

EUROKINEMA

Association de producteurs
de cinéma et de télévision



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INTERNATIONAL VIDEO FEDERATION
Publishers of Audiovisual Content
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Society of Audiovisual Authors
Société des Auteurs Audiovisuels

UNIC
Union Internationale des Cinémas
International Union of Cinemas



Brussels, 17.10.2013

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

JOINT STATEMENT

In April 2013, the European Commission has issued a revised Communication (New Communication – NC) on State aid for films and other audiovisual works. This new Communication should replace the Communication of 2001, which expired on 31 December 2012.

Under the NC, the territorial spending condition established by the Communication of 2001, according to which Member States can require that up to 80% of the entire film budget is spent in the Member State granting the aid, has been modified substantially. According to the new proposal, Member States would only be able to require that up to 160% of the aid awarded is spent in the territory offering the aid. Such a new basis would greatly restrict the intensity of territorialisation granted to Member States. At the same time, any restriction on the origin of goods and services would be prohibited.

The Commission notes itself in the NC that the fragmentation of the European audiovisual sector is related to Europe's linguistic and cultural diversity and that State aids subsidize a large amount of European cinematographic creation.

The development of dynamic production activity in the country that allocates various support mechanisms (automatic support, selective support, tax credits, tax shelter) is the main justification for the provided support. The obligation of territorialisation of a substantial part of the expenditure is necessary to maintain a critical mass of activity. It is particularly important that sustainable and economically healthy technical industries helping the creation are maintained in the country of production. These justifications were presented to DG Competition by Member States and professional associations.

However, the NC observes that the territorial spending obligations in the film and audiovisual funding schemes are a problem with regard to their compliance with the internal market principles of the Treaty. The NC considers now appropriate to take into account the case-law of the Court of Justice with regards to the rules of origin of goods and services based on the case-law from *Laboratoires Fournier* 2005¹.

¹ *Laboratoires Fournier* (C-39/04), ECR 2005 I-2057 (10 March 2005)

The absolute prohibition of discrimination based on the origin of goods and services involved in film production based on Laboratoires Fournier case-law is however pronounced without having made a compatibility test of this case-law with the "Cultural clause" (article 107, 3, d).

The "Cultural clause" (Article 107, paragraph 3 d) was introduced in the Treaty to ease tensions between the internal market principles, whose effects can be intense, and characteristics linked to the "cultural market " and especially in this case the film market ("dual" market of goods and services that are both cultural and economic). The reference to the Laboratoires Fournier case-law based on research activities, cancels the "Cultural clause" (Article 107 3, d) and puts the control of State aid to cinema in the general scheme of State aid control regardless of the high specificity of cinematographic creation.

Contrary to what is alleged in the NC, the criterion of territorial spending can certainly be justified, even if it constitutes a restriction on the fundamental freedoms guaranteed by the Treaty. The Commission recognizes itself in the 2001 Communication that the territorial condition is justified by the need to promote cultural objectives. This need, recognized by Article 167 TFEU and Article 3 (3) of the TFEU, has also recently been reaffirmed by the Court, which refers directly to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions².

Ultimately, the prohibition of territorial spending could lead to a situation where tomorrow's funding schemes in the different Member States could compete between themselves vis-à-vis European production companies without increasing activity or investment in the European film and audiovisual sector.

Contrary to what the Commission expects, this prohibition of territorialisation spending will encourage the fragmentation of film and audiovisual sector and would be detrimental to the number and quality of European coproductions.

The effects of this change on Member States State aid policy can only be harmful. While the territorial spending, as defined since the 2001 Communication can no longer apply, it will lead Member States to significantly reduce States aid, and even eventually to withdraw the existence of public finance support for films. This would have serious consequences for growth and employment in these sectors and impact European cultural diversity.

In conclusion, the undersigned associations ask the Commission to provide Member States with territorial criteria securing the sustainability of support schemes for the film and other audiovisual works (core principle and budget). The confirmation of the territorial criteria of the previous communication of 2001 would be seen by signatories as maintaining the existing equilibrium.

Signatories:

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² Council Decision 2006/515/EC of 18 May 2006, OJ 2006 L 201, p. 15

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