

## Answer of FIAD to the consultation on State aids to the film industry

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- 1) **What is FIAD?** The International federation of film distributors associations represents national associations of film distributors operating in most European countries. Our members are mainly involved in theatrical distribution and may also manage video or television rights.
- 2) **The activity of film distribution:** the distributor is involved in financing the film when he gives to the producer an advance. That advance is a guarantee whatever the box office results of the film. The distributor is also involved in organizing and financing the release of the film: marketing, dubbing, subtitling, advertising, prints. The counterpart of the mandate between the distributor and the producer is an exclusivity over a territory (one or several countries) and medias (one or several from theatrical, physical video, television including pay and free television, VoD). The market is very selective: a few films (as an average two out of ten for the most) just pay back the advance and the distribution costs from theatrical revenues.
- 3) FIAD first of all thanks the Commission for offering the opportunity to answer the consultation on State aids. Most of all it is favorable to the inclusion of theatrical distribution within the scope of the communication on State aids: that would bring distributors a better legal security regarding the supports they may get from a national authority. As we will emphasize later we regret that the communication does not go further in the scope of the communication.
- 4) **The position of distributors and competition.** For the sake of the argument one could wonder if the more competition there would be in film production (to the assumption that a support to production is a competition issue) the cheapest the film would be when the producer presents it on a film market to distributors. It is more the artistic qualities of the film and its potential at the box office which organize the discussion about the price of the film than the production budget. When the film has already been released in its production country, the results achieved there are the most important factor in the financial discussion for future distribution in other territories. As a matter of fact, the more the films produced thanks to national supports, the greater the cultural diversity and the more the chances for a distributor to find the film which will be considered the most appropriate for the audience of the distributor in a specific territory.
- 5) FIAD endorses here the statement published on May 15<sup>th</sup> 2012 which it signed with ten organizations from the film industries: as a whole it considers the present communication is fully satisfactory. The main change suggested by the Commission is the territorialisation issue: that is the replacement of the criteria of a State to require that 80% of the budget of a film would be spent in its territory by a criterion that 100% of the aid to be spent in the EEA. We fail to understand what proof or evidence legitimates such modification. We are

concerned that a change to the current criteria could lead to arbitrary, disguised territorialisation at national level. This would not increase transparency or legal certainty for market operators. The worst would be that authorities granting supports would stop their policies therefore reducing film production and cultural diversity with negative consequences for film distributors.

- 6) FIAD also thanks the European film agency directors (EFADs) for the declaration they published on May 20<sup>th</sup> 2012. It regrets with the EFADs that the Commission would leave aside elements such as VoD platforms which may be part of the markets allocated to film distributors. That omission is the more regretful: first of all as the communication has no time limit and amendments will not be considered before an unpredictable moment; secondly as the Commission is itself supporting VoD platforms through the MEDIA program, therefore recognizing the need of support of that sector.
- 7) Film distributors will not comment here the other aspects regarding film production as we share the opinions of our colleagues from that field. We will just point out the problem raised by the proposal regarding non-European works which most of the times will be distributed in Europe by our members. We share the opinion of the EFADs on the negative effect of the regressive scale for these films and also consider that the distinction between European and non-European works is problematic and puts at risk Europe's openness to partner with third countries.
- 8) We fail to see the link between the issue of State aids and those of exclusivities in time and space as the Commission wants to link them. The international organizations of the film industries have expressed permanently over years that a film is financed by presales, particularly to distributors, and that the counterparts of these presales are exclusivities. The market on one hand and the relations between operators from the film industries and film agencies on the other hand have organized the management of these exclusivities in a way which these operators consider satisfactory. We think that a policy must be oriented towards a single objective. To mix issues of competition with issues related to the interior market is not in our view a coherent approach.