

TERMS OF REFERENCE

Tender n° DG EAC 02/04

Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aids schemes for films and audiovisual productions

Contracting Authority: European Commission

1. BACKGROUND INFORMATION

The criteria used by the European Commission to assess the compatibility with the EC Treaty of aid schemes for cinema and TV production were clarified in chapter 2 of the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works¹. This Communication contains the general approach of the Commission with regard to State aid to the cinema and TV production sector.

Such approach has been recently confirmed up to 30 June 2007 by a further Communication² which also announces the Commission's intention to launch a study covering the effects of state aids systems and in particular the economic and cultural impact of territorialisation requirements taking into account the impact on co-productions.

The criteria set by the Communication are two-fold:

- a) Respect of the general legality criterion
- b) Specific compatibility criteria for State aid to cinema and TV fiction production.

The second of these criteria applies to "territorialization". The Communication states that "Member States shall allow producers to invest at least 20% of the film budget in others Member States without suffering any reduction in the aid provided for under the scheme". Most Member States do not impose any territorialization criteria, in other words, producers are free to spend their film budget in the country or countries of their choice. According to

¹ COM(2001)534 final of 26.09.2001, OJ C 43, 16.02.2002

² COM(2004)171 final of 16.03.2004, [to be published]

Commission information, in January 2004, there were four Member States (France, UK, The Netherlands and Belgium) and certain German Länder that imposed “territorialization” requirements.

The Communication stated that the Commission did not intend to alter the specific compatibility criteria unless they prove unable to prevent undue distortion of competition within the EC.

According to the European Audiovisual Observatory³, the EU Member States dedicated 1099 million EUROS in 2001 and 1100 in 2002 for funding the development, production and distribution of European films. The national or regional mechanisms of support to cinema are very different in terms of how they are financed, available resources, criteria for selecting projects, etc. The Observatory’s database KORDA⁴ contains an inventory of State aid in Europe. The Observatory has also scheduled the publication by May 2004 of an extensive report whose provisional title is “Public funding for films and audio-visual works in Europe”.

The number of European films financed via international co-productions is very high and in some Member States they represent the majority of the films produced. European co-productions are also important from a pan-European circulation point of view since they are more likely to be distributed in several Member States than the films produced in a single country. The European Convention on Cinematographic Co-production⁵, which is signed by all the Members of the EU, has largely contributed to the development of European co-productions.

2. CONTRACT OBJECTIVES & EXPECTED RESULTS

2.1. Overall objectives

The overall objective of this contract is to provide information to the Commission in respect of the application of Articles 151 and 87.3(d) of the EC Treaty.

According to Article 151.1 of the EC Treaty, “the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity”. In addition, Article 151.4 enshrines the principle that the Community shall take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures. Cinematographic productions are an essential component of our culture, which are covered by Article 151.

Article 87.3 (d) of the EC Treaty states that the Commission may consider compatible with the common market State “aid to promote culture and heritage conservation where such aid

³ European Audiovisual Observatory, 2003 Yearbook, Volume 3, T.15.1.

⁴ <http://korda.obs.coe.int/web/fr/>

⁵ <http://conventions.coe.int/>

does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest". On the basis of this exception, the Commission has examined and approved all the national schemes of State aid to cinema that have been notified.

2.2. Specific objective

The specific objective of this contract is to provide the Commission services with a study examining the impact of the "territorialization" requirements imposed by certain Member States as a condition for providing State aid to cinema, and in particular:

- The economic impact on the cinema sector, in terms of distortion of competition;
- The influence on the development of European co-productions.
- The influence on the cinema sector in cultural terms

The study will also evaluate the relative importance of fiscal advantages on the localisation of film production.

2.3. Results to be achieved by the Contractor

A. The contractor shall deliver a clear analysis of the essential characteristics of the cinema industry and film distribution/circulation in the countries covered by the study applying "territorialization" and of the cinema industry and film distribution/circulation in the covered countries that do not apply it, compare them, and assess whether the differences (if any) can be explained by the existence of "territorialization" requirements. The contractor shall also evaluate what should be the consequences in cultural terms in case of removal of territorialisation requirements from national aid schemes

B. The contractor shall also identify the composition of the cost budgets of films produced in the two categories of countries mentioned above and identify the impact of the "territorialization" requirements, providing examples.

C. In relation to European co-productions, the contractor shall determine whether "territorialization" requirements hinder the implementation of European co-productions deals. He shall also illustrate how "territorialization" requirements are treated in co-production agreements between Member States.

D. Finally, the contractor shall provide a description of State aid schemes based on fiscal advantages shall identify the magnitude of the number of film productions benefiting from such schemes and shall assess their impact on the choice of the country of film production.

3. SCOPE OF THE WORK

3.1. General

3.1.1. Project description

The project consists of a study, including a 1 day workshop for validating its findings.

3.1.2. Geographical areas to be covered

28 countries: 25 EU Member States, and 3 candidate countries (Rumania, Bulgaria and Turkey).

3.2. Specific activities

PART A: Impact of “territorialization” requirements on industry’s structure.

This part shall identify the possible links between the obligations existing in certain countries to invest in a certain area a share of the subventions received via aid schemes and the essential characteristics of the cinema production industry, as well as the intra Community circulation of films The following steps should be followed:

A.1 providing a historical analysis of “territorialisation” requirements in all covered countries

A.2 Identification of "territorialisation" requirements in the aid schemes in force in the years 2000/2003. The findings will be checked with responsible national authorities.

A.3 Grouping of the countries according to the degree of intensity of the "territorialisation" requirements.

A.4 Analysis of the industry’s main features (number and size of companies, existing stock of industrial facilities, number of jobs and value added in each of the main sub-sectors, prevailing prices for rendering typical services and degree of use of industrial capacities, etc.) in 2002/2003 in all the countries with "territorialisation" requirements.

A.5 Analysis of the industry’s main features (number and size of companies, existing stock of industrial facilities, number of jobs and value added in each sub-sector, prevailing prices for rendering typical services and degree of use of industrial capacities, etc.) in 2002/2003 in the countries without "territorialisation" requirements.

A.6 Identification of differences and similarities between the main features of the cinema industries (number and size of companies, existing stock of industrial facilities, number of jobs and value added in each sub-sector, prevailing prices for rendering typical services and degree of use of industrial capacity, etc.) in 2000/2003 of the two groups. When making the comparison, countries inside the same category (territorialization/absence of territorialization) shall be grouped, taking into account their market, industrial and financial/regulatory structure.

A.7 On the grounds of the above elements, impact evaluation of the "territorialisation" requirements on the main features of the cinema industry in 2002/2003 (number and size of

companies, existing stock of industrial facilities, number of jobs and value added in each sub-sector, prevailing prices for rendering typical services and degree of use of industrial capacity, etc.) in the two groups of comparable countries.

A.8 Identification of the patterns of the intra Community circulation of films (in terms of international distribution, attendance and revenues) produced in the two groups of countries (territorialization/absence of territorialization) and international co-productions (see point B for reference). Countries in each of the two categories (territorialization/absence of territorialization) shall be grouped, taking into account their market, industrial and financial/regulatory structure.

A.9 Impact evaluation of the "territorialisation" requirements on the intra Community circulation of films (in terms of international distribution, attendance and revenues).

A.10 Qualitative evaluation of the consequences in cultural terms for the cinema sector if the "territorialization" requirements were removed by all Member States.

A.11 On the grounds of the above elements, perspective evaluation of the consequences on the main features of the cinema industry (number and size of companies, existing stock of industrial facilities, number of jobs and value added in each sub-sector, prevailing prices for rendering typical services and degree of use of industrial capacity, etc.) in the two groups of comparable countries if the territorialization" requirements were removed by all Member States.

A.12 On the grounds of the above elements, perspective evaluation of the consequences on the patterns of the intra Community circulation of films (in terms of international distribution, attendance and revenues) produced in the two groups of countries (territorialization/absence of territorialization) and international co-productions (see point B for reference). Countries in each of the two categories (territorialization/absence of territorialization) shall be grouped, taking into account their market, industrial and financial/regulatory structure.

PART B: ANALYSIS OF THE BUDGETS OF A SAMPLE OF FILMS

B.1 Identify a representative sample of films (from both the countries covered by the study and originating from other countries) produced in a single country or internationally co-produced over the period 2000/2003, and divide them into the following categories:

a) Films produced in a single country not applying "territorialization"

a.1) small and medium budget

a.2) large budget

b) Film produced in a single country applying "territorialization".

b.1) small and medium budget

b.2) large budget

c) Films co-produced between countries applying "territorialization"

c.1) small and medium budget

c.2) large budget

d) Films co-produced between countries not applying “territorialization”

d.1) small and medium budget

d.2) large budget

e) Films co-produced between a country applying “territorialization” and a country not applying “territorialisation”

e.1) small and medium budget

e.2) large budget

B.2 Divide the budget structure of a the chosen films into an appropriate number of cost categories (covering the steps of development, production and post-production);

B.3 Compare mentioned cost categories of the budget structure of films sub a.1 with sub b.1, c.1, d.1 and e.1; sub a.2 with sub b.2, c.2, d.2 and e.2

B.4 Identify and analyse the economic impact (if any) of the “territorialization” requirements on the mentioned cost categories of the budget structure of the chosen films.

B.5 Identify and analyse the impact (if any) of the “territorialization” requirements in terms of geographical localisation of spendings concerning the mentioned cost categories of the budget structure of the chosen films.

PART C: IMPACT OF “TERRITORIALIZATION” REQUIREMENTS ON INTERNATIONAL CO-PRODUCTION AGREEMENTS AND PRODUCTIONS (between the countries covered by the study)

C.1 Identify the number of international co-productions (in relation to the total number of productions) carried out over the period 2000/2003 between:

a) Countries covered by the study not applying “territorialization”

b) Countries covered by the study applying “territorialization” and countries that do not apply it

c) Countries covered by the study applying “territorialization”

C.2 Analyse and describe how “territorialization” is treated in the co-production agreements between the countries covered by the study.

C.3 Identify the patterns of the financing models of international co-productions involving the countries covered by the study with a specific reference to the “territorialization” issues (see point C.1), the Media Plus Programme as well as the instruments of the Council of Europe on co-productions.

PART D: STATE AID SCHEMES BASED ON FISCAL ADVANTAGES

D.1 Enumerate and describe the functioning of State aid schemes based on fiscal advantages, in force in 2000/2003 in all the countries covered by the study.

D.2 Identify the number of films whose producers benefit from fiscal advantages, per country and budget size (small/medium, large).

D.3 Identify how many of the films that have received fiscal advantages are considered as national productions by the country granting the fiscal advantage, are considered as European co-productions or co-productions with third countries.

D.4 Evaluate the impact of such schemes on the choice of the location for producing films.

3.3. Project management

3.3.1. Responsible body

The responsible body within the European Commission is Directorate-General Education and Culture, Unit C/1 “Audiovisual Policy”.

4. LOGISTICS AND TIMING

4.1. Location

Contractor own facilities

4.2. Commencement date & Period of execution

The indicative intended commencement date is 1.10.2004 and the period of execution of the contract will be 12,5 months. Actual commencement will take place after signature of the contract by both parties.

4.3. Time Schedule

The following meetings with the Commission services in Brussels are foreseen:

- Kick-off meeting;
- Presentation and discussion of the first interim report;
- Presentation and discussion of the second interim report;
- Presentation and discussion of the preliminary and the draft final report.
- 1 day workshop.

The reporting schedule is specified in section 6.

5. REQUIREMENTS

5.1. Personnel

5.1.1. Key experts

All experts who have a crucial role in implementing the contract are referred to as key experts. The profiles of the key experts for this contract are set out below. It is not necessary that each of these profiles correspond to a single individual. One expert may have the skills and experience required to cover more than one role in the project. Equally, one role may be divided between two or more experts if the Tenderer believes that this will be the most effective way to achieve the desired results. It is recommended that the team proposed by the Tenderer has all the skills and experience described below:

Key expert 1: Team Leader

Qualifications and skills

Degree in Economics.

Professional experience

At least 15 years of experience in economic research, of which at least 5 as team leader.

Key expert 2: Senior economic expert

Qualifications and skills

Degree in Economics.

Professional experience

At least 15 years of experience in economic research. Experience in the audiovisual sector would be an asset.

Key expert 3: Senior legal expert

Qualifications and skills

Degree in Law.

Professional experience

At least 15 years of experience in competition law, and, in particular, State aid.

Experience in the field of State aid to cinema would be an asset.

Key expert 4: Senior fiscal expert

Qualifications and skills

Degree in Economics or law

Professional experience

At least 15 years of experience in economic and fiscal research. Experience in the audiovisual sector would be an asset.

Key expert 5: Cinema expert

Professional experience

At least 10 years of experience in the cinema sector, as a cinema critic, director or producer.

5.1.2. Other experts

Researchers able to cover with an appropriate knowledge of the relevant legal and economic situation in the 28 countries covered by the study.

5.2. Facilities to be provided by the Contractor

The Contractor shall ensure that experts are adequately supported and equipped. In particular it shall ensure that there is sufficient administrative, secretarial and interpreting provision as necessary, to enable experts to concentrate on their primary responsibilities.

6. REPORTS

6.1. Reporting requirements

Each draft report will be submitted in 1 original and 4 copies in English and by e-mail (MS Word compatible) to the correspondent official (whose name will be communicated by the Contracting Authority).

The Commission will comment on the draft reports within 60 days. In the absence of observations from the Commission within the deadline, all reports will be considered as being approved.

Within 20 days of receiving the Commission's observations, the Contractor will submit new draft reports taking full account of these observations, either by following them precisely, or by explaining clearly why he did not. Should the Commission still not consider the reports acceptable, the Contractor will be invited to amend them until the Commission is satisfied.

After approval by the Commission, the final version of the reports will be submitted in 1 original and 4 copies and by e-mail to the correspondent official in English.

The contractor will also provide the approved version of the final report on 5 CD-ROMs (MS Word compatible and HTML formats).

6.2. Interim reports

The first interim report shall be submitted within 4 months after the date of signature of the contract by the last of the two parties. The second interim report shall be submitted within 8 months after the date of signature of the contract by the last of the two parties.

The **first interim report** shall include at least the following:

- Findings of parts A.1, A.2 and A.3 for all the countries covered by the study. Findings of parts A.4, A.5, A.6, A.7, A.8, A.9, A.10 and part B. for 4 EU countries, 2 of whom applying “territorialization” and 2 not applying it;
- problems encountered, solutions found or proposed, and impact on future work;
- Detailed time schedule for the completion of the work;

The **second interim report** shall include at least the following:

- Findings of parts A and B of the study for all countries covered by the study;
- Findings of parts C and D for 4 EU countries, 2 of whom applying “territorialization” and 2 not applying it.
- Problems encountered, solutions found or proposed, and impact on future work;
- Detailed time schedule for the completion of the work;

6.3. Final report

A preliminary final report shall be submitted within 11 months after the date of signature of the contract by the last of the two parties. The report shall include the following:

- An executive summary in English, French and German and a presentation set in English suitable for the general public (MS Powerpoint compatible).
- A detailed analysis of the findings of the study (parts A, B, C and D).

The draft final report will be prepared taking into account comments presented during the workshop referred to in section 6.4. The draft final report will be submitted within one month after the workshop.

6.4 Organization of 1-day workshop in Brussels.

The workshop will be held within two weeks after the submission of the preliminary final report. It will be designed to stimulate a discussion among interested parties in order to validate the findings of the study contained in the preliminary final report.

The Commission will provide the meeting and interpretation facilities for the workshop. All other organizational aspects will be the responsibility of the contractor. The Commission will provide a list of invitees, which should be completed by the contractor where appropriate.