Subject: State Aid SA.58206 (2020/N) – United Kingdom Film and TV Production Restart Scheme

Dear Foreign Secretary

1. Procedure

(1) By letter of 18 September 2020, the United Kingdom ("UK") notified the above mentioned aid scheme ("the Measure").

2. Detailed Description of the Measure

2.1. Context of the Measure

(2) TV and film production companies have ceased filming to a significant extent and have suffered significant losses in winding down and halting existing productions due to the COVID-19 outbreak and the lock-down measures taken by the UK government to contain the pandemic. The UK authorities explained that as lock-down measures ease, production companies face difficulties in restarting production due to the lack of available insurance to cover risks associated with COVID-19.

(3) The UK authorities indicated that the inability to obtain sufficient insurance to cover certain COVID-19 risks has prevented the vast majority of production companies sourcing and accessing the third party funding they require for their productions. This is because, in order for production companies to obtain
financing from a finance company or other finance providers\(^1\), these finance companies require production companies to have comprehensive insurance in place that cover all of the various risks that could affect a production.

(4) The UK authorities explained that, in the context of the COVID-19 pandemic, the two following areas of production insurance cover are not designed or sufficient enough to cover COVID-19 related risks:

(a) “cast cover” which covers additional production costs resulting from the accident / illness of key cast and crew who are named in the policy; and

(b) “civil authority” which covers additional expenses resulting from civil authority action that prevents or hinders access to a key location or facility used in the production.

(5) The UK authorities explained that, first, the cover limits in place for the two areas of insurance cover mentioned above are not suitable in the context of current COVID-19 related risks.\(^2\) Secondly, the scope of the cover is too narrow.\(^3\) Thirdly, insurers have been introducing specific exclusions of cover for communicable diseases (including COVID-19) from new production insurance policies in the UK (both for new productions and for productions looking to seek additional financing and insurance to reflect costs already incurred from COVID-19 production delays). This is primarily because this type of insurance solution was designed and written to provide cover against unusual and unforeseen events or circumstances in the short term, rather than systemic risks like COVID-19. The UK authorities are continuously monitoring the availability of the product on the insurance market.

(6) The UK authorities explained that without the Measure over £7 billion (EUR 7.77 billion)\(^4\) worth of productions which are scheduled before the end of December 2020 are at risk of not taking place due to the lack of availability of sufficient insurance and third party financing. Consequently, the UK authorities identified the key barrier preventing this activity from restarting as the lack of COVID-19 cover available in the market due to the specific COVID-19 exclusions in production insurance policies to obtain third party financing as a result.

2.2. Objective of the Measure

(7) The objective of the Measure is to support the restart of film and television (together, audio-visual) production, which is currently failing due to the lack of availability of sufficient insurance to cover risks associated with COVID-19.

\(^{1}\) Financing may be sought either at the start of a new production or in the course of the production, when additional liquidity are needed for the completion of the audio-visual work.

\(^{2}\) The cover limits are too modest in comparison with what the actual amount of the damage related to the COVID-19 pandemic would be.

\(^{3}\) For instance, cast cover typically only covers named individuals, as opposed to all cast and crew.

\(^{4}\) Reference rate: GBPI = EUR 1.11 on 3 August 2020.
2.3. Legal basis

(8) The legal basis for the Measure is section 8 of the Industrial Development Act 1982. The Measure will be governed by scheme rules to be known as the Film and Television Production Restart Scheme.

2.4. Granting authority and financing of the measure

(9) The responsibility for implementation and delivery of the scheme will rest with the UK Government. The scheme will be established by The Secretary of State for Digital, Culture, Media and Sport (“DCMS”). The Measure is financed through the general budget of the State.

2.5. Eligibility criteria

2.5.1. Beneficiaries

(10) The Measure will be available to television and film production companies that either are established, and subject to corporate taxation, in an EEA Member State, or that are a partnership, provided that all of the profits of the business carried on by the partnership are subject to tax in one or more EEA Member States.

(11) Production companies will be charged a fee of 1% of the gross production budget (less any applicable deductions) in order to participate in the scheme. Although participation in the scheme will be optional for production companies, the UK authorities expects take-up to be high since production companies that do not have the means to self-insure cannot get insurance cover for COVID-19 related losses in the market.

(12) Production companies participating in the scheme must also comply with certain social commitments set out in the scheme rules. Production companies participating in the scheme must also publicly recognise the support provided under the scheme by mentioning the UK Government in its opening or closing credits.

5 For these purposes, “EEA Member State” will include the UK for the duration of the scheme.

6 Specifically they will be asked to commit that they will:

- not employ individuals on unpaid internships on the eligible projects;
- ensure that all employees of the beneficiaries are paid national minimum wage / London living wage (as applicable to where the filming is taking place);
- consider meaningfully how they can comply with (i) (if the production is a feature film) the British Film Institute (“BFI”) Diversity Standards, and adopt the Set of Principles to Tackle and Prevent Bullying, Harassment and Racism in the Screen Industries or (ii) (if the production is a series or television programme) any relevant requirements or policies relating to diversity, bullying, harassment and racism or use the principles contained therein to develop and implement their own policies to tackle bullying, harassment and racism on the workplace;
- publish online or have publicly available their diversity targets and policies on bullying, harassment and racism;
- if the beneficiary will benefit from UK corporation tax high-end television tax relief or film tax relief in respect of the eligible project, make payments into the appropriate ScreenSkills funds; and
- explore meaningfully the possibility of offering ScreenSkills or equivalent recognised training, organisation placements on shoots, or upskill of the existing workforce on the production.
2.5.2. Eligible productions

(13) Productions that may benefit from the Measure must fulfil the following criteria:

(a) be produced solely by a qualifying beneficiary as described above (section 2.5.1) or by that qualifying beneficiary and one or more co-producers;

(b) spend at least 50% of the gross production budget on UK expenditure;

(c) pass a cultural test as set out in an annex to the scheme rules. The cultural test is similar in nature to cultural test for eligibility for Film, High-End Television, Children’s Television or Animation tax relief in the United Kingdom, or one of the UK’s official co-production treaties but adapted to include (i) other genres outside of drama and documentaries and (ii) smaller scale productions;

(d) be unable to start (or restart) production due to the inability of the production company to source financing, where such inability is caused by a lack of availability of sufficient insurance cover (or equivalent cover such as an internal group-wide captive scheme) for COVID-19 related risks.

(14) The criteria related to the inability to start or restart production mentioned above will be deemed satisfied if the following conditions are cumulatively met:

(a) The production is not able to obtain insurance cover for COVID-19 related risks under any insurance policy entered into and has sought to secure insurance cover for COVID-19 related losses through a broker or directly through at least two regulated insurers, and its applications or requests for such insurance have all been rejected or the only insurance cover that was offered was not on commercially viable terms.

(b) The production does not have access to cover for COVID-19 losses through a group insurance policy, self-insurance scheme or an alternative

---

7 As governed by The Cultural Test (Television Programmes) Regulations 2013 (as amended), adopted on the basis of Section 1216CB of the Corporation Tax Act 2009, and Schedule 1 to the Films Act 1985 (as amended), adopted on the basis of Section 1197 of the Corporation Tax Act 2009. These tests form part of aid schemes previously approved by the Commission or put under the General Block Exemption Regulation n°651/2014: SA.56047 for the UK Film Tax Relief scheme, SA.50624 for the UK Animation Tax relief scheme, SA.48771 for the UK High-end Television TaxRelief scheme and SA.41397 for the UK Children’s Television TaxRelief scheme.

8 Official coproduction treaties refer to a cultural test and usually refer either to UK’s cultural test, or to the cultural test of the counter Member State.

9 Participants must set out in their applications that they have submitted the statutory declaration to the British Film Institute stating that they meet the requirement of the cultural tests; otherwise they must submit such a statutory declaration to the scheme administrator for approval by the UK Government. Self-certification by the production company and verification by the UK authorities will take place prior to granting the certificate of eligibility to eligible participants.

10 An insurance cover that is not on commercially viable terms refers to an insurance product that does not enable the production to start or to restart as it does not cover all the risks that investors require to be insured.
scheme set up with a similar aim to the Measure (i.e. a scheme providing support to film or TV production companies that are unable to (re)start production due to a lack of insurance cover for COVID-19 related losses).

(c) Either: (i) solely due to the lack of insurance cover for COVID-19 losses, the production has been unable to secure approval from the commissioning broadcaster to release any part of the agreed licence fee or the agreement of any other finance provider to release finance for the production on customary terms; or (ii) due to the production’s anticipated eligibility for the scheme, it has been able to secure approval from the commissioning broadcaster to release any part of the agreed licence fee or the agreement of any other provider to release finance for the production on customary terms.

(d) The production has obtained insurance cover at commercial rates for all necessary non-COVID-19 risks or the terms of such insurance cover have been agreed with an insurer in principle such that the production will be in a position to (and shall) put such cover in place immediately after confirming its eligibility for the scheme.

(e) Productions must have a legally binding and effective production contract, financing agreement or trust letter which has been duly executed and includes or appends a gross production budget and an agreed production schedule with dates for the commencement of principal photography, the expected completion of principal photography, and delivery of the finished programme.

(15) The Measure will exclude productions that:

(a) involve the reporting or discussion of news or current affairs and are broadcast live;

(b) provide coverage of live events (including sport) or theatrical, musical or artistic performances given otherwise than for the purpose of being filmed;

(c) are filmed (whether in whole or in part) in front of a live paying audience;

(d) are advertisements or other promotional programmes;

(e) are produced for training purposes and will not be publicly broadcast; or

(f) are pornographic in nature.

2.5.3. Eligible costs

(16) The Measure will support the audio-visual work production costs related to COVID-19. Only production costs arising as a direct result of cast illness or civil authority action caused by COVID-19 will be eligible for compensation under the scheme. Production costs for these purposes will include:

11 Examples of costs include, but are not limited to, location hire, crew wages and equipment rental for the purposes of a days’ filming, where such costs are committed and therefore unrecoverable, but filming is unable to take place (e.g. due to the relevant key cast member being unavailable due to
(a) in the case of an interruption or postponement of the production, production costs necessarily and reasonably incurred over and above the expenditure that would otherwise have been incurred for the period during which the production has been interrupted or postponed, but for the cast illness or civil authority action; and

(b) in the case of abandonment, the production costs that have already been incurred and are rendered entirely valueless solely and directly as a result of abandonment caused by the cast illness or civil authority action.

(17) Two categories of COVID-19 related losses will be covered:

(a) “Cast Losses” which are losses sustained by a production company due to interruption, postponement or abandonment of the production as a result of (i) one or more members of the cast or crew being unable to work due to their own death or illness or (ii) one or more named persons being unable to work due to the death or critical illness of a member of their immediate family resulting from COVID-19 and their performance of such role(s) is material to the production.

(b) “Civil Authority Losses” which are losses sustained by a production company as a result of an interruption, postponement or abandonment of a production caused by: (i) an action taken by a UK Civil Authority in response to COVID-19 that prevents or hinders access to a production location; (ii) one or more individuals being prevented or hindered from performing their role(s) in a production where their performance of such role(s) is material to the production, as a consequence of their acting in accordance with any regulations, written directions or guidance issued by such a UK Civil Authority in response to COVID-19; or (iii) new restrictions imposed by a UK Civil Authority or amendments to existing restrictions imposed by a UK Civil Authority after the launch date of the Proposed Measure which may or may not impact on specific individuals’ ability to engage in the production but which have, in any event, a material adverse impact on the ability of the production company to complete the production in the manner originally contemplated.

(18) Only costs that are strictly and wholly COVID-19 related losses are covered by the Measure.

(19) Production insurance for non-COVID-19 related risks has continued to be available to TV and film production companies in the UK during the pandemic. This will not be affected by the scheme, and production companies will be required to take out commercial insurance for non-COVID-19 risks.

2.6. Form of the aid

(20) The aid will take the form of a direct grant.
2.7. Aid intensity and cumulation

(21) The Measure will award aids up to a total maximum of 70% a production’s overall budget or up to £5 million (EUR 5.5 million) (whichever is lower) per production participating in the aid scheme in relation to COVID-19 related risks.

(22) In case the COVID-19 related risks materialise, the Measure will pay out aid up to 20% of the production budget (up to a maximum of £5 million) in the case of interruption and/or postponement of the production, and up to 70% or up to a maximum of £5 million (whichever is lower) in the case of abandonment of the production. The UK authorities explained that these levels have been assessed as the minimum levels of aid required to have the effect of allowing productions to start or restart. In any event, the UK authorities explained that only a minority of the supported productions are expected to be abandoned and to actually receive up to 70% of the budget each.

(23) An excess amount below which damages shall be paid by the relevant production company will be set. The excess will be the greater of:

(a) £1,000 (EUR 1,100); and
(b) A sum equal to 10% of the value of the eligible costs.

(24) These excesses shall apply in aggregate over the length of the scheme, and the Measure will only pay out aid with respect to COVID-19 related losses that exceed the excess.

2.8. Budget

(25) The foreseen budget of the Measure is £500 million (EUR 555 million).

(26) The UK authorities indicated that the actual budget for the scheme would depend on the future trajectory of the COVID-19 pandemic, given that the aid would only be granted where production companies incur COVID-19 related costs, as explained above (recital (16)).

(27) The UK authorities estimated that around £3.8 billion (EUR 4.21 billion) of production worth will be supported, representing therefore approximately half of the production worth planned to the end of 2020 (see recital (6) above) and almost 90% of the productions. The estimated £3.2 billion (EUR 3.55 billion)12 worth of productions that will not be covered by the scheme represents less than 10% of the total productions by volume.

2.9. Duration

(28) Production companies may apply to participate in the scheme until 31 December 2020 (or such earlier date as DCMS may determine in circumstances where DCMS closes the scheme to new applicants, as a result of the aggregate value of estimated compensation payable under the scheme nearing £500 million). The period of principal photography of eligible productions must have meaningfully

---

12This production value is primarily accounted for by a small number of very high value productions that are able to self-insure and so will not be eligible for the scheme.
commenced at the latest on 31 December 2020. The Measure will support COVID-19 related losses incurred until 30 June 2021.

3. STANDSTILL OBLIGATION

(29) The aid will only be granted under the scheme following State aid approval by the Commission. The UK authorities have therefore fulfilled their obligation under Article 108(3) TFEU by notifying the scheme before putting the aid into effect.13

4. ASSESSMENT OF THE MEASURE

4.1. Existence of aid

(30) Article 107, paragraph 1 TFEU states that “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.”

4.1.1. State resources

(31) The Measure is imputable to the State as the Measure is established and under the responsibility of the UK Government (see recital (9)). In case the formal administration of the Measure is outsourced, this conclusion would not change since the Measure would remain under the responsibility of the UK Government. The Measure involves State resources since the Measure will be financed by the State budget (see recital (9) above). The fact that eligible production companies pay a fee for participating in the scheme (see recital (11) above) does not modify this conclusion, since it remains the UK authorities that will decide on the funds’ spending and conditions of use.

4.1.2. Economic advantage

(32) The Measure provides an economic advantage to the aid beneficiaries since it will enable them to pursue an activity that they would otherwise not be able to carry out on the basis of the normal market conditions (see recital (2) above). Furthermore, the Measure concerns only a segment of the audio-visual and moving images sector, namely TV and Film productions (see recital (7) above).

4.1.3. Selectivity

(33) The Measure is selective as only audio-visual productions that qualify as cultural under a cultural test and that are unable to secure financing due to a lack of insurance cover for COVID-19 related risks may benefit from the aid (see recital (13) above).

---

4.1.4. **Effect on intra-EU trade and competition**

(34) Given that audio-visual productions circulate across Member States, the Measure has an effect on intra-EU trade and competition.

4.1.5. **Conclusion**

(35) The Measure constitutes State aid in application of Article 107(1) TFEU.

4.2. **Compatibility of the Measure**

(36) The Measure is assessed under Article 107, paragraph 3, (d) of the TFEU, in the light of the criteria set out in the Cinema Communication.\(^{14}\) In application of these criteria, aid schemes for the production of audio-visual works must:

(a) Comply with the general legality principle (para. 48-50 of the Cinema Communication), including compliance with the following territorial spending obligations thresholds:

- maximum 50% of the overall production budget for projects to be eligible;
- maximum 80% of the overall production budget at the moment of granting of the aid\(^{15}\).

(b) Support only audio-visual cultural products (para. 52.1. of the Cinema Communication).

(c) Limit the aid intensity to 50% of the production budget, except for difficult audio-visual works, that are excluded from this limit (para. 52.2. of the Cinema Communication). The Cinema Communication defines the notion of ‘difficult audio-visual works’ as short films, films by first-time and second-time directors, documentaries, or low budget or otherwise commercially difficult works. It further clarifies that under the subsidiarity principle, it is up to each Member State to establish a definition of difficult film according to national parameters.

(d) Not reserve the aid to specific production activities or individual parts of the production value chain (para. 52.5. of the Cinema Communication).

(37) Finally, the aid scheme must comply with the transparency obligation, implying publication of the aid measure and the individual aid awards exceeding EUR 500,000.\(^{16}\)

---

\(^{14}\) Communication from the Commission on State aid for films and other audiovisual works (Text with EEA relevance) (2013/C 332/01) (OJ C 332, 15.11.2013, p. 1).

\(^{15}\) For aid awarded as direct grants, for instance defined as a percentage of the production budget, the territorial spending obligation may not require that more than 160% of the aid amount awarded to the production in spent in the territory granting the aid. For aid calculated as a percentage of the expenditure on film production activities in the granting Member State, the maximum expenditure subject to territorial spending obligations is 80% of the production budget.

\(^{16}\) Paragraph 52.7. of the Cinema Communication.
4.3. General legality

(38) The Measure does not contain any clause contrary to the TFEU in fields other than State aid. The Measure does not discriminate on the basis of the place of establishment (see recital (10) above).

(39) The Measure excludes productions which have less than 50% of their eligible costs spent in the UK territory (see recital (13)(b) above). Consequently, the Measure complies with the maximum limits set by the Cinema Communication as regards territorial spending obligations (see recital (36)(a) above).

4.4. Cultural product

(40) Audio-visual productions must pass the cultural test established for the purpose of the Measure, or the tests established for the purpose of the other aid schemes in favour of audio-visual productions, as approved by a Commission decision or put under the General Block Exemption Regulation (see (13)(c) above).

4.5. Aid intensity and cumulation

(41) Productions benefiting from the Measure qualify as ‘difficult audio-visual works’ in the sense of the Cinema Communication (see recital (36)(c) above). Consequently, eligible productions may benefit from cumulated aid up to 100% of the overall production costs. According to the Cinema Communication, it is up to the Member State to establish a definition of difficult film according to national parameters. The Commission must verify that the Member State’s definition does not constitute a manifest error.

(42) The eligible audio-visual productions fulfilling the requirements set out in section 2.5.2 above are to be considered ‘difficult audio-visual works’ because only productions that are unable to start (or restart, if this implies that the production company needs to secure finance from a finance entity) due to a lack of sufficient insurance in the market for COVID-19 related losses are eligible. The eligible productions are considered to be commercially difficult since the sole barrier for carrying out the production is the impossibility to secure the necessary financing for reasons pertaining to a temporary failure of the market (see recital (5)), given the absence of a critical financial product, namely sufficient insurance cover for COVID-19 related losses in case of cast illness or civil authority action as defined above (see recital (17)).

(43) The Cinema Communication has set the maximum aid intensity in principle at 50% of the production budget, with a view to stimulating normal commercial initiatives (see para. 52.2.). In the case at hand, it has been shown that a higher aid intensity is necessary to enable the release of funds from financiers and funders (see recital (3)). A contrario, only a small proportion of the production companies, those that are able to self-insure these costs, may pursue commercial initiatives (see recital (27)). Consequently, the normal 50% aid intensity threshold will not have the effect of stimulating normal commercial initiatives, but rather drastically limit them.

---

The application of the derogation to the principle of aid intensity limited to 50% of the overall budget is justified in the case at hand because it is strictly limited to the costs resulting from the materialisation of COVID-19 related risks (see recitals (17) and (18) above). Under the application of the Measure, no other ground, unrelated to the COVID-19 related losses, may result in the aid exceeding 50% of the production budget.

Furthermore, the application of the derogation to the principle of aid intensity limited to 50% of the overall budget is proportionate for the following reasons:

(a) It is limited in time. Only production companies seeking to start (or restart) the production in the year 2020 may apply to the Measure (see recital (28) above).

(b) It is expected to be limited in practice. It is expected that a minority of the projects supported will actually be abandoned and therefore, only a minority of the projects will actually receive cumulated aid up to 100% of the production budget (see recital (22) above).

(c) No more than 70% of a production company’s COVID-19 related losses are compensated (i.e. a production that claims for interruptions and then later for abandonment can only claim up to 70% (or £5 million) in total) (see recital (21) above).

(d) The 70% of aid intensity will not apply to all beneficiaries, but only to those having a budget below £7.2 million (EUR 7.9 million), since the Measure caps the aid at maximum £5 million (see recital (21) above).

For the reasons stated above, the Commission considers that the maximum aid intensity foreseen by the Measure complies with the requirements of the Cinema Communication.

4.6. Aid not reserved to specific production activities

The Measure will support all production costs (see recital (16)) and therefore complies with the requirement of para. 52.5 of the Cinema Communication.

4.7. Transparency

The UK authorities confirmed that information relating to the aid beneficiaries as well as information on the present Measure would be published the Commission’s Transparency Award Module (“TAM”).

5. **CONCLUSION**

Having regard to the Treaty on the Functioning of the European Union and the Communication from the Commission on State aid for films and other audio-visual works\(^{19}\), in conjunction with Article 131 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Norther Ireland from the European Union and the European Atomic Energy Community, 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.

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](http://ec.europa.eu/competition/elojade/isef/index.cfm).

Your request should be sent electronically to the following address:

European Commission,  
Directorate-General Competition  
State Aid Greffe  
B-1049 Brussels  
[Stateaidgreffe@ec.europa.eu](mailto:Stateaidgreffe@ec.europa.eu)

Yours faithfully,

For the Commission

Margrethe VESTAGER  
Executive Vice-President

---

\(^{19}\) OJ 2013/C 332/01.