



EUROPEAN COMMISSION

Brussels,

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Sir,

Subject: State aid N108/09 – Spain (Valencia)

Valencia film production support scheme

1 Summary

(1) I am pleased to inform you that the Commission has decided to raise no objections to the Valencia film production support scheme until 31 December 2012, as it is compatible with the common market. This approval is subject to the following commitments made by the Spanish authorities:

- In case the incentives given to film productions for using the Ciudad de la Luz studios in Alicante are considered by the European Commission to be State aid¹, any such incentives would be included when considering the overall aid intensity limit of 50% of the contribution of the Valencian coproducer to the production budget.
- The Spanish authorities will implement any changes that may be required by any changes to the State aid rules of the Commission's Cinema Communication² before 31 December 2012.

¹ Following the in-depth investigation C8/08 which the Commission decided to launch on 13 February 2008: http://ec.europa.eu/competition/state_aid/register/ii/doc/C-8-2008-WLAL-es-13%2002%202008.pdf

² 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

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2 Procedure

- (2) The Spanish authorities notified the Commission on 25 February 2009 of the proposed scheme and provided additional information on 22 April 2009 and on 4 June 2009.

3 Description

- (3) The objective of the Valencia film production support scheme is to provide direct grants to film and audiovisual works of artistic and cultural merit which are filmed either entirely or partially in the Valencia region. It aims to encourage works which contribute to the innovation and diversity of the audiovisual language, as well as to film culture, and its support of Valencian and European cultural heritage.
- (4) The scheme has the following legal bases:
- Ley 1/2006 de 19 de abril de la Generalitat Valenciana, del Sector Audiovisual;
 - Ley 16/2008, de 22 de diciembre, de Medidas Fiscales, de gestión administrativa y financiera y de organización de la Generalitat; and
 - Draft Resolución de la presidenta del Instituto Valenciano del Audiovisual Ricardo Muñoz Suay, por la que se convoca concurso público para la concesión de ayudas a la producción de obras audiovisuales y cinematográficas que sean portadoras de méritos artísticos y culturales propios, y que se rueden total o parcialmente en la Comunitat Valenciana
- (5) The scheme is open to all commercial production companies investing in a qualifying film production registered in the Register of Audiovisual Businesses of the Valencia Region, as well as those domiciled in the EEA, provided the latter undertake to open a branch or office in the Valencia Region and register in the above Register prior to payment of any aid under the scheme.
- (6) The aid is only available for films and audiovisual works which satisfy at least two of the following cultural criteria, which are similar to those applied in the Valencia film reward scheme³ and the Valencia support scheme for audiovisual production by SME's⁴ previously approved by the Commission:
- (a) the action of the audiovisual work is set mainly in Valencia (Comunitat Valenciana) or in other places in the EEA;
 - (b) at least one of the principal characters is connected with Valencian or European culture or is part of the Valencian language area;

final, 26/9/01, OJ C 43 pp6-17, 16/2/02); prolonged in 2004 (OJ C 123 pp1-7, 30/4/04), 2007 (OJ C 134 p5, 16/6/07) and 2009 (OJ C 31 p1, 7/2/09).

³ State aid N379/07: http://ec.europa.eu/community_law/state_aids/comp-2007/n379-07.pdf

⁴ State aid N309/08: http://ec.europa.eu/community_law/state_aids/comp-2008/n309-08.pdf

- (c) the screenplay of the audiovisual work is mainly written in Valencian (en lengua valenciana) or Castellano;
 - (d) the screenplay of the film or audiovisual work is an adaptation of an original literary work;
 - (e) the theme of the film or audiovisual work forms part of or is derived from Valencian or European culture or heritage;
 - (f) the theme of the film or audiovisual work concerns art or one or several artists;
 - (g) the theme of the audiovisual work concerns historical figures or events;
 - (h) the film or audiovisual work addresses actual, cultural, social or political themes which are of interest to the population of Valencia (Comunitat Valenciana) or of the EEA;
 - (i) the theme of the film or audiovisual work makes reference to a universally significant and relevant event, fictional or real;
 - (j) the film or audiovisual work uses the architectural, archaeological and natural heritage of Valencia (Comunitat Valenciana) to reflect the European cultural context.
- (7) The budget of the scheme is €30 million for the period 2009-2012, with an annual budget of €7 million. This financed by the Instituto Valenciano del Audiovisual Ricardo Muñoz Suay, which is supported from the general budget of the Valencia Region.
- (8) The aid amount is 20% of 80% of the local qualifying expenditure in the Valencia Region incurred by the beneficiary for the production of the aided film or audiovisual work. The amount of local qualifying expenditure taken into account for the calculation of the aid will not, in any case, be greater than 80% of the production budget. The maximum aid intensity, taking into account any other aid for the production, is 50% of the contribution of the beneficiary to the production budget.

4 Assessment

Existence of aid

- (9) 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.
- (10) ***Involvement of State resources:*** The funding for this scheme is provided by the Instituto Valenciano del Audiovisual Ricardo Muñoz Suay. The Institute

is funded by the Valencia Regional Government. Consequently, the scheme is imputable to the Valencia Regional Government and is financed from State resources.

- (11) ***Economic advantage to an undertaking:*** The producers of films under the scheme benefit from a financial advantage in the form of a direct payment from the State. They would not receive this advantage under normal market conditions and would have to bear the entire costs of their activities without State funding. Therefore, the scheme provides an economic advantage to the beneficiaries.
- (12) ***Distortion of competition and selectivity:*** The scheme is selective in nature as the only beneficiaries of the scheme are film production companies making films or audiovisual product which meet the eligibility criteria. The beneficiaries compete with other undertakings involved in production of audiovisual works which do not necessarily benefit from the scheme. Consequently, the scheme distorts or threatens to distort competition.
- (13) ***Effect on Community trade:*** In view of the international trade in films and in particular in feature films, the Commission considers that the selective advantage provided to production companies under the scheme may affect intra-community trade. At the same time, the Commission notes that there may be limited potential for intra-Community trade in films in Valencian language. However, given that the scheme includes a preference for film shot in the Valencia Region, the effect on Community trade cannot be excluded.
- (14) Consequently, the scheme constitutes State aid within the meaning of Article 87(1) EC.

Compatibility

- (15) The State aid criteria of the Cinema Communication⁵ provide special rules for assessing aid for film and audiovisual production under article 87(3)(d) of the EC Treaty. As well as applying the 'general legality' principle, these criteria require that:
- the aid is directed towards a cultural product, applying verifiable national criteria;
 - the producer must be free to spend at least 20% of the film budget in other Member States;
 - the maximum aid intensity is 50%, except for difficult and low budget films; and
 - the scheme does not provide aid supplements for specific film-making activities.

⁵ 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, 26/9/01, OJ C 43 pp6-17, 16/2/02); prolonged in 2004 (OJ C 123 pp1-7, 30/4/04), 2007 (OJ C 134 p5, 16/6/07) and 2009 (OJ C 31 p1, 7/2/09)

- (16) The scheme does not contain any elements which give cause for concern as regards the general legality principle. The territorial requirements are assessed in paragraph (18) on the basis of the Cinema Communication.
- (17) The Spanish authorities have defined verifiable cultural criteria to ensure that the aid is directed towards a cultural product. These criteria are applied by the Instituto Valenciano del Audiovisual prior to payment of the aid.
- (18) Since the producer is free to spend at least 20% of the film budget in other Member States without suffering a reduction in the aid, the territorial condition is respected. Furthermore, the maximum cumulative aid intensity is 50% and the scheme does not provide aid supplements for specific film-making activities.
- (19) Consequently, the scheme satisfies the State aid assessment criteria of the Cinema Communication.

5 Conclusion

On the basis of the above assessment, the Commission has decided to consider the aid compatible with the EC Treaty.

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

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu or, alternatively, by registered letter or fax to:

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Yours faithfully,
For the Commission

Neelie Kroes
Member of the Commission