



EUROPEAN COMMISSION

Brussels, 30.8.2012
C(2012) 6093 final

Subject: **State aid SA.34030 (2012/N) – Italy**
 Lazio regional film support scheme

Sir,

1. SUMMARY

(1) I am pleased to inform you that the European Commission has approved the Lazio regional film support scheme until 31 December 2012, on the basis that the Italian authorities have undertaken to modify the scheme if required by a change in the relevant State aid rules¹ during this period.

2. PROCEDURE

(2) Following pre-notification discussions, by letter dated 24 April 2012, the Italian authorities notified the above-mentioned aid measure to the Commission under the simplified procedure. A summary of the notification was published on the website of the Commission on 27 April 2012. However, although the Commission did not receive any substantiated comments of third parties upon publication of a summary of the notification on its website, it considered that important information was missing from the notification. As required by the Notice, the Commission reverted to the normal procedure and addressed a request for information to the Italian authorities on 20 June 2012. The Italian authorities met the Commission services on 11 July 2012, before replying on 16 July 2012 and on 2 August 2012.

(3) The Italian authorities gave assurance that no aid will be granted to the beneficiaries until approval of the scheme by the European Commission.

¹ 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, 26.9.01, OJ C 43 pp. 6-17, 16.2.02); prolonged in 2004 (OJ C 123 pp1-7, 30.4.04), 2007 (OJ C 134 p. 5, 16.6.07) and 2009 (OJ C 31 p1, 7.2.09) until 31 December 2012, at the latest.

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(4) The Italian authorities agreed to receive the present decision in the working language, namely English.

3. DESCRIPTION OF THE MEASURE

(5) The objective of the scheme is to support the production of films and audiovisual works that may contribute significantly to the development of cultural resources and particularly of the regional identity of the Lazio region.

(6) The measure finds its legal basis in the following: (1) Article 1 sections 107, 108 and 109 of Regional law n. 12 of 13.08.2011 "Disposizioni collegate alla legge di assestamento del bilancio 2011 – 2013"; and (2) Deliberation of the Regional government (Giunta regionale) n. 578 of 2.12.2011 "Interventi regionali in materia di cinema ed audiovisivo (ex art. 1, commi 107,108 e 109 della legge regionale 13 agosto 2011, n.12)". The granting authority is the Lazio Region (hereafter "the Region").

(7) The aid granted in the form of direct aid will support production costs incurred in 2011 in the region, the above-the-line expenditure being excluded. The Region expressed in 2010 its intention to stimulate the audiovisual works. Several provisions concerning the support to cinema and audiovisual have been included in the legal acts adopted by the authorities end of 2010². However, the beneficiaries could apply for the aid only end of 2011, following the adoption of the legal basis acts, referenced above. According to the Italian authorities, the aid will not be paid until the Commission approval.

(8) The duration of the scheme is of one year, the budget of the scheme being EUR 15.000.000 for the 2012 financial year.

(9) The aid is only available to the following categories of film and audiovisual works:

1. for children;
2. production of first and second films ;
3. research and experimentation of new multimedia and interactive languages;
4. production of documentary films;
5. small budget;
6. audiovisual works implemented by independent producers;
7. works implemented by enterprises during the first three years from the start of their activity, as well micro and small enterprises.

(10) Beneficiaries: Applications for the aid may be submitted by the following beneficiaries: a) individual enterprises or family – owned enterprises engaged, exclusively or primarily in the production of films and/or audiovisual works; b) partnerships or public limited companies, the object of which is to be engaged exclusively or primarily into cinema production and/or audiovisual works. In order to obtain the grants, the companies must be registered in the database of the Ministry of Cultural Heritage and Activities at the moment of the payment of the aid.

² See Regional Law of 24.12.2010, n. 8, "Approvazione del bilancio di previsione della Regione Lazio per l'esercizio finanziario 2011". By the deliberation of the of 17.12.2010, n. 604, the Regional government (Giunta) adopted the draft-law "Interventi regionali per lo sviluppo del cinema e dell'audiovisivo" that became Law n. 135 of 13.01.2011.

- (11) Cultural criteria: only certain films and audiovisual works are eligible for aid. They are those deemed to be "cultural product" on the basis of the cultural eligibility test to assess the quality of the projects with regard to the content, the creative talents and production. The cultural content of the projects will be assessed by an evaluation commission of experts. The evaluation commission consists of five members: a Director from the Regional Directorate for cultural matters; a Director of the regional body competent for promotion of cinema, audiovisual and multimedia culture; a film critic who is a member of the national union of Italian film critics; an expert with extensive professional experience in the film sector; and an expert with extensive professional experience in the audiovisual sector.
- (12) To qualify for subsidy, the film must obtain at least 50% of the points available for content, creative talent and production. At least 2 of the following selection criteria must be satisfied:
- Subject/screenplay of cinematographic/audiovisual work from theatrical and literary works at regional/Italian/European level (max 8 points);
 - Subject/screenplay of cinematographic/audiovisual work for environmental, historical, religious and cultural matters at regional/Italian/European level (max 8 points);
 - Subject/screenplay regarding a character/personality of historical, religious, social and artistic relevance at regional/Italian/European level (max 8 points);
 - Territorial setting of the main subject of the work at regional/Italian/European level taking into account the territorial identity (max 12 points);
 - Original dialogues shot in Italian or dialects of the region (max 4 points).
- (13) Territorial conditions: The beneficiary must spend at least 40% of the amount of the total production budget in Lazio. There is no obligation as regards the rest of the budget which may be spent outside Lazio and outside Italy.
- (14) Aid intensity: The amount of the aid for each cinematographic and audiovisual work cannot cover more than a) 13% of the eligible costs for cinematographic works and b) 10% of the eligible costs for audiovisual works. The above percentages may be increased up to a maximum of respectively 15% and 12% for the following categories:
1. for children;
 2. first and second films;
 3. research and experimentation of new multimedia and interactive languages;
 4. documentary creation;
 5. low-budget genre.
- (15) These percentages may also be increased up to a maximum of 15% and 12% respectively for the following works: 1. audiovisual works implemented by independent producers and 2. works implemented by enterprises during the first three years from the start of their activity, as well as micro and small enterprises³.

³ The Italian authorities confirmed that the point 4.5 of the Annex A ("Modalità e criteri per la concessione delle sovvenzioni") to the Deliberation of the Regional government n. 578 of 2.12.2011 will be suppressed. A new provision, point 4.7 bis, will be introduced stating that the remaining budget will be distributed between the beneficiaries proportional to the aid granted and within the intensity limits established by the Cinema Communication.

- (16) The overall budget for the above – mentioned grants is capped at EUR 500.000 for cinematographic works and at EUR 750.000 for audiovisual works.
- (17) When the overall production budget is less than EUR 50.000, the amount of the aid may be up to 50% of the eligible costs.
- (18) Aid can be cumulated with other forms of aid within the limits allowed by the current rules on State aid.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid within the meaning of Article 107(1) of the TFEU

- (19) According to Article 107(1) TFEU, "*save as otherwise provided in the Treaties, 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.*"
- (20) The notified scheme allows a selected number of enterprises to be relieved, by means of State resources, of a part of their costs regarding financing cinematographic activities which they would normally have to bear themselves. The measure is therefore granted through State resources and confers an advantage on selected recipients.
- (21) Consequently, the support from the State strengthens the position of a selected number of beneficiaries in relation to their competitors in the EU and therefore has the potential of distorting competition. Since the beneficiaries are active in selling products or services which are, at least potentially, subject to trade between Member States, this support is likely to affect trade.
- (22) The Commission therefore concludes that the notified scheme constitutes State aid within the meaning of Article 107(1) TFEU as moreover confirmed by the notifying Member State in its notification.

4.2. Compatibility of the aid

- (23) The Commission will assess the compatibility of the notified measure with the internal market in the light of the 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 works⁴ (referred to as "the Cinema Communication") which contains a detailed interpretation of Article 107 (3) (d) of the TFEU in this area of state aid law. The aid can be justified if the aid scheme complies with the general legality principle and the four specific compatibility criteria regarding cultural content, territorial conditions, aid intensity and aid supplements, as set out in the Cinema Communication. Moreover, with respect to the fact that the costs to be covered by the aid were incurred in 2011, the Commission has to examine if, without the aid, the undertakings would have not engaged the same expenditure for production.

A. General legality principle

⁴ For reference, see footnote 1.

- (24) 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 TFEU provisions in fields other than State aid. In particular, the Commission must ensure that the TFEU principles prohibiting discrimination on the grounds of nationality and freedom of establishment have been respected.
- (25) To be in line with the freedom of establishment provisions of the Treaty, the Cinema Communication requires that beneficiaries need not have a permanent branch or agency in the territory before the aid is paid. It is observed that the legislation at stake, including the condition of registration in the database the Ministry of Cultural Heritage and Activities, is open to undertaking from other Member States.
- (26) Consequently, on the basis of the information provided by Italy, the notified scheme does not raise any issue in respect of the general legality principle.

B. Cultural product

- (27) 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 a production which benefits from aid is cultural according to verifiable national criteria. Criteria included in the analysed measure (see the "description" part of this decision) are directly related to the cultural content of the projects and the Commission's assessment is therefore based on these criteria.
- (28) The promotion of culture and of the diversity of its expressions is supported both by Article 167 of TFEU, and the UNESCO Convention on the Promotion and the Protection of the Diversity of Cultural Expressions, which was approved by the Council on behalf of the Community by means of Decision 2006/515/EC⁵.
- (29) According to the Italian authorities, the cultural eligibility assessment conducted by the evaluation commission (see points 11 and 12 above) will guarantee that only genuine "cultural products" would receive public funding – and the combined application of them will further ensure that point 2.3(b).1 of the Cinema Communication on the cultural criteria is fulfilled.
- (30) The Commission notes that the cultural content of the projects is assessed by an evaluation commission composed of film experts according to the criteria set out by the authorities. These criteria, as assessed by experts, will safeguard the cultural content of the audiovisual and cinematographic works financed. The Commission considers that the Italian authorities have established verifiable national criteria within the meaning of point 2.3(b) 1 of the Cinema Communication. Consequently, the aid is directed towards a cultural product.

C. 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. In other words, the Commission

⁵ Council Decision of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, OJ L 201, 25.07.2006, p. 15 – 30.

accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80% of the production budget of an aided film or TV work.

(32) The scheme requires 40% of the production budget to be spent in the region. Producers remain free to spend up to 60% of the film budget outside Lazio region without incurring any reduction in the amount of the aid. Consequently, these conditions allow producers to spend at least 20% outside Italy without incurring any reduction in the amount of aid, as required by the Cinema Communication.

(33) Consequently, the territorial criterion of the Cinema Communication is fulfilled.

D. Aid intensity

(34) According to point 2.3 (b) 3 of the Cinema Communication, the aid intensity must be limited to 50% of the production budget. In the scheme under assessment, the Italian authorities have confirmed that the total aid intensity will not be higher than 50% of the production budget for any category of products covered by the notified scheme.

E. Aid supplements

(35) According with 2.3(b) 4 of the Cinema Communication, aid supplements for specific filmmaking 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.

(36) The current scheme does not provide for such aid supplements.

F. Necessity of the aid

(37) The Commission has to assess if the measure has an incentive effect on the expenditure carried out by the producers in 2011. From the information communicated by the Italian authorities, it came out that the Region's intention to support the film production was clearly and publicly known since 2010. The Italian authorities showed that in December 2010 the Regional government adopted the draft-law "Regional measures for the development of cinema and audiovisual sector"⁶ which stated the types of the public interventions and the categories of productions to be aided. The final legal basis (see above paragraph 6) was adopted only in 2011. The Italian authorities consider that the draft-law issued in 2010 as well as the regional budget law n. 8 of 24.12.2010 created an assurance for the potential beneficiaries that the production, in 2011, of films and audiovisual works would allow them to benefit from a support system⁷. According to the Italian authorities, given the procedural delays for the adoption of regional laws that constitute the legal basis for the scheme, the beneficiaries had to bear the costs without being able to apply for the aid until end of 2011. In practice, however, without the assurance for public support from December 2010 and early January 2011, the activities financed would not have been carried out.

(38) Taking into account the above arguments, the Commission takes the view that it can be accepted that the measure had an incentive effect for the costs incurred in 2011 and, therefore, the aid is necessary to promote the culture in the region of Lazio.

⁶ See footnote 2.

⁷ See the grounds of the Deliberation of the Regional Committee n. 578 of 2.12.2011.

5. CONCLUSION

- (39) In the view of above, the Commission finds that the aid granted on the basis of the measure in question is compatible with the internal market in accordance with 107(3)(d) TFEU and has accordingly decided not to raise objections to the notified measure.
- (40) The Italian authorities are reminded that, pursuant to Article 108(3) TFEU, they are obliged to inform the Commission of any plan to extend or amend the measure.
- (41) The scheme has been approved until 31 December 2012 on the basis that the Italian authorities have committed to amend the scheme if required by a change in the relevant State aid rules during the lifetime 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://ec.europa.eu/competition/elojade/isef/index.cfm>.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President