



EUROPEAN COMMISSION

SECRETARIAT-GENERAL

ACCUSÉ DE RÉCEPTION

Brussels, 06 X 2005
SG-Greffe (2005) D/ 205395

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SIGNATURE *Mary Wemyss*

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1040 BRUXELLES

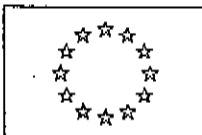
Subject: State Aid n° N 207/2005 - Ireland

The Secretariat-General would be obliged if you would forward to the Minister for Foreign Affairs, the enclosed decision from the Commission on the subject specified above.

For the Secretary-General,


Karl VON KEMPIS

Encl. : C(2005) 3679 final



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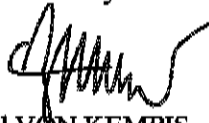
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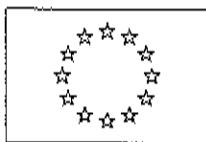
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For the Secretary-General,


Karl VON KEMPIS

Encl. : C(2005) 3679 final



EUROPEAN COMMISSION

Brussels, 05.X.2005

C(2005)3679 final

**Subject: State aid N 207/2005 - Ireland
Broadcasting Funding Scheme**

Sir,

1. Procedure

- (1) In a letter dated 28 April 2005, received by the European Commission on 29 April 2005, the Irish authorities provided a notification for the Broadcasting Funding Scheme. The Commission wrote requesting additional information on 29 June 2005 and 19 August 2005. The Irish authorities replied to these requests with letters registered on 18 July 2005 and 14 September 2005.

2. Description of the aid measure

- (2) **Legal basis:** On the basis of the Broadcasting Funding Act 2003 (hereafter: "the 2003 Act"), enacted on 23 December 2003¹, the Broadcasting Commission of Ireland (hereafter: "BCI") has developed a Broadcasting Funding Scheme (hereafter: "the Fund") to offer financing support for the production of new television or radio programmes of all genres² on Irish culture, heritage and experience, on adult literacy, and in particular the above mentioned topics in the Irish language.
- (3) **Objective:** The objective of the Broadcasting Funding Scheme is to develop high-quality radio and television programmes in English and Irish which explore the themes of Irish culture, heritage and experience, in contemporary or historic contexts and to

¹ This decision does not apply to any other schemes which may be created on the basis of the 2003 Act, in particular a scheme for financing of development of archiving of programme material produced in Ireland (Sec. 2 (1) (d) of the 2003 Act).

² Genres of programming considered acceptable under the scheme include factual and fictional programming (e.g. documentaries, educational programmes, drama productions, feature films and animation); one-off programmes (short or feature-length) and multi-episode projects (series or serials) and programmes targeted at the general public or towards a specific audience group, e.g. children.

Mr Brian COWEN
Ministry of Foreign Affairs
St. Stephen's Green 80
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increase public access to these programmes at national, local and community level as well as to represent the diversity of Irish culture and heritage.³ Furthermore, an objective of the scheme is to promote and preserve material of local character and the ethos of local and community broadcasting.

- (4) **Managing authority:** The BCI has responsibility for the development, management and administration of all aspects of the Fund. The BCI will establish structures to focus on the primary objectives of the scheme and ensure the effective distribution of funding (open, fair and verifiable application and assessment processes).
- (5) **Form of the aid:** The aid takes the form of a direct grant.
- (6) **Beneficiaries of the aid:** The beneficiaries of the scheme are all public and private radio and television broadcasters and independent production companies of audiovisual works. The estimated number of beneficiaries is between 101 and 500.
- (7) **Requirement to broadcast:** Funding will only be available for programmes which will be broadcast. In the case of television broadcasting, the broadcaster must be a free television service which provides near universal coverage in the country⁴, or a cable or MMD system as part of a community content contract⁵. In the case of radio broadcasting, it must be carried on sound broadcasting services⁶ licensed by the BCI or operated by Radio Telefís Éireann (RTE) – the Irish public broadcaster.
- (8) **Budget of the scheme:** The Broadcasting Funding Scheme will be financed by the Minister for Communications, Marine and Natural Resources (hereafter: “the Minister”) out of monies provided by the Oireachtas (the Irish Parliament) for the purpose of the Fund. For each financial year from 31 December 2002 an amount equal to 5 % of the net annual television licence fee income⁷ is paid to the Fund. This will cover both the administration of the scheme and grants to support the production of

³ Programmes concerned primarily with news or current affairs are explicitly excluded.

⁴ Near universal coverage means 90 % of the population of the country. There is no specification as to the transmission platform. Therefore, producers of programmes broadcast through unencrypted (free of charge) satellite transmission service are also eligible to apply for a grant under the scheme. This is in accordance with the primary purpose of the scheme, i.e. to ensure that Irish viewers and listeners enjoy greater and continued access to the supported programmes. Programmes broadcast on satellite television services on a subscription basis are excluded from funding under the scheme. However, there is nothing to prevent the re-distribution of supported programmes on other platforms.

⁵ Within the meaning of Section 39 of the Broadcasting Act 2001. The scheme gives the possibility to not-for-profit organisations, which are representative of a particular local community, to create programming on specific topics. Since these groups do not possess any transmission facilities, in order to make the programmes available to audience, there is an obligation imposed on cable and MMD system operators to distribute community television services on their networks free of charge. No such obligation is imposed on satellite networks, as all satellite service providers which are available in Ireland operate outside the Irish jurisdiction. Accordingly, community television services are confined to cable and MMD systems. However, this does not provide any advantage to cable or MMD systems nor will it disadvantage other platform operators.

⁶ Within the meaning of Section 2 of the Radio and Television Act 1988.

⁷ Total licence fee receipts less any expenses incurred by the Minister in relation to the collection of those fees. A payment into the Fund is made at the end of each month equivalent to 5% of the total net licence fee receipts for that month.

programmes. Accordingly, the amount available will vary from year to year depending on the total licence fee collected.⁸

- (9) **Eligible costs:** Eligible costs relate directly to the production of an audio or audiovisual work.⁹ Prior to drawdown of final payments from the BCI, programme makers will be required to submit an audited cost of production statement and full audited accounts for the project.
- (10) In very exceptional circumstances, BCI may allocate funding in respect of the development phase of programming. This will only apply to programme genres which have proved to be especially difficult to get to production, due to either the specialised cultural nature of the programmes or their obvious lack of commercial appeal. In these cases, the BCI may decide to fund a project at an earlier stage to give an applicant an opportunity to undertake additional research or secure matching funds. This funding will be available to writers and directors to research, write, and develop scripts and ideas and will involve the same beneficiaries as for the production phase. Aid for the development phase will constitute a very low percentage of the overall funding available under the scheme.
- (11) **Aid intensity:** In general, the BCI will allocate grants under the Broadcasting Funding Scheme which represent at most 95% of the total production budget for the programme (including support for the development phase, if applicable). All categories of radio and television programmes to be supported by the scheme fulfil the conditions of difficult and/or low-budget audiovisual works and/or audiovisual works which counteract the limited geographic extension of the Irish language.
- (a) **Difficult audiovisual works:** The thematic areas of the programmes to be supported by the Fund are culturally important but may not be commercially sustainable. The criteria upon which the difficulty is assessed depends on the producer, broadcaster or project's resources, the lack of commercial potential for a particular programme, or the lack of significant audience appeal. These difficulties are heightened by the specificity of the linguistic, educational and cultural themes. Programmes dealing with adult literacy issues are always difficult to make. Similarly, programmes that are experimental in nature, or have a high level of creative risk, will meet the criteria of difficult audiovisual works.
- (b) **Low budget:** The radio and television programmes funded through the scheme will have low budgets.¹⁰

⁸ As an example, the money paid into the Fund in 2004 amounted to € 8.5 million. In the event that the total funding allocation is not fully drawn down in any given year, such monies may be carried forward into the following year. No payments have been made from the Fund so far.

⁹ The following are explicitly excluded from the eligible costs: depreciation; banking, financial and legal charges; training and development costs; purchase of equipment or premises. With regard to the capital funding, in most cases, capital costs are ineligible under the scheme. However, where the applicant is a community, or a community group engaged in programme production, some capital costs may be eligible for funding. This shall be assessed on a case-by-case basis. In addition, beneficiaries that are entitled to offset the VAT in their purchases against the VAT on their sales are only entitled to funding based on their "net of VAT" expenditure over the life of the project.

¹⁰ See the tables in paragraph 12. The Irish authorities confirmed that, in the cases of radio programmes with the budget greater than € 55,000 and television programmes with the budget greater than € 750,000, where

- (c) *Programmes which counteract the limited geographic extension of certain language and cultures:* The scheme outlines the provision of funding to programmes on stated themes relevant to Irish culture, heritage and experience, and particularly to the support of programmes in these thematic areas in the Irish language. Such cultural products have limited circulation within the EU and world markets as their broadcast appeal is limited to Ireland by the cultural and linguistic nature of the themes of the scheme. The Irish television market, because of its small size and limited export possibilities for Irish productions, offers limited market potential for programmes that deal specifically with Irish culture, heritage and experience. This limited geographic extension is even more significant in the case of programmes produced in the Irish language¹¹, the funding of which is a major objective of the scheme. It is expected that such programmes would represent at least 25 % of the total funding.

- (12) The decision as to the percentage of funding to be awarded to an individual programme or series will be based on a number of factors. These include the potential for securing other sources of funding and the extent to which the proposal meets the objectives of the scheme. It will be a matter for applicants to outline to the BCI how the balance of funding for a particular project would be funded. The following matrices provide an example of the likely percentages to be allocated:

Radio programmes:

MIN budget	MAX budget	Grant awarded as a percentage of the total budget:
	€ 20,000	75 % - 95 %
€ 20,000	€ 40,000	70 % - 90 %
€ 40,000	€ 55,000	65 % - 85 %
Greater than € 55,000		between 20% and 80%

Television programmes:

MIN budget	MAX budget	Grant awarded as a percentage of the total budget:
	€ 50,000	75 % - 95 %
€ 50,000	€ 250,000	70 % - 90 %
€ 250,001	€ 750,000	65 % - 85 %
Greater than € 750,000		between 20% and 80%

- (13) **Recoupment of funding:** The BCI retains the right to introduce a recoupment clause in any contract under the scheme where a sizable grant has been approved to a programme or series of programmes that might reasonably be expected to make a significant profit. The exact recoupment amount will be negotiated individually for each project. All recouped funding will be re-assigned directly into the Fund's budget and will be used to support new projects. In addition, contracts between the BCI and beneficiaries will include a provision that in the event that actual costs incurred are less than budget that this underspend will be returned to the BCI.

the aid intensity exceeds 50% of the eligible costs, grants will be assigned only to programmes having the character of difficult films and/or Irish language programmes.

¹¹ The Irish language is only spoken in Ireland and in Northern Ireland, a region of United Kingdom.

- (14) **Territorialisation:** There are no territorialisation requirements in the scheme.
- (15) **Cumulation:** The maximum total amount of public support for a project from this scheme and from other public sources will be 95% of the eligible costs. To ensure that this maximum is not exceeded, evidence of supplementary financing arrangements will be required when applying for funding.
- (16) **Duration:** The scheme prepared by the BCI on the basis of the 2003 Act will be put into effect as soon as the European Commission and the Minister have approved it.¹² The notified scheme will be in force until the end of 2009.
- (17) **Dissolution of the Fund:** According to Section 7 of the 2003 Act, in the event of the wind-up of the Fund, the Minister shall pay any remaining money to RTE, the Irish public service broadcasters. This State intervention is not subject to the current decision and the Commission does not take at this stage any position on this.

3. Assessment

3.1. Existence of aid

- (18) According to Article 87(1) EC, save as otherwise provided in the Treaty, 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 be incompatible with the common market, in so far it affects trade between Member States.
- (19) **State resources:** The funds of the Broadcasting Funding Scheme are provided by the Oireachtas. The amount of funding which is based on the television licence fee income is permanently under the control of the Irish public authorities and is at their disposal. Consequently, State resources are clearly involved in this scheme.
- (20) **Economic advantage:** The broadcasters and independent producers of programmes benefit from a financial advantage in the form of direct grants which they would not receive under normal market conditions.
- (21) **Distortion of competition:** The measure is selective in character as the only recipients of the funding are broadcasters and independent film production companies which create programmes on specific themes related in particular to Irish culture, heritage and experience. The beneficiaries compete with other undertakings not involved in production of such audiovisual works. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the measure at issue distorts or threatens to distort competition in the Community.
- (22) **Effect on trade:** Since radio and television productions are traded at an international level, the financial advantage granted to broadcasters and independent production companies on the basis of the scheme under investigation affects trade between Member States.

¹² The Minister approved the draft scheme in April 2005, subject to a positive decision from the European Commission. The Minister is awaiting the Commission decision before formally and publicly approving the scheme.

- (23) Accordingly, the notified measure constitutes State aid within the meaning of Article 87(1) EC.

3.2. Compatibility

- (24) The aid could be justified under the exception of Article 87 (3) (d) EC for aid to promote culture.
- (25) The so called Cinema Communication¹³ provides for special rules on assessing cinematographic and other audiovisual works under Article 87 (3) (d) EC. The scope of the Cinema Communication includes all kinds of audiovisual products distributed by multiple distribution channels. Accordingly, the Cinema Communication is applicable to the audiovisual products which will be supported by the Fund and can be applied by extension to the radio productions funded under the scheme.
- (26) The aid can be justified if the aid scheme complies with the general legality principle and the four specific compatibility criteria set out in the Cinema Communication.

3.2.1. General legality principle

- (27) According to point 2.3. (a) of the Cinema Communication, the aid scheme needs to respect the “general legality” principle, i.e. the Commission must verify that the scheme does not contain clauses that would be contrary to Treaty provisions in fields other than State aid. In particular the Commission must ensure, that the EC Treaty principles prohibiting discrimination on the grounds of nationality and freedom of establishment have been respected.
- (28) In the case at hand, these principles are respected. Broadcasters and independent production companies from any EU Member State are eligible for the aid.

3.2.2. Cultural project

- (29) According to point 2.3. (b) 1. of the Cinema Communication, the aid must be directed to 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).
- (30) The purpose and scope of the scheme under investigation demonstrates that the scheme is directed towards the production of cultural programming. Programmes eligible for funding must be based on themes of Irish culture, heritage or experience, including topics such as history, historical buildings, the natural environment, folk, rural and vernacular history, traditional and contemporary arts, the Irish language, and the Irish experience in European and international contexts. In addition, a – rather

¹³ 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 26.09.2001, OJ C 43 of 16.2.2002); prolonged by Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the follow-up of the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works of 26.09.2001 (COM(2004)171 final of 16.3.2004, OJ C 123 of 30 April 2004).

insignificant - number of programmes being supported may be aimed at improving adult literacy.¹⁴

- (31) As regards the financing of quality television and radio programmes which are of particular local interest¹⁵ and aim at promotion of local and community broadcasting, this heritage represents an important part of the regional and local specificities of Irish culture. At the community broadcasting level, the scheme will encourage creative expression, provide access to training, production and distribution facilities, encourage local creative talent, foster local traditions and provide programmes for the benefit, entertainment, education and development of persons involved in programme-making and programme listeners or viewers. The objectives of the scheme are to assist the creation of programmes as vehicles for the preservation of local heritage and culture, as well as fostering the not-for-profit ethos of community broadcasting.
- (32) The applications for the funding will be assessed by the BCI on the basis of the following criteria: programme themes (Irish culture, heritage, experience or adult literacy); quality of programme proposal and/or script; additionality; new or innovative concept; national, local or community interest (in terms of intended audience, wide range of viewers/listeners or rather more defined audience); track record of creative and technical personnel; partnerships; financial aspects (good value for money in terms of quality and quantity of programming).
- (33) Therefore, the scheme under investigation directly benefits the creation of cultural works to be broadcast in radio and television.
- (34) Finally, the Fund will only allocate grants to finance programmes that will be broadcast. At the application stage, the BCI will insist that the independent producers must confirm that they have an agreement to broadcast and the broadcasters must confirm their commitment to a peak hour¹⁶ slot for the programme. Taking into account the requirement to broadcast and the condition that the supported programmes must be accessed by people who are deaf or with hearing difficulties¹⁷, the scheme ensures that the supported cultural products are available to numerous viewers and listeners.

3.2.3. Territorialisation

- (35) 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. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of*

¹⁴ These are productions aimed to help adults improve their reading, writing and numeracy skills in the privacy of their own homes and also to raise awareness of the literacy and numeracy issue among the general population, e.g. a television series "Read Write Now" complemented by a radio series under the same title, written materials and support systems. It is expected by the Irish authorities that such programming will not represent more than 10% of the total funding.

¹⁵ As an example, the recording of the abundance of oral heritage existing at a local level would be of particular relevance to the scheme.

¹⁶ With the exception of educational or children's programming, all programmes must be broadcast at peak times. The BCI defines peak viewing and listening times in radio between 7 a.m. and 7 p.m. and in television between 6 p.m. and 11:30 p.m.

¹⁷ In order to facilitate the understanding and enjoyment of people who are deaf or with hearing difficulties, all funded programmes must make provision for subtitling.

expenditure of up to 80 % of the production budget of an aided film or TV work" but "limited to the minimum degree required to promote cultural objectives."

- (36) There are no restrictions on where the production expenditure of the programme being supported is incurred, whether inside or outside the Irish State.

3.2.4. Aid intensity

- (37) 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."*
- (38) The Cinema Communication further provides that, in view of the comparatively limited geographic extension of certain languages and cultures and given the limited circulation of those cultural products within the EC and world markets, the Commission could accept aid intensities higher than 50% where proven to be necessary.
- (39) All programmes envisaged under the scheme are either difficult audiovisual works, low-budget programmes, or, in the case of programmes produced in the Irish language, audiovisual works which counteract the limited geographic extension of certain languages and cultures. Consequently, the aid intensities above 50% in the scheme under investigation comply with Commission's Cinema Communication.

3.2.5. Aid supplements for specific film-making activities

- (40) 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."*
- (41) In this case, such supplements for specific programme-making activities are not foreseen.

3.3. Conclusion

- (42) The Commission has therefore come to the conclusion that the financial support for radio and television programmes under the Broadcasting Funding Scheme constituting State aid within the meaning of Article 87 (1) EC, is compatible with the common market pursuant to Article 87 (3) (d) EC.

4. Decision

The Commission has accordingly decided, on the basis of the foregoing assessment, not to raise any objections to the measure at issue, considering that it constitutes State aid compatible with the common market under Article 87 (3) (d) EC until the end of 2009.

The Commission reminds the Irish authorities to submit an annual report on the implementation of the scheme:

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://europa.eu.int/comm/secretariat_general/sgb/state_aids/

Your request should be sent by registered letter or fax to:

European Commission
Competition Directorate-General
Directorate State Aid II
Rue de la Loi/Wetstraat, 200
B-1049 Brussels
Fax No: +32 2 2969580

Yours faithfully,

For the Commission

Neelie KROES
Member of the Commission

