

BFI response to the:

**COMMUNICATION FROM THE COMMISSION ON STATE AID FOR
FILMS
AND OTHER AUDIOVISUAL WORKS**

28 June 2013

1. Executive summary

The British Film Institute welcomes the opportunity to comment on the latest draft of the Communication, in the same spirit as we have welcomed the opportunity to engage constructively with the European Commission (EC) over the last two years on this important issue. The BFI has worked with the UK industry, public bodies, the UK Government and with our partners the European Film Agency Directors to assess the implications and impact of the EC's proposals.

Films and audiovisual works play an important role in contributing to the promotion, development and enhancement of culture in the UK, in Europe and internationally. European cinema has the power to "open our eyes" to our history, to our culture and to our identity. Film moves and inspires us, it excites our emotions as well as our intellect. At the same time, film is a powerful driver of Europe's economy and State aid is essential to sustain a critical mass of European film to the benefit of audiences.

The BFI welcomes the new text for the following reasons:

- We are pleased that both the UK's automatic (tax relief) and selective (lottery funds) models of state aid support for film are consistent with the draft Communication. The text recognises that the UK's definition of qualifying expenditure (used or consumed) achieves a balance between incentivising production in the UK while upholding the principle of free movement of goods and services across Europe.
- We are pleased that the limits on aid intensity for films, with the exception of difficult audiovisual works, will remain at 50% and very much welcome the higher level of aid intensity of 60% for co-productions.
- We are pleased that Member States are encouraged to support producers to deposit a copy of films in receipt of state aid to a film heritage institution.

However we remain concerned that:

- The new text will undermine several of the important state support mechanisms across Europe – notably in France and Germany – and that this would have an adverse effect on the audiovisual sector in the UK as well as across Europe. We support the principle of subsidiarity which would allow for a variety of schemes tailored to the needs of different countries. While 'Used or Consumed' has proved successful in supporting the UK industry, we have no reason to assume it would be the answer for other Member States. The Commission's proposals occur at a time of significant economic downturn, where Europe is competing in a challenging international environment. We would like to stress the need to support, in as many ways as possible, a sector which is a proven driver of growth.
- In relation to transparency, the levels of detail required could be detrimental to the industry as a whole as well as requiring a level of cost to collect and collate that would be impractical and disproportionate.
- The 80% cap on territorialisation will result in 20% of production activity taking place outside the EU, further reducing our competitiveness. The removal of this cap would be beneficial to Europe as a whole.

- At this late stage we have yet to have sight of an impact assessment from the Commission which models the effect of its proposals on the number, range and value of European production and associated employment, and Europe's cultural diversity.

The ability of the European Union as a whole to compete on the global stage, to attract inward investment is important in economic terms, as it helps to secure a large number of highly-skilled, well paid jobs. As the Commission has observed, public funding is an important factor in securing the critical mass of activity that is required to create the dynamic for the development and consolidation of the industry through the creation of soundly based production undertakings and the development of a permanent pool of human skills and experience.

2. Introduction

The British Film Institute (BFI) is the lead organisation for film in the UK. Since 2011, it has combined a creative, cultural and industrial role as a Government arm's length body and distributor of National Lottery funds. Its key priorities are to support a vibrant UK film culture by investing in film education, audience access, filmmaking and film heritage.

In October 2012, the BFI published 'Film Forever, Supporting UK Film 2012-2017', which set out its strategy for the next five years, following an extensive industry consultation. It described the activities underpinning the BFI's three strategic priorities:

- Expanding education and learning opportunities and boosting audience choice across the UK;
- Supporting the future success of British film; and
- Unlocking film heritage for everyone in the UK to enjoy.

To that end, the BFI helps ensure public policy supports film, especially British film. It follows that we support the Commission's recognition that state aid is important to sustain audiovisual production and that film production and distribution are both cultural and important economic activities. In the context of initial proposals from the European Commission, we commissioned an independent evaluation from Oxford Economics to look at the economic impact of the film industry and the contribution played by state aid. Their report demonstrated that without the UK film tax relief, the core UK film industry would be around 70% smaller.

There are five key areas where we would like to offer feedback:

- Territorial spending obligations
- Competition to attract Major Productions
- Aid Intensity
- Film heritage
- Transparency

There are other issues raised in this Communication which we shall briefly touch on at the end of our response.

In putting together this response, we have consulted with the industry, screen agencies in England, Scotland, Wales, and Northern Ireland, as well as the UK Government and several European Film Agencies.

3. Scope

We are pleased that the expansion of the scope of the Communication has been retained from the previous draft. State aid is necessary to support the whole value chain of the film industry. We also agree with the Commission that other audiovisual related state aid initiatives should be looked at on a case by case basis.

4. Territorial Spending Obligations

The European Commission acknowledges in this Communication that territorial conditions are necessary to maintain a critical mass of infrastructure for film production in Member States. The UK strongly agrees with this sentiment given the global nature of the film industry and the portability of the various stages along the value chain.

We welcome the fact that the UK's national and regional support mechanisms will remain valid under this new framework, specifically because we do not restrict the origin of goods, services or workers which is in line with the fundamental principles of the single market within the European Union. We appreciate that the Commission has made significant changes to the text on territoriality since the last official version in 2012.

However, we recognise that this solution is not one that has been received well by some of our European counterparts and we can understand their position. The new text will undermine several of the important state support mechanisms across Europe – notably from France and Germany – and that this could have an adverse effect on the audiovisual sector in the UK as well as across Europe.

The BFI remains firmly committed to the principle of subsidiarity which recognises that each Member State is best placed to determine how to most appropriately support the production of audio-visual works in their own territories. We believe that a variety of solutions is required to support content in Europe and would urge the Commission to listen hard to those views and take them on board.

The European funding schemes that are under threat are important to the UK production industry. Between 2008 and 2012, £344million of UK film production spend was supported by funding from individual European states. The impact is magnified in those nations and regions in the UK with low audiovisual capacity. For example in Wales, the production community is strongly reliant on European funding. 33% of the 30 feature film productions co-financed by the Film Agency for Wales since 2006, have been European co-productions, with several more in the pipeline. The types of UK films supported by these funds, such as *Byzantium*, *I Am Breathing* and *Chico & Rita*, and the types of production companies that rely on these funds such as Sigma and Warp are very significant to the industry and if these European schemes are undermined it could cause uncertainty in the sector and might lead to some productions failing to reach the market. The Commission's proposals are made at a time of significant economic downturn, where Europe is competing in a challenging international environment. We would like to stress the need to support, in as many ways as possible, a sector which is a proven driver of growth.

In addition, we are unclear as to why, at the end of Paragraph 52 there is a need for an 80% cap on territorialisation. As we have previously demonstrated, Member States are competing with territories across the world rather than with each other, and this arbitrary limit will probably result

in 20% of the production activity taking place outside the EU. Current practice has demonstrated that the most portable element of film production is Visual Effects. While we have a very skilful and talented VFX sector, often the work is taken to countries outside the EU that offer tax reliefs specifically targeted at VFX work. As a consequence, we are already seeing UK VFX houses moving their operation to Canada and South East Asia, where extremely generous post production incentives are in place, to compete on an equal footing. The removal of this 80% cap would be beneficial to Europe as a whole.

5. Competition to attract major foreign productions

We very much welcome the removal of the text on the regressive scale of aid intensity and the Commission's conclusion that there are considerable benefits to the EU of attracting major foreign investments. Inward investment, alongside domestic production and co-production, plays a vital part in the film ecology in the UK – without it our industry including indigenous production would be the poorer and much less able to make such a vital cultural and economic contribution.

We recognise the Commission's need to monitor the impact of this kind of aid, but seek reassurance from the Commission that the rules would not change arbitrarily without a proper evaluation, consultation and lead in period. One of the points that we most welcome with this new Communication is that for the first time it does not have an expiry date. Once it is in force it will give a level of confidence, stability and certainty to the sector as a whole which is crucial for all aspects of film production. Making films is high risk business and the BFI is keen to remove as much of the risk as possible. Being clear that the framework will last is one way to achieve this.

6. Aid intensity and Cross-border productions

We are pleased that the limits on aid intensity for films, with the exception of difficult audiovisual works, will remain at 50% and very much welcome the higher level of aid intensity of 60% for co-productions. This is an important change as additional support for co-productions should lead to more co-operation between European countries although this benefit is likely to be undermined by the changes to the whole framework which will undermine support structures in Member States across Europe.

7. Transparency

Paragraph 54(7) in the Communication introduces a new requirement on Member States to publish a great deal of information on the projects and activities receiving state aid. The BFI strongly supports the principles of transparency and the need to be accountable, especially when public money is being spent. However, we are concerned that the levels of detail required in this paragraph could be very detrimental to the industry as a whole as well as requiring a level of cost to collect and collate that would be impractical and disproportionate.

Many of the details to be made public, as set out in the Communication, are commercially sensitive and would enable third parties to calculate the overall production budgets. This is a concern for production companies of all sizes as this figure can affect the sale price and value of a film. Sales agents aim to generate as much value as possible from their films by creating a perception of value and selling off the back of it. In addition, it could make our public funding incompatible with other sources of private commercial finance as co-funders will not want such information disclosed and therefore might be reluctant to co-finance. As a consequence, the

publication of this information could make Europe less attractive to investment and thereby threaten cultural diversity.

There is an added danger that providing this information will only give a partial picture of the various complex multi-party elements of film financing and is likely to lead the public to the wrong conclusion about the nature of film funding which could undermine public confidence in public support for film.

We understand that the UK government is concerned that this requirement would require a significant change to the existing rules of taxpayer confidentiality which is an important mechanism in promoting voluntary compliance with tax rules. We also understand, informally, that the Commission is looking again at the detail of its proposal which we welcome. Transparency is an important goal so maybe the principle of subsidiarity could be applied here so that Member States can work out mechanisms for themselves to ensure that the processes are as transparent as possible without damaging the sector.

8. Film Heritage

We welcome the proposal on film heritage, previously raised in the *Initial Issues Paper* asking Member States to encourage producers to deposit a copy of films in receipt of state aid to a film heritage institution for preservation, as well as for specified non-commercial use. The BFI is the guardian of the UK's National Film Archive and we want audiovisual works preserved and made available today and for future generations. We will continue to work with the UK Government to ensure that this is taken forward.

9. Consultation process

This Communication will have a profound impact on the support for audio-visual content throughout Europe and, ultimately, on the number and range of European films which are produced and available to audiences in Europe and internationally; in short, it will have a significant cultural and economic impact. Given this, and given the elements such as transparency which are completely new to the draft, we were disappointed by the extremely limited consultation period albeit now extended by one month. More analysis is required to truly test the impact of some of the changes and respondents should have been given more time to carry this out. In addition, there are certain elements of the draft which lack clarity (notably the use of different words such as "activity" and "expenses" to say the same thing), and this could lead to multiple interpretations of the text causing confusion throughout the sector. We would like to urge the Commission to make the final draft clearer and stand ready to help if required.

Finally, once again, we regret that after nearly two years of work on this dossier, we have yet to have sight of an impact assessment from the Commission which models the effect of its proposals on the number, range and value of European production and associated employment, and Europe's cultural diversity.

9. Summary

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inspires us, it excites our emotions as well as our intellect. At the same time, film is a powerful driver of Europe's economy and State aid is essential to sustain a critical mass of European film to the benefit of audiences.

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