



Notification obligations for state aid concerning audiovisual works in the EU

NOTE

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Francisco Javier Cabrera Blázquez



Table of contents

1. General legal framework.....	1
2. The new General Block Exemption Regulation.....	3
3. Notification of aid schemes under the GBER (Art. 54)	5
4. Aid measures notified under the Cinema Communication 2013 (selection).....	7



1. General legal framework

Article 107 TFEU (ex Article 87 TEC) declares incompatible with the common market “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 ... in so far as it affects trade between Member States”. However, there are exceptions to this rule, the most relevant for the audiovisual sector being Article 107.3(c) and (d) TFEU. According to these paragraphs, two types of aid may be considered to be compatible with the common market:

- Article 107.3(c) aid to facilitate the development of certain economic activities or of certain economic areas, where such aid does not adversely affect trading conditions to an extent contrary to the common interest;
- Article 107.3(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Union to an extent that is contrary to the common interest.

According to Article 108(3) TFEU, the Commission has to be notified, in sufficient time to enable it to submit its comments, of any plans to grant or alter aid.¹ In the case of aid concerning audiovisual works (including cinematographic works), the Commission assesses whether the aid scheme respects the “general legality” principle, i.e. whether or not the scheme contains clauses that would be contrary to the provisions of the EU Treaty in fields other than state aid (including its fiscal provisions). It then assesses the compatibility of the support scheme with the provisions of the TFEU dealing with state aid. The Commission’s assessment of state aid for audiovisual works is based on the rules indicated in the 2013 Cinema Communication.²

¹ When the total amount of the aid granted per member state for one undertaking does not exceed 200,000 euros over any period of three fiscal years, this aid measure is exempted from the notification requirement in Article 108(3) TFEU. See Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid (Text with EEA relevance), 18 December 2013, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R1407>

² Communication from the Commission on State aid for films and other audiovisual works (Text with EEA relevance), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52013XC1115%2801%29>. For more information on the Cinema Communication see Cabrera Blázquez F.J., Lepinard A., “The New Cinema Communication: All’s Well that Ends Well?” in Nikoltchev S. (ed.), *The new Cinema Communication*, IRIS plus 2014-1, European Audiovisual Observatory, Strasbourg, 2014, <https://rm.coe.int/1680783dab>.





2. The new General Block Exemption Regulation

In 2014, the revised General Block Exemption Regulation (GBER)³ considerably extended the scope of exemptions from prior notification of state aid granted to companies. According to Article 3 GBER, public aid schemes shall be considered compatible with the internal market and exempted from the notification requirement of Article 108(3) of the Treaty provided that such aid fulfils all the general conditions laid down in Chapter I GBER, as well as the specific conditions for the relevant category of aid laid down in Chapter III GBER. The key changes brought by the revised GBER are the following:

- Wider scope through increased thresholds: The exemption thresholds for many measures that were already covered by the existing GBER have been raised, allowing member states to grant higher aid amounts without prior notification. For some categories of aid, the scope has also been increased through more flexible eligibility conditions, more favourable maximum aid intensities and higher aid amounts.
- Wider scope through additional categories of aid: The adoption of a revised Enabling Regulation⁴ allowed the Commission to exempt new categories, such as aid for local, broadband, research and energy infrastructures, innovation clusters, regional urban development funds, culture and heritage conservation, audiovisual works, sports and recreational infrastructures and aid to make good damage caused by certain natural disasters.
- Simplification: taking on board feedback from the public consultations and in accordance with the objectives of the Commission's State Aid Modernisation (SAM) initiative,⁵ the conditions that aid measures should meet to benefit from the exemption have been significantly clarified and simplified.

The revised GBER may have an impact in the way member states notify state aid schemes concerning the audiovisual sector. Recital 73 GBER acknowledges the important role played by these works in shaping European identities as well as the audiovisual sector's

³ Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (Text with EEA relevance), <http://eur-lex.europa.eu/eli/reg/2014/651/oj/eng>.

⁴ Council Regulation (EU) 2015/1588 of 13 July 2015 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to certain categories of horizontal State aid (Text with EEA relevance), http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2015.248.01.0001.01.ENG.

⁵ See http://ec.europa.eu/competition/state_aid/modernisation/index_en.html.



particularities, and states that the criteria determined by the Commission in the Cinema Communication should be reflected in block exemption rules for aid schemes for audiovisual works. According to Article 4(1)(aa) GBER, the notification threshold amounts to EUR 50 million per scheme per year.⁶

Article 54 GBER lists the specific conditions rules according to which an aid scheme for audiovisual works shall be exempted from the notification requirement of Article 108(3) of the Treaty. These specific conditions are based on the criteria exposed in the Cinema Communication.

- Aid shall support a cultural product, and each member state shall establish effective processes to determine what is considered “cultural”, such as selection of proposals by one or more persons entrusted with the selection or verification against a predetermined list of cultural criteria. The aid may be granted to the pre-production, production and distribution of audiovisual works.
- The aid intensity for the production of audiovisual works shall not exceed 50% of the eligible costs, but may be increased to 60% of the eligible costs for cross-border productions funded by more than one member state and involving producers from more than one member state, and to 100% of the eligible costs for difficult audiovisual works and co-productions involving countries from the Development Assistance Committee (DAC) List of the OECD.
- The aid intensity for pre-production shall not exceed 100% of the eligible costs. If the resulting script or project is made into an audiovisual work such as a film, the pre-production costs shall be incorporated in the overall budget and taken into account when calculating the aid intensity. The aid intensity for distribution shall be the same as the aid intensity for production.
- Aid shall not be reserved for specific production activities or individual parts of the production value chain. Aid for film studio infrastructures shall not be eligible. Also aid shall not be reserved exclusively for nationals, and beneficiaries shall not be required to have the status of undertaking established under national commercial law.

Furthermore, Article 54 GBER also contains a list of eligible costs and includes rules concerning territorial spending obligations following the lines of the Cinema Communication.

The revised GBER entered into force on 1 July 2014.

⁶ With regard to investment aid for culture and heritage conservation, Article 4(1)(z) imposes a threshold of EUR 100 million per project, and of EUR 50 million per undertaking per year for operating aid for culture and heritage conservation.



3. Aid schemes notified under the GBER (Art. 54)

As of 9 April 2018, a search in the State Aid database of the European Commission concerning Article 54 GBER produces a list of 301 notifications.

The State Aid database of the European Commission is available at http://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3. In order to obtain the list of notifications concerning Article 54 GBER, one has to perform a search as indicated in the picture below:

The screenshot shows the 'State Aid Advanced Search' interface with the following filters:

- State Aid Procedure:** N - Notified aid, C - Contradictoire, E - Existing aid, XT - Exemption Training. Includes a checkbox for 'Select only Commission cases with related court cases(s)'. Links: (Select All), (Unselect All).
- Member State:** Austria, Belgium, Bulgaria, Croatia. Links: (Select All), (Unselect All).
- Region:** (Empty dropdown). Links: (Select All), (Unselect All).
- Primary Objective (Main):** Agriculture; Forestry; Rural areas, Aid or disadvantaged workers and/or workers with disabilities, Airport infrastructure or equipment, Airport operation. Links: (Select All), (Unselect All).
- Include GBER Objective:** . Links: (Select All), (Unselect All).
- GBER Objective:** Aid for culture and heritage conservation (Art. 53), Aid schemes for audio-visual works (Art. 54), Aid for sport and multifunctional recreational infrastructures (Art. 55), Investment aid for local infrastructures (Art. 56). Links: (Select All), (Unselect All).
- Primary Objective (Agriculture cases):** Article 13 - Aid for innovation, Agriculture; Forestry; Rural areas, Aid for advisory services in rural areas, 70-2001 Art. 5 (Consultancy and other services ...). Links: (Select All), (Unselect All).
- Decision Type:** Decision finding that the measures do not constitute aid, Decision not to raise objections, Decision to initiate the formal investigation procedure, Decision to extend proceedings. Links: (Select All), (Unselect All).
- EU Primary legal basis:** No aid in the sense of Art. 107(1) TFEU, Art. 107(2)(a) TFEU - Social character, Art. 107(2)(b) TFEU - Natural disasters, Art. 107(2)(c) TFEU - Certain areas of Germany. Links: (Select All), (Unselect All).
- EU Secondary legal basis:** 3 precedent decisions-Notice on Simplified Procedure, 2009, Agriculture-Agricultural Block Exemption Regulation 2014-2020 (Commission Regulation No 702/2014), Agriculture-Agricultural Guidelines 2014-2020 (European Union Guidelines for State aid in the agricultural sector), Agriculture-Block Exemption Regulation 1857/2006. Links: (Select All), (Unselect All).
- Aid Instrument:** Guarantee (where appropriate with a reference to the Commission decision (10)), Direct grant/ Interest rate subsidy, Tax advantage or tax exemption, Loan/ Repayable advances. Links: (Select All), (Unselect All).
- Case type:** Ad Hoc Case, Consultation, Full Function Joint Venture. Links: (Select All), (Unselect All).
- DG Responsible:** Agriculture and Rural Development DG, Competition DG, Fisheries and Maritime Affairs DG. Links: (Select All), (Unselect All).

Clear Search





4. Aid schemes notified under the Cinema Communication 2013

Aid schemes that do not comply with the rules of the GBER have to be notified to the European Commission and assessed according to the parameters of the Cinema Communication 2013. The following table provides a list of aid schemes notified to the Commission since the end of 2013. This list was extracted from the State Aid database of the European Commission as indicated in section 3 of this note.

Table 1. Aid measures notified under the Cinema Communication 2013 (selection in chronological order)

Country	Observations	Link
IT – Italy	<p>Tax incentives for the production of cinematographic works (modifications).</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Modifications of aid schemes notified by Italy and declared compatible by the commission, (Decision SA 49294, 18 December 2017).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49294</p>
IT – Italy	<p>Tax incentives for the production of audiovisual works (modifications).</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Modifications of aid schemes notified by Italy and declared compatible by the commission, (Decision SA 49296, 18 December 2017).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_49296</p>



Country	Observations	Link
FR - France	<p>Automatic financial aids for production and preparation of long duration cinematographic works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by France and declared compatible by the Commission (Decision SA 48699, 20 November 2017).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48699</p>
FR - France	<p>Automatic financial aids for production and preparation of creation documentary and fiction.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by France and declared compatible by the Commission (Decision SA 48907, 20 November 2017).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48907</p>
IT - Italy	<p>Tax credits for film production companies.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme Notified by Italy and declared compatible by the Commission (Decision SA 48021, 28 June 2017).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_48021</p>
DE - Germany	<p>Funding of film production and distribution, aid to VoD distribution: system of state aid notified by Germany.</p> <p>Secondary legal basis it the Communication on Cinema of 2013.</p> <p>Aid scheme notified by Germany. Decision to initiate the formal investigation procedure from the Commission than positive decision (Decision, SA38418, C (2016) 5551 final, 1 September 2016).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38418</p>



Country	Observations	Link
ES - Spain	<p>Modification of Spanish scheme for tax deductions in cinema and audiovisual works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Modifications of aid scheme notified by Spain and declared compatible by the Commission (Decision SA 40170, 14 December 2015).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40170</p>
FR - France	<p>Modifications of Tax credit for cinema and audiovisual.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by France and declared compatible by the Commission (Decision SA 42419, 29 September 2015).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_42419</p>
FR - France	<p>Modification of international tax credits scheme in the field of cinema and audiovisual works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by France and declared compatible by the Commission (Decision SA 42428, 29 September 2015)</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_42428</p>
ES - Spain	<p>Tax deduction for film and audiovisual productions in the province of Biscay.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by Spain and declared compatible by the Commission (Decision SA 40885, 15 July 2015).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_40885</p>



Country	Observations	Link
UK - United Kingdom	<p>Film tax relief modifications.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by United Kingdom and declared compatible by the Commission (Decision SA 41369, 14 July 2015).</p>	<p>http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_41396</p>
IT - Italy	<p>Tax incentives scheme for audiovisual works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by Italy and declared compatible by the Commission (Decision SA 39375, 3 December 2014).</p>	<p>http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_39375</p>
BE - Belgium	<p>Modifications of the “<i>tax shelter</i>” to support audiovisual works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by Belgium and declared compatible by the Commission (Decision SA 38370, 28 November 2014).</p>	<p>http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38370</p>
FR - France	<p>Scheme of cinema and audiovisual tax credits (increasing cinema and audiovisual tax credits).</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by France and declared compatible by the Commission (Decision SA38539, C (2014) 8798 final, 19 November 2014).</p>	<p>http://ec.europa.eu/competition/elojade/iseef/case_details.cfm?proc_code=3_SA_38539</p>



Country	Observations	Link
IT - Italy	<p>Digital tax cinema tax credits.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Aid scheme notified by Italy.</p> <p>Decision not to raise objections and also for some measures of the scheme to initiate the formal investigation procedure then positive decision (Decision C25/2009, 29 October 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C25_2009</p>
IE - Ireland	<p>Modifications of Irish Film tax relief support scheme.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Ireland and declared compatible by the Commission (Decision SA 38959, 20 October 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38959</p>
IT - Italy	<p>Prolongation of tax incentive for film production, investment and distribution.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Italy and declared compatible by the Commission (Decision SA 377992, 31 July 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37922</p>
FR - France	<p>Tax credit for foreign audiovisual and cinematographic works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by France and declared compatible by the Commission (Decision SA 38442, 15 July 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38442</p>
HU - Hungary	<p>Amendment of the Hungarian film support scheme.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Hungary and declared compatible by the Commission (Decision SA 38425, 24 June 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38425</p>



Country	Observations	Link
HR - Croatia	<p>Investment incentives for the production of audiovisual works.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Croatia and declared compatible by the Commission (Decision SA 38392, 24 June 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38392</p>
DE - Germany	<p>Amendments of the Baden-Wurttemberg film scheme.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Germany and declared compatible by the Commission (Decision SA 38449, (11 June 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38449</p>
NE - Netherlands	<p>Dutch film production incentive.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by the Netherlands and declared compatible by the Commission (Decision SA 38099, 13 Mai 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38099</p>
ES - Spain	<p>Modifications of the Basque film support scheme.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Spain and declared compatible by the Commission (Decision SA 38212, 8 May 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38212</p>
BE - Belgium	<p>Filmfonds, aid scheme for audiovisual consisting in a direct grant.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Belgium and declared compatible by the Commission (Decision SA 38083, 11 April 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38083</p>



Country	Observations	Link
UK – United Kingdom	<p>Modifications of the UK film tax relief.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by the United Kingdom and declared compatible by the Commission (Decision SA 38306 and Decision SA 37176, 17 March 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38306</p> <p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37176</p>
BE – Belgium	<p>FWB – RTBF fund for Belgian series consisting in reimbursable grant.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Belgium and declared compatible by the Commission (Decision SA 37479, 17 March 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37479</p>
DE - Germany	<p>Film funding fund, HessenInvest, Film.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Germany and declared compatible by the Commission (Decision SA 38000, 27 February 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38000</p>
IT – Italy	<p>Prolongation of aid scheme to Tuscan Cinema (aid N221/2010).</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Italy and declared compatible by the Commission (Decision SA 38084, 21 February 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_38084</p>
EE - Estonia	<p>Support to the audiovisual sector in Estonia, aid scheme consisting in a direct grant.</p> <p>Secondary legal basis is the Communication on Cinema of 2013.</p> <p>Notified by Estonia and declared compatible by the Commission (Decision SA 37526, 4 February 2014).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_37526</p>



Country	Observations	Link
DE - Germany	<p>Prolongation of the Funding of the film production, distribution and exhibition scheme.</p> <p>Secondary legal basis is the Communication on Cinema 2013.</p> <p>Notified by Germany and declared compatible by the Commission (Decision SA 36753, 3 December 2013).</p>	<p>http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36753</p>



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