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**Subject: State aid N 40/2007 – Czech Republic  
Aid to Eurovize – audiovisual production**

Sir,

#### **I. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the above mentioned measure for supporting the production of cultural and educational audiovisual programs and decided to consider the aid to be compatible on the basis of Article 87 (3) (c) and Article 87 (3) (d) of the EC Treaty.

#### **II. PROCEDURE**

- (2) By letter dated 17 January 2007, registered on the same day, the Czech authorities notified the above mentioned measure to the Commission. The Commission sent a request for additional information on 7 February 2007. By letter dated 30 March 2007, the Czech authorities requested a prolongation for submitting additional information until 20 April 2007, which the Commission accepted by letter of 2 April 2007. The Commission sent the Czech authorities a reminder for submitting the additional information on 27 April 2007. The Czech authorities provided the requested information on 30 April 2007.

#### **III. DESCRIPTION OF THE MEASURE**

- (3) **Objective.** The objective of the measure is to inform the Czech general public via audiovisual works how public institutions (such as Czech Ministries, European Investment Bank), Czech municipalities and other state organizations contribute to the preservation cultural heritage and the development of tourism in the Czech Republic.

Karel SZWARZENBERG  
ministr zahraničních věcí  
Ministerstvo zahraničních věcí České republiky  
Loretánské náměstí 5  
118 00 Praha 1  
Česká republika

- (4) **Legal basis.** The legal base for the measure is the Act No 543/2005 Sb. on state budget for 2006. The measure, proposed by a group of members of the Lower Chamber of Czech parliament has been supported by voting on the State budget law.
- (5) **Subject of the aid:** Individual aid is granted to the production of audiovisual works comprising a series of 67 programmes. According to the Czech authorities, the programmes can be categorized as journalistic and discussion type programmes and the core idea is to create a novel, non-standard program series not yet experimented on the Czech market on special topics.
- (6) The programs will be broadcasted on a commercial television, called 24cz, and which is mainly focusing on broadcasting news, actual information about politics, economics, society, including the broadcasting of the Czech parliamentary sessions. The broadcast via the cable and satellite transmission will reach Czech spectators in the Czech Republic and Europe. The referred series of audiovisual works are also planned to be offered to other commercial channels.
- (7) The topics of the individual programmes are defined by the Czech Ministry of Culture. The series will cover two major topics: how public institutions contribute to 1) culture and the conservation of cultural heritage and 2) educational information related to the development of tourism. The main programs were chosen upon their impact on the Czech Republic and will be grouped under the following working titles:
  - **"What is new at the Ministry?":** altogether 39 programmes, weekly series where the Czech Ministries will present their approach towards cultural heritage conservation and development of tourism in the Czech Republic. These series will include information such as what financial resources (including EU structural funds) are available for those main objectives or what current legislations are in force. The aim of this series is also to improve public opinion about the Czech ministries and other public institutions.
  - **"Tourism in the Czech Republic":** altogether 9 programmes, weekly series focusing on domestic tourism possibilities presented by local mayors, regional representatives, members of parliaments, etc. The aim of the series is to provide educational information to the general public about interesting tourist destinations and broadening the possibilities in the area of tourism in the Czech Republic.
  - **"Questions for Ivan Pilip":** altogether 19 programmes, monthly series focusing on the loan policy of the European Investment Bank (EIB) mainly towards preserving cultural monuments and development of tourism. The program will be interviewing Ivan Pilip, currently the vice-president of the European Investment Bank and previously the finance minister of the Czech Republic.
- (8) **Granting authority:** The granting authority will be the Ministry of Culture (Ministerstvo Kultury ČR).
- (9) **Budget, aid amount and aid intensity:** The total budget for the 67 programmes of audiovisual production is 21.5 million CZK (approx. 0.75 million EUR), from which 15 million CZK (approx. 0.5 million EUR) is planned to be covered by state contribution. The aid intensity of the measure is therefore 70 per cent. The aid given to the

beneficiary is not cumulated with any other aid from local, regional, national and Community public bodies.

- (10) **Beneficiaries:** The direct beneficiary of the aid is Eurovize o.p.s., which will produce the referred series of audiovisual works<sup>1</sup>.
- (11) **Eligible costs:** The costs eligible for financing under the scheme will be those directly related to production of audiovisual works, comprising the series of 67 programs.

#### **IV. ASSESSMENT OF THE AID MEASURE**

##### **A. State aid within the meaning of Article 87 (1) of the EC Treaty**

- (12) According to Article 87 (1) of the EC Treaty, “*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 common market*”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings<sup>2</sup>, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (13) The Czech authorities grant individual aid via the state budget through the Ministry of Culture for the production of audiovisual series. Consequently, the measure involves State resources. The aid favours a certain company and the production of a certain good and therefore provides economic advantage to undertakings. Since film and TV productions are traded between Member States, and the audiovisual program will be broadcasted through cable and satellite, there is a potential distortion of competition and effect on trade.
- (14) Therefore, the Commission considers that the scheme constitutes State aid within the meaning of Article 87 (1) of the EC Treaty and it is therefore necessary to assess its compatibility under the provisions of Article 87 (3) of the EC Treaty.

##### **B. Compatibility**

- (15) The Commission has to verify whether any of the derogations provided for in article 87 (3) EC could apply and thus the measure may be considered to be compatible.

##### **Compatibility under Article 87 (3) (d)**

- (16) The Czech authorities argue that the aid has a cultural objective i.e. how public institutions such as Czech ministries contribute to cultural heritage conservation thus indicating the measure could therefore be derogated under Article 87(3)(d) EC, according to which an “*aid to promote culture and heritage conservation where such*

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<sup>1</sup> In line with Article 16 of Directive 2004/18/EC, the EU procurement directives do not apply to public service contracts for the production of programme material intended for broadcasting.

<sup>2</sup> The concept of an undertaking encompasses every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed. See for instance: judgement of the Court of 23 April 1991 in case C-41/90, Klaus Höfner and Fritz Elser vs Macrotron GmbH.

*aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest” can be exempted. Moreover, according to Article 151 (4) EC Treaty, the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.*

- (17) In accordance with the Commission practise<sup>3</sup>, the cultural derogation provided for Article 87(3)(d) must be interpreted restrictively and should be limited to measures for specific projects which 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 measure, not the medium or its distribution per se<sup>4</sup>.
- (18) As stated in para (7) the series will cover two major topics, namely culture, the conservation of cultural heritage and educational information related to the development of tourism. It is therefore noted that the measure has some elements exemptible under Article 87 (3)(d) EC, inasmuch as those parts of the planned audiovisual works that are related to culture and the preservation of cultural heritage in the Czech Republic. As far as production of audiovisual works is concerned, the so called “Cinema Communication”<sup>5</sup> sets out the compatibility criteria, under which aid can be approved. Even though in principle this Communication applies to aid schemes, the criteria can be applied in analogy to individual aid measures and the criteria can give guidance as to the compatibility analyses according to Article 87 (3)(d) of the EC Treaty.
- (19) *The aid must be directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).*
- (20) Part of the support is directed towards audiovisual works aiming at the promotion of national culture and the preservation of national cultural heritage in the Czech Republic, thus they are directly linked to the national notion of culture and cultural heritage (e.g. information on reconstruction of national cultural monuments). Hence this part of the notified measure can be considered to be directed to a cultural product.
- (21) *The producer must be free to spend at least 20 % of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80 % of the production budget of an aided film or TV work.*
- (22) In the present case, no obligation on territorial coverage exists for spending the film budget.
- (23) *Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding*

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<sup>3</sup> For example N458/2004; Spain, *State aid to Espacio Editorial Andaluza Holding sl.*, [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aids/comp-2004/n458-04.pdf](http://europa.eu.int/comm/secretariat_general/sgb/state_aids/comp-2004/n458-04.pdf). For further reference see [http://ec.europa.eu/comm/competition/state\\_aid/register/ii/by\\_primary\\_obj\\_culture.html](http://ec.europa.eu/comm/competition/state_aid/register/ii/by_primary_obj_culture.html)

<sup>4</sup> Commission Decision NN 70/98 *State aid to public broadcasting channels ‘Kinderkanal and Phoenix*, OJ 1999 C 238, page 3.

<sup>5</sup> *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works* (COM(2001)534 final of 26.09.2001, OJ C 43 of 16.2.2002).

*a bidding contest between Member States. Difficult and low-budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to the Member States to establish a definition of difficult and low budget film according to national parameters.*

- (24) In case of the current measure, the aid intensity amounts to 70%. However, the Commission notes that the Czech authorities claim that the referred audiovisual series would have limited prospect of commercial success, if any. This results from the fact that the measure will relate to the production of experimental, non-standard type of TV programmes that have not yet been introduced on the Czech market, focusing on culture and the preservation of cultural heritage in the Czech Republic. Furthermore, the overall budget for one single programme is very low (approx 320.000 CZK or less than 11.000 EUR). Therefore, the supported audiovisual programmes could be considered as being "difficult and low budget".
- (25) *Aid supplements for specific film-making activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided.*
- (26) As the Czech authorities confirmed, all costs are directly related to the production of the series.
- (27) Hence the four specific compatibility criteria, as set out in the referred "Cinema Communication", are met.

### **Compatibility under Article 87 (3) (c)**

- (28) The Czech authorities stated that the whole notified measure has a cultural objective. However, they have not explained in what respect broadcasting of educational information on the development of tourism is related to a national notion of culture. Therefore for such programs no other specific compatibility clause seems to be applicable to the notified aid apart from the possible general application of Article 87(3)(c) EC. The latter provides that, "*aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest, may be considered to be compatible with the common market*".
- (29) **Common interest.** As recognized in several EU communications<sup>6</sup>, tourism is an important economic asset for a large number of regions, rural communities and municipalities in the EU. Tourism is able to generate employment and growth; therefore the activity can play an important role in the attainment of the Growth and Jobs Strategy goals of the Renewed Lisbon strategy<sup>7</sup>. The Czech authorities argue that the information is educational because the programmes may attract all groups of the society, provides valuable information for the whole public and can have impact on the development of the Czech Republic. Accordingly, the Commission concludes that the aid as regards as

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<sup>6</sup> For instance *Communication from the Commission, A renewed EU Tourism Policy: Towards a stronger partnership for European Tourism*. COM(2006) 134 final of 17.3.2006.

<sup>7</sup> *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions, Implementing the Renewed Lisbon Strategy for Growth and Jobs* (COM(2006) 816 final of 12.12.2006).

educative information on the development of tourism is targeted at an objective of common interest.

- (30) ***Necessity and proportionality.*** The Commission notes that the Czech authorities claim that these types of educational programmes are missing from the Czech audiovisual market. In view of their very limited potential commercial attractiveness, it is unlikely that any private company would be interested in fully financing such programs. The aid has an incentive effect, since the measure will ensure wide availability of the information on the development of tourism, which would be otherwise not available. It is important to highlight that the referred measure neither provides State aid to specific companies in the tourist sector (such as for instance hotels), nor does it promote general activities of public institutions. The measure is designed to provide educational information to the public on domestic tourism possibilities, such as "bicycle tourism" or "water tourism". Since the audiovisual programs subject to the measure are commercially very risky, most likely unprofitable and taking into account the low amount of aid (0.5 million EUR) the Commission considers that the measure is proportionate to the objectives it pursues. Furthermore, all the programmes will be produced and broadcasted in Czech language, thus, it appears that the cross-border trade and competition will not be significantly affected. Based on these considerations, the Commission considers that the measure is both necessary and proportionate to the objective it pursues and does not affect trading conditions to an extent contrary to the common interest.

## V. CONCLUSION

- (31) On the basis of the foregoing assessment, the Commission considers that the measure is compatible with the common market pursuant under Article 87 (3) (c) and Article 87 (3) (d) of the EC Treaty.
- (32) 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. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the internet site:

[http://ec.europa.eu/comm/competition/state\\_aid/register/ii/](http://ec.europa.eu/comm/competition/state_aid/register/ii/).

Your request should be sent by encrypted e-mail to [stateaidgreffe@ec.europa.eu](mailto:stateaidgreffe@ec.europa.eu) or, alternatively, by registered letter or fax to:

European Commission  
Directorate-General for Competition  
State Aid Greffe  
Rue de Spa 3  
B-1049 Brussels  
Fax No: +32 2 2961242

Yours faithfully,  
For the Commission

*Neelie KROES*  
Member of the Commission