Subject: State Aid SA.63138 (2021/N) – Italy COVID-19 - Tax credit for audiovisual production companies

Excellency,

1. PROCEDURE

(1) By electronic notification of 18 May 2021, Italy notified an aid to film and audiovisual production companies for expenses incurred to comply with the provisions of the COVID-19 Protocol for the safety of cinema and audiovisual workers (the “measure”) under the Temporary Framework for State aid measures to support the economy in the current COVID-19 outbreak (the “Temporary Framework”).

(2) Italy exceptionally agrees to waive its rights deriving from Article 342 of the Treaty on the Functioning of the European Union (“TFEU”), in conjunction with Article 3 of Regulation 1/1958 and to have this Decision adopted and notified in English.

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

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2. **DESCRIPTION OF THE MEASURE**

(3) Italy considers that the COVID-19 outbreak affects 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. Italy explains that the film industry is particularly affected by the COVID-19 outbreak and by the containment measures imposed by the government in response to the crisis. While lockdowns and mobility restrictions have had a great impact on the revenues, the production costs could not be reduced proportionally to the loss of revenues. Italy estimates that the losses amount in 2020 to more than 60% of the 2019 turnover. In addition, producers have to incur additional costs relating to compliance with the sanitary requirements, introduced by the Protocol of 7 July 2020. In this context, the measure grants a tax credit to film and audiovisual production companies for expenses incurred to comply with the provisions of the COVID-19 Protocol for the safety of cinema and audiovisual workers.

(4) Italy confirms that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA.

(5) The compatibility assessment of the measure is based on Article 107(3)(b) TFEU, in light of sections 2 and 3.1 of the Temporary Framework.

2.1. **The nature and form of aid**

(6) The measure provides aid in the form of a tax advantage.

2.2. **Legal basis**

(7) The legal bases for the measure are the following:

(a) Italian Law n. 220, 14 November 2016, "Disciplina del cinema e dell'audiovisivo".

(b) Ministerial Decree 4 February 2021, "Disposizioni applicative in materia di credito di imposta per le imprese di produzione cinematografica e audiovisiva di cui all'articolo 15 della legge 14 novembre 2016, n. 220", by the Ministro dei Beni e delle Attività Culturali e del Turismo in conjunction with the Ministro dell'Economia e delle Finanze.

(c) Cinema and Audiovisual Workers’ Safety Protocol of 7th July 2020, “Protocollo condiviso per la tutela dei lavoratori del settore cineaudiovisivo” (the “Safety Protocol”).

misure urgenti in materia di contenimento e gestione dell'emergenza epidemiologica da COVID-19, applicabili sull'intero territorio nazionale”.

(e) Decree Law No. 19 of 25 March 2020, “Misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19”.

(f) Decree Law No. 33 of 16 May 2020, “Ulteriori misure urgenti per fronteggiare l'emergenza epidemiologica da COVID-19”.

2.3. Administration of the measure

(8) The Ministry of Culture - General Direction for Cinema and Audiovisual manages the aid scheme. The State is the granting authority since the aid is a reduction of the corporate tax normally due in application of the national tax regulation.

2.4. Budget and duration of the measure

(9) The estimated budget of the measure is EUR 25 000 000.

(10) Aid may be granted under the measure as from the notification of the Commission’s approval until no later than 31 December 2021.

2.5. Beneficiaries

(11) The final beneficiaries of the measure are production companies of audiovisual and cinematographic works that are benefiting from the tax credit for the production of audiovisual and cinematographic works that has been approved by Commission Decision of 22 April 2021 (the 2021 Decision).

(12) They must fulfil the following criteria:

(a) Have their registered office in the European Economic Area;

(b) Be subject to taxation in Italy due to their tax residence, or due to the presence of a permanent establishment in Italy, to which the audiovisual work covered by the benefits is attributable;

(c) Record a minimum fully paid-up share capital and a net worth not lower than EUR 40 000, both in case of companies established as corporations and in case of individual production companies or established as partnerships; these limits are reduced to EUR 10 000 in relation to the production of research and training works and of short films;

(d) Differ from non-profit cultural associations and foundations;

(e) Have NACE classification J 59.1;

3 The tax liability in relation to which the aid is granted must have arisen no later than 31 December 2021, in line with footnote 23 of the Temporary Framework.

4 Commission Decision of 22 April 2021, C(2021) 2866, State aid SA.62007 (2021/N) & SA. 62008 (2021/N) - Italy - Internal Tax Credit for the production of cinematographic and audiovisual works – modifications, not yet published in the OJ.
(f) Comply with social security, tax, insurance, hygiene and safety at work obligations and apply the current national collective labour agreements;

(g) Not be in situations that prevent them from negotiating with public administrations;

(h) Not be in bankruptcy proceedings.

(13) Aid may not be granted under the measure to medium and large enterprises that were already in difficulty within the meaning of the General Block Exemption Regulation ("GBER") on 31 December 2019. Aid may be granted to micro and small enterprises that were in difficulty within the meaning of the GBER on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid or restructuring aid.

2.6. Sectoral and regional scope of the measure

(14) The measure aims to remedy the serious disturbance in the economy of Italy due to the COVID-19 outbreak, by supporting the undertakings belonging to the cinema and audiovisual production sector, which suffer from liquidity shortage. It applies to the undertakings that are liable for taxation in Italy.

2.7. Basic elements of the measure

2.7.1. Eligible costs

(15) Eligible costs are those incurred to comply with the provisions of the Safety Protocol. It includes costs incurred for training of staff, presence of specialised as well as medical staff, appropriate personal protective equipment (surgical masks and disposable gloves), hydro-alcoholic solutions, insurance costs and costs for swabs for all staff involved in production, as well as daily cleaning and regular sanitisation of the working environments.

(16) These costs must be incurred in relation to the production of cinematographic or audiovisual works that are eligible to the tax credit approved by the 2021 Decision (recital (11)).

2.7.2. Aid intensity and aid amount

(17) The aid intensity is 60% of the eligible costs. The Italian authorities confirm that the overall aid amount will not exceed EUR 1.8 million per undertaking.

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7 Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

8 Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.
2.8. Cumulation

(18) The aid granted under the measure may be cumulated with aid granted under the tax credit approved by the 2021 Decision (see recital (11))\(^9\), up to maximum 100% of the eligible costs and a maximum of cumulated aid amount of EUR 400 000 per work. Eligible costs above EUR 400 000 may benefit from aid in application of the tax credit approved by the 2021 Decision.\(^10\) In any event, the cumulated aid may not exceed the maximum aid intensity per work approved by the 2021 Decision.\(^11\)

(19) The Italian authorities confirm that aid granted under the measure may be cumulated with aid under *de minimis* Regulations\(^12\) or the General Block Exemption Regulation\(^13\) provided the provisions and cumulation rules of those Regulations are respected.

(20) The Italian 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.

(21) The Italian authorities confirm that if the beneficiary receives aid on several occasions or 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(s) 22(a) of that framework, will be respected.

2.9. Monitoring and reporting

(22) The Italian 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 above EUR 100 000 granted under the measure on the comprehensive national State aid website or Commission’s IT tool within 12 months from the moment of granting\(^14\)).

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\(^9\) The tax credit approved on 22 April 2021 awards a tax credit of 40% of the eligible costs.

\(^10\) Pursuant to Decree no. 70 of 4 February 2021, article 3, paragraph 3, letter e) of the Decree.

\(^11\) See recital (27) of Decision of 22 April 2021, C(2021) 2866, State aid SA.62007 (2021/N) & SA.62008 (2021/N) - Italy - Internal Tax Credit for the production of cinematographic and audiovisual works – modifications, not yet published in the OJ.


3. **ASSESSMENT**

### 3.1. Existence of State aid

(23) 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.

(24) The measure is imputable to the State, since it is administered by the State (recital (8)). It is financed through State resources, since it is a reduction of the tax normally due (recital (8)).

(25) The measure confers an advantage on its beneficiaries in the form of tax advantages (recital (6)). The measure thus relieves those beneficiaries of costs which they would have had to bear under normal market conditions.

(26) The advantage granted by the measure is selective, since it is awarded only to certain undertakings, in particular to undertakings active in the cinema and audiovisual production sector that benefit from the tax credit approved by the 2021 Decision (recital (11)).

(27) The measure is liable to distort competition, since it strengthens the competitive position of its beneficiaries. It also affects trade between Member States, since those beneficiaries are active in sectors in which intra-Union trade exists.

(28) In view of the above, the Commission concludes that the measure constitutes aid within the meaning of Article 107(1) TFEU. The Italian authorities do not contest that conclusion.

### 3.2. Compatibility

(29) Since the measure involves aid within the meaning of Article 107(1) TFEU, it is necessary to consider whether that measure is compatible with the internal market.

(30) 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”.

(31) 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”.

(32) Italy explains that, similar to other sectors, the film sector has been severely hit by the COVID-19 outbreak and the containment measures imposed by the government in response to the crisis. Specifically, in the sector covered by the
herein outline, which was hit hard by the prolonged lockdown, the losses amounted to more than 60% of the 2019 turnover (recital (3)).

(33) The measure aims at supporting production of cinematographic and audiovisual works, by reducing the substantial costs necessary for the fulfilment of the Safety Protocol, at a time when the normal functioning of markets is severely disturbed by the COVID-19 outbreak and that the outbreak is affecting the wider economy and leading to severe disturbances of the real economy of Member States (recital (3)).

(34) The measure is one of a series of measures conceived at national level by the Italian authorities to remedy a serious disturbance in their economy. Furthermore, the measure has been designed to meet the requirements of a specific category of aid (“Limited amounts of aid”) described in section 3.1 of the Temporary Framework.

(35) 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 tax advantages (recital (6)).

- The overall nominal value of tax advantages shall not exceed EUR 1.8 million per undertaking; all figures used must be gross, that is, before any deduction of tax or other charges. If the beneficiary receives aid on several occasions or 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 of EUR 1.8 million per undertaking will be respected. 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 (9). The measure therefore complies with point 22(b) of the Temporary Framework.

- Aid may not be granted under the measure to medium\(^{15}\) and large enterprises that were already in difficulty on 31 December 2019 (recital (13)). The measure therefore complies with point 22(c) of the Temporary Framework. Aid may be granted to micro and small enterprises that were in difficulty on 31 December 2019, if those enterprises, at the moment of granting the aid, are not subject to collective insolvency procedure under national law and they have not received rescue aid\(^{16}\) or restructuring aid\(^{17}\) (recital (13)). The measure therefore complies with point 22(c)bis of the Temporary Framework.


\(^{16}\) Alternatively, if they have received rescue aid, they have reimbursed the loan or terminated the guarantee at the moment of granting of the aid under the notified measure.

\(^{17}\) Alternatively, if they have received restructuring aid, they are no longer subject to a restructuring plan at the moment of granting of the aid under the notified measure.
• Aid will be granted under the measure no later than 31 December 2021. For aid in form of tax advantages, the tax liability in relation to which that advantage is granted must have arisen no later than 31 December 2021. The measure therefore complies with point 22(d) of the Temporary Framework.

(36) The Italian authorities confirm that the aid under the measure is not conditioned on the relocation of a production activity or of another activity of the beneficiary from another country within the EEA to the territory of the Member State granting the aid. This is irrespective of the number of job losses actually occurred in the initial establishment of the beneficiary in the EEA (recital (4)).

(37) The Italian authorities confirm that the monitoring and reporting rules laid down in section 4 of the Temporary Framework will be respected (recital (22)). The Italian 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, the cumulation rules of the relevant Regulations, and the maximum aid intensity ceiling established by this decision are respected (recitals (18)-(21)).

(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

Martine DEPREZ
Director
Decision-making & Collegiality
EUROPEAN COMMISSION