Subject: State aid SA. 36361 (2013/N) – Czech Republic
Cultural heritage and Contemporary Art

Sir,

1. PROCEDURE

(1) On 18 March 2013, the Czech authorities notified to the Commission the above mentioned scheme. The Commission requested additional information on 16 May 2013 and 30 August 2013, which was provided by the Czech authorities on 1 July 2013 and 21 October 2013 respectively.

2. DESCRIPTION OF THE SCHEME

2.1. General objective

(2) The objective of the aid scheme ("Draft Programme CZ 06") is to preserve cultural heritage for future generations and to make it accessible to the general public for knowledge and education. It also aims to strengthen European cultural identity and cultural dialogue and to reinforce bilateral relations with Norway, Iceland and Lichtenstein.
(3) The Draft Programme CZ 06 is based on the overall objectives of the European Economic Area Financial Mechanism 2009–2014, i.e. to contribute to the reduction of economic and social disparities in the EEA through financial contributions in priority sectors and to strengthen bilateral relations between donors and recipient countries.

(4) The main objectives of the Draft Programme CZ 06, as identified by the Czech authorities, are specified in two subprogrammes:

- under **Programme Area 16** (PA 16) to preserve cultural heritage for future generations and to make cultural heritage available to public for knowledge and education;

- under **Programme Area 17** (PA 17) to strengthen the European cultural identity and cultural dialogue, to strengthen bilateral relations with Norway, Iceland and Liechtenstein. The selection of specific projects will lead to the support, primarily, of innovative works for which a high level of artistic creativity is expected. In terms of playwriting, artists’ attention will be focused on achieving the objectives of cultural policy. Further to these policies, the programme area should help to remove barriers in this field of intercultural dialogue and inclusive social policy. It focuses on projects that will contribute to the shaping of cultural identity and social cohesion and will help to remove certain undesirable social phenomena in the context of European cultural heritage.

2.2. **Activities supported**

2.2.1. **Program Area 16**

(5) **Under PA 16**, two calls for projects will be opened for the submission of proposals for project applications. These calls for projects will take place within 12 months of each other. As the Czech authorities explained, based on the results of the open calls, support may be provided to diverse movable cultural assets and museum-type collections listed in the Central Register of Collections, as well as to diverse monuments listed in the Central List of Monuments of the Czech Republic. Programme CZ06 specifies that support may be provided to any of the total number of 40 528 monuments, comprising cultural monuments (40 244), national cultural monuments (272) and UNESCO monuments (12), provided that the given project meets the criteria of the open call.

(6) Several activities, as well as 2 pre-defined projects can be supported under the notified measure:

a) **Restoration of monuments** (real estate): Maintenance, repair, reconstruction, restoration, landscaping or other modification of cultural estates and the surroundings thereof\(^1\);

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\(^1\) Concerning the activity restoration of monuments, the Czech authorities have identified several examples of possible supported projects, such as: 1) Revitalization of Saint Anežka Česká cloister, potential beneficiary: National Gallery in Prague; 2) Smrčka’s House, potential beneficiary: Hussite Museum in Tábor; 3) Revitalization of Hlučín — Darkovičky fortification area, potential beneficiary: Silesian Regional Museum; 4) Restoration of UNESCO monuments, potential beneficiaries: Český Krumlov;
b) Presentation of movable cultural assets and preservation of movable cultural heritage: Restoration and presentation of cultural values, and the storage and presentation thereof in a high-quality, safe new environment (museum and museum-like artefacts and collections, registered movable monuments, written cultural heritage and film heritage)

2

c) Pre-defined project: "Digital restoration of Czech film heritage" (making Czech film works available to the public): The main objective of the project is the preservation and accessibility of Czech film heritage for the general public. This project will therefore contribute to the preservation of the Czech cinematographic cultural heritage. Under this project, only 10 films will be digitized. The aim of digitization/digital restoration has been developed methodologically with the Czech National Film Archive (NFA)-the beneficiary of the support-and has as result a digital version of the original work, which is as close as possible to what the audience had seen and heard at the time of the first release of the film. This requires the active participation of specialists like film historians, technologists, archivists and also filmmakers who are able to rightly assess the delicate nuances of each restoration step by step. Each digitization project necessarily requires an in-depth research of historical documents about each film, production history of each film, as well as its distribution and dissemination. This process includes several type of activities, like for example: historical research in the archives; selection and identification of all materials necessary for the proper and complex digitization project; selection and identification of source material for sound transfer; restoration of image and sound; metadata management; preservation of Lednice — Valtice area; Litomyšl. For example, in relation to the potential project, the revitalization of Saint Anežka Česká cloister, the Czech authorities explained that such a project could include the revitalization of the ground area that is around the cloister, a vast piece of land to which archaeological sites are attached to, land that cannot be made accessible to the public without necessary constructional and gardening adjustments.

2 Concerning the activity presentation of movable cultural assets and preservation of movable cultural heritage, the Czech authorities have identified several examples of possible supported projects, such as: 1) Digital gallery “Across Art and Epochs” project, potential beneficiary: National Gallery in Prague; 2) 100 objects of Czech history-100 stories of new expositions of the National Museum (project), potential beneficiary: National Museum; 3) Czech national music treasure to the World (project), potential beneficiary: National Museum; 4) Museum of decorative arts (UPM) (project), potential beneficiary: National Museum. For example, in relation to the project, Digital gallery, the Czech authorities explained that the main aim of the project will be to integrate target groups into effectively using the potential of movable cultural heritage of the National Gallery Prague through digitalization and 3D presentation of collected showpieces. Complex digitalization of the chosen volute of the most significant collected showpieces of the National Gallery Prague from all its five collections (some of them cannot be presented to the public in the traditional way of an exhibition — Collection of Graphics and Drawings) is expected. The project is based on cooperation with the Norwegian partners.

3 Two groups of experts (film historians, curators, critics, technicians) have worked on identifying a list of two hundred films produced since the beginning of the Czech cinema until the early 1990. Films for digitization will be selected from this list.

4 According to the Czech legislation, a digitized film from the collection of the NFA is not considered a new work, but just a new representation of the same one, which means that with the digitization no new copyright issues should be raised.
restored digital copy; production of digital masters for different types of distribution; production of negative and prints on film stock.

d) **Pre-defined project – Industrial Heritage:** This project is focused on documenting industry heritage experience exchange. Within the project, there will be consultations between the Norwegian and the Czech parties, there will be presentation of industrial heritage of the two countries, documentation methods, monument care evaluation, and revitalization and presentation methods. Some of the key activities are for example:

- mapping the industry heritage in the Czech Republic
- mapping the industry heritage in Norway
- publishing bi-lingual publication / catalogue (Czech, English)
- creating touring exhibition (panels) for the Czech Republic and Norway
- creating connected educational materials and programs of the exhibition
- final international (the Czech Republic/Norway) conference.

(7) As the type of supported activities 6 a) restoration of monuments activities and 6 b) presentation of movable cultural assets and preservation of movable cultural heritage are implemented through an open call for projects, it must be held that this type of potential projects are just examples and do not constitute a final exhaustive list of supported projects under the notified measure, the same being applicable for their respective expected beneficiaries.

2.2.2. **Programme Area 17**

(8) Under **PA 17**, two calls for projects will be opened for the submission of proposals for project applications. These calls for projects will take place within 12 months of each other. No pre-defined projects have been established.

(9) The outputs of the **PA 17** will be concrete projects in diverse artistic disciplines, which will provide significant support for contemporary professional art with special attention to the quality and level of innovation thereof. These projects will be specific actions and events of high artistic quality that will also promote cultural diversity and civic cohesion in a new and innovative way.

(10) The outputs of Programme Area 17 will also include projects conducive to the creativity and education of artists and other persons and organisations providing cultural services. In order to strengthen cultural dialogue and European identity, these projects, as well as creative workshops and art festivals, will have an international flavour. Bilateral partnership relations with institutions in donor countries are expected to become stronger with the implementation of most projects in all four of the arts supported (professional theatre, music, visual arts and film). To this end, some activities (where a broader impact is projected) will be carried out ‘in compulsory collaboration with a partner from donor countries’, i.e. in the absence of the establishment of bilateral cooperation it will not be possible to apply for a grant.
(11) **Under PA 17**, the activities which can be supported under the notified measure include:

1. **Professional theatre (theatre of movement and gesture, including professional dance and the visual arts)** that will include the possibility of releasing a related audio-visual recording and issuing a non-periodical publication

   - A festival, show; a new interdisciplinary (or alternative) project (support for the studying and one-year’s operation thereof). – Both projects need a compulsory co-production.
   - A project for the new staging of a production, as well as its performance; -Both projects are of optional co-production.
   - A creative workshop, training course, conference, seminar– a project of compulsory co-production.

2. **Professional visual arts** that include the possibility of issuing a related non-periodical publication

   - An exhibition project; support of year-round exhibition activities– both projects of optional co-production.
   - A creative workshop, training course, conference, seminar– a project of compulsory co-production.

3. **Professional music (classical, contemporary and alternative music)** with the possibility of releasing a related audio (visual) recording and issuing a non-periodical publication

   - A music festival, as well as a creative workshop, training course, conference, seminar – both projects of compulsory co-production.
   - A concert– a project of optional co-production.

4. **Film**

   - A creative scriptwriting workshop, training course, conference, seminar (support for the organisation of these events depending international partnership and the exchange of experience in cinematographic scriptwriting – with the active participation of a foreign partner, including the possibility of releasing a related audio-visual recording and issuing a non-periodical publication), as well as a film festival show – both projects of compulsory co-production.

2.3. **Budget and duration**

(12) The scheme's total budget amounts to € 19.28 million (CZK 478,14 million). The duration of the scheme starts from the date of the completion of the notification process (adoption of a Commission decision) and ends on 30 April 2017.
<table>
<thead>
<tr>
<th>PA 16</th>
<th>EUR 16.78 Million</th>
<th>2013 (Annual Budget-EUR) 66 294 €</th>
<th>2014 8 450 000 €</th>
<th>2015 7 380 000 €</th>
<th>2016 888 023 €</th>
<th>2017* -</th>
</tr>
</thead>
<tbody>
<tr>
<td>Grant per project (minimum/maximum grants EUR)</td>
<td>2014</td>
<td>2015</td>
<td>2016</td>
<td>2017</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Restoration of monuments; Preservation of movable assets and movable cultural heritage (EUR 15.87 Million)</td>
<td>0 €</td>
<td>8 000 000 €</td>
<td>7 000 000 €</td>
<td>868 023 €</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>170.000-1.200.000 €</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Digital restoration of Czech film heritage (EUR 0.8 Million)</td>
<td>50 000 €</td>
<td>400 000 €</td>
<td>330 000 €</td>
<td>20 000 €</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>Pre-defined project-Industrial heritage (EUR 116 294)</td>
<td>16 294 €</td>
<td>50 000 €</td>
<td>50 000 €</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>PA17</td>
<td>EUR 2.5 Million</td>
<td>2013 (Annual budget-EUR) 0 €</td>
<td>2014 1 400 000 €</td>
<td>2015 1 000 000 €</td>
<td>2016 100 000 €</td>
<td>2017* -</td>
</tr>
<tr>
<td>Grant per project (minimum/maximum grants EUR)</td>
<td>2014</td>
<td>2015</td>
<td>2016</td>
<td>2017</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Activities supported in the area of professional theatre,</td>
<td>0 €</td>
<td>1 400 000 €</td>
<td>1 000 000 €</td>
<td>100 000 €</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td></td>
<td>10 000 – 160 000 €</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Although the measure is intend to last until 30 April 2017, the break-down for 2017 was not provided as the eligibility of project costs and the projects’ implementation will end in 2016, therefore no budget is allocated to the activities supported under the notified measure after the end of 2016.
2.4. **Granting authority**

(13) The aid is financed by the 2009-2014 EEA Funds. Under the Memorandum of Understanding between the Czech Republic and representatives of the donor states, the National Contact Point – Ministry of Finance of the Czech Republic is the entity in charge of granting the aid.

(14) Under the Ministry of Finance, the following departments are responsible for the EEA Funds and the 2009-2014 Norwegian Funds: Centre for Foreign Assistance – preparation and coordination, Centre for Foreign Assistance – implementation, monitoring and evaluation, Central Finance and Contracts Unit, and Unit for the Certification of Funding under 2009 – 2014 EEA/Norway Financial Mechanisms.

2.5. **Legal basis**

(15) The legal basis for this scheme consists of the following acts:

- Protocol 38b to the EEA Agreement on the EEA Financial Mechanism 2009-2014;

- Agreement between the European Union, Iceland, the Principality of Liechtenstein and the Kingdom of Norway on an EEA Financial Mechanism 2009-2014 of 28 July 2010;

- Memorandum of Understanding on the Implementation of the EEA Financial Mechanism 2009-2014 between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Czech Republic (signed on 17 June 2011);


2.6. **Beneficiaries**

(16) **Under PA 16**, the beneficiaries that are eligible under the open calls are the following:

- institutions set up and managed by the State;
- regional and municipal administrations;
- churches and religious organisations;
- non-governmental non-profit organisations;
- and other legal entities managing cultural heritage.
The beneficiary of the support under the pre-defined project ‘Digitisation of Czech films’ is the Czech Republic's National Film Archive, which is a state-funded organisation set up by the Ministry of Culture.

Under the pre-defined project– Industrial Heritage, the beneficiary will be the National Heritage Institute, which is a state-funded organisation set up by the Ministry of Culture.

Under PA 17 the eligible beneficiaries are legal and natural persons involved in cultural services, activities and heritage in the fields of professional theatre, fine arts, music and film:

– at national level – state-funded organisations set up by the Ministry of Culture (artistic, curating or scientific);

– at regional and municipal level – cultural and artistic organisations established by regional/municipal administration;

– non-governmental cultural and artistic bodies, non-profit cultural organisations and companies including natural persons whose artistic endeavours have achieved outstanding results over the long term, or activities providing significant support to high-quality artistic creation.

2.7. Form of the aid, aid intensity and cumulation rules

The aid will be provided in the form of direct grants.

The maximum aid intensity ranges from 60% to 90%. Final beneficiaries must provide the difference of co-financing of the total eligible costs.

<table>
<thead>
<tr>
<th>Type of beneficiary</th>
<th>Aid intensity</th>
<th>Co-financing</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutions founded and controlled by the state/PA 16</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Institutions founded and controlled by the regions and municipalities/PA16</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Churches and religious organisations/PA 16</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>NGOs/PA 16</td>
<td>90%</td>
<td>10%</td>
</tr>
<tr>
<td>Other entities/PA 16</td>
<td>60%</td>
<td>40%</td>
</tr>
<tr>
<td>National Film Archive/PA 16</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>National Heritage Institute/PA16</td>
<td>80%</td>
<td>20%</td>
</tr>
<tr>
<td>Eligible beneficiaries /PA 17</td>
<td>90%</td>
<td>10%</td>
</tr>
</tbody>
</table>
(22) Under the notified measure, the support can be cumulated with aid received from other local, regional, national or Community schemes to cover the same eligible costs. The maximum aid intensity here will be 100% of eligible project costs. The programme does not permit applications for the same project costs from other grant schemes. Every final beneficiary has to declare that no other source (except the co-financing from public money or own resources) will be used for any costs paid under this scheme.

2.8. Eligible costs

(23) Eligible costs are consistent for each activity and each applicant and are specified in the Guideline of the Eligible costs, prepared in accordance to the Regulation on the implementation of the European Economic Area (EEA)/Norwegian Financial Mechanisms 2009–2014, articles 7.3 and 7.4 and Article 7.5. The measure includes eligible direct cost and indirect costs.

(24) The eligible direct expenditures for a project are those expenditures which are identified by the Project Promoter and/or the project partner, in accordance with their accounting principles and usual internal rules, as specific expenditures directly linked to the implementation of the project and which can therefore be booked to it directly. In particular, the following direct expenditures are eligible:

(a) the cost of staff assigned to the project, comprising actual salaries plus social security charges and other statutory costs included in the remuneration;

(b) travel and subsistence allowances for staff taking part in the project, not exceed the relevant national scales;

(c) cost of new or second hand equipment, generally accepted for items of the same kind.

(d) purchase of land and real estate under the conditions set in Article 7.5;

(e) costs of consumables and supplies;

(f) costs entailed by other contracts awarded by a Project Promoter for the purposes of carrying out the project, provided that the awarding complies with the applicable rules on public procurement and the above mentioned Regulation;

(g) costs arising directly from requirements imposed by the project contract for each project (e.g. dissemination of information, specific evaluation of the action, audits, translations, reproduction), including the costs of any financial services (especially the cost of financial guarantees).

(25) Indirect costs are all eligible costs that cannot be identified by the Project Promoter and/or the project partner as being directly attributed to the project but which can be identified and justified by its accounting system as being incurred in direct relationship with the eligible direct costs attributed to the project. They may not include any eligible direct costs. Indirect costs of the project shall represent a fair apportionment of the overall overheads of the Project Promoter or the project partner.
The method of calculating the indirect costs and its maximum amount shall be determined in the project contract. The method of calculation of indirect costs of a project partner shall be stipulated in the partnership agreement between the Project Promoter and the project partner.

2.9. Application and selection process

As already mentioned the support under this measure is granted on the basis of open calls and pre-defined projects.

Two calls for projects under both PA 16 and PA 17 will be opened for the submission of proposals for project applications. These calls for projects will take place within 12 months of each other.

65% of funds earmarked for both PA 16 and PA 17 would be allocated to the first call for projects; the remaining 35% will be allocated to the second call for projects.

The date of the call for projects depends on the approval of the entire Programme CZ06 by the Financial Mechanism Office, the state of preparation of all necessary materials and documents, and the completion of the notification process.

The call for projects shall be organised by the Granting authority and shall contain several common features, among which the following: they shall be widely publicised with a view to reach all potential applicants; they shall include a clear and reasonable deadline, which shall be at least two months from the date of the publication of the announcement, and an address for submission; they shall clearly specify the eligible applicants and any restrictions, limitations or exclusions that they may be subject to; they shall contain detailed selection criteria as well as a scoring chart; they shall be published on the website of the granting authority in the national language(s) and in English; etc.

The open calls are intended for all eligible applicants (see Beneficiaries section above) in the programme area concerned (PA 16 or PA 17). Under each call, all applications will be assessed first in terms of formal requirements and eligibility and then in terms of quality.

The following eligibility criteria under PA 16 and PA 17 have been defined:

1. The applicant is eligible
2. The partner/partners are eligible (if applied in a partnership)
3. The project is in the public interest – it complies with the conditions of the call
4. It is not possible that the project is submitted in any other call within the structural funds EU in the same time as the Call from EEA and Norway Grants is opened
5. The project is in line with the call rules (programme area, outcomes, outputs), activities are eligible.
6. The location of the project realization complies with the conditions set by the Call.

7. The time period of the project implementation complies with the proposal and it does not exceed the maximum specified in the Financial Mechanism 2009-2014.

8. The requested amount of grant complies with the conditions set by the Call.

9. The amount and securing of co-financing, including the source, is enclosed.

(34) Five basic evaluation criteria (quality criteria) have been identified for both PA 16 and PA 17:

<table>
<thead>
<tr>
<th>Basic assessment quality criteria</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Applicant’s ability and preparedness to implement the project</td>
<td>16</td>
</tr>
<tr>
<td>2 Project significance (relevance)</td>
<td>24</td>
</tr>
<tr>
<td>3 Project contribution and overall effectiveness</td>
<td>32</td>
</tr>
<tr>
<td>4 Economic efficiency and sustainability of project</td>
<td>15</td>
</tr>
<tr>
<td>5 Horizontal (cross-cutting) policies</td>
<td>13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100</strong></td>
</tr>
</tbody>
</table>

(35) Any sub-criteria and the number of points awarded to them will be defined before a call is published and they will subsequently be made public together with all instructions for applicants.

(36) The Granting Authority shall review the applicants for compliance with formal and eligibility criteria. Applicants whose applications are rejected at this stage shall be informed and given a reasonable time to appeal that decision.

(37) Each application that meets the formal and eligibility criteria will be assessed further by two independent evaluators (experts in the area concerned), who award points on the basis of criteria which have been defined and made public in advance. An application is recommended if it receives an average of at least 70 points from both evaluators. All applications receiving more than 70 points will be referred to the evaluation committee for final recommendation. The ranking of applications will be made on the basis of the points received; the number of applications approved will depend on the funds allocated for the call concerned.
In relation to the pre-defined projects (PDPs), it must be held that they have been prepared by institutions whose experience in the area concerned in the Czech Republic is unparalleled, according to the CZ authorities. The topics of two PDPs were examined from the national cultural strategy point of view or the priorities of the Czech Ministry of Culture and have been consulted with the experts of the Ministry of Culture, Donor Programme Partner (Arts Council of Norway) and donors. The relevance of the PDPs is in line with the Programme Objectives, both PDPs were approved by the donors in April 2013 as a part of the Programme.

2.10. Accounting for aid and monitoring mechanism

Under both programmes, the grant is to be paid ex-post. If the grant beneficiary requires it, it will be possible to receive an advanced payment, up to maximum 10% of the total approved expenses.

Invoices for project expenditure are initially paid in full by the final beneficiary of the grant and are subsequently submitted, with the monitoring report, to the aid grantor, who provides reimbursement up to the financing percentage identified in section 2.7 above, if all expenditure is eligible and properly documented.

The costs are to be paid therefore once they are officially declared eligible and on the basis of submitted Interim Financial Report and Payment Claim including: Bank accountant statement, List of personnel costs and List of expenditures.

The entire monitoring mechanism set up by the Granting Authority will be based on: regular project reporting (interim and completion reports), programme steering (Programme Steering Committees), on-the-spot monitoring and programme/project evaluations. The interim reports will give an overview of project progress including achievement of declared results and will be the basis for the payment request together with the rest of the financial documentation (list of claimed expenditures, account statement). Programme Steering Committees will be established with the goal to supervise overall programme implementation. On-the-spot monitoring of the projects (verification of the information declared in monitoring reports) will be realized as regular, ad-hoc or as follow-up check of proposed corrective measures. Programme/project evaluations will be carried out at least once throughout the programme implementation.

3. ASSESSMENT OF THE PRESENCE OF STATE AID

3.1. State aid in the sense of Article 107(1) TFEU

According to Article 107(1) TFEU, "any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

In order to be classified as State aid, a support measure must therefore fulfil the following cumulative conditions: 1) it must be granted through State
resources; 2) it has to confer an economic advantage to undertakings; 3) this advantage must be selective and 4) it must distort or threaten to distort competition and it must affect intra-Union trade.

(45) As these conditions have a cumulative character, the non-fulfilment of one of them leads to the conclusion that a measure does not constitute State aid within the meaning of Article 107(1) TFEU.

**State resources**

(46) It is settled case-law that a measure can be categorized as State aid under Article 107 (1) TFEU only if it grants an advantage directly or indirectly through State resources and the use made of resources is imputable to the State.

(47) The notified scheme clearly involves State resources, since the Memorandum of Understanding establishing the conditions for the use of the EEA funds has been negotiated and concluded between the Czech Republic and the representatives of the donor countries. Moreover, State public authorities have been involved in the adoption of such a measure since the whole process of granting the State support is dealt, inter alia, with by the Czech Ministry of Finance, therefore the notified measure is imputable to the State.

**Presence of Undertakings and Economic activity**

(48) Under the scheme, it cannot be excluded that the beneficiaries, who can have different legal forms, may engage in activities of an economic nature\(^6\), as the organization of cultural events, festivals and shows, the performance of cultural activities may be considered economic activities on a competitive market\(^7\). Indeed there may be entities other than the beneficiaries offering the same or substitutable goods and services on the market. In the case of renovation of monuments, a beneficiary may use the building for the operation of an economic activity.

(49) During the notification process, the Czech authorities have explained that, in view of the nature of the programmes PA 16 and PA 17, all beneficiaries might in consequence act as undertakings, although not in all cases i.e. they do not expect for example churches to run any business activity; however such possibility cannot be excluded per se.

(50) Therefore, to the extent that the beneficiaries carry out economic activities, they qualify as undertakings in the sense of article 107 (1) TFEU.

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\(^6\) Under EU competition law, an undertaking is "(...) any entity engaged in an economic activity, in particular an activity consisting in offering goods and services on a given market, regardless of its legal status and the way in which it is financed"; see Case C-118/85 Commission v. Italy [1987] ECR 2599, para. 7.

\(^7\) Digital restoration, education and training in the field of cinematography, and film festivals and film shows may, under certain circumstances, not qualify as economic activities. See Commission decision of 2 August 2013 in case SA.36106 Czech cinematography support scheme, point 37.
**Advantage and Selectivity**

(51) The beneficiaries get an advantage through the measure, since they would not receive the direct grants, contributions for operations and repayable financial support under normal market conditions. Furthermore, these payments relieve the beneficiaries from part of the costs they should have borne in carrying out the cultural project selected or in performing their activities.

(52) The economic advantage granted under the scheme is selective in the sense that it benefits certain undertakings that are involved in the cultural activities supported by the present scheme.

**Distortion of competition**

(53) By favouring certain undertakings operating in the field of culture and cultural heritage, a field which is opened to competition and therefore, where the favoured undertakings compete with other undertakings that carry out the same cultural activities as those specified in the scheme, the measure affects or may affect competition between such undertakings.

(54) Consequently, the Commission is of the opinion that the notified scheme may distort competition.

**Effect on intra-EU trade**

(55) By favouring certain undertakings operating in the field of culture and cultural heritage, which is open to trade between Member States, it cannot be excluded that certain activities supported under the notified measure also affect intra-EU trade in this sector.

(56) In relation to the type of activity 6 a) restoration of monuments, it must be mentioned that cultural heritage sites, including museums and galleries, are generally mentioned in popular travel guides to the Czech Republic. According to the Czech authorities, data on the percentage of foreign visitors to cultural heritage sites out of the total number of foreign tourists is not available. However, some information on the visitors of cultural sites and monuments can be drawn from the “Survey Focu sed on the Motivation of Potential Foreign Tourists” commissioned by the Czech Tourism agency (2010, available at [http://vyzkumy.czechtourism.cz/](http://vyzkumy.czechtourism.cz/)). The results indicate that visiting cultural sites and monuments is the second most frequent activity sought by foreign visitors (first one being town tourism).

(57) In the case of cultural heritage sites, foreign visitors constitute 6.5% out of the total number of approximately 4.5 million visitors. In the case of the UNESCO monuments, major national cultural institutions and main tourist destinations, this percentage may be somewhat higher.

(58) Out of the large number of Czech monuments, only a small part has an outstanding potential to attract foreign tourists. A survey focused on the attendance of the TOP 20 Czech tourist attractions (available at the websites of

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8 Small amounts of aid are considered to still distort competition (Joined cases T-298 et al./97, T-1 et al./98 Alzetta Mauro and others v Commission of the European Communities [2000] ECR II-2319).
CzechTourism-
showed that only ten sites and museums count with outstanding numbers of visitors (such as the Prague Castle, Jewish Museum in Prague, National Gallery in Prague, State Castle and Chateau in Český Krumlov).

(59) The Czech authorities are of the opinion that a large part of tourists would not decide to visit the Czech Republic without the existence of its monuments (second most important reason for visit), but that this reason (visit of monuments) will however exist regardless of the EEA/Norway Financial Mechanisms, which constitute only a very small percentage of the funds invested in the preservation of the Czech cultural heritage.

(60) Given that the projects supported under the type of activity restoration of monuments are implemented through a call for projects, an exhaustive list of beneficiaries and type of projects cannot be provided ex-ante. Therefore, given that any museum/cultural site or monument (including UNESCO ones) out of the 40 244 national monuments is eligible for support under the scheme, the Commission cannot exclude an effect on intra-trade for this type of supported activity under the notified scheme.

(61) In relation to the type of supported activity, 6 b) presentation of movable cultural assets and preservation of movable cultural heritage, by analogy the same reasoning above can be applied in relation to this type of supported activity. Given that these projects are implemented through a call for projects, an exhaustive list of beneficiaries and type of projects cannot be provided ex-ante. Therefore, given that support may be granted to any movable cultural assets and museum-type collections listed in the Central Register of Collections, the Commission cannot exclude an effect on intra-trade for this type of supported activity under the notified scheme.

(62) In relation to the pre-defined project "Digital restoration of Czech film heritage" (making Czech film works available to the public), since the audiovisual work productions are traded at an international level, the financial advantage granted on the basis of the scheme could affect trade between Member States.

(63) In relation to the pre-defined project Industrial Heritage, some of the activities supported (international conference, bi-lingual (English-Czech) publications) under this project have the potentiality to affect intra-Union trade. The National Heritage Institute, the beneficiary of the project, has a wide scope of activities and receives a number of other subsidies and grants. Therefore, the grant for this pre-defined project cannot be provided under the de minimis principle, as in aggregate with other grants, the amount allowed under the de minimis rule would be exceeded. Should the activities supported under this project affect trade between Member States, they can be nonetheless declared compatible with the internal market, as demonstrated below, in section 4.

(64) In relation to the type of supported activities under PA 17, it must be held that the funds will support professional theatre groups and professional visual, musical and film arts, the aid covering festivals, concerts, specialised courses, creative workshops through an open call for projects. The beneficiaries may
use the funds to create audio-visual recordings associated with the project they have implemented.

(65) In order to strengthen cultural dialogue and European identity, these projects, as well as creative workshops and art festivals, will have an international flavour. Moreover, some of the selection criteria proposed for the assessment of the projects supported under PA 17 refer to the degree of innovativeness of a project to contribute to cultural interaction, but also to the degree of strengthening bilateral relations between Czech Republic and the donor countries.

(66) Czech authorities expect that quite intense advertising will be in place within individual projects in order to attract audience to the supported cultural events. The importance of advertising is also given by the fact that it is one of the criteria for evaluation of grant application quality. Grant applicants must clearly describe the advertising activities for the given project, including the methodology and budget. The evaluated information includes a detailed communication plan and information on the media used (web, press, leaflets, radio, etc.). Due to the use of electronic media, the advertising activities may exceed the local level.

(67) According to the Czech authorities, data on the percentage of foreign visitors expected to the type of activities supported under PA 17 out of the total number of visitors is not available. Moreover, the percentages of local-scale and nationwide activities are not known for the type of the activities supported under PA 17.

(68) However, based on the results of the survey mentioned in paragraph 56 above, there are exceptional events and institutions in the field of visual art, which significantly exceed the relatively low attendance by foreign visitors. This applies mainly to the Prague Quadriennale (International Exhibition of Scenography and Theatre Architecture), where foreign visitors represented 67% of all visitors in 2011. The same applies to the National Gallery in Prague with a long-term 38% share of foreign visitors.

(69) The Czech authorities have explained during the notification process that, in their view, the supported projects detailed under PA 17 as such would not have the potential to attract foreign tourists to the Czech Republic. The survey on the motivation of potential foreign visitors indicates that similar events rank fifth among the six activities most frequently sought by tourists.

(70) The types of activities supported under PA 17 are implemented through a call for projects, in consequence, an exhaustive list of beneficiaries and type of projects cannot be provided ex-ante. Based on the foregoing, and given that, there are activities and institutions in the field of visual art (see paragraph 68 above) similar to the ones eligible for support under PA 17 that could exceed the relatively low attendance by foreign visitors, the Commission cannot exclude an effect on intra-trade for this type of supported activities.
3.2. De minimis

(71) Although the amounts of aid per project will be limited\(^9\), it cannot be guaranteed that the aid amount per beneficiary will never exceed the *de minimis* threshold, in particular since a beneficiary may have already reached the *de minimis* threshold with other support measures.

3.3. Conclusion on the existence of State aid

(72) In light of the foregoing, the Commission considers that, to the extent that the support at hand is granted to beneficiaries performing an economic activity and whose activity is likely to affect intra-Union trade, independently of their legal form, the measure in question constitutes State aid within the meaning of Article 107(1) TFEU.

4. COMPATIBILITY ASSESSMENT

4.1. Compatibility with Article 107(3)(d) TFEU

(73) According to Article 107(3)(d) TFEU, aid to promote culture and heritage conservation may be considered compatible with the Internal market, where such an aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.

(74) Furthermore Article 167 TFEU provides that "The Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore".

(75) The principles laid down in Article 107(3)(d) TFEU have been applied to cases similar to the case at stake in a series of precedent decisions\(^10\).

(76) Regarding aid to audio-visual works, the relevant rules are laid down in the Cinema Communication\(^11\).

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\(^9\) Given that under PA 17 the average grant amount per beneficiary equals approximately € 85,000, the aid element per beneficiary will be on average below the *de minimis* threshold.


4.1.1. **Genuine cultural objective**

(77) The present scheme is aimed at the promotion of culture and heritage conservation in the Czech Republic. It is designed primarily for assisting the cultural institutions established by the Czech public authorities, supporting cultural activities like organisations of festivals, shows, workshops, conferences but also restoration of monuments, digitisation of cultural heritage, publishing activities.

(78) The information submitted by the Czech authorities proves the cultural and cultural heritage aspect of the type of activities to be subsidized under the notified scheme. The granting authority assesses for each application that the relevant conditions to qualify as a cultural project are fulfilled.

(79) In particular, the beneficiaries of support under PA 16 and PA 17 are entities which engage in activities with a truly cultural content, such as national and regional museums, galleries, cultural institutions set up by the Czech Ministry of culture. Furthermore, the control mechanisms foreseen, including the separate accounting for allocated public funding to ensure sufficient control of the use of funding, offer an additional guarantee that only cultural projects falling under Article 107(3) (d) will be supported and that only the costs of such projects can be compensated without any possibility of overcompensation.

(80) During the notification process, the Czech authorities have confirmed that the grants shall not be provided to commercially viable projects. The premises of some cultural sites may be used for small events, such as concerts, in order to receive funds for their operation but the income from such events will be used for the maintenance of the given monument/site. Also, the revenues from film distribution will be used for further digitization of films, which contribute to the fulfilment of the objective of the pre-defined project Digital restoration of Czech film heritage. The cultural activities supported under this scheme are not profit-seeking.

(81) The Commission is therefore of the opinion that the notified aid is directed towards activities with a truly cultural content and, therefore, falls within the scope of Article 107(3) (d) TFEU.

4.1.2. **Necessity and proportionality**

(82) The supported activities under the present aid scheme are aimed at projects exclusively promoting culture and cultural heritage conservation. The Czech authorities consider that conservation of cultural heritage, the operation of cultural institutions, the organization of cultural events and the digitisation of cultural heritage will usually not take place without the State financial support.

(83) The Czech authorities explained that the beneficiaries targeted by the scheme are bodies lacking capital, for which the resources provided by State aid are indispensable. Moreover, given that certain cultural monuments are in a technically poor condition, the measure is necessary to protect cultural heritage from irreversible losses caused by further delays in implementing the necessary renovation works.
The activities to be financed under the scheme are unprofitable so one could ascertain that they would not be carried out or could not be achieved, at a desirable quality without external support. As described, the aid is granted only to projects which could not be realised on a commercially viable basis. In relation to the type of activities -audio and video musical recordings of artistic production-, the granting authority will check before granting the aid that without the financial support the project could not be carried out.

Moreover the fact that the open calls for projects under PA 16 and PA 17 are based on eligibility and selection criteria which are clearly defined and published in advance acts as an incentive for the performance of the activities falling under the calls. The fact that the aid cannot be granted before the granting authority has confirmed, subject to detailed verification, that the projects meet the conditions of eligibility (see paragraphs 32 and 33 above) laid down by the scheme is an additional guarantee. Moreover, the notified measure contains provisions for the verification concerning the existence and reliability of the requests as well as for the recovery of unduly granted funding.

In particular, appropriate arrangements are put in place to guarantee that the aid is actually used for the pursued objectives and is proportional. Beneficiaries are obliged to submit financial statements. They have to declare that no other source (except the co-financing from public money or own resources) will be used for any costs paid under this scheme. Authorities check the documents provided periodically by the beneficiaries and, in addition to the correctness and completeness of such documents, they also verify whether the grant has been used for the intended purpose. A separate accounting for allocated public funding is envisaged (see paragraph 79 above), in order to ensure sufficient control of the use of funding and to offer an additional guarantee that only cultural projects falling under Article 107(3) (d) will be supported and that only the costs of such projects can be compensated without any possibility of overcompensation. Further, the authorities are allowed to perform on-site inspections of all beneficiaries, in which case they check original documents to make sure that the grant has not been spent contrary to the terms negotiated. If the authorities find out that it has been spent contrary to the agreement terms, the whole amount that has been spent on unauthorised items or activities should be repaid back with interests to the Granting Authority.

Regarding aid to creative scriptwriting workshops, training courses, conferences, or seminars, paragraph 21 of the Cinema Communication states that scriptwriting, development, film distribution, or film promotion (including film festivals) may be supported by State aid which may cover all aspects of film creation, from story concept to delivery to the audience. If aid may be granted to scriptwriting, it is even more so justified for seminars and workshops around scriptwriting and film creation which are more distant from the marketing of a film than scriptwriting itself. Paragraph 52(3) of the Cinema Communication does not set a limit for the intensity of aid to script writing. Otherwise, with regard to the Cinema Communication, the aid to these activities does not raise doubts as to its compatibility with the internal market.

The Czech authorities explained that the grant amount of State financing has been established during the consultation with the donor countries and it is based on a survey applied to a sample of potential applicants. The survey
highlighted the maximum level of co-financing that the applicants would be able to cover for the type of activities supported by the scheme. The co-financing scheme with the proposed levels of co-financing for different types of applicants was approved by the donors and on this basis the Czech Ministry of Finance defined the general rules for implementation. Similar level of co-financing was also applied to support coming from EU funds.

(89) Although the financing received under the scheme may be cumulated with other forms of public support, the total financial support obtained by the beneficiary may not exceed the costs necessary to accomplish the project or that activity.

(90) Based on these considerations, the Commission considers that the measure is both necessary and proportionate to achieve the objective of culture conservation and promotion.

4.1.3. *Distortion of competition and effect on intra-Union trade*

(91) As stated above, the Commission cannot exclude an effect on competition and trade between Member States. However, under the notified measure such effects are likely to be limited in view of the nature of the eligible costs, the limited overall budget and the small number of beneficiaries with a very limited market share. For the activities carried out in the Czech language, the impact on intra-Union trade would be even more limited.

(92) Moreover, in the case of major UNESCO monuments beneficiaries, given the limited grant amount per beneficiary (1.2 million EUR), available for the renovation of monuments type of activity, they could only apply for small improvements rather than large renovations.

(93) Any possible impacts on competition and intra-Union trade will further be minimized by the fact that any processes associated with funding are clearly defined and are fully under the public eye, as all the information concerning the decision-making processes undertaken by the Czech authorities is transparent. Moreover, based on the information provided by the Czech authorities, in relation to the projects implemented through the open call for projects, equal access through a transparent and objective selection process is ensured to all applicants, including those from other Member States. The only exception concerns those activities under PA 17 referred to in paragraph 10, where compulsory collaboration with a partner from a donor country is required to strengthen bilateral relations with Norway, Iceland and Liechtenstein in accordance with the objective of PA17.

(94) Moreover, every project promoter will be obliged to purchase goods and services via transparent tender in accordance to the national public procurement rules.

(95) Based on these considerations, the Commission considers that the measure is both necessary and proportionate to the objective of promoting culture in the Czech Republic and does not affect trading conditions and competition in the Union to an extent contrary to the common interest.
5. **DECISION**

(52) For these reasons the Commission considers that, to the extent that the measure constitutes State aid, it is necessary and proportionate for the promotion of culture and heritage conservation and does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest within the meaning of Article 107(3)(d) TFEU. Consequently, the Commission finds that the notified measure is compatible with the internal market in accordance with Article 107(3)(d) TFEU and has accordingly decided not to raise objections to the notified scheme.

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European Commission  
Directorate-General for Competition  
Directorate for State Aid  
State Aid Greffe  
BE-1049 Brussels  
Belgium  
Fax No: +32 2 296 12 42

Yours faithfully,  
For the Commission

Joaquin ALMUNIA  
Vice-president