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Subject: **State aid SA.37922 (2013/N) – Italy**
Tax incentives for film production, investment and distribution - prolongation

Dear Madam,

1. PROCEDURE

(1) By letter dated 10 December 2013, the Italian authorities notified the prolongation of the tax incentives for film production, investment and distribution ("tax incentives scheme") to the Commission. Additional information was provided on 21 February 2014 and 11 June 2014.

(2) The schemes were first approved by the Commission in its Decisions of 18 December 2008 (N 595/08)[1] and of 22 July 2009 (C 25/2009 - ex - N 673/2008)[2]. The

[1] State aid N595/08 – Italy – Film production tax incentives: state aid approval http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N595_2008.

[2] State aid C25/2009 (ex N 673/2008) – Italy – Film investment & distribution tax incentives: state aid approval. Digital cinema tax credit: Opening of formal investigation http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_C25_2009.

Onorevole Federica Mogherini
Ministro degli Affari esteri
P.le della Farnesina 1
I - 00194 Roma

prolongation of the mentioned two schemes until 31 December 2013 was subsequently approved by Decision of 6 July 2011 (case SA.32926 and SA.32927)[3]. The digital cinema tax credit has not been part of the current assessment nor this decision.

2. DETAILED DESCRIPTION OF THE AID MEASURE

2.1. Objective, legal basis, budget and duration

(3) The objectives of the Italian tax incentives for film production, investment and distribution are cultural, centred on the protection, stimulation and promotion of the film sector. The notification concerns the prolongation of these tax incentives until 31 December 2022. No aid will be granted under the scheme until the Italian authorities have received the approval from the Commission contained in this Decision.

(4) According to the Italian authorities, the tax measures are proposed on a longer period in order to give the cinematographic sector, in the current period of severe crisis, a lasting legal and financial certainty within which to produce quality cultural works. According to the Italian authorities, these activities are characterised by the need of long-term planning.

(5) The yearly budget of the scheme is set at € 110 million, corresponding to an overall budget of € 990 million.

(6) The legal bases for the scheme are the following:

- decreto legge 21 giugno 2013, n.69, convertito, con modificazioni, dalla legge 9 agosto 2013, n.98: art.11 (proroga del credito d'imposta per la produzione, la distribuzione e l'esercizio cinematografico);
- decreto legge 8 agosto 2013, n.91, convertito, con modificazioni, dalla legge 7 ottobre 2013, n.112: art.8, commi da 1 a 7 (disposizioni urgenti concernenti il settore cinematografico e audiovisivo);
- legge 24.12.2007 n.244 (legge finanziaria per il 2008): art.1, commi da 325 a 328 e da 330 a 337;
- d.m. 7 maggio 2009: disposizioni applicative dei crediti d'imposta concessi alle imprese di produzione cinematografica in relazione alla realizzazione di opere cinematografiche;
- d.m. 21 gennaio 2010: disposizioni applicative dei crediti d'imposta concessi alle imprese non appartenenti al settore cineaudiovisivo e alle imprese di distbuzione ed esercizio cinematografico per attivita' di produzione e distribuzione di opere cinematografiche.

(7) The Italian authorities have indicated that, apart from their extended budget and duration, there are no other modifications of the tax incentives.

[3] State aid SA.32926 and SA.32927 (ex N595/2008 and ex C25/2009-N673/2008) – Tax incentives for film production, investment and distribution – Italy: prolongation http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_32926.

(8) The Italian authorities have indicated that the extension of the tax incentives to audiovisual works, mentioned in the cited legal bases, is not part of the current notified scheme, but will be notified separately. It is therefore not considered in this decision, which only deals with the tax incentives for films.

2.2. The different tax measures under the scheme

(9) The aid scheme consists of a) tax incentives for film production and b) tax incentives for film investment and distribution.

(10) The tax incentives for film production, granted to film production companies, comprise the following:

- A tax credit measure for "Italian"[4] cultural films and films recognised to be of cultural interest;
- A tax credit granted to executive producers and technical industries on the basis of Italian involvement in foreign films.

(11) The different tax incentives for film investment and distribution are:

- A tax credit for businesses outside the film sector investing in the production of "Italian" cultural films or films recognised to be of cultural interest;
- A tax credit for film distributors and exhibitors investing in the production of "Italian" cultural films or films recognised to be of cultural interest;
- Tax credits for film distributors investing in the distribution of "Italian-language" cultural films and/or films recognised to be of cultural interest.

2.3. Aid intensities and territorial conditions

(12) The maximum cumulative aid intensity available under the scheme is 50%, except in the case of difficult or low-budget films[5], where it amounts to up to 80%.

(13) For the notified film production measure for "Italian" cultural films and films recognised to be of cultural interest (paragraph (10) above), the territorial conditions require that 80% of the tax credits must be spent in Italy. This film production tax credit (of 15%) is applied to the total cost of production. Consequently, the intensity of the measure is 15% and the territorial spending condition equals up to 12% of the production budget.

(14) As regards the tax incentive for executive producers and technical industries referred to under paragraph (10) the tax credit (of 25%) is granted in relation to production spending in Italy, up to a maximum of 60% of the film budget. Moreover,

[4] Both Italian and European films are considered to have the "Italian" nationality.

[5] For the Italian definition of difficult and low-budget films, see the Decision in case C 25/2009 (ex - N 673/2008) (paragraphs (30)-(31)) and case N595/08 (paragraphs (31)-(32)).

for the purpose of receiving the tax incentive, spending incurred in another EU Member State can be assimilated to Italian expenditure up to 30% of the film budget.

(15) Under the film investment tax incentives, the tax credit equals 40% of the eligible investment while 80% of these (re-)investments in film production have to be spent in Italy. Since the maximum eligible investment is 49% of the production budget, this territorial condition concerns at most 39.2% of the production budget.

(16) The tax incentives based on investments in film *distribution* are not subject to the limits and territorial conditions mentioned above.

(17) Among the criteria applied to evaluate if a film can be considered "Italian" under the tax incentives, some have a territorial component but do not have to be fulfilled to pass this cultural test. However, two eligibility criteria have a mandatory character:

- At least one of the following two must be valid: 1) the production is filmed and uses Italian studios, 2) the production makes use of Italian technical industries.
- In addition, at least 30% of the total production budget of the film must be spent in Italy (on Italian or European crew; on filming and the use of studios in Italy; and/or on the use of Italian technical industries).

With regard to the first requirement, the Italian authorities confirmed that it is subject to the same limit of 30% as the second point.

2.4. Film heritage provisions

(18) The 2013 Cinema Communication[6] invites the Member States to encourage and support producers to deposit a copy of the aided film in the film heritage institution designated by the funding body for preservation, as well as for specified non-commercial use agreed with the right holder(s).

(19) The Italian authorities have informed the Commission that, according to their legislation, in order to be eligible for support, production companies have to deposit a copy of the film in the national film archive ("Cineteca nazionale"). Three years after their deposit, the national film archive uses the copies for cultural and educational use on a non-commercial basis. The Cinema Directorate-General ("Direzione generale per il Cinema") may also use the copies for non-commercial purposes.

3. ASSESSMENT OF THE AID MEASURE

3.1. Existence of aid

(20) 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*

[6] Communication from the Commission on state aid for films and other audiovisual works, Official Journal of the European Union, 15.11.2013, C 332, pp. 1-11.

the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market".

(21) Under the notified scheme, the Italian State will forego certain tax revenues which it should receive according to the tax rules. The source of funding is based on the tax incentives offered by the State and the State resources of the scheme are coming from the general State budget, as confirmed by the Italian authorities.

(22) With regard to the other conditions of Article 107 (1), the Commission refers to the analysis set out in the previous Commission Decisions on these schemes (see paragraph (2)), which is also applicable here. As all the conditions of Article 107 (1) are fulfilled, the Commission therefore concludes that the measure constitutes State aid within the meaning of Article 107 (1) TFEU.

3.2. Compatibility

(23) The envisaged measure is a prolongation of an aid scheme which remains unchanged as to its substance and which has previously been approved by the Commission under Article 107(3)(d) of the TFEU as compatible with the internal market.

(24) In the preceding decisions of the Commission (see paragraph (2)), the 2001 Cinema Communication[7] served as a basis to approve the film production incentives and those aspects of the distribution/investment tax incentives that result in support for film production. The tax incentives for film distribution were approved directly under article 107 (3)(d) of the TFEU. The 2013 Cinema Communication[8] updated the rules for the assessment of state aid for films and other audiovisual works under Article 107 (3) (d) of the TFEU. The scope of the Cinema Communication has been expanded to cover not only production, but also film distribution activities.

(25) The scheme can be justified if it complies with the modified criteria of the 2013 Cinema Communication. These relate to a) general legality and b) specific compatibility criteria.

3.2.1. General legality

(26) With regard to the general legality principle, the 2013 Cinema Communication (in Article 50) has modified the limits set to the territorial spending obligations of film production support schemes. Such support schemes may require:

- that up to 50% of the overall production budget is spent in the territory in order to qualify for aid.

[7] 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 of 26/09/2001 (OJ C 43 of 16/02/2002); extended in 2004 (OJ C 123 of 30/04/2004); 2007 (OJ C 134 of 16/06/2007); and 2009 (OJ C 31 of 07/02/2009).

[8] See footnote 4.

- that up to 160% of the aid amount awarded is spent in the territory granting the aid. Alternatively the aid amount awarded may be calculated as a percentage of territorial production expenditure.

In any case, not more than 80% of the overall production budget may be linked to territorial spending obligations.

(27) The fiscal nature of the mechanism means that the potential beneficiaries need to have taxable income in Italy to take advantage of the tax incentives, but the tax incentives are not limited to those elements of the (production) budget that are spent in Italy.

(28) As a condition of several measures under the scheme, 80% of the amount made available to film producers (either directly as a tax credit to the production company, or indirectly as an investment) has to be spent within Italy, which is well below the 160% level. At the same time, this 80% spending condition is calculated on an eligible amount of maximum 15% (in the case of production incentives) or 49% (in the case of distribution/investment incentives) of the film production budget. As a result, these territorial conditions concern at most 12% and 39.2% of the production budget.

(29) The tax incentive for executive producers and technical industries referred to under paragraph (10) is calculated as a percentage of territorial production expenditure, up to 60% of the total production budget.

(30) In other words, the territorial linking outlined in paragraphs (28) and (29) does not exceed 80% of the production budget.

(31) Concerning the territorial spending elements among the eligibility criteria used to define an "Italian" film, the required level of production activity in Italy does not exceed 50 % of the overall production budget, as mentioned above in paragraph (17).

(32) There are no territorial conditions attached to the tax measures aiming at generating investments in film distribution.

(33) The territorial spending conditions of the prolonged aid measure are therefore in line with the new rules of the 2013 Cinema Communication. As already set out in the previous Commission Decisions on this scheme, the prolonged scheme does not contain other provisions that would raise issues with respect to the general legality principle, and is therefore compliant with the 2013 Cinema Communication.

3.2.2. Specific compatibility criteria

(34) The prolongation of the Italian tax incentives for film production, investment and distribution does not affect their provisions with regard to the cultural character of the aid, its aid intensity levels or the absence of aid for specific production activities. The prolongation of the aid measure therefore does not affect the assessment done with regard to these compatibility criteria in the previous Commission Decisions (paragraph (2)), and is also in line with the 2013 Cinema Communication's provisions on these criteria.

(35) The aid should be awarded in a transparent manner (Article (52)7 of the 2013 Cinema Communication[9]). The Italian authorities have assured the Commission that this will be the case.

(36) Under the 2013 Cinema Communication (Article (52)4), the costs for distributing and promoting audiovisual works which are eligible for production support may be supported with the same aid intensity as they were or could have been for their production. As the maximum cumulative aid intensities are the same for all the notified tax measures, the Italian scheme is in line with this provision.

(37) In the light of the above considerations, the Commission considers the aid scheme to be compatible with Article 107 (3) (d) TFEU.

4. CONCLUSION

(38) The Commission has decided not to raise objections to the aid on the grounds that it is compatible with the internal market pursuant to Article 107 (3) (d) of the Treaty on the Functioning of the European Union. The amended scheme has been approved until 31 December 2022.

(39) On 21 May 2014, the Commission adopted a Communication aligning the transparency requirements across all the recently revised state aid rules[10], which modifies the transparency requirements included in Article (52)7 of the Cinema Communication. The Commission reminds the Italian authorities that they have two years to put in place these transparency mechanisms.

(40) The Commission reminds the Italian authorities to submit annual reports on the implementation of the aid scheme. The Commission moreover reminds the Italian authorities to inform the Commission according to Article 108 paragraph 3 of the TFEU on all plans to modify the scheme or to introduce a new 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.

[9] At least the following information will be published on a single website or on a single website retrieving information from several websites: the full text of the approved aid scheme and its implementing provisions, the name of the aid beneficiary, the name and nature of the aided activity or project, the aid amount, and the aid intensity as a proportion of the total budget of the aided activity or project. Such information will be published online after the award decision has been taken, kept for at least 10 years and will be available to the general public without restrictions.

[10] Communication from the Commission amending the Communications from the Commission on EU Guidelines for the application of State aid rules in relation to the rapid deployment of broadband networks, on Guidelines on regional State aid for 2014-2020, on State aid for films and other audiovisual works, on Guidelines on State aid to promote risk finance investments and on Guidelines on State aid to airports and airlines (C(2014) 3349/2), http://ec.europa.eu/competition/state_aid/modernisation/index_en.html#.

Your request should be sent by encrypted e-mail to stateaidgreffe@ec.europa.eu, by registered letter or by fax to:

European Commission
Directorate-General for Competition
State Aid Greffe
B-1049 Brussels
Belgium

Fax No: +32 2 296 12 42

Yours faithfully,

For the Commission

Ferdinando NELLI FEROCI
Vice-President