



EUROPEAN COMMISSION

Brussels, 11.XII.2007

C(2007) 6074 final

**Subject: State aid NN 6/2006 – United Kingdom
UK film development and production funds**

Sir,

1. SUMMARY

(1) I am pleased to be able to inform you that the European Commission has approved the film support schemes listed below, as described in the above notification (referred to below as "the Schemes"), until 31 December 2012. The UK authorities have undertaken to implement any changes that may be required after the expiry of the Commission's Cinema Communication on 31 December 2009, at the latest¹.

- UK Film Council:
 - Premiere Fund;
 - New Cinema Fund; and
 - Development Fund
- Scottish Screen:
 - Content development;
 - Short film production; and
 - Content production

¹ 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 works (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04) and 2007 (OJ C 134 p5, 16/6/07).

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- Northern Ireland Screen:
 - Script development;
 - Low budget feature film;
 - Feature films & TV production, including Mini-strands; and
 - Mini-distribution and promotion
- Film Agency for Wales:
 - Script Development; and
 - Content Production

(2) The procedure followed, the description of these Schemes and the Commission's assessment of them are set out below, as well as the Commission's formal decision. As there are several schemes, a table of contents has been provided for ease of reference.

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3. PROCEDURE

- (3) In a letter dated 15 December 2005, received by the European Commission on 19 December 2005², the UK authorities notified the UK film development and production funds.
- (4) The Commission wrote requesting additional information on 28 March 2006³. The Commission received the reply of the UK authorities to these requests on 29 May 2006⁴.
- (5) In the context of the UK film tax incentive State aid case (N461/05), the UK authorities had provided information concerning the criteria for difficult and low budget films on 11 August 2006⁵ and for the UK Cultural Test on 9 November 2006⁶. Both elements were also relevant for the assessment of the UK film production and development funds.

² A/40535

³ D/52538

⁴ A/34148

⁵ A/36476

⁶ A/38997 & A/39010

- (6) The Commission wrote to the UK authorities on 2 April 2007⁷ to ask for more information. The UK authorities responded on 2 May 2007⁸, 22 June 2007⁸, 17 September 2007⁹ and 5 October 2007¹⁰.

4. DESCRIPTION OF THE MEASURES

- (7) This notification relates to a number of separate film support schemes funded through an allocation of UK National Lottery funds.
- (8) The Schemes are administered by the following funding bodies:
- **The UK Film Council**, a Non Departmental Public Body¹¹, and company limited by guarantee, with the Secretary of State for Culture, Media and Sport being the sole member.
 - **Scottish Screen**, a Non Departmental Public Body¹¹, a company limited by guarantee and a registered charity.
 - **The Northern Ireland Screen**, a company limited by guarantee which receives its funding for these particular schemes from the Arts Council of Northern Ireland.
 - **The Film Agency for Wales**, a limited company which is the sole Agency for film in Wales and provides the Arts Council of Wales with administrative and advisory support, putting forward recommendations for projects that should receive funding.
- (9) This section is divided between those characteristics which are common to all the Schemes and those which are specific to each Scheme operated by each of the funding bodies.

Common characteristics

4.1 *Legal basis*

- (10) The national legal basis for the Schemes is the National Lottery Act 1993 (Chapter 7)¹², as amended by the National Lottery Act 1998 (Chapter 22)¹³ and the following Statutory Instruments:
- Statutory Instrument 1994 No 1342 National Lottery¹⁴ (with respect to the Arts Council of Wales, Scottish Screen and Arts Council of Northern Ireland)
 - Statutory Instruments 1999 No.2090 National Lottery¹⁵ (with respect to UK Film Council)

⁷ D/51522

⁸ A/37540

⁹ A/37527

¹⁰ A/38157

¹¹ The UK authorities define a Non Departmental Public Body as a body which has a role in the processes of national government, but is not a Government department or part of one, and which accordingly operates to a greater or lesser extent at arm's length from Ministers

¹² www.legislation.hmsso.gov.uk/acts/acts1993/Ukpga_19930039_en_1.htm

¹³ www.legislation.hmsso.gov.uk/acts/acts1998/19980022.htm

¹⁴ www.legislation.hmsso.gov.uk/si/si1994/Uksi_19941342_en_1.htm

¹⁵ www.legislation.hmsso.gov.uk/si/si1999/19992090.htm

- Statutory Instrument 2000 No 78 National Lottery¹⁶ (with respect to Scottish Screen)

4.2 'British' film

- (11) All film projects selected for funding must be capable of certification as a 'British' film by the UK Government.
- (12) A film project can qualify as a 'British' film in one of the following three ways:
- It passes the UK Cultural Test (see paragraph (14) below)
 - It is a coproduction which satisfies the conditions of the European Convention on Cinematographic Coproduction
 - It is covered by one of the UK's bilateral coproduction agreements (to which the UK authorities will apply the UK Cultural Test through the treaties and/or their guidelines).
- (13) All the production support Schemes apply the UK Cultural Test within their eligibility criteria. Since some of the elements of the UK Cultural Test are not known before the development phase, the development funding Schemes apply rules based on the UK Cultural Test. More details are provided in the description of these Schemes.
- (14) The Films (Definition of “British Film”) (No.2) Order 2006 introduced the current UK Cultural Test from 1 January 2007. This is a points-based system which gives each film a score out of a maximum 31 points, with a pass mark of 16, based on the following criteria:

Criterion	Maximum points
A – Cultural content (Maximum total : 16 points)	
A1 Film set in the UK	4 ¹⁷
A2 Lead characters British citizens or residents	4 ¹⁸
A3 Film based on British subject matter or underlying material	4 ¹⁹
A4 Original dialogue recorded mainly in English	4 ²⁰
B – Cultural contribution (Maximum total: 4 points)	
• Film represents/reflects a diverse British culture / British heritage / British creativity	4 ²¹

¹⁶ www.opsi.gov.uk/legislation/scotland/ssi2000/20000078.htm

¹⁷ 1 point if at least 25% of the film is set in the UK, 2 points for at least 50%, 3 points for at least 66% and 4 points for at least 75%. A film is set in the UK if the story takes place in the UK. It does not matter where the film is actually shot. This will be measured by the counting the number of pages in the script which are set in the UK, using the standard script format of one page of script corresponding to one minute of screen time.

¹⁸ 1 point if 1 of the 3 main characters is British, 2 points if 1 of the 2 main characters is British, and 4 points if 2 or more of the 3 main characters are British or if there are only 1 or 2 main characters and all are British. The main characters will be determined by taking account of their centrality and prominence in the story.

¹⁹ 4 points if the film depicts a British story, ie, if the subject matter is British

²⁰ 1 point if at least 25% is recorded in English or a UK regional or minority language, 2 points for at least 50%, 3 points for at least 66% and 4 points for at least 75%. This will be measured by comparing the number of words spoken in these languages in the script with the total number of words of dialogue in the script.

²¹ Up to 2 points for significant contribution towards UK cultural diversity (1 point for subject/portrayal, 1 point for other factors impacting on the final content); 1 point for significant contribution towards UK cultural

Criterion	Maximum points
C – Use of UK cultural hubs (Maximum total: 3 points)	
C1 Studio and/or location shooting / Visual effects / Special effects	2 ²²
C2 Music recording / Post production	1 ²³
D – Use of EEA national/resident cultural practitioners (Maximum total: 8 points)	
D1 Director	1
D2 Scriptwriter	1
D3 Producer	1
D4 Composer	1
D5 Lead actors	1
D6 Majority of cast	1
D7 Key staff ²⁴	1
D8 Majority of crew	1

The following rule applies if a film scores all 15 of the points available in sections C, D and A4: if it scores less than two points in section A1 and less than two points in section A2, it must additionally obtain the points in section A3 to pass the UK Cultural Test²⁵.

4.3 Eligible costs

- (15) The Schemes are all aimed at the film/TV production sector so the eligible costs are those which are incurred in the making of a film or audiovisual work.
- (16) The specific eligible costs depend on the schemes concerned. In general, the development funds aim to cover the costs of developing a script from a story or concept. In general, the production funds cover the costs of making a film (or other audiovisual work) based on a script.

4.4 Aid amount

- (17) The aid amount in these schemes is not calculated as a pre-determined percentage of the eligible costs.

heritage; and 1 point for significant contribution towards UK culture through a novel and creative approach to filmmaking.

²² 2 points if at least 50% of work on shooting / visual effects / special effects is carried out in the UK, 0 points for less than 50%.

²³ 1 point if at least 50% of work on music recording / post production being carried out in the UK

²⁴ 1 point if at least one of the following is an EEA citizen or resident: Lead cinematographer, lead production designer, lead costume designer, lead editor, lead sound designer, lead visual effects supervisor, lead hair and make-up supervisor

²⁵ This still means that, if such a film scores two points in section A1 or two points in section A2, it will not require the additional points from section A3 to pass the test.

- (18) According to the UK authorities, potential beneficiaries request an amount of funding in their application. Sometimes, the potential beneficiary will have already secured other funding, or at least have been given an indicative amount of funding from such other sources of finance so that the amount being requested from the funding body addresses some or all of the balance of finance required.
- (19) The funding agencies may offer some, all or none of the amount of funding requested. They may review the production budget and suggest ways of reducing the costs (and therefore the amount being requested from them), or they may suggest that further and/or alternative sources of finance are approached in order to reduce the amount being requested from them.
- (20) The amount that the funding agencies are prepared to offer to the project will also take into account the total amount of funding available to them in the relevant scheme and what they consider to be the most strategic use of that funding. They will also take into account, in feature film funding, the potential return on the investment.
- (21) The aid amount is therefore the minimum amount required from the funding body to get the project made or completed, bearing in mind the aid intensity limits. If a shortfall remains, the potential beneficiary is asked to explain how they plan to finance this balance, and thus will indicate whether this funding is likely to be from a State Aid source or not.

4.5 *Difficult films*

- (22) Difficult films under £8 million (€11.9 million) may qualify for higher levels of State aid than 50% under these Schemes.
- (23) A difficult film is defined by the UK authorities as “one which would have little if any prospect of commercial success because of its experimental nature or because it represented a high level of creative risk. A difficult film would also need to contribute to achieving one or more of the following objectives:
 - (a) comprise a strong cultural and public service ethos; or
 - (b) contribute to the improvement of new technologies by, inter alia, exploring new digital delivery formats in an inventive and creative way, furthering the art of cinema and storytelling; or
 - (c) promote new and innovative challenges in the form and content of the films financed; or
 - (d) offer a clear alternative to commercial cinema and provide opportunities to film makers who have been rejected by, or have themselves rejected, the commercial film industries in Europe; or
 - (e) encourage film-makers and audiences to engage with minority languages; or
 - (f) support development of, and provide creative opportunities for businesses and individuals in areas of low economic or social developments; or
 - (g) provide opportunities for organisations and individuals who have been excluded from the film industry as a result of, for example, race, gender, sexual

orientation, poverty, disability, geographical isolation, religious belief or political opinion; or

- (h) support the development of creative and effective film-making communities across a minimum of two European Union or European Economic Area countries; or
- (i) involve first-time or inexperienced film-making writing, directing or producing talent;
- (j) promote the development of short films or of pilot films of under 10 minutes which have commercial potential.”

4.6 *Recouping funding*

- (24) In the case of development funding, many of the scripts that receive funding will not get made into films. However, a condition of development funding from each funding body is that, in the event that a film project goes into production, the funding will normally be repaid with a premium. In such cases, the funding becomes repayable upon the commencement of principal photography (being the first day of actual shooting/filming).
- (25) It is also normal practice for the funding bodies to expect to participate in any film profits (ie, an agreed proportion of the producer’s share of any net profits of the film) as a result of their development funding in the film.
- (26) In the case of production finance, the funding bodies aim to invest in films that have the potential to recoup some or all of their investment (except in the case of difficult films including short films). The terms for recouping this funding in film productions are normally negotiated individually in accordance with established industry practices. Each funding body will expect and require commercial repayment terms and a profit participation share commensurate with its participation in the production funding in relation to other investors and consistent with those customary in the private sector.
- (27) Funding recouped in this way is available for use by the funding body either in one of its film support Schemes or for its related activities.

4.7 *Combination with other State aid*

- (28) The Schemes can be combined with other forms of direct aid given to the film industry (eg at local/regional level) and with the UK film tax incentive²⁶.
- (29) By the time a funding body decides to offer funding, it will have access to a finalised finance plan that provides details of support from all other funding bodies. From this, the funding body will calculate the maximum support that can be provided. The funding agreement with the filmmaker will include a clause to the effect that the overall aid intensity (including tax incentives) in the film must be limited to 50% of

²⁶ Approved by the European Commission on 22/11/06: http://ec.europa.eu/community_law/state_aids/comp-2005/n461-05.pdf

the total production budget. For difficult films, higher percentages are allowed, as indicated in the tables below summarising the specific characteristics of each scheme.

Specific characteristics²⁷

- (30) This section sets out the specific characteristics of the Schemes (which are in addition to the general characteristics referred to above). Since Schemes managed by the same funding body have similar selection criteria, the Schemes are grouped by each of the four funding bodies.
- (31) The sub-section for each funding body describes the specific characteristics of each scheme included in this notification which is managed by the funding body. Each sub-section begins with a table showing the total annual budget and the maximum award per project for each of the Schemes managed by the funding body. The table also shows both the maximum aid intensity which is generally applicable and those that are applicable to difficult films for each of the Schemes.
- (32) The specific characteristics for each scheme are then described, including the objective of the scheme, the form of the aid, selection criteria, beneficiaries, eligible costs, any specific explanation of the data included in the initial table and any territorial conditions.

4.8 UK Film Council schemes

- (33) The UK Film Council operates three of the Schemes included in this notification:

Scheme	Total funds available per year	Max award per project	Max aid intensity – general	Max aid intensity – difficult films	Max cumulative aid intensity	
					General	Difficult films
Premiere Fund	£8m (€11.5m)	£3m (€4.3m)	35%	50%	50%	75%
New Cinema Fund	£5m (€7.1m)	£1m (€1.4m)	50%	90%	50%	90%
Development Fund	£4m (€5.7m)	£0.4m (€0.6m)	50%	90%	50%	90%
Total	£17m (€24.3m)	-	-	-	-	-

- (34) Projects are selected for funding on the basis of their creative merits by the Head of the relevant Fund, together with colleagues within the UK Film Council and external assessors. Funding recommendations are reviewed by an internal production finance committee.

²⁷ Throughout this letter, sterling amounts have been converted to the nearest 100 euro applying the exchange rate of GBP 1 : EUR 1.42978, the prevailing rate on 29/10/07

- (35) The beneficiaries of each of the Schemes are filmmakers (including producers, directors and writers) from across the UK and from elsewhere in the European Economic Area. All three Schemes are open to production companies. In addition, the New Cinema Fund is open to short film project proposals from individuals and the Development Fund is open to project proposals from individuals.
- (36) For projects submitted for funding by production companies, the UK Film Council requires that its funding is paid to a company registered in the UK (ie, a company incorporated in the UK or a company incorporated in the European Economic Area with a registered branch in the UK).

4.8.1 Premiere Fund

- (37) The Premiere Fund provides investment in the production of individual films. It aims to help filmmakers leverage private sector investment into the films, to facilitate the production of popular British films which have the potential to attract significant audiences in the UK and abroad and broaden the range of films on offer to the public.
- (38) According to the UK authorities, films supported by the Premiere Fund would not have been made without such public funding as they could not attract sufficient commercial finance. The purpose of the Premiere Fund is not to reward commercially successful films but rather to encourage the production of films that:
- will be shown and seen in cinemas (because distributors and exhibitors believe that they will attract cinema-goers);
 - appeal to audiences (in terms of broadening the range of films that are shown to cinema audiences);
 - provide an alternative to standard Hollywood 'blockbuster' fare; and
 - attract some level of private funding which demonstrates interest in the film and a potential for sales.
- (39) Films must be capable of qualifying as a 'British' film, as described in section 4.2. Projects must be in the form of a script to produce a feature film intended for cinema exhibition; capable of obtaining theatrical and video release certificates no more restrictive than the British Board of Film Classification's '18' rating²⁸ in the UK; and have secured, or have the potential to secure, a UK theatrical release.
- (40) The aid takes the form of an equity investment by the UK Film Council in the production funded and the UK Film Council seeks to recover funding provided by the Premiere Fund from the proceeds of exploiting the film. The UK Film Council also receives a share of any net profits.
- (41) Any funding recovered by the UK Film Council in this way contributes towards further funding of film-related initiatives to deliver the UK Film Council's and Government's objectives for film culture.

²⁸ "Suitable only for adults. No-one younger than 18 may see an '18' film in a cinema. No-one younger than 18 may rent or buy an '18' rated video". Source: <http://www.bbfc.co.uk/about/index.php>

- (42) For a film which is not a difficult film, the 35% maximum aid intensity in the above table assumes that the UK film tax credit will be utilised (as is likely with most films receiving awards from the Premiere Fund). However, the UK authorities have confirmed that the investment from the Premiere Fund will be reduced such that the overall aid intensity, including the UK film tax credit, is at most 50%. The UK authorities believe that the 35% overall limit is appropriate for occasions where the Premiere Fund contributes to a film which does not use the UK film tax credit.

4.8.2 New Cinema Fund

- (43) The New Cinema Fund provides funding for feature-length film production and short films, including digital and experimental films. It aims to nurture new talent and to encourage lower budget, cutting-edge filmmaking.
- (44) Films must be capable of qualifying as a 'British' film, as described in section 4.2. Projects need to be in the form of a script to produce a feature film intended for cinema exhibition; capable of obtaining theatrical and video release certificates no more restrictive than the British Board of Film Classification's '18' rating in the UK; and have secured, or have the potential to secure, a UK theatrical release.
- (45) The aid takes the form of equity investment by the UK Film Council in the production funded and the UK Film Council seeks to recover funding provided by the New Cinema Fund from the proceeds of exploiting the film. The UK Film Council also receives a share of any net profits.
- (46) Although there is no upper limit on the aid intensity for difficult films with a budget of less than £8 million (€11.9 million), the UK authorities do not expect the aid intensity to exceed 70% and suggest that, in most cases, the aid intensity is likely to be less than 50%. However, since the New Cinema Fund includes the production of short films, the UK authorities believe that most short films in the UK would not get made if they were not in receipt of 100% cash funding from public bodies.
- (47) In such cases, the aid beneficiary is likely to be working for free on the film or will have deferred any fees to be paid out of any revenues on the film and will have secured a number of 'in kind' contributions to the film. Taking into account the value that can be attributed to the budget of deferred fees and 'in kind' costs, the maximum aid intensity for such films would be 90%.
- (48) The UK authorities have also indicated that there may be rare instances where the New Cinema Fund may wish to fund up to 100% of the cash costs of an extremely low budget production. For the same reasons, the effective maximum aid intensity would then be 90%.
- (49) The UK authorities have indicated that many difficult films would be well below this aid intensity level. They would expect this level of aid to be available only to highly experimental films which are more likely to be shown in gallery spaces than in cinemas. The UK authorities have explained that the value of supporting these projects is to encourage artists to cross between art forms and to encourage a high level of experimentation in film-making.

4.8.3 Development Fund

- (50) The film project forming the basis of the application for funding must be capable of being developed as a feature length cinema film and must, if made into a film, be capable of qualifying as a 'British' film, as explained in section 4.2.
- (51) As the UK Cultural Test includes points for elements which would not be known before the development phase, the UK Film Council would consider the following main criteria from the test:
- Whether the project is set in the UK;
 - Whether the lead characters are British citizens or residents;
 - Whether the film is based on British subject matter or underlying material;
 - Whether the script is intended to be developed in the English language (or in a recognised regional or minority language);
 - Whether there is a significant representation/reflection of British cultural heritage;
 - Whether there is a significant representation of British cultural diversity;
 - Whether there is a significant representation/reflection of British culture through a novel and creative approach to film-making;
 - nationality or residence of the writer (European Union or EEA);
 - nationality or residence of the director (European Union or EEA)..
- (52) The UK Film Council looks at the above elements of the project as shown in the script, treatment or idea to the extent that they can possibly be identified at an early development stage. Although an applicant may submit a first draft script with a relatively detailed story mapped out, they might only submit an idea for a script where few of the elements are known. The UK authorities have noted that the elements within the story itself can change during the development of a project, so it would be impossible and ineffective to try to apply a weighting to the above criteria.
- (53) Applications can be made for various 'strands' of funding, including:
- *seed funding* to launch projects at a very early stage of development;
 - *partnered development* where partnership funding from another source is already in place;
 - *pre-production* which relates to costs associated with the end of the development stage of a film shortly before the producers start to shoot the film; and
 - *slate funding* where the Development Fund contributes to the development costs of a 'slate' of projects being developed by the same company.

- (54) The UK authorities have explained that development funding is generally provided by the Development Fund in stages. The UK Film Council is legally entitled to exercise a right of cut-off after a relevant stage (normally one draft of the script at a time). 100% of the cash costs of a particular stage may therefore be funded from the Development Fund while earlier or later stages might be funded either by the producer from its own resources or via other third party finance. The costs might alternatively be deferred to be reclaimed from the production budget if the film project ultimately goes into production. As noted in paragraph (47), this implies an effective maximum aid intensity of 90%.
- (55) The Development Fund can cover expenditure such as the following:
- Writer(s) fees;
 - Research fees;
 - A contribution towards the overhead costs of the producer;
 - Payments to acquire and option rights to adapt works for the screen;
 - Producer's fees;
 - Reasonable legal costs of the producer;
 - Script readings with cast;
 - Script editors;
 - Executive producer/mentor;
 - Other specific requirements, eg, story-boarding;
 - Preparation of the production budget;
 - Preparation of the production schedule;
 - Director's development fee/script work;
 - Casting; and
 - Training courses to aid project development.
- (56) When funding is offered under the Development Fund, the UK Film Council requires a premium of up to 50% on its funding to be reimbursed to the Development Fund if the film project goes into production. The UK Film Council has the discretion to require a lower premium or occasionally waive the premium.
- (57) If a film does go into production, the development cost would become a part of the production budget – development typically represents about 20% of the production budget. Even though up to 90% of the development cost may be covered by the Development Fund in the case of difficult films, this funding would be less than 20% of the production budget.

4.9 Scottish Screen schemes

(58) Scottish Screen operates three of the Schemes included in this notification:

Scheme	Total funds available per year	Max award per project	Max aid intensity – general	Max aid intensity – difficult films	Max cumulative aid intensity	
					General	Difficult films
Content development	£550,000 (€786,400)	£100,000 (€143,000)	50%	75%	50%	90%
Short film production	£400,000 (€571,900)	£75,000 (€107,200)	50%	75%	50%	90%
Content production	£2,700,000 (€3,860,400)	£500,000 (€714,900)	25%	50%	50%	90%
Total	£3,650,000 (€5,218,700)	-	-	-	-	-

(59) Apart from projects submitted to the Content development fund, Scottish Screen first applies the UK Cultural Test described in section 4.2. All projects, including those submitted to the Content development fund, are assessed for their cultural impact, creative impact, business case and state of readiness using the following criteria:

- *Cultural impact*: cultural benefits and impacts on screen culture in Scotland (eg, development of audiences within Scotland or the promotion and/or development of Scottish content, talent or companies outside Scotland);
- *Creative impact*: allows Scottish talent to develop, creates work recognised as creatively excellent, creates work recognised as original and innovative and/or promotes Scotland, Scottish identity and Scottish talent to a national and international audience;
- *Business development and project delivery*: the business plan included with the application, particularly how the project/activity will be financed, managed and delivered, and the impact on audiences, markets, skills development, business and partnerships.
- *Project and market readiness*: priority is given to projects for which there is an audience or a clear route to the market. This is indicated by, for example, the status of the project at the time of application, what is required to enable the project to progress, market research and partnership finance already in place.

(60) After the funding offer, officers at Scottish Screen work with production companies to progress projects and close finance. Scottish Screen acts essentially in an Executive Producer capacity, monitoring the project, supervising the shoot and participating in the edit. Funding payments are staged against agreed milestones.

(61) The beneficiaries of each of the Schemes are primarily filmmakers (including producers, directors and writers) resident in Scotland but can also benefit filmmakers from across the UK and from elsewhere in the European Economic Area, whether production companies or individuals. There is no requirement concerning the registration of companies applying to Scottish Screen for funding.

4.9.1 Content development

(62) The objective is to support the development and preparation of films with a strong Scottish element, in particular feature length fiction films, feature length documentaries and animation that are intended for theatrical distribution. The scheme is specifically aimed at companies and projects which would benefit from further and advanced script and project development work, prior to packaging and financing.

(63) Scottish Screen will consider applications for development funding to include:

- *Script and project development funding* to support a wide range of projects in a hands-on capacity to get projects to a point where the production company can bring in third party finance or move their project into production. At least 10% match funding must already be in place at the time of application and typical development expenditure could include the following:
 - Writer(s) fees;
 - Research fees;
 - Producer's fees;
 - Script editors;
 - Director's development work with the script;
 - Contribution towards the overhead costs of the producer;
 - Payments to acquire and option rights to adapt works for the screen;
 - Contribution to legal costs of the producer;
 - Preparation of the production budget; and
 - Preparation of the production schedule and casting;
- *Slate funding* to provide assistance for strong creative producers to develop a range of projects with appropriate editorial and business support and where at least 25% of the funds are matched.

(64) When funding is offered for content development, Scottish Screen requires 100% repayment and a premium of 50% on its funding if the film project goes into production. This is due on the first day of principal photography. Scottish Screen will also take a profit participation position from the producer's share of net profits.

- (65) Any funding received by Scottish Screen in this way contributes towards further funding of screen-related projects.
- (66) However, at the time the funding decision is made, Scottish Screen will not know whether or not the film will go into production once it has been developed. Consequently, although the funding takes the legal form of a repayable loan, the relatively small number of films which go into production implies that, in practice, it should be treated as a direct grant.

4.9.2 Short film production

- (67) This fund supports the production of short films, which have proven to be a valuable first step into film for producers, directors and writers. It is intended to support and encourage new filmmakers and encourage films which are distinctive and innovative.

4.9.3 Content production

- (68) This fund supports the production of feature length fiction films, feature length documentaries, animated feature films and difficult and low budget feature films. The fund aims to encourage challenging and innovative Scottish filmmaking.
- (69) The aid takes the form of an equity investment by Scottish Screen in the production funded and Scottish Screen seeks to recover funding provided by the Content Production fund from the proceeds of exploiting the film, *pro rata* and *pari passu* with other equity investors. Scottish Screen also receives a share of any net profits, after anyone who has deferred their fees or funding has been paid their entitlements from the exploitation of the film.

4.10 Northern Ireland Screen schemes

- (70) The Northern Ireland Screen operates the following schemes included in this notification:

Scheme	Total funds available per year	Max award per project	Max aid intensity – general	Max aid intensity – difficult films	Max cumulative aid intensity	
					General	Difficult films
Script development	£200,000 (€286,000)	£40,000 (€57,200)	50%	50%	50%	90%
Low budget feature film	£150,000 (€214,500)	£150,000 (€214,500)	-	75%	-	90%
Feature films & TV production	£150,000 (€214,500)	£150,000 (€214,500)	50%	75%	50%	75%
Mini-individuals	£215,000 (€307,300)	£2,250 (€3,200)	-	90%	-	90%
Mini-ultra low budget		£4,500 (€6,400)	-	90%	-	90%
Mini-low budget		£22,500 (€32,200)	-	75%	-	75%
Mini-std budget		£50,000 (€71,500)	-	-	-	-

Scheme	Total funds available per year	Max award per project	Max aid intensity – general	Max aid intensity – difficult films	Max cumulative aid intensity	
					General	Difficult films
Mini-distribution & promotion Mini completion funding		£5,000 (€7,150)	-	50%	-	50%
		£10,000 (€14,300)	50%	90%	-	90%
				50%	50%	50%
Total	£715,000 (€1,022,300)	-	-	-	-	-

(71) Note that, apart from the Mini-distribution and promotion scheme, the Mini-strands²⁹ in the fourth group of the above table are covered by the feature film and television production guidelines. The same rules in relation to eligibility criteria, objectives and territorial conditions apply to each of these Mini-strands. The table shows the overall budget for these Mini-strands and the lower maximum limits on the amounts Northern Ireland Screen will invest in a project.

(72) When assessing funding applications:

- The UK Cultural Test is applied first and no project which fails this test can be awarded funding;
- Projects which pass the UK Cultural Test are also required to be typically Northern Irish in character, tone and setting. The applicant's nationality and place of residence are not taken into consideration.

(73) Eligible projects are assessed by a Lottery Case Officer and a film assessor, either from Northern Ireland Screen or an external film assessor. The case summary prepared by them is considered first by the Lottery Committee, which makes a recommendation, and then by the Arts Council of Northern Ireland, which takes the decision.

(74) The beneficiaries of each of the Schemes are primarily filmmakers (including producers, directors and writers) located in Northern Ireland but can also benefit filmmakers from across the UK and from elsewhere in the European Economic Area, whether production companies or individuals. The project to be funded should be seen to be sufficiently culturally relevant to Northern Ireland to warrant support.

4.10.1 Script development

(75) Loans are available for the development of single feature films and single television films, television drama series and serials (but normally only when a broadcast is already committed to providing partnership funds to the producer); short narrative films; short experimental films; arts documentaries; animation of any length or genre and 'digital media projects with a high proportion of moving image content'.

²⁹ Mini-individuals, Mini-ultra low budget, Mini-std budget, Mini-distribution & promotion, and Mini-completion funding schemes aimed at supporting micro-budget films.

- (76) The UK authorities have explained that the phrase 'digital media projects with a high proportion of moving image content' was designed to avoid dictating that the mechanism to reach the audience must be cinema, film festivals or terrestrial television. They have also confirmed that Northern Ireland Screen gives priority to the cultural importance of the project and the extent to which it can reach an appropriate audience.
- (77) The UK authorities had previously confirmed that Northern Ireland Screen had not made any awards in this category but stated that a theoretical example would be a CD-ROM exploring some elements of Northern Irish history. In their view, the cultural imperative to back the project would be strong but the project would fall outside the other categories of funding available. The UK authorities have also confirmed that the digital media which Northern Ireland Screen has in mind does not include video games.
- (78) Up to 75% of development costs may be funded if these costs do not exceed £10,000. Where the total budget does exceed £10,000, the award will be no more than 50% of the budget.

4.10.2 Low budget feature film

- (79) This scheme supports one low-budget, digital feature film per year. Support is directed at projects which have a strong cultural resonance for Northern Ireland; projects that offer important developmental opportunities to key Northern Ireland talent; films that use a digital format appropriate to this budget level; and projects with broadcasters, sales agents or distributors already attached.
- (80) The basic low budget feature film specifications are as follows:
- The film's budget must be no more than £200,000 (EUR286,000);
 - The creative team must have a short film track record but the low budget feature film project must be their first feature film;
 - The cast, crew and facilities should ideally consist of some individuals from Northern Ireland, although this is not a condition of funding; and
 - Delivery is on Digibeta for TV but the film must be shot for, and post production must allow, other distribution if needed.
- (81) The funding takes the form of a direct grant.

4.10.3 Feature films & TV production

- (82) The purpose of this scheme (including the Mini-strands²⁹ mentioned above) is to help deliver a consistent flow of high quality and culturally significant programming with the ultimate aim of ensuring that the culture and creative potential of Northern Ireland is expressed through moving image.

- (83) Funding in the form of direct grants is available towards the costs of pre-production, production and post-production of:
- Single feature films
 - Television drama singles, series and serials.
- (84) Funding is not available for:
- Marketing, distribution and promotion costs for any of the above types of production
 - Completion funding for any of the above types of production.
- (85) Projects must have cultural relevance to Northern Ireland and must meet the UK definition of a 'British film'.
- (86) Films which receive support from Lottery funds must be intended to be distributed or broadcast in Northern Ireland, as well as in other territories. Priority will be given to projects with sales agents or distributors already attached.
- (87) The cast, crew and facilities should ideally consist of some individuals from Northern Ireland, although this is not a condition of funding.

4.10.4 Mini-distribution and promotion scheme

- (88) This scheme funds certain distribution and promotion costs up to a maximum of 10% of the production costs or £5,000 (€ 7,150) per project, whichever is the lower.
- (89) Funding takes the form of direct grants.
- (90) Eligible costs include:
- the distribution and promotion costs of individual short films and packages of short films made in Northern Ireland since 1994;
 - the distribution and promotion costs of any other productions in the Mini-strands;
 - for film: negative cutting, tape to film transfers, internegative/interpositive duplicating materials; 35mm prints; cost of adding a screen credit for Northern Ireland Screen (which is a requirement of Northern Ireland Screen support);
 - for video: telecine transfers, tape masters, VHS and/or DVD copies;
 - for festivals: shipping costs; entry fees and information packs for competitive festivals; and
 - the design and print costs of promotional materials.

4.11 *Film Agency for Wales schemes*

- (91) The Film Agency for Wales operates two of the Schemes included in this notification:

Scheme	Total funds available per year	Max award per project	Max aid intensity – general	Max aid intensity – difficult films	Max cumulative aid intensity	
					General	Difficult films
Script development	£250,000 (€357,400)	£80,000 (€114,400)	50%	75%	50%	90%
Feature film production	£500,000 (€714,900)	£250,000 (€357,400)	50%	75%	50%	90%
Total	£750,000 (€1,072,300)	-	-	-	-	-

(92) Funding applications are assessed as follows:

- The UK Cultural Test is applied first and no project which fails this test can be awarded funding;
- Projects which pass the UK Cultural Test are also required to show a significant contribution to Wales in a number of ways as shown in the sections below for both of the Film Agency for Wales Schemes.

(93) The beneficiaries of each of the Schemes are primarily filmmakers (including producers, directors and writers) located in Wales but can also be film-makers from across the UK and from elsewhere in the European Economic Area. There is no requirement to for an individual applicant to reside in Wales.

4.11.1 Script development

(94) This scheme is for both individuals and production companies seeking partnership funding for the development of a feature length screenplay aiming for cinema release.

(95) As well as considering a project's ability to qualify as a 'British' film, as set out in section 4.2, the Film Agency for Wales will take into account the benefit to Welsh talent. In this context, a writer, director, writer-director or producer who was born or is resident in Wales is considered to be Welsh talent.

(96) As with the UK Film Council's Development Fund, the aid is in the form of development loans, which are repayable with a premium if the project is produced.

4.11.2 Feature film production

(97) This scheme is for production companies seeking partnership funding for the production of a feature length film aiming for cinema release.

(98) As well as considering a project's ability to qualify as a 'British' film, as set out in section 4.2, the Film Agency for Wales will take into account the benefit to Welsh filmmakers and the level of participation of key Welsh talent. In this context, a

filmmaker (in particular a director, producer or writer) who was born or is resident in Wales is considered to be Welsh talent.

- (99) The aid is in the form of an equity investment in the film. The scheme supports 2-3 low budget films per annum.

5. ASSESSMENT

- (100) The Schemes include four film development schemes, seven film production schemes and one film promotion and distribution scheme:

- Development schemes:
 - UK Film Council Development Fund
 - Scottish Screen Content development scheme
 - Northern Ireland Screen Script development scheme; and
 - Film Agency for Wales Script development scheme.
- Production schemes
 - UK Film Council Premiere Fund;
 - UK Film Council New Cinema Fund;
 - Scottish Screen Short film production scheme;
 - Scottish Screen Content production scheme;
 - Northern Ireland Screen Low budget feature film scheme;
 - Northern Ireland Feature films & TV production scheme, including Mini-strands; and
 - Film Agency for Wales Content production scheme.
- Promotion and distribution scheme:
 - Northern Ireland Screen Mini-distribution and promotion scheme

- (101) Since all of these schemes concern support related to films and other audiovisual works, the Cinema Communication[ref] is relevant for the assessment of all of these schemes to varying degrees. The assessment of these Schemes therefore begins with an assessment of some of the criteria which are common to several of the Schemes under the Cinema Communication. These are the definition of a 'British' film, the overall State aid intensity and the compatibility criterion of aid for specific film-making activities. Each of the subsequent sections considers the three different types of scheme: Development schemes, Production schemes and the Distribution/Promotion scheme.

5.1 *Definition of a 'British film'*

- (102) All film projects selected for funding must be capable of certification as a 'British' film by the UK Government. The definition of a 'British film' detailed in section 4.2 was assessed by the Commission in its approval of the UK film tax incentive scheme³⁰.
- (103) According to the UK authorities, they decided to comply with point 2.3. (b) 1. of the Cinema Communication, on the cultural nature of the supported product, through a test designed to select distinctively culturally British productions. The UK authorities therefore consider that such productions are cultural by nature within the meaning of point 2.3 (b) 1. of the Cinema Communication.
- (104) Section A of the UK Cultural Test focuses on four different elements that the UK authorities consider contribute to the cultural content of a film:
- the extent to which the film is set in the UK;
 - what proportion of the main characters are British citizens or residents;
 - whether or not the subject matter or underlying material of the film is British; and
 - the extent to which the original dialogue is in English.
- (105) While it is up to the UK authorities to define criteria for what they consider to be "cultural content", it is worth noting that English is widely spoken internationally. English is used in other major film producing countries, such as the United States, and there is a trend among filmmakers of different nationalities towards making films in English so that they can reach a global audience. Therefore, this criterion alone would not always ensure that a film would be culturally British. On the other hand, the remaining three criteria in Section A could give some genuine assurance of whether a film would be culturally British.
- (106) It could be argued that the "Cultural hubs" and "Cultural practitioners" Sections (C & D respectively) of the UK Cultural Test do not refer to purely cultural content aspects of film making. At most 3 points of the UK Cultural Test are available in Section C on the basis of the percentage of expenditure on UK studios, visual effects, special effects, music recording, audio post production, and laboratory processing. The 8 points of Section D essentially focus on the nationality and ordinary residence of those employed to make the film.
- (107) Consequently, in its assessment, the Commission has only taken into consideration the criteria in Sections A and B of the UK Cultural Test, apart from the proportion of English in the dialogue (A4), as they are based on overtly cultural considerations.
- (108) In the UK Cultural Test, the total of 11 points available in Sections C and D account for 36% of the 31 points available overall. In contrast, the Cultural Content and Cultural Contribution sections (sections A and B) account for 65% of the overall points available (20 out of 31 points). Even discounting the 4 points for the use of English, a film satisfying only these criteria of the UK Cultural Test could achieve the 16 points required to pass the test.

³⁰ Commission decision of 22 November 2006. See http://ec.europa.eu/community_law/state_aids/comp-2005/n461-05.pdf

- (109) In addition, a film cannot pass the UK Cultural Test if it only obtains all the points in Sections C and D together with the points for the English language (A4). Such a film would be awarded 15 points, which is below the pass mark of 16.
- (110) The UK Cultural Test addresses the specific case where a film scores all 15 of the points available in sections C, D and A4. It provides that "If [such a film] scores less than two points in section A1 and less than two points in section A2, it must additionally obtain the points in section A3 to pass the cultural test." The UK authorities have clarified that "if a film scores two points in section A1 or two points in section A2, it will not require the additional points from section A3 in order to pass the test." In this scenario (15 points from sections C, D and A4), there would be two possibilities for such a film to pass the test:
- the film should get at least 2 points in either of Sections A1 and A2, which would require that either 50% of the film would be set in the UK or one of the two main characters would be British or resident in Britain.; or
 - if the film gets 0 or 1 point in both of Sections A1 and A2, then it must be based on British subject matter or underlying material to obtain at least 1 (and in fact all 4) points of Section A3.

Even in these two extreme scenarios, the content of a film could reasonably be found to be cultural according to the UK authorities' definition.

- (111) Based on the information available at the time when the funding decision is made, the funding bodies administering the Schemes will judge whether a film is capable of qualifying as a 'British film'. The UK authorities have confirmed that a funding body which decides to support a film project on the basis that the resulting film will be capable of qualifying as a 'British film' will also monitor the progress of the project to make sure that it does qualify once the film is complete.
- (112) In addition, coproductions which meet the terms of either the European Convention on Cinematographic Co-Production³¹ (the European Convention) or one of the UK's bilateral coproduction agreements do not also need to pass the UK Cultural Test.
- (113) The European Convention considers that "the defence of cultural diversity of the various European countries is one of the aims of the European Cultural Convention" and that cinematographic co-productions are "an instrument of creation and expression of cultural diversity on a European scale [and] should be reinforced". The explanatory report of the European Convention³¹ states that "European cultural co-operation in the cinema field takes place primarily through co-productions". The European Convention therefore aims to encourage European coproductions as an instrument of furthering European cultural diversity and its expression. Regarding the UK's bilateral coproduction agreements, they have the same objective as the European Convention (encouraging coproductions).³² Article 151 EC requires the Commission to take cultural diversity into account as part of the application of the cultural chapter of the EC Treaty. Therefore, the Commission considers that productions qualifying under the conditions of the European Convention and the UK's bilateral coproduction

³¹ <http://conventions.coe.int/Treaty/en/Reports/Html/147.htm>

³² Moreover, the UK authorities have stated that the UK Cultural Test will be applied to coproductions through all the UK's bilateral treaties and/or their guidelines.

agreements may be considered as meeting the requirement of point 2.3. (b) 1. of the Cinema Communication.

- (114) Consequently, the Commission considers that the UK authorities have established verifiable national criteria to ensure that the aid is directed towards a cultural product within the meaning of point 2.3.(b) 1. of the Cinema Communication.

5.2 *Overall State aid intensity*

- (115) The maximum overall aid intensity under these Schemes is 50% except in the case of difficult films whose budgets are less than £8 million (€11.9 million). Such films could receive a higher overall aid intensity which is assessed scheme-by-scheme in the subsequent sections.
- (116) The UK authorities consider a difficult film to be as defined in paragraph (23). In particular, it must be “one which would have little if any prospect of commercial success because of its experimental nature or because it represented a high level of creative risk.”³³ Applying the subsidiarity principle, the Commission considers that the UK authorities have established “a definition of difficult [...] films according to national parameters”.

5.3 *Aid supplements for specific film-making activities*

- (117) For all the Schemes in this notification, the funding is available to all development and production activities. So there are no aid supplements for specific film-making activities. This complies with the conditions of the Cinema Communication.

Development schemes: general characteristics

5.4 *Existence of aid*

- (118) According to Article 87(1) EC, save as otherwise provided in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall be incompatible with the common market, in so far it affects trade between Member States.
- (119) The funds used in all of these Development schemes apply money raised from the UK National Lottery. Since the funding bodies are State-owned legal entities, these revenues are permanently under the control of public authorities and at their disposal. Consequently, State resources are clearly involved in this scheme.
- (120) The scriptwriters, producers and other beneficiaries under the Development schemes benefit from a financial advantage which they would not normally receive under market conditions. The funding takes the form of development loans which will only be repaid if the developed film project goes into production.

³³ A difficult film also has to achieve one or more of the additional goals in the list indicated in section 4.4.

- (121) The measures are selective in nature as the only recipients of the funding are companies or individuals developing films. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the Development schemes threaten to distort competition in the EU.
- (122) For film projects which are developed with the support of funds from the Development schemes and are subsequently made into films, since film productions are traded at an international level, the financial advantage granted to film producers on the basis of these Development schemes affects trade between Member States.
- (123) For film projects which are developed with the support of funds from the Development schemes but which are not subsequently made into films, the developed project is deemed to have no commercial value. However, this is only known after the end of the development phase. It could be argued that the decision, prior to the development phase, to award funding to one undertaking rather than to another on subjective grounds could have an effect on trade between Member States.
- (124) Accordingly, the funds given by the Development schemes constitute State aid within the meaning of Article 87(1) EC.

5.5 *Compatibility*

- (125) In view of the above, the compatibility of the aid given by the Development schemes needs to be assessed.
- (126) The Commission's Cinema Communication³⁴ provides special rules on assessing State aid to cinematographic and other audiovisual works under Article 87 (3) (d) EC. The scope of the Cinema Communication includes all kinds of audiovisual products distributed by multiple distribution channels. Accordingly, the Cinema Communication is applicable to the audiovisual productions which will be supported by the Schemes and can be applied by analogy to the development of these productions funded under the Development schemes.
- (127) **General legality:** According to point 2.3. (a) of the Cinema Communication, the aid scheme needs to respect the "general legality" principle, ie, the Commission must verify that the scheme does not contain clauses that would be contrary to EC Treaty provisions in fields other than State aid. In particular, the Commission must ensure that the EC Treaty principles prohibiting discrimination on the grounds of nationality and freedom of establishment have been respected.
- (128) **Cultural product:** According to point 2.3. (b) 1. of the Cinema Communication, the aid must be directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).

³⁴ 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 works (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04) and 2007 (OJ C 134 p5, 16/6/07) until 31 December 2009, at the latest.

- (129) ***Territorial conditions:*** According to point 2.3. (b) 2. of the Cinema Communication, "The producer must be free to spend at least 20 % of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80 % of the production budget of an aided film or TV work" but "limited to the minimum degree required to promote cultural objectives."
- (130) ***Aid intensity:*** According to point 2.3. (b) 3. of the Cinema Communication, "Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget films."
- (131) ***Aid supplements for specific film-making activities:*** According to point 2.3. (b) 4. of the Cinema Communication, "Aid supplements for specific film-making activities (eg, post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided."
- (132) The compatibility of the common characteristics of all the Development schemes has been assessed in sections 5.1 to 5.3. The specific characteristics for each Development scheme operated by each of the four funding bodies are considered below.

Development schemes: specific characteristics

5.5.1 UK Film Council Development Fund

General legality principle

- (133) For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. The UK Film Council requires companies to be registered in the EU or EEA at the point of application but does not require registration or establishment of a branch of such companies in the UK at the time of application. This requirement is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.
- (134) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Development Fund does not raise any issues in this respect.

Cultural project

- (135) The compatibility of the general UK definition of a 'British film' with the cultural criterion is assessed in section 5.1.
- (136) Not all of the elements of the UK Cultural Test are known prior to the development phase and coproduction partners are unlikely to have been identified at that stage. Consequently, it is impossible to apply the full UK Cultural Test before the funding decision is taken.

- (137) However, the UK Film Council has identified the following eligibility criteria from the UK Cultural Test which may be apparent from the script, treatment or idea submitted to them prior to the development phase of a film project. They therefore apply these criteria when considering applications for funding from the Development Fund:
- Whether the project is set in the UK;
 - Whether the lead characters are British citizens or residents;
 - Whether the film is based on British subject matter or underlying material;
 - Whether the script is intended to be developed in the English language (or in a recognised regional or minority language);
 - Whether there is a significant representation/reflection of British cultural heritage;
 - Whether there is a significant representation of British cultural diversity;
 - Whether there is a significant representation/reflection of British culture through a novel and creative approach to film-making;
 - nationality or residence of the writer (European Union or EEA);
 - nationality or residence of the director (European Union or EEA).
- (138) The UK Film Council looks at the above elements of the project as shown in the script, treatment or idea to the extent that they can possibly be identified at an early development stage. According to the UK authorities, although applicants may submit a first draft script with a relatively detailed story mapped out, they might only submit an idea for a script where few of the elements are known.
- (139) The Commission considers that the above criteria could reasonably ensure that the content of a film which goes into production on the basis of a project funded by the Development Fund would be cultural, as defined by the UK authorities in their definition of a 'British film'. Consequently, the Commission considers that the UK authorities ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (140) The Development Fund has no explicit territorial conditions: none of the above criteria oblige any of the expenditure of either the development phase or indeed the subsequent film project to be incurred in the UK. Consequently, the Development Fund meets the requirement of the Cinema Communication concerning territorial conditions that any aid beneficiary is able to spend at least 20% of the film production budget outside the UK without suffering any reduction in the amount of aid.

Aid intensity

- (141) The maximum aid intensity from the Development Fund is normally 50%. However, for difficult films, the maximum aid intensity may be up to 90% in exceptional cases. The maximum cumulative aid intensity is up to 90% of total development costs and up to 100% of the cost of screenplay development.
- (142) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3.(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.

- (143) The UK authorities have indicated that, in the event that a film goes into production, the development costs typically represent about 20% of the production budget. Consequently, even though up to 90% of the development cost may be covered by the Development Fund in the case of difficult films, this funding would still be less than 20% of the production budget.
- (144) In the event that a film does not go into production, we cannot consider the aid amount as a proportion of the total production budget. Therefore the calculation of the aid intensity is limited only to the proportion of the development costs. It might therefore exceed the 50% aid intensity limit. The rationale of the 50% maximum aid intensity in the Cinema Communication is "with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States". At the beginning of the development stage of a film, the risk that a film project is not ultimately produced (and hence that all the investment is lost) is much higher than at the beginning of the production phase. Consequently, an aid intensity higher than 50% for a film which does not go into production is unlikely to have a significant impact on the normal commercial initiatives inherent in a market economy.
- (145) The Commission considers that, since the scheme supports film development, which is an essential phase for the production of a film or audiovisual work, it is essentially the maximum aid intensity of 50% for the production of the work which must be ensured. Consequently, the Commission considers that the aid intensity levels of the Development Fund do not present any problems.

Conclusion

- (146) Consequently, the UK Film Council Development Fund complies with the compatibility criteria of the Cinema Communication, applied by analogy.

5.5.2 Scottish Screen Content development scheme

General legality principle

- (147) Applications for funding under the Content development scheme may be made by both companies and individuals. For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. As this requirement is not imposed at the time of making a funding application, this is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.
- (148) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, Scottish Screen's Content development scheme does not raise any issues in this respect.

Cultural project

- (149) Scottish Screen does not apply the UK Cultural Test to applications for its Content development scheme. However, it does apply the criteria in paragraph (59), including cultural impact and creative impact on screen culture in Scotland of the proposed film project.

- (150) The Commission considers that the above criteria could reasonably ensure that the content of a film which goes into production on the basis of a project funded by the Development Fund would be cultural, as defined by the UK authorities in their definition of a 'British film'. Consequently, the Commission considers that the UK authorities ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (151) The Content development scheme has no explicit territorial conditions: none of the criteria in paragraph (59) oblige any of the expenditure of either the development phase or indeed the subsequent film project to be incurred in the UK or, more specifically, Scotland.
- (152) However, the criteria concerning Scottish cultural content are likely to impose some implicit territorial constraints on projects which receive the aid. Nonetheless, these conditions appear to allow at least 20% to be spent outside the UK without reducing the amount of aid. Consequently, the Content development scheme meets the requirement of the Cinema Communication concerning territorial conditions.

Aid intensity

- (153) The maximum aid intensity from the Content development scheme is normally 50%. However, for difficult films, the maximum aid intensity may be up to 75%. The maximum cumulative aid intensity is up to 90% of total development costs.
- (154) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (155) The UK authorities have indicated that, in the event that a film goes into production, the development costs typically represent about 20% of the production budget. Consequently, even though up to 90% of the development cost may be covered by the Content development scheme in the case of difficult films, this funding would still be less than 20% of the production budget.
- (156) In the event that a film does not go into production, we cannot consider the aid amount as a proportion of the total production budget. Therefore the calculation of the aid intensity is limited only to the proportion of the development costs. It might therefore exceed the 50% aid intensity limit. The rationale of the 50% maximum aid intensity in the Cinema Communication is "with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States". At the beginning of the development stage of a film, the risk that a film project is not ultimately produced (and hence that all the investment is lost) is much higher than at the beginning of the production phase. Consequently, an aid intensity higher than 50% for a film which does not go into production is unlikely to have a significant impact on the normal commercial initiatives inherent in a market economy.

- (157) The Commission considers that, since the scheme supports film development, which is an essential phase for the production of a film or audiovisual work, it is essentially the maximum aid intensity of 50% for the production of the work which must be ensured. Consequently, the Commission considers that the aid intensity levels of the Content development scheme do not present any problems.

Conclusion

- (158) Consequently, the Scottish Screen Content development scheme complies with the compatibility criteria of the Cinema Communication, applied by analogy.

5.5.3 Northern Ireland Screen Script development scheme

General legality principle

- (159) The applicant's nationality and place of residence are not taken into consideration in funding decisions.
- (160) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Script development scheme does not raise any issues concerning its general legality under the EC Treaty.

Cultural project

- (161) The Script development scheme applies the national definition of 'British' film, which has been assessed in section 5.1.
- (162) In addition, projects must also be typically Northern Irish in character, tone and setting. As all three elements concern the cultural content of the project, the Commission considers that the criteria applicable to the Script development scheme would ensure that the aid is directed towards a cultural project according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (163) The territorial conditions of the Script development scheme are limited to the requirements of the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). The additional criteria of being typically Northern Irish in character, tone and setting do not oblige any of the expenditure to be incurred in the UK or, more specifically, in Northern Ireland. Consequently, these conditions appear to allow at least 20% of the development expenditure to be spent outside the UK without incurring any reduction in the amount of aid.
- (164) Consequently, the territorial conditions applicable to the Script development scheme are below the maximum territorial requirement allowed by the Cinema Communication.

Aid intensity

- (165) The maximum aid intensity from the Script development scheme is 50%.

- (166) However, the maximum cumulative aid intensity is up to 90% of total development costs in the case of difficult films.
- (167) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (168) The UK authorities have indicated that, in the event that a film goes into production, the development costs typically represent about 20% of the production budget. Consequently, even though up to 90% of the development cost may be covered by the Script development scheme in the case of difficult films, this funding would still be less than 20% of the production budget.
- (169) In the event that a film does not go into production, we cannot consider the aid amount as a proportion of the total production budget. Therefore the calculation of the aid intensity is limited only to the proportion of the development costs. It might therefore exceed the 50% aid intensity limit. The rationale of the 50% maximum aid intensity in the Cinema Communication is "with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States". At the beginning of the development stage of a film, the risk that a film project is not ultimately produced (and hence that all the investment is lost) is much higher than at the beginning of the production phase. Consequently, an aid intensity higher than 50% for a film which does not go into production is unlikely to have a significant impact on the normal commercial initiatives inherent in a market economy.
- (170) The Commission considers that, since the scheme supports film development, which is an essential phase for the production of a film or audiovisual work, it is essentially the maximum aid intensity of 50% for the production of the work which must be ensured. Consequently, the Commission considers that the aid intensity levels of the Script development scheme do not present any problems.

Conclusion

- (171) Consequently, the Northern Ireland Screen Script development scheme complies with the compatibility criteria of the Cinema Communication, applied by analogy.

5.5.4 Film Agency for Wales Script development scheme

General legality principle

- (172) Applications for funding under the Script development scheme may be made by both companies and individuals. For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. As this requirement is not imposed at the time of making a funding application, this is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.
- (173) The scheme takes into account the benefit to Welsh filmmakers and the level of participation of key Welsh talent in selecting projects for funding. A filmmaker (in particular a director, producer or writer) who was born or is resident in Wales is

considered to be Welsh talent. However, the scheme is not reserved for Welsh-born individuals or residents of Wales. As a result, there is no discrimination on the grounds of nationality or residence.

- (174) Consequently, on the basis of the information provided by the UK authorities, the Film Agency for Wales Development scheme does not raise any issues in respect of the general legality criterion.

Cultural project

- (175) When considering a project for funding, the Film Agency for Wales considers a project's ability to qualify as a 'British' film. It also takes into account the benefit to Welsh-resident talent.
- (176) The Commission considers that the above criteria could reasonably ensure that the content of a film which goes into production on the basis of a project funded by the Development Fund would be cultural, as defined by the UK authorities in their definition of a 'British film'. Consequently, the Commission considers that the UK authorities ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (177) The Commission considers that the requirement that funding decisions should take into account the benefit to filmmakers resident in Wales is not an explicit territorial condition. The territorial conditions of the Film Agency Development scheme are therefore limited to the requirements of the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria).
- (178) However, the criteria concerning Welsh talent are likely to impose some implicit territorial constraints on projects which receive the aid. Nonetheless, these conditions appear to allow at least 20% to be spent outside the UK without reducing the amount of aid.
- (179) Consequently, the territorial conditions applicable to the Script development scheme are below the maximum territorial requirement allowed by the Cinema Communication.

Aid intensity

- (180) The maximum cumulative aid intensity under the Script development scheme is normally 50%. However, the maximum cumulative aid intensity is up to 90% of total development costs in the case of difficult films.
- (181) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (182) The UK authorities have indicated that, in the event that a film goes into production, the development costs typically represent about 20% of the production budget. Consequently, even though up to 90% of the development cost may be covered by the

Script development scheme in the case of difficult films, this funding would still be less than 20% of the production budget.

- (183) In the event that a film does not go into production, we cannot consider the aid amount as a proportion of the total production budget. Therefore the calculation of the aid intensity is limited only to the proportion of the development costs. It might therefore exceed the 50% aid intensity limit. The rationale of the 50% maximum aid intensity in the Cinema Communication is "with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States". At the beginning of the development stage of a film, the risk that a film project is not ultimately produced (and hence that all the investment is lost) is much higher than at the beginning of the production phase. Consequently, an aid intensity higher than 50% for a film which does not go into production is unlikely to have a significant impact on the normal commercial initiatives inherent in a market economy.
- (184) The Commission considers that, since the scheme supports film development, which is an essential phase for the production of a film or audiovisual work, it is essentially the maximum aid intensity of 50% for the production of the work which must be ensured. Consequently, the Commission considers that the aid intensity levels of the Script development scheme do not present any problems.

Conclusion

- (185) Consequently, the Film Agency for Wales Script development scheme complies with the compatibility criteria of the Cinema Communication, applied by analogy.

Production schemes: general characteristics

5.6 Existence of aid

- (186) According to Article 87(1) EC, save as otherwise provided in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall be incompatible with the common market, in so far it affects trade between Member States.
- (187) The funds used in all of these Schemes apply money raised from the UK National Lottery. Since the funding bodies are State-owned legal entities, these revenues are permanently under the control of public authorities and at their disposal. Consequently, State resources are clearly involved in this scheme.
- (188) Filmmakers and other beneficiaries under the Production schemes benefit from a financial advantage in the form of direct grants and/or risk capital which they would not normally receive under market conditions.
- (189) The measures are selective in nature as the only recipients of the funding are filmmakers. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the Schemes distort or threaten to distort competition in the EU.

- (190) Since film productions are traded at an international level, the financial advantage granted to film producers on the basis of these Schemes affects trade between Member States.
- (191) Accordingly, the notified Schemes constitutes State aid within the meaning of Article 87(1) EC.

5.7 *Compatibility*

- (192) The Commission's Cinema Communication³⁵ provides special rules on assessing State aid to cinematographic and other audiovisual works under Article 87 (3) (d) EC. The scope of the Cinema Communication includes all kinds of audiovisual products distributed by multiple distribution channels. Accordingly, the Cinema Communication is applicable to the audiovisual productions which will be supported by the Production schemes.
- (193) **General legality:** According to point 2.3. (a) of the Cinema Communication, the aid scheme needs to respect the "general legality" principle, ie, the Commission must verify that the scheme does not contain clauses that would be contrary to EC Treaty provisions in fields other than State aid. In particular, the Commission must ensure that the EC Treaty principles prohibiting discrimination on the grounds of nationality and freedom of establishment have been respected.
- (194) **Cultural product:** According to point 2.3. (b) 1. of the Cinema Communication, the aid must be directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).
- (195) **Territorial conditions:** According to point 2.3. (b) 2. of the Cinema Communication, "The producer must be free to spend at least 20 % of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80 % of the production budget of an aided film or TV work" but "limited to the minimum degree required to promote cultural objectives."
- (196) **Aid intensity:** According to point 2.3. (b) 3. of the Cinema Communication, "Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget films."
- (197) **Aid supplements for specific film-making activities:** According to point 2.3. (b) 4. of the Cinema Communication, "Aid supplements for specific film-making activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral

³⁵ 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 works (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04) and 2007 (OJ C 134 p5, 16/6/07) until 31 December 2009, at the latest.

incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided.”

- (198) The compatibility of the common characteristics of all the Production schemes has been assessed in sections 5.1 to 5.3. The specific characteristics for each Production scheme operated by each of the four funding bodies are considered below.

Production schemes: specific characteristics

5.8 UK Film Council schemes

5.8.1 Premiere Fund

General legality principle

- (199) Any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. The UK Film Council requires companies to be registered in the EU or EEA at the point of application but does not require registration or establishment of a branch of such companies in the UK at the time of application. This requirement is in line with the EC Treaty.

- (200) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Premiere Fund does not raise any issues in this respect.

Cultural project

- (201) The Premiere Fund applies the national definition of 'British' film, which has been assessed as being in line with the Cinema Communication in section 5.1.

Territorial conditions

- (202) There are no explicit territorial conditions in the Premiere Fund, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, the territorial conditions applicable to the Premiere Fund allow any aid beneficiary to spend at least 20% of the film production budget outside the UK without incurring any reduction in the aid amount, as required by the Cinema Communication.

Aid intensity

- (203) The maximum cumulative aid intensity does not exceed 50% except in the case of difficult films, for which it may be up to 75%.
- (204) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (205) The maximum aid intensities for the Premiere Fund therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

(206) Consequently, the Premiere Fund complies with the compatibility criteria of the Cinema Communication.

5.8.2 New Cinema Fund

General legality principle

(207) Applications for funding under the New Cinema Fund may be made by both companies and individuals. For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. The UK Film Council requires companies to be registered in the EU or EEA at the point of application but does not require registration or establishment of a branch of such companies in the UK at the time of application. This requirement is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.

(208) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the New Cinema Fund does not raise any issues in this respect.

Cultural project

(209) The New Cinema Fund applies the national definition of 'British' film, which has been assessed as being in line with the Cinema Communication in section 5.1.

Territorial conditions

(210) There are no explicit territorial conditions in the New Cinema Fund, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, the territorial conditions applicable to the New Cinema Fund allow any aid beneficiary to spend at least 20% of the film production budget outside the UK without incurring any reduction in the aid amount, as required by the Cinema Communication.

Aid intensity

(211) The maximum cumulative aid intensity under the New Cinema Fund is normally 50%. However, for difficult films, the maximum cumulative aid intensity is generally 70% but may be up to 90% in exceptional cases.

(212) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.

(213) The maximum aid intensities for the New Cinema Fund therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

- (214) Consequently, the New Cinema Fund complies with the compatibility criteria of the Cinema Communication.

5.9 Scottish Screen schemes

5.9.1 Content production

General legality principle

- (215) Applications for funding under the Content production scheme may be made by both companies and individuals. For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. As this requirement is not imposed at the time of making a funding application, this is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.
- (216) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, Scottish Screen's Content production scheme does not raise any issues in this respect.

Cultural project

- (217) The Content production scheme first applies the national definition of 'British' film, which has been assessed as being in line with the Cinema Communication in section 5.1. Scottish Screen also applies criteria specific to Scottish culture in paragraph (59), including cultural impact and creative impact on screen culture in Scotland of the proposed film project.
- (218) Consequently, the Commission considers that the UK authorities ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (219) There are no explicit territorial conditions in the Content production scheme, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, neither these nor the additional criteria in paragraph (59) oblige any of the production expenditure to be incurred in the UK or, more specifically, in Scotland. Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring a reduction in the amount of aid, as required by the Cinema Communication.

Aid intensity

- (220) The maximum aid intensity from the Content production scheme is normally 25%. However, for difficult films, the maximum aid intensity is 50%. The maximum

cumulative aid intensity is generally 50% but may be up to 90% for difficult films in exceptional cases.

- (221) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (222) The maximum aid intensities for the Content production scheme therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

- (223) Consequently, the Scottish Screen Content production scheme complies with the compatibility criteria of the Cinema Communication.

5.9.2 Short film production

General legality principle

- (224) Applications for funding under the Short film production scheme may be made by both companies and individuals. For a funding application made by a company, any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. As this requirement is not imposed at the time of making a funding application, this is in line with the EC Treaty. Individuals applying for funding are required to be EEA citizens or residents, which is also in line with the EC Treaty.
- (225) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, Scottish Screen's Short film production scheme does not raise any issues in this respect.

Cultural project

- (226) The Short film production scheme first applies the national definition of 'British' film, which has been assessed as being in line with the Cinema Communication in section 5.1. Scottish Screen also applies criteria specific to Scottish culture in paragraph (59), including cultural impact and creative impact on screen culture in Scotland of the proposed film project.
- (227) Consequently, the Commission considers that the UK authorities ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (228) The territorial conditions of the Short film production scheme are limited to the requirements of the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). None of the additional criteria in paragraph (59) oblige any of the production expenditure to be incurred in the UK or, more specifically, in Scotland. Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring a reduction in the amount of aid.

(229) Consequently, the territorial conditions applicable to the Content production scheme are below the maximum territorial requirement allowed by the Cinema Communication.

Aid intensity

(230) The maximum aid intensity from the Short film production scheme is normally 50%. However, for difficult films, the maximum aid intensity is 75%.

(231) The maximum cumulative aid intensity is generally 50%. However, for difficult films, it may be up to 90% in exceptional cases.

(232) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.

(233) The maximum aid intensities for the Short film production scheme therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

(234) Consequently, the Scottish Screen Short film production scheme complies with the compatibility criteria of the Cinema Communication.

5.10 Northern Ireland Screen schemes

5.10.1 Low budget feature film

General legality principle

(235) The applicant's nationality and place of residence are not taken into consideration in funding decisions.

(236) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Low budget feature film scheme does not raise any issues concerning its general legality under the EC Treaty.

Cultural project

(237) The Low budget feature film scheme applies the national definition of 'British' film, which has been assessed in section 5.1.

(238) In addition, the funded projects must have a strong cultural resonance for Northern Ireland. Since this will enhance the cultural content of the project, the Commission considers that the criteria applicable to the Low budget feature film scheme would ensure that the aid is directed towards a cultural project according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (239) There are no explicit territorial conditions in the Low budget feature film scheme, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, neither these nor the additional criteria in paragraph (80), particularly those of having strong cultural resonance for Northern Ireland and offering important developmental opportunities to key Northern Ireland talent, oblige any of the production expenditure to be incurred in the UK or, more specifically, in Northern Ireland.
- (240) Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring a reduction in the amount of aid, as required by the Cinema Communication.

Aid intensity

- (241) The maximum aid intensity from the Low budget feature film scheme is 75% and the maximum cumulative aid intensity is 90%.
- (242) The Low budget feature film scheme is only open to projects with a budget of at most £200,000 (€286,000) which must be the first feature film of the creative team and use a digital format. Consequently, all projects funded by the scheme must be not only low budget but also have both little prospect of commercial success.
- (243) Although both aid intensity limits are higher than the usual 50% limit referred to in the Cinema Communication, all funded projects will be difficult and low budget films, for which the Cinema Communication allows the aid intensity to be higher.
- (244) Bearing in mind that the overall budget of the scheme is £150,000 (€214,500), the Commission considers that the maximum aid intensities for the Low budget feature film scheme comply with the aid intensity rules of the Cinema Communication.

Conclusion

- (245) Consequently, the Northern Ireland Screen Low budget feature film scheme complies with the compatibility criteria of the Cinema Communication.

5.10.2 Feature films & TV production³⁶

General legality principle

- (246) The applicant's nationality and place of residence are not taken into consideration in funding decisions.
- (247) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Low budget feature film scheme does not raise any issues concerning its general legality under the EC Treaty.

³⁶ Including the Northern Ireland Screen Mini-strands: Mini-individuals, Mini-ultra low budget, Mini-std budget, and Mini-completion funding schemes aimed at supporting micro-budget films.

Cultural project

- (248) The Feature films & TV production scheme applies the national definition of 'British' film, which has been assessed in section 5.1.
- (249) In addition, projects must also be typically Northern Irish in character, tone and setting. As all three elements concern the cultural content of the project, the Commission considers that the criteria applicable to the Feature films & TV production scheme would ensure that the aid is directed towards a cultural product according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (250) There are no explicit territorial conditions in the Feature films & TV production scheme, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, neither these nor the additional criteria that projects must also be typically Northern Irish in character, tone and setting oblige any of the production expenditure to be incurred in the UK or, more specifically, in Northern Ireland.
- (251) Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring a reduction in the amount of aid, as required by the Cinema Communication.

Aid intensity

- (252) The maximum cumulative aid intensity allowed under the Feature films & TV production scheme is normally 50%. However, for difficult films, the maximum cumulative aid intensity is 75%.
- (253) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (254) The maximum aid intensities for the Feature films & TV production scheme therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

- (255) Consequently, the Northern Ireland Screen Feature films & TV production scheme complies with the compatibility criteria of the Cinema Communication.

5.11 Film Agency for Wales Content production scheme

General legality principle

- (256) Applications for funding under the Content production scheme may be made by companies. Any funding awards must be paid to a company which is registered in the UK either as a UK company or as a UK branch of an overseas company. As this

requirement is not imposed at the time of making a funding application, this is in line with the EC Treaty.

- (257) The scheme takes into account the benefit to Welsh filmmakers and the level of participation of key Welsh talent in selecting projects for funding. A filmmaker (in particular a director, producer or writer) who was born or is resident in Wales is considered to be Welsh talent.
- (258) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Film Agency for Wales Development scheme does not raise any issues in respect of the general legality criterion.

Cultural project

- (259) The Content production scheme applies the national definition of 'British' film, which has been assessed in section 5.1.
- (260) In addition, the benefit to Welsh filmmakers and the level of participation of key Welsh talent are taken into account when selecting projects for funding. As these additional elements concern the cultural content of the project, the Commission considers that the criteria applicable to the Content production scheme would ensure that the aid is directed towards a cultural project according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (261) There are no explicit territorial conditions in the Feature films & TV production scheme, though there are implicit territorial conditions in the UK Cultural Test (which does not apply to European co-productions which meet the European Convention criteria). However, neither these nor the additional requirement that funding decisions should take into account the benefit to filmmakers resident in Wales and participation of key Welsh talent oblige any of the production expenditure to be incurred in the UK or, more specifically, in Wales.
- (262) Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring any reduction in the amount of aid, as required by the Cinema Communication.

Aid intensity

- (263) The maximum cumulative aid intensity allowed under the Content production scheme is normally 50%. However, for difficult films, the maximum cumulative aid intensity is up to 90% in exceptional cases. In addition, the maximum award per project is £250,000 (€357,400).
- (264) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (265) The maximum aid intensities for the Content production scheme therefore comply with the aid intensity rules of the Cinema Communication.

Conclusion

(266) Consequently, the Film Agency for Wales Content production scheme complies with the compatibility criteria of the Cinema Communication.

Northern Ireland Screen Mini-distribution & promotion scheme

5.12 Existence of aid

(267) According to Article 87(1) EC, save as otherwise provided in the Treaty, any aid granted by a Member State or through State resources in any form whatsoever, which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall be incompatible with the common market, in so far it affects trade between Member States.

(268) The funds used in the Mini-distribution & promotion scheme apply money raised from the UK National Lottery. Since Northern Ireland Screen and the Arts Council of Northern Ireland are state-owned legal entities, these revenues are permanently under the control of public authorities and at their disposal. Consequently, State resources are clearly involved in this scheme.

(269) Filmmakers and other beneficiaries under the scheme benefit from a financial advantage in the form of direct grants which they would not normally receive under market conditions.

(270) The measures are selective in nature as the only recipients of the funding are filmmakers. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the Schemes distort or threaten to distort competition in the EU.

(271) The aid amount per project is £5,000 (€7,150) and the costs which are eligible for funding under the scheme are as follows:

- the distribution and promotion costs of individual short films and packages of short films made in Northern Ireland since 1994;
- the distribution and promotion costs of any other productions in the Northern Ireland Screen Mini-strands;
- for film: negative cutting, tape to film transfers, internegative/interpositive duplicating materials; 35mm prints; cost of adding a screen credit for Northern Ireland Screen to the film (which is a requirement of Northern Ireland Screen support);
- for video: telecine transfers, tape masters, VHS and/or DVD copies;
- for festivals: shipping costs; entry fees and information packs for competitive festivals; and
- the design and print costs of promotional materials.

- (272) The aid amounts are small enough to make the scheme fall below the *de minimis* threshold³⁷. However, the UK authorities prefer not to consider the scheme as being *de minimis*.
- (273) Since film productions are traded at an international level, it could be argued that the financial advantage granted to film producers on the basis of this scheme affects trade between Member States. However, the aid amount per project is £5,000 (€7,150) and the aid is directed towards the distribution and promotion costs of short films and Mini-strand (micro-budget) films. So the effect on trade is unlikely to be significant.
- (274) However it cannot be excluded that the funds provided by the scheme constitute State aid within the meaning of Article 87(1) EC.

5.13 Compatibility

- (275) The Commission's Cinema Communication³⁸ provides special rules on assessing State aid to cinematographic and other audiovisual works under Article 87 (3) (d) EC. The scope of the Cinema Communication includes all kinds of audiovisual products distributed by multiple distribution channels.
- (276) Although the Communication applies to aid in favour of the production of films, the criteria of the Communication can serve as a reference for assessing the compatibility of support measures concerning the promotion and distribution of films with the State aid rules of the EC Treaty. However, given that promotion activities do not form part of the production of films, the Commission has to carry out a separate assessment of the necessity and proportionality of the measure directly under Article 87 (3) d).
- (277) **General legality:** According to point 2.3. (a) of the Cinema Communication, the aid scheme needs to respect the "general legality" principle, ie, the Commission must verify that the scheme does not contain clauses that would be contrary to EC Treaty provisions in fields other than State aid. In particular, the Commission must ensure that the EC Treaty principles prohibiting discrimination on the grounds of nationality and freedom of establishment have been respected.
- (278) **Cultural product:** According to point 2.3. (b) 1. of the Cinema Communication, the aid must be directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).
- (279) **Territorial conditions:** According to point 2.3. (b) 2. of the Cinema Communication, "The producer must be free to spend at least 20 % of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme. In other words, the Commission accepted as an eligibility criteria territorialisation in

³⁷ Commission Regulation (EC) No 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to *de minimis* aid (OJ L 379, p5-10, 28/12/06)

³⁸ 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 works (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04) and 2007 (OJ C 134 p5, 16/6/07) until 31 December 2009, at the latest.

terms of expenditure of up to 80 % of the production budget of an aided film or TV work” but “limited to the minimum degree required to promote cultural objectives.”

- (280) ***Aid intensity:*** According to point 2.3. (b) 3. of the Cinema Communication, "Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget films."
- (281) ***Aid supplements for specific film-making activities:*** According to point 2.3. (b) 4. of the Cinema Communication, "Aid supplements for specific film-making activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities in/to the Member State granting the aid is avoided."

General legality principle

- (282) The applicant's nationality and place of residence are not taken into consideration in funding decisions.
- (283) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the UK authorities, the Mini-distribution and promotion scheme does not raise any issues concerning its general legality under the EC Treaty.

Cultural project

- (284) Northern Ireland Screen applies the national definition of 'British' film, which has been assessed in section 5.1.
- (285) In addition, projects must also be typically Northern Irish in character, tone and setting. As all three elements concern the cultural content of the project, the Commission considers that the criteria applicable to the films eligible to benefit from the Mini-distribution and promotion scheme would ensure that the aid is directed towards a cultural project according to verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

Territorial conditions

- (286) There is no obligation to spend any of the distribution and promotion costs subsidised by the scheme in the UK or, more specifically, in Northern Ireland. Consequently, these conditions appear to allow producers to spend at least 20% outside the UK without incurring any reduction in the amount of aid, as required by the Cinema Communication.

Aid intensity

- (287) The scheme funds distribution and promotion costs up to a maximum of 10% of the production costs or £5,000 (€7,150) per project, whichever is the lower.

- (288) The aid is directed towards short films, packages of short films and Mini-strand films. All are very low budget and therefore likely to meet the criteria for difficult films.
- (289) As noted in paragraph (116), the Commission considers that the UK authorities have met the requirement in point 2.3(b)3 of the Cinema Communication to establish a definition of difficult films which would be excluded from the 50% aid intensity limit.
- (290) Bearing in mind the limited aid amount per project, the maximum aid intensities for the Mini-distribution and promotion scheme therefore comply with the aid intensity rules of the Cinema Communication.

Necessity and proportionality

- (291) The objective of the scheme is to support the distribution and promotion of short and micro-budget films, including the costs of participating in film festivals. As noted in paragraph (285), the Commission considers that the support for the promoting films on this scale pursues a cultural objective: the promotion and distribution of community films with Northern Irish cultural and artistic content.
- (292) This objective is in line with Article 151 of the EC Treaty, which explicitly mentions “artistic and literary creation, including in the audiovisual sector” as an area where the Community shall, if necessary, support and supplement the actions of Member States, and provides that “the Community shall take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.”
- (293) The maximum aid available is limited to £5,000 (€7,150). Bearing in mind the types of films which are being supported and the eligible costs under the scheme, the Commission considers that the present measure is necessary and proportionate to promoting the common interest objective of promoting the representation of cultural and artistic European films at international level.
- (294) Therefore, the Commission considers that the measure is necessary and proportionate to the objective pursued and does not distort competition to an extent which would be contrary to the common interest in line with Article 87 (3) d).

Conclusion

- (295) Consequently, the Northern Ireland Screen Mini-distribution and promotion scheme complies with the compatibility criteria of the Cinema Communication.

Overall conclusion

- (296) The Commission has therefore concluded that the financial support for film development and production under the following schemes constituting State aid within the meaning of Article 87 (1) EC, are compatible with the common market pursuant to Article 87 (3) (d) EC:
- UK Film Council:
 - Premiere Fund;
 - New Cinema Fund; and
 - Development Fund

- Scottish Screen:
 - Content development
 - Short film production; and
 - Content production
- Northern Ireland Screen:
 - Script development;
 - Low budget feature film;
 - Feature films & TV production, including Mini-strands; and
 - Mini-distribution & promotion
- Film Agency for Wales:
 - Script Development; and
 - Content Production schemes.

6. DECISION

The Commission has accordingly decided, on the basis of the foregoing assessment, not to raise any objections to these measures, considering that they constitute State aid compatible with the common market under Article 87 (3) (d) EC until 31 December 2012. The UK authorities have undertaken to implement any changes that may be required after the expiry of the Commission's Cinema Communication on 31 December 2009, at the latest³⁹.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site:

http://ec.europa.eu/community_law/state_aids/index.htm.

Your request should be sent by registered letter or fax to:

European Commission
 Competition Directorate-General
 Directorate State Aid II
 B-1049 Brussels
 Fax No: +32 2 296 9816

Yours faithfully,

For the Commission

Neelie KROES
 Member of the Commission

³⁹ 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 works (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04) and 2007 (OJ C 134 p5, 16/6/07).