European Commission: Spanish State Aids and EU Approval

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The Spanish Ministry of Culture approved, on 19 October 2009, an Order Approving Economic Aids to Cinematographic and Audiovisual Companies.

Spain notified the European Commission of this Order on 29 October 2009. Before the consultation period ended, the Commission received a claim by “Filmmakers against the Order”, a group of 205 directors, technicians and film critics.

The Commission, on 27 January 2010, finally approved the new System of Economic Aids to the Cinematographic and Audiovisual Activity in Spain, as it considered the Order to be compatible with the Treaty on the Functioning of the European Union. The system of economic aids is approved until 31 December 2015 on the basis of the commitment made by the Spanish Authorities to amend it, if this is required, by modifications introduced during that period of time to the applicable rules on national aids.

According to Spanish Authorities, the object of the above-mentioned system of economic aids for cinematographic and audiovisual activity is to encourage Spanish linguistic and cultural diversity in the European context, helping audiovisual directors, new creators and independent producers and distributors.

The legal basis of this system is formed by the following: Law 55/2007 of 28 December on Cinema, Royal Decree 2062/2008 of 12 December, which develops the aforementioned Law, and the Order by which rules for the application of Royal Decree 2062/2008 are made public.

The Authority responsible for providing the aid will be the Instituto de la Cinematografía y de las Artes Audiovisuales (Cinematographic and Audiovisual Arts Institute - ICAA), of the Ministry of Culture, which will have a global budget for this purpose of EUR 576 million.

Finally, this system includes the following types of economic aids:

- Selective aids for pre-production and production;

- Automatic aids for production;

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- Selective aids for promotion and distribution;

- Other aids (for the participation of Spanish films in film festivals and for cultural projects).

The Commission concluded that the system notified represents a national aid according to Article 107.1 of the Treaty on the Functioning of the European Union.

The economic aid can be justified if the system is in accordance with the general legal criteria and the four compatibility-specific criteria related to cultural content, territorialisation, intensity of the economic aid and supplementary subsidies, stated in the Cinema Communication.

In Article 2.3.a., the Cinema Communication states that the Commission must verify that the scheme does not contain clauses that would be contrary to provisions of the EC Treaty (now called Treaty on the Functioning of the European Union) in fields other than State aid. In Article 2.3.b.1., the Cinema Communication states that the economic aid must be directed toward a cultural product. Each member state shall ensure that the content of productions which benefit from the economic aids can be classified as “cultural” in accordance with verifiable national criteria.

The Spanish Government is interested in encouraging the production and distribution of cinematographic works with cultural content, encouraging the cultural diversity of the works that are finally presented to the public, and emphasising specifically the projection of the different Spanish languages. According to the Spanish Authorities, the main reason for supporting cinematographic diversity in Spain is the considerable share of American productions in the Spanish market (in 2008, the share of Spanish movies in Spanish market was 13.3%. On the other hand, the share of American movies in Spanish market was 71.5%).

The Spanish Authorities state that the number of viewers of European and South American movies decreases every year in Spain, compared to the number of viewers of American movies. Therefore, Spain considers that a way of encouraging viewers to watch quality films with high cultural interest in movie theatres would be through granting economic aids for their promotion and marketing.

On the basis of all the above-mentioned considerations, the Commission concluded that the economic aid system is compatible with the Common Market in accordance to what it is stated in Article 107.3.d. of the Treaty on the Functioning of the European Union and decided not to object to it.

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Decision of the European Commission, Subject: State aid No N 587/2009 - Spain - Spanish national film support scheme, C (2010)174 final, 27 January 2010

http://ec.europa.eu/competition/state_aid/register/ii/doc/N587-2009-WLWL-en-27.01.2010.pdf

Orden CUL/2834/2009, de 19 de octubre, por la que se dictan normas de aplicación del Real Decreto 2062/2008, de 12 de diciembre, por el que se desarrolla la Ley 55/2007, de 28 de diciembre, del Cine, en las materias de reconocimiento del coste de una película e inversión del productor, establecimiento de las bases reguladoras de las ayudas estatales y estructura del Registro Administrativo de Empresas Cinematográficas y Audiovisuales; Boletín Oficial del Estado nº257, de 24 de octubre de 2009

http://www.boe.es/boe/dias/2009/10/24/pdfs/BOE-A-2009-16839.pdf

Order 2834/2009, of 19 October, which sets out regulations for the application of the Royal Decree 2062/2008, of 12 December, that develops Law 55/2007, of 28 December, on Cinema, in the matters of recognition of film costs and producers' investment, establishing the regulatory basis of national aids and the structure of the Registry of Cinematographic and Audiovisual Companies; Spanish Gazette nº 257, 24 October 2009

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