

**COMMISSION DECISION (EU) 2022/1978****of 25 July 2022****ON AID SCHEME SA.54817 (2020/C) (ex 2019/N) which Belgium plans to implement to support the production of video games***(notified under document C(2022)5130)***(Only the French and Dutch are authentic)****(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union, and in particular the first subparagraph of Article 108(2) thereof,

Having regard to the Agreement on the European Economic Area, and in particular Article 62(1)(a) thereof,

Having called on interested parties to submit their comments pursuant to those articles, <sup>(1)</sup> and having regard to their comments,

Whereas:

**1. PROCEDURE**

- (1) By letter of 1 July 2019, Belgium notified the Commission of the aid scheme for the production of video games. Further information was sent to the Commission by letters dated 3 January 2020 and 2 February 2020.
- (2) By letter of 30 April 2020, the Commission informed Belgium that it had decided to initiate the procedure provided for by Article 108(2) of the Treaty on the Functioning of the European Union (referred to below as 'TFEU') in respect of the aid.
- (3) The Commission decision to initiate the procedure was published in the *Official Journal of the European Union* <sup>(2)</sup>. The Commission called on the interested parties to submit their comments on the aid in question.
- (4) In its letter of 29 May 2020, Belgium presented its comments on the decision to open the procedure.
- (5) On 16 July 2020, the Commission received a number of observations on the matter from an interested party. It forwarded them to Belgium, which was given an opportunity to respond. The Commission received Belgium's comments by letter of 30 November 2020.
- (6) In its letter of 29 May 2020, Belgium informed the Commission that it wished to amend the legislation on which the aid was based, and in that of 30 November 2021, that a draft law containing the relevant amendments had been tabled before the Belgian Chamber of Representatives <sup>(3)</sup>.
- (7) Belgium provided additional information on 10 June 2021 and 8 December 2021, as well as on 10 February 2022 and 29 March 2022.

<sup>(1)</sup> Decision C(2020) 2648 final of 30 April 2020 (OJ C 206, 19.6.2020, p. 11).

<sup>(2)</sup> OJ C 206, 19.6.2020, p. 11.

<sup>(3)</sup> <https://www.lachambre.be/FLWB/PDF/55/1590/55K1590001.pdf>

## 2. DETAILED DESCRIPTION OF THE AID SCHEME

### 2.1. Title of the scheme, legal basis and duration

- (8) This is a tax shelter scheme to encourage the production of video games. It is designed as an extension of the initial tax shelter, the purpose of which was to support audiovisual production, and which was authorised by the Commission in 2003 <sup>(4)</sup>. Extensions of this initial scheme were approved in 2004 <sup>(5)</sup>, 2007 <sup>(6)</sup>, 2009 <sup>(7)</sup>, 2013 <sup>(8)</sup>, and 2014 <sup>(9)</sup>. The tax shelter scheme that was approved in 2014 was extended, unchanged, in 2020 <sup>(10)</sup>. The current version of this scheme will remain in place until 31 December 2026.
- (9) The legal basis is the Belgian Income Tax Code (*Code des impôts sur les revenus/Wetboek van Inkomstenbelastingen*) <sup>(11)</sup> and the Law of 29 March 2019 extending the tax shelter to the video game industry, published in the Belgian Official Gazette (*Moniteur belge/Belgisch Staatsblad*) of 16 April 2019 <sup>(12)</sup>, and the amendment to that law, currently under scrutiny by the Belgian Chamber of Representatives <sup>(13)</sup>. It is expected that the amendment will be adopted once the Commission has approved it.
- (10) The duration of the aid measure will be extended until 31 December 2027 <sup>(14)</sup>.

### 2.2. Budget

- (11) The estimated budget is EUR 36 000 000 (EUR 6 000 000 annually). Its source is the federal budget of the Belgian State.

### 2.3. Purpose of the aid measure and eligible works

- (12) The purpose of this scheme is to support and encourage investment by companies in the production of video games, by granting tax advantages to such companies. Companies subject to corporation tax in Belgium that meet the required criteria can avail themselves of the tax shelter for which this aid scheme provides.
- (13) To benefit from tax reductions under the scheme, they must invest in works produced by companies producing video games approved as European video games by the competent services of the community concerned, which means that the games must have been produced mainly with the help of authors and creative workers resident in Belgium or another country belonging to the EEA or supervised and controlled in practice by one or more producers and co-producers established in one or more EEA countries.

<sup>(4)</sup> N 410/02 (ex-CP 77/2002), Belgium – State aid to Belgian film and audiovisual production – cinema tax shelter scheme, [https://ec.europa.eu/competition/state\\_aid/cases/137343/137343\\_455458\\_39\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/137343/137343_455458_39_2.pdf)

<sup>(5)</sup> N 224/04, Belgium – State aid to Belgian cinematic and audiovisual production – changes in the federal scheme known as the cinema tax shelter, [https://ec.europa.eu/competition/state\\_aid/cases/140619/140619\\_503601\\_23\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/140619/140619_503601_23_2.pdf)

<sup>(6)</sup> N 121/2007, Belgium – Tax measures to encourage audiovisual production – tax shelter – extension of aid measure No N 224/2004, [https://ec.europa.eu/competition/state\\_aid/cases/219141/219141\\_703682\\_36\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/219141/219141_703682_36_2.pdf)

<sup>(7)</sup> N 516/2009, Belgium – Tax shelter to encourage audiovisual production – extension of aid measure No N 121/2007, [https://ec.europa.eu/competition/state\\_aid/cases/233078/233078\\_1210789\\_29\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/233078/233078_1210789_29_2.pdf)

<sup>(8)</sup> SA.35643 (2012/N), Belgium – Extension of tax shelter in support of audiovisual productions, [https://ec.europa.eu/competition/state\\_aid/cases/246468/246468\\_1451339\\_61\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/246468/246468_1451339_61_2.pdf), and SA.36655 (2013/N), Belgium – Changes in the tax shelter in support of audiovisual productions, [https://ec.europa.eu/competition/state\\_aid/cases/248603/248603\\_1525887\\_174\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/248603/248603_1525887_174_2.pdf)

<sup>(9)</sup> SA.38370 (2014/N), Belgium – Changes in the tax shelter in support of audiovisual productions, [https://ec.europa.eu/competition/state\\_aid/cases/253328/253328\\_1646431\\_87\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases/253328/253328_1646431_87_2.pdf)

<sup>(10)</sup> SA.59274 (2020/N), Belgium – Extension of the tax shelter in support of audiovisual productions SA.38370 (2014/N), [https://ec.europa.eu/competition/state\\_aid/cases1/20215/289138\\_2239389\\_113\\_2.pdf](https://ec.europa.eu/competition/state_aid/cases1/20215/289138_2239389_113_2.pdf)

<sup>(11)</sup> <https://eservices.minfin.fgov.be/myminfin-web/pages/public/fisconet/document/6c0aa338-3dad-4e4b-960f-8e01564d20d0>

<sup>(12)</sup> <http://www.ejustice.just.fgov.be/eli/loi/2019/03/29/2019040875/moniteur>

<sup>(13)</sup> See footnote No 3.

<sup>(14)</sup> In its notification dated 1 July 2019, Belgium proposed that the measure be extended until 31 December 2025. In view of the length of time that has passed since this notification, Belgium decided it wished to extend the duration of the measure until 31 December 2027.

- (14) This accreditation of video games depends on cultural tests established by the Flemish Community and the Walloon Region for their own aid schemes and approved by the Commission (in 2018 for the Flemish Community <sup>(15)</sup>, extended and amended in 2022 <sup>(16)</sup>, and in 2020 for the Walloon Region <sup>(17)</sup>). The test criteria are that the game must have cultural and artistic qualities, that the production activities and the parties concerned must have links with Flanders or the Walloon region, and that the game concerned must be innovative and creative. To ensure this, Belgium has committed itself to ensuring that the Belgian federal State will conclude a cooperation agreement with the Flemish Community, the French-speaking Community and the German-speaking Community on the respective competences of these communities and of the federal State in relation to the tax shelter scheme. Belgium notes that, for the duration of the tax shelter scheme, approval by the communities of video games in this context will be subject to the same criteria as those applied by the Flemish Community and the Walloon Region to their own aid schemes for video games.

#### 2.4. Form of aid, organisation of the system, aid intensity and cumulation

- (15) Under the current tax shelter system, a company ('the investor') can make a financial contribution, based on a framework contract, to the producer of a particular audiovisual work. The investor receives compensation for this investment in the form of a 'tax shelter certificate' enabling the investor to benefit from tax relief through a reduction in its taxable profits. The principle underpinning the taxation of company profits is that companies are liable for tax on their overall profits (Article 185 of the Belgian Income Tax Code). The tax base is ascertained by deducting deductible expenses from profits (Article 6 of the Income Tax Code). As a rule, companies can deduct the professional expenses they have incurred during the taxable period (Article 49 of the Income Tax Code). As regards the value of investments, an amount may be deducted that depends on the value of the contribution (Article 61, second paragraph of the Income Tax Code). Under the tax shelter scheme, the company liable for tax can immediately deduct 421 % of the amounts invested, a sum exceeding its financial contribution. Depending on the nature of the notified project, this also applies to contributions to the production of a video game.
- (16) Under the scheme notified by Belgium, the tax value of the tax shelter certificate was set at 70 % of the production and operating costs incurred within the EEA or, if the production and operating costs incurred in Belgium account for less than 63 % of the total budget, of the production and operating costs incurred in Belgium. The amount of aid for possible investment in a production is set at 48 % of the tax value of the tax shelter certificate. This means that in a maximalist scenario in which at least 63 % of the total budget is spent in Belgium, aid intensity could reach 48 % of 70 %, amounting to 33,6 % of the budget for the production, but it would be lower in cases where production expenditure incurred in Belgium was lower than 63 % of the overall budget. If such aid were provided in addition to other forms of production aid, aid intensity would be limited to 50 %.
- (17) Accordingly, in the initial version of the scheme the tax value of the tax shelter certificate was established on the basis of territorial spending. The amount of investment (and therefore the amount of aid) depends on the percentage of territorial spending, which means that it varies according to the planned amount of expenditure in Belgium.

#### 2.5. Accreditation of beneficiaries

- (18) Under the tax shelter scheme, production companies benefiting from the scheme must be accredited in order to be able to take part. The point of this, according to Belgium, is that accreditation can be withdrawn from any companies or individuals that fail to abide by the law <sup>(18)</sup>.

<sup>(15)</sup> SA.49947, Belgium – Aid for videogames (VAF Gamefonds), [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_49947](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49947)

<sup>(16)</sup> SA.101526, Belgium – VAF Gamefonds, recital (23), [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_101526](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_101526)

<sup>(17)</sup> SA.55046, Belgium – Soutien aux jeux vidéo culturels, artistiques et éducatifs (Wallimage), recital (14) [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_55046](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_55046); the Walloon Region includes the German-speaking region.

<sup>(18)</sup> Article 194 ter(1)(2) of the Income Tax Code states that the conditions for accreditation are laid down by royal decree.

- (19) Belgium has explained that accreditation will be granted swiftly following an application by the production companies concerned. Such an application comprises simply: information identifying the company concerned, a document showing that the applicant is not in arrears with payments to the National Social Security Office, and an undertaking to abide by the law on the tax shelter scheme. Specifically, this means that the production company undertakes to make its offer of a tax shelter certificate in accordance with the provisions of the Law of 11 July 2018 on public offers of investment vehicles and the admission of investment vehicles to negotiation on regulated markets <sup>(19)</sup> and those of Regulation 2017/1129 of the European Parliament and of the Council <sup>(20)</sup>.
- (20) Belgium has explained that the accreditation process will not introduce any conditions relating to the establishment in Belgium of the companies concerned at the time of their application for accreditation.

## 2.6. Rationale for the aid

- (21) Belgium explained in its notification that the video game sector in Belgium accounted for EUR 100 000 000 in 2018, or 0,08 % of the world market (about EUR 124 000 000 000 in 2018).
- (22) Belgium has since updated these figures. In 2020 the video game sector generated USD 159 800 000 000 in revenue worldwide <sup>(21)</sup>. The EUR 82 000 000 which Belgium reported as the total revenue of the Belgian market for that year accounted for a mere 0,05 % of worldwide revenue. The market on the European continent accounts for 19 % of the world market, corresponding to USD 29 600 000 000, or over EUR 27 600 000 000. This means that in 2020 the Belgian video games market accounted for 0,3 % of the relevant market on the European continent. According to the 2019 data, the Belgian sector employed 1 000 people, out of a total of 87 628 across Europe. There were 63 video game development studios in Belgium, out of a total of 4 913 across Europe <sup>(22)</sup>. These figures thus show that the Belgian video game sector occupies a modest place on the overall European market. In Belgium, many of the companies active in the video game sector are small companies. Many of them are relatively new, meaning that they have been in existence for less than six years. Given the size of companies in this sector and the short time for which they have existed, they face difficulties in developing. This is holding back the production of a larger number of cultural video games, entailing greater diversity.
- (23) Belgium wishes to make the following observations: despite the growth this sector has experienced, the industry lacks the financial impetus required to achieve a market breakthrough. Developing a game to be played on a computer, console, tablet or smartphone is akin to making a film in that it takes several months or even years. The process requires highly skilled workers. As in the film industry, no marketable result is available until the end of the process. Given these features, the video game sector is relatively risky. Moreover, just as in the film industry, it is impossible to be sure that a particular game will prove attractive to enough people to bring a return on investment. In addition, projects involving video games with a significant educational, cultural and artistic component are considered to be more risky. This is because they involve the same production costs as video games enjoying worldwide popularity, but have access to a more limited market.
- (24) Financial limitations impede the launching of major projects with significant creative potential but which require a correspondingly higher budget. Production of video games therefore focuses on games that can be played on personal computers and games that can be produced on a lower budget. Financing difficulties stand in the way of preserving and developing cultural know-how at local level. The fact is that it is in producers' interests to work as subcontractors for foreign companies, rather than developing their own video games.
- (25) As a result, Belgian video game companies often have serious difficulties in obtaining financing for new projects. They also face a great deal of international competition.

<sup>(19)</sup> [http://www.ejustice.just.fgov.be/mopdf/2018/07/20\\_2.pdf#Page18](http://www.ejustice.just.fgov.be/mopdf/2018/07/20_2.pdf#Page18), p. 58312.

<sup>(20)</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC (OJ L 168, 30.6.2017, p. 12).

<sup>(21)</sup> Newzoo – Global Games Market Report 2020, downloadable from [newzoo.com](http://newzoo.com).

<sup>(22)</sup> 2019 report, by the European Game Developers Federation in cooperation with the Interactive Software Federation of Europe. Data collected on a majority of European Union countries and a number of non-Member States. [https://www.egdf.eu/wp-content/uploads/2021/08/EGDF\\_report2021.pdf](https://www.egdf.eu/wp-content/uploads/2021/08/EGDF_report2021.pdf)

- (26) The tax shelter will help to increase the number of private investments in the video game production sector, in the same way as the tax shelter for film and audiovisual production.

### **2.7. Description of the grounds for initiating the procedure**

- (27) The scheme, as initially notified to the Commission, raised doubts as to its general legality. The tax value of the tax shelter certificate is established on the basis of territorial spending. There could have been a conflict between these territoriality conditions and the principles of general legality, specifically the principles of the TFEU guaranteeing free movement of goods and freedom to provide services (Articles 34 and 56 of the TFEU).
- (28) The Commission expressed its doubts as to whether it was legal and compatible with the internal market for aid to video games to define the amount of investment and thereby the amount of aid as a percentage of territorial spending in Belgium, and whether it was necessary or proportionate to have territorial conditions linked to such aid.

### **3. COMMENTS BY INTERESTED PARTIES**

- (29) In a letter dated 16 July 2020, the organisation of Flemish independent film and television producers (Vlaamse Onafhankelijke Film & Televisie Producenten, referred to in what follows as VOFTP), made a number of comments on the notified aid scheme. VOFTP believes that it is affected by this scheme, fearing that extending the tax shelter system to video games will reduce the flow of investment to its members' audiovisual productions. According to VOFTP, the extension of the initial tax shelter does not meet the conditions for compatibility with the internal market and should not, therefore, be approved by the Commission.
- (30) In its submission, VOFTP underlines the importance of a thorough examination to ascertain whether the video games to receive aid under this scheme genuinely have a link with Belgium and contribute to the objective of promoting culture within the meaning of Article 107(3)(d) of the TFEU, and cultural diversity. VOFTP fears that the scheme contains no guarantee that aid will be granted only for video games with a cultural objective.
- (31) According to VOFTP, the criteria applied under the aid scheme for video games to assess the cultural aspect of such games should guarantee that any game benefiting from aid is of cultural value. Such criteria should be defined by the community or region responsible, which have their own aid schemes for the video game sector. In each case, an organisation specific to respectively the Flemish Community (the Flemish Audiovisual Fund) or the Walloon Region defines the criteria for assessing the cultural aspect of a video game. VOFTP doubts whether the application of these criteria is guaranteed. A cooperation agreement between the Belgian state and the respective communities is needed, but no such agreement exists.

### **4. COMMENTS BY BELGIUM**

- (32) In its letter of 29 May 2020, Belgium noted that the decision to initiate the procedure confirmed that the conditions for the aid concerned to be classed as aid to promote culture and thus compatible with the internal market, pursuant to Article 107(3)(d) of the TFEU, are met.
- (33) As regards the conditions of territorial spending and the general legality of such expenditure (including its necessity and proportionality) and, specifically, the principles of the TFEU guaranteeing the free movement of goods and freedom to provide services (Articles 34 and 56 of the TFEU), Belgium has started to examine the possibility of extending eligible spending to the whole territory of the EEA. On 16 July 2021, the Finance and Budget Committee of the Belgian Chamber of Representatives proposed that the applicable legislation be amended to replace the phrase 'expenditure on production and operating costs in Belgium' by 'expenditure on production and operating costs in the European Economic Area'. In the draft amendment, the value for tax purposes of the tax shelter certificate is set at 70 % of expenditure on production and operating costs incurred within the EEA or, if expenditure on production and operating costs that constitutes professional income subject to taxation within the EEA accounts for less than 63 % of the total budget, of expenditure on production and operating costs that constitutes professional income subject to taxation within the EEA. The Chamber of Representatives is ready to adopt the amendment as soon as the Commission takes an affirmative decision.

- (34) As regards the VOFTP's comments on the cultural nature of video games that are potentially eligible for aid and the application of the respective communities' cultural tests to the video games covered by the tax shelter, Belgium has stated that the cooperation agreement between the federal State and the communities on the existing tax shelter for audiovisual productions should be adapted to include the application of the communities' or regions' cultural tests to video games. This will take place before the notified scheme is implemented, as soon as the Chamber of Representatives adopts the legislative amendment proposed, and as soon as the Commission adopts the decision on the tax shelter for the production of video games. Belgium confirms that this cooperation agreement will not alter the content of these tests.

## 5. ASSESSMENT OF THE SCHEME

### 5.1. Existence of State aid

- (35) Article 107(1) of the TFEU provides: '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'.

#### 5.1.1. State resources and imputability

- (36) Investors can deduct from their taxable profits funds used in the context of the scheme under examination. This deduction, provided for by the law, reduces the amount of tax collected by the State. The law also states that these funds are to be allocated to companies approved by the State for this operation and that they must contribute to specific productions that have been explicitly accredited as European video games by the competent services of the community concerned. Consequently, the investments in question make use of State resources and are imputable to the State.

#### 5.1.2. Advantage

- (37) The purpose of the scheme is to reduce the production costs borne by producers of video games. Such expenditure is part of the costs habitually borne by all producers of video games. In other words, it is a cost that is usually assigned to the beneficiary's budget.
- (38) The aid provided to the producer comes from the investor's contribution, which itself results from the tax-deductibility of this operation. The Commission thus notes that the advantage resulting from tax-deductibility is in fact transferred to the producer via the framework contract.
- (39) Consequently, the scheme confers an advantage on the producer to which that producer would not have access under normal market conditions. The measure therefore constitutes an advantage favouring producers of video games.

#### 5.1.3. Selectivity

- (40) The scheme is selective because only beneficiaries whose projects have passed the selection test can receive aid. Moreover, the aid scheme covers only the video game sector. In addition, the tax deduction of 421 % of the value of the investment means that the investments concerned (and therefore the beneficiaries) are treated more favourably than other investments with respect to the objective of the tax system, as other investments cannot be deducted at a rate exceeding their nominal value. This is the case even though their situation, both *de jure* and *de facto*, is comparable with respect to the objective of the tax system, which is to tax companies' revenue after the deduction of investments. This treatment cannot be justified by the nature and the logic of the system. Under the corporate tax system, a standard deduction cannot exceed the nominal value of an investment.

#### 5.1.4. Distortion of competition and effect on trade between Member States

- (41) Since video games are part of international trade and this market is open to competition, the financial advantage granted to beneficiaries may affect competition and trade between Member States.

## 5.2. Lawfulness of the aid

- (42) In notifying the scheme before it took effect, Belgium complied with its obligations under Article 108(3) of the TFEU.

## 5.3. Legal basis for the assessment

- (43) The extent to which the scheme is compatible with the internal market will be analysed on the basis of Article 107(3)(d) of the TFEU, in view of the objective of promoting culture through support for cultural projects.
- (44) To be more precise, the scheme's compatibility with the internal market will be analysed in the light of point 24 of the Commission Communication on State aid for films and other audiovisual works <sup>(23)</sup> (referred to below as the 'Cinema Communication'). Point 24, which deals specifically with State aid for the production of video games, states that where an aid scheme targeting games with a cultural and educational purpose can be shown to be necessary, the Commission will apply, *mutatis mutandis*, the aid intensity criteria defined for films in the Cinema Communication.

## 5.4. Compatibility of the aid with the internal market

- (45) In its decision to open the procedure, the Commission noted that the scheme appears to meet most of the criteria for classification as aid to promote culture and hence as aid compatible with the internal market, pursuant to Article 107(3)(d) of the TFEU.

### 5.4.1. General legality

- (46) To be compatible, aid schemes must first meet the criterion of 'general legality'. The concept of 'general legality' rests on the assumption that the eligibility conditions and the criteria for granting aid do not contain any clause indissolubly bound up with the granting of aid that contradicts the specific provisions of the TFEU in fields other than State aid <sup>(24)</sup>.
- (47) The scheme does not impose any conditions relating to Belgian nationality or any requirement for the company receiving aid to be based mainly in Belgian territory. Beneficiaries can be based in another European Union country or in the European Economic Area.
- (48) The accreditation procedure for production companies and intermediaries has no bearing on the general legality of the scheme. Under the existing tax shelter scheme, production companies benefiting from the scheme must have an established agency in Belgium at the time the aid is disbursed. The accreditation process does not include any conditions regarding the establishment or residence in Belgium of the companies concerned at the time when they apply for accreditation.
- (49) As regards aid intensity, Belgium has introduced an amendment, by means of a draft law, to the restrictive territorial provisions of the aid scheme initially notified. Under this draft law, the amount of aid is established according to the amount of expenditure on production and operating costs incurred in the European Economic Area. Consequently, the scheme is no longer liable to constitute an obstacle to the freedom of movement of goods or the freedom to provide services within the internal market (Articles 34 and 56 of the TFEU).

### 5.4.2. Promotion of culture, pursuant to Article 107(3)(d) of the TFEU

- (50) Under Article 107(3)(d) of the TFEU, aid to promote culture and heritage conservation may be deemed compatible with the internal market if such aid does not affect trading and competition conditions in the EU to an extent that is contrary to the common interest.

<sup>(23)</sup> OJ C 332, 15.11.2013, p. 1.

<sup>(24)</sup> Judgment of the Court of Justice of 15 June 1993, Matra, C-225/91, ECLI:EU:C:1993:239, paragraph 41.

- (51) The Commission has not drawn up any guidelines on how to apply this provision to aid for video games. Point 24 of the Cinema Communication confirms that aid intended to support video games is analysed on a case-by-case basis.
- (52) The assessment of aid for video games under Article 107(3)(d) of the TFEU follows Commission practice, which started with the decision on French tax credit in support of video games, in which the Commission recognised that certain video games can be classed as cultural products <sup>(25)</sup>.
- (53) The Flemish Community and the Walloon Region have developed – for their own video game aid schemes – a number of cultural criteria for games eligible for aid, which are also applicable to the tax shelter scheme <sup>(26)</sup>. They have established a scale for the selection of projects in order to ensure that the games which receive support genuinely meet the conditions for recognition as a cultural work. The Commission has analysed these criteria <sup>(27)</sup> and approved these schemes.
- (54) Contrary to the claim made by the interested party VOFPT, Belgium has committed itself to establishing a cooperation agreement between the federal State and the communities before implementing the tax shelter scheme for video games (see recitals (14) and (34)). This kind of cooperation is already in place for support for audiovisual works.
- (55) In conclusion, the scheme supports cultural projects and meets the objective of promoting culture, pursuant to Article 107(3)(d) of the TFEU.

#### 5.4.3. Appropriateness of the aid measure

- (56) The purpose of the scheme is to support cultural projects that face difficulties in obtaining funding on the market, given the nature of the project (cultural works) and the risks involved (while there will definitely be production costs, there is no guarantee of an audience). So the scheme helps to finance part of the production costs of video games selected for their contribution to promoting culture. The support mechanism is based on the principle of support for the production of games by private investors. Belgium has explained that a system of direct support would entail higher administrative and financial costs than the tax shelter measure. Moreover, the payment of a direct grant would come earlier in the process than any tax exemptions (both provisional and final). In addition, since responsibility for cultural matters is devolved to Belgium's communities, audiovisual policy at Belgian federal

<sup>(25)</sup> The Commission recognised the need for support for video games in the following decisions:

C47/2006 (ex N 648/2005), France – Tax credit for the production of video games, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_20324](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_20324);

SA 33943 (2011/N), France – Extension of aid scheme C 47/2006 – Tax credit for the production of video games, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_33943](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_33943);

SA.36139 (2013/C), United Kingdom – Video games tax relief, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_36139](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36139);

SA.39299 (2014/N), France – Tax credit for the production of video games – amendments, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_39299](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_39299);

SA.47892 (2017/N), France – Tax credit for the production of video games – amendments and extension, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_47892](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_47892);

SA.45735 (2017/N), Denmark – Scheme for the development, production and promotion of cultural and educational digital games, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_45735](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_45735);

SA.46572 (2017/N), Germany – Bavarian games support measure, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_46572](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_46572);

SA.49947 (2017/N), Belgium – Aid for video games (VAF Gamefonds), [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_49947](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49947);

SA.50512 (2018/N), France – Video games aid fund – writing, creation of intellectual property and collective operations, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_50512](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_50512);

SA.51820 (2018/N), Germany – North Rhine Westphalian games support measure, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_51820](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_51820);

SA.101526, Belgium – VAF Gamefonds, [https://ec.europa.eu/competition/elojade/isef/case\\_details.cfm?proc\\_code=3\\_SA\\_101526](https://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_101526).

<sup>(26)</sup> SA.55046, Belgium – Soutien aux jeux vidéo culturels, artistiques et éducatifs (Wallimage); SA.101526, Belgium – VAF Gamefonds.

<sup>(27)</sup> Recitals (52) to (54) of the decision concerning the Wallimage fund and (38) and (39) of the decision concerning the VAF Gamefonds.



level is limited to establishing the tax shelter system as part of Belgium's socioeconomic policy. By involving private investors, Belgium wishes to encourage mutual contacts and access for the cultural sector to the various potential sources of funding.

- (57) The scheme is thus an appropriate means to achieve the intended objective.

5.4.4. *Whether the aid is necessary*

- (58) Video games benefiting from aid are cultural works that promote local and European culture. Their international marketing potential provides leverage for the promotion of culture on a large scale.
- (59) However, projects involving video games face difficulties in obtaining funding under market conditions (see recitals (22) to (24) above). The financial risks inherent in projects involving video games, which necessarily incur production costs, while any earnings remain uncertain, constitute barriers to private investment. This means that public intervention is required to bring a larger and more diverse share of projects to fruition.

5.4.5. *Proportionality of the aid*

- (60) Point 24 of the Cinema Communication states that, provided that an aid scheme for games with a cultural and educational purpose can be shown to be necessary, the Commission will apply, by analogy, the same aid intensity criteria as those established for aid schemes in favour of audiovisual works.
- (61) The scheme supports the creation of video games in limited proportions. The maximum aid intensity is 33,6 %, and, where there is more than one source of aid, it is limited to 50 % of the production costs of a video game, in line with the 50 % threshold established by the Cinema Communication. The purpose of the maximum intensity rates is to preserve private initiative by obliging aid beneficiaries to obtain funds from other sources, in addition to the State.
- (62) In conclusion, the scheme is proportional to the objective pursued.

5.4.6. *Limited distortion of competition and effects on trade*

- (63) Worldwide, the video game sector generated revenue amounting to USD 159 800 000 000 in 2020. The market on the European continent accounts for 19 % of this market, corresponding to USD 29 600 000 000 (over EUR 27 600 000 000). In 2020, revenue on the Belgian video game market came to EUR 82 000 000, which corresponds to 0,3 % of the overall European market and 0,05 % of the world market <sup>(28)</sup>.
- (64) In the light of the above, it is clear, firstly, that the budget for the scheme to support the Belgian video game sector is relatively limited (see recital (11)) by comparison with the sector's overall turnover in Belgium. Secondly, any distortion caused by this aid can be considered minor, as Belgian video games have a limited share of both the European and the world market.
- (65) The Commission concludes that this aid will not unduly increase the market power of the beneficiary companies, while it will expand the range of games with cultural qualities on the market. The overall assessment of this aid in relation to the internal market is positive, as any distortions of competition and impact on trade that may result will be limited.

---

<sup>(28)</sup> Recital (22).

## 6. CONCLUSION

- (66) The Commission therefore concludes that this aid will not unduly increase the market power of the beneficiary companies, while it will, conversely, improve the variety of the range of games with cultural qualities on the market. It should thus be concluded that any distortions of competition and effects on trade resulting from the scheme are limited, and that the overall assessment of aid designed to promote culture is positive. The tax shelter for the creation of video games is compatible with the internal market on the basis of Article 107(3)(d) of the TFEU,

HAS ADOPTED THIS DECISION:

### *Article 1*

The State aid which Belgium plans to implement in favour of the production of video games by applying a tax shelter scheme for the production of video games is compatible with the internal market, pursuant to Article 107(3)(d) of the Treaty on the Functioning of the European Union.

Implementation of the aid is accordingly authorised.

### *Article 2*

This Decision is addressed to the Kingdom of Belgium.

Done at Brussels, 25 July 2022.

*For the Commission*  
Margrethe VESTAGER  
*Member of the Commission*

---