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**Subject: State aid N 303/10 – Romania - Romanian film support scheme**

Sir,

### **1. Summary**

- (1) I am pleased to be able to inform you that the Commission has assessed the Romanian film support scheme notified by Romanian authorities and decided to consider the aid to be compatible with TFEU. The scheme is approved until 31 December 2014. The Romanian authorities have undertaken to implement any changes that may be required if the relevant State aid rules are amended during this period.<sup>1</sup>

### **2. Procedure**

- (2) The Romanian authorities notified the Commission of the scheme on 6 July 2010. The Commission sought additional information on 6 August 2010, which the Romanian authorities provided on 03 September 2010. The Romanian authorities also provided further clarifications on 6 October, 12 November and 23 November 2010.

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<sup>1</sup> 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 (COM(2001)534 final of 26/9/01, OJ C 43 pp6-17 of 16/2/02); prolonged in 2004 (OJ C 123 pp1-7 of 30/4/04), 2007 (OJ C 134 p5, 16/6/07) & 2009 (OJ C 31 p1, 7.2.2009).

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### 3. Description

#### 3.1. Objective

- (3) The objective of the scheme is to promote culture and to preserve cultural heritage by supporting the development of the film industry, culture and cinematographic education in Romania, as well as to support the production of films by encouraging private initiative in the areas of creation, financing, production, and distribution of Romanian films or films made with Romanian participation.

#### 3.2. Legal bases

- (4) The legal bases for the scheme are:
- the Draft of General Terms and Conditions for the State Aid scheme designed to support Romanian cinematography;
  - the Law no. 328/2006<sup>2</sup> on the approval of Government Order no. 39/2005<sup>3</sup> regarding cinematography, with its subsequent amendments and completions.

#### 3.3. Duration and budget

- (5) The scheme will be launched after this Commission decision and will last until 31 December 2014.
- (6) The overall budget of the measure is RON 347 million (€ 80.68 million).

RON million	2010	2011	2012	2013	2014	Total 2010-2014
Direct credit	60	60	60	70	80	330
Indirect support	1.66	2.16	3.16	4.66	5.36	17
Total	61.66	62.16	63.16	74.66	85.36	347

EUR million <sup>4</sup>	2010	2011	2012	2013	2014	Total 2010-2014
Direct credit	13.95	13.95	13.95	16.98	18.6	76.73
Indirect support	0.39	0.5	0.73	1.08	1.25	3.95
Total	14.34	14.45	14.68	17.36	19.85	80.68

#### 3.4. Funding bodies

- (7) The National Centre of Cinema ("NCC") represents the public authority with responsibility for implementing and managing the state aid scheme. NCC is a public institution of national interest with legal personality and subordinate to the Ministry of Culture, Religious Affairs and National Heritage.

<sup>2</sup> Published in the Romanian Official Journal no. 649/2006.

<sup>3</sup> Published in the Romanian Official Journal no. 704/2005.

<sup>4</sup> Exchange rate 1 RON : EUR 0.232529 as at 19 November 2010.

- (8) Direct credit for the production of fictional, animated or documentary feature films are granted by the NCC from the Cinematographic Fund. Indirect financial support is granted by the NCC from budget allocations intended for indirect financial support.

### **3.5. Mechanism of the state aid measures**

- (9) The aid takes the form of:
- a) direct reimbursable financial loans, interest-free (direct credit) for the production of Romanian films or films made with Romanian participation;
  - b) non-reimbursable grants (indirect financial support).

#### **3.5.1 Operation of the direct credit**

- (10) This measure aims at stimulating the development of cinematographic projects with cultural qualities by supporting the producers who involve themselves in such films, despite a lower rate of profitability and a higher risk implied by the realisation of a cultural cinematographic project.
- (11) Beneficiaries of the measure are producers who are (1) Romanian legal persons registered at the Cinematographic Register or (2) legal persons from other EEA Member States who have registered with the Cinematographic Register at the latest after winning the competition for selection of cinematographic projects for granting the state aid and before the conclusion of the contract for receiving the state aid.
- (12) The Romanian authorities estimate that there will be approximately 250 beneficiaries of the direct credit.
- (13) Projects are pre-selected for funding by expert selection committees composed by members proposed by the unions and associations of the cinematic industry. The final decision on attribution of grants is taken by the selection committees together with the Administrative Council of the NCC.
- (14) In order to be eligible for direct credit, a film has to be qualified as "Romanian film" or film "with Romanian participation" through the accumulation of a minimum of points - 65 out of 100 for Romanian films and 35 out of 100 for films with Romanian participation.<sup>5</sup> The points are granted according to a set of criteria defined by the Romanian authorities. These criteria include the language of the film being Romanian, whether or not the authors, producer, actors, artistic and technical crew are Romanian citizens or residents;, location of filming, post-production and technical equipment.

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<sup>5</sup> The reason for differentiating between these two categories of films is that there are different requirements to be fulfilled by the beneficiaries in each category. Producers of Romanian films have to contribute at least 6% of the total budget of the film, while the producers of films with Romanian participation have to contribute at least 10% in the case of multilateral co-productions and at least 20% in the case of bilateral co-productions.

- (15) Only the projects that accumulate the sufficient number of points will then move further into the second stage of assessment - the cultural test. The cultural test aims at assessing the main elements that add value to a cinematographic production with intrinsic cultural qualities. It is done by analysing the quality of the screenplay according to criteria such as the subject, dialogue, dramatic structure, potential interest and impact on domestic public and potential impact on international level. Also quality of director and producer are assessed based on a rating scale, taking into account their previous achievements such as prizes at international festivals, number of spectators having seen their movies in the cinemas and distribution of their movies abroad.

### 3.5.2. Operation of the non-reimbursable grants (indirect financial support)

- (16) The Romanian authorities wish to encourage co-producers and/or financiers of films to participate in the production of eligible films and increase the total financial resources available for investment in the cinema field. This will be done by reimbursing a part of the amounts invested in the production of a film.
- (17) The beneficiaries of the scheme are Romanian legal bodies or legal bodies from other EEA Member States that have branch offices or subsidiaries in Romania. The beneficiaries have to be registered at the Cinematographic Register and be liable to Romanian taxes.
- (18) Indirect financial support is granted after the beneficiary will pay all the taxes due in Romania, in the form of non-reimbursable grants calculated in reference to the amount of taxes paid:
- a) to the co-producers and financiers involved in the production of a film which has benefitted from a direct credit, in amount of 150% from the tax on profit corresponding to the amount invested, which cannot exceed 10% of the direct production costs incurred in Romania and which represents a maximum 50% of the gross profit.<sup>6</sup>

### **Example:**

#### Assumptions

**The film budget = eligible costs** = the total direct costs involved in producing the film = **RON 3,750,000**, financed as follows:

- State aid in form of *direct credit* = **RON 1,312,500**;
- The contribution of the co-producer – the co-producer has earned a gross profit of 1,500,000 RON, of which 50% is invested in the film, respectively **RON 750,000**;
- The contribution of the financier – the financier obtained a gross profit of RON 1,800,000, of which 50% is invested in the film, respectively **RON 900,000**;
- The contribution of the producer - **RON 787,500**;
- Rate of the tax on profit – **16%**.

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<sup>6</sup> This provision does not apply to the mandatory contribution of the producer to the budget of a Romanian film (min. 6 %) and to the mandatory contribution of the producer to the budget of a film with Romanian participation (min. 10% in case of multilateral co-productions and min 20% in case of bilateral co-productions).

Maximum aid per beneficiary:

The State aid per beneficiary may not exceed 10% of the direct production costs incurred in Romania. Therefore:

Maximum per beneficiary = RON 3,750,000 \* 10% = RON 375,000

The State aid the film is eligible for may not exceed 50% of the gross profit. Therefore:

Maximum for the co-producer = RON 1,500,000 \* 50% = RON 750,000;

Maximum for the financier = RON 1,800,000 \* 50% = RON 900,000.

Calculating State aid in the form of indirect financial support:

State aid for the **co - producer** = 150% \* 16% \* Gross profit invested =

= 24% \* RON 750,000 = **RON 180,000** (< max per beneficiary of RON 375,000 and < max for the coproducer of RON 750,000);

State aid for the **financier** = 150% \* 16% \* Gross profit invested =

= 24% \* RON 900,000 = **RON 216,000** (< max per beneficiary of RON 375,000 and < max for the financier of RON 900,000)

**Total State aid** awarded in the form of *indirect financial support* = **RON 396,000**

- b) to legal entities who contribute to the making of a commissioned film, in amount of 25% of all taxes corresponding to the budget spent in Romania on commissioned films, provided a minimum of 40% of the film's budget is spent in Romania; the state aid is to be used to cover the direct production costs incurred in Romania and cannot exceed 10% thereof; these stipulations can be complemented in law with those from (a) above, provided the maximum allowed intensity is not exceeded.

**Example:**

Assumptions:

- **Total budget** (direct costs) of the film = **RON 4,800,000**
- **Total budget spent in Romania** = **RON 1,500,000**
- **Total taxes** on budget spent in Romania = **RON 1,000,000**

Calculating the cap:

Maximum aid amount = 10% \* Total budget = RON 480,000

Calculating the State aid in form of indirect financial support:

State aid = 25% \* Taxes on budget spent in Romania = RON 250,000 (< max aid amount of RON 480,000)

**Total State aid** awarded = **RON 250,000**

- (19) Taking into consideration that the execution of films stipulated in point a) above benefited from State support under the form of direct credit, their status of cultural product has already been demonstrated in accordance with the provisions of paragraphs 14 and 15.
- (20) Commissioned films stipulated in point b) are defined by the Romanian authorities as films made by legal persons authorised and resident in Romania as executive producer. According to Romanian authorities they are in fact productions prepared in Romania with the involvement of an undertaking which is liable to Romanian tax but does not qualify as a film producer. As such the commissioned films are not eligible for direct credits for film production and another cultural test is applied. This test is based on the UK model of cultural test<sup>7</sup> and primarily focuses on quantifying the national and European cultural

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<sup>7</sup> State aid N 461/2005 – United Kingdom - UK film tax incentive.

particularities of the style and quality of a film and on stimulating the promotion of cultural diversity.

- (21) The aid in the form of indirect financial support is granted on a "first come – first served" basis within the limit of the available amounts.

### **3.6. *Maximum cumulative aid intensity and the territoriality criterion***

- (22) The maximum intensity of State aid to be granted in form of a direct credit and/or indirect financial support is 50% of the production budget, with the exception of cinematographic projects with “low budget” and “difficult films”. In these cases, the intensity of State aid will not exceed 80% of the production budget.
- (23) The Romanian authorities have defined difficult film as a film with low chances of cinematographic commercialisation and characterised by: a high level of creative risk, innovative use of cinematographic language through unusual narrative or means of expression, as well as the offering of an artistic alternative to commercial cinema. In addition, difficult films must achieve at least three of the following objectives: (1) they are cultural interest films of a high complexity and whose production implies a high level of difficulty, e.g. historical films; (2) they implement new cinematographic technologies in a creative and innovative manner; (3) they promote new and innovative challenges in the form and content of the films financed thus furthering the art of cinema and storytelling (reportage-style films, films using non-professional actors, films with no dialogue based exclusively on images, unfamiliar experimental techniques); (4) they have minimum chances or even no chances at all of commercial success, owing to the experimental style in which they are made; (5) they promote debuts in feature films, short films or pilot films of less than 10 minutes, with the exception of advertisements that may have commercial potential; (6) they support the development of the film creation and production communities in at least two countries.
- (24) The Romanian authorities have defined low budget films as being those with a budget that is considerably lower than the average budget for a film of the same category made during the previous year; this category includes projects with a budget at least 50% lower than the average budget for a film of the same category made during the previous year.
- (25) The beneficiary of State aid granted in the form of a direct credit and/or indirect financial support may spend at least 20% of the budget for the film in other EEA Member States or signatory states of the Central European Free Trade Agreement.

## **4. Assessment**

### ***Existence of aid***

- (26) The scheme is financed from public funds and award decisions are made under the supervision of the Ministry of Culture, Religious Affairs and National Heritage. Consequently, State resources are clearly involved in this scheme.

- (27) The scheme is selective in nature as the only recipients of the funding are producers, co-producers, financiers or legal entities who contribute to production of a film. Accordingly, the State favours certain undertakings and the production of certain goods and therefore the scheme threatens to distort competition in the EU.
- (28) Consequently, the funds awarded by the scheme constitute State aid within the meaning of Article 107(1) TFEU.

### *Compatibility*

- (29) The State aid criteria of the Cinema Communication<sup>8</sup> provide special rules for assessing aid for film and audiovisual production under article 107(3)(d) of the TFEU. As well as applying the 'general legality' principle, these criteria require that:
- the aid is directed towards a cultural product, applying verifiable national criteria;
  - the producer must be free to spend at least 20% of the film budget in other Member States;
  - the maximum aid intensity is 50%, except for difficult and low budget films; and
  - the scheme does not provide aid supplements for specific film-making activities.
- (30) The scheme does not contain any elements which give cause for concern as regards the general legality principle.
- (31) As noted above, the scheme aims to promote culture and to preserve cultural heritage by supporting the development of the film industry, culture and cinematographic education in Romania, as well as to support the production of films by encouraging private initiative in the areas of creation, financing, production, and distribution of Romanian films or films made with Romanian participation.
- (32) For the films that benefit from the direct credit or direct credit and indirect financial support, these criteria include quality of the screenplay assessed according to criteria such as the subject, dialogue, dramatic structure, potential interest and impact on domestic public and potential impact on international level, as well as quality of the director and the producer. For films that benefit from indirect financial support only, these criteria refer to national and European cultural particularities of the style and quality of a film.

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<sup>8</sup> 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 (COM(2001)534 final, 26/9/01, OJ C 43 pp6-17, 16/2/02); prolonged in 2004 (OJ C 123 pp1-7, 30/4/04), 2007 (OJ C 134 p5, 16/6/07) and 2009 (OJ C 31 p1, 7/2/09).

- (33) Consequently, the Romanian authorities have defined verifiable cultural criteria which are applied by a panel of experts to ensure that the aid is directed towards a cultural product.
- (34) Film producers are able to spend at least 20% of the film production budget in other EEA Member States. Therefore, the territorial criterion of the Cinema Communication is respected and the scheme does not provide aid supplements for specific film-making activities.
- (35) Consequently, the scheme satisfies the State aid assessment criteria of the Cinema Communication.

## **5. Conclusion**

In view of the above assessment, the Commission has decided to consider the aid compatible with Article 107(3)(d) TFEU.

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Yours faithfully,  
For the Commission

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