



Legal conditions and criteria for film funding in Europe

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Different forms of film funding

1. Direct public support through film funds
2. Fiscal incentives schemes
3. Regulating investments in production by broadcasters, distributors and VOD providers

Different forms of film funding

1. Direct funding
2. Fiscal incentives
3. Regulating investments in production by broadcasters, distributors and VOD providers

State Aid

The general principles for state aid

Direct funding of films in the EU falls under the rules on culture, competition, hereunder state aid

❑ Culture:

- Principle of subsidiarity: EU does not have exclusive competence on culture

❑ Competition and state aid:

- Exclusive competence of the EU for establishing competition rules that guarantee the functioning of the internal market includes rules on state aid

❑ Culture, competition and state aid:

- promotion of **culture and heritage conservation** that does not affect trading conditions and competition in the Union and is not contrary to the common interest

How does state aid work for cinema?

The 2013 Cinema Communication

- updates the 2001 Cinema Communication
- is the result of 3 years of consultation process with stakeholders
- sets the legal conditions and criteria for film funding in the EU, but which are also relevant for any neighbouring country wishing to interact with operators in the single market:
 - Scope and assessment
 - Film heritage
 - Subsidy race
 - Territorial spending obligations

Conditions & criteria: scope and assessment

Scope:

- Includes all aspects of film creation, from story concept to delivery to the audience.
- But does not include provisions on aid to video games.

Assessment:

the Commission's role is limited to verifying whether a Member State has

- a relevant, effective verification mechanism in place,
- a cultural selection process to determine which audiovisual works should benefit from aid,
- a cultural profile to be fulfilled by all audiovisual works as a condition of the aid.

- The Commission **will not review the detailed criteria** used by the Member States in their assessment.

Conditions & criteria: film heritage

- ❑ Member states shall **encourage and support producers to deposit a copy** of the aided film **in the film heritage institution designated** by the funding body:
 - for preservation
 - for specified non-commercial use agreed with the rightsholder(s)
 - in compliance with intellectual property rights and without prejudice to fair remuneration for the rightsholder(s)
 - after an agreed period of time set in the grant agreement and
 - such that this does not interfere with the normal use of the film

Conditions & criteria: subsidy race

- No specific criteria in the new Cinema Communication.
- The Commission will continue to monitor further development of this type of aid to ensure that **competition takes place primarily on merits** rather than on the basis of public aid.
- Aid for foreign productions may be compatible with Article 107(3)(d) TFEU as aid to promote culture under the same conditions as aid for European productions.

Conditions & criteria: territorial spending

- Level of territorial production activity required as eligibility condition:
 - 50% max. of the production budget
 - or 160% max. of the aid amount (If the aid amount is calculated as a percentage of the budget).

- Aid awarded as a percentage of the expenditure on production activity in the granting Member State still allowed

- In both cases, the expenditure that can be subject to territorial spending obligations remains limited to 80% of the production budget.

Territorial spending obligations (1/3)

Film Budget	Aid intensity up to 50%	Example of aid granted	Territorial spending obligation maximum possible	
			New rules up to 160% of aid	Old rules up to 80% of budget
10 million	5 million	5 million	8 million	8 million

Territorial spending obligations (2/3)

Film Budget	Aid intensity up to 50%	Example of aid granted	Territorial spending obligation maximum possible	
			New rules up to 160% of aid	Old rules up to 80% of budget
10 million	5 million	2.5 million	4 million	8 million

Territorial spending obligations (3/3)

Film Budget	Aid intensity up to 50%	Example of aid granted	Territorial spending obligation maximum possible	
			New rules up to 160% of aid	Old rules up to 80% of budget
10 million	5 million	1 million	1.6 million	8 million

Where do funds get their money from?



Where do funds get their money from?

- ❑ Fund income is financed from a variety of sources, using a number of different models

- ❑ In decreasing order of economic relevance:
 - Income from public sources (national and local)
 - TV tax and contributions (mandatory and voluntary)
 - Taxes on cinema tickets and cinema advertising
 - Levies on video and VOD
 - National lotteries
 - Repayments made to funds

Different forms of film funding

1. Direct funding

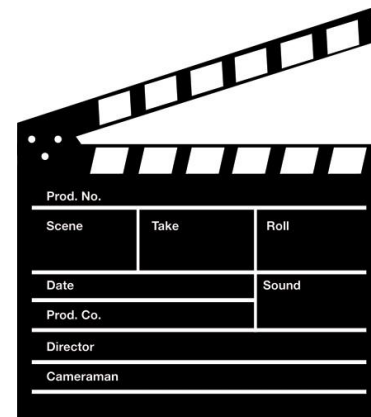
2. Fiscal incentives

3. Legal investment obligations of
broadcasters, distributors and
VOD providers



Different forms of film funding

1. Direct funding
2. Fiscal incentives
3. Legal investment obligations on broadcasters, distributors and VOD providers



The players and their obligations (AVMSD)

□ Linear services (TV broadcasting – art. 16-17)

>50% of transmission time to EU works

>10% of transmission time/programming budget to independent EU works

□ Non linear services (VOD – art. 13)

- Production/acquisition of rights of EU works
- Share of EU works in VOD catalogue
- Prominence to EU works in VOD catalogue

The players and their obligations (national)

Spain & Italy

- Investment

Germany

- Contribution > *Filmförderungsanstalt*

Belgium (French Community)

- Investment **OR** contribution > *Centre du cinéma et de l'audiovisuel*

France

- Investment **AND** contribution > *Centre national du cinéma et de l'image animée*

... in Spain (*investment*)

Legal basis

Ley 7/2010, de 31 de marzo, General de la Comunicación Audiovisual

Obligations

- ❑ Broadcasters and “electronic communication service providers and programme catalogue service providers” whose programming schedules include films which are less than seven years old by reference to their date of production:
 - 5% of the income earned by the operator in the previous financial year (6% for public service broadcasters)
 - 60% (75% in the case of public service broadcasters) must be allocated to cinema films
 - 60% must be allocated to works – of any type – produced in one of Spain’s official languages.
 - Of this amount, 50% must be allocated to independent production.
 - 40% of their remaining financial investment (25% in the case of public service broadcasters) may be allocated to the financing of TV films, series or mini-series.
 - Within these percentages, public service audiovisual media providers must allocate at least 50% to TV films or mini-series.

... in Italy (investment)

Legal basis

Decreto Legislativo 31 luglio 2005, n. 177 (Testo unico)

Decreto interministeriale 22 febbraio 2013, firmato dal Ministro dello Sviluppo economico e dal ministro per i Beni e le Attività culturali

Obligations

Broadcasters

- Public-service broadcaster (RAI)
 - 15% of total annual revenues allocated to European works by independent producers, with subquotas for films of original Italian expression wherever produced and animation films for the formation of children.
- Private broadcasters
 - 10% of annual net revenues in production, financing, pre-acquisition or acquisition of Italian works made by independent producers, including recent works (5 years old), with subquotas for films of original Italian expression wherever produced

VOD providers

- 20% share of European works in VOD catalogues, or
- 5% of the annual revenues specifically attributable to the public provision of on-demand audiovisual content within the same catalogues in the preceding year. (Minimum threshold of EUR 100,000)
- Can be reduced by 1/5 if the provider fulfills prominence rules (proposed)

... in Germany (contribution)

Legal basis

Filmförderungsgesetz (Film Support Act, FFG): Direct contribution >
Filmförderungsanstalt

Obligations

Broadcasters

- Public-service broadcasters
 - 2.5% of expenses incurred via the broadcasting of films during the previous year
- Private broadcasters (free-to-air TV)
 - The level of the contribution is in proportion to the importance of film in scheduling.
- Pay-TV broadcasters
 - 0,25 % of net turnover

Cinema operators, video distributors and VoD providers

- Cinema operators
 - contribution based on box office revenues per screen. The film levy for each cinema screen amounts to between 1.8 percent and 3 percent of net annual turnover, provided that it exceeds EUR 75,000.
- Video industry and VoD providers
 - The levy is to be paid by video distributors and providers of VoD services with a net annual turnover above EUR 50 000. The rate of the levy depends on the turnover

... in Belgium Fr.C. (investment / contribution)

Legal basis

Décret coordonné sur les services de médias audiovisuels du 26 mars 2009 (AMS Decree)

Obligations

Two options:

- Production / purchase, or
- Direct contribution > *Centre du cinéma et de l'audiovisuel*

Broadcasting services providers (linear or non-linear)

- sliding scale based on the operator's annual turnover (minimum threshold fixed at EUR 300,000).

Service distributors

- Contribution determined on the basis of
 - the number of subscribers to the service **or**
 - the platform's previous annual revenues

... in France (investment + contribution)

Legal basis

Code du cinéma et de l'image animée

Décret n° 2010-1379 du 12 novembre 2010 relatif aux services de médias audiovisuels à la demande

Obligations

a) Direct contribution > *Centre national du cinéma et de l'image animée*

Cinema theatres, broadcasters, distributors of AV services, video distributors and VoD providers

- Tax on cinema tickets (TSA)
- Tax on broadcasters (TST) and tax on distributors (TST-D)
- Tax on video distributors and VoD providers

b) Production / purchase

Broadcasters

- Former analogue free-to-air TV channels, Pay-TV channels (canal +), Digital terrestrial TV channels, TV channels broadcast on cable and satellite

VOD providers (threshold EUR 10 million)

- Subscription-based VoD service providers (production of cinematographic and audiovisual works / French original expression)
- Other services. such as, in particular, non-subscription-based service providers
- Catch-up TV services

The players and their obligations (wrap up)

❑ **Two types of obligations**

- Investment in production / purchase
- Direct contribution to cinema fund

❑ **General trends**

- Extension of obligations to new services
- Specific obligations for public service broadcasters

❑ **... with exceptions**

- Minimum threshold
- Certain services excluded



For further information:

www.obs.coe.int

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