



# The Four Pillars of state support

for film and audiovisual production

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**WORKSHOP**

**“The financial ecosystem of the European audiovisual production”**

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# Film funds and tax incentives

## Film funds

- provide financial support for a.o. the production of film and audiovisual works.

## Tax incentives

- entice private money into production.

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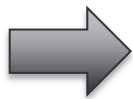
- entice private money to production business.

**STATE AID**

# Film funds and tax incentives

## EU Competition Law

- **Exclusive competence** of the EU for establishing **competition rules** that guarantee the functioning of the **internal market** (Article 3(b) TFEU)



includes rules on **STATE AID** (Articles 107-109 TFEU)

# Film funds and tax incentives

## EU Competition Law

MS aid schemes communicated to the Commission (Article 108.3 TFEU)

- Respect **legality principle**
- **Compatible with** TFEU provisions on **state aid**
- **Necessary, proportional and adequate**

# Film funds and tax incentives

## EU Competition Law

In November 2013 the Commission adopted its **Communication on State aid for films and other audiovisual works**.

- It contains revised **criteria for assessing** under EU state aid rules film funding schemes put in place by member states.

# Film funds and tax incentives

## Communication on State aid for films and other audiovisual works

- Public aid provided to a film production must be **legal** under the EU Treaty (eg, it must not affect the internal market);
- the aid must be directed towards a **cultural product**. Member States ensure that the content of the aided production is cultural according to **verifiable national criteria**;
- the **aid intensity** must in principle be limited to **50% of the production budget**, except in the case of difficult and low budget films;

# Film funds and tax incentives

## Communication on State aid for films and other audiovisual works

### Contentious issues

- “Subsidy race”: competition among some Member States to use State aid to attract inward investment from large-scale, mainly US, film production companies.
- Territorial spending obligations: Imposed on producers whereby they have to spend a part of their production budget on a given country in order to receive public money.



# Quotas

## Audiovisual Media Services Directive (AVMSD)

### Television

- **>50% for European works**, excluding news, sports events, games, advertising, teletext services and teleshopping (Article 16 AVMSD).
- **10% of their transmission time or 10% of their programming budget** devoted to **independent works** (Article 17 AVMSD).

### VoD

- **financial obligations, minimum share** in catalogue or **prominence** requirements (Article 13 AVMSD).

# Investment obligations

## Audiovisual Media Services Directive (AVMSD)

- allows for **more detailed or stricter rules**, provided that they respect the fundamental freedoms guaranteed by the Treaty.
- aims at the promotion of distribution and production of European and independent **audiovisual** productions.

# Investment obligations

## CJEU case law

- France: investment obligations **do not involve State resources** and therefore **do not constitute State aid**.
- Spain: the measure disputed **does not constitute an advantage granted** either directly or indirectly **by the State or through State resources**. Moreover, since the measure applies to television operators, the advantage in question is **not dependent on the control exercised by the public authorities over such operators**.

# Investment obligations

## National case law: SPAIN

- Constitutional Court: right of economic freedom **not absolute**. The **objective** of the obligation is constitutionally **legitimate**, and the measure is **adequate for the achievement of that objective**.

## National case law: GERMANY

- Federal Constitutional Court: marketers of cinema films formed a homogeneous group bound by a close interest and a certain responsibility in financing the film industry. **BUT...**
  - **Obligation of TV companies** to pay the levy was **not clearly defined**.
  - Rectified by **amendment to the Film support Act (FFG)** in 2010.

# Thank you!

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