



EUROPEAN COMMISSION
Impact Assessment Board

Brussels,
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Opinion

Title **DG COMP - Impact Assessment on a Communication on State aid for films and other audiovisual works**

(draft version of 6 September 2012)*

(A) Context

Under the State aid rules of the TFEU, the Commission assesses financial support offered by Member States for the production and dissemination of films, TV productions and other audiovisual works. In 1998 the Commission established specific criteria to assess whether such state aid qualifies under the culture derogation of Article 107(3)d TFEU. In 2001, these criteria were taken over in the "Cinema Communication" which provides guidance on how the Commission assesses such State aid under the Treaty. These criteria were last extended until end 2012. The Treaty recognises the importance of promoting culture, and includes it in the policies specifically referred to (Art. 167 TFEU), giving the possibility of exception to the general incompatibility principle of Art. 107 for aid to promote culture. The number of film support notifications received by the Commission has been around 20 - 25 in recent years. This Communication asks Member States to design their support schemes according to the criteria. Interested parties are recipients of State aid, i.e. everybody who is engaged commercially in producing, distributing or promoting films or other audiovisual works, their employees, and the audiences. In the State Aid Modernization (SAM) Communication of May 2012 the Commission committed to a "broad modernisation package for EU State aid policy as a whole", by the revision of various state aid guidelines based on common economic principles.

(B) Overall assessment

The report provides an adequate overview of the main issues concerning state aid for the film industry, but should be improved in a number of respects. First, the report should better structure the problem definition to analyse the most important problem drivers, and the mechanisms by which the different problem elements influence each other, supported by the available evidence. Second, it should retain a broader range of policy options for more in depth analysis. Third, the report should provide a more detailed analysis of the expected impacts of the various options and packages of sub-options. Finally the report should compare the options with respect to their effectiveness, efficiency, and coherence in achieving the stated objectives.

In their written communication with the Board DG COMP accepted to amend the report along the lines of these recommendations.

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted
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(C) Main recommendations for improvements

(1) Strengthen the problem definition. The report should better structure the problem definition to analyse the most important problem drivers, and the mechanisms by which the different problem elements influence each other, supported by the available evidence. This should be done by more clearly distinguishing between, on the one side problems related to the sector which make it dependent on subsidies, in particular lack of access to upfront financing of film production and promotion linked with the small scale of producers, which itself is a result of the fragmentation of the sector along linguistic and national borders, and on the other hand problems that have arisen in the application of the current rules. The report should indicate more clearly that the baseline scenario that consists of a prolongation of the current rules may not lead to immediate changes for the sector but maintain a situation of legal fragility because the current rules are in violation of internal market principles and therefore in danger of being annulled by the Court, with the risk that aid recipients may be asked to refund the received support. It should clarify that the initiative is fully in line with the principles that guide State aid policy modernisation, because the new rules would reinforce internal market principles by better defending internal market freedoms.

(2) Present a broader range of options. The report should retain a broader range of options for more in depth analysis, particularly by providing alternatively feasible packages of sub-options under Option 2, for example by defining a minimalistic package that only implements the changes that are formally necessary, and a more ambitious one that gives more discretion over policy to the Commission. It should also explain in greater detail why the option to extend the rules under the current Communication and deal with the issues in a future block exemption regulation is not expected to produce any concrete benefits, while there may be legal and political drawbacks.

(3) Provide a more detailed analysis of impacts. The report should more explicitly analyse the expected impacts of the various options and packages of sub-options for the different parties involved, supported by the available evidence. It should also more specifically address the SME aspects, especially by indicating how the rules may help to simplify access to Member State support. A more consistent effort should be made to identify who is affected in which particular way by the specific option (element) under consideration. The material presented in the problem definition should be more explicitly used to give an indication of the likely costs and benefits for the industry, audiences, the preservation of cultural identity, as well as the costs for national administrations. The analysis of the social impacts needs to be strengthened. The report should provide an indication of the scale of appropriate measures which would be necessary under the new rules.

(4) Improve the comparison of options. The report should provide a better comparison between options, based on clear indications of expected costs and benefits. The overview table should summarise the available evidence rather than present qualifications that do not appear to be clearly linked to the argument in the report. Subsequently the report should compare all the options and packages of sub-options with respect to their effectiveness, efficiency, and coherence in achieving the stated objectives.

Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report

(D) Procedure and presentation

The report should include a timetable for a formal evaluation, complying with the Commission's evaluation standards, of the state aid regime in this sector, and specifically define the focus and responsible actors.

(E) IAB scrutiny process

Reference number	2012/COMP/005
External expertise used	No
Date of IAB meeting	Written procedure