

### Common position of the European Film Agency Directors on the State Aids Action Plan

The European Film Agency Directors met in Venice on 6 September 2005 to consider the proposals set out in the European Commission's *State Aids Action Plan – Road Map for the reform of state aids 2005 – 2009*.

Underpinning any consideration of the Action Plan put forward by the Commission, the European Film Agency Directors would wish the specificity of film support to be taken into account. As has been stressed on many occasions by the European Commission in the course of the World Trade Organisation (WTO) negotiations and for the drafting of the UNESCO Convention on the protection of cultural diversity, cultural goods and services have specific characteristics and cannot be treated as commodities. Thus the cultural nature of audiovisual works implies that they be able to benefit from special treatment, in line with Article 87.3 d of the Treaty: film support systems are economic instruments that enable Member States to achieve their cultural objectives and thereby guarantee cultural diversity.

In its proposed State Aids Action Plan, the Commission raises the possibility of putting in place (1) a block exemption for the film sector in the context of (2) a comprehensive review of the provisions of the *Cinema Communication* on certain legal aspects relating to film and other audiovisual works of 26 September 2001.

#### 1. Regarding the Commission's proposal to apply to the film sector a category block exemption

A block exemption could have the advantage, under certain conditions, of releasing Member States from an obligation to submit to the procedures for notifying proposed support scheme to the Commission. This, however, would entail the establishment of criteria of which we have yet to be made aware and which, were they to be too restrictive, would undermine the very basis of the support given by Member States to their film industries.

The European Film Agency Directors note that the state aid guidelines relating to film set out in the Commission's 2001 Communication and extended via the Communication of 16 March 2004 have already been the subject of extensive discussion between the Commission and the Member States. They therefore consider that these guidelines constitute a fair balance that, at one and the same time, allows the Commission to guarantee that the general rule of Community law is respected, and enables member states to develop coherent national support policies, essential to strengthen their film sectors and for the emergence of European film culture.

For these reasons, it is necessary to assure resorting to a block exemption mechanism for cinema does not entail the application of more restrictive policies by DG Competition. The maintenance of existing guidelines needs to be guaranteed and not put in question, while at the same time ensuring the flexibility of their application through a permanent dialogue between the Commission and the European cinema agencies.

In consequence, and with regard to these issues, the European Film Agency Directors consider that the framework to be adopted by the Commission for the state aids regime, whatever the legal form it takes, would have as its objectives the following: the maintenance of national support systems by guaranteeing their legal safety, the avoidance of undermining the current criteria applied to film support, and the guarantee of a flexible approach to the evaluation and supervision of national support systems which will, in the future, be confronted with challenges and opportunities.

## **2. Regarding the comprehensive revision of the 2001 Communication**

The Commission has also indicated that in the context of the upcoming revision of the 2001 Communication, it will carry out a detailed analysis of national film support systems and, in particular, of the economic and cultural impact of territorialisation requirements applied by Member States in this area. We understand that this study will be launched later in 2005 and will serve as the basis on which the Commission is to assess the 80% threshold for territorialisation that was adopted in the 2001 Communication.

**In relation to these considerations, the European Film Agency Directors would wish to stress the following:**

- Territorialisation does not constitute a barrier to free circulation. It not only makes possible a sustainable film sector, it also assures the maintenance and development of film culture in Europe. It is founded on the legitimate will of Member States and of regions to enable the benefits of support provided to be enjoyed by people in those Member States and regions who provide that support, in terms of opportunities to make and have access to both their own films and those from other parts of Europe. In this sense, the territorialisation of support makes it possible to concretise the link between the state and its industry.
- Territorialisation requirements are indispensable to the development of a strong creative fabric without which the film sector cannot grow and cannot guarantee innovation and creativity. Cinema is subject to the dynamic of the value chain and challenging these requirements is likely to weaken national industries and to undermine the very foundations of the sector.

- While territorialisation requirements give rise to local spending obligations, they do not prevent spending by professionals and European firms that are free to decide to work in any market they choose.
- The Commission makes a distinction between cultural or artistic expenditure, on the one hand, and technical expenditure on the other. This distinction is an artificial construct that does not correspond to the reality. It is vital for film-makers to be able to choose the members of their crews and the service providers with whom they wish to work. The quality of their work depends on this and must remain independent of the rules of the internal market.
- The Commission's approach completely under-estimates the importance of co-production agreements made between Member States. They systematically make national support systems available to professionals from co-producing partner countries. These co-production agreements and, *inter alia*, the Council of Europe's European Convention on Cinematographic Co-production, make it possible for professionals from one member state to work with those from another Member State, leading to the creation of indispensable networks and the emergence of European film. At the same time, these agreements facilitate the circulation of European Films throughout the Union.

The European Film Agency Directors encourage the Commission to consider in the framework of the forthcoming study the substance of these remarks about the need to maintain current territorialisation criteria. Moreover, we insist on the need to reaffirm these criteria before taking forward the thinking about the application of a sector block exemption for film.

### Conclusions

At a time when the European Union is actively committed to promoting cultural diversity, notably through its leading role in the WTO negotiations and those relating to UNESCO's Convention for the Protection of Cultural Diversity, the problematisation by the Commission of the territorialisation principle in particular and of state aids for film in general, would be in direct contradiction with the recognition of the specificity of film and of the role of cultural policies as the cement of Europe's film culture.

The European Film Agency Directors are at the disposal of the Commission to speak further and in more detail.

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