

UK Film Council
Submission to the European Commission on
the State Aid Action Plan

15 September 2005

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1. Executive Summary

The UK Film Council endorses the aim of the Commission's State Aids Action Plan – Road Map for the reform of state aids 2005 -2009 to simplify the processes around state aid approvals, to consider the option of a block exemption for film, and to advance the cause of markets operating more efficiently while ensuring the achievement of public interest outcomes. Underpinning any consideration of the Action Plan put forward by the Commission, the UK Film Council would wish that the specificity of film support 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 cultural diversity.

2. Introduction

The UK Film Council, the strategic agency for film and the moving image in the United Kingdom, wishes to respond to the invitation of the European Commission to submit its views on the Commission's Action Plan. In so doing, the UK Film Council is drawing on discussions with Europe's other national film agencies that have led to the preparation of a

Common Position of the European Film Agency Directors on the State Aids Action Plan that the UK Film Council fully supports .

The UK government has set for the UK Film Council a set of policy and funding priorities. These are embodied in the UK Film Council's published plan for the period April 2004 to March 2007 and include:

- to ensure effective long-term fiscal measures are in place to support the UK film industry and its culture ;
- to maximise inward investment by assisting the industry to strengthen the infrastructure for film ;
- to ensure an adequate supply of skilled and talented professionals ;
- to help achieve a more diverse and inclusive workforce and film culture;
- to help the film sector to harness the potential benefits of digital technology;
- to help combat copyright theft and to assist the film industry to respond to changing market realities and consumer expectations ;
- to champion moving image culture in all its richness and diversity across the UK;
- to offer a more diverse range of films to a broader UK audience ;
- to assist the production of British or European feature films that can attract audiences the world over ;
- to support creativity, innovation, new talent and 'cutting edge' filmmaking;
- to broaden the range and ambition of projects and talent being developed;
- to offer children and young people the opportunity to participate in filmmaking ;
- to help promote targeted showcase film events ;
- to improve the quality of discussion, information and debate about film;
- to gather and publish statistics and to devise, carry out and disseminate research that helps develop a competitive UK film industry and vibrant film culture.

In its proposed State Aids Action Plan, the Commission raises the possibility of putting in place a block exemption for film in the context of 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. The UK Film Council warmly welcomes the opportunity to discuss the parameters of such a block exemption as such an approach by the Commission would recognise the validity of the UK Film Council's priorities and enable it and other similar film agencies in the UK and across Europe to discharge their roles to the full.

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

A block exemption for the film sector would have the advantage of simplifying the process of giving aid in Member States to cultural activity by removing the element of uncertainty about the legality of various support mechanisms for the film sector. This uncertainty arises when a public body proposes a new support mechanism but initially has to determine whether such support constitutes a state aid or not and, if so, then has to go through the rigorous and often protracted notification route without knowing whether the aid will eventually be approved. It would also mean that such essential aid is able to be targeted strategically at the time of greatest need in the sector without delay.

Nevertheless an effective block exemption would have to entail the establishment of criteria which, if too restrictive, would undermine the very basis of the support given by Member States to their film industries.

The UK Film Council notes 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. We therefore suggest 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. However, the scope of these guidelines would need to be reviewed and widened in order to ensure that all categories of film activity are considered along the whole of the value chain that links together the creation, circulation and exploitation of films.

For these reasons, it is necessary to ensure that any possible block exemption for cinema would not involve the application of more restrictive policies or parameters by the Commission. The maintenance of existing guidelines needs to be guaranteed, 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 UK Film Council suggests that the framework to be adopted by the Commission for the state aids regime in relation to film, whatever legal form it takes, should 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 a good number of challenges and opportunities.

We would hope that the adoption of a block exemption regime would be accompanied by increased transparency in the regulatory process; we note that it has become difficult of late to access information about notifications and clearances, with only summaries rather than the full texts of clearances being available. We feel it would immensely help State Aid compliance and understanding if there were ready availability of information about approved State Aid activity.

4. Potential scope of a film block exemption

The State Aid Action Plan (Section IX para.62) refers to the desire to see a block exemption for culture and a clarification of the scope of Article 87 (3) (d). The UK Film Council believes that it would be helpful for such a block exemption to cover, in addition to production activities (including post-production):

- film exhibition including film festivals;
- film distribution;
- film and moving image archives;
- film education.

The very important area of skills training is already the subject of a block exemption, and non-vocational production and access projects with community groups is addressed in Section 5 below.

Certain of these activities may not actually constitute state aid (for example because they have no capacity to distort trade), but guidance on this would provide much needed clarity for a substantial number of funds and public agencies in the UK (and elsewhere). For example, it is the UK's understanding that educational activity can take place outside of a school environment – and therefore support for this sort of activity is not a State Aid. However a clarification of the status of non-school or college bodies offering educational activity direct to the public would also form a useful part of any film block exemption.

5. Social Regeneration

In the Sustainable Communities paper published by the Commission there are various references to social regeneration (the key paragraph is quoted below) and the desire to see social regeneration projects allowed under a new exemption:

“And communities in these areas often need assistance to mobilise themselves to create organisations for mutual support, including charitable activity and voluntary sports and recreational facilities –

social regeneration. Small-scale, community-based economic activity often has a valuable social function as well as developing entrepreneurial skill-sets and contributing to economic development within the deprived area itself."

The UK Film Council would regard such an exemption as being highly positive. For clarity, we would wish to see such an exemption drafted in such a way as to include support for certain film-related activities such as community cinema projects, community production projects, film societies etc.

6. 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 this analysis, the UK Film Council 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. Territorialisation makes it possible to safeguard the value chain and thus to assure the development and deployment of that value chain both by the country's professionals and those from other parts of Europe.
- While territorialisation requirements give rise to local spending obligations, they do not prevent spending by professionals and European companies 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. As is immediately evident when one looks at the UK Film Council's priorities (section 2), we believe that this distinction is an artificial construct that does not correspond to the reality of filmmaking. It is vital for filmmakers 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 appears to under-estimate the importance of co-production agreements made between Member States. Such agreements 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 and territorialisation requirements do not in any way whatsoever detract from the putting in place of shared projects or from their Europe-wide distribution.

The UK Film Council encourages the Commission to consider these remarks on the need for the maintenance of the territorialisation clauses in the framework of the forthcoming study on this theme .

7. Conclusions

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

For the UK Film Council and for other national film agencies, as well as for many regional bodies that support film, it is vital that the Commission's considerations of a block exemption for the film sector be informed first and foremost by a recognition of the need in Europe to create and promote a sustainable film industry on behalf of its citizens .

This recognition would of necessity be underpinned by a full understanding of the market environment of the European film industry and the peculiarity of this "market." The ideal of the internal market is far from the realities of this market : even though the UK has one of the most vibrant film production sectors in the world, able to compete globally for investment, the final, end-user market for film – theatrical distribution, home video, pay and free television – is dominated by the US studios. If territorialisation were to be undermined, Member States' commitment to

support their local industries would also be undermined. This would make the film sector even more fragile.

Agencies like the UK Film Council are vital to the future of the European industry. Reducing territorialisation might appear to lead to more efficiency and a better allocation of resources, but in practice it would jeopardise an industry that only exists because of the political will to preserve and promote cultural diversity.

The UK, in common with other Member States, is clear that supporting film entails supporting the whole value chain, including technical skills and infrastructure. Were these skills and infrastructure to be delocalised, national industries would become unsustainable.

Moreover, the uncompetitive position of Europe's film industries, faced with global, integrated firms that dominate the final market, is recognised through EU policies and proposed measures that address the film sector, for example the European Investment Bank's i2i Audiovisual scheme aimed at improving the sector's access to capital, and the Television Without Frontiers Directive that establishes quotas for European works and for independent production.

The main purpose of a block exemption for film would be to streamline the clearance process for film support measures; but crucially it has to be acknowledged at the outset that those support measures are aimed as much at delivering industrial outcomes as they are at delivering cultural outcomes: there will be no cultural outcomes without the industrial policy.

The UK Film Council, working alongside Europe's other national film agencies, is at the disposal of the Commission to speak further and in more detail about these matters.