



(CEPI – ID 59052572261-62)

## **CEPI Submission in response to the "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, equivalent to 95% of the entire European audiovisual production industry and producing 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 these months, particularly for taking on board many of the concerns the audiovisual industry underlined during the initial phase of this consultation, 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**

Investing in cinema/TV production and promoting cultural diversity through a competitive audiovisual sector are crucial to the European economy. The audiovisual sector is working to respond proactively to the new challenges it faces today by being innovative and dynamic. The measures of austerity and financial restrictions currently required in this particularly challenging time have also underlined the need for the industry -particularly for our SMEs - to be prompt and to react quickly in order to foster a healthy and diverse European audiovisual sector. Independent

producers have to make sure all their activities can be functionally combined with specific national tax credits and funds to foster the development of cultural products which are well distributed across Europe.

In light of this, CEPI welcomes the Commission's statement concerning the crucial role audiovisual works, and particularly films and TV production, play in shaping European identities<sup>1</sup>. We also appreciate and welcome the effort shown by the Commission in finding the best solutions for the sector to continue this essential function.

As indicated in our response to the first draft of the Cinema Communication in September 2011, we strongly believe art and culture are powerful instruments to communicate common European values. Audiovisual creative productions are instrumental considering the important social and cultural relationship Europeans have with their film and TV programmes.

For this reason, we would like to recall article 107 paragraph 3d of TFEU underlining the importance of the aid in promoting culture and heritage conservation, which is currently crucial for our sector. **It is indeed thanks to this principle and to the combination of national/regional funding opportunities that the linguistic and cultural diversity specificities of our industries can develop at their best<sup>2</sup>; this also allows the fostering of a wide and diverse audiovisual market which is competitive towards international markets and which certainly enriches the whole EU audiovisual sector.**

The national dialogue between local producers' communities and public funding bodies has to ensure that funding schemes meet national needs and challenges. As the Commission also underlined, according to Article 5 of the TEU, the definition of cultural activities is primarily a responsibility of the Member State. We are in agreement that it should remain with the Member State to decide the cultural selection process that would determine which audiovisual work should benefit from aid (point 11-12 current Communication).

## **2. Scope of activities**

**CEPI would like to reiterate its support to extend state aid to all aspects from story concept to delivery to audience, including of course production as underlined in point 17 of the Communication.** We welcome the fact that no aid for specific components of the film budget shall be indicated in order to avoid national preferential treatment of certain sectors. In line with this, we welcome the decision of the Commission to leave the producer free to choose the items of the budget that will be spent in other Member States.

---

1 Audiovisual works are also recognized by the UNESCO Convention on the Protection and the Promotion of the diversity of Cultural Expressions as a “unique cultural phenomenon”-Paris Convention 20 October 2005

2" In line with Article 167 TFEU- The Union shall contribute to the flowering of the Cultures of the Member States while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore

We would also like to emphasise our position in reference to points 18-19-20 of the Communication and support the condition that cinemas might receive state aid to support their transition to digital film production. CEPI encourages the Commission to enable the necessary flexibility for Member States to shorten the transition period of their whole theatrical exploitation sector and we welcome and acknowledge the support that the Creative Programme might have towards this matter.

In reference to points 19-20 – transmedia storytelling and games (which do not meet the condition of GBER or the Minimis Regulations expressed in point 20) – **we welcome the decision by the Commission that the rules designed for film production will not be automatically applied to games.**

### **3. Territorial Spending Obligations**

The main concern identified by CEPI's members relates to point 26 of the Draft Communication and to the way the Commission intends to address territorial conditions for film/TV support schemes. This would mean a very significant change from the 2001 Cinema Communication which established that 80% of the budget has to be spent in the territory which provided the aid. However, the current draft of the Cinema Communication proposes to change this system completely, stating that 100% of the aid will have to be spent in the territory offering the aid.

**We would like to recall what CEPI, together with FIAPF and IVF already stated last September 2011: there is insufficient evidence supporting the need for the main modification proposed by the Commission. We are strongly convinced that territorial requirements should be kept as they stand in the 2001 Communication<sup>3</sup>.**

We understand that the Commission tries to ensure legal certainty and to address disproportionate situations which might rise in the future through the development of the Digital Single Market<sup>4</sup>. Nevertheless, **we would once again like to remind the Commission that the 2008 EC study on the economic and cultural impact of territorial conditions within the framework of film support schemes was unable to find any negative consequences of territorial conditions.** The disproportionate condition identified by the Commission does not realistically reflect consumers' views, nor has it affected cinema diversity and/or production and distribution sectors. **We would also like to stress that no complaints from film/TV producers have identified a distortion in competition of the current AV single market.**

---

<sup>3</sup>" Cannes, 15<sup>th</sup> May 2012- CEPI in cooperation with several other relevant AV stakeholders addressed this specific issue on a letter sent to both EU institutions/National authorities

<sup>4</sup> When the Commission refers to the Laboratoires Fournier ruling, we would like to underline that this specific case addresses the “research and development sector” which differs significantly from the specificities of Film/TV production, as clearly preserved by Article 107, paragraph 3d

Furthermore, as the Commission knows, aid models have been established across Europe with very different criteria focusing on cultural and economic aspects, fostering regional and/or federal supports, embracing different tax schemes, from selective to automatic aids. **CEPI would like the Commission to take into consideration how crucial these schemes have become nationally and regionally, particularly for our SMEs in this time of austerity measures.** Where these schemes have been developed, there is no doubt that local and regional economies have notably benefited and flourished through an:

- **Increase of inward investments:** when major productions have been attracted in certain territories (from European and non-European markets) local jobs and economic growth have also increased.
- **Increase of know-how:** the human skills and technical expertise developed locally/regionally to foster the creation of cultural products such as films and/or TV Programmes cannot be underestimated. Young talents have been scouted, film locations have been used fostering the regeneration and touristic development of the areas where these changes took place, advices/specific financial services have been developed in support of the AV sector in a particular areas to provide support in allocating the funds accordingly.

The Film/TV market has increasingly flourished on a regional and national basis and that is why it is very difficult to imagine that this market will develop following the same dynamics as the single market for goods and services. **CEPI members currently use nationally/regionally dynamic and diversified aids which will encourage the development of a less fragmented market through time and modalities which reflect the specificity of our sector – the audiovisual sector.**

From a political and economic point of view, we would encourage the Commission to also remember that there are Member States which are developing very attractive and innovative policies where both the AV industry and regional/national funding bodies are working in close synergy to relaunch the economy at national and regional level. **This is supposed to positively influence the European economy as a whole so we would strongly recommend the Commission to reflect on the negative effect a change of territorial requirements could have on those countries,** especially when they will be asked to approve their cultural budgets in the forthcoming months. Finally, this Communication will create serious difficulties to the current structures, considering the majority of these film subsidies systems have been set up to last beyond 2013.

This is why CEPI believes that the new proposed system of territorial spending obligations will not accomplish the Commission's envisaged goals and could negatively affect the AV sector.

#### **4. Competition to Attract Major Foreign Film Production and aid intensity**

Territorialisation enables co-production: producers are able to combine different sources of funding each with its own rules and obligations. A producer needs to be able to combine on a single project funding from one Member State with compatible funding from other Member States. It is indeed thanks to the national support schemes that our producers can "take the risk"

to invest in another country and to re-launch the economy in a period where it is not always so easy "to take the initiative and take the risk".

On major co-productions we understand from the new Communication that the Commission has identified specific cases where there have been excessive subsidies to attract non-European production and that the Commission intends to address them by setting a cap, to make sure competition takes place on the basis of quality and price, rather than on State Aid.

CEPI recognises that EU and non-EU co-productions have both contributed to the productivity of the EU AV Market and feels it would be excessive to punish the whole industry because of alleged specific cases of abuse. In general we do not believe this would be the right approach to respond proactively to the foreign film market domination, which often affects the independent film/TV market. Under the condition that appropriate national culture and sectoral tests are observed, European-Non European co-productions also have a fundamental role to play, fostering long terms positive effects on the overall European audiovisual sector.

**Last but not least we still consider it is extremely important for the aid intensity to be kept at 50% as underlined in paragraph 44- point 2 of the current Communication; the aid intensity amount for co-production up to 60% is also considered acceptable by CEPI's members.**

**However, we would like the Commission to take in consideration that higher aid intensities would be strongly encouraged for those small sized markets which experience low budgets and low distribution perspectives because of their limited territory, population OR language .** Indeed in these markets it is difficult to use financial income from distributions pre-sales to fund new film projects. In other words, TV producers, unless financed by public broadcasters (which is not always possible due to the financial crises affecting both PSB and independent producers) will have difficulties in finding the financial support they need, unless higher aid intensity level are allowed.

### **5 Promoting international Availability of Films Online**

**CEPI is concerned about the proposal by the Commission to encourage rightholders, as a condition of the aid, to release to third parties the online rights for those exploitations that they are otherwise unable to exploit.**

We certainly welcome the opportunity and the need to promote the availability of films/TV programmes online and cross-border, where there are specific market needs. However, we would also like to remind the Commission that the TV sector works in a very particular way and that in practice for example TV Broadcasters often buy the total bundle of rights from our TV producers. This means that in reality these producers have no control over the online rights and as a result of the condition this could imply that they would not be eligible for the aid in the first place.

Regrettably, in the majority of cases the online rights indeed remain largely unexploited, which clearly limits the circulation of European TV productions. Independent TV producers would

welcome the opportunity to exploit those rights on new platforms and across borders - as long as this will be done in accordance with the market needs - in order to promote a less fragmented AV market and being aligned with the principles of the Digital Agenda 2020. We believe however that making the release of online rights to third parties a condition of aid could result in unintended perverse effects and would not lead to the desired increase of online circulation.

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

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