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**Subject: State aid SA.38425 (2014/N) – Hungary
Amendment of the Hungarian film support scheme**

Sir,

1. SUMMARY

(1) The European Commission has assessed the modifications to the Hungarian film support scheme and decided to consider 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 13 May 2014, the Hungarian authorities notified the modification of the Hungarian film support scheme.

(3) The scheme was first approved by the Commission by decision of 16 July 2008 (N 202/08)¹. It was subsequently prolonged (SA.36579 (2013/N))² until 31 December 2019.

¹ State aid N202/08 – Hungary – Hungarian film support schemes,
http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_N202_2008.

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- (4) By letter of 19 May 2014, the Hungarian authorities have provided a language waiver and agreed to have the Decision on the notified film support scheme adopted and notified in English as the authentic language.

3. DESCRIPTION OF THE MEASURE

3.1 General provisions

- (5) The aid scheme intends to support and promote the development of the Hungarian film culture.
- (6) The scheme consists of the following aid measures:
- Direct aid for film production.
 - Tax incentives (indirect support) for film production, based on deductible donations from corporate donors to film productions.
 - Aid for activities other than film production: script development, pre-production, film distribution, cinemas, film events and motion picture publications.
- (7) The legal bases of the scheme are: a) Act II of 2004 on Motion Pictures ("Motion Picture Act"); b) Act LXXXI of 1996 on Corporate and Dividend Tax; c) Decree 67/2013 (X.17.) EMMI of the Minister of Human Resources on the rules of state aid of motion picture activities other than film production.
- (8) The modified scheme will run from 1 July 2014 until 31 December 2019. The Hungarian authorities have committed not to implement the scheme before it has been approved by the European Commission.

3.2 Modifications to the scheme

- (9) The notified measure consists mainly of modifications to the (cumulative) aid intensities, which are amended as followed:
- a. Direct film production support:
- In the case of international co-productions, the aid intensity is not more than 60% of the Hungarian contribution. When the co-production involves at least one producer from a country on the OECD DAC list, the aid intensity can go up to 100% of the Hungarian contribution.
 - In the case of difficult films³ and low-budget⁴ films, the aid intensity may amount to up to 100% of the production budget or of the Hungarian contribution (if it is a co-production).

² State aid SA.36579 (2013/N) – Hungary – Hungarian film support scheme (prolongation of SA.25613 (N 202/2008)),

http://ec.europa.eu/competition/elojade/isef/case_details.cfm?proc_code=3_SA_36579.

³ Defined in case N 202/2008 on the basis of two conditions: a) the film is produced originally in the Hungarian language; and b) it is probable that the production budget will not be recouped by the revenues coming from the film's distribution. In case the production budget is recouped, the revenues that exceed the production budget will be repaid to the funding body.

⁴ The low-budget thresholds were defined in case N 202/2008 as follows: HUF 237 million (EUR 1.01 million) for Hungarian films; HUF 467 million (EUR 1.99 million) for international co-productions. These amounts are adjusted every year according to the national inflation year of the previous year (in case of Hungarian films) and according to the national inflation and the inflation of the Eurozone (in

b. Tax incentives: The total value of the support may not exceed 25% of the eligible production expenditure (compared to 20% before). The definition of eligible expenditure depends on the level of spending in Hungary:

- In case less than 80% of the total production budget is spent in Hungary, the eligible production expenditure equals 125% of the Hungarian production costs.
- In case 80% or more of the total production budget is spent in Hungary, the eligible production expenditure equals 100% of the total production budget.

As a result, the maximum aid intensity under the scheme equals 25% of the production budget. The maximum cumulative aid intensity remains at 50% of the total production costs, except in the case of international co-productions and/or difficult films (see point a.).

c. Direct support for activities other than film production:

- Aid intensities for script development and production preparation can amount to up to 100% of eligible costs, but – once the film goes into production – the aid amounts are incorporated in the total production support.
- The aid intensities for distribution and promotion are aligned with those applicable in the case of production support.

(10) The amendments will entail an increase of the overall budget⁵ of the scheme from HUF 111 000 million to HUF 122 000 million (approximately EUR 402 million). The annual budget amounts to between HUF 16 000 million (circa EUR 52.7 million) and HUF 23 000 million (close to EUR 76 million) over the time period 2014-2019.

(11) As the Hungarian Historic Film Foundation was closed down, the Hungarian authorities have also updated the funding bodies under the scheme. They are:

- a) The Hungarian National Film Fund;
- b) The National Cultural Fund;
- c) The Ministry of Human Resources;
- d) The Ministry of National Economics.

(12) Aside from a few additional changes of administrative nature, all other aspects and conditions of the approved scheme remain unchanged.

3.3 Other elements

(13) The 2013 Cinema Communication⁶ invites the Member States to encourage and support producers to deposit a copy of the aided film in the film heritage institution

the case of international co-productions). This brings the current amounts to HUF 324.8 million (EUR 1.07 million) for Hungarian films and HUF 575.7 million (EUR 1.90 million) for international co-productions.

⁵ 1 EUR = 303.467 HUF (currency exchange rate of 14 May 2014).

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.

designated by the funding body for preservation, as well as for specified non-commercial use agreed with the right holder(s).

- (14) Under Decree 60/1998 (III.27) of the Government, film and video works distributed in Hungary should be deposited with the Hungarian National Digital archive. This also applies for the films supported under the notified scheme.

4. ASSESSMENT OF THE MEASURE

4.1. Existence of state aid

- (15) 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.*
- (16) As set out in the State aid cases N202/08 and SA.36579, the measure constitutes State aid within the meaning of Article 107 (1) TFEU.

4.2. Compatibility of the aid

- (17) The envisaged measure is a modification of an aid scheme which has previously been approved by the Commission under Article 107(3) (d) of the TFEU as compatible with the internal market.
- (18) In the preceding decisions of the Commission (N202/08 and SA.36579), the aid scheme was approved on the basis of the 2001 Cinema Communication⁷. Published on 15 November 2013, the new Cinema Communication ("2013 Cinema Communication")⁸ updated these rules for the assessment 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 2013 Cinema Communication.
- (19) With regard to the general legality principle, the 2013 Cinema Communication (Article 50) has modified the limits set to the territorial spending obligations of film support schemes. Film support schemes:
- May require that up to 50% of the overall production budget is spent in the territory in order to qualify for aid.
 - May require 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.

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 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.

- May not link more than 80% of the overall production budget to territorial spending obligations.
- (20) The territorial conditions of the Hungarian film support scheme were initially assessed in Decision N202/08. There are territorial conditions attached to the tax incentive scheme and to the direct production support:
- Tax incentives: The indirect support awarded to the production of an audiovisual work is calculated as a percentage of the expenditure on film production activity in Hungary⁹. There is no minimum level of territorial spending required to be eligible for support. The modifications to the scheme have increased the aid from 20% of eligible production expenditure to 25% of eligible production costs, but have not amended the definitions of eligible production expenditure. As a result, the territorial linking remains the same and does not exceed 80% of the production budget.
 - Direct production support: The beneficiaries are required to spend at least 60% of the aid in Hungary. A lower or higher percentage may be specified by the funding body, but this may not go below 40% nor exceed 80% of the aid amount. Taking into account the maximum aid intensities under the scheme, the territorial spending obligations do not go above 80% of the production budget.
 - In addition to this, some of the eligibility criteria that apply to both the tax incentives and the direct production support have a territorial spending character as they relate to the film shooting taking place in Hungary and the film production or post-production being prepared in Hungary. As the maximum score is achieved if the share of Hungarian shooting locations, or the costs of pre-or post-production costs in Hungary, reach 50%, there is no territorial incentive, at the eligibility stage, which goes beyond 50% of the overall production budget. Moreover, it is not necessary to score any points on these criteria in order to be eligible for aid. The producers will not have to score an excessive part of the points available in other categories, when they don't score these points. Furthermore the allocation of points will not substantially endanger the neutral effect of the aid between the items of the film and will not turn the aid into national preference for the sector which provides the specific aid items. Taking into account all these circumstances, it can be concluded that the Hungarian film support scheme complies with the territorial spending conditions set out by the new rules of the 2013 Cinema Communication.
- (21) Aside from the territorial spending criteria, the 2013 Cinema Communication has not modified the principles of the 2001 Cinema Communication with regard to the general legality principle. The modifications of the Hungarian film support scheme therefore do not raise any issues in respect of the general legality principle, as assessed in Decisions N202/08 and SA.36579.
- (22) Regarding the specific compatibility criteria, the 2013 Cinema Communication does not tighten the criteria with regard to the cultural character of the aid or aid for specific production activities. The assessment done with regard to these compatibility criteria in the State aid cases N202/08 and SA.36579 is therefore not affected.
- (23) According to Article 52 (paragraphs 2 to 5) of the Cinema Communication, the (cumulative) aid intensity must in principle be limited to 50% of the production

⁹ Cost items in the production budget of a film, which generate tax obligations under any tax law in Hungary, are considered eligible Hungarian production expenditure.

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. Aid for scriptwriting or development is unlimited, but if the project is ultimately made into a film, these costs should be taken into account when calculating the maximum aid intensity. The costs of distributing and promoting audiovisual works which are eligible for production support may be supported with the same intensity as they were (or could have been) for their production.

- (24) The Hungarian modifications relate mainly to the cumulative aid intensities, which have been set in accordance with these provisions (see paragraph (9)). They are therefore in line with the Cinema Communication.
- (25) The Hungarian authorities have assured that the aid will be awarded in a transparent manner. They will comply with the Cinema Communication provision (Article (52) 7) stating that Member States must publish at least the following information 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 must be published online after the award decision has been taken, kept for at least 10 years and be available to the general public without restrictions.

5. CONCLUSION

- (26) The Commission has accordingly 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 scheme is approved until 31 December 2019.
- (27) On 21 May 2014, the Commission adopted a Communication aligning the transparency requirements across all the recently revised state aid rules¹⁰, which modifies the transparency requirements included in Article (52) 7 of the Cinema Communication. The Commission reminds the Hungarian authorities that they have two years to put in place these transparency mechanisms.
- (28) The Commission reminds the Hungarian authorities to submit annual reports on the implementation of the aid scheme.
- (29) The Commission moreover reminds the Hungarian authorities to inform the Commission according to Article 108 paragraph 3 of the TFEU on all plans to modify the scheme or to approve a new scheme.

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#.

- (30) The Hungarian authorities have provided a language waiver agreeing that the current Decision is adopted and notified in English.

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