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**Subject: State Aid SA. 48362 (2017/N) – United Kingdom
Video games tax relief - prolongation**

Sir,

1. PROCEDURE

- (1) On 31 August 2017, following pre-notification contacts, the UK authorities notified to the Commission the prolongation of the video games tax relief. The UK authorities submitted additional information on 9 October 2017.
- (2) The UK video games tax relief was originally approved on 27 March 2014¹ (hereinafter "2014 decision").

2. DESCRIPTION OF THE MEASURE

2.1. Objectives of the measure and its proposed prolongation

- (3) The UK video games tax relief was introduced in April 2014 to address the underproduction of culturally European video games.

¹ Commission decision of 27.03.2014 on the State aid scheme SA.36139 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for video games, http://ec.europa.eu/competition/eojade/isef/case_details.cfm?proc_code=3_SA_36139.

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- (4) In 2017, to establish the impact of the measure on the production of culturally European video games, the UK government commissioned an independent qualitative evaluation², which found that the relief has been effective in its objective. However, while the relief has had an impact, the evaluation also found that there is some way left to go to fully address the underproduction of culturally European video games and generate a critical mass of sustainable activity. Therefore, the UK authorities notified the prolongation of the scheme until 1 April 2023.
- (5) The UK authorities ascertain that the make-up of the video games market continues to push developers away from producing culturally European video games. According to data provided by the UK authorities, the UK video games market remains small in global terms, equivalent to approximately 3.8 per cent of the estimated worldwide market (2016 data). Many games purchased on the UK market are not developed in the UK: between October and December 2016 only 17 per cent of games released in the UK were also developed there. The largest publishers continue to be non-European firms, with only one European firm (Ubisoft) among the top 25 largest companies in 2016.
- (6) Apart from its duration, all the modalities of the UK video games tax relief scheme remain unchanged.

2.2. Main elements of the measure

- (7) The tax relief is provided through the corporation tax system and allows qualifying production companies to either reduce their corporation tax liability or convert this figure into a payable tax credit. The relief can be claimed on expenditure on goods and services used or consumed in the EEA. The rate of the payable credit amounts to 25 per cent and relief is available only on up to 80 per cent of the qualifying expenditure. The resulting maximum aid intensity is 20 per cent.
- (8) A beneficiary claiming the UK video games tax relief cannot claim relief under another creative sector tax relief, nor under the UK's SME Research and Development relief. In principle, the aid may be cumulated with other State aid, up to a maximum cumulative aid intensity of 50 per cent.
- (9) To ensure that only culturally European video games benefit from the relief, games must pass a cultural test administered by the British Film Institute to qualify. Based on a sample of games released in the UK in October to December 2016, the UK authorities estimate that around 22 per cent of the games made in the UK passed the cultural test. Similar results were found for mobile games. This is in line with the figures included in the 2014 decision, i.e. approximately 26 per cent (see recital 29 of the 2014 decision).
- (10) At least 25 per cent of the core expenditure incurred on the video game has to relate to expenditure on goods or services that are provided from within the EEA.
- (11) The volume of subcontracting costs qualifying as eligible for aid is limited to GBP 1 million. In 2015 and 2016, the median budget for video games qualifying

² Ipsos Mori (2017). Video games tax relief evaluation, <https://www.ipsos.com/ipsos-mori/en-uk/video-games-tax-relief-evaluation>.

for the relief amounted to respectively GBP 110 000 and GBP 170 000. The majority of games were in other words not affected by the sub-contracting limit.

- (12) The UK authorities forecast the cost for the video games tax relief over the period 2018-2023 to amount to GBP 460 million in total. They have emphasised that these forecasts are estimates of future claims rather than specific budgets for the scheme.

2.3. Other elements

- (13) The UK authorities have committed to publish information on the aid scheme to be in line with the transparency rules as set out e.g. in Article 9 of the General Block Exemption Regulation³.

3. ASSESSMENT OF THE MEASURE

3.1. Existence of aid

- (14) According to Article 107 (1) TFEU, *"Save as otherwise provided in the Treaties, 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"*.
- (15) For the reasons laid out in the 2014 decision (recital 36), the Commission considers that the digital games scheme constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility of the aid measure

3.2.1. General legality

- (16) Regarding the general legality of the scheme, the prolongation (without modifications) of the scheme does not affect the arguments set out by the Commission in recitals 37-38 of the 2014 decision.
- (17) The notion of limiting subcontracting expenditure has been confirmed by subsequent Commission case practice in the video games sector⁴. Such requirements can be considered acceptable by the Commission as a means to ensure that the beneficiaries are the ones taking responsibility for the actual development of the game. The data submitted by the UK authorities moreover demonstrate that a majority of the supported games were not affected by the subcontracting limit in 2015 and 2016 (see recital (11)).

³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26 June 2014, p. 1.

⁴ Notably in the context of the French video games tax measure, most recently approved by SA.47892 (2017/N) – France - Crédit d'impôt en faveur de la création de jeux vidéo – modifications et prolongation - http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47892 and in the context of the Bavarian games support measure, approved by SA.46572 – Germany – Bavarian games support measure - http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46572.

3.2.2. *Compatibility on cultural grounds*

- (18) In the 2014 decision, the UK video games tax relief was considered compatible on cultural grounds on the basis of Article 107 (3) (d) TFEU.
- (19) Article 107 paragraph 3 (d) of the TFEU states that “*aid to promote culture and heritage conservation may be considered to be compatible with the common market where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest*”.
- (20) The Commission has not developed guidelines for the application of this provision to aid to games. Recital 24 of the 2013 Cinema Communication⁵ states that aid measures to support games are addressed on a case-by-case basis. Nevertheless, the Commission applies the aid intensity of the Cinema Communication by analogy to aid schemes for educational or cultural games of which the necessity can be demonstrated.
- (21) The prolongation of the scheme does not affect the reasoning of the Commission on the cultural character of the measure, as set out in recitals 41 to 44 of the 2014 decision. The submitted data on the pass rate of the cultural test confirm that it is sufficiently selective.
- (22) The reasoning set out in the 2014 decision (recitals 45-49) on the appropriateness, necessity and proportionality of the measure remains valid. In particular, the updated market data submitted by the UK authorities (see recital (5)) show that the market for culturally European video games remains limited and that public funding is justifiable in this context.
- (23) The UK authorities have committed to publish information on the aid scheme in accordance with transparency rules (see recital (13)).

3.2.3. *Conclusion on compatibility*

- (24) Overall, the Commission takes the view that the aid will not unduly strengthen the market power of beneficiary firms or hamper the dynamic incentives for market operators, but, on the contrary, will increase the diversity of supply on the games market. The possible distortions of competition are outbalanced by the expected positive cultural results of the scheme. The Commission therefore concludes that the prolongation of the UK video games tax relief can be considered compatible with the internal market pursuant to Article 107 (3) d) TFEU.

3.3. Additional observations

- (25) Since the United Kingdom notified on 29 March 2017 its intention to leave the European Union, pursuant to Article 50 of the Treaty on European Union, the Treaties will cease to apply to the United Kingdom from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification, unless the European Council in agreement with the United Kingdom decides to extend this period. As a consequence, and without prejudice to any provisions of the withdrawal agreement, the present decision only applies (i) if the United Kingdom is still a Member State on the first day of the period for which the

⁵ Communication from the Commission on state aid for films and other audiovisual works, Official Journal of the European Union, 15.11.2013, C 332, pp. 1-11.

notified scheme is approved, and (ii) to individual aid granted⁶ under the notified scheme until the United Kingdom ceases to be a Member State.

4. CONCLUSION

The Commission has accordingly decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3) (d) of the Treaty on the Functioning of the European Union.

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Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
Stateaidgreffe@ec.europa.eu

Yours faithfully
For the Commission

Margrethe VESTAGER
Member of the Commission



⁶ According to the case-law of the CJEU, aid must be considered to be granted at the time that an unconditional right to receive it is conferred on the beneficiary under the applicable national rules (See Case C-129/12 Magdeburger Mühlenwerke EU:C:2013:200, paragraph 40).