European Commission: State Aid for Films According to the New Cinema Communication

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State aid for European films and other audiovisual works may from now on cover all aspects of the creation process. This is the main change introduced by the 2013 Cinema Communication that was adopted by the European Commission on 15 November 2013. This document replaces the 2001 Cinema Communication that expired on 31 December 2012, after having been renewed three times: in 2004, 2007 and 2009 respectively (see IRIS 2004-4/6, IRIS 2007-7/4 and IRIS 2009-3/3).

In principle, aid granted by a member state that does or may distort competition is considered to be incompatible with the internal market. However, Article 107(3)(d) of the Treaty on the Functioning of the European Union allows for aid that promotes culture and heritage conservation. According to Article 108 of the Treaty, the Commission needs to review national state aid systems. The 2001 Cinema Communication set out the criteria used to assess national support schemes for film productions with the aim of providing legal certainty to all the stakeholders involved. The new Communication responds to changes in the film industry that have emerged since then. For example, new digital technologies affect digitization and make storytelling possible over multiple platforms and formats. This is now explicitly addressed. The Commission consulted film professionals and member states for comments on the text.

The new Communication applies to a wider range of activities than just film production. Scriptwriting, development, film distribution and promotion as well as cinemas may be supported. Apart from this, aid for specific production activities is not allowed. This means the money cannot be reserved for separate parts of the budget. The applicable aid intensity for the production of a film continues to be limited to 50% of the overall budget. This norm will also apply to distribution and promotion activities. However, in principle there is no limit set for aid to scriptwriting or development. Co-productions funded by more than one member state can now receive aid of up to 60% of the production budget. Commercially difficult works, such as documentaries or films by first-time directors, are excluded from these limits.

The Commission acknowledges that territorial spending conditions may be necessary to preserve national infrastructures for film production. New to the

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2013 Communication is that such obligations should remain proportionate to the actual aid. Member states may demand a minimum level of production activity in their territory, which shall not exceed 50% of the production budget. In the case of aid awarded in the form of grants, the maximum territorial spending obligation should be limited to 160% of the aid amount. As before, the overall maximum is an obligation of 80% of the production budget. The last revision to be noted is that the new Communication introduces the need for the preservation of film heritage. Member states should encourage aided works to be deposited for preservation and non-commercial use throughout the Union.

The Communication entered into force on 16 November 2013. New state aid measures are now assessed according to the criteria set out therein. Member states should bring their existing schemes into line with the new Communication within two years.

Communication from the Commission on State aid for films and other audiovisual works (2013/C 332/01)

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:332:0001:0011:EN:PDF

Memo of the European Commission, State aid: Commission adopts new film support rules - frequently asked questions, 14 November 2013

http://europa.eu/rapid/press-release_MEMO-13-993_en.htm

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