Subject: State aid SA.60697 (2020/N) - Slovakia
State aid scheme to support the culture of national minorities in Slovakia

Excellency,

1. Procedure

(1) Pursuant to Article 108(3) TFEU, and by letter dated 23 December 2020, the Slovak authorities notified to the Commission the measure aimed at supporting the culture of national minorities in Slovakia.

(2) The Commission requested additional clarification via emails on the measure on 13 January and 2 February 2021. The Slovak authorities provided the requested clarification via email on 14 January and on 4 March 2021.

2. Detailed Description of the Measure

(3) The purpose of the aid granted under this scheme is to support, preserve and protect, through the “Press Fund for the Promotion of National Minority Culture”, the identity and cultural values of national minorities living in Slovakia. More specifically, the measure aimed at fostering editorial activity in periodicals and in non-periodical press for the purpose of preserving, expressing, protecting and developing the identity and cultural values of national minorities.

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(4) Examples of publications supported by the measure include news and information periodicals focusing on the cultural life and education of persons belonging to national minorities, literary periodicals focusing on children and youth, as well as socio-scientific, educational periodicals and annexes to religious periodicals focusing on the culture and the language of national minorities. The scheme is also intended to support the publication of books aimed at promoting the development of the culture and language of national minorities. This includes the original works of national minority authors, artistic monographs, bilingual historical monographs of municipalities, art literature, translation of Slovak literature into the language of national minorities and from minority language into Slovak, and translation of foreign-language literature into the language of national minorities.

(5) The legal bases of the measure are the Act No 523/2004 on the budgetary rules of public administration and amending certain acts, as amended ("the Budgetary Regulation Act"); the Act No 358/2015 regulating certain relations in the field of State aid and de minimis aid and amending certain acts ("State Aid Act"); the Act No 212/1997 on compulsory copies of periodical publications, non-periodic publications and reproduction of audiovisual works, as amended; the Act No 167/2008 on periodical press and agency news and amending certain acts ("Press Act"), as amended by Act No 221/2011, Act No 185/2015 Coll. Copyright Act; Act No 138/2017 on the Fund for the Promotion of the Culture of National Minorities; the Act No 357/2015 on financial control and audit and amending certain acts, as amended; the Act No 343/2015 on public procurement and amending certain acts, as amended and the Act No 431/2002 on accounting, as amended.

(6) The total amount of the aid scheme represents approximately EUR 2 000 000 per year, or EUR 14 000 000 over the seven years covered.

(7) The granting authority is the “Fund for the Promotion of the Culture of National Minorities”.

(8) The Slovak authorities point out that the measure is essentially the same as the one that had been found compatible with the internal market by the Commission Decision C(2014) 9473 of 05.12.2014 on the basis of Article 107(3)(d) TFEU. Given that that scheme expired on 31 December 2020, the notified measure is meant, on the one hand, to be a follow-up to that approved State aid measure, and introduced, on the other hand, a small number of minor modifications in comparison to it.

1 Pursuant to Section 9(1) of Act No. 358/2015 regulating certain aspects in the field of state aid and de minimis aid, notifiable State aid may only be provided if it has been approved by the Commission. The Slovak authorities also confirmed that none of the amendments to the legal acts listed in this recital applies prior to the approval of the scheme by the Commission.

2 The granting authority during the duration of the previous scheme was the “Government Office of the Slovak Republic”.

Conditions for obtaining the aid

(9) The beneficiaries must be legal persons engaged in the implementation of cultural activity with the purpose of:

(a) the preservation, expression, protection and development of the identity and cultural values of national minorities;

(b) education and education in the rights of persons belonging to national minorities;

(c) ensuring intercultural dialogue and understanding between citizens of Slovak nationality and citizens belonging to national minorities and ethnic groups (hereinafter referred to as “intercultural dialogue and understanding”).

(10) The beneficiaries are active in publishing in the language of national minorities and are generally not profit making. A part of them provides the publications free of charge, others for a symbolic (non-commercial) price. These are projects that, by their very nature, are not commercially interesting, but are of particular importance in terms of their contribution and the promotion of national and cultural diversity.

(11) The beneficiaries of the aid can be micro, small or middle size enterprises that fulfil the definition used in Annex I to Commission Regulation (EU) No 651/20144, as well as large enterprises. However, a beneficiary cannot be a company in difficulty5 or a company that is subject to a recovery pursuant to a previous Commission decision declaring aid granted by the Slovak Republic illegal and incompatible.

(12) Aid may be granted only for the implementation of a project which receives more than 40 % of the maximum number of points available in the evaluation by the relevant expert committee6.

(13) The evaluation is based on qualitative criteria of the cultural content (see recital 12 and footnote 6) and all supported projects of the scheme must meet the criteria of difficulty, low budget, artistic focus and cultural character7.”

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6 The projects are selected on the basis of a set of qualitative criteria laid down in the law and in the provider’s internal regulations, such as the Principles, Modalities and Criteria for the Evaluation of Applications for Grants from the Fund and the Principles for the Provision of Grants from the Fund. Points can be distributed according to the following guidance: Relevance of the project’s objectives and goals – 0 to 20 points; Benefits of the project for the target group – 0 to 20 points; Cultural-societal significance of the project – 0 to 20 points; Budget of the project – 0 to 20 points; Quality and exceptionality of the project – 0 to 20 points.

7 See www.kultminor.sk; Structure of Aid Activities of the Fund for the Promotion of the Culture of National Minorities
The aid intensity represents a maximum of 95% of the eligible costs, as identified in recital (15). The calculation of the aid intensity is justified mainly by the nature of the publications as they are relevant for a specific local market and are published in small numbers. The high State aid intensity is justified by the need to compensate beneficiaries for disadvantageous production conditions and to eliminate shortcomings of the market caused by high production costs while motivating beneficiaries to contribute both in terms of content and finances to the protection of the culture of national minorities. The Slovak authorities explained that the absence of the programme and the measure would lead to a disruption of continuity in the field of the protection of minority cultures.

In absolute terms, the amount of aid granted under the programme shall not exceed EUR 200 000 for all projects submitted by the same beneficiary per year. Eligible costs in this respect can cover the following items: author's fees (royalties); travel costs (only for periodicals); costs related to the production of periodical and non-periodical publications, such as pre-printing preparations, prints, covers, protective packaging; mail costs (only in the case of periodicals); acquisition of tangible assets and material costs strictly necessary for the implementation of the projects (only for periodicals); operating costs for periodical printing and costs of auditors' reports.

Non-eligible costs under the present scheme are costs that are not included in the budget of the project; reimbursement of credits, loans and interests from them; payment of obligations from previous budgetary years; payment of salaries, insurance premiums and contributions to insurance companies, life and property insurance; accountancy works; costs for legal and economic services; scholarships; taxi services; parking fees for the use of personal or service vehicles; highway fees, leasing of cars, costs for service, maintenance and repairation of transport means; costs of promotion of applicant in the media, advertising banners, reimbursable VAT, office supply not related to the implementation of the project, installation of utilities.

The grantor shall grant aid in the form of a subsidy only if all the criteria and conditions laid down in this scheme and in the invitation to apply for a subsidy are met.

https://kultminor.sk/attachments/article/475/%C5%A0TRUKT%C3%9ARA%20PODPORNEJ%20%C4%8CINNOSTI%20FPKNM%20na%20rok%202021_FINAL_priority_3.pdf; Rules of Procedure for the Evaluation Boards of the Fund for the Promotion of the Culture of National Minorities
https://kultminor.sk/attachments/article/454/Rokovac%C3%AD%20poriadok%20odbornej%20rady%20Fondu%20na%20podoru%20kult%C3%BAry%20n%C3%A1rodnostn%C3%BDch%20men%C5%A1%20podpora.pdf; Principles, Modalities and Criteria for the Evaluation of Applications for Grants from the Fund
https://kultminor.sk/attachments/article/475/Zasady_hodnotenia_ziadosti.pdf; Principles for the Provision of Grants from the Fund
https://kultminor.sk/attachments/article/475/Z%C3%A1sady%20%C3%A1sady%20%C3%A9AZ.pdf

However, given that beneficiaries can obtain this amount more than once every three year time period, the measure does not constitute de minimis aid.

Some of these costs, such as acquisition costs of tangible assets and operating costs for periodical printing were not eligible under the predecessor scheme.
(18) By means of a declaration of honour, the applicant shall demonstrate the provision of financial resources to co-finance the eligible expenditure of the project, either from its own resources or through other public sources or other sources that do not constitute State aid or minimal aid. Where it has requested financial security from sources other than own resources, it shall indicate the co-financing body.

(19) The applicant shall prove by means of a declaration on honour that it is not an undertaking in difficulty\(^\text{10}\) and that it is not subject to a recovery order following a previous Commission decision declaring the aid granted by the Slovak Republic illegal and incompatible with the internal market\(^\text{11}\).

(20) The grant application, including the mandatory annexes, must be submitted in accordance with the invitation to tender.

(21) The aid may be granted for a period of time determined by the terms of the call concerned and will be effectively monitored by the grantor.

(22) The Slovak authorities specified that the duration of this specific support is until 31 December 2027.

(23) The Slovak authorities emphasized that the measure has purely a cultural objective i.e. contributing to the dissemination of cultural values of national minorities living in Slovakia.

3. **ASSESSMENT OF THE MEASURE**

3.1. **Lawfulness of the measure**

(24) By notifying the measure before putting it into effect, Slovakia has respected its obligations under Article 108(3) TFEU.

3.2. **Existence of State aid**

(25) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

(26) The measure is imputable to the State, since the subsidies are provided directly by the Fund for the promotion of the culture of national minorities to publishers of periodical and non-periodical publications. These subsidies are fully financed from the State budget and are therefore granted through State resources.

\(^{10}\) See footnote 5.

The measure confers a selective advantage to the companies participating in the programme in the sense that the grants cover costs that, in normal market circumstances, would have to be borne by the companies themselves. The measure may, in that respect, allow them to increase their sales and accordingly their profits from those sales.

It is apparent that the measure has only a local character. Books and periodicals published in one of the languages of the national minorities living in Slovakia are intended only for a determined circle of readers in determined parts of the country with a strong local dimension. It is unlikely that other publications in Slovak or minority languages represent a real substitute because they do not address the issue of national minorities. In these circumstances, a possible increase in sales would not meaningfully affect cross-border trade or prevent in any appreciable way competitors from being established in the relevant market. However, bearing in mind that all projects are to be presented in the language of national minorities living in Slovakia, it cannot be excluded that there might be a potential effect on trade and competition between Member States. Therefore, the measure constitutes State aid in the meaning of Article 107(1) TFEU.

3.3. Compatibility of the State aid measure

As the measure constitutes State aid, the Commission has to verify whether any of the derogations provided for in Article 107(3) TFEU could apply, and thus the measure may be considered compatible with the internal market.

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

In accordance with the Commission practice, the cultural derogation provided for in Article 107(3)(d) TFEU must be interpreted restrictively, and should be limited to measures for specific projects that are related to the national notion of culture. Furthermore, it is considered that the notion of culture must be applied to the content and nature of the cultural projects.

The measure needs to be assessed directly under 107(3)(d) TFEU, in which case the Commission analyses whether the aid is well designed to deliver its objective, whether it is necessary, proportional and whether the distortion of competition and effects on cross-border trade are limited.

The objective of the measure at hand is the support of preservation, expression, protection and development of the identity and cultural values of national minorities, education and training in the field of minority rights, as well as inter-ethnic and inter-cultural dialogue and understanding between the majority population and national minorities and ethnic groups.

12 "Language of a national minority" means a codified or standardised language traditionally used in the territory of Slovakia by its citizens belonging to a national minority that is different from the State language. These are the following languages: Bulgarian, Czech, Croatian, Hungarian, German, Polish, Romani, Rusyn and Ukrainian.
The Commission points out that the promotion of cultural diversity is considered a common interest goal. Indeed, Article 167(1) 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”. Further, the measure is in line with Council Resolution of 14 February 2002 concerning the promotion of linguistic diversity and language learning in the framework of the implementation of the objectives of the European Year of Languages 2001; and finally with Article 22 of the Charter of Fundamental Rights of the European Union, which reaffirms the principle that the EU respects cultural, religious and linguistic diversity.

It is relevant to add that according to Article 167(4) TFEU, the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures. In this regard, the scheme is inspired by the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

The objective of the notified measure is the support of publication of press, magazines and books in minority languages. Their content can be clearly considered as cultural, as they contain tales, poems, stories, narratives, studies, critics, presentation of trends in the literature of one of the minority languages as well as of the history of national minorities of Slovakia. These publications are focusing on the topics of the national minorities in Slovakia and on the preservation and development of their identities. The granting authority carries out an assessment of the cultural relevance of the supported projects based on transparent criteria. (See recitals (9), (12) and (13).)

In this sense, the measure promotes the production and distribution of cultural content and promotes cultural diversity within the meaning of Article 107(3)(d) TFEU.

Publishing publications in the language of national minorities is generally not a profit-making activity (cf. the Commission’s reasoning in comparable cases, e.g. cases No 660/2006, No 663/2006, No 664/2006, No 675/2006, No 712/2006, SA.35814, SA.35815, SA.35816 and SA.35817). Part of the beneficiaries provide the target group with project outputs free of charge, part for a symbolic (non-commercial) price. These are projects which, by their very nature, are not ‘commercially interesting’, because such publications are relevant for a specific local market and are published in small numbers. Hence, the measure is necessary to ensure contribution to and the promotion of national and cultural diversity.

Since this measure is exclusively aimed at printed publications in the framework of the programme, it is unlikely that other publications would be real substitutes, since they do not specifically focus on the needs of the targeted national minorities in Slovakia, and in turn, subscribers and/or advertisers would not switch between them due to the grants. Moreover, the notified aid is proportional to the stated objective, as the aid is limited in its amount and may not exceed 95% of the eligible costs. Therefore, the measure is proportional to achieve the declared objective.

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13 OJ C 50/1 of 23.2.2002.
The measure, in view of the limited circulation of the aided products, does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest. The distortion of intra-EU trade and competition is likely to be very limited due to the narrow local or regional nature of the publications, their (minority) language and limited number. The measure concerns exclusively printed publications in the languages of national minorities in Slovakia that focus on their historic origin and demands in this Member State. In this respect, these publications cannot be substituted by Slovak language alternatives or publications understandable to the affected national minorities imported from other Member States. Similarly, their use in other Member States can be estimated only as negligible. This is furthermore supported by the fact that publishing linguistic minority publications is not a profitable activity.\footnote{The Commission has used similar reasoning in its previous decisions, in particular in N. 660/2006, N. 663/2006, N. 664/2006, N. 675/2006, N. 712/2006, SA.35814, SA.35815, SA.35816 and SA.35817.}

In view of the above, the Commission concludes that the aid granted on the basis of the measure in question is compatible with the internal market on the basis of 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.

If this letter contains confidential information which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt.

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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](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President