



EUROPEAN COMMISSION
Secretariat General

Brussels, 17.06.2010
C (2010)4193

PUBLIC VERSION
WORKING LANGUAGE
**This document is made available for
information purposes only.**

**Subject: State aid N 98/2010 – Czech Republic
Czech film support scheme**

Sir,

1. SUMMARY

- (1) I am pleased to inform you that the European Commission has assessed the above aid and decided to consider the aid to be compatible with the TFEU¹. The scheme is approved until 31 December 2015 on the basis that the Czech authorities have undertaken to amend the scheme if required by changes to the relevant State aid rules during this period.

2. PROCEDURE

- (2) The Czech authorities notified the scheme mentioned above by submission dated 12 March 2010, registered the same day. On 30 March 2010, the Commission sent a request for information to the Czech authorities. The Czech authorities replied by letter dated 8 April 2010. On 29 April 2010, the Commission submitted a new request for clarification and the Czech authorities responded by letter dated 6 May 2010.

¹ With effect from 1 December 2009, Article 87 of the EC Treaty has become Article 107 of the Treaty on the Functioning of the European Union (TFEU); the two sets of provisions are in substance identical. For the purposes of this Decision references to Article 107 of the TFEU should be understood as references to Articles 87 of the EC Treaty when appropriate.

Vážený pan
Karel SCHWARZENBERG
ministr zahraničních věcí
Ministerstvo zahraničních věcí České republiky
Loretánské náměstí 5
118 00 Praha 1
ČESKÁ REPUBLIKA
Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium.
Telephone : (32-2) 299 11 11.

3. DESCRIPTION

- (3) According to the Czech authorities, one of the objectives of the overall film support scheme is to support film culture and production of audiovisual works in the Czech Republic, including national production, co-production and foreign production.
- (4) The legal bases for the scheme are Government Resolution No. 1304/2009 on the Film Industry Support and State Budget Rules Act No. 218/2000.
- (5) The granting authority is the Media and Audio-Visual Department of the Ministry of Culture of the Czech Republic.
- (6) The aid intensity is 20 % of eligible costs for goods and services referred to in paragraph 18.a) or 10 % of eligible costs for remuneration for actors and crew members referred to in 18.b).
- (7) Beneficiaries may spend at least 20% of the implementation budget in another member state. The amount of eligible costs² used in calculation of the grant amount may not exceed 80% of the total budget of a project.
- (8) Application of a film project to the programme will take place through a three-part process:
 - The Project Registration Application is the initial notification to the Ministry of an application to the programme; this application focuses principally on whether the project satisfies the cultural test.
 - The second stage, the Project Record Application, provides financial information on the project.
 - The final application, the Grant Award Application, is only possible once the two prior applications have been approved by the Ministry.
- (9) Project Registration Applications are evaluated by the Programme Council, a panel of experts of recognised standing in the field of media and cinematography. Council members are nominated by institutions and professional organisations in the audiovisual industry.
- (10) The overall budget of the scheme is CZK 5400 million (EUR 208,5 million).³
The annual budget varies as follows:
 - 2010: CZK 400 million (EUR 15.5 million)
 - 2011: CZK 1000 million (EUR 38.6 million)
 - 2012: CZK 1000 million (EUR 38.6 million)

² For a definition of the eligible costs, see paragraph 18.

³ Euro foreign exchange reference rate of the European Central Bank as at 7 June 2010: EUR 1 = CZK 25.898

2013: CZK 1000 million (EUR 38.6 million)

2014: CZK 1000 million (EUR 38.6 million)

2015: CZK 1000 million (EUR 38.6 million)

(11)The scheme includes pre-production support and production support.

(12)The aid is only available to the following audiovisual works:

- a live-action fiction or animated film intended for distribution in cinemas whose length is at least 70 minutes (the total amount of eligible costs incurred in connection with a project in the Czech Republic must amount to a minimum of CZK 15 million, i.e. EUR 579 thousands⁴);
- a documentary film intended for distribution in cinemas whose length is at least 70 minutes (the total amount of eligible costs incurred in connection with a project in the Czech Republic must amount to a minimum of CZK 3 million, i.e. EUR 116 thousands⁵);
- a live-action fiction, documentary or animated film intended for broadcast on television whose length is at least 70 minutes (the total amount of eligible costs incurred in connection with a project in the Czech Republic must amount to a minimum of CZK 15 million, i.e. EUR 579 thousands⁶);
- an episodic segment of a live-action fiction or animated television series or a series of episodes⁷, wherein the length of each episodic segment is at least 40 minutes (the total amount of eligible costs incurred in connection with a project in the Czech Republic must amount to a minimum of CZK 10 million, i.e. EUR 386 thousands⁸).

(13)To be eligible for the support, audiovisual works must meet the following conditions:

- the project has met the criteria of the cultural test, i.e. it has scored at least 23 points (out of maximum 46 points) on the test (consisting of eight cultural criteria and seven production criteria) and fulfilled at least two, or partially three or four criteria, of the eight cultural criteria (i.e. scored at least 4 points on the eight cultural criteria); and
- financing for 75% of the total project implementation costs has been secured prior to the date of submission of the Project Record Application.

(14)Certain films and audiovisual works are excluded from support, such as those breaking applicable laws of the Czech Republic and/or showing sexual or violent scenes in a highly offensive and suggested manner.

(15)The cultural (content) criteria in the first section of the eligibility test are as follows, with a score of 2 point each:

⁴ The minimum total budget of eligible projects is CZK 18.75 million, i.e. EUR 724 thousands.

⁵ The minimum total budget of eligible projects is CZK 3.75 million, i.e. EUR 145 thousands.

⁶ The minimum total budget of eligible projects is CZK 18.75 million, i.e. EUR 724 thousands.

⁷ Reality TV cannot qualify for the scheme.

⁸ The minimum total budget of eligible projects is CZK 12.5 million, i.e. EUR 483 thousands.

- a) Storyline / screenplay / central theme of the film is based on events that are a part of Czech or European culture / history / mythology / religion⁹
- b) Film is based on a character / personality from Czech / European culture / history / society / religion¹⁰
- c) Storyline of the film is connected with a European setting / place / location / architectural or cultural setting
- d) Storyline / script / central theme of the film is based on a literary work or adapted from another artistic discipline (fine arts, music, etc.) of cultural importance
- e) Storyline / script / central theme of the film focuses on current cultural / sociological / political themes in Czech or European society
- f) Film reflects important Czech or European value(s), such as cultural diversity / solidarity / equality / protection of minorities or human rights / tolerance / environmental protection / respect for cultural or family traditions
- g) Film focuses on Czech / European culture / identity or Czech / European customs and traditions
- h) Storyline / script / central theme of the film is based on current or historical events affecting European / Czech society¹¹

(16) The second section of the eligibility test awards points for production criteria as follows:

- i) Film is a cinematographic work that contributes to the development of its genre – 3 points
- j) The filmmakers are Czech citizens or citizens of EEA member states:
 - director
 - producer / co-producer
 - DOP
 - script writer
 - lead actor / actress
 - supporting actor / actress
 - composer
 - production designer
 - costume designer
 - editor
 - makeup artist

⁹ Criterion a) refers to productions that are based on incidents being part of traditional Czech or European culture / history / mythology / religion.

¹⁰ The characters or personalities must be well-known and they must have a substantial role in the film.

¹¹ Criterion h) refers to productions that are based on current or historical incidents having influence on contemporary European / Czech society.

- head of production
 - postproduction or VFX supervisor
 - assistant DOP
- ½ point for each, maximum 7 points

- k) Final version of the film is in any language of the EEA – 4 points
- l) At least 51% of the crew (excluding those in point j) are citizens of EEA countries – 4 points
- m) Shooting takes place on locations or in studios in the Czech Republic – 4 points¹²
- n) Production uses Czech service providers in the Czech Republic – 4 points¹³
- o) Post-production (including sound and visual post-production, laboratories, soundtrack recording, etc.) takes place in the Czech Republic – 4 points¹⁴

(17) Beneficiary must be a business with its seat or place of business in the Czech Republic, implementing a project in the Czech Republic and applying for a grant under the scheme, provided that it is simultaneously:

- a producer or co-producer of an audiovisual work,
- registered with the relevant local tax authority for payment of income tax in the Czech Republic.

The evaluation of whether these criteria are met by an applicant to the scheme, will take place only when a positive grant award decision has been made by the Ministry and prior to funds being disbursed.

(18) Eligible costs mean:

- a) Payments for supplies of goods and services directly related to the applicant's implementation of a project and purchased in the Czech

¹² Categories m) *Location of shooting*, n) *Use of service providers* and o) *Location of post-production*: The points are awarded on the basis of days by employing the following methodology:

- If there is at least 1 day shooting in the Czech Republic / using Czech service providers / post-production taking place in the Czech Republic, the project receives 1 point;
- If the days of Czech shooting / using Czech service providers / post-production taking place in the Czech Republic reach 10% of the total, the project receives 2 points;
- If the days of Czech shooting / using Czech service providers / Czech post-production taking place in the Czech Republic reach 25% of the total, the project receives 3 points;
- If the days of Czech shooting / using Czech service providers / post-production taking place in the Czech Republic reach 50% or more of the total, the project receives 4 points.

¹³ Category n) *Use of service providers*: see footnote 12. 'Czech service providers' shall mean a business with its seat or place of business in the Czech Republic. In interpreting criterion n), no points shall be awarded for any service provider whose services are directly associated with production processes for which points are awarded in criteria m) or o). Therefore, for productions shooting in locations or studios in the Czech Republic, this means that points will only be awarded under criterion n) for service providers directly involved in pre-production.

¹⁴ Category o) *Location of post-production*: see footnote 12.

Republic from entities with a seat, place of business or permanent residence, and tax domicile in the Czech Republic;

1. Services provided by natural persons, wages, salaries, fees, goods and charges will qualify as eligible costs if and insofar as:
 - The individual is listed in the customary cast or crew lists as being resident in Czech Republic, and
 - Is either a permanent resident of the Czech Republic or subject to income tax in the Czech Republic on his or her payment in connection with the provision of such goods and services;
 2. Goods and services provided by companies will qualify as eligible costs if and insofar as:
 - The company providing goods and/or services has a seat or place of business in the Czech Republic, and
 - The company providing goods and/or services is registered for payment of income tax in the Czech Republic, and
 - The goods and/or services billed for are provided in the Czech Republic.
- b) Remuneration paid to actors and crew members who are foreign nationals or to persons who do not have permanent residence in the Czech Republic and whose income or revenues generated from sources in the Czech Republic are therefore subject to withholding tax according to a special rate.

(19) An applicant with cumulated state aid in excess of 50% of the project implementation costs is not entitled to a grant.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid within the meaning of Article 107(1) of the TFEU

(20) The notified scheme allows a selected number of enterprises to be relieved, by means of State resources, of a part of their costs regarding financing cinematographic activities which they would normally have to bear themselves. Consequently, the support from the State strengthens the position of a selected number of beneficiaries in relation to their competitors in the Community and therefore has the potential of distorting competition. Since the beneficiaries are active in selling products or services which are, at least potentially, subject to intra-Community trade, this support is likely to affect trade between Member States.

(21) The Commission therefore concludes that the notified scheme constitutes State aid within the meaning of Article 107(1) TFEU as moreover confirmed by the notifying Member State in its notification.

4.2. Compatibility of the aid

(22) The Commission's Cinema Communication¹⁵ provides for special rules on assessing aid to the production of cinematographic and other audiovisual works under Article 107 (3) (d) of the TFEU. The aid can be justified if the aid scheme complies with the general legality principle and the four specific compatibility criteria regarding cultural content, territorial conditions, aid intensity and aid supplements, as set out in the Cinema Communication.

A. General legality principle

(23) As stated in point 2.3 (a) of the Cinema Communication, the Commission must verify that the scheme does not contain clauses that would be contrary to Treaty provisions in fields other than State aid.

(24) To be in line with the freedom of establishment provisions of the Treaty, the Cinema Communication requires that beneficiaries need not have a permanent branch or agency in the territory before the aid is paid. There is no such requirement in the scheme at stake. In this case, the registration requirement of a permanent branch or agency is accordingly only imposed at the time of payment of the aid.¹⁶ By means of the requirement in paragraph 17 being applied only at the last stage of the process, when it is already determined that a project will qualify for support under the scheme, the Czech Republic will be in compliance with the requirement that any entity from the European Economic Area ('EEA'), which has undertaken to establish its local branch in the Czech Republic upon the award of the aid, is given the possibility to become a beneficiary of the aid. In addition, it follows from footnote 13 that the use of any entity from the EEA, which has established its local branch in the Czech Republic, will also earn points under the criterion n) *Use of service providers*.

(25) Consequently, on the basis of the information provided by the Czech authorities, the notified scheme does not raise any issues in respect of the general legality principle.

B. Cultural product

(26) According to point 2.3. (b) 1. of the Cinema Communication, the aid must be directed towards a cultural product. Each Member State must ensure that the content of a production which benefits from aid is cultural according to

¹⁵ 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 43/6 of 16/2/02); prolonged in 2004 (OJ C 123/1 of 30/4/04), 2007 (OJ C 134/5 of 16/6/07) and 2009 (OJ C 31/1 of 7/2/09) until 31 December 2012.

¹⁶ The requirement of the applicant's registration is limited to having an agency, even on a temporary basis, at the time of payment of the aid.

verifiable national criteria (in compliance with the application of the subsidiarity principle).

(27) The cultural content of all film projects is assessed according to the criteria set out in paragraph 15. All of these criteria refer to verifiable aspects of the cultural content of the resulting film. Consequently, the Czech authorities have established verifiable national criteria within the meaning of point 2.3.(b) 1. of the Cinema Communication.

(28) Consequently, the aid is directed towards a cultural product.

C. Territorial conditions

(29) Three of the points-based eligibility (production) criteria could be seen as encouraging local spending, namely those relating to the location of shooting being in the Czech Republic, the use of Czech service providers in the Czech Republic and the location of post-production in the Czech Republic. However, only 7 points are required to pass this second section of the eligibility (production) criteria, out of a maximum available 30 points from categories listed in paragraph 16. So it should not be difficult to exceed this minimum without scoring any points in either of these categories, each of which has a maximum of 4 points attached to it. Moreover, as explained in footnote 12, the points for categories m) *Location of shooting*, n) *Use of service providers* and o) *Location of post-production* are awarded on a pro-rata basis. The maximum score is achieved if the share of Czech shooting location / use of Czech service providers / Czech post-production location reaches 50%. Therefore, there is no incentive to spend more than 50% of such costs in the territory of the Czech Republic.

(30) As explained in paragraph 7, the film producer is able to spend at least 20% of the budget outside the Czech Republic without reducing the amount of the aid, as required by the Cinema Communication.

(31) Consequently, the territorial criterion of the Cinema Communication is fulfilled.

D. Aid intensity

(32) The maximum aid intensity is 20%. The maximum cumulative aid intensity is 50%.

(33) For all the support under the scheme, the 50% aid intensity limit of the Cinema Communication is applied. Consequently, the scheme satisfies the aid intensity criterion of the Cinema Communication.

E. Aid supplements for specific film-making activities

(34) 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.”

- (35)The current scheme applies to all the main film-making activities, namely preproduction, principal photography and post-production. So there are no aid supplements for specific film-making activities. This complies with the conditions of the Cinema Communication.
- (36)The Commission's analysis confirms that the notified measure fulfils both the substantive and procedural requirements laid down in the Cinema Communication.

5. CONCLUSION

- (37)In view of the above, the Commission finds that the aid granted on the basis of the measure in question is compatible with the Internal Market in accordance with Article 107 (3) (d) of the TFEU and has accordingly decided not to raise objections to the notified measure.
- (38)The scheme has been approved until 31 December 2015 on the basis that the Czech authorities have committed to amend the scheme if required by a change in the relevant State aid rules during the lifetime of the scheme.
- (39)If this letter contains confidential information, which should not be published, please inform the Commission services within 15 working days after receipt of this letter by providing reasons. If the Commission does not obtain a reasoned request within this delay, it will presume that you agree with the publication towards third parties and with the publication of the entire wording in the authentic language on the following internet website http://ec.europa.eu/community_law/state_aids/state_aids_texts_en.htm. Applications must be sent by encrypted E-mail to: stateaidgreffe@ec.europa.eu or via Fax to the following address:

European Commission
Directorate-General for Competition
State Aid Greffe
Rue Joseph II 70
B-1049 Brussels
Fax No: +32 2 2961242

Sincerely,

For the Commission
Joaquín ALMUNIA
Vice-President of the Commission