



**CEPI – ID 59052572261-62**  
**Avenue Livingstone 26, 1000 Brussels**

**27<sup>th</sup> May 2013**

## **CEPI Submission in response to the Revised Draft "Communication from the Commission on State Aid for Films and Other Audiovisual Works"**

### **CEPI - The European Coordination of Independent TV Producers**

The European Coordination of Independent Producers (CEPI – ID 59052572261-62) represents the interests of approximately 8000 independent film and television producers in Europe who supply over 16000 hours of new programming each year to broadcasters in Europe, ranging from single documentaries and special event programming to game shows, light entertainment and high-cost drama serials.

CEPI welcomes the work undertaken by the Commission during the past months, particularly the taking on board many of the concerns the audiovisual industry underlined during the initial consultation phase in September 2011. **CEPI would gladly provide the Commission with any further information should this be necessary to complete this discussion in the forthcoming weeks/months.**

### **1. Introduction**

CEPI welcomes the revised draft of the “Communication from the Commission on State Aid for Films and Other Audiovisual Works” which was published on the 30<sup>th</sup> April and appreciates the work the Commission has led during the past months to facilitate the discussion and the collection of relevant information from the main representatives of the sector.

Nevertheless, CEPI regrets that at this crucial point of the drafting, the Commission has provided stakeholders with such a short time to react to this revised draft and to provide further and more significant information which would help to finalise such an important document. It is in the interest of the Commission that, particularly in these times of economic austerity, important

industries such as the Film and TV sectors<sup>1</sup> continue to benefit from support mechanisms that encourage the development of human and technical expertise and foster a more competitive Europe through cultural creation, economic growth and job creation<sup>2</sup>.

For this reason CEPI would like to request the Commission to reconsider the time available for stakeholders to react to this consultation. This extra time would allow a better understanding of the crucial factors indicated in the “Specific Changes” section and would allow stakeholders to address these factors with enough time to safeguard important Cinema and TV production support mechanisms currently in place.

## **4. Specific Changes**

### **4.1. Scope of activities**

**CEPI would like to underline once again its support for the extension of extend state aid to all aspects of an audiovisual work from story concept to delivery to audience, including of course production.**

In line with the Commission, we strongly agree on the importance of fostering cultural diversity and making sure audiovisual works are seen by audiences. Nevertheless, we would like to stress that for TV producers the way TV programmes are distributed to the audience often goes hand in hand with the work of broadcasters (both public and private): when a broadcaster’s delivery is addressed specifically to traditional transmission platforms, TV producers might find themselves in the position of being unable to release their rights to third parties for new exploitation. We would therefore encourage the Commission not to underestimate the way the distribution of TV programmes will take place and to make sure this will not affect or be at disadvantage of the small production companies.

Furthermore, as the Commission has rightly stated, a number of trends have emerged since 2001 that see the delivery to audiences taking place in different ways such as online content or festivals. On the latter we would like to stress that financial tools are already in place to address this specific strand through the EU funding programme Creative Europe.

We also welcome the Commission’s decision not to apply the rules designed for film production automatically to games. Finally, the development of the Commission’s view that transmedia storytelling should be considered an audiovisual work within the scope of this Communication has also been endorsed by CEPI.

### **4.2 Cultural Criterion**

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<sup>1</sup> As part of the cultural industries they represent 3.3% of EU GDP and employ 6.7 million people.

<sup>2</sup> Cinema Communication Revised Draft, Paras 7 & 8, p3.

CEPI strongly welcomes the definition of cultural activities is primarily a responsibility of the Member States, in line with the principle of subsidiarity<sup>3</sup>.

### **4.3 Territorial Spending Obligations**

CEPI would like to underline that the changes to the territorial spending obligations outlined by the European Commission in the revised draft have been perceived differently across the network. **The majority of the members of this organization are not in the position to assess the long-term effects of the changes to the current aid mechanisms proposed by the Commission and especially about the meaning in concrete terms.**

For instance, CEPI does not agree with the Commission's reference to the Laboratoires Fournier case<sup>4</sup> as a justification for the changes in territorial spending obligations which were said to undermine cross border activities in the internal market. CEPI has expressed its disinclination to this point already in its response to the previous consultation as the cultural exception stressed under article 107 3(d) of the TFEU seems to have been completely neglected.

Furthermore, the results of the 2008 EC study on the economic and cultural impact of territorial conditions<sup>5</sup> were clearly inconclusive, as acknowledged by the Commission in the Communication itself.<sup>6</sup> CEPI has undoubtedly a strong interest in understanding and supporting the Commission in the difficult task of addressing these specific points, so we would strongly encourage a further analysis and/or a specific assessment of the points the Commission subsequently raises in paragraph 29 of the Communication, something which clearly cannot be done in one month.

At present, the revised draft does not seem to address how important regional and national film support schemes will be able to ensure producers maintain their key role as a driving force for the development of local and regional economies. Small and medium production companies which are currently provided with financial support mechanism to increase their know-how and foster inward investment could see their business investment significantly reduced because of a disincentive for local and regional administrations to renew their funding schemes.

The major concern is that there is a risk to source goods and services from larger territories because the scale of market in those territories might provide a more competitive price (cheaper). This situation could clearly undermine both the national/regional support schemes especially when production activities will not generate enough income in these states to justify tax incentive or grant aid<sup>7</sup>. Indeed, within CEPI, several regional film support schemes have already stipulated

<sup>3</sup> *The use of Union competences is governed by the principles of subsidiarity and proportionality* Art 5 TEU.

<sup>4</sup> CJEU C-39/04, 10.3.2005. This case addresses the research and development sector, which differs significantly from the specificities of film/TV production. Cinema Communication Revised Draft, p5.

<sup>5</sup> 'Study on the Economic and Cultural Impact, notably on Co-productions, of Territorialisation Clauses of state aid Schemes for Films and Audiovisual Productions' 2008. The study was unable to find negative consequences of territorial conditions imposed at national level.

<sup>6</sup> Cinema Communication Revised Draft p8.

<sup>7</sup> This principle would not be in accordance with what underlined by the Commission on Member States not obliged to grant any tax incentive to expenditure which is not directly linked to activities that generate income taxable in their territory

that the amount of aid is calculated as a percentage of the eligible costs for audiovisual works (i.e. expenditure on the production activity made in the regional territory) with costs of crews made up from people resident in the region and their offices to be registered in the region: such regional funds have already been approved by the Commission and are currently operative.

**It goes without saying that this should be really taken into account by the Commission as it would negatively impact the development of their economic growth and jobs at the national level, making Europe as a whole less competitive on the global scale.**

In the UK on the other hand existing systems of state aid for the audio-visual sector already comply with the Commission's proposal on territorial spending obligations. In the UK, the system of 'used or consumed' means that services and goods are deemed to contribute to the film, high-end TV or animation programme's core expenditure if they are used or consumed in production in the UK, regardless of the country in which they were originally purchased.

**It would be very important for the Commission to provide further analysis and more time for useful discussion and gathering of information to address these issues effectively.**

Ultimately, CEPI would like to confirm its support for the aid intensity to be kept at 50% of the production budget in order to stimulate commercial activities<sup>8</sup> whilst a specific 60% for co-productions should also be allowed.

#### **4.4 Competition to attract major foreign productions**

CEPI would also like to reconfirm, as expressed in our previous contribution, that on the condition that that national culture and sectoral tests are in place, the attraction of high-profile production to Europe also contributes to the productivity of the European market and so is endorsed by CEPI members.

#### **4.6 Film Heritage**

This topic is currently under discussion as part of the *Licences for Europe* initiative announced by the EU Commission (DG Internal Market and Services, DG Education and Culture and DG Connect) last December. This initiative is currently addressing many of the issues DG Competition touches on between paragraphs 45 and 48 of the revised draft of the Cinema Communication. For this reason, CEPI does not believe these topics should be addressed as part of this Communication, especially considering that Workstream 3 of *Licences for Europe* is clearly addressing intrinsic issues which can vary according to the Member State, the copyright law in place and the way certain agreements have already been implemented.

We would encourage the Commission to foster parallel discussions with the other DGs as several stakeholders from both the TV and Film sector have already raised significant concerns during the several *Licences for Europe* sessions which address topics ranging from contractual agreements with voluntary deposits to the set up of a Memorandum of Understanding (MoU). Furthermore, the discussion within this initiative of what is considered to be used for educational purposes and what is considered to be "non commercial" has opened up crucial debates which

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<sup>8</sup> Art 39 and 54(2) Cinema Communication Revised Draft.

would need serious and careful analysis undertaken by the Commission rather than addressing these issues in the Cinema Communication.

For this reason, CEPI finds this additional section on film heritage quite inappropriate. Ultimately, the deposit of films in film heritage institutions should also consider the incumbent risk of the copy being illegally accessed and shared into the market. The new digital shift and the content downloaded online from illegal sources represents a further concern the Commission should keep in mind.

We are at Commission's disposal to provide any further information.

Elena Lai  
CEPI Secretary General  
cepi@europe-analytica.com  
0032(0)474 741536