

**FIAD**

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## **ANSWER TO THE CONSULTATION ON STATE AIDS**

### **Who do we stand for?**

We represent film distribution companies whose main activity is the release of cinematographic works in cinemas.

Film distributors contribute to film production financing with advances paid to the producers. They give films the profile they deserve with the release in the first – theatrical – window of rights exploitation. Depending upon the contracts they have with producers, the distributors may have rights for part or all of the following markets:

- cinemas
- physical video
- video on demand
- television (free or pay television)
- internet (streaming)

We will comment in particular on the activity of distributors in the field of cinema releasing, letting our colleagues from other sectors of the industry answer for their own fields of activity.

Our answers (underlined) are as follows:

### ***What should be the objective of State aid for films and audiovisual works?***

Before answering this question we would like to comment on the presentation made by the Commission on various aspects of the question of State aids. We will refer to the paragraphs of the document issued by the Commission.

(13) The consideration of the market share of American films in Europe (70% of the admissions in the cinemas) does not address the fact that the budgets of these films have no similarity to those of the European films. A European film is considered by the Commission as ‘high budget’ when its budget is above €15M, according to the guidelines of the MEDIA programme. Many American films have a ten-times higher budget (over \$ 200M that is €141 M, according to paragraph 32 of the document from the Commission). American budgets enable viewers – particularly those from young generations who in Europe are the principal audience – to be offered entertaining films which combine world famous talents and special

effects. One of the ambitions of Europe should be to offer its audiences content that is equally, or more, attractive.

(14) The fragmentation of the sector which consists of SMEs is presented as one of the reasons for the difficult circulation of European films. One should not forget that Europe is the sum total of national markets with all their cultural, particularly linguistic, and sociological characteristics. Films are first released in their production country and, if they are a success, in other countries. The existence of a large number of SMEs is also an aspect of cultural sectors: the decision to put a film into production results from common views between a producer and a director about a project. That is easier within an SME than in a large group. That said, many SMEs are linked to large groups which contribute to financing their production.

(15) The Commission is right to underline the difficulties faced when developing projects. The investment in writing a script before it is put into production requires time and, therefore, money. It is common for several years to be spent in development before the project in question can be financed.

(16) We lack elements to appreciate the links between territorial spending obligations and the fragmentation of the production sector.

(17) The remark about a risk of over-production of European works compared to the distribution channels available seems to us in contradiction with the regrets expressed in paragraph 13 about the small market share and, in paragraph 14, about the lack of circulation of the works. Higher market shares and a better circulation would provide works with adequate commercial opportunities. Expressed differently, the issue is not to produce as many films as possible, but rather films requiring the best skills and competences (see our last sentence about paragraph 13).

(21, 22 and 23) These paragraphs mention the principles which condition a State aid: it must be necessary, proportionate and effective. They mention the high number of films, their lack of circulation and the importance of examining whether the funds are applied as effectively as possible. While giving acknowledgement to States, thanks to the principle of ‘subsidiarity’, and their competence in the implementation of criteria which are their own, the Commission regrets that it would lead to ‘contradictory funding’, an expression we fail to understand. We should recall that we are in the cultural field. In Europe, some countries are considered by the Commission in the MEDIA guidelines as ‘small producing countries’. In these countries the decision to produce a few films is part of the cultural identity. Without exaggeration we may say that the fact that these films have been produced, shown in their production country and just had small international circulation (for example in festivals) fully answers the ambitions of these countries.

(24) We do not share the opinion of the Commission on the lack of data about the sector. The European audiovisual observatory, partially financed by the Commission, publishes statistics on the sector and not only in its ‘focus’ mentioned in a footnote to paragraph 12. National film agencies also publish statistics on their national production. That said, of course we are in favour of full transparency in the allocation of the supports.

(25) This paragraph also mentions the lack of statistics, the fact that many European films are not shown in cinemas – without any figures regarding the assumption – and the lack of

precise budgets in film production. Usually the allocation of a support requires the presentation to the film agency of elements related to the budget of the project for which a support is requested. We again express our commitment to transparency in the allocation of the supports.

(26, 27 and 28) We are fully conscious that the supports come from public finances which are under strict budgetary rules and also transparency rules. Therefore the mention of aims such as increasing audience choice, building audience awareness for European films, ensuring the cultural diversity of content, seems to us fully adequate within the exercise where we are invited by the Commission to evaluate the efficiency of the supports.

We consider that the objective of State aids must be to ensure the expression and renewal of artistic creation according to the diversity of talents and cultural sensibilities present in all the member States. The fragmentation of the sector in SMEs is a characteristic of the cultural industries and, particularly in Europe, reflects the fragmentation of the markets for cultural and linguistic reasons. Works produced by these companies under a system of territorial and chronological exclusivities which are the counterpart of the finance brought by private operators to film production should be fully able to reach their public.

#### ***How should one measure that this objective is fulfilled?***

The measurement of such an objective is difficult and may end up being based on inadequate information.

One characteristic of the production of cultural works is the difficulty of matching demand with supply. Whatever the budgets for production, the budgets for promotion, or the countries of production, we always face a lack of certainty as to how the public will receive the films.

The fact that the works exist and are available to the public is the most important consideration.

#### ***What would be the most effective way for the Commission to control this subsidy race?***

(29 to 34) The Commission mentions the subsidy race to attract important international productions to Europe, and the competition which would be detrimental both to the sector and to European taxpayers. We understand that this assertion is not based on specific figures. Actually in paragraphs 11 and 12, the Commission mentions the importance of the supports to the cinematographic sector (€2.3 Billion) and the number of films produced in Europe (in 2009, 1,168). That number shows that the main part of the supports goes to the production of European films: otherwise we would not have so many films. Therefore the amount of the supports to productions coming from outside Europe can only be a modest part of the supports. The Commission mentions the ancillary effects which may come from these productions (eg. tourism). First of all we would like to point out that the use of European film services shows the high level of their competence, which can only satisfy European decision makers. Secondly the ancillary effects are not limited to tourism generated by having seen a film but cover expenses related to the film: transport, hotels, catering; these expenses contribute to the turnover of the European companies, generate taxes, and the European taxpayers can only applaud that. Lastly, and probably more importantly, the issue is not

whether this or that European country attracts a non-European production but whether it comes to Europe or another part of the world.

(35) The reference to the UK Cultural Test is one of the answers covered by the principle of subsidiarity. However, for people from the film industry, any film is a cultural product. Going to the movies is a cultural experience. Watching a film in a cinema or at home is a cultural experience.

(36) The Commission rightly points out the difficulty of putting an end to the diversity of the criteria while preserving the principle of subsidiarity.

We draw attention to the fact that the aim of avoiding a subsidy race to attract productions must not lead to reducing the principle of subsidiarity in use for cultural productions and, in so doing, to diminishing the legitimacy of States to determine the criteria of their actions to allocate the supports. A more comprehensive study of the existing distortions, if any, should be carried out.

***What factors should be taken into account by State aid assessment criteria for activities other than production?***

(38 to 40) The Commission mentions the supports other than those going to production allocated by some States and aims to include them in the Cinema Communication: development, distribution, promotion, festivals, training, developing film culture, VoD, digital projection, rural cinemas. We understand the aim of the Commission but need clarification on its objectives: ‘to avoid stimulating the supply of audiovisual content without ensuring that the corresponding distribution and promotion of such content matches demand’. As mentioned earlier, a characteristic of the sector is the unpredictability of matching demand and supply. However we understand the need for legal certainty of these supports. For these actions, statistics on their results should be available. Besides this, we would like to point out that among the actions mentioned, some of them are State activities financed by public money: developing film culture is often done at school within the official curriculum.

For activities other than production, quantitative data may be used: number of cinemas equipped, number of applications for development, number of films supported through a distribution scheme. We must point out here that these supports have no effect on the internal market. They need specific requirements regarding territoriality and aid intensity.

***How should the switch of cinemas to digital projection be covered by future rules on aid to cinema?***

(41) The Commission mentions the Communication adopted in 2010 on opportunities and challenges for European cinema in the digital age. That question is particularly important for film distributors which now face the most important technical change since the origins of their industry.

Financing the equipment of the cinemas for digital projection is organised as follows: distributors **at the end of the process** will make savings by not using any more 35mm prints and using digital files; the exhibitors invest in the equipment.

Cinemas showing a high number of films as national releases get from the distributors a contribution coming from their savings (VPF = virtual print fee). That model, with finance going directly to the exhibitor or to a third party, is appropriate for the most important cinemas such as multiplexes. During the transition period when cinemas will install the equipments, and after that period - according to commitments from distributors regarding exhibitors or third parties – distributors will contribute to the costs of the equipments. That period of time ranges from 6 to 10 years: so there is no immediate savings from distributors.

Other cinemas, located in rural areas, or cinemas with a single screen, do not fit into that model. States and local authorities have implemented support schemes as mentioned by the Commission in its 2010 Communication. Other supports are under the *de minimis* rule. Whatever the form of the supports there is no assumption that it has an effect on the internal market and on trade within the European Union. We let our colleagues from the exhibition sector comment on that issue.

***Should the scope of the Communication extend beyond films and TV productions to other types of audiovisual projects? If so, what definition of 'audiovisual project' should be used?***

As mentioned in our introduction, we represent companies whose activity is the distribution of cinematographic films; we let our colleagues from the sectors covered by this question answer it.

***Should the current maximum overall aid intensity remain as 50% of the production budget, with higher aid intensities for difficult and low budget films?***

The difficulties specific to the production of some films lead us to answer yes.

***If activities other than production are to be covered by the Communication as well, would it be appropriate to set the maximum overall aid intensity as 50% of the total project budget (covering script-writing, development, pre-production, principal photography, post-production, distribution, promotion and marketing costs)?***

Several of these activities are managed by different operators: script-writing, development, pre-production, principal photography and post-production are financed by the producer; distribution, promotion and marketing costs are usually financed by the distributor. He advances these costs and recoups them from his share of the receipts coming from cinemas, after deduction of the commission which pays his service.

The unpredictability of matching supply and demand for films leads one film out of ten to recoup its distribution costs from the receipts coming from cinemas. So the distributor is in a different financial situation than the producer: the 50% rule must apply to each operator and not be cumulative on a project.

Regarding film distribution, it must be pointed out that in some cases costs are very high and receipts are always fully unpredictable:

- 1) the producer will only provide an internegative and the distributor must finance the technical costs for 35mm and for digital projection
- 2) in some countries films are released dubbed or sub-titled; in others only dubbed: dubbing costs are very expensive
- 3) whatever the expectations for the number of admissions, there are some fixed costs which elevate the threshold for recouping the costs of ‘difficult films’

We consider that the principle of territoriality should be reconsidered regarding support to distribution: obviously the support goes to a distributor intending to distribute a film on a specific territory and most of the expenses will be spent in that territory (for example advertising or the payments of VPFs to the cinemas showing the film).

Regarding the question of aid intensity, it is often considered that the earliest stages of film production are those when the risk taken by the producer is the highest. The risk is also very high when presenting the film to the public: only a few films recoup their release costs (prints and advertising) from the revenues coming from cinemas. These costs and the guarantee allocated to the producer will not be recovered by the distributor. Therefore the risk for the release of what we call ‘difficult films’ or low-budget films is high and the aid intensity requirements should address that issue, under the principle of subsidiarity regarding culture.

*Would it be appropriate to encourage cross-border co-operation by allowing a higher overall aid intensity (of perhaps 60%) for film projects which involve activities in more than one Member State, including co-productions?*

We let our colleagues from the production sector answer this.

*If other types of audiovisual projects are to be covered by the Communication, what should the appropriate maximum overall aid intensity be?*

Same answer.

*Should Member States be allowed to impose territorial conditions on aid for audiovisual projects? If so, would it be fair to limit this to 100% of the aid amount or is there a more appropriate benchmark?*

Same answer.

*Should conditions on production support be imposed to encourage a smooth digital transition, such as ensuring that a digital master is produced and requiring that publicly-funded works are released under Creative Commons Attribution-ShareAlike<sup>1</sup> licences?*

Distributors wish that the transition towards digital projection should be as quick as possible to avoid double costs (35mm prints and digital files). So producers should provide films under the digital format. That is often required in the guidelines for some State aids. The increase of the number of cinemas equipped – in some European countries that is already the case for half

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<sup>1</sup> <http://creativecommons.org/licenses/by-sa/3.0/>

their cinemas – will lead to the acceleration of the use of digital files. However during the transition period some films will be released under both formats, with additional costs it is important to cover.

The producer has to decide the way the works he has produced will be exploited and, more particularly, of the contractual system which seems the most appropriate to him.

***Should distribution support cover distribution on all platforms (ie, not only, for example, for releasing in cinemas)?***

Yes, for economic coherence, giving consideration to our remarks about territoriality and aid intensity.

***Since most European films receive public support, it could help to develop film culture/literacy and ensure that supported films are safeguarded for future generations if such funding is conditional on the supported films being deposited and available for cultural/educational use. Should a new Communication invite Member States to do so, especially if the public funding is over 50% of the film's budget?***

Usually the allocation of a public support requires that a copy be deposited in a film archive. Regarding the other aspects, we reserve our answer for the consultations taking place under the communication from the Commission on May 24, 2011 on the online market.

***Should a new Communication include additional State aid rules for supporting initiatives designed to encourage businesses to take advantage of the digital revolution?***

The Commission rightly underlines in paragraph 56 the necessity during the transition period to support innovation. However we point out that the transition period takes the form of a permanent change. The communication of the Commission should address that.

***Are there any other issues which the Commission should consider in a new Communication?***

(61) The Commission here deals with aspects which are not covered by the communication but which are also debated in other occasions. Regarding distribution, we must comment on the idea that release windows and territorial licensing are ‘artificial barriers between audiences and films they want to see’. Going into production means that the producer looks for finance coming from operators such as distributors, video publishers, television broadcasters (free television, pay-television, cable, satellite), Internet operators (download, streaming), foreign partners. These finances allow the producer to limit his own financial risk and to consider producing ambitious films. The counterpart of these finances are exclusivities in time (windows) and space (territories). Contractual relations of course allow amendment of the number of territories as decided by the contracting parties. This is one of the key characteristics of the film industry.