

**DECISIONS OF THE GOVERNMENT OF ROMANIA  
GOVERNMENT OF ROMANIA**

**DECISION**

**onsetting up a State Aid scheme in support of the cinema industry**

Whereas the provisions of:

- the Commission Regulation (EU) No 651/2014 of 17<sup>th</sup> of June, 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, published in the Official Journal of the European Union, series L no. 187, as subsequently amended and supplemented<sup>1</sup>;
- the Commission Communication on the State aid for films and other audio-visual works, published in the Official Journal of the European Union, series C no. 332 of 15<sup>th</sup> of November, 2013;
- the Government Ordinance no. 39/2005 on cinematography, approved as subsequently amended and supplemented under Law no. 328/2006, as subsequently amended and supplemented;
- the Government Emergency Ordinance no. 77/2015 on the national State aid procedures, and amending and supplementing the Competition Law no. 21/1996, approved as subsequently amended and supplemented under Law no. 20/2015, as subsequently amended,

on the grounds of art. 108 of the Constitution of Romania, republished, and art.1 paragraph (1) and art. 3 paragraph (1) items 25 and 29 the Government Ordinance no. 22/2007 on the organization and operation of the National Commission for Strategy and Prognosis, republished, as subsequently amended and supplemented,

The **Government of Romania** adopts this decision.

**ARTICLE 1**

- (1) This decision sets up a transparent State aid scheme exempted from the notification requirement to the European Commission, pursuant to the provisions of art. 54 of the Regulation (EU) No 651/2014, as subsequently amended and supplemented.
- (2) The provider of this scheme is the National Commission for Strategy and Prognosis.
- (3) The objective of the State aid scheme is to support the film culture and the film production in Romania, consisting in both the cinematographic films, as defined at art. 1 of the Government Ordinance no. 39/2005 on cinematography, approved as subsequently amended and supplemented under Law no. 328/2006, as subsequently amended and supplemented, as well as the TV films or series and other audio-visual works, as defined under the European Convention on Cinematographic Co-Production, by attracting foreign productions.

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<sup>1</sup> Commission Regulation (EU) 2017/1084 of 14<sup>th</sup> of June, 2017 amending Regulation (EU) No 651/2014 as regards aid for port and airport infrastructure, notification thresholds for aid for culture and heritage conservation and for aid for sport and multifunctional recreational infrastructures, and regional operating aid schemes for outermost regions and amending Regulation (EU) No 702/2014 as regards the calculation of eligible costs, published in the Official Journal of the European Union, series L no. 156 of 20<sup>th</sup> of June, 2017.

- (4) The following objectives are pursued through granting of the State aid:
- a) to develop cooperation in the European and international film industry;
  - b) to support film producers in view of growing the domestic film production;
  - c) to create new jobs in the creative and related industries;
  - d) to advance the national cultural identity and that of the national minorities in Romania by shooting cinematographic films and promoting the same in the global circuit of values;
  - e) to vocational professional training in the film industry.

## ARTICLE 2

For the purposes of this Decision, the terms and expressions below have the following meanings:

- a) *State aid* — any measure fulfilling all the criteria laid down at art. 107 paragraph (1) of the Treaty on the Functioning of the European Union;
- b) *undertaking* — any entity carrying on an economic activity irrespective of its legal status and the way in which it is financed, or whether it's set up to generate profits or not;
- c) *date of granting the aid* — the moment the legal right to receive the aid is conferred on the undertaking under the applicable national legal regime. In this case, the date of granting the aid is the date of the signature of the financing agreement between the beneficiary and the State aid provider;
- d) *eligible cost* — costs which, pursuant to this scheme, serve as the basis of the calculation of the State aid which can be provided;
- e) *ineligible costs* — costs required to implementation of the projects, which are not funded under the State aid scheme';
- f) *financing agreement* — legal act for consideration executed between the National Commission for Strategy and Prognosis, as provider, on one hand, and the beneficiary, on the other hand, under which a film project selected further to the evaluation and selection process is approved for financing under this scheme;
- g) *undertaking in difficulty* — pursuant to the provisions of item 18 of Regulation (EU) No 651/2014, is an undertaking in respect of which at least one of the following circumstances occurs:
  - In the case of a limited liability company (other than an SME that has been in existence for less than three years), where more than half of its subscribed share capital has disappeared as a result of accumulated losses;
  - In the case of a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years), where more than half of its capital, as shown in the company accounts, has disappeared as a result of accumulated losses;
  - Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors;
  - Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan;
  - In the case of an undertaking that is not an SME, where, for the past two years: the undertaking's book debt to equity ratio has been greater than

7.5, and the undertaking's Earnings Before Interest, Tax, Depreciation and Amortization, hereinafter referred to as EBITDA<sup>2</sup>, interest coverage ratio has been below 1.0;

- h) *aid intensity* — the gross aid amount expressed as a percentage of the eligible costs, before any deduction of tax or other charge. The eligible costs shall be discounted to their value at the moment the aid is granted;
- i) *territorial spending obligations* — mean the obligations imposed by the authority granting the aid on beneficiaries to spend a minimum amount and/or conduct a minimum level of production activity in the territory of Romania;

#### ARTICLE 3

- (1) This State aid scheme is multiannual in nature, and is implemented until 31<sup>st</sup> of December, 2020, covering for not more than 45% of the eligible costs made in the territory of Romania for film production.
- (2) The maximum annual aid budget is RON 233 million, equivalent of approximately EUR 50 million.
- (3) This State aid's budget is foreseen in the budget of the National Commission for Strategy and Prognosis, the President of which has the capacity of tertiary authorizing officer, subordinated to the General Secretariat of the Government. Financing agreements under this scheme can be issued before 31<sup>st</sup> of December, 2020, subject to observance of the State aid legislation, as well as to the commitment appropriations approved on an annual basis under the law regarding the State's budget for this programme.
- (4) The payment of the State aid is made in years scheme is years 2018-2020, covering for not more than 45% of the eligible costs made in the territory of Romania for film production, under the financing agreements issued, subject to the commitment appropriations approved on an annual basis under the law regarding the State's budget for this programme.
- (5) The maximum annual aid budget is RON 898 million, equivalent of approximately EUR 150 million, broken down as follows:
  - a) commitment appropriations for issuing of financing agreements for years 2018-2020;
  - b) commitment appropriations for payment of the State aid for years 2018-2022.
- (6) The estimated total number of beneficiaries of the scheme is 150 producers.

#### ARTICLE 4

- (1) The State aid granted under this scheme consists of:
  - a) non-reimbursable financial allocations accounting for 35% of the total eligible costs with acquisition, lease, manufacturing of good and/or provision of services in connection with development of film and film production projects in Romania, as well as with the fees, wages and other payments to natural persons linked with implementing the project;
  - b) non-reimbursable financial allocations accounting for 10% above the basic allocation, insofar as a geographic area, a city or Romania is promoted in the same film production.
- (2) The allocations reference is made to at paragraph (1) are granted conditional upon at least 20% of the total budget of the project being spent in the territory of

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<sup>2</sup> EBITDA, Earnings Before Interest, Tax, Depreciation and Amortization.

Romania, without this territorial spending obligation exceeding 80% of the total budget of the production. Similarly, the beneficiaries will spend up to 160% of the aid granted to the production in the territory of Romania.

#### ARTICLE 5 Scope

- (1) This decision does not apply to:
  - a) aid towards export-related activities towards third countries or Member States, namely directly linked to the quantities exported, to the establishment and operation of the distribution network or to other current expenditure linked to export activity;
  - b) aid contingent upon the use of domestic over imported goods;
  - c) undertakings which are the subject of a recovery order not executed further to a previous decision of the competent bodies declaring the aid illegal;
  - d) ad hoc aid in favour of an undertaking as referred to in letter c);
  - e) aid granted to undertakings in difficulty.
- (2) This scheme does not apply to the State aid measures which involve themselves, through the associated conditions or through the financing method an inseparable breach of the European Union law, namely:
  - a) the aid measures where the grant of the aid is conditional on the beneficiary being seated in Romania, or being mainly established in Romania. However, the requirement to have an office or branch in the Member State which grants the aid at the time when payment of the aid is permitted;
  - b) the aid measures where the grant of the aid is conditional on the beneficiary using goods produced at national level or national services.

#### ARTICLE 6

##### **Beneficiaries and eligibility criteria**

- (1) Romanian or foreign companies registered, and acting in compliance with the provisions of the legislation applicable in Romania or the country of origin, as applicable, which meet the following cumulative conditions, irrespective of the national or international nature of the eligible project, are eligible for this State aid scheme:
  - a) whose principal company's objects consist of film production, and for the Romanian companies, are registered with the Film Registry;
  - b) hold the capacity of producer, co-producer, and/or provider of production services, and produce feature films (fiction, animation and documentary), TV films or series, in part or entirely in the territory of Romania;
  - c) as producer/co-producer, hold the intellectual property rights on the work to be produced or, where they render services for a foreign production company, acquired the rights for shooting the production;
  - d) for foreign producers, to have signed a co-production agreement or services agreement with a Romanian producer;
  - e) submit information about the total budget of the production for which this State aid is requested, for productions which are shot entirely in the territory of Romania, while for those which are partially shot in the territory of Romania, information about the budget corresponding to the costs made in the territory of Romania, for which the State aid is requested;
  - f) prove they don't have outstanding liabilities to the general government budget of Romania.

- (2) For co-productions, co-producers will delegate one single company to represent the production and hold the capacity of applicant under this State aid scheme.
- (3) In order to be eligible, projects are required to meet the following cumulative conditions:
  - a) these fall within the category of “cultural project”;
  - b) the amount of the total eligible costs in connection with implementation of the project is at least EUR 100,000.
- (4) In not more than 10 days of the effective date of this decision, by order of the president of the National Commission for Strategy and Prognosis, the criteria for qualification as cultural product will be defined. Having determined and published the criteria for qualification as cultural product, the State aid scheme may be implemented.

#### ARTICLE 7

- (1) Subject to the terms of this decision, the State aid is granted for film production, irrespective of their media, such as short and medium fiction films, TV series, straight-to-video or direct-to-stream films, or any other type of media, art documentaries, animation films.
- (2) The aid granted under this scheme is not reserved to a specific production or constituents of the production value chain. The aid intended to the infrastructure of film studios is excluded from the scope of this scheme.
- (3) Applicants which are active in both the eligible sectors/areas, as well as in ineligible sectors/areas may benefit of financing for the eligible objects, insofar as they submit accounting documents which show separated records of these activities, or a distinction between costs, so that the activities carried out in the excluded sectors would not be applied the aid granted under this scheme.

#### ARTICLE 8

##### **Eligible costs**

- (1) Pursuant to the provisions of art. 54 of the Regulation (EU) No 651/2014, eligible costs shall be for the supply of goods and provision of services in direct connection with implementation of an eligible product, as follows:
  - a) fees, wages and other payments to natural persons in connection to their work linked directly with implementation of the eligible project, provided that the income these persons obtain for or which are directly relevant for implementation of the eligible product qualifies as taxable income in Romania pursuant to the Romanian tax legislation, the bilateral tax conventions and the international agreements in force at the time when the income was obtained;
  - b) any payments made for goods supplied and services rendered by legal entities, where the respective goods and/or services are directly relevant for implementation of the eligible project, if: the legal entity which supplies the goods or renders the services has its registered office in Romania; the legal entity is a tax resident in Romania, and the goods are supplied and the services are rendered in the territory of Romania, irrespective of their origin.
- (2) For the purposes of this scheme, the following categories will not qualify as eligible costs for allocation of the non-reimbursable financial allocation:
  - a) any costs made before the date when the “Financing Agreement” is obtained;

- b) the project's financing costs;
  - c) bank guarantees in connection with implementation of the eligible fund-raising project;
  - d) costs with gifts, welcome flowers;
  - e) costs with acquisition of assets the acquisition of which was made with another source of public aid;
  - f) any other costs which are not relevant for development of the project;
  - g) bank charges, interest and other fees related to loans;
  - h) fines, penalties, legal costs;
  - i) in-kind contribution;
  - j) collateral costs occurring under a lease agreement;
  - k) any other costs which occur after delivery of the film, which are not relevant for production of the project;
  - l) costs with infrastructure of film studios; marketing costs.
- (3) The maximum aid amount cannot exceed EUR 10 million for each project funded under this scheme.

## ARTICLE 9

### **Means of granting**

The payment method is:

- a) Repayment of 35% of the eligible costs made to rendered services in film production in the territory of Romania, potentially plus 10%, insofar as Romania is explicitly and prominently promoted through the venues used;
- b) After completion of the film project and spending of the relevant budget, however not later than 2 years after the moment when the "Financing Agreement" was issued, the applicant shall file with the authority financing the State aid scheme a payment application having enclosed an audit report certifying the amount of the eligible costs effectively made pursuant to the "Financing Agreement" and the legal regulations in force.

## ARTICLE 10

- (1) The provisions of this decision will be implemented by the provider of this State aid scheme, being the National Commission for Strategy and Prognosis.
- (2) The National Commission for Strategy and Prognosis shall publish the invitation to submit Applications under this State aid scheme every year, in not more than 10 days of the date when the annual budget of the State aid scheme is approved.
- (3) The list of documents to be submitted by the applicant to support fulfilment of the eligibility criteria in respect of both the project, and the beneficiary, the details about the eligible costs and the beneficiary/project selection criteria will be determined in not more than 10 days by order of the president of the National Commission for Strategy and Prognosis to be published in the Official Gazette of Romani, Part I.
- (4) Applicants will submit all the documents supporting the fulfilment of the eligibility criteria laid down under this scheme, including a declaration on the aid previously received (de minimis or State aid) to fund the same eligible costs.
- (5) before granting the aid (respectively executing the financing agreement), the provider shall check that all State aid criteria laid down for this scheme for each applicant are met.

## ARTICLE 11

- (1) Financing of eligible product under this State aid scheme shall be annual and multiannual.
- (2) After completion of the film project and spending of the budget of the eligible project, however not later than 2 years after the moment when the "Applicant Certificate" for the aid measure hereunder, the applicant shall file with the National Commission for Strategy and Prognosis a payment application having enclosed an audit report certifying the amount of the eligible costs effectively made pursuant to the "Applicant Certificate" of the aid measure hereunder and the provisions hereof.
- (3) This audit report shall be issued by an audit company with at least 3-year proven audit experience.
- (4) The audit shall assume professional liability for the manner in which the audit is conducted, indicating both the documents reviewed, as well as the work methodology applied.
- (5) The National Commission for Strategy and Prognosis shall conduct its own verifications. The authority shall be allowed to ask that the audit report is supplemented or clarified.
- (6) The National Commission for Strategy and Prognosis is required to approve the payment application in not more than 10 days of the date when the audit report is complete. Should the conclusions of the audit report be incomplete, the National Commission for Strategy and Prognosis shall ask that this is supplemented. The applicant is required to supplement the report in not more than 30 days of the date when they receive the relevant request of the National Commission for Strategy and Prognosis.
- (7) The actual payment shall be made in not more than 120 days of the date when the payment application is approved, as this was previously confirmed by the auditor, pursuant to the provisions of this article.

## ARTICLE 12

- (1) The selection of projects eligible shall be done by a selection commission. The composition and organizational structure of the eligible project selection commission are determined by order of the president of the National Commission for Strategy and Prognosis.
- (2) This selection commission shall bear the name "Romanian Film Commission".
- (3) The National Commission for Strategy and Prognosis shall give notice of the composition of the selection commission in December of each year during which the State aid is implemented for the next year.
- (4) By way of exception, for 2018, the National Commission for Strategy and Prognosis shall give notice of the composition of the selection commission in not more than 30 days of the date when this decision is published in the Official Gazette of Romania, Part I.
- (5) The selection commission's members are appointed in each implementation year of the scheme, and will work in standing session.
- (6) Neither the persons proposed for the selection commission, nor well as their family members and relatives to the second degree may take part in any capacity whatsoever in a film project enrolled in the respective competition session.
- (7) The selection commission shall be formed of 5 members, including the president, appointed by order of the president of the National Commission for

Strategy and Prognosis, among leading features from the academic community, representatives of the cultural and arts community, people with filmmaking experience, people with relevant business experience, or representatives of the nongovernmental bodies specialized in public policies. In the event of a tie, the president shall have the casting vote.

- (8) The selection commission evaluates and selects film projects which meet the eligibility conditions on a first-come, first-served basis, and decides by decision on issuing of the "Applicant Certificate" of the aid measures provided hereunder.
- (9) Similarly, after the receipt of the audit report, the selection commission shall issue decisions qualifying as certification of the amount of the eligible costs to be paid to the beneficiaries. Regardless of circumstances, no amount in excess of that set out in the "Applicant Certificate" of the aid measure hereunder may be paid.
- (10) The organization and operation regulation of the Romanian Film Commission shall be approved by order of the president of the National Commission for Strategy and Prognosis, and shall be published on the website thereof.
- (11) The decisions of the selection commission will be subject to the right of appeal with the administrative litigation court, in observance of the terms and conditions laid down under the Administrative Litigation Law no. 554/2004, as subsequently amended and supplemented.

#### ARTICLE 13

##### **Notification threshold**

This scheme shall be exempt from the notification requirement as long as it does not exceed the EUR 50 million threshold per scheme per year.

#### ARTICLE 14

##### **Incentive effect**

- (1) This scheme only applies to aid which has an incentive effect.
- (2) Aid shall be deemed to have an incentive effect where the beneficiary applied in writing for aid with the provider before the work started on the respective project or activity.
- (3) The aid application contains at the least the following information:
  - a) the name and size of the undertaking;
  - b) the description of the project, including the start and end date thereof;
  - c) the place of the project;
  - d) the list of project's costs;
  - e) the type of aid and the amount of the public financing required for the project.

#### ARTICLE 15

##### **Cumulation**

- (1) In order to determine whether the notification threshold and the maximum aid intensity are observed, consideration shall be given to all State aid granted for the activity or project receiving aid.
- (2) Aid granted to cover identifiable eligible costs exempted under this scheme may be cumulated with:
  - a) any other State aid, insofar as the respective measures target different identifiable eligible costs;



- b) any other State aid, in connection with the same eligible costs, which partly or completely overlap, but only when the respective cumulation does not exceed the maximum aid intensity hereunder.
- (3) The State aid exempted under this scheme shall not be cumulated with any type of de minimis aid in respect of the same eligible costs should such cumulation give rise to an aid intensity in excess of that set out hereunder.

## ARTICLE 16

### **Transparency, monitoring and reporting rules**

- (1) The National Commission for Strategy and Prognosis is under the obligation to publish on its website the full text of the State aid scheme, the period during which applications are received, the annual budget, the date when the annual/total budget of the scheme is exhausted, as well as the format of the documents required to access it.
- (2) The National Commission for Strategy and Prognosis shall monitor compliance with the eligibility conditions and criteria set out under this scheme during its implementation period so that the maximum allowable aid intensity is not exceeded, and shall take the necessary actions when the conditions laid down hereunder or under the then applicable domestic or European legislation are not observed. Any failure of the beneficiaries as to the conditions laid down under this scheme, as well as of any obligations assumed to acquire financing shall cause application by the authority financing the State aid scheme of the measures necessary to recover the aid, including any interest thereon, pursuant to the provisions of the Government Emergency Ordinance no. 77/2015 on the national State aid procedures, and amending and supplementing the Competition Law no. 21/1996, approved as subsequently amended and supplemented under Law no. 20/2015, as subsequently amended.
- (3) The National Commission for Strategy and Prognosis is required to keep detailed records of the aid granted to all projects under the scheme. Such records containing all the information needed to determine whether the criteria laid down under the applicable European regulations are met shall be kept for 10 years of the date when the last aid under the scheme is granted.
- (4) The beneficiaries of the State aid granted under this scheme are required to keep all the documents in connection therewith for 10 years, and are further required to make such available to the authority implementing the State aid scheme or the Competition Council or whenever requested from them.
- (5) The National Commission for Strategy and Prognosis, as authority in charge of implementation of this regional State aid scheme, is required to submit to the Competition Council all the data and information required for monitoring of State aid at national level, in the form and within the term set out under the Regulation regarding the State aid monitoring procedures, put in place by the Order of the president of the Competition Council no. 175/2007, as well as the data and information required to prepare the State aid inventory and the reports and information notes required for Romania to fulfil its obligations as Member State of the European Union.
- (6) To allow the possibility of an ex-ante verification of the eligibility of the potential beneficiaries of the scheme, pursuant to the provisions of art. 29 of the Regulation regarding the State Aid Register, put in place by the Order of the president of the Competition Council no. 437/2016, the National Commission for Strategy and Prognosis, as provided for the State aid measure, is required to

- enter this scheme in the general Register of the State aid granted by Romania (RegAS) in not more than 5 business days of the effective date hereof.
- (7) Any contracts, payments, aid recovery obligations and actual repayment of the respective aid in connection with this measure will be also entered in RegAS in not more than 7 business days of then date when the financing agreement is signed, respectively of the date when payments, aid recovery obligations or actual repayment of the respective aid are instituted.
  - (8) The Competition Council may ask for data and information from the State aid provider when the information available shows that the State aid granting conditions were not observed. Where the data submitted by the provider fails to clarify the matters reported, the Competition Council may order an inspection on the beneficiary undertaking, in observance of the legal provisions in effect. In this inspection, the Competition Council's inspection team shall be attended by representatives of the provider.
  - (9) The information provided in Annex II of Regulation (EU) No UE concerning each individual aid in excess of the equivalent of EUR 500,000 shall be published on the national website [www.ajutordestat.ro](http://www.ajutordestat.ro).
  - (10) Further to a written request of the European Commission, the National Commission for Strategy and Prognosis shall submit to the first, via the Competition Council, in not more than 20 days or other term set out in the respective request, all the information the European Commission may decide are needed to assess whether the conditions laid down hereunder are observed.
  - (11) Beneficiaries undertake to credit as such the financial support of the Government of Romania in the film and all advertising materials, by including the following text: "Film made with the support of the Government of Romania".
  - (12) The European Commission shall be informed in not more than 20 business days of the effective date of this decision, pursuant to the provisions of the Regulation (EU) No 651/2014.
  - (13) The State aid to be recovered must include accrued interest, as due from the disbursement date and until the recovery date. The applicable interest rate shall be that determined pursuant to the Council Regulation (EU) 2015/1589 of 13<sup>th</sup> of July, 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union.
  - (14) The provider is required to submit for information to the Competition Council, in not more than 5 days of adoption, its own decisions ordering any recovery of the State aid granted.
  - (15) To recover the State aid, the provider is required to issue, in not more than 30 business days, by order, application rules which are to be submitted for information to the Competition Council, in not more than 5 business days of adoption thereof.

PRIME MINISTER  
**VASILICA-VIORICA DĂNCILĂ**

Countersigned by:  
the Secretary General of the Government,  
**Ioana-Andreea Lambru**  
the President of the National Commission for  
Strategy and Prognosis,

**Ioan Ghizdeanu**  
the Minister of Public Finance,  
**Eugen Orlando Teodorovici**  
the Minister of Culture and National Identity,  
George Ivaşcu

Bucharest, 13<sup>th</sup> of June, 2018.  
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**EDITOR: GOVERNMENT OF ROMANIA**

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