



## EUROPEAN COMMISSION

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### PUBLIC VERSION

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Subject: **State aid SA.44942 (2016/N) - Spain**  
**Aid to local media published in the Basque language**

Dear Sir,

#### 1. PROCEDURE

- (1) On 8 March 2016, the Spanish authorities notified the above-mentioned measure to the Commission under Article 108(3) TFEU. The Commission requested additional information from Spain on 28 April 2016. Spain submitted the requested additional information on 12 May 2016.

#### 2. DESCRIPTION OF THE MEASURE

- (2) The measure aims to promote and boost periodicals in the Basque language as well as collaborative projects in the field of local media in Basque within the scope of the province of Guipúzcoa. To this purpose the Government Body of Guipúzcoa has allocated the total amount of EUR 931 615 of which EUR 100 000 destined at financing collaborative projects, and the rest to be awarded to periodicals exclusively published in Basque.
- (3) **Objective:** According to the Spanish authorities, the main objective of the notified scheme is to promote cultural and linguistic diversity, in particular with a view to foster the use of the Basque language. More in particular, the purpose of the scheme is to promote periodicals published in the Basque language. Additionally, the measure aims to promote collaborative projects in the field of local media in the Basque language within the geographic scope of the province of Guipúzcoa.

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- (4) **Duration:** The measure covers the time period from the Commission approval until 31.12.2017, which is the last date on which aid can be granted under the notified measure.
- (5) **Legal basis:** The Spanish authorities submitted a decision by the Governing Body of the Guipúzcoa Provincial Council of 7 March 2016 to regulate a grant scheme under the programmes managed by the Basque Language Directorate General. That decision, based on Law 10/1982 of 24 November 1982, the Fundamental law on the Standardisation of the use of the Basque language (*Ley básica de Normalización del Uso del Euskera*) and on the Action Plan for the Promotion of the Basque Language (*Plan de Acción para la Promoción del Euskera – ESEP*) approved by the Basque Parliament on 11 September 2013, together with its annexes regulates the award of the aid, constituting the legal basis of the present scheme.
- (6) **Form of the aid:** The aid takes the form of direct grants paid by instalments.
- (7) **Beneficiaries:** The recipients of the aid will be micro-enterprises in the media sector, specifically printed media. The Spanish authorities estimate that the number of beneficiaries will be between 51 and 100. Public entities are explicitly excluded from the scheme. Furthermore, publications submitted by political parties, professional colleges, trade union, publications from associations, foundation and any similar entity focusing solely on its members or employees, as well as school publications, cultural newsletters, sports magazines, show guides and general newspapers are not eligible.
- (8) **Basic eligibility criteria:** Firstly, the beneficiaries must be registered and have their domicile for taxation purposes in the province of Guipúzcoa. Where this is the case, the following publications may be eligible for support:
- a) weekly, biweekly or monthly local or regional publications;
  - b) daily local or regional publications;
  - c) periodicals providing general information that are distributed throughout the province of Guipúzcoa;
  - d) specialised periodicals.
- (9) **Selection criteria:** Only those publications meeting the following requirements will be considered in the granting process:
- a) published exclusively in Basque;
  - b) have a transparent distribution system;
  - c) assigned the legal deposit and the ISSN or, failing this, they must have dealt with its application;
  - d) published with the same heading, in form of a continuous series, with correlative numbering and date of publication;
  - e) include an imprint with the legally required provisions;
  - f) provide information in each published number on the price or the subscription system, when there is one. This condition shall not apply in the case of free publications.
  - g) fulfil the following minimum conditions in term of periodicity, number of pages and print run:

Publication type A: 10 numbers, 120 pages, 400 copies.

Publication type B: 170 numbers, 680 pages, 400 copies.

Publication type C: 1 number, 100 pages, 800 copies.

Publication type D: 1 number, 100 pages, 500 copies.

h) in the case of the publications of type A and B, they must have a website with an electronic version of the publication.

The requirements referred to in paragraphs g) and h) do not apply in the case of periodicals with a distribution scope of a population of less than 4 000 people.

- (10) **Selection board:** Aid will be granted by the Evaluation Board (comisión evaluadora) following an objective, transparent and non-discriminatory point system laid out in the Specific Regulatory Bases (bases específicas). Only those publications having scored at least half of the maximum possible points will be taken into consideration in the selection process.
- (11) **Aid amount and intensity:** The global budget of the scheme is EUR 931 615, of which EUR 100 000 has been allocated for the financing of the collaborative projects in the fiscal year 2016. In that same year EUR 498 969 will be awarded to the eligible publications in Basque while the remaining EUR 332 646 will be granted in the fiscal year 2017.
- (12) The budgeted amount will be distributed among the different types of publications according to the following maximum percentage limits:
- Publication of type A: 55%
  - Publication of type B: 25%
  - Publication of type C: 14%
  - Publication of type D: 6%
- (13) The aid intensity is limited to 70% of the eligible costs, which consist in the costs related to producing, editing and distributing the benefiting publications in the case of the publications of type A and B, for the publications of type C and D the intensity is reduced to 50% of the eligible costs. The minimum amount of grant per beneficiary is EUR 1 500, which can go up to a maximum amount of EUR 120 000. For collaborative projects the aid intensity is limited to 70% of the eligible costs, which are the costs of personal and technical equipment and offices linked with those projects.
- (14) **Cumulation:** The financing granted under the present scheme may be cumulated with other sources of financing awarded by any other local or regional public institutions. Moreover, beneficiaries can be awarded both, aid for publications and aid for the collaborative projects described above.

### 3. ASSESSMENT OF THE MEASURE

#### EXISTENCE OF AID

- (15) 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". It follows that in order for a measure to

qualify as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted from State resources, 2) it has to confer an economic advantage on undertakings, 3) the advantage has to be selective, and 4) the measure has to distort or threaten to distort competition and affect trade between Member States.

- (16) In the present case the Commission considers it appropriate to look first at the possible effect on trade between Member States.

*Effect on trade between Member States*

- (17) With regard to the criterion of effect on trade between Member States, public support to undertakings only constitutes State aid under Article 107(1) TFEU insofar as it "affects trade between Member States". A relatively small amount of aid or the relatively small size of the undertaking which receives it does not as such exclude the possibility that trade between Member States might be affected.<sup>1</sup> Public support can also be liable to have an effect on trade between Member States even if the recipient is not directly involved in cross-border trade.<sup>2</sup>

- (18) However, the Commission notes that such an effect cannot be hypothetical or presumed. It must be established why the measure distorts or threatens to distort competition and has an effect on trade between Member States.<sup>3</sup> It is settled case-law that the Commission is not required to carry out an economic analysis of the actual situation on the relevant markets, of the market share of the undertakings in receipt of the aid, of the position of competing undertakings or of trade flows between Member States.<sup>4</sup> In the case of aid granted unlawfully, the Commission is not required to demonstrate the actual effect which that aid has had on competition and on trade. It must however be explained how and on what market competition is affected or likely to be affected by the aid,<sup>5</sup> based on the foreseeable effects of the measure.<sup>6</sup>

- (19) In that respect, the Commission has in several cases<sup>7</sup> considered that certain activities, due to their specific circumstances, have a purely local impact and

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<sup>1</sup> Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 68.

<sup>2</sup> Judgment of the Court of Justice of 14 January 2015, *Eventech v The Parking Adjudicator*, C-518/13, ECLI:EU:C:2015:9, paragraph 67; Judgement of the Court of Justice of 8 May 2013, *Libert and others*, Joined Cases –C-197/11 and C-203/11, ECLI: EU:C:2013:288, paragraph 78; Judgement of the Court of Justice of 24 July 2003, *Altmark Trans*, C-280/00, ECLI: EU:C:2003:415, paragraph 78.

<sup>3</sup> See for instance Joined Cases T-304/04 and T-316/04 *Italy and Wam v Commission* ECLI:EU:T:2006:239, para 63; confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57.

<sup>4</sup> See for instance Case T-177/07 *Mediaset v Commission* ECLI:EU:T:2010:233, paras 145-146, confirmed by Case C-403/10 P *Mediaset v Commission* ECLI:EU:C:2011:533, paras 111, 113 and 115; Case C-279/08 P *Commission v Netherlands* ECLI:EU:C:2011:551, para 131.

<sup>5</sup> Case T-34/02 *Le Levant 001 and others v Commission* ECLI:EU:T:2006:59, para 123.

<sup>6</sup> See for instance confirmed by Case C-494/06 P *Commission v Italy and Wam* ECLI:EU:C:2009:272, para 57; Joined Cases T-447/93, T-448/93 and T-449/93 *AITEC and others v Commission* ECLI:EU:T:1995:130, para 141.

<sup>7</sup> See for instance, the Commission decisions in State aid cases N 258/2000 *Leisure Pool Dorsten*, OJ C 172, 16.6.2001, p. 16; C10/2003 *Netherlands – Non-profit harbours for recreational crafts*, OJ L 034, 06.02.2004, p. 63; N 458/2004 *Editorial Andaluza Holding* OJ C 131, 28.5.2005, p. 12; SA.33243 *Jornal*

consequently no such effect if the following criteria are met. First, the beneficiary supplies goods or services to a limited area within a Member State and is unlikely to attract customers from other Member States. Second, it cannot be foreseen, with a sufficient degree of probability, that the measure will have more than a marginal effect on the conditions of cross-border investments or establishment.

- (20) In the present case, with regard to the geographical zone within which the alleged beneficiaries' products compete, the Commission takes the view that the products provided cater to a local market.
- (21) In support of this position, the Commission notes that the use of the Basque language is confined to a rather limited linguistic and geographical area. Furthermore, the notified measure aims at promoting linguistic values to a locally restricted audience through the attribution of very modest amounts to small beneficiaries (micro-enterprises in the printed media sector) with only local or regional reach.
- (22) The Commission considers that public support to economic activities in the field of culture is not liable to affect trade between Member States where it concerns events and entities which are unlikely to attract users or visitors away from similar offers in other Member States.<sup>8</sup> The Commission considers that only funding granted to large and renowned cultural institutions and events which are widely promoted outside their home region has the potential to affect trade between Member States. News media and/or cultural products which, for linguistic and geographical reasons, have a locally restricted audience are not liable to affect trade between Member States.<sup>9</sup>
- (23) Moreover, with regard to the effect on the conditions of cross-border investments or establishment, the Commission notes that there is no positive evidence of relevant cross-border investments for such investments in periodicals in Basque. The Commission also notes that the scheme applies only to micro-enterprises which provide periodicals in Basque and to the collaboration of those Basque local media undertakings publishing in the Basque language. Given the size of the undertakings concerned, the limited ambit of the market involved and the low amounts of public support at stake, the Commission stands for the opinion that it does not appear reasonably foreseeable that the notified scheme could have more than a marginal impact on the conditions that determine cross-border investments or establishment.

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*de Madeira*, OJ C 131, 28.05.2005, p. 12; SA.34576 *Portugal – Jean Piaget North-east Continuing Care Unit*, OJ C 73, 13.03.2013, p. 1; N 543/2001 *Ireland – Capital allowances for hospitals*, OJ C 154, 28.6.2002, p. 4.

<sup>8</sup> See, for instance, the Commission decisions in State aid cases N 630/2003 *Local Museums Sardinia*, OJ C 275, 8.11.2005, p. 3; SA.34466 *Cyprus — Center for Visual Arts and Research*, OJ C 1, 4.1.2013, p. 10; SA.36581 *Greece – Construction of Archaeological Museum, Messara, Crete*; OJ C 353, 3.12.2013, p. 4; SA.35909 (2012/N) – *Czech Republic - Infrastructure for tourism (NUTS II region Southeast)*, OJ C 306, 22.10.2013, p. 4; SA.34891 (2012/N) - *Poland - State support to Związek Gmin Fortecznych Twierdzy Przemysł* OJ C 293, 9.10.2013, p. 1.

<sup>9</sup> See, for instance, Commission Decisions in State aid cases N 257/2007 *Subsidies for theatre productions in the Basque country*, OJ C 173, 26.07.2007, p. 1; N 458/2004 *Editorial Andaluza Holding*; SA.33243 *Jornal da Madeira*, OJ C 16, 19.01.2013, p. 1.

- (24) Based on an overall assessment of the above indications, the Commission considers, in light of the available information, that the measure cannot reasonably be foreseen to have more than a marginal effect, if any, on the conditions of cross-border investment and establishment between Member States.
- (25) On these grounds the Commission considers that the alleged aid measure is not liable to affect trade between Member States.

#### 4. CONCLUSION

- (26) In light of the above, since the notified aid scheme under review is not liable to affect trade between Member States, there is no need to examine the other cumulative conditions for the existence of State aid within the meaning of Article 107(1) TFEU. The Commission therefore reaches the conclusion that the notified aid scheme does not constitute State aid pursuant to Article 107(1) TFEU.

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Yours faithfully  
For the Commission

Margrethe VESTAGER  
Member of the Commission