



EUROPEAN COMMISSION

Brussels, 11.08.2011  
C(2011) 5868 final

**PUBLIC VERSION**

**WORKING LANGUAGE**

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**Subject: State aid SA.32836 (2011/N) – Slovakia  
Audiovisual Fund**

## **1. SUMMARY**

- (1) I am pleased to inform you that the European Commission has assessed the above mentioned measure for supporting the audiovisual production in the Slovak Republic, the so called Audiovisual Fund programme (hereinafter "the Fund"), and decided to consider the aid to be compatible on the basis of Article 107 (3) (d) of the Treaty on the Functioning of the European Union (TFEU). The scheme is approved until 31 December 2016 on the basis that the Slovak authorities have undertaken to amend the scheme if required by changes to the relevant State aid rules during this period.

## **2. PROCEDURE**

- (2) By letter dated 4 April 2011, registered on 7 April 2011, the Slovak authorities notified the scheme for audiovisual production in Slovakia. The Commission sent a request for additional information on 12 May 2011, to which the Slovak authorities replied on 13 June 2011.

## **3. DESCRIPTION OF THE MEASURE**

- (3) **Objective:** The objective of the scheme is to support and promote the development of Slovak audiovisual culture. The Fund is a programme aiming at the support of all stages in

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the life of cultural audiovisual work.<sup>1</sup> The various sub-programmes can be grouped as follows:

- 1) development, creation and production of audiovisual works;
- 2) distribution and public presentation of audiovisual works;
- 3) research, education, training and publishing activities;
- 4) technology development.

Sub-programmes 1 and 2 have been notified to the Commission whilst the Slovak authorities operate sub-programme 3 under the "de minimis" regulation<sup>2</sup> or the General block exemption regulation<sup>3</sup> in the areas "Aid for research and development and innovation" (Chapter II, Section 7) and "Training aid" (Chapter II, Section 8). Sub-programme 4 is also applied under the "de minimis" regulation. Sub-programmes 3 and 4 are not covered by the scope of this decision and therefore not considered further hereafter.

(4) **Evaluation criteria:** For all types of support, the expert committees evaluate each application according to the following criteria:

- (a) group I – artistic and creative potential (45%):
  - artistic and creative potential of the project expressed by the quality and originality of theme and content, according to gender classification of the project (feature, documentary, animated),
  - artistic expression of the content, gender and genre profiling, contribution to development of film narration and cinematic representation of reality,
  - artistic quality of the script/content intention, description of creative methods of film narration, main characters and visual concept of the project,
  - creative and educational benefit of the project, emphasis on cultural and social values,
  - artistic and realisation experience of the participating creative workers, their previous awards and achieved creative/professional results (individual creative references of the project),
- (b) group II – overall benefit to audiovisual culture in the Slovak Republic<sup>4</sup> (30%),
- (c) group III – legitimacy and appropriateness of requested amount of financial support<sup>5</sup> (25%).

For every application for financing from the Fund, all three criteria are evaluated by an expert committee. More detailed sub-criteria are applied to each of the sub-programmes.

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<sup>1</sup> The previous aid scheme regarding audiovisual works in Slovakia, approved as case N 551/2006 by the Commission, has not been applied since 1<sup>st</sup> January 2010 and no aid has been provided since that date. That scheme ended its activity on 31<sup>st</sup> December 2009 due to the launch of the granting activities of the Fund on 1<sup>st</sup> January 2010.

<sup>2</sup> Commission regulation (EC) 1998/2006 of 15 December 2006 on the application of Articles 87 and 88 of the Treaty to de minimis aid (OJ L 379, 28. 12. 2006).

<sup>3</sup> Commission regulation (EC) 800/2008 of 6 August 2008 declaring certain categories of aid compatible with the common market in application of Articles 87 and 88 of the Treaty (General block exemption Regulation) (OJ L 214, 9. 8. 2008).

<sup>4</sup> Production, organisational and financial provision of the project (criterion of quality of producer and realisation strategy, financial legitimacy and adequacy of expenses, guarantee of co-financing from the applicant, estimated benefit according to the audiovisual sphere development)

<sup>5</sup> The credit of the applicant (achieved results, realisation experience, co-production partners, obtained grants for implemented projects, the applicant's success in other kinds of support programmes)

- (5) **Minimum threshold set for evaluation criteria:** To benefit from funding under any of the sub-programmes, the proposed project must score more than 50 % of the maximum possible points in group I relating to the cultural content of the project. A grant can be provided only if, in addition, the proposed project scores more than 50 % of maximum possible points of the sum of groups II and III.
- (6) **Excluded projects:** The aid is not intended either for support of commercial television broadcasting (advertisements, teleshopping), or creation of television programmes (such as news, musical programmes, sport programmes or religious programmes), except feature, documentary, animation or TV programmes focused on audiovisual culture.<sup>6</sup> The aid is not intended for acquiring licences for television broadcasting of audiovisual works. Furthermore, violent programmes or programmes with other inappropriate content are excluded from the support activity within the submitted scheme. Audiovisual works or audiovisual recordings that are not intended for public presentation, mostly amateur films and other works realised as leisure activities, home videos, company presentations or other kinds of audiovisual recordings created for internal purposes are excluded from the support activity of the Fund as well.
- (7) **Legal basis:** The legal basis for the funding is the *Act No. 516/2008 Coll. on the Audiovisual Fund and the amendment of certain acts*<sup>7</sup>. The detailed conditions of the scheme are specified in the *Statute of the Audiovisual Fund*, internal regulation of the Fund No 2/2009 as amended<sup>8</sup>, the *Principles of providing financial support from the Audiovisual Fund*, internal regulation of the Fund No 10/2009 as amended<sup>9</sup>, the *Principles, methods and evaluation criteria of proposals for financial support from the Audiovisual Fund*, internal regulation of the Fund No 8/2009 as amended<sup>10</sup>, the *Organisational and acting manual of the expert committees of the Audiovisual Fund*, internal regulation of the Fund No 1/2010 as amended<sup>11</sup> and the *Directive of the Audiovisual Fund on avoiding the conflict of interest*, internal regulation of the Fund No 1/2010 4/2010 as amended<sup>12</sup>.
- (8) **Duration:** The foundation of the Fund entered into force on 1 January 2009. During the year 2009 the Fund constituted its bodies and all necessary administrative background. The Fund practically has started its granting activities in January 2010. In 2010, the Fund provided financial support under the Temporary Framework approved by the Commission in case N 222/2009. The scheme has been notified for the period up to 31 December 2016. It will be put into effect and first aid in 2011 will be granted upon the State aid approval by the Commission. No aid will be granted before this decision is taken. The Slovak authorities have undertaken to implement any changes required after the expiry of the

<sup>6</sup> The Slovak authorities confirmed that reality shows, "Big Brother"-type shows or all other similar types of entertainment television programmes are excluded from the support activity within the submitted scheme.

<sup>7</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/zakon\\_o\\_avf.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/zakon_o_avf.sflb.ashx); English version at [http://www.avf.sk/Libraries/Eng\\_dokumenty/act\\_on\\_the\\_audiovisual\\_fund.sflb.ashx](http://www.avf.sk/Libraries/Eng_dokumenty/act_on_the_audiovisual_fund.sflb.ashx).

<sup>8</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/VP\\_2-2009\\_Statut\\_AVF.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/VP_2-2009_Statut_AVF.sflb.ashx)

<sup>9</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/VP\\_10-2009\\_zasady\\_poskytovania.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/VP_10-2009_zasady_poskytovania.sflb.ashx)

<sup>10</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/VP\\_8-2009\\_Zasady\\_hodnotenia\\_ziadosti.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/VP_8-2009_Zasady_hodnotenia_ziadosti.sflb.ashx)

<sup>11</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/VP\\_1\\_2010\\_Organizacny\\_a\\_rokovaci\\_poriadok\\_OK.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/VP_1_2010_Organizacny_a_rokovaci_poriadok_OK.sflb.ashx)

<sup>12</sup> [http://www.avf.sk/Libraries/Z%3%a1kony\\_a\\_predpisy/Smernica\\_Audiovizu%3%a1lneho\\_fondu\\_na\\_zamedzenie\\_konfliktu\\_z%3%a1ujmov.sflb.ashx](http://www.avf.sk/Libraries/Z%3%a1kony_a_predpisy/Smernica_Audiovizu%3%a1lneho_fondu_na_zamedzenie_konfliktu_z%3%a1ujmov.sflb.ashx)

Communication on certain legal aspects relating to cinematographic and other audiovisual works<sup>13</sup> (“hereinafter the Cinema Communication”). This Communication expires at the latest on 31 December 2012.

(9) **Form of the aid:** The aid will be financed in the form of direct grants and loans with due dates up to 5 years.

(10) **Budget of scheme:** Total expected sum of aid and its division into individual programmes of support activity of the Fund are included in the following table:

	<b>Total budget in EUR</b>	<b>Sub-programme 1 (production)</b>	<b>Sub-programme 2 (distribution and public presentation)</b>
<b>Average budget per year</b>	<b>7,800,000</b>	<b>6,800,000</b>	<b>1,000,000</b>
<b>Total sum within the scheme duration</b>	<b>46,800,000</b>	<b>40,800,000</b>	<b>6,000,000</b>

(11) **Granting authority:** The aid will be granted by the Audiovisual Fund.

(12) **Financing of the Fund:** The incomes of the Fund are contributions from the State budget of the Slovak Republic, contributions of obligatory entities defined by the law and own incomes of the Fund<sup>14</sup>. The entities obliged to pay the contribution to the Fund are subjects which use audiovisual works for their business activities (television broadcasters, cinema operators, distributors of audiovisual works on media and by other means of public distribution, and retransmission providers).

(13) **Beneficiaries:** Beneficiaries of the scheme are micro enterprises, small and medium-sized enterprises. A legal entity or a natural person who apply for a grant from the Fund must be registered in the Slovak Republic under the Commercial Code or the Trade Licensing Act.<sup>15</sup>

<sup>13</sup> 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.

<sup>14</sup> Interests from bank deposits, administration fees from applicants for the application processing, contractual penalties, interests from loans provided by the Fund

<sup>15</sup> A branch/agency of a foreign legal entity registered pursuant to related legislative regulations of the Slovak Republic is also considered legal entity with registered office in the Slovak Republic.

(14) **Eligible costs:** In the project's budget, eligible expenses<sup>16</sup> include: royalties and license rewards/retainers,<sup>17</sup> staff expenses,<sup>18</sup> expenses for technologies,<sup>19</sup> rental charges,<sup>20</sup> expenses for shooting material,<sup>21</sup> expenses for stage setting and design,<sup>22</sup> expenses for visual and sound postproduction,<sup>23</sup> legal and economic services, travel and transport expenses,<sup>24</sup> accommodation, promotion and printed materials,<sup>25</sup> other expenses directly related to the project<sup>26</sup>. Essential eligible expenses for the support to distribution are: translation and language adaptation of the film,<sup>27</sup> multiplication of film prints or digital cinema packages and related services,<sup>28</sup> multiplication of film trailers and production of other promotional materials,<sup>29</sup> insurance of film prints, advertising costs, PR and press conferences, marketing research and other related services, transport costs, legal and accounting services.

(15) **Aid intensity:** The maximum aid intensity for projects in sub-programme 1 is in principle 50 % of the production budget of the audiovisual work; higher aid intensities can be applicable in case of low budget audiovisual works<sup>30</sup> and difficult audiovisual works<sup>31</sup>, where the aid can amount up to 90 % of the production budget of the audiovisual work. An overview of the maximum share of support on total project expenses as well as the maximum support per project in sub-programme 2 is shown in the table below:

Field	Maximum aid intensity	Nominal limit in EUR
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<sup>16</sup> Certain indirect expenses in the project are accepted as eligible expenses within the set limit, i.e. eligible use of provided finances, such as:

- a) payments of operational expenses necessary for activities in correspondence with the project, in the sum no higher than 10 % of the total amount of financial support from the Fund and determined for the project's realisation,
- b) producer's fee in the sum up to 5 % of the total amount of financial support from the Fund and determined for the project's realisation,
- c) accountable reserve for unexpected expenses in the sum up to 5 % from the total amount of financial support from the Fund and determined for the project's realisation,
- d) expenses for legal services, accounting services, economic services and audit in the sum of individual accountable expenses up to 5 % from the total amount of financial support from the Fund and determined for the project's realisation.

<sup>17</sup> Rewards according to agreements concluded pursuant to the Author's Law – authors and performing artists, copyright acquisition to the works used in the projects, screening fees for hiring films for the events etc.

<sup>18</sup> Services of staff members and other personal expenses for realisation of work pursuant to concluded Performance agreement

<sup>19</sup> Services related to providing camera, light, sound and other technical equipment necessary for the project's realisation

<sup>20</sup> Facilities for shooting, screening or other facilities necessary for the project's realisation and other

<sup>21</sup> Raw film stock, sound material, video media, CD media and other

<sup>22</sup> Studio and location, scene, stage set, properties, costumes, masks and other

<sup>23</sup> Cutting rooms, laboratories, sound production and other

<sup>24</sup> Staff members, transport of technological equipment and other materials

<sup>25</sup> Production of invitations, leaflets, posters, catalogues, bulletins etc. – only direct expenses on the project's promotion are acceptable.

<sup>26</sup> E.g. visa, registration or participant fees, office material, communication expenses, postage etc.

<sup>27</sup> Subtitles

<sup>28</sup> Laboratories, digital technologies and other

<sup>29</sup> Electronic press kits, TV spots, stills, posters, banners, etc.

<sup>30</sup> A low budget audiovisual work is an audiovisual work, of which the production budget is not higher than median production budget of a Slovak audiovisual work. The low budget threshold is specified by the Board of the Fund, considering the statistic surveys in audiovision. In this context, the Slovak authorities consider that a low budget film is a film with a production budget less than EUR 1,100,000 in 2011.

<sup>31</sup> A difficult audiovisual work is an audiovisual work that is not primarily intended for economic profit and its possible economic profit cannot have influence on revenues on a relevant market, especially considering its artistic or experimental character, in regard to its content or its technical processing.

<b>Distribution</b>	95%	100,000
<b>Public presentation</b>	80%	200,000

(16) **Cumulation:** The total cumulative support cannot exceed the above maximum intensity.

(17) **Territorialisation:** The scheme at hand does not contain any territorial conditions.

#### 4. ASSESSMENT OF THE MEASURE

##### 4.1 State aid in the sense of Article 107 (1) of the TFEU

(18) According to Article 107 (1) of the TFEU, “*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 shall, in so far as it affects trade between Member States, be incompatible with the internal market*”. It follows that in order to be qualified as State aid, the following cumulative conditions have to be met: 1) the measure has to be granted out of State resources, 2) it has to confer an economic advantage to undertakings, 3) the advantage has to be selective and distorts or threatens to distort competition, 4) the measure has to affect trade between Member States.

(19) **Involvement of State resources:** As indicated in paragraph (12), the financing under the present scheme is granted mainly out of the State budget and contributions of obligatory entities defined by the law. Consequently, State resources are involved in this scheme.

(20) **Economic advantage to an undertaking:** The producers and distributors of audiovisual works under the present scheme benefit from a financial advantage in the form of direct grants and loans. They would not receive grants under normal market conditions and would have to bear the entire costs of their activities without State funding. Therefore, the scheme provides an economic advantage to the aid beneficiaries.

(21) **Selectivity and distortion of competition:** The scheme is selective in nature as the beneficiaries of the aid are operating in the audiovisual sector. The beneficiaries compete with other undertakings involved in production and distribution of audiovisual works which do not necessarily benefit from the scheme. Consequently, the scheme distorts or threatens to distort competition.

(22) **Effect on intra-EU trade:** Since audiovisual work productions are traded at an international level, the financial advantage granted under the production and distribution support on the basis of the scheme could affect trade between Member States.

(23) For the description of the national context of audiovisual culture, see paragraphs (43) to (45) as well as paragraphs (50) to (54). In this context, the types of activities supported as public presentation of audiovisual works under the scheme (film festivals and events) are unlikely to be economic activities. Accordingly, this support probably does not constitute State aid within the meaning of Article 107(1) of the TFEU. However, even if any of them were considered to be economic activities, they are regarded by the Slovak authorities as being essential for the support of Slovak audiovisual culture and this is assessed in section 4.2.3.1.

(24) Therefore, the Commission considers that, with the possible exception of the support for film festivals and events, the scheme constitutes State aid within the meaning of Article

107 (1) of the TFEU. It is therefore necessary to assess its compatibility under the provisions of Article 107 (3) of the TFEU.

## 4.2 Compatibility

- (25) The Cinema Communication provides criteria for assessing State aid to cinematographic and audiovisual production under Article 107 (3) (d) of the TFEU. Accordingly, the Cinema Communication is applicable to audiovisual production projects in the meaning of sub-programme 1.
- (26) Sub-programme 2 is aimed at supporting the distribution and public presentation of audiovisual works. This type of activity takes place after the production phase of the audiovisual work and therefore it does not directly fall within the scope of the Cinema Communication. Consequently, it is appropriate to assess the compatibility of the aid measure directly on the basis of Article 107 (3) (d) of the TFEU. However, given that the distribution and public presentation of audiovisual works is linked to the production of audiovisual works, the Cinema Communication is regarded as a pertinent reference when assessing the compatibility of State aid for this type of activity.

### 4.2.1 Sub-programme 1: the production of audiovisual works

- (27) The aid can be justified if it complies with the general legality principle and the four specific compatibility criteria set out in the Cinema Communication.

#### 4.2.1.1 General legality principle

- (28) 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*. On the basis of the information provided by the Slovak authorities, none of the four notified sub-programmes does raise any issues in this respect.<sup>32</sup>

#### 4.2.1.2 Cultural project

- (29) 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 the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle)*.

Under the notified programmes, the pre-requisite for receiving the aid is to score more than 50 % of the maximum possible points related to the cultural content of the project. With this set condition, a sufficient attention to cultural (content) criteria and cultural character is guaranteed in evaluating projects, given that no support can be provided if the programme does not have a sufficient cultural content.

- (30) This ensures that the content of the supported productions and distributions are cultural within the meaning of point 2.3 b) (1) of the Cinema Communication and that the aid under sub-programme 1 is therefore directed towards a cultural product.

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<sup>32</sup> The Slovak authorities confirmed that it is sufficient for the recipient to have a temporary agency established in the Slovak Republic at the time of payment of the aid.

#### 4.2.1.3 Territorial conditions

- (31) According to point 2.3. b) 2. of the Cinema Communication, *"the producer must be free to spend at least 20 % of the film budget in other Member States without suffering any reduction in the aid provided for under the scheme."*
- (32) The scheme at hand does not contain any territorial conditions. The aid beneficiary is free to spend the aid in other Member States. Therefore sub-programme 1 raises no concerns regarding territorial conditions and therefore the criterion of the Cinema Communication is met.

#### 4.2.1.4 Aid intensity

- (33) According to point 2.3 b) 3. of the Cinema Communication, *"Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget films."*
- (34) For sub-programme 1 the maximum aid intensity amounts, in principle, to 50% of the project costs. Higher aid intensities can be applicable in case of low budget films and difficult films, where the aid can amount up to 90 % of the production budget of the audiovisual work.
- (35) In application of the subsidiarity principle, the Commission considers that regarding sub-programme 1 the Slovak authorities have established definitions of "low budget films" and "difficult films" in accordance with the Cinema Communication.

#### 4.2.1.5 Aid supplements for specific film-making activities

- (36) 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."*
- (37) Sub-programme 1 provides support to the costs linked to the film production process as a whole, without foreseeing any aid supplement for specific film-making activities. This complies with this criterion of the Cinema Communication.

#### 4.2.1.6 Conclusion

- (38) The Commission has therefore concluded that the financial support by the Fund for production of audiovisual work projects under the sub-programme 1 constitutes State aid within the meaning of Article 107 (1) of the TFEU which is compatible with the internal market on the basis of Article 107 (3) (d) of the TFEU as it fulfils the conditions set out in the Commission's Cinema Communication.



## 4.2.2 Sub-programme 2: distribution of audiovisual works

### 4.2.2.1 Necessity and proportionality

- (39) As the Cinema Communication is not applicable to distribution of the audiovisual works, the Commission needs to assess the necessity and proportionality of this type of support.<sup>33</sup>
- (40) As indicated in paragraph (3), the objective of the scheme is to support and promote the development of Slovak audiovisual culture. In particular, the scheme aims to support the distribution of Slovak audiovisual works, as well as European audiovisual works, in Slovakia. Moreover, the evaluation of the fulfilment of cultural criteria described in paragraph (4)(a) by an expert committee supports this objective.
- (41) This objective is in line with Article 167 (1) of the TFEU, which provides that *“the Union shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore”*. Pursuant to Article 167 (4) of the TFEU, *“the Union shall take cultural aspects into account in its action under other provisions of the Treaties, in particular in order to respect and to promote the diversity of its cultures”*.
- (42) The Slovak authorities justify this support by the specific characteristics of the distribution market in the Slovak Republic, which is limited to 5.4 million people.
- (43) Distribution of audiovisual works in cinemas in the Slovak Republic is influenced by the size, structure and performance of the distribution market. This market reports the trend of continual decrease in main indicators according to the size and potential of the market. In the Slovak Republic, the number of cinemas and seats are decreasing in a long-term period. The structure of this market is unequal and shows significant disproportions between individual regions of Slovakia.
- (44) The following table illustrates the market structure according to the country of origin of individual audiovisual works screened in the Slovak Republic in 2010:

Country of origin	# of films	# of screenings	# of spectators	Gross revenues	Share on attendance	Share on revenues
CZ – Czech Republic	60	10,645	415,675	1,627,642 €	10.62%	9.03%
ES – Spain	10	1,187	42,631	135,673 €	1.09%	0.75%
FR – France	44	3,353	65,556	216,120 €	1.68%	1.20%
GB – Great Britain	29	7,303	342,377	1,486,300 €	8.75%	8.24%
SK – Slovak Republic	15	1,671	73,240	250,105 €	1.87%	1.39%
USA	222	76,568	2,869,890	13,924,214 €	73.34%	77.22%
Other	139	3980	103957	392057 €	2.65%	2.17%
<b>TOTAL</b>	<b>519</b>	<b>104,707</b>	<b>3,913,326</b>	<b>18,032,111 €</b>	<b>100.00%</b>	<b>100.00%</b>

- (45) The provided data illustrate significant disproportions in the structure of the distribution market. These disproportions are limiting factors in ensuring content and cultural diversity of audiovisual contents. Therefore, providing aid in the field of distribution and cinema

<sup>33</sup> For necessity and proportionality assessment of distribution support see Commission decisions N742/07 Estonian film support scheme of 13/02/2008, paragraphs 60 to 66, N202/08 Hungarian film support schemes of 16/07/2008, paragraphs 192 to 199, N233/08 Latvian film support scheme of 16/07/2008, paragraphs 51 to 62 and N477/08 German film support scheme of 10/12/2008, paragraph 91 to 95.

development in the Slovak Republic is essential for the preservation and development of cultural diversity, as well as the preservation and development of the structure of the distribution market.

- (46) The Commission considers that the distribution support is necessary to achieve the intended objective. There are no conditions on the geographical origin of the audiovisual works selected for the distribution support. Moreover, taking into account the above mentioned aid intensity requirements and also the budget of this sub-programme<sup>34</sup>, the aid will have limited effect on trade or competition within the EU. Consequently, the Commission considers that the aid for audiovisual work distribution under the scheme respects the proportionality principle.
- (47) Therefore, the Commission considers that the distribution support within the scheme is necessary and proportionate to the objective pursued and does not distort competition to an extent which would be contrary to the common interest in line with Article 107(3)(d) of the TFEU.

#### *4.2.2.2 Conclusion*

- (48) The Commission has therefore concluded that the support by the Slovak Republic under sub-programme 2, related to the distribution of audiovisual works, constitutes State aid within the meaning of Article 107 (1) of the TFEU which is compatible with the internal market on the basis of Article 107 (3) (d) of the TFEU.

### **4.2.3 Sub-programme 2: public presentation of audiovisual works**

#### *4.2.3.1 Necessity and proportionality*

- (49) As explained in paragraph (23), the types of activities (film festivals and events) benefitting from the public presentation support given under the sub-programme 2 are unlikely to be economic activities in the Slovak context described in paragraphs (43) to (45) as well as paragraphs (50) to (54). However, even if any of them were considered to be an economic activity, the underlying objective is in line with Article 107(3)(d) of the TFEU. Furthermore, as regards the proportionality of the public presentation support, the amounts involved are small, the aid intensity is reasonable and particularly, the objective is cultural.
- (50) As regards public promotion of film cultural events, there are various international film festivals in the Slovak Republic. The greatest ones of them are MFF ART FILM Trenčianske Teplice (18 years), MFF Bratislava (12 years), and MFF Cinematik Piešťany (5 years). Except for them, 50 more festivals, exhibitions, screenings and other events with nationwide and international participation are taking place, with programme focus on film works and also on other audiovisual production.
- (51) The audience of the largest international film festivals in the Slovak Republic is generally local. These festivals are focused mainly on target groups which are film school students, members of film clubs and well-educated filmgoers or film fans. Pursuant to non-statistical information on registration and accreditation of guests, professionals, journalists and other participants of Slovak film festivals, the Slovak authorities confirmed that foreign spectators represent a very minor ratio of audience of Slovak film festivals.

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<sup>34</sup>

See paragraph 10.

- (52) Film festivals and other public film events in Slovakia are focused on artistically valuable films and therefore festivals and other events represent a “cultural alternative” to the standard film distribution. Programme film selection is usually oriented on films which are not released in Slovak cinemas in common. Almost all of them are difficult films which do not have any relevant market share in local and international film distribution market. Festival screenings give a unique opportunity of public presentation to this kind of films. In that point of view film festivals and other public events in the field of audiovisual culture enlarge market space for European films and support trade between Member States.
- (53) Film festivals and other events usually include film education components into the festival programme – e.g. retrospectives of film artistic personalities, showing of national film heritage from foreign countries, thematic or genre special selections and other.
- (54) The following table illustrates in details the characteristics and results of major film festivals in the Slovak Republic in 2010<sup>35</sup>:

	IFF Bratislava	Art Film Fest	IFF Cinematik	Febiofest
<b><i>Location</i></b>	Bratislava and other 3 cities	Trenčianske Teplice, Trenčín	Piešťany	Bratislava and other 7 cities
<b><i>Duration in days</i></b>	8	9	7	33
<b><i>Dominant programme orientation</i></b>	Competition of first and second feature films, documentary films and shorts, thematic selections	International competition of features and shorts, retrospectives	European feature and documentary competition, student films, genre retrospectives.	First screenings of Slovak and Czech films, films for film clubs, int. festivals' selection
<b><i># of admissions (tickets)</i></b>	18,029	3,456	1,007	8,106
<b><i>Ticket revenues in €</i></b>	17,738	6,912	4,513	15,681
<b><i>Average ticket price in €</i></b>	0.98	2.00	4.48	1.93
<b><i>Total budget in €</i></b>	1,100,000	984,005	111,875	100,580
<b><i>State aid support in €</i></b>	150,000	125,000	55,000	50,000
<b><i>State aid support in %</i></b>	13.6	12.7	49.2	49.7

Source: statistical research by the Slovak Audiovisual Fund, 2010

- (55) In view of the low revenues and limited participation of non-Slovak spectators, the aid provided to film festivals and other events is unlikely to distort competition and also does not have any negative effect on trade between Member States in the Slovak context.

<sup>35</sup> In 2010 the Slovak Audiovisual Fund has started a basic statistical research of supported film festivals and other film events in Slovakia. This research will continue in the next years. There are no relevant statistical data of film festivals in Slovakia available before 2010.

- (56) State aid for public presentation of audiovisual works is essential for the scheme's objective of supporting and promoting Slovak and European audiovisual culture. Principally, support of public presentation of an audiovisual work completes the effect of support provided to the work's creation and production.
- (57) Festivals and other public events represent an inevitable scope for public screening of many European films, above all difficult and artistically valuable works. A lot of Slovak and European films are screened in Slovakia mostly at festivals and other public events. Festival circulation gives Slovak and European films a long term opportunity of public screenings, in contrast to the standard film distribution market<sup>36</sup>.
- (58) From this point of view the support offered to film festivals and other events of public presentation of audiovisual works is necessary for the scheme's objective and for enlarging a space for European audiovisual culture.
- (59) Consequently, given the Slovak context noted above and that, as noted in paragraph (56), the Slovak authorities have demonstrated that State aid for public presentation of audiovisual works is necessary and proportional, in view of the scheme's objective of supporting and promoting Slovak audiovisual culture, this support is necessary and proportional.

#### *4.2.3.2 Conclusion*

- (60) The Commission has therefore concluded that if the financial support by the Slovak Republic under the sub-programme 2, related to public presentation of audiovisual works, in particular film festivals, were to constitute State aid within the meaning of Article 107 (1) of the TFEU it would be compatible with the internal market on the basis of Article 107 (3) (d) of the TFEU.

## **5. Decision**

The Commission has accordingly decided to consider the aid to be compatible with the internal market and not to raise objections to the notified measure.

The Commission requests the Slovak authorities to submit an annual report on the implementation of the scheme. The Commission further reminds the Slovak authorities that any plans to modify this scheme must be notified to the Commission.

If this letter contains confidential information, which should not be disclosed to third parties, please inform the Commission within fifteen working days of the date of receipt. If the Commission does not receive a reasoned request by that deadline, you will be deemed to agree to the disclosure to third parties and to the publication of the full text of the letter in the authentic language on the Internet site: [http://ec.europa.eu/eu\\_law/state\\_aids/state\\_aids\\_texts\\_en.htm](http://ec.europa.eu/eu_law/state_aids/state_aids_texts_en.htm).

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<sup>36</sup> For illustration see the share of number of European films on the standard distribution market (48,55%) and on four major film festivals in the Slovak Republic (81,6%).

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Yours faithfully,

For the Commission

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Vice-President of the Commission