



Consultation on the draft communication from the Commission on State aid for films and other audiovisual works

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The movement of European Coalitions for Cultural Diversity (ECCD) was created in 2005 by several national coalitions of cultural professional organisations in Belgium, Germany, France, Slovakia and Spain in order to foster the signature and ratification of the 2005 UNESCO Convention for the Protection and the Promotion of the Diversity of Cultural Expressions. Today, it counts thirteen European Coalitions: Austria; Belgium; France; Germany; Hungary; Italy; Ireland; Portugal; Slovakia; Spain; Sweden; the UK and Switzerland.

Its main objective is to keep the European institutions informed of the expectations and needs of creators and European cultural professional organisations. This is not only with regard to the UNESCO Convention but also to all subjects related to culture under European competence.

For instance, the European Coalitions are involved in the trade negotiations issues in order to ensure that Member States and European Union retain their ability to create and implement cultural policies, including on digital media.

The reason why the ECCD would like to express its concerns on the EC draft communication on State aid for films and other audiovisual works is the same as for the TAFTA : **the protection and promotion of cultural diversity as laid down in the EU Treaties and the fact that the audiovisual sector is of central cultural importance and is subject to particularly economic and cultural specificities.**

1. Our main concerns on the third EC review project of the 2001 Cinema communication remain the rules on territorial spending obligations. For almost two years now, stakeholders have been expressing in their contributions to the EC

consultations, on the one hand, the positive impact of those obligations and on the other hand, the absence of any proof from the European Commission on their adverse effects.

At first glance, the new draft communication of the European Commission seems, to address this issue by:

-for State aids awarded as a proportion of the production expenditure (for instance tax incentive): maintaining the 2001 Communication rule

-for aids awarded as grants: expressing the ceiling of the territorial spending obligations as a percentage of the aids amount in such a way (160%) that they “correspond to the previous 80% of the production budget rule when the aid intensity reaches the general maximum [of] 50% of the production budget”.

However, in both cases, the new rules proposed by the European Commission are very different from the current ones.

For the aids awarded as grants: the mentioned equivalence between the current and the proposed rules does exist only when the aid intensity reaches 50% of the production budget. Should it be lower, as for the film support schemes in France, Germany, Austria, the UK and Belgium for instance, the new rule for territorial spending obligations based on the aid intensity results in a much lower percentage.

Hence, for an aid intensity of 10% of the budget production, the ceiling for territorial spending obligations will represent 16% of the budget production instead of the 80% currently applied. Should the aid intensity be of 20% of the budget production, the ceiling of territorial spending obligations will also be much lower than the current ceiling (32% of the budget production instead of 80%).

Therefore, it cannot be argued that it is a slight change.

Should the new rule be adopted, it is easy to forecast how such an important decrease of authorized spending obligations will negatively impact the amount of support granted by a city/region/country:

-as they will not expect the same level of benefits from the awarded grants, they will probably decide to reduce their support accordingly;

-the human skills and technical expertise required for cultural creation will consequently disappear in those countries, regions and localities;

-the whole audiovisual and cinematographic system Member States and regions put in place will be jeopardized in spite of their efficiency.

Moreover, as explained in the study on the impact of territorialisation commissioned by the EC in 2008, the evolution towards hidden territorial spending obligations is not excluded with such a strict regime.

2. In addition to the change of territorialisation rules, ECCD are concerned by **the exclusion of any discrimination based on the origin of goods and services involved in film production**, a new element provided for by the draft communication.

If this rule is to be applied, territorialisation will lose its meaning. The consequences of such a change will be the same as for the review of territorial spending obligations. It will have a disincentive effect on the public authorities; consequently the aids provided by several countries will be under threat, for instance national film support schemes which involve conditions based on the national establishment and on the fact that incomes are taxable in the national territory.

3. As mentioned by the ECCD in their previous consultations, **the specificity of the audiovisual sector**, characterized by both its industrial and cultural aspects, should be fully taken into account in accordance with **the 2005 UNESCO Convention on the protection and promotion of cultural diversity, article 167.4 TFUE and article 107.3 d) TFUE**.

Consequently, a strict application of the internal market and competition rules to the audiovisual sector does not comply with the EU fundamental rules, that is to say the EU Treaties nor the interpretation of their application given by the ECJ.

In this respect, the reference should not be the “Laboratoires Fournier” decision, which has nothing to do with the cultural sector but the UTECA case. According to this case, derogatory rules could be justified if they are necessary and proportionate in order to comply with a general interest objective such as a cultural one.

Above all, the adoption of these new rules by the European Commission would have a politically detrimental effect. It would affirm the supremacy of the market and competition rules over the very identity of the European Union, its cultural diversity.

As for the TAFTA negotiation, ECCD firmly believe that the European Union will send a disastrous message if it were to give up its cultural commitment at a time of economic crisis. It is precisely in such a context that its cultural commitment has to be strengthened.

The ECCD thank the European Commission for giving them the possibility to express their views on the draft communication and hope that their recommendations will be taken into account in the rules soon to be adopted.