[DE] Federal Government Commissioner for Cultural and Media Affairs presents German film support reform bill

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On 12 February 2024, the Federal Government Commissioner for Cultural and Media Affairs (BKM), Claudia Roth, presented a bill on measures to support the German film industry (FFG-E). The bill is designed to reform the German film support system by making it more efficient and transparent while reducing the related administrative burden.

The first of the bill's six sections deals with the structure and organisation of the *Filmförderungsanstalt* (Federal Film Board – FFA). According to Article 1(1), the FFA, a federal institution established under public law, is a national body set up to support the structure of the German film industry and the creative and artistic quality of German film-making as a condition for its success in Germany and abroad. Its remit remains essentially unchanged under the new bill. However, the bill explains that the advice that it provides to the federal government should cover issues relating to technological advances affecting the film and cinema sector, including in the field of artificial intelligence. It also requires the FFA to ensure that the industry becomes more environmentally sustainable.

Under Article 3 FFG-E, the FFA can, in order to fulfil its remit and subject to the agreement of the supreme federal authority for cultural and media affairs, also provide additional funding and invest in other institutions. It can also enter bilateral and multilateral cooperation agreements with the film support bodies of other countries and the German *Länder* in order to support international film projects.

According to Article 4 FFG-E, which deals with services provided to other institutions, the FFA will manage all federal government support for the film industry with effect from 1 January 2025, when the bill will enter into force. The FFA will, against the reimbursement of the expenses incurred, take responsibility for all federal government film and media support. This particularly includes the cultural film support provided by the BKM, but may also cover other types of media support, such as for the gaming industry.

Articles 5 to 25 FFG-E describe the role of the FFA administrative council, executive committee and CEO. The composition of the administrative council

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should reflect current developments in the film industry, and its size should remain manageable in order to ensure it can operate efficiently. Its members, who are independent, are appointed for a five-year term by the supreme federal authority for cultural and media affairs. According to Article 10(2) FFG-E, it will take funding decisions on a proposal from the CEO pursuant to Article 3(2) FFG-E, unless they fall under the CEO's remit. One objective of the new legislation is to give the executive committee a purely supervisory role in order to make the division of responsibilities within the FFA clearer. Funding decisions that were previously taken by the executive committee will therefore, in future, be taken by either the CEO (up to the sum of EUR 150,000) or the administrative council (for higher amounts). The administrative council can delegate these decisions to newly established funding committees in accordance with Article 13 FFG-E. Meanwhile, the permanent funding committees previously regulated in Articles 20 *et seq*. FFG are abolished.

The executive committee will continue to supervise the CEO. Article 21 FFG-E states that the CEO should have at least one deputy, be appointed by the administrative council for a five-year term and, like all FFA employees, not be active in the film industry. According to Article 22 FFG-E, the CEO implements the decisions of the administrative council and executive committee, and represents the FFA in and out of court. Article 38 FFG-E, included in order to reflect similar provisions that apply to other public institutions, requires the FFA to publish the annual salaries of the CEO and their deputy, including any significant remuneration they receive for outside activities.

The FFA will appoint a diversity committee in accordance with Article 26(1) FFG-E. The committee will advise the FFA on issues related to diversity, inclusion and anti-discrimination pursuant to Article 30 FFG-E. In particular, it will take measures relating to the training and composition of the FFA staff, organs and funding committees, and help draw up guidelines on incentives to increase diversity.

With regard to film support, Article 46 FFG-E states that the production of accessible versions of supported films must be significantly improved. Paragraph 1 of the article stipulates that an accessible version of all supported films should be available by the time they are released in each exploitation window. The same obligation applies to film distributors, but only for the windows for which they hold the exploitation rights. Funding for film digitisation should only be granted if at least one accessible version of the film is produced by the time it is released in cinemas. As regards the screening of accessible versions in cinemas, the use of mobile applications has become a popular solution, enabling viewers to watch on their own devices. Article 46(2) FFG-E therefore creates the possibility of using an app to meet the obligation to provide an accessible version. These apps must themselves be accessible within the meaning of Article 4 of the

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Behindertengleichstellungsgesetz (Disability Equality Act).

The support system for film production created under the *Filmförderungsgesetz* (Film Support Act) is completely reformed in Articles 61 *et seq*. FFG-E. In future, it will be solely founded on an automatic, performance-based funding model that will replace the current system of selective decisions made by a specially appointed funding committee. Since production subsidies will be linked to the economic and cultural success of their previous films, successful film producers will be automatically rewarded. In order to ensure new films can access funding more quickly and reliably, automatic production subsidies will be the only type of funding available under the *Filmförderungsgesetz*. The abolition of selective project film funding will release more funds for automatic production subsidies. Meanwhile, the lowering of viewer thresholds will significantly broaden access to production subsidies, so more producers will be able to benefit in future. Scriptwriters and directors will also share in the success of films they have written or directed.

The Film Support Act's provisions on film promotion support are also overhauled in the new bill. Primarily in order to increase administrative and funding efficiency, as well as planning security for applicants, Articles 101 *et seq*. FFG-E make provision for a new, entirely performance-based reference film funding system that will be better resourced. Distribution project funding and video and sales funding are abolished. However, in order to acknowledge the importance of the success of German films abroad, alternative funding strategies will be devised outside the FFG.

The cinema funding provided for in Articles 113 *et seq*. FFG-E is largely unchanged. The main difference is that, here also, funding decisions will no longer be taken by a committee. Instead, funding will only be granted if certain conditions are met and the necessary funds are available. Although it is still project-based, cinema funding will therefore become automatic and the system will be more transparent, efficient and predictable.

The fourth section of the FFG-E deals with the financing of the FFA. According to Article 121(1), the FFA will continue to receive most of its funding from a film levy paid at different rates by various subgroups of film industry stakeholders, as described in Articles 122 *et seq*. FFG-E. For cinemas, the bill moves away from a screen-based charge to a cinema-based fee in order to reflect more accurately cinema operators' financial capacity. The main change is the removal of preferential treatment under Articles 130 to 132 FFG that enables different types of television companies to pay up to 40% of their contributions in the form of media services. The growing importance of video-on-demand for income streams and film promotion has, in the BKM's opinion, led to direct competition between video-on-demand service providers and television companies. Allowing only one of these categories to pay part of the levy in the form of media services is

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therefore no longer justified. The BKM does not think it is feasible to allow both categories to pay part of the charge in the form of media services because this would create a considerable disparity between the payments made by cinemas on the one hand and the cash payments made by television companies and video-on-demand providers on the other. In view of the increased importance of the home entertainment industry for film sales, the BKM does not believe this is justified. The BKM's conclusions are the subject of continuous debate, especially in the light of the principle of equal treatment enshrined in Article 3(1) of the *Grundgesetz* (Basic Law – GG).

Referentenentwurf des Filmförderungsgesetzes vom 4. März 2024

https://www.kulturstaatsministerin.de/SharedDocs/Downloads/DE/2024/2024-03-04-referentenentwurf-ffg.pdf?__blob=publicationFile&v=5

Film support bill of 4 March 2024

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