

## **EFADs- CineRegio State Aid Workshop**

**Brussels, 4 June 2019, 9.30am-5pm**

**Centre du Cinéma et de l'Audiovisuel, Boulevard Léopold II, 44 - 1080 Bruxelles  
Ministère de la Fédération Wallonie Bruxelles.**

### **Draft summary report**

#### **1. Exchange between CineRegio and EFADs members**

##### *Monitoring*

- CineRegio and EFADs members exchanges about their experience in monitoring procedure (when the European Commission wants to check the compliance of schemes and supported projects with the rules/criteria set out in the Cinema Communication / GBER). The following funds present went through a monitoring exercise: CNC, Vienna Film Fund, Czech Film Center, Slovak Film Institute.
- Monitoring took place either on notified or GBER schemes. Detailed paperwork have to be submitted, incl. often examples of projects supported and eventually to adjust guidelines (definition of difficult works, discrimination on the ground of nationality, incentive effect, undertakings in difficulty, intensity...). It could take a long time.
- Several funds explained that the difficulty they encounter is sometimes linked to the fact that state aid issues are coordinated at national level by another administration that does not necessarily know about the specificities of the Cinema Communication and the application of state aid rules to the audiovisual sector (expertise is on GBER which cover many fields incl. audiovisual article 53 & 54).

##### *Transparency*

- As part of State Aid Modernization (SAM), the European Commission introduced new requirements from 1st July 2016, whereby individual aid awards exceeding EUR 500.000 have to be published by MS in publicly accessible repositories.
- There was lack of clarity as to what needs to be taken into account in the EUR 500.000. When in a MS, national and regional funds and tax incentives are given to the same production company and for the same project, should we cumulate the amount and therefore communicate between regional and national authorities? Who should be considered liable for entering the data in the database and respecting the 6 months deadline?
- The 6 months deadline creates an administrative burden as it is not aligned with the annual reporting obligation.
- Currently there is no common practice. In some MS, each fund sends information about its own granting decisions without cumulating. Other,

already exchange information as soon as the granting amount exceeds EUR 400.000.

- Question was asked about the situation when in one MS, the same project received money via different beneficiaries.
- Certain funds wondered about the need to cumulate also with funding granting by foreign funds (in the case of co-productions).

#### *Incentive effect*

- According to the incentive effect, a beneficiary has to apply for funding before principal photography.
- This principle has a direct consequence on the eligible costs.
- The strict application of the incentive effect is problematic for certain MS or/and projects (e.g. documentaries or if the shooting can only take place at a certain moment/season, the need to have some footage to attract private investors, minority co-producer arriving late in the project).
- In certain MS, there is the possibility to ask for an exception duly justified, other MS accept shooting material made max 12 months before the application (counted as development expenses).

## **2. Exchange with the European Commission officials from DG COMP**

*Presentation of the latest and next developments on GBER and Cinema Communication (including transparency requirements) – by Lovisa Mouzaoui, Ansgar Held and Davide Galli de Paratesi.*

[Slides as well as additional documents shared with participants].

The European Commission has launched a fitness check exercise but there is no intention to re-open the Cinema Communication nor to change the article 53 and 54. However, if CineRegio and EFADs find there are issues to be raised/suggestions for changes, the parties are invited to participate in the Public Consultation on the Fitness Check (deadline 10th July).

#### *Transparency and reporting (TAM database)*

The Commission clarified that:

- The transparency obligation aims at allowing the citizen to know about companies receiving large amount of public money, it is a business intelligence tool.
- State aid schemes where individual aid awards exceed EUR 500.000 have to be published by MS in publicly accessible repositories.
- It is up to each MS to decide if they want to use TAM (IT platform and public repository for the publication of aid awards created by the European Commission to help MS in the implementation of the transparency obligation) or set up their own system to submit the data in format requested by DG Comp. 25 MS have chosen to

use TAM. Spain, Romania and Poland have decided to develop their own national registers. Their data are then transferred to the European Commission (and not encoded in TAM). Italy has a central system that checks and cumulates aids before reporting/encoding it to TAM

- Cumulation: the Commission's staff paper on transparency says: "(...) *while transparency in principle requires cumulation and publication per project or aided activity, even if this includes different eligible costs or objectives, **formal compliance checks** will be restricted to the need to cumulate **granting acts** for the **same beneficiary** and the **same eligible costs** for the **same objective** under the **same project**, in order to comply at least with the **minimum requirements of Article 8 of GBER***"
- Data to be sent to the European Commission 6 months after granting decision, 1 year for fiscal incentives.
- About the cumulation, the European Commission explained
  - that Member states are free to decide how to practically implement the best method for cumulating aids and that there is a need for a good internal communication between granting authorities
  - a concrete example: if EUR 750.000 are granted by a national film fund on 2nd January 2017 and then EUR 300.000 by a regional film fund on 7th February 2017: 2 entries should be made in TAM (1 by the national and 1 by the regional)
- The aid awards information need to be entered in TAM on the basis of the granting decision, even if the support is not in the end distributed (different from SARI) because distortion on the market occurs as soon as there is a commitment to support a project
- DG Comp. makes compliance controls on Transparency on a yearly basis. A specific unit is in charge of this. It mainly checks: respect of the deadline and the volume, cross-check/crossing data with SARI (on the basis of the number of expected projects). In most MS there is no direct compliance issue.
- No real sanctions in case of non-respect. The Commission policy is more to encourage the development of good practices

#### *Incentive effect (ex. documentaries...)*

- The European Commission understood perfectly why a certain degree of flexibility is needed in this area. They insisted on the fact that the wording of the GBER is large enough to provide flexibility. The incentive effect is a matter of principle as has been subject of a court ruling recently ([C-349/17 - Eesti Pagar](#))
- Some countries have different schemes with different eligible costs (development, production...)

- On the question of the period of eligible costs, the Commission invited the participants to raise the points in the framework of the Consultation (Fitness check).

#### *Undertakings in difficulty*

- Requiring a self-declaration is good but not sufficient. The fund should check that there is no formal bankruptcy procedure engaged.
- It is a general budgetary rule that can not be changed even if the Commission knows the specificity of the audiovisual sector: sometimes a company after receiving funding is not in difficulty anymore.

#### *Support to infrastructures/studios*

- Operating aid is not possible on the basis of article 53 and 54 that is focused on support to content (works). There is a clear resistance from DG Comp officials in opening this up. Currently content (AV works) have a special status.
- A short exchange took place on the example of Ciudad de la Luz film studio in Spain, where the Commission asked Spain to recover €265 million from Ciudad de la Luz film studio complex. [Summary of case: the €265 million public funding granted by the Valencia Regional Government to the film studio complex was not provided on market conditions and needed to be paid back by the beneficiary. The Commission concluded that no private investor would have accepted to invest on the same terms and that the public funding massively distorts competition between major European film studios. The Commission's investigation found that the market for large film studios in Europe is very competitive].
- It was suggested that maybe other state aid legal basis could be useful to look at (innovation, research, SMEs, regional).

#### *VFX*

- Support to specific segment of the production is not allowed. It is more industrial than cultural. Some MS would like to support VFX or techno hubs and this was not allowed so far.

#### *Video-games*

- Video games are not included in the GBER article 54, however, it is not a problem to have these schemes notified via the Cinema Communication (individual assessments). DG Comp. has already issued several positive decisions for state aid support in this sector (France, UK, Bayern, Flanders, Denmark).

#### *Third countries support*

- Public support awarded by 3<sup>rd</sup> countries is not considered state aid and not bound by EU rules.

#### *Film festivals*

- Support to film festivals can be secured via the article 53 of the GBER.

### **3. Next steps**

- 1. CineRegio and EFADs will continue to exchange about monitoring experiences, transparency issues and implementation of the incentive effect**
- 2. The secretariats of CineRegio and EFADs will prepare a list of funding schemes which have been monitored/checked by DG Comp. since 2015, incl. "Transparency compliance control".**
- 3. CineRegio and EFADs members will reflect about the opportunity to participate in in Public Consultation on the Fitness Check (deadline 10 July).**

#### **List of participants**

##### **EFADs**

1. Julie-Jeanne Régnauld (Secretary General, EFADs)
2. Edith Pirlot (legal officer, FWB, BE)
3. Elena Frankova (Director, Czech Film Fund, CZ)
4. Susan Ronald and Christian Spiteri (Funds Manager, Malta Film Commission, MT)
5. Jérémie Kessler and Emilie Cardoso (Deputy Director and officer European Affairs CNC, FR)
6. Els Hendrix (BKM, DE)
7. Natasa Bucar (Managing Director, Slovenian Film Center, SI)
8. Jonas Vilhelmsson (legal officer, Swedish Film Institute, SE)
9. Stephen Bristow (representing BFI, UK)
10. Maria Mineiro (Vice-President, ICA, PT)

##### **CineRegio**

1. Charlotte Appelgren (SG Cineregio)
2. Gerlinde Seitner, Vienna Film Fund (AU)
3. Gregory Faes, Auvergne Rhône-Alpes Cinéma (FR)
4. Nevina Satta, Sardegna Film Fund (IT)
5. Philippe Reynaert, Wallimage (BE)
6. Annabelle Lepiece, Lawyer Wallimage/CineRegio on State Aid issues
7. Frederik Beernaert, VAF/ Screen Flanders (BE)
8. Katarina Krave, Film i Vast (SE)

##### **European Commission**

1. Ansgar Held (DG COMP, Unit C4, State aid media & audiovisual)

2. Lovisa Mouzaoui (DG COMP, Unit C4, State aid media & audiovisual)
3. Marie Quinquet de Monjour (DG COMP, Unit C4, stagiaire)
4. Davide Galli de Paratesi (DG COMP, Unit A3, State aid policy and scrutiny)