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**Subject: State Aid SA.51820 (2018/N) – Germany  
North Rhine-Westphalian games support measure**

Sir,

## **1. PROCEDURE**

- (1) On 08/11/2018, following pre-notification contacts, the German authorities notified to the Commission the North Rhine-Westphalian scheme to support the development and production of digital games ("the Scheme").

## **2. DETAILED DESCRIPTION OF THE MEASURE**

### **2.1. Context and objectives**

- (2) The Scheme aims at supporting the development of high-quality, cultural or pedagogical digital games and interactive media projects ("digital games") in North Rhine-Westphalia ("NRW"). It also aims at ensuring a varied cultural landscape and at encouraging innovation. It may contribute to the strengthening of the European digital audiovisual sector.

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- (3) At the moment, NRW grants support to promote digital games through a scheme implemented since 2016 in accordance with the *de minimis* Regulation.<sup>1</sup> As NRW considers it appropriate, necessary and proportionate to support the games sector beyond *de minimis* ceilings, the German authorities have proceeded with a notification. They wish to support larger projects with higher financing requirements that are able to compete in the international market.
- (4) The German authorities submit that Germany has a limited international competitiveness in games production. In particular, they submit that in the global market, the market share of German games is below 1%. Limited to the German market alone, German game developers had in 2017 a market share of 5.4%, and the trend is descendent. Indeed, according to the Association of German games industry (Verband der deutschen Games-Branche), the market share of German digital games has decreased between 2014 and 2017 from 6.9% to 5.4% in terms of sales (from EUR 130 million to EUR 119 million).<sup>2</sup> In addition, the German Authorities submit that the cost of production of a game in Germany is 30% higher than in other countries, the public funding being (much) lower than in other EU and non-EU countries.
- (5) In a nutshell, the authorities submit that the German undertakings are under-represented on a worldwide market for digital games which has developed significantly in the recent years. The reason for this is according to the NRW authorities the lack of capital and growth opportunities. The notified aid aims at ensuring that development of projects with realistic sales perspective on the world market would be boosted. Given the fact that many digital games are sold exclusively via Apple and Google digital game stores, supporting the visibility on these platforms is identified as being also very important. The low budgets of the developers and publishers make it difficult to do marketing and the sales stagnate.
- (6) In particular, the area of culturally significant and pedagogically valuable games to be supported by the aid measures suffers from a lack of market access. As the market is smaller than the entertainment sector, where the so-called "global games" dominate the market, private financing through investors is hardly possible. Therefore the economic risks associated with their production are higher. According to the German authorities, it is difficult to obtain private funding for the production of such games and the market pressures games developers not to emphasise the culturally European elements of their game in order to sell to global audiences.

## **2.2. Legal basis, duration, and the budget**

- (7) The legal basis of the Scheme is the Förderleitlinien der Film- und Medienstiftung NRW GmbH für die Förderung von digitalen Spielen und interaktiven Inhalten (Guidelines for support of Film and Media Foundations for the development of

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<sup>1</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid, OJ L 352, 24.12.2013, p. 1, [http://ec.europa.eu/competition/state\\_aid/legislation/de\\_minimis\\_regulation\\_en.pdf](http://ec.europa.eu/competition/state_aid/legislation/de_minimis_regulation_en.pdf).

<sup>2</sup> See <https://www.game.de/marktdaten/umsatzanteile-deutscher-spieleentwicklungen-am-deutschen-games-markt-2017>

NRW digital games and interactive content) of 13.04.2018 and the implementing rules.

- (8) The Scheme will be in place until 31 December 2023. The measure will not enter into force before approval by the European Commission.
- (9) The overall budget of the Scheme until the end of 2023 is financed from the budget of the Federal State of NRW and amounts to EUR 14 million.

### **2.3. Aid forms, amounts and intensities**

- (10) The measure consists of support for: a) concept development, b) prototype development and c) production.
- (11) The support for the concept developers can amount to 80% of the estimated costs. It cannot amount to more than EUR 20.000 euro per individual project.
- (12) The support for prototype development can take the form of a grant by way of share financing. The grant may be up to 50% (in justified exceptional cases up to 80%) of the estimated development expenditure. It cannot amount to more than EUR 80.000 per project. For particularly complex projects, the amount can be increased up to EUR 100.000.
- (13) The support for the digital games production may consist of a conditionally repayable interest-free loan. The loan is limited to 50% of the estimated eligible expenditure, but not exceeding EUR 500.000 per individual project.

### **2.4. Beneficiaries**

- (14) The selection of the beneficiaries will be made by an award committee (the Committee"). The Committee will be chaired by the Managing Director of the Federation for Film and Media of NRW. Representative of the State Chancellery of NRW, as well as at least three other members will be part of the Committee. The Committee will decide on the funding according to the list of specific criteria. The decisions require the approval of the majority of the present members.
- (15) The measure targets professionals and undertakings that develop and produce digital games or interactive content. In order to benefit from the aid, the undertaking has to have (or commit to set up) a registered office, a permanent establishment or a branch in NRW, at the moment the aid is paid out. The realization of the project or the measure must not have started at the time of application. In its application, the applicant must present in a short presentation to the Committee which of the criteria for provision of the aid are met.
- (16) The aid can be cumulated with *de minimis* aid within the limits of possible maximum aid intensities laid down by German or European law. The granting authority will verify that these limits are respected.
- (17) The Committee makes its selection on the basis of the criteria outlined in the table below.

<b>GROUP 1: Cultural content</b>
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1. The setting of the game is in Germany, the European Economic Area (EEA) or
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has historical references to it.
2. The main characters relate to Germany or the EEA, or represent a personality of the German or European world history, or a fictional figure of German or European cultural history.
3. The game is released at least in the German-language version.
4. The game's theme or the idea relate to Germany or the EEA, in respect of the game's design, story or German gaming culture.  <i>The cultural context and content can in exceptional cases be also non-European, if it is very clearly outlined and particularly creative or innovative, as well as having fulfilled a particularly large number of criteria of groups 2 and 3.</i>
<b>GROUP 2: Cultural/creative hub</b>
1. The project has a particular effect on the regional cultural and creative industries, given the fact that a substantial part of the creative work (concept development, programming, audio production) takes place in NRW.
2. At least 50% of the team members have their residence in NRW, are subject to taxation there or are otherwise familiar with the NRW culture (for instance because of their qualifications acquired in NRW or through spending a relevant amount of time in NRW or Germany). The following team members must fulfil this condition in any case:  a) producer  b) lead writer/ concept developer/author  c) leading composer/sound designer  d) art director  e) technical director  f) leading game designer
3. Promotion of young professionals: the team includes graduates from universities or institutes of higher education of up to two years before:  a) Graduates of universities or colleges situated in NRW.  b) Graduates from foreign universities or colleges, if they are currently residing in NRW.
<b>GROUP 3: Artistic, creative and technological innovation</b>
<i>The game is particularly creative or innovative in the following areas:</i>
1. Narrative or game structure.

2. Design of the characters, the setting, the story or the surroundings.
3. The game's music.
4. Interactivity, multi-player functionality, user interface, user-generator content.
5. Use of Artificial Intelligence.
6. Use of new technologies for the development, implementation or application of the game.

## 2.5. Transparency

- (18) The German Authorities confirm that, in accordance with the Transparency Communication it will published on a website: the full text of the approved aid scheme, including its implementing rules, name of the granting authority, name of the aid beneficiary, aid instrument and the aid amount per beneficiary, the objective of the aid, the date of granting, and the number of the aid measure at the Commission.<sup>3</sup>

## 3. ASSESSMENT OF THE MEASURE

### 3.1. Existence of aid

- (19) The German authorities consider the scheme to constitute State aid within the meaning of Article 107 (1) TFEU.
- (20) 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"*.
- (21) The aid scheme is financed from the budget of the Federal State of North Rhine-Westphalia (see recital (9)).
- (22) Under the scheme, undertakings active in the games development and distribution sector receive an economic advantage in the form of grants or conditionally repayable loans that serve to reduce their production costs (see recitals (10) to (13) ).
- (23) The support is limited to a particular sector, i.e. companies in the digital games sector and is therefore selective (see recital (15)).
- (24) The measure distorts competition and affects trade between Member States, as the video games sector has an international character (see e.g. recital (4)).

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<sup>3</sup> The information will be available at [www.Filmstiftung.de](http://www.Filmstiftung.de) and at [www.bmwi.de/Redaktion/DE/Artikel/Europa/beihilfenkontrollpolitik.html](http://www.bmwi.de/Redaktion/DE/Artikel/Europa/beihilfenkontrollpolitik.html)

- (25) Therefore 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

- (26) Beneficiaries are not required to be a national undertaking established under national law. Only at the moment of the payment a registered office, a permanent establishment or a branch has to be set up.
- (27) The eligibility and selection criteria that ensure the NRW cultural character of the scheme do not require team members to have the German nationality or residence.
- (28) Among the selection criteria there is a requirement related to the inclusion of recent graduates in the team. The criterion, which is not compulsory, does not introduce discrimination on nationality grounds. The requirement rather encourages the transfer of know-how and expertise between the NRW games sector and related education.
- (29) There are no direct territorial spending conditions, requiring the beneficiaries to spend a certain amount (of aid) in the German territory, attached to the scheme.
- (30) Among the selection criteria, the execution of a substantial part of the creative work in NRW forms one of the ways in which potential beneficiaries can demonstrate their connection to a NRW cultural/creative hub. However, it is possible to demonstrate this connection in other ways, by including sufficient recent graduates and other team members that can demonstrate a link to the NRW culture.

#### 3.2.2. Promotion of culture in line with Article 107 (3) (d) TFEU

- (31) The Commission has not developed guidelines for the application of this provision on aid to games. Recital 24 of the 2013 Cinema Communication<sup>4</sup> 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. Accordingly, the assessment of video games support takes place on the basis of Article 107 (3) (d) TFEU and in line with Commission practice<sup>5</sup> in this sector.

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<sup>4</sup> 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.

<sup>5</sup> In the video games sector, the Commission has so far approved aid on the basis of the cultural derogation in cases C47/2006 – France – Crédit d'impôt pour la création de jeux vidéo, [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_C47\\_2006](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_C47_2006); SA.36139 (2013/C) – UK – Video games tax relief, [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_36139](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_36139); SA.33943 – France – Prolongation du régime d'aide C 47/2006 – Crédit d'impôt en faveur de la création de jeux vidéo, [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_33943](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_33943); SA.39299 (2014/N) – France – Crédit d'impôt en faveur de la création de jeux vidéo – modifications, [http://ec.europa.eu/competition/elojade/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_39299](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_39299); 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/iseef/case\\_details.cfm?proc\\_code=3\\_SA\\_47892](http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_47892); SA.45735 (2017/N) – Denmark – Scheme for the development, production and promotion of cultural and educational

- (32) 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*”.
- (33) The NRW digital games scheme aims to support the development of high-quality, cultural or pedagogical digital games. In order to ensure that the selected projects fit this goal, an extensive selection procedure has been set up, with detailed criteria and involving an expert Committee (see section 2.4).
- (34) The selection process ensures that only digital games of high-quality, which are culturally or educationally valuable, can be supported under the scheme. It emphasizes the cultural content of the game, its innovative character and its cultural affiliation with the NRW games and/or educational community (see recital (17)).
- (35) The Commission is therefore satisfied that the provisions of the NRW digital games scheme ensure that the aid is granted to promote culture in line with Article 107 (3) d) TFEU.

### 3.2.3. *Appropriateness, necessity and proportionality of the measure*

#### The scheme is the appropriate instrument

- (36) The German authorities explained that the culturally valuable games are particularly risky to produce and depends on support to be realised. The Commission therefore considers that the measure is appropriate in view of the stated objectives of the scheme and the inherent difficulties for the market to achieve those objectives.
- (37) The grants and conditionally repayable loans form adequate support tools to achieve this goal, while there may be a reimbursement of the aid in case a supported game is particularly successful in the market.
- (38) The design of the scheme, in particular the eligibility and selection criteria, allow public support to be channelled to NRW digital games of educational and/or cultural value, making it appropriate for the achievement of the cultural objectives of the German authorities.

#### Necessity of the scheme

- (39) The German authorities have underlined that culturally valuable games have similar production costs, but significantly smaller markets compared to "global games". Therefore the economic risks associated with their production are higher and it is difficult to access market financing for the production of such games.
- (40) The aid can therefore be considered necessary in order to foster the production of culturally relevant games. Taking into account the commercial market pressures, less NRW, German or European cultural elements would be present in the produced games in the absence of aid.

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digital games, [http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_45735;SA.46572\(2017/N\)-Germany-Bavarian\\_games\\_support\\_measure](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45735;SA.46572(2017/N)-Germany-Bavarian_games_support_measure),  
[http://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46572](http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46572)

- (41) In light of the above, the Commission concludes that the necessity of support in view of incentivising the production of NRW or German high-quality, cultural or pedagogical digital games is demonstrated.

#### Proportionality of the scheme

- (42) The scheme has a limited budget and the aid amounts are also relatively small (see recitals (9) and (11), (12) and (13)).
- (43) The aid is proportional since support under the scheme is limited to 50% (at most 80%) of the production costs. The aid can be cumulated with other types of support, within the limits set by German and European law. This is in line with the provisions of the 2013 Cinema Communication, which are applicable to the games sector by analogy.

#### *3.2.4. Limited distortion of competition and effect on trade*

- (44) The small budget and aid amounts of the scheme in comparison with the large size of the global games market (see recital (4)) result in a limited market impact.

#### *3.2.5. Transparency*

- (45) The commitments of the German authorities with regard to the publication of information on the aid scheme (see recital (18)) are in line with the transparency provisions contained in several Communications<sup>6</sup>.

#### *3.2.6. Conclusion*

- (46) 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 NRW digital games scheme can be considered compatible with the internal market pursuant to Article 107 (3) d) TFEU.

## **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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<sup>6</sup> See the Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (C(2014) 3349/2), [http://ec.europa.eu/competition/state\\_aid/modernisation/index\\_en.html#](http://ec.europa.eu/competition/state_aid/modernisation/index_en.html#).



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Yours faithfully  
For the Commission

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