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Sir,

**Subject: State aid SA.30569 (NN33/2010) – Bulgaria  
Bulgarian film support scheme**

## **1. SUMMARY**

- (1) I am pleased to be able to inform you that the European Commission has assessed the Bulgarian film support and decided to consider the aid contained therein as compatible with Article 107 (3) (d) of the Treaty on the Functioning of the European Union (TFEU). The scheme is approved until 31 December 2012 on the basis that the Bulgarian authorities have undertaken to implement any changes that may be required after the expiry of the Commission Communication on cinematographic and other audiovisual works (hereinafter “Cinema Communication”)<sup>1</sup>.

## **2. PROCEDURE**

- (2) By letter registered on 9 March 2010, the Bulgarian authorities notified to the European Commission the film support scheme for the years 2010-2012.

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<sup>1</sup> 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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- (3) Following a request for information from the Commission sent on 7 May 2010, the Bulgarian authorities confirmed in their reply of 21 May 2010 that the aid had already been granted under the scheme before it was notified to the Commission. Consequently, the Commission has re-registered the measure as unlawful aid and communicated that to the Bulgarian authorities by a letter of 22 July 2010.
- (4) Further clarifications were provided by the Bulgarian authorities by e-mails 29 March 2011, 30 September 2011, 6 March 2012, 15 June 2012 and 29 June 2012.

### 3. DESCRIPTION OF THE AID SCHEME

- (5) **Objective.** The main purpose of the aid is to support the development and preservation of the Bulgarian film culture. The main priorities are to provide assistance in the production and distribution of films of high artistic merit and debut film projects, to ensure the right of public access to various forms of film-related creative work, to protect the rights and interests of audiences, to support new talent and young writers, and to promote Bulgarian films domestically and internationally.
- (6) **Granting authority.** The granting authority is the national Film Centre Executive Agency (NFC EA). In line with the Film Industry Act, the Agency is a second-level spending unit of the Ministry of Culture. The transfer of the Ministry's budget for the Agency is determined by the annual Bulgarian State Budget Act.
- (7) **Legal basis.** The legal basis of the scheme is as follows: Film Industry Act (as amended in SG No 74 of 15 September 2009); Rules of Procedure of the National Film Centre Executive Agency (as amended in SG No 103 of 2 December 2008); Protection and Promotion of Culture Act (as amended in SG No 74 of 15 September 2009); Rules of Procedure of the Ministry of Culture (promulgated in SG No 80 of 9 October 2009).
- (8) **Source of the aid.** The aid is granted out of the general budget of the Bulgarian state.
- (9) **Form of the aid.** The aid is provided in the form of direct grants.
- (10) **Supported activities.** The following activities are eligible for support under the notified scheme:
  - (a) film production, which includes both domestic<sup>2</sup> and co-production films, as well developing projecting including scriptwriting of these,
  - (b) distribution and showing films,
  - (c) promotion of Bulgarian films and international and national film festivals, Bulgarian film weeks and showcases.
- (11) **Beneficiaries.** Between 101 and 500 companies are expected to benefit from the scheme each year. The beneficiaries are film production, distribution and promotion companies. The Bulgarian authorities confirmed that the aid provided

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<sup>2</sup> This includes also Bulgarian films associated with national displays and commemorations of events and notable historical figures as well as debut films.

under the scheme is not reserved exclusively for nationals and in providing the aid no discrimination is made with regard to nationality or the place of residence of the beneficiary at the time of payment of the aid. Undertakings established in one Member State and operating in Bulgaria by means of a permanent branch or agency are eligible for aid<sup>3</sup>.

- (12) **Eligible costs:** The eligible costs for film production include script writing, developing and preparing of a project, revamping and improving of the existing drama material, auditions and casting of actors, location scouting shooting, editing and synchronization. As far as the support for distribution of films to cinemas is concerned, the eligible costs involve production and placing of commercial materials, production and subtitling of prints for distribution; expenses for promotion and other direct distribution expenses. The aid granted does not cover the expenses for salaries and the maintenance of the offices of the distribution companies. As regards the promotion of Bulgarian films and national film events, the support is meant for production and subtitling of film prints, production and placing of commercial materials and travelling and stay of part of the crews related to the respective showcase.
- (13) **Estimated budget and budgetary breakdowns.** The total annual budget of the scheme amounted to BGN 10.1 million (approx. EUR 5.2 million) and BGN 13.6 million (approx. EUR 6.9 million) in 2010 and 2011 respectively. The estimated budgetary breakdown for the year 2012 is presented below:

Supported Activities	%	2012 (in BGN)
- Film production	85%	14 110 000
- Distribution and showing films	10%	1 660 000
- The promotion of Bulgarian films, film festivals, Bulgarian film weeks and showcases	5%	830 000
<b>Total</b>	<b>100%</b>	<b>16 600 000</b>

As regards the following years, the forecast maximum aid amounts shall be as follows:

Year	Amount in BGN	Amount in EUR (approx.)
2013	17,200,000	8,794,220
2014	18,920,000	9,673,642
2015	20,812,000	10,641,006
2016	22,893,000	11,705,005
2017	25,183,000	12,875,863
<b>TOTAL</b>	<b>105,008,000</b>	<b>53,689,736</b>

- (14) **Duration.** The Bulgarian authorities notified the scheme for the period 2010-2017. They have undertaken to implement any changes required after the expiry of the Cinema Communication and to notify the Commission of these changes.

<sup>3</sup> Foreign nationals need to register in line with the Film Industry Act, however, as confirmed by the Bulgarian authorities, such registration does not present any legal impediment but is rather necessary for the purposes of the national statistics.

- (15) **Cultural criteria.** As confirmed by the Bulgarian authorities, it is mandatory to meet the following cultural criteria for all projects when applying for the financial assistance under the Film Industry Act:

- the artistic and creative potential of the project in the context of European cultural diversity expressed by the quality and originality of theme and content, contribution to the development of the film narration and cinematic representation of reality, artistic quality of the script/content intention, description of creative methods of film narration, dramaturgical structure, main characters and visual concept of the project, creative and educational benefit of the project, emphasis on cultural and social themes.

More particularly, when evaluating the projects the experts should consider if: the script is based on a story or event that is part of Bulgarian or European culture, mythology or religion; the main characters are representatives of Bulgarian/European/world culture or they are key figures, related with the history, society or religion; the film represents Bulgarian/European/world tradition and customs; the story of the film is taking place in Bulgaria or Europe or it represents in general typical cultural specifics; the script is based on a book or adaptation of other art works (fine and applied arts, music or others) with a significant cultural value; the main theme in the script is a key issue for the Bulgarian or European society regarding cultural, social or political point of view. The film represents or reflects important Bulgarian/European/world human values like cultural diversity, cultural traditions and family values, solidarity, minorities' representation and protection, tolerance and protection of human rights; the film reflects on developing and familiarizing with the Bulgarian or European identity; the film is about an artist or an art genre; the film is based on scientific topics or natural phenomena.

- the professional experience of the producer and director, and the recognition of their previous productions in terms of reception by audiences and at international festivals and nominations by professional associations and organisations<sup>4</sup>.

- (16) The assessment of projects under these criteria is carried out by the National Arts Committees comprising professionals in the field of cinematography.

- (17) As confirmed by the Bulgarian authorities the Film Industry Act contains a number of provisions to ensure that the aid is channelled into the creation of a cultural product. The Act defines the purposes of the state aid:

- to confirm film-making as an important area of national culture
- to encourage the creation and distribution of film production with artistic merit
- to protect and preserve cinematographic works as a part of European and world cultural heritage.

- (18) Furthermore, projects that advocate violence, religious, racial or ethnical intolerance, or those of pornographic nature are not eligible for State aid.

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<sup>4</sup> Naturally, this condition does not apply to debut films.

- (19) **Maximum aid intensities.** The maximum aid intensity for film production and distribution projects cannot exceed 50% of the project budget. However, in case of low-budget films<sup>5</sup>, the maximum aid intensity for film production projects amounts to 80% of the production budget. The aid under the scheme cannot be cumulated with other support schemes.
- (20) **Maximum aid amounts:** As confirmed by the Bulgarian authorities, the maximum possible amounts of aid that can be received from the National Film Centre are as follows:
- feature fiction film – up to BGN 910 000
  - debut feature fiction – up to BGN 600 000
  - international coproduction fiction feature – up to BGN 338 000
  - development fiction feature – up to BGN 25 000
  - feature documentary – up to BGN 94 270
  - development documentary – up to BGN 6 000
  - international coproduction documentary – up to BGN 50 130
  - 1 min. animation screen time – up to BGN 5 648
- (21) **Definition of a low-budget film.** In line with the Film Industry Act, a low-budget film is film a budget of which does not exceed 60% of the average budget of a European film during the previous year as reported by the European Audiovisual Observatory.
- (22) **Market situation:** As indicated by the Bulgarian authorities, it is very difficult for a film made in Bulgaria to achieve a commercial success. This is due to the small market and the limited language scope of Bulgarian pictures, a large part of which falls into the cinema d'auteur category in terms of their artistic and genre specifics. The situation is further aggravated by the almost defunct network of cinemas - of a total of over 3,000 cinemas across the country prior to 1989, there were only 33 registered at the NFC EA by 2010 (with 140 screens), and 29 cinema halls (with 137) in 2011. Many of the cities and district centres have no cinema at all. The Bulgarian authorities confirm that according to information of the Observatory of Cultural Economics, half of the population in Bulgaria has no access to cinema, which renders distribution of Bulgarian movies very contingent and conditional.
- (23) In terms of the film production, in 2010, only 7 full-length feature films were made with budgets totaling approximately BGN 10.5 million, whereas only 5 of these were distributed, attracting a total of 464,297 spectators<sup>6</sup>. In 2011, 8 full-length feature films were made with their budgets totaling approx. BGN 13.7 million and 5 of these have attracting a total of 416,599<sup>7</sup> spectators.
- (24) **Territorialisation.** The Film Industry Act stipulates that 75% of the aid amount allocated under the scheme must be spent in the territory of the Republic of Bulgaria.

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<sup>5</sup> See definition in paragraph below.

<sup>6</sup> In this case it is worth noting that one of these films was a co-production that attracted 376,575 viewers.

<sup>7</sup> In this case, also significant part of viewers (145,515) was attracted by the co-production.

## 4. ASSESSMENT

### 4.1. Presence of State aid

- (25) According to Article 107 (1) TFEU, “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, in so far as it affects trade between Member States, be incompatible with the common market”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distort or threaten to distort competition, 4) the measure has to affect intra-Community trade.
- (26) ***Involvement of State resources.*** The direct grants foreseen under the present scheme are granted out of the Bulgarian State Budget. The granting authority - National Film Centre Executive Agency is a second-level spending unit of the Ministry of Culture. Consequently, State resources are involved in the scheme.
- (27) ***Economic advantage to an undertaking.*** The beneficiaries of the scheme - film producers, film distributors and promoters, benefit from a direct grant under the present scheme. Such grants constitute an economic advantage that the beneficiaries would not receive under normal market conditions. Therefore, the scheme provides an economic advantage to the aid beneficiaries.
- (28) ***Distortion of competition and selectivity.*** The scheme is selective in nature as the only recipients of the support are film producers or film distributors. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the scheme threatens to distort competition in the EU. Consequently, the scheme distorts or threatens to distort competition.
- (29) ***Effect on Community trade.*** Since film productions are traded at an international level, the financial advantage granted to the beneficiaries under the different types of support within the scheme could affect trade between Member States.
- (30) Consequently, the different types of support under the scheme constitute State aid within the meaning of Article 107(1) TFEU. The compatibility of the aid therefore has to be assessed.

### 4.2. Compatibility

- (31) The Commission’s Cinema Communication provides special rules on assessing State aid to cinematographic and other audiovisual works under Article 107(3)(d) TFEU. 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 scheme and can be applied by analogy to the development of these productions.
- (32) The criteria of the Communication can also serve as a reference for assessing the compatibility of the scheme's support for the distribution and showing of films with the State aid rules of the EC Treaty. However, given that promotion and distribution 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 this aspect directly under Article 107 (3) (d) TFEU. As regards the support for promotion of Bulgarian films and film festivals, this will be assessed directly under Article 107 (3) (d) TFEU.

- (33) The criteria of the Communication are set out in paragraphs (34) and (35). In view of the above, they are relevant for the assessment of production and distribution support under the scheme.
- (34) **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.
- (35) Point 2.3. (b) of the Cinema Communication establishes four additional compatibility criteria:
- **Cultural product:** 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).
  - **Territorial conditions:** "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."
  - **Aid intensity:** "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."
  - **Aid supplements for specific film-making activities:** "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**

- (36) There are no signs of incompatibility with the general legality criterion. Consequently, on the basis of the information provided by the Bulgarian authorities, the scheme does not raise any issues concerning its general legality under the TFEU.

### ***Cultural product***

- (37) The cultural content of all film projects are assessed according to the criteria set out in paragraph (15). Given that these criteria refer to verifiable aspects of the cultural content of the resulting film as well as the fact that the assessment of these criteria is carried out by professionals in the field of cinematography, the Bulgarian authorities have established verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication. Consequently, the aid is directed towards a cultural product.

### ***Territorial conditions***

- (38) As set out in paragraph (24) above 75% of the aid amount allocated for film production under the scheme must be spent in the territory of the Republic of Bulgaria. The maximum financing under the scheme is 50% of the production budget (this may reach 80% of low budget films).
- (39) Consequently, the condition that a 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) is met in this case. Therefore, the scheme complies with the territorialisation requirement of the Cinema Communication.

### ***Aid intensity***

- (40) The Bulgarian authorities consider low-budget films to be as defined in (21). Applying the subsidiarity principle, the Commission considers that the Bulgarian authorities have established a definition of low-budget films, which is in line with the Cinema Communication.
- (41) The maximum aid intensity is in general 50% of the film budget, except in the case of low budget films where the intensity can amount up to 80%.
- (42) Consequently, in view of the specific characteristics of the market for Bulgarian film market, the Commission considers that the scheme complies with the aid intensity rules of the Cinema Communication with respect to the allowed maximum aid intensities.

### ***Necessity and proportionality***

#### ***Distribution & showing support***

- (43) As explained in paragraph (32), the distribution and showing support under the scheme cannot be assessed only on the basis of the Cinema Communication criteria. The necessity and proportionality of the distribution and promotion support needs to be assessed for the purposes of applying Article 107(3)(d) TFEU.
- (44) The objective of the scheme is to support and promote the development of Bulgarian film culture. In particular, the scheme aims to support the distribution of Bulgarian films, as well as European films, in Bulgaria.
- (45) This objective is in line with Article 151 of the TFEU, which 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.”



- (46) In line with the information provided by the Bulgarian authorities, the Bulgarian film market is very small due to the limited language scope of Bulgarian pictures, the best part of which fall into the cinema d'auteur category in terms of their artistic and genre specifics.
- (47) The situation is further aggravated by the almost defunct network of cinemas - of a total of over 3 000 cinemas across the country prior to 1989, there were only 33 registered at the National Film Centre by 2010 (with 140 screens), and 29 cinema halls (with 137) in 2011. Many of the cities and district centres have no cinema at all. The Bulgarian authorities confirm that according to information of the Observatory of Cultural Economics, half of the population in Bulgaria has no access to cinema, which renders distribution of Bulgarian movies extremely difficult.
- (48) As a result, according to the Bulgarian authorities, the market for Bulgarian films, due to the limited language area, is very limited and therefore not commercially viable. This is why Bulgarian films are difficult to produce and to distribute<sup>8</sup>.
- (49) Therefore, the Commission considers that the distribution and showing support within the scheme 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 107(3)(d) TFEU.

#### ***Support for promotion of Bulgarian films and film festivals***

- (50) As described in paragraph (10), the scheme also foresees support of promotion of Bulgarian films and international and national films festivals, Bulgarian films weeks and showcases. The support includes the production and subtitling of film prints, production and placing of commercial materials and travelling and stay of part of the crews related to the respective showcase.
- (51) The support is essential for achieving the scheme`s objectives of preserving and promoting Bulgarian film culture. In view of the role of film festivals in the dissemination of cinematographic works with cultural content as well as on the international recognition of the festivals concerned, the Commission considers that the support measure for the organisation of film festivals pursues a cultural objective. This objective is in line with Article 151 TFEU mentioned in paragraph (45) above. The Commission considers that the present measure is necessary and appropriate to promote the common interest objective of fostering the dissemination of films with cultural content.
- (52) As indicated in paragraph (13) above, the amount of available support is small. Therefore, the Commission considers that the measure is 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 107 (3) d) TFEU.

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<sup>8</sup> In 2010, only 7 full-length feature films were made, whereas only 5 of these were distributed, and in 2011 out of 8 full-length feature films which were made, only 5 were distributed.

## 5. DECISION

- (53) The Commission regrets that the Bulgarian authorities have implemented the scheme without prior notifying it to the Commission as required under Article 108 (3) TFEU. In line with this provision “the Commission shall be informed, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid” and “the Member State concerned shall not put its proposed measures into effect until this procedure has resulted in a final decision”.
- (54) On the basis of its assessment of all the elements of the present scheme, the Commission has decided to consider the scheme compatible with the common market and not to raise objections to it. The scheme is approved until 31 December 2017 on the basis that the Bulgarian authorities have undertaken to implement any changes to the scheme which may be required after the expiry of the Cinema Communication. The Commission requests the Bulgarian authorities to submit an annual report on the implementation of the scheme.
- (55) The Commission reminds the Bulgarian authorities that in accordance with Article 108 (3) TFEU any plans to amend or extend the scheme must be notified to the Commission in advance and the Member State concerned is not entitled to put the measures into effect before the Commission’s decision.

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:

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

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Yours faithfully,

For the Commission

*Joaquín ALMUNIA*  
Vice-President