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**Subject: State Aid SA.64615 (2021/NN) – Germany
Prolongation of the Bavarian games support measure SA.46572
(2017/N)**

Excellency,

1. PROCEDURE

- (1) By notification of 31 August 2021, Germany notified a prolongation until 30 June 2022 of the aid scheme SA.46572 (2017/N)¹, Bayerische Computerspielförderung (Bavarian games support measure) (“the original scheme”), which the Commission had already approved (“the initial decision”) as compatible with the internal market in accordance with Article 107(3)(d) TFEU and in light of the Cinema Communication².
- (2) The original scheme, which has its legal basis in the Bayerische Richtlinie für die Förderung digitaler Spiele³, did apply from the Commission’s approval in 2017 until the end of 2020. The German authorities (i.e. the Bavaria State

¹ Commission Decision of 4 September 2017, C(2017) 6048, State Aid SA.46572 – Germany - Bavarian games support measure.

² Communication from the Commission on State aid for films and other audiovisual works (OJ C332, 15.11.2013, p. 1).

³ https://www.fffbayern.de/fileadmin/user_upload/downloads/FFF/Games/Richtlinien/Bayerische_Richtlinie_fuer_die_Foerderung_digitaler_Spiele_ab_1.1.2018.pdf

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administration) extended the scheme's application thereafter, without notifying that extension to the Commission.

2. DETAILED DESCRIPTION OF THE NOTIFIED MEASURE

- (3) The application of the original scheme was extended after its expiry at the end of 2020, and the Bavarian government intends to apply it until 30 June 2022. The annual budget for the years 2021 and 2022 will be, as in the original scheme, EUR 1.75 million.
- (4) The German authorities have not introduced any other amendments to the original scheme, which provides State aid for the production of digital games and is described in detail in recitals (11) to (23) of the initial decision.

3. ASSESSMENT OF THE MEASURE

3.1. Lawfulness of the measure

- (5) The Commission notes that Germany extended the application of the original scheme after 31 December 2020 without notifying it beforehand to the Commission; this is a breach of Article 108(3) TFEU. Any aid paid before the approval by the Commission is therefore unlawful, at least if it does not respect the conditions of *de minimis* aid⁴.

3.2. Presence of State aid

- (6) 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.
- (7) The original scheme constituted State aid within the meaning of Article 107(1) TFEU for the reasons set out in recitals (27) to (31) of the initial decision. The prolongation does not alter that conclusion. The Commission therefore refers to the assessment of the initial decision and concludes that the aid scheme as extended constitutes State aid in the meaning of Article 107(1) TFEU.

3.3. Compatibility

- (8) The Commission assessed the original aid scheme as aid for the promotion of culture on the basis of Article 107 (3)(d) TFEU and the Cinema Communication. The Commission also took into account its decisional practice with regard to digital games and concluded that the original scheme fulfilled the relevant compatibility conditions.

⁴ 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.

- (9) The Commission refers to its analysis of compatibility as set out in recitals (32) to (57) of the initial decision.
- (10) The Commission considers that the extension of the duration of the original scheme does not alter the conclusion reached by the Commission as to the compatibility of the scheme as set out in its initial decision.

4. CONCLUSION

The Commission regrets that Germany put the aid into effect, in breach of Article 108(3) of the Treaty on the Functioning of the European Union.

However, it has decided, on the basis of the foregoing assessment, 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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<http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Your request should be sent electronically to the following address:

European Commission,
Directorate-General Competition
State Aid Greffe
B-1049 Brussels
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Yours faithfully,

For the Commission

Margrethe VESTAGER
Executive Vice-President