



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

### **RESPONSE FROM THE BRITISH SCREEN ADVISORY COUNCIL (BSAC)**

**26 June 2013**

#### **Introduction**

We welcome the opportunity to comment on the revised draft Communication from the European Commission on State Aid for Films and other Audiovisual Works, revised following last year's consultation. The British Screen Advisory Council (BSAC), an independent membership organisation, uniquely brings together business leaders representing all aspects of the audiovisual value chain in the UK, including a wide range of film industry expertise, making us well placed to provide constructive comments on the issues raised in the Communication.<sup>1</sup> BSAC has contributed to many of the debates in Europe on film policy and the creative industries. In 2006, BSAC was instrumental in securing the UK Film Tax Credit, and we have been engaging with the UK Government in recent months on the design and implementation of the new tax reliefs for animation and high end TV, as well as the video games relief currently under consideration by the Commission. Most recently, we have provided responses to DG Education and Culture on the Creative Europe proposal, and to DG Competition on the previous draft Cinema Communication in June 2012.<sup>2</sup>

We strongly welcome the changes made to the draft Cinema Communication as a result of last year's consultation process and consider the new draft to be substantially improved. We are pleased that the Commission has listened to the industry's concerns in relation to the previous draft and has made revisions accordingly, particularly in the area of aid intensity, which was a major concern for the European audiovisual industry. We welcome the Commission's

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<sup>1</sup> See BSAC's Membership at <http://www.bsac.uk.com/membership-list.html>

<sup>2</sup> See our response to the previous draft Cinema Communication at <http://www.bsac.uk.com/2012.html?download=204:final-bsac-response-to-the-communication-on-state-aid>

acknowledgement that major international productions facilitate a range of positive impacts that are essential for the health of the European audiovisual industry, including maintaining high quality infrastructure, studio facilities, equipment and skilled technicians. The decision to remove the proposal on a regressive scale of aid intensity for high budget foreign productions is extremely important in protecting the global competitiveness of the European audiovisual sector.

We also welcome the tone of the new draft, referring to the Commission's commitment to promoting cultural diversity in line with the UNESCO Convention and acknowledging that the cultural exception to State aid rules enables the sustainability of the European film and other audiovisual sectors across all Member States. The continued provision of state aid for film and other audiovisual works is essential in sustaining a vibrant and culturally diverse audiovisual industry in Europe that makes a valuable contribution to economic growth. The Film Tax Relief (FTR) in the UK generates in the order of £12 in UK GDP for every £1 invested, and Oxford Economics estimates that without the FTR the core UK film industry would be around 70% smaller, the equivalent to an average loss of £600 million a year in total UK production over 2012-15.<sup>3</sup>

We noted in our response to the consultation on the previous draft of the Communication in 2012 that the proposals to limit territorial spending obligations (the restriction of the origin of goods, services or people to be used by a beneficiary to the awarding territory as a condition of aid) would not affect the UK as the 'used or consumed' rules, under which the FTR operates, do not restrict the origin of goods, services or people. However, we expressed concern that the Commission's proposals at that time would have a negative impact for countries whose support schemes do not operate 'used or consumed' rules, and therefore on the European audiovisual sector as a whole, an outcome that would not be desirable for the UK. We note the changes to the proposals on territorial spending obligations in the current draft Communication, compared to the previous draft, however the proposals will still have a negative impact for countries such as France, Germany and Belgium, who may be forced to change the way that their support schemes operate. There may also be a knock-on effect for Member States, such as the UK, whose aid schemes do not restrict the origin of goods, services or people, in terms of their opportunities to collaborate with European partners that may have been affected by the proposals on territorial spending obligations.

We welcomed in our previous consultation response the intention that the Communication would not be subject to periodic review and revision, as had previously been the case. This would undoubtedly provide stability, which would be positive for the industry. We understand that the Commission still intends this to be the case as no expiry date has been set for the draft

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<sup>3</sup> 'The Economic Impact of the UK Film Industry' Oxford Economics, September 2012

Communication. However, we would ask for clarification on this point in the text of the Communication.

### **Scope of activities**

In our previous response on the draft Communication we welcomed the initiative to widen the scope of activities that Member States can support under the State aid rules. We argued that, although Member States have successfully notified schemes to support distribution and digital exhibition on a case-by-case basis, explicitly stating that aid covering all aspects of film creation will be considered may encourage the broadening of current support schemes. This would have a positive impact on the European audiovisual industry as a whole.

We note the Commission's assertion that aid to cinemas would usually fall under the *de minimis* Regulation as the amounts involved would be small. However, we argue that this will not necessarily be adequate in some cases, and recommend that the Commission clarifies how it intends to apply the criterion of 'aid to promote culture' under Article 107(3)(d) TFEU in these cases. This would provide a greater degree of legal certainty in terms of support for exhibition.

### **Cultural Criterion**

We welcome the Commission's acknowledgement of its adherence to the 'subsidiarity' principle, that 'the definition of cultural activities is primarily a responsibility of the Member States'.<sup>4</sup> In our previous response we argued strongly against the Commission's proposed criteria to define what constitutes a European work as being in opposition to the subsidiarity principle. We welcome the decision to remove this proposal following opposition from the industry, which the Commission has taken into account.

### **Territorial spending obligations**

In our previous response we highlighted the proposals on restricting territorial spending obligations as a concern for the European audiovisual industry as a whole. We welcome the clarification contained in the new draft of the Communication that aid mechanisms, such as the UK FTR, where the 'used or consumed' rules do not stipulate the origin of the goods or services to be used or consumed within the UK, and are therefore not an impediment to free movement rights in the internal market, are not defined as territorial spending obligations.

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<sup>4</sup> 'Communication from the Commission on State aid for films and other audiovisual works' 30 April 2013, para 25

However, we note that our colleagues in territories where aid mechanisms do discriminate based on the origin of goods and services involved in film production are concerned that the Commission's proposals may mean that their aid mechanisms will no longer be able to operate. The Commission implies that such aid mechanisms will no longer receive Commission approval in the section under 'General legality' paragraph 52 of the draft Communication. This would not only have a significant impact on the level of film production in those territories, but may also have a knock-on effect across the European audiovisual industry by decreasing the opportunities for collaboration between Member States. The loss of aid mechanisms in key partner territories for co-productions would have a significant impact for the UK, for example, in terms of our co-production activity. If the Commission's proposals were to lead to the disqualification of aid schemes currently in existence, there would be a significant impact for film production in those territories, and consequently on the cross-border circulation of audiovisual works throughout Europe.

### **Competition to attract major foreign productions**

We strongly welcome the decision by the Commission to remove the proposal for a regressive scale of aid intensity for non-European films from the draft Communication. As we previously argued, this would have significantly damaged the global competitiveness of the European audiovisual industry. Encouraging major international productions to shoot in European territories, using European talent and expertise, enriches cultural diversity and the influence of European culture globally, as well as having a significant positive economic impact in terms of employment and use of goods and services. We are pleased that the Commission has acknowledged the consensus argument of the industry across Europe that major international productions are necessary to 'maintain a high quality audiovisual infrastructure, to contribute to the employment of high class studio facilities, equipment and staff and to contribute to transfer of technology, know-how and expertise', and that the Commission has stated that such productions are, in principle, eligible for aid under the same conditions as aid for European production.

We note the Commission's intention to monitor the further development of aid to major international productions 'to ensure that competition takes place primarily on the basis of quality and price, rather than on the basis of State aid'. We would urge that any possible future proposals in this area must be based on strong evidence of substantial harm, and must balance the considerable damage that would be done to the economic health of the audiovisual sector and cultural diversity against any benefits the Commission may see in action to restrict aid to major international productions.

### **Cross-border productions**

We previously supported the introduction of a higher aid intensity for cross-border productions funded by more than one Member State, and we are pleased that this is included in the new draft Communication. Increasing the cap on aid intensity to 60% for cross-border productions should have a positive impact on the cultural diversity of European film by encouraging more co-productions.

### **Film heritage**

The UK supports the protection of film heritage through the preservation of films that have received State aid. The deposit of a copy of a film that has received Lottery funding by the BFI is already a requirement in the UK. We have previously argued that it should be a matter for each individual Member State to decide if the deposit of a film that has benefited from aid should be made compulsory in respect of a particular intervention. Therefore, we support the wording in the current draft Communication that ‘Member States should encourage and support producers to deposit a copy of the aided film in the film heritage institution designated by the funding body for preservation’.

### **Specific assessment criteria under Article 107(3)(d) TFEU**

The granting of public support requires high levels of transparency to ensure that public policy goals are being achieved and we, therefore, support the intention of criteria 7 to ensure that the aid awarded through schemes, which are compatible with Article 107(3)(d), is done so in a transparent manner. However, there are issues of commercial confidentiality that restrict the nature of data that can reasonably be expected to be made public. We recommend that data be provided by aid providers on an aggregated basis in order to avoid causing any uncertainty in the investment environment for European film production.