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**Subject: State aid SA.38392 (2014/N) – Croatia
Investment incentives for the production of audiovisual works**

Dear Madam,

1. SUMMARY

(1) The European Commission has assessed the Croatian Investment incentives for the production of audiovisual works and considers the aid to be compatible with the Treaty on the Functioning of the European Union ("TFEU"). The scheme is approved until 31 December 2019.

2. PROCEDURE

(2) On 26 February 2014 the Croatian authorities notified the Investment incentives for the production of audiovisual works. The Croatian authorities provided further clarifications on 22 April 2014.

(3) The aid scheme was considered existing aid in the framework of the accession of the Republic of Croatia to the European Union and as such examined by the Commission in accordance with the procedure provided for in Annex IV, Chapter 2, paragraph 1 c) (under Article 16) of the Accession Treaty¹. It ran until 31 December 2013.

¹ Council of the European Union, *Accession Treaty: Treaty concerning the accession of the Republic of Croatia*, Brussels, 7 November 2011, <http://delhrv.ec.europa.eu/files/file/articles-st14409.en11-1323455241.pdf>. See also

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3. DESCRIPTION OF THE MEASURE

3.1. Objective, legal basis, budget, funding body and duration

- (4) The scheme has cultural objectives and aims in particular to support the production of audiovisual works in the Republic of Croatia.
- (5) The national legal bases of the aid scheme are a) the Audiovisual Activities Act (NN 76/07 and 90/11); b) the Law on State aid (NN 141/13 and NN 72/13); and c) the Regulations to encourage investments in the production of audiovisual works.
- (6) The annual budget², financed through the general budget of the State, amounts to HRK 20 million (circa EUR 2.6 million) and the overall budget over the time period concerned amounts to HRK 120 million (approximately EUR 15.7 million).
- (7) The Croatian Audiovisual Centre is the funding body.
- (8) The scheme will run until 31 December 2019. No aid will be granted under the scheme until the Croatian authorities have received the approval from the Commission contained in this Decision.

3.2. Beneficiaries, eligibility conditions and selection procedure

- (9) The scheme supports the production of feature films, animations, documentaries, television films and television series, produced entirely or partly in the Republic of Croatia and intended for presentation to the general public.
- (10) The beneficiaries have to be audiovisual production companies, registered as legal entities in the Republic of Croatia. Undertakings established in the EU or European Economic Area (EEA) who have their headquarters outside the Republic of Croatia are considered legal entities registered in the Republic of Croatia provided they establish a permanent branch or agency in Croatia. This condition is only enforced upon granting of the aid.
- (11) In order to be eligible for support, the applicants need to have produced at least one audiovisual work (feature film, animation, documentary, television film, or television series) in the last three years prior to the date of submission of the application. This work needs to have been publicly shown in at least one of the following ways: commercial distribution in cinemas, broadcasting on television and/or programming by at least one international film or television festival³.
- (12) Upon applying, the potential beneficiaries must have secured at least 70% of the financing necessary to cover the production costs in the Republic of Croatia.
- (13) Only those projects that achieve a minimum number of 12 points in the qualification test (out of a total of 34) may benefit from aid. The purpose of this test is to determine the cultural character of the work (A), the contribution of human resources of the Republic of Croatia and the other Member States of the EEA (B), and the use of Croatian production

SA.35512 - Ordinance on the promotion of investment in the production of audiovisual works, http://ec.europa.eu/competition/ejojade/isef/case_details.cfm?proc_code=3_SA_35512.

² The conversions in this Decision are based on a conversion rate of 1 HRK = 0.130483 EUR on 26 March 2014.

³ The regulations include a number of derogations to this requirement for cases where the founder or director of the applying company (but not the company itself) has been involved in the production of such a work; where the applying company has provided production services for such a work; or where the applying company instead has experience in the provision of production services for audiovisual commercials.

capacities⁴ (C). A score of at least 4 has to be attained in each of these three categories (out of a maximum of 12 in categories A and B and a maximum of 10 in category C). The projects need to pass the test, but beyond that, there is no difference in treatment or benefits between projects that receive a higher or lower score.

- (14) In order to be eligible for support, the production spending in Croatia has to amount to minimum HRK 2 million (close to EUR 261 000) for feature films, HRK 300 000 (approximately EUR 39 000) for documentaries, HRK 500 000 (around EUR 65 000) for animation films, HRK 1 million (circa EUR 130 000) for television films and HRK 750 000 (almost EUR 98 000) per episode for TV series. This required minimum level of production activity in Croatia cannot exceed 50% of the overall production budget.
- (15) In case the audiovisual production is produced entirely in the Republic of Croatia, the cast and crew employed in the Republic of Croatia must consist of at least 50% of Croatian citizens or citizens of other EEA Member States. In case the production is partially produced in the Republic of Croatia, at least 30% of the cast and crew employed in the Republic of Croatia must be Croatian citizens or citizens of other EEA Member States.
- (16) In the case of an application for an aid in excess of HRK 4 million (approximately EUR 522 000) (see also paragraph (21)), one Croatian trainee (Croatian national or resident) must be engaged in each of the main production activities (production design, production, camera, costume design, make-up and prosthetics, stunts). This condition, which is only applicable in case of exceptionally large aid amounts, has been set with the objective of (re-)building the Croatian technical and craft skills base through the transfer of knowledge inherent to traineeships.
- (17) A Committee considers the applications and assesses whether the conditions for obtaining a grant are fulfilled. It comprises five members: one member from the Ministry of Culture, two members from the Croatian Producers Association, one member from the Ministry of Finance and one member from the Croatian Audiovisual Centre. They are appointed by the Minister of Culture for a renewable period of two years.
- (18) Decisions are made on a first-come first-served basis, based on the order in which applications are received.

3.3. Form of the aid, aid amounts, eligible costs and intensities

- (19) The aid is given in the form of direct grants.
- (20) The grants are calculated as a percentage (20%) of the production expenditure in Croatia. All the costs relating to goods and services purchased within the scope of producing the audiovisual work are eligible.
- (21) In principle, these grants can amount to up to HRK 4 million (approximately EUR 522 000). For films of which the total production spending in Croatia exceeds HRK 20 million (circa EUR 2.6 million), grants of more than HRK 4 million may be determined by the Croatian Audiovisual Centre, in proportion to the available funds.

⁴ Based on the percentage of shooting/production days taking place in Croatia and on the use of Croatian service providers for production service expenses incurred in Croatia. In order to achieve the minimum number of points in category C, it is not necessary to achieve any points based on the shooting/production locations, even if it can be expected that most applications for aid under the scheme (which is based on production activity within Croatia) will achieve at least some points on this criterion. Moreover, the allocation of points under category C does not lead producers to spend more than 50% of the production budget in Croatia.

- (22) In any case, the territorial expenditure taken into account for the calculation of the grants cannot exceed 80% of the total production budget.
- (23) The aid can be cumulated with other aid. The maximum cumulative aid intensity amounts to 50% of the production budget, or 60% in the case of international co-productions (cross-border productions). For difficult⁵ and low-budget⁶ audiovisual works, the maximum cumulative aid intensities may amount to up to 80% of the overall production budget.

3.4. Film heritage and transparency

- (24) The following will be published on the official website: 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 project, the aid amount and the aid intensity as a proportion of the total budget of the project. This information will be kept for at least 10 years and will be made available to the public.
- (25) The 2013 Cinema Communication⁷ 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).
- (26) The Croatian authorities have indicated that there are no film heritage provisions attached to the notified scheme.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of state aid

- (27) 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"*.
- (28) The scheme is financed by the Croatian Ministry of Culture out of the state budget.

⁵ A *difficult or demanding audiovisual work* is defined (Article 3 of the Consolidated Act on Audiovisual Activities) as:

"A work of special artistic and/or cultural value for the national or European film production that contributes to cultural diversity and pluralism of artistic expression. A difficult or demanding audiovisual work is primarily:

- a work of high quality or creative risk or an experimental film which is not, due to a variety of reasons, commercially profitable, namely, a work that has difficulties in accessing financial resources,

- a work that is thematically demanding but important for its cultural goals that are not commercially sustainable,

- the first or second film of a director, documentary film, short film or a similar work."

⁶ A *low-budget audiovisual work* is defined (Article 3 of the Consolidated Act on Audiovisual Activities) as *"any work whose costs of production do not exceed the average costs of an audiovisual work in its category (feature film, short feature film, feature documentary film, short documentary film, animated film, experimental film) primarily financed from public funds of the Republic of Croatia in the last three years."*

⁷ 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.

- (29) The scheme is selective in nature, and audiovisual production companies are the targeted beneficiaries. Accordingly, the State favours certain undertakings and the production of certain goods, and therefore may distort competition.
- (30) Since audiovisual works are traded at an international level, the financial advantage granted to the beneficiaries under the scheme may affect trade and competition between Member States.
- (31) Therefore, the measure constitutes State aid within the meaning of Article 107 (1) TFEU and its compatibility has to be assessed.

4.2. Compatibility of the aid

- (32) The Commission's Communication on state aid for films and other audiovisual works (2013 Cinema Communication, see footnote 7) provides for special rules for assessing the compatibility of State aid for films and other audiovisual works under Article 107 (3) (d) of the TFEU. The aid can be justified if the aid scheme complies a) with the general legality principle and b) with the specific compatibility criteria set out in the Cinema Communication (in its point (52)).

4.2.1. General legality

- (33) Under the principle of general legality, the eligibility conditions and award criteria may not contain clauses contrary to the TFEU in fields other than state aid. This includes ensuring that the TFEU principles prohibiting discrimination on the grounds of nationality, free movement of goods, free movement of workers, freedom of establishment, freedom to provide services and freedom of movement of capital have been respected (Articles 18, 34, 36, 45, 49, 54, 56 and 63 TFEU).
- (34) In compliance with the above principles, under the scheme, undertakings established in one Member State and operating in another by means of a permanent branch or agency are eligible for aid. This condition is only enforced upon granting of the aid.
- (35) Moreover, the eligibility conditions on the employment of human resources (cast and crew) extend to citizens of EEA Member States. The requirement, only applicable in the case exceptionally large aid amounts are awarded, to engage Croatian residents as trainees does not discriminate on the grounds of nationality. This requirement stems from the cultural and educational objectives of (re-)building Croatian skills and contributing to the transfer of know-how and expertise.
- (36) The film production incentive is calculated as a percentage of production expenditure in Croatia. In such a case, Member States may require a minimum level of territorial spending under the eligibility criteria of a scheme, which does not exceed 50% of the overall production budget. The scheme sets a number of minimum production activity levels in the territory as a condition for eligibility (paragraph (14)). The qualification test, in its category (C), also contains a number of criteria that entail a territorial linking (see paragraph (13) and footnote 4). None of these eligibility criteria however incentivise producers to spend more than 50% of the production budget in Croatia. Furthermore, under the Cinema Communication the territorial linking may in any case not exceed 80% of the total production budget. This limit has been respected by the Croatian authorities.

(37) Consequently, the conditions of the Croatian scheme are in line with the Cinema Communication's provisions in terms of general legality.

4.2.2. Specific assessment under point 52 of the Cinema Communication

(38) Under the Cinema Communication, Member States must ensure that the aid is directed to a cultural product, according to their own national criteria and through an effective verification process to avoid manifest error. In line with the subsidiarity principle, the Commission's task is limited to verifying if a Member State has a relevant, effective verification mechanism in place, either through the set-up of a cultural selection process or by conditioning the aid on the basis of a cultural profile to be fulfilled by all projects applying for the support. Under the notified scheme, the cultural character of the project is determined on the basis of a list of criteria within the qualification test, for which a minimum score has to be attained in order to qualify for aid (see paragraph (13)).

(39) The (cumulative) aid intensity must in principle be limited to 50% of the production budget, with higher intensity levels possible for cross-border co-productions funded by more than one Member State (up to 60% aid intensity), difficult audiovisual works and co-productions with countries from the DAC list of the OECD. The aid intensities under the scheme (paragraph (24)) follow these limits. The Croatian authorities have provided a definition of difficult audiovisual works that is in line with the Cinema Communication.

(40) According to the Cinema Communication, apart from script-writing, development, distribution or promotion, aid granted for specific production activities is not allowed. Under the qualification test, one of the criteria in category (C) relates to film shooting/locations, a specific production activity. Yet the allocation of points under the qualification test does not endanger the neutral effect of the aid between the items of the budget of the film (see footnote 4). The Commission therefore considers that the Croatian aid scheme complies with this requirement of the Cinema Communication.

(41) The aid should be awarded in a transparent manner. As described in paragraph (25), the Croatian authorities have assured the Commission that this will be the case.

4.2.3. Conclusion

(42) The Commission therefore concludes that the aid scheme constitutes State aid within the meaning of Article 107 (1) TFEU, but that it can be considered compatible with the internal market pursuant to Article 107 (3) (d) TFEU.

5. CONCLUSION

(43) The Commission has accordingly decided not to raise objections to the notified Investment incentives for the production of audiovisual works on the grounds that it is compatible with the internal market pursuant to Article 107 paragraph 3 d) of the TFEU. The amended scheme has been approved until 31 December 2019.

(44) The Commission reminds the Croatian authorities to submit annual reports on the implementation of the aid scheme.

(45) The Commission moreover reminds the Croatian 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>.

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

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Yours faithfully,
For the Commission

Joaquín ALMUNIA
Vice-President