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**PUBLIC VERSION**

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**Subject: SA.57530 (2020/N) – COVID-19-Aid scheme for audio-visual  
production companies - Luxembourg**

Excellency,

**1. PROCEDURE**

- (1) By electronic notification of 12 June 2020, Luxembourg notified aid in the form of limited amounts of aid to audio-visual production companies (“Aide sous forme d’avance remboursable et d’une aide sous forme de subside non-remboursable à la production audiovisuelle dans le cadre de la lutte contre le Covid-19”, “the measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, as amended (“the Temporary Framework”).<sup>1</sup>
- (2) Luxembourg exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in

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<sup>1</sup> Communication from the Commission - Temporary framework for State aid measures to support the economy in the current COVID-19 outbreak, 19 March 2020, OJ C 91I, 20.3.2020, p. 1-9, as amended by Communication from the Commission C(2020) 2215 final of 3 April 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 112I, 4.4.2020, p. 1-9 and by Communication from the Commission C(2020) 3156 final of 8 May 2020 on the Amendment of the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak, OJ C 164, 13.5.2020, p. 3-15.

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conjunction with Article 3 of Regulation 1/1958<sup>2</sup> and to have this Decision adopted and notified in English.

## **2. DESCRIPTION OF THE MEASURE**

- (3) Luxembourg considers that the COVID-19 outbreak has started to affect the real economy. The measure forms part of an overall package of measures and aims to ensure that sufficient liquidity remains available in the market, to counter the liquidity shortage faced by undertakings because of the outbreak, to ensure that the disruptions caused by the outbreak do not undermine the viability of the undertakings and thereby to preserve the continuity of economic activity during and after the outbreak.
- (4) Luxembourg explains that, similar to other sectors, the audio-visual production sector has been severely hit by the COVID-19 outbreak and the containment measures imposed by the government in response to the crisis. Indeed, the audio-visual sector came to a complete halt during the lockdown. Besides the forced interruption of shootings, the audio-visual market players have also faced the closure of theatres and consequently a decrease of revenues as well as the cancellation of numerous professional markets, festivals and other business events.
- (5) Luxembourg considers that the production of audio-visual works may be delayed beyond the date when the confinement measures are lifted notably due to:
  - (a) The likely non-availability of staff and equipment booked for the period during the outbreak, that would be committed to other projects;
  - (b) The absence of available financing either for continuing the production of an ongoing work or for starting a new project, which would further increase costs without enabling the generation of potential revenues.
- (6) Moreover, given the international dimension of audio-visual works, Luxembourg explains that the continuation of the audio-visual productions may also depend on the development of the COVID-19 outbreak and its management in other countries, which is not necessarily aligned with the measures taken by Luxembourg.
- (7) For the reasons stated above, Luxembourg considers that the audio-visual production companies will face a liquidity shortage for a longer period than the confinement period itself.
- (8) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, as interpreted by Section 2 and Section 3.1 of the Temporary Framework.

### **2.1. The form of aid**

- (9) The measure provides aid in the form of direct grants and repayable advances.

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<sup>2</sup> Regulation No 1 determining the languages to be used by the European Economic Community, OJ 17, 6.10.1958, p. 385.

## **2.2. Legal basis**

- (10) The legal basis for the measure is the ‘Règlement grand-ducal portant introduction d’une aide sous forme d’avance remboursable et d’une aide sous forme de subside non-remboursable à la production audiovisuelle dans le cadre de la lutte contre le Covid-19’, to be adopted by Luxembourg after the Commission’s approval of the measure.

## **2.3. Administration of the measure**

- (11) The Luxembourg Film Fund is responsible for administering the measure.

## **2.4. Budget and duration of the measure**

- (12) The estimated budget of the measure is EUR 7 million. The measure is financed through the budget of the Luxembourg Film Fund.
- (13) Aid may be granted under the measure as from its approval until no later than 31 December 2020.

## **2.5. Beneficiaries**

- (14) The beneficiaries of the measure are audio-visual production companies active in Luxembourg affected by the economic repercussions of COVID-19 and having temporary financial difficulties. The Luxembourg authorities estimate that there will be up to 50 beneficiaries.
- (15) Aid may not be granted under the measure to undertakings that were already in difficulty within the meaning of the General Block Exemption Regulation (“GBER”)<sup>3</sup> on 31 December 2019.

## **2.6. Sectoral and regional scope of the measure**

- (16) The measure is open to the audio-visual production sector. It applies to the whole territory of Luxembourg.

## **2.7. Basic elements of the measure**

- (17) The objective of the scheme is to provide liquidity to undertakings active in the audio-visual production that have been forced to stop their activities due to the COVID-19 outbreak.
- (18) The measure has the two following components.

### *2.7.1. Repayable advances*

- (19) To be eligible for the aid, an undertaking needs to fulfil the following conditions:

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<sup>3</sup> As defined in Article 2(18) of Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ L 187 of 26.6.2014, p. 1.

- (a) It must be facing temporary financing liquidity shortage related to the COVID-19 outbreak. It will have to provide evidence of the interruption of its activity and the related loss of revenues suffered, resulting in a shortage of liquidity.
- (b) It was already carrying out economic activities before the crisis and has benefited from a previous compatible aid for the production of an audio-visual work.
- (c) The eligible costs are staff costs and overheads. Income arising from a professional activity carried out as a self-employed person under the condition that the person concerned is, as such, subject to the provisions of the Luxembourg Social Security legislation, shall be equivalent to staff costs. Staff costs are capped at 2,5 times the social minimum wage of a qualified person. The loss in the producers' revenues caused by the annulment or delay of the shootings due to the COVID-19 outbreak are also eligible.
- (d) The costs are calculated on the basis of the annual accounts for the last financial year, or in the absence of, on the basis of available financial data or tax declaration.
- (e) The amount of the repayable advance is maximum EUR 250 000 per audio-visual production company.
- (f) The conditions of reimbursement of the aid is decided by the Luxembourg Film Fund, on the basis of the beneficiary's foreseeable future revenues.
- (g) Aid applications may be submitted until 15 August 2020.

2.7.2. *Direct grants:*

- (20) To be eligible for the aid, an undertaking needs to fulfil the following conditions:
  - (a) It must be facing temporary financing liquidity shortage related to the COVID-19 outbreak. It will have to provide evidence of the interruption of its activity and the related loss of revenues suffered, resulting in the shortage of liquidity.
  - (b) It has benefited from a previous compatible aid for the production of an audio-visual work.
  - (c) It employs maximum 10 employees with an annual turnover or annual balance sheet of maximum EUR 2 million.
  - (d) The aid applicant must either submit the annual accounts for the last financial year, or, in absence of, any other available financial data or tax declaration.
  - (e) The aid amount is maximum EUR 10 000 per audio-visual production company, up to the limit of EUR 50 000 per undertaking.
  - (f) Aid applications may be submitted until 15 August 2020.

## **2.8. Cumulation**

- (21) The Luxembourg authorities confirm that if the undertaking beneficiary receives aid in several forms under the measure or aid under other measures approved by the Commission under Section 3.1 of the Temporary Framework, the overall maximum cap per undertaking, as set out in point 22(a) of that framework at EUR 800 000, shall be respected. The Luxembourg authorities confirm that aid granted under the measure may be cumulated with aid granted under other measures approved by the Commission under other sections of the Temporary Framework provided the provisions in those specific sections are respected.
- (22) The Luxembourg authorities confirm that aid granted under the measure may be cumulated with aid under the *de minimis* Regulation<sup>4</sup> provided the provisions and cumulation rules of that Regulation are respected. In case the aid is cumulated with aid under the General Block Exemption Regulation<sup>5</sup>, the Luxembourg authorities confirm that the provisions of that Regulation will be respected.

## **2.9. Monitoring and reporting**

- (23) The Luxembourg authorities confirm that they will respect the monitoring and reporting obligations laid down in Section 4 of the Temporary Framework (including the obligation to publish relevant information on each individual aid granted under the measure on the Commission's IT tool within 12 months from the moment of granting<sup>6</sup>).

## **3. ASSESSMENT**

### **3.1. Lawfulness of the measure**

- (24) By notifying the measure before putting it into effect, the Luxembourg authorities have respected their obligations under Article 108(3) TFEU.

### **3.2. Existence of State aid**

- (25) For a measure to be categorised as aid within the meaning of Article 107(1) TFEU, all the conditions set out in that provision must be fulfilled. First, the measure must be imputable to the State and financed through State resources. Second, it must confer an advantage on its recipients. Third, that advantage must be selective in nature. Fourth, the measure must distort or threaten to distort competition and affect trade between Member States.

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<sup>4</sup> Commission Regulation (EU) No 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to *de minimis* aid (OJ L 352, 24.12.2013, p.1).

<sup>5</sup> Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty.

<sup>6</sup> Referring to information required in Annex III to Commission Regulation (EU) No. 651/2014 of 17 June 2014 and Annex III to Commission Regulation (EU) No 702/2014 and Annex III of the Commission Regulation (EU) No 1388/2014 of 16 December 2014. For repayable advances, the nominal value of the underlying instrument shall be inserted per beneficiary.

- (26) The measure is imputable to the State, since it is administered by the Luxembourg Film Fund (see recital (11)) and it is based on the ‘Règlement grand-ducal portant introduction d’une aide sous forme d’avance remboursable et d’une aide sous forme de subside non-remboursable à la production audiovisuelle dans le cadre de la lutte contre le Covid-19’. It is financed through State resources, since it is financed by public funds (recital (12)).
- (27) The measure confers an advantage on its beneficiaries in the form of direct grants and/or repayable advances<sup>7</sup> (recitals (19) and (20)). The measure thus provides funding to those beneficiaries in terms that are better than those of the market.
- (28) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular undertakings active in the audio-visual production sector (recital (14)).
- (29) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries (recital (17)). It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists (see recital (6)(14)).
- (30) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Luxembourg authorities do not contest that conclusion.

### **3.3. Compatibility**

- (31) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether the measure is compatible with the internal market.
- (32) Pursuant to Article 107(3)(b) TFEU the Commission may declare compatible with the internal market aid “*to remedy a serious disturbance in the economy of a Member State*”.
- (33) By adopting the Temporary Framework on 19 March 2020, the Commission acknowledged (in Section 2) that “*the COVID-19 outbreak affects all Member States and that the containment measures taken by Member States impact undertakings*”. The Commission concluded that “*State aid is justified and can be declared compatible with the internal market on the basis of Article 107(3)(b) TFEU, for a limited period, to remedy the liquidity shortage faced by undertakings and ensure that the disruptions caused by the COVID-19 outbreak do not undermine their viability, especially of SMEs*”.
- (34) The measure aims at facilitating the access of undertakings to liquidity at a time when the normal functioning of the markets, including credit markets, is severely disturbed by the COVID-19 outbreak and that outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States. The financial support provided by the Luxembourg authorities

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<sup>7</sup> Repayable advances without interest, which would not be available under the same conditions on the market for these undertakings.

will help the aid recipient to stay financially viable and to maintain its creditworthiness.

- (35) The measure is one of a series of measures conceived at national level by the Luxembourg authorities to remedy a serious disturbance in their economy. The importance of the measure to preserve the viability of audio-visual production companies as part of the wider objective to support the cultural actors and sector is widely accepted by economic commentators and the measure is of a scale which can be reasonably anticipated to produce effects across the entire Luxembourg economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid ("*Aid in the form of limited amount of aid*") described in Section 3.1 of the Temporary Framework.
- (36) The Commission accordingly considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State and meets all the conditions of the Temporary Framework. In particular:
- The aid takes the form of direct grants and repayable advances (recital (21)).
  - The overall nominal value of direct grants and repayable advances shall not exceed EUR 800 000 per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges (recital (21)). The measure therefore complies with point 22(a) of the Temporary Framework.
  - Aid is granted under the measure on the basis of a scheme with an estimated budget as indicated in recital (12). The measure therefore complies with point 22(b) of the Temporary Framework.
  - Aid will not be granted to undertakings under the measure that were already in difficulty on 31 December 2019 (recital (15)). The measure therefore complies with point 22(c) of the Temporary Framework.
  - Aid will be granted under the measure no later than 31 December 2020 (recital (13)). The measure therefore complies with point 22(d) of the Temporary Framework.
- (37) The Luxembourg authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (23)(23)). The Luxembourg authorities further confirm that the aid under the measure may only be cumulated with other aid, provided the specific provisions in the sections of the Temporary Framework are respected and the cumulation rules of the relevant Regulations are respected (recitals (21) and (22)). The Luxembourg authorities moreover confirm that in case the aid under the measure is cumulated with previous compatible aid for the same eligible costs, the cumulation rules applicable to that aid are respected.
- (38) The Commission therefore considers that the measure is necessary, appropriate and proportionate to remedy a serious disturbance in the economy of a Member State pursuant to Article 107(3)(b) TFEU since it meets all the relevant conditions of the Temporary Framework.

#### **4. CONCLUSION**

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)(b) of the Treaty on the Functioning of the European Union.

The decision is based on non-confidential information and is therefore published in full on the Internet site: <http://ec.europa.eu/competition/elojade/isef/index.cfm>.

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

**CERTIFIED COPY**  
For the Secretary-General,

**Jordi AYET PUIGARNAU**  
Director of the Registry  
**EUROPEAN COMMISSION**