

**Contribution to the public consultation on the draft Cinema Communication on
“Assessing State aid for films and other audiovisual works”**

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1. Introduction

Cine-Regio, the European network of regional film funds welcomes that the Commission recognises the regional dimension of film culture and that public intervention in the audiovisual sector – at regional, national and European level – is necessary and justified.

As we understand, the task is to find a solution which makes sure that Cinema State Aid is not against the fundamental principles of the Treaty and at the same time provides a better and more simplified legal framework than the 2001 Cinema Communication. However, we in Cine-Regio also recognise that this also creates a challenge as a new Cinema Communication should cover all types of aid schemes from selective schemes, to automatic, to fiscal schemes – and from aid directed towards films with very different commercial potential and budget range.

Cine-Regio welcomes the majority of points listed in the Commission’s draft Cinema Communication on “State aid for films and other audiovisual works”, published in March 2012, and in particular we welcome the updated FAQ document, published 15th May, which has cleared up a number of our concerns in the draft Communication, in particular the territorial conditions in film support schemes. However, in order to ensure legal certainty of these clarifications and the interpretation listed in the FAQ of 15th May we have to insist on it being incorporated into the final Cinema Communication.

Cine-Regio gathers 37 regional film funds from 15 countries in Europe. The members run a range of support schemes to support cinema and to encourage cross-border and international cooperation across Europe. The network facilitates the exchange of good practices among regional film funds and it works to strengthen the co-development and co-production of audiovisual products.¹ The regional film fund agencies, members of Cine-Regio, are focussing more and more on developing sector talent, more challenging films, documentaries and children’s film. To demonstrate this further – at this year’s Berlin Film Festival, 32 films in the Official Programme were supported by Cine-Regio members, 8 of the films in main competition. At this year’s Cannes Film Festival, 35 films in the Official Programme and side bars have received support from a Cine-Regio member, 8 films in main competition. We are therefore pleased that the Commission has been able to approve these schemes in the past, which illustrates the extent to which those regions take pride in their rich cultural heritage and help to preserve Europe’s cultural diversity.

¹ More info on <http://www.cine-regio.org>.

2. The good news in the draft Cinema Communication

In the Cine-Regio response of August 2011 to the Issues Paper on Film State Aid we asked the Commission to consider 7 reflection points when drafting the new Cinema Communication. We welcome that 6 of the 7 reflection points have been considered and clarifications have been provided via the updated FAQ of 15th May 2012. The reflection point on “maintain current territorialisation level” is dealt with in section 4 below.

1. The draft Cinema Communication is based on the cultural exception. It is based on the derogation provided by article 107.3.(d) TFEU and hence is consistent with the international obligations assumed by the European Union as well as with the European audiovisual and cultural policies.
2. Explicit reference to regional culture. Explicitly refer to culture and regional diversity as article 167 TFEU already does. The 2001 Cinema Communication only refers to national cultural criteria and Member States without taking into account the role of regional funds as well as their competences in the field.
3. Aid benefit to all audiovisual projects. Eligible products are all screen-based content ensuring a cultural merit. This excludes pornography, commercials, etc. as also stated in the Commission's MEDIA Programme guidelines referring which films are eligible for support.
4. No discrimination as regards to the value chain and eligible activities as long as they relate to the film sector. Development (script, marketing tools and audience engagement); production (Pre-production - up to digital master print); distribution; promotion, etc..
5. Clarifies how support schemes directed towards activities concerning new business models, digital cinema, etc. will fit in line with the new rules.
6. The current aid intensity of 50% of the production budget, with higher aid intensities for difficult films, are maintained as it stands now. In addition, a new criteria which allows aid intensity of 60% for international co-productions has been introduced.

3. Clarifications needed in the draft Cinema Communication

Cine-Regio would like to highlight that we find that the draft Communication is very informative and we appreciate the Commission's big efforts in providing explanation on the reasons behind some of the new criteria. However, we have found that the draft Cinema Communication of March 2012 is unclear on a number of points, and we would therefore like to highlight a number of points which need to be reformulated or/and explained in more detail.

1. The territorial criterion should be more clearly expressed – see section 4 below.
2. The draft Communication refers in section 4, page 6 to fiscal schemes/tax-based film financing and the competition among Member States to attract major foreign productions. Cine-Regio finds that it must be acknowledged that European territories greatly benefit from inward investments. Big budget films today are financed in an international market place, where European countries compete with other states, such as Canada, New Zealand, US, Caribbean countries etc. To limit the ability for Europe to compete in this market, will truly be harmful both to the sector and to European taxpayers. It is our understanding that some of the fiscal/tax-based schemes may have some technical challenges in applying the new criteria of 100% on aid amount and Cine-Regio urge the Commission and Member States to find a long-term solution of benefit to both the sector and to the European taxpayers.

3. Point 7 lists the different types of film funding. It is not clear to us if the Commission distinguishes between the different type of aid schemes (i.e. equity/co-production investment, loan repayable with interest, soft-loan/conditionally repayable loans, grants, etc.).
4. Point 42(1), 42(3). Here we would like to question the formulation of the “posted workers”/labour standards. The rule seems to allow service companies to circumvent national labour laws. The rule will need to be modified to correspond to Directive on the posting of workers.
In the updated FAQ of 15th May 2012 the problem has been recognised and there is now a reference to the Directive on Posting of Workers. We expect an appropriate alternative wording in line with the Directive to be incorporated into the final Cinema Communication.
5. Point 42, bullet point 3: "However, an aid scheme for film production may impose....provided that this is no more than 50% of the production budget". By introducing this new rule the Commission will discriminate films that are normally allowed aid intensity higher than 50%. It seems that in practice it will be a problem for low budget films, such as documentaries and short films, to receive sufficient funding if this new criteria is introduced. In some Member States this type of film only receives funding from one fund. Example: budget 100.000 EUR; amount applied for 80.000 EUR; possible territorialisation with new criteria 50.000 EUR (and not 100% of aid amount). Hence, a "non difficult film" has a better position. If total public funding will remain at 50% - difficult films might not be financed. Small and difficult films are, by definition, less likely to attract funding/distribution outside their language/cultural region and private funding is limited for these types of productions – especially in terms of new talent projects. This might change the content towards more conformity, not more diversity. Certainly, this cannot be in the interest of the European citizens. In summary, the maximum territorialisation rule must be harmonized, with the rules for aid intensity, allowing higher territorialisation for difficult films and international/-regional co-productions. Alternatively, the "50% of the production budget rule" is not introduced for "difficult films" and only the 100% territorialisation rule applies, with the same effect.
6. Point 44(2). The French translation of “cross-border” is currently “trans-frontaliers”. To avoid misunderstandings we suggest an explanation note is added: "meaning across any border, both between neighboring countries, e.g. France/Germany and far away, e.g. France/Bulgaria. Also inter-regional co-productions must be included or as a minimum minority language zones must be recognised. The focus on inter-regional productions also protects against too much national centralisation in Member States with diverse intra-national regions such as Germany, UK, France, Spain.

Today the majority of European feature films need to seek multi-national and multi-regional financing in order to actually be made. Moreover, co-production projects increase the chances of distribution of co-produced films in the partner territories and over time help to consolidate business alliances and contribute to the sustainability of the sector. Co-production projects can be developed with the support of quite small amounts of money from regional film agencies. By encouraging co-productions across regional borders, Cine-Regio and its members contribute significantly to EU audiovisual policy goals. In fact, many European films would not have been made had it not been for the existence of regional support. The 2001 Cinema Communication only refers to national cultural criteria and Member States without taking into account the role of regional funds as well as their competences in the field. In the new Cinema Communication any reference to national criteria or national territories should also be extended to regional criteria or regional territories.

7. Point 44(2). The draft Communication is referring to “national language of Member States”. Indeed it should refer to “an official language of Member States or regions.”
In the updated FAQ of 15th May 2012 the issue has been dealt with. We expect the FAQ update to be incorporated into the final Cinema Communication.
8. Point Point 44(5). It is unclear for us how the table of maximum aid intensities for non-European works should operate in the case of minority co-productions with non-EEA countries with which a Member State has a coproduction treaty. For example a German (20%)-Brazilian (80%) co-production. According to the

German-Brazilian coproduction treaty, such a film should be regarded as German. However, according to the definition in the draft Communication, the film would not be a European work.

In the updated FAQ of 15th May 2012 it is suggested that in addition to the definition of a “European work” in annex, films made under co-production treaties between Member States and third countries could also be added.

9. Point 44(6). The formulation should be reviewed. The current formulation can be interpreted to rule out aid for principal photography and post-production – which is not the case/opinion of the Commission.
In the updated FAQ of 15th May 2012 the text is reformulated: “the objective is that aid must not be reserved for individual parts of the production value chain. Script-writing and development are excluded from this”.
10. Point 45. In determining whether maximum aid intensity is respected, it is unclear to us how a regional funding agency can control aid intensity on a film project. In France, there is a system in place to control aid intensity, however, this is not the case in all Member States. If you have a French-Belgium co-production you know what the aid intensity is in France, but how can you as a regional film agency in France control what the aid intensity is in Belgium? It is impossible to impose control over a system you have no control over. Could it be considered in the text that a funding agency is only responsible for aid intensity in “his” Member State? And similarly with EU-Non-EU co-productions? In addition, how to apply aid intensity in Member States having different aid intensity levels? E.g. a Swedish-French co-production. In France aid intensity for a feature film is 50% and in Sweden it could be 80%. What is the aid intensity allowed for this film? We suggest that an explanation note is added to the FAQ to address these issues.
11. Digital content and sustainability. We need to ensure that public support mechanisms will lead to a healthy expansion of film sector activity across Europe, and for the benefit of all – European citizens and film professionals alike. The switch to the digital world should not lead to the marginalisation of the European film industry, on the contrary Europe should take advantage of the opportunities brought by new technologies and make the best of them. In this context it is also important to note that linguistic differences between EU Member States still represent one of the biggest hurdles on the road to creating a genuine single market for cultural products in Europe. The draft Cinema Communication clarifies to a certain extent how support schemes to activities concerning new business models, technical/social media training, digital cinema, etc. would fit in the new rules e.i. the draft Communication lists that support for digital cinema will not be included (point 18), however, the draft Communication suggests that the “de minimis Regulations”² can be applied, alternatively, GBER³, and if more aid is needed this can be assessed on a case-by-case basis. Can this work? While new technologies create great opportunities for the cinema sector they pose serious challenges for the transition from analogue to digital in particular as regards small and independent cinemas that do not benefit from the VPF financing model and the projection of digital masters of European films. Competition authorities should echo the voice of other Commission services⁴ and the European Parliament⁵ that recognise the urgent need of public and private support to digital cinema. Without state aid, smaller and less profitable cinemas will face closure. State aid is therefore essential.
12. As for games & cross-media with a clearly cultural aim and/or related to the promotion of a film work it is our understanding that aid schemes for this type of work will be allowed/approved in a new Cinema Communication on a case-by-case basis. In other words computer games are not excluded. This we find could be more clearly expressed in the final Communication.
In the updated FAQ of 15th May 2012 an explanation note to clarify the topic has been added, however, further clarifications are welcomed to ensure legal certainty.

² Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid, OJ L 379, 28.12.2006, p. 5

³ Commission Regulation (EC) No 800/2008 of 6th August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the treaty (General block exemption Regulation), OJ L 214, 9.8.2008, p. 3

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of 24 September 2010 on opportunities and challenges for European cinema in the digital era [COM(2010) 487 final.

⁵ Draft Report on European cinema in the digital era (2010/2306(INI)).

4. Territorialisation assists in creating a cultural output

One of the main concerns raised by the Commission in the Issues Paper, and main changes from the 2001 Cinema Communication to the March 2012 draft Cinema Communication, relates to the territorial conditions in film support schemes and the potential conflict with the fundamental principles of the Internal Market, which guarantees the free movement of goods, persons and services.

With today's 2001 Cinema Communication criteria – in theory – if a Member State offers aid of €150.000 to a €10M film production, the Member State can insist that up to €8M of the production budget is spent in the Member State. It is our understanding that the Commission does not find such an approach to be in line with the “proportional principle” in the Treaty. Hence, the Commission finds that the territorial conditions set out in 2001 Communication cannot remain as they stand and the Commission therefore had to come up with a new set of criteria on the topic of territorialisation without risking the instability in the European film sector.

In our experience, territorialisation helps to preserve cultural identity and territorialisation requirements help regional audiovisual support agencies to ensure that a critical mass of audiovisual activity takes place in the region. A critical mass of audiovisual activity provides a guarantee that the region retains the skills and infrastructure necessary to produce audiovisual works that reflect its unique cultural identity. The guarantee of a certain level of effect on culture, creativity, social cohesion and economic growth are at the forefront of many regional film bodies' minds.

In our response of September 2011 we asked that territorialisation requirements should be maintained as they stand in the 2001 Cinema Communication. There are no indications either from the EC Film Study on territorialisation, the Commission nor other stakeholders that territorialisation causes a distortion of competition. Cine-Regio firmly believes that territorialisation has positive effects, particularly as regards to the preservation of cultural identities, the creation of a critical mass of audiovisual activities and the solidarity between regions, mainly through the facilitation of co-production projects.

In response to the 100% aid amount criteria introduced in the Issues Paper on Film State Aid (2011), we in Cine-Regio have suggested both at our August 2011 meeting with the Commission and in our September 2011 response to the Issues Paper that instead of the “100% aid amount criteria”, the territorialisation obligation allowed could be linked to “100% of audio-visual costs”. It was our understanding that such an approach could be looked into further. It is not clear to us if such an approach will require Member States to decide on a set of joint criteria on how to define what are audio-visual costs (similar approach as to define a “European work” in MEDIA 2007). We would of course argue that the new Cinema Communication should allow for each funding agency to decide for themselves, which are the eligible audio-visual costs as long as the obligation is only to spend up to 100% on these specified costs. Alternatively, “100% of audio-visual costs” should be accepted as part of the funding regulations/selection criteria and then fixed individually with each funding contract.

Assuming that the current “100% aid amount criteria” will be maintained in the final Cinema Communication, it is of utmost importance to us that more legal certainty is introduced on how this new criteria should be applied. Through a constructive dialogue with the Commission, and the updated FAQ of 15th May 2012, some of the misunderstandings on how to apply and understand the new suggested criteria have been clarified. However, in order to secure the legal certainty – and hence secure the stability in the European film sector – we in Cine-Regio have to insist that those clarifications in the updated FAQ of 15th May 2012 are incorporated into the final Cinema Communication. In particular, footnote 12 in the draft Cinema Communication has created some confusion and we therefore have to insist that the new wording in the updated FAQ of 15th May 2012 correspond to the example in footnote 12: *“For example, a regional film support scheme requires that all films it supports include at least 10 days of the film production activity in the region.....this is not a territorial spending obligation because there is no restriction on the origin of goods and services involved in the production.”*

In this context, it is our understanding that with the new territorialisation criteria a selective scheme by a film agency can – as also under the 2001 Cinema Communication - via its selection/eligibility criteria – decide on the project proposal which favours more the objectives of the film funding agency. Hence, the distinguish is between

“obligations/obligatory regulations” (100% aid amount criteria) and “award criteria” (elements in a project application that lead to the award of the fund and might then be fixed as contractual obligations with the individual beneficiary). In the overall guidelines/objectives of a film fund, the fund can state – as also allowed in the 2001 Cinema Communication – that in its overall guidelines/objectives the aim is to for example: “strengthen the audio-visual media in Region X and it is intended that at least 1.5 times the amount of the total funding sum awarded for the current year be spent in Region X”; or/and “it is intended that a majority of projects awarded during the year is by film directors from Region X”; or/and “it is intended that a minimum of 10 days of production activity takes place in Region X”. For the members of Cine-Regio it is very important that we gain legal certainty in this respect.

5. Cine-Regio members’ motivation for investing in cinema

The 37 regional film funds share a common understanding on the role and contribution of films and audiovisual works to our society. They share a common motivation to support culture and creative industries, enhance talent development and curb brain-drain, promote cultural diversity and contribute to the reinforcement of European regional identities, foster social inclusion, ensure the viability, sustainability and competitiveness of the European film sector, preserve diversity in a globalised world and encourage circulation of European films. As for members of Cine-Regio the objectives of public funding for films and audiovisual works are as listed below.

- Support culture and creative industries. Investment in cinema is primarily motivated by the political will to support cinema and filmmaking in the region: to support the development of quality films and art-house cinema, to provide local talents (film directors, actors, technicians) an opportunity to use their skills, to give local broadcasters access to facilities capable of producing original content and to nurture locally based creative production companies and technical industries.
- Promote cultural diversity and contribute to the reinforcement of European regional identities. The expression of local identities or minority languages through films is a strong catalyst of regional identity. Regional film funds are at the forefront of the implementation of the principles enshrined in the European Treaties as well as the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions ratified by the European Union. Regional investment in culture is highly relevant to this ambition of nurturing diversity, enabling its expression (including so-called minority languages) whilst at the same time stimulating cultural exchanges and collaborative projects across borders. Films reflecting the culture of European regions such as Andalusia, Wallonia, Hamburg-Schleswig Holstein, Südtirol, etc. would most probably not be sufficiently commercial to be made or distributed without public support.
- Enhance talent development and curb brain-drain. A majority of regional film funds fulfill an important role in enhancing regional film production and talent development. As for talent, we must continue to support the extensive talent base that we have in Europe – both when it comes to live action film and animation - including new graduates, many of whom – especially in respect of animation - are migrating to North America. Regional funds contribute to retain European talent and to foster creative ecosystems, to form the creative clash - creative people that, once gathered in a specific place, create synergies and fruitful collaborations, thereby fostering further creativity.
- Foster social inclusion. Films make a substantial contribution to social cohesion by promoting regional identity, but also through the sense of pride and increased self-esteem that result from the link between a region and a film. Films also help the social integration of marginalised groups such as individuals and communities of different ethnic and national origins and at-risk youths. Regional film support fosters local identities, media literacy and democratic empowerment.
- Ensure the viability, sustainability and competitiveness of the European film sector. Investment in the audiovisual sector is a way to improve the innovative capabilities of the European regional film and related industries, to build a regional audiovisual infrastructure, to develop creative clusters, to stimulate entrepreneurship amongst young people, to attract private investment as well as to encourage tourism and branding in Europe.

- Preserve diversity in a globalised world. Local and regional territories increasingly play a crucial role in sustaining Europe's culture. In a world that is becoming more and more global and complex, the threat of losing the regional identity to a uniform and grey world is constantly present. Supporting film culture is therefore increasingly important and it contributes to preserving a heterogeneous society.
- Encourage circulation of European films. Films catering to a highly localised, niche audience, and/or in a lesser known language have very limited options for commercial theatrical distribution. Distributors often concentrate on films with a wide audience appeal. Alternative screening opportunities are necessary to give niche films a chance to reach an audience. Almost 60% of the regional funds have dedicated funding streams for supporting distribution and exhibition of material, helping smaller films make it to festivals and offering support for screening films for various audiences. Overall this contributes to cultural goals of increasing on-screen diversity.

6. Conclusion

For Cine-Regio a culturally diverse Europe is not a Europe where cultural life is centralised around a handful of major cities and capitals, but is a part of the lives of as many communities as possible. Territories are well suited to foster film creativity and culture. Among others because cultural products such as film are influenced by local customs and language. As for members of Cine-Regio the objectives of public funding for films and audiovisual works are as listed in section 5 above.

In conclusion, European Cinema is one of the cornerstones of European cultural expression. Its importance has for many years been recognised by the EU's competition rules and by State aid control in particular. Hence, as regards to the new Cinema Communication we need:

- Clarity for rules on territorialisation and aid intensity
- Non-discrimination against small and difficult films
- Legal certainty for points currently only addressed in FAQ and footnotes

In addition, we urge the Commission and Member states to find a solution on the ability to provide fiscal schemes/tax incentives, and we urge the Commission to ensure that any reference to national criteria or national territories should also be extended to regional criteria or regional territories.

The UNESCO convention on cultural diversity both reaffirms Member States' sovereignty to implement support policies for culture as they see fit "to protect and promote the diversity of cultural expressions" (article 1) and it also seeks to promote culture as a factor in socio-economic development. It notes that "parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions." UNESCO therefore explicitly recognises the role of the regions in creating and promoting cultural diversity. The Convention also notably recognises both the economic and cultural dimensions of the creative industries in the preamble, stating that UNESCO is "convinced that cultural activities, goods and services have both an economic and a cultural nature."

We would like to thank you for this opportunity to communicate our standpoints in writing. If we can be of any assistance in taking matters further, please do not hesitate in contacting: Cine-Regio, Filmbyen 23, 8000 Aarhus C, Denmark. Attn.: Charlotte Appelgren, General-Secretary.

Cine-Regio members:

Apulia Film Fund, Italy
Basque Film Fund, Spain
BLS Südtirol Alto Adige, Italy

CICLIC – Region Centre, France
CRRV – Région Nord-Pas de Calais, France
ECLA – Region Aquitaine, France

Consejería de Cultura Andalusia, Spain
Film Agency for Wales, UK
Film Fund FUZZ, Norway
Film I Skåne, Sweden
Film I Väst, Sweden
Film London, UK
Film3, Norway
FilmCamp, Norway
Filmfonds-Wien, Austria
Filmförderung Baden-Württemberg, Germany
Film Fund Hamburg Schleswig-Holstein, Germany
FilmFyn, Denmark
Filmkraft Rogaland, Norway
Filmpool Nord, Sweden
Filmregion Stockholm Mälardalen, Sweden
FIP – Piemonte, Italy
Flanders Audiovisual Fund, Belgium

Friuli Venezia Giulia Audiovisual Fund, Italy
Ile-de-France Film Fund, France
Institut Català de les Indústries Culturals, Spain
Krakow Regional Film Fund, Poland
Mitteldeutsche Medienförderung, Germany
PACA - Région Provence-Alpes-Côte d'Azur, France
POEM, Finland
Région Aquitaine, France
Rhône-Alpes Cinéma, France
Riga Film Fund, Latvia
Rotterdam Media Fund, The Netherlands
Screen South, UK
Trentino Film Fund, Italy
Wallimage, Belgium
West Danish Film Fund, Denmark
Zürcher Filmstiftung, Switzerland