

DECISION OF COMPETITION COUNCIL
No. 6/19.01.2006
regarding the state aid scheme for cinematography

THE COMPETITION COUNCIL,

Having regard the provisions of the European Agreement establishing an association between Romania, on one hand, and the European Communities and their Member States, on the other hand, ratified by the Law no. 20/1993, published in the Official Gazette of Romania, Part I, no. 73/12.04.1993,

Having regard the provisions of the Competition Law no. 21/1996, republished in the Official Gazette of Romania, Part I, no. 724/16.08.2005,

Having regard the provisions of the Law no. 143/1999 on State Aid, republished in Official Gazette of Romania, Part I, no. 744/16.08.2005,

Having regard the provisions of the Regulation on State Aid for cinematographic and television production, published in the Official Gazette of Romania, Part I, no. 470 on 2nd of July 2002, with the subsequent amendments and completions,

Having regard the Decree no. 57/2004 for the appointment of the Competition Council's members,

On the following basis,

PROCEDURE

(1) By address no. 2256/05.09.2005, registered at the Competition Council with no. RS-AS nr. 81/05.09.2005, the National Cinematography Center notified, according to Art. 6 of *Law 143/1999 on State aid, republished*, the State aid under the form of a state aid scheme for cinematography, having as objective the development of film projects and production of all types of films.

(2) As a result of the Competition council's requests enclosed in the addresses no. RG7915/12.10.2005, RG/8153/27.10.2005, RG/8346/04.11.2005, referring to the clarification of certain aspects related to the application of the general legality principle, the state aid's intensity for co production, the definition of difficult and low budget films, the principle of non- discrimination of the beneficiaries, other measures enclosed in the Draft of Law for approving the GO no. 30/2005, the National Centre of Cinema submitted, by the address no. CNC/2960/14.12.2005 amendments and completions to the initial notification form.

(3) The notification became effective on the date of registration at the Competition Council of the address comprising the supplementary information requested, namely on 14.12.2005.

DESCRIPTION OF THE SCHEME

Objective

(4) The state aid scheme for cinematography is a state aid scheme for the promotion of culture and preserving of the cultural patrimony, being notified by the National Center of Cinema (hereby CNC), and aiming to support of film production. The funds shall be granted effectively by the CNC, public body of national interest, with legal personality, in the suborder of the Ministry of Culture and Cults. It functions as a specialist body of the public central administration in the cinematographic field, and grants financing from the Cinematographic fund which it manages.

(5) The cinematographic fund is established in order to ensure the financial means necessary to develop the cinematographic activity, funds coming from private contributions equally collected and given, to authorized legal and natural persons from Romania as well as from the Member States of the EU¹, with the fulfillment of the principles prohibiting discrimination on grounds of nationality, freedom of establishment, free movement of goods and freedom to provide services.

The state aid

(6) The Draft of Law for approving the GO no. 39/2005 on cinematography encloses several support measures from State bodies and local authorities, but the present Decision assesses only the scheme represented by the direct credits for cinematographic production, the rest constituting schemes under the *de minimis* ceiling², and therefore, exempted from the obligation of notification.

(7) In order to support the elaboration of a cultural product so important for the educational process of the civic society and to encourage the creation of the films clearly disadvantaged by the competition with the extra –community productions, the CNC grants reimbursable credits, without interest, with a maximum reimbursement period of 7 years³.

¹ The sources are detailed at art. 13 of the Draft of Law for approving the GO no. 39/2005

² The Guidelines issued in the application of the cinematography law shall enclose the CNC's detailed obligation to monitor the state aids' granting and to make sure that these do not exceed the Eur 100,000 ceiling, cumulated for the last three years, as well as the beneficiaries' obligation to give a declaration on their own responsibility for this purpose.

³ The direct credits without interest are detailed at Section I in the Draft of Law for approving the GO no. 39/2005.

(8) The objectives of the scheme are as follows:

- Development and modernization of the film industry and the cinematographic market.

The contests organized by the CNC take into account favoring the creativity, which will be used as raw material in film production, adding a plus value with economic character to the cinematographic creations.

- Sustaining the creation and the cinematographic industry, by promoting certain coherent financial policies compatible on European level:

For this it is aimed to sustain co productions, by the accession of our country to the European Convention on cinematographic co production, ratified by the Law no. 28/2002⁴, CNC's active participation within cinematographic European bodies EURIMAGES, EUROPA CINEMA, EUREKA, etc., developing the sector of cinematographic services, the proportion of the cinematographic sector in the country's GDP.

- Promotion of new director talents by allocating state aids to debut films. This way, within the last three years, half of the films produced were signed by debutant directors.

(9) Within the next years, CNC's new strategy will aim the following:

- diversifying the public successful films, actuality films and comedies;
- making certain films or cinematographic adaptations inspired by the national literature;
- continuing the historical film tradition;
- increasing the number of cinematographic projects;
- increasing the turnover and the cinematography's contribution in the GDP, which should reach a proportion of 6 – 8%;
- promoting the co productions and the performances within the cinematographic field.

Legal Basis

(10) The legal basis for granting the financing is the Draft of Law for approving the GO no. 39/2005 on cinematography.

Geographical coverage

(11) The financing is to be granted to the Romanian legal and natural persons, as well as to those from the Member States of EU, which are registered at the Cinematographic Register (namely have residency/a subsidy/a legal representative in Romania) with the

⁴ Law no. 28/2002, published in the OJ no. 62/29.01.2002.

fulfillment of the principles prohibiting discrimination on grounds of nationality, freedom of establishment, free movement of goods and freedom to provide services, under reciprocity conditions. Therefore, the product's geographical market is represented by Romanian's territory as well as the Member States of the EU.

Eligibility of the beneficiaries

(12) According to the notification form, the beneficiaries of the allocations based on this scheme are authorized natural and legal persons, from Romania or the Member States which have won a session of the annually selection contests for the cinematographic projects, organized by CNC. In order to be eligible, when submitting their dossier for the selection of the projects, the beneficiaries should meet the following conditions:

I. For the producers of Romanian movies:

- to be registered at the Cinematographic Register;
- to have a minimum equity of RON 20,000 for the legal persons, respectively present a bank guarantee letter, equivalent to this sum, issued in the favor of CNC, for the natural persons;
- to prove that they have at that moment, a contribution of minimum 6% from the total budget of the movie, in cash, services or nature, according to the conditions of art.16 in GD no. 39/2005.

If that project is selected in the contest, when the financing contract with the CNC is to be signed, the producer must prove with documents that it has the rest of the funds (of up to 50% from the production's budget, namely of up to 20% for difficult or low budget films) necessary to fulfil the maximum allowed intensity, as it is stipulated in art. 4 (4) of the *Regulation on the state aid for cinematographic and television production*;

- to have obtained, according to the conditions of GD no. 39/2005, the written agreement of the script's author to make the movie;
- to present the draft dossier elaborated in accordance with the provisions of the contest's Regulation;
- to include in the production device the costs that cannot exceed certain maximum quotas:

- 10% for the payment of the producing company;
- 10% for unforeseeable costs;
- 5% for the payment of the director's activity;
- 4% the payment for the script's writing;
- 4% for the executive producer;
- 4% the payment for the original composed music;

- to prove that it does not have debts to the state budget or local budgets, the state security budgets and the Cinematographic Fund, except from the rates to be paid for the contracts closed with CNC.

II. for the producers participating at co productions:

The National Cinematographic Center can grant financial reimbursable credit, without interest, for the international cinematographic co-productions with Romanian legal persons as co-producers that fulfill the following conditions:

- to be registered at the Cinematographic Register;

- to be the winner of the selection contest for cinematographic projects, according to the law and the *Regulation on the selection contest for cinematographic projects and on the granting of reimbursable financial credits, without interest, from the Cinematographic Fund*;
- to have a financial participation of minimum 10%, for the multilateral co-productions with at least 3 co-producers and respectively, minimum 20% for the bi-lateral co productions;
- to own, based on a contract closed between the interested parties, a co- ownership right on the original negative, to have the right to a support allowing it to copy the cinematographic movie and to own exploiting rights for the Romanian territory;
- to compulsory ensure an actual technical and artistic participation to the movie's production, proportionally to its own investing participation and in accordance with the *Regulation on the selection contest for cinematographic projects and on the granting of reimbursable financial credits, without interest, from the Cinematographic Fund*;
- to assume the obligation that the movie's titles to mention the credit granted by the National Cinematographic Center.
- the direct credit for international co productions cannot exceed 50 % from the Romanian part contribution to the film making, except from the difficult and low budget films.

(13) The Romanian legal persons participating to multilateral or bilateral co productions must present themselves to the contest with the project's dossier, enclosing the following documents:

- The film's script, in Romanian;
- Copy of the contract with the film's director;
- Copy of the contract on ownership rights on the script;
- List of the artistically and technical events from the countries involved;
- The budget estimation and the Romanian's part financing plan;
- The production plan;
- The co production contract between the producers;
- List of the shooting places;
- The characteristically plan.

Criteria for selecting the projects

(14) Subject of the present state aid scheme are the long length fiction, documentaries, animation films as well as those of short reel fiction, documentaries, animation winners of the annual contests organized by CNC.

(15) The selection Commissions asses and select the cinematographic projects which have fulfilled the eligibility conditions and establish the results of the contest based on the following assessing criteria:

- The script's quality– the subject's originality;

- The dialogue's quality;
 - The drama's structure;
 - The interest and the impact on the audience;
 - The potential for international representing;
- The director and producer's quality is assessed according to the following assessment indicators:
- The number of spectators from Romania, for one of the movies made in their directing career;
 - The number of selections and awards received at international A class festivals (Berlin, Amsterdam, Cannes, Locarno Toronto, Venetia) both for the director and the producer;
 - The producer's financial contribution to the project, as well as the sums repaid for the previously received credits, fulfillment of the contracts' evolution;
 - Commercial success (number of countries where a movie made in its career was showed in cinemas, as well as the number of televisions which had acquired that movie).

(16) Cannot participate to the contests for obtaining the credits, the following:

- Projects promoting the slander of the country or the nation, the rightful order or the Constitution's principles, which incite to war, national, racial, religious hate, to ethnical, religious or sexual orientation discrimination, to territorial isolationism;
- The movie projects enclosing, in images or language, obscene elements or elements with pornographic character;
- The cinematographic projects bringing prejudices to a person's dignity, honor or private life;
- The projects directly or indirectly inciting to violence;
- The cinematographic projects with electoral, political or religious propaganda character.

The duration of the scheme

(17) The period to apply the state aid scheme is of 5 years, namely 2004- 2008.

The scheme's budget

(18) The project's global amount is of approx. RON 74,500,000, divided as follows:

- RON 18,500,000 in 2004;
- RON 14,000,000 in 2005;
- RON 14,000,000 in 2006;
- RON 14,000,000 in 2007;
- RON 14,000,000 in 2008.

(19) The sums allocated shall be reimbursable financial credits, without interest, (direct credit) granted based on contest. The credit obtained this way shall be granted in several tranches, as follows:

- up to 50% from the sum allocated at the beginning of the preparation period;
- the difference up to 50% from the remained amount is to be granted during the project's achievement, as follows:

- Up to 20% at the producer's or of the delegated producer's request, at half of the filming, based on production reports;
- Up to 20% at the end of the filming, based on the production reports and of the record of the end of the shooting;
- 10% when receiving the standard copy or the video swage and a financial audit to certify the correct use of the credit, the producers' / financiers' financial participation, as well as the producer's contribution and the delivery contract.

(20) The financing commission cannot grant financial credit for two film projects belonging to the same director. The first selected project (short reel or full length) shall have priority in accordance with the hierarchy communicated by the selection commission.

(21) The sums shall be reimbursed in 7 years, from the incomes obtained by the beneficiary, exclusively from the commercialization of the film made with this credit. The reimbursement is made as percentage, from the incomes made by the film receiving the credit, from all the forms of audio-visual exploiting, cinemas, video, television, internal or international market, the reimbursement percentage being equal with the crediting percentage (by the CNC) for that specific project. One film's production cannot exceed 2 years from the date when the contract was signed.

Eligible costs

(22) In accordance with art. 5 (1) of the *Regulation on the state aid for cinematographic and television production*, eligible costs are "all the costs composing the total budget of a cinematographic or television production.., and the producers must be free to choose the cost categories to be made on the territory of the Member States of the EU or the CEFTA countries", except from the aid supplement for post- production costs. Therefore, all the categories of costs included in the budget shall be considered eligible costs, except from the aid supplements for post-production.

Intensity

(23) In accordance with art 4 (4) in the *Regulation on the state aid for cinematographic and television production*, the maximum allowed intensity for this type of aids is of 50%. This limit may be exceeded in the case of „difficult” and „low budget” movies.

(24) In accordance with the definition from art. 3 s) of the Draft of Law for approving GO nr. 39/2005, difficult films presents a high level of creative risk, renew the cinematographic language; promotes the cultural diversity, the cultural dialogue and

cinematographic works in the world cultural values; offers artistic alternatives to the commercial cinema.

(25) The difficult film needs to contribute to achieving at least three of the following objectives: achieving productions of cultural importance, extremely complex features and whose making presupposes increased difficulty (like historical); implementing new technologies in an inventive and creative way; promoting new and innovative challenges in the form and content of the films financed; have little if any prospect of commercial success because of its experimental nature, promotes first or second film, shorts or of pilot films of under 10 minutes which have commercial potential but are not adverts; support the development of the creation and filming communities from at least two countries.

(26) The low budget films, as defined within the same article, are considered to be those films which have a budget **considerably** lower than the average budget for the same category, from the previous year productions.

(27) Therefore, for these films, the intensity ceiling can be enhanced up to 80%, in accordance with the provisions of art. 23 of the Draft of law for approving the GO nr.39/2005.

Beneficiaries' number

(28) In accordance with the information from the notification, the CNC estimated that there shall be 50 beneficiaries, the average estimated amount to be granted annually to one undertaking being of RON 800,000.

(29) Within the state aid scheme for cinematography, one undertaking can benefit of several financing, proportionally with the number of films it produces.

ASSESSMENT OF THE SCHEME

The support measure's state aid character

(30) In order to be considered as state aid, according to the Law no. 143/1999 on the state aid, republished, the financial support granted as scheme must cumulatively fulfill the four conditions provisioned at art. 2 (1) in the Law:

- to be granted by the state, from state resources;
- the measure must be selective;
- to insure an advantage to the undertaking;
- to distort or threaten to distort the competition or to affect the trade between Romania and the Member States of the European Union.

State sources

(31) As mentioned in the notification, the sums available for this scheme come from funds of the CNC, namely from the Cinematographic Fund.

(32) Since the CNC, the one managing the Cinematographic fund, is a public body, the whole Fund must be regarded as State resources. Therefore, the support measures granted within the scheme as reimbursable credits, without interest, from the Cinematographic Fund, represents sources granted by the State, from State funds.

Selectivity

(33) Secondly, for a measure to be considered as State aid, it has to be selective, namely to favor certain undertakings or the production of certain goods. The selective character of this scheme is obvious, as there are mentioned criteria for selecting the beneficiaries, which, in order to be eligible, must be film producers. Therefore, other undertakings from other economic fields do not benefit by this state aid. The beneficiaries' selection is made according to the criteria enclosed in the *Regulation on the selection contest for cinematographic projects and on the granting of the reimbursable financial credits, without interest, from the Cinematographic Fund*.

Granting an advantage

(34) The third condition that must be fulfilled is that the financial support measure to ensure an advantage for the beneficiary. The Competition Council mentions that the beneficiaries are the film producers, regardless their type, which qualify as undertakings, in accordance with the Law no. 143/1999, republished, and which are favored in comparison with the other producers which do not qualify at the selections and which have to obtain the sums from banks, under market conditions (therefore also paying the interest).

(35) In accordance with the supplementary information submitted by CNC, these credits without interest could not have been obtained by the beneficiaries from a bank, for the same period of time. Therefore, it is considered that the financial support from the State is equal with the whole value of the credit received by the beneficiaries.

Distorting the competition

(37) In order to be considered as State aid, the financial support must distort the competition or the trade between Romanian and the Member States of the EU. Obtaining a credit under preferential conditions, which would have not been possible to be obtained under market conditions, creates the premises for competition distortion, as the films made with the support of these financing may compete, at national and international level, with other films produced in Romania or the Member States of the EU.

(38) Taking into account the above mentioned facts, as all the conditions provisioned at art. 2 (1) of the Law no. 143/1999, republished, are fulfilled, the financial support measures granted within the scheme for cinematography represent state aid measures.

Compatibility

(39) In order to be considered as compatible, the state aid scheme notified by the National Cinematographic Center must fulfill the criteria provisioned by the *Regulation on the state aid for cinematographic and television production*.

(40) In order to be compatible, the state aid must, firstly, to be designated for making cinematographic productions enclosed in the cultural products' category, in accordance with the legislation in the field.

(41) In accordance with the definition from the Draft of Law for approving the GO no. 39/2005, cinematography is a "cultural industry, of national importance, which creates a plus of value by exploiting and disseminating the cultural diversity, having as purpose the making, delivery and exploiting of cinematographic films and includes all the activities and persons doing business in this area".

(42) Also, the cinematographic film is the end product of artistically and technical workings specific for this area (which have as result making of fiction, animation, documentaries films of any length and on any base), therefore, it is a cultural product, the film industry being part of the big family of cultural industries, together with the audio-visual production, the multimedia activities, etc.

(43) In accordance with the data from the notification, the film, as cinematographic product, is a good of wide consumption, as it circulates ideas, symbolic values. The newly created legal framework has a social role of informing and/or entertainment and contributes to forming the collective identity. At the same time, the film has the role of cultural service as it answers to an idea or need of cultural level, and it embraces the measures supporting the cultural practices that the State, the cultural bodies, the foundations or private companies make available for the collectivity.

(44) Another criteria to be fulfilled is that the state aid granted within this scheme must respect the principles prohibiting discrimination on grounds of nationality, of free competition, of freedom of establishment, free movement of goods and freedom to provide services. This criterion is stipulated in the text of the Draft of Law itself, at art. 1 (2), which says that the provisions of GO no. 39/2005 are applicable to the natural and legal persons from Romania as well as from the Member States of EU, with the fulfillment of the above mentioned principles. They can benefit of direct credits regardless they receive the points related to making a Romanian film or those for a co production. Therefore, the Competition Council considers that this criterion is fulfilled.

(45) As far as the territoriality criteria is concerned, in accordance with art. 21 (2) of the Draft of Law, the producers are free to allocate a minimum of 20% from the film's budget on the territory of the Member State of the EU or the CEFTA countries. In other words, the producers are not imposed to spend on the Romanian territory more than 80%

from the budget of a film produced with state financing. Therefore, the Competition Council considers that this criterion is also fulfilled.

(46) As a general rule, the state aid's intensity for film production within this scheme shall not exceed 50% from the eligible costs. For certain film categories, difficult and low budget films, the intensity can exceed this ceiling up to 80% from the eligible costs.

(47) The criteria regarding the eligible costs are also fulfilled as the post -production shall not be covered by aid supplements.

(48) Taking into consideration the above presented facts, the Competition Council considers that all the criteria imposed in the *Regulation on the state aid for cinematographic and television production* is fulfilled.

State aid cumulating

(49) In accordance with the provisions of art. 5(2) of the *Regulation on the state aid for cinematographic and television production*, the undertakings doing business in the cinematographic production field may benefit also by horizontal aids (regional state aids, for SMEs, for employment, for training, for research- development), in accordance with the provisions from the specific regulations in the state aid field. In this case, the state aid's cumulus, for the same eligible costs, cannot exceed the maximum intensity of 50% from the production's budget, respectively 80% for difficult and low budget films.

Monitoring

(50) In accordance with art. 52 (2) of the Draft of Law for approving the GO no. 39/2005, the monitoring of the obligations assumed by the beneficiaries takes place when the last sums from the credit are allocated, which takes place only after a financial audit made and submitted by the producer to certify the correct utilization of the granted credits. For this, the beneficiary of a credit has to keep an accountability of the film's cashing in, in a distinct analytic account, until it reimburses the whole credit.

(51) If the beneficiary of the credit does not make available for the CNC the detailed situation of the expenses and the justifying documents in maximum 15 days or it does not fulfill its assumed contract obligations, the CNC may suspend or cancel the contract for granting the financial credit, may request the recovery of the sums already granted from the credit or may start a forced execution procedure.

Conclusions

(52) Regarding the above presented facts, the Competition Council considers that the *State aid scheme for granting direct credits for film production* has a state aid character, with the objective of promoting culture and preserving the cultural patrimony and it is compatible with the provisions in the *Regulation on the state aid for cinematographic and television production*.

DECIDES

Art. 1. In the basis of art. 21 (2)(b) corroborated with art. 23 (1)(h) in the *Law no.143/1999, republished*, it is authorized the State aid scheme for granting the direct credits for film production, having as objective the promotion of culture.

Art.2. The total amount estimated to be granted based on the notified scheme is of RON 74,500,000.

Art.3. This decision is applicable as of its date of communication.

Art.4. Pursuant to art. 32 in the Law nr. 143/1999 on State aid, republished, the National Cinematography Center shall submit to the Competition Council information on the state aids granted based on the scheme, in view of their inventorying and monitoring. The first report shall be submitted within 6 months from the date when this Decision was issued.

Art.5. Pursuant to art. 46 in the Law nr. 143/1999, republished, this decision may be appealed by the interested persons before the Bucharest Court of Appeal, the administrative section, within 30 days from its communication.

Art.6. This Decision shall be communicated by the General Secretariat of the Competition Council to:

- National Cinematography Center, str. Dem. I. Dobrescu nr. 4-6, sector 1, Bucharest;
- Ministry of Culture and Cults, no.30 Kiseleff str, sector 1, Bucharest.

PRESIDENT

MIHAI BERINDE