

## Directive

### issued by the Federal Government Commissioner for Culture and the Media on the granting of equitability benefits as compensation for the risk of losses arising from COVID-19 in the production of German cinema films and high-end series (“Production Continuation Fund”)

*This is a non-binding translation. The German version shall be authoritative.*

#### Section 1 Purpose, legal basis

(1) The Federal Government Commissioner for Culture and the Media shall grant, on the basis of the spending appropriation allocated in the federal budget and in accordance with the provisions of this Directive and the applicable budgetary provisions, particularly Section 53 of the German Federal Budget Code (*Bundshaushaltsordnung*), as well as the associated administrative provisions, equitability benefits to natural and legal persons engaged in the production of films and series to compensate for unforeseeable and uninsurable hardships arising from COVID-19.

(2) As a result of the COVID-19 pandemic, the production of cinema films and series is subject to the risk of shooting stoppages and abandonments caused by Covid19, hereinafter referred to as “**production disruptions**”, and has therefore been effectively halted. This high economic risk cannot and, for the foreseeable future, will not be covered by the customary standard film-production insurance policies. If the risk materializes, it can threaten the very existence of production companies, especially small and medium-sized ones. Moreover, banks and other funding sources providing debt finance will not release funds unless the production firms have adequate cover for pandemic-related loss risks. In order to safeguard the existence of the German film and series production landscape and to guarantee the production of culturally and economically successful cinema films and high-end series but also to preserve the impact of such productions on the national economy, to maintain the great innovation potential of film and series production and to give a much-needed boost to economic activity, it is essential that this key industry should be able to resume its operations. The availability of high-quality cinema films, which constitute valuable cultural and economic assets, is also a prerequisite for the preservation of cinemas as cultural centres.

(3) Equitability benefits granted by means of a mechanism known as the Production Continuation Fund (*Ausfallfonds*) to cinema film and series production companies and to producers of films and series, hereinafter referred to as “**filmmakers**”, in accordance with this Directive shall serve to compensate them for the economic plight caused by COVID-19 and to safeguard their existence. This Production Continuation Fund shall be compatible with the production continuation funds and comparable measures administered by the *Länder* for the same purpose. The *Länder* have adopted provisions to this effect within the scope of their responsibility. These are attached as Annex 1 of this Directive and shall be applied in their most recently amended version.

(4) There shall be no legal entitlement to the receipt of equitability benefits from the Production Continuation Fund, hereinafter referred to as “**compensatory benefits**”. The German Federal Film Board (*Filmförderungsanstalt*) shall be the authorizing body and shall take decisions at its own discretion after due consideration.

(5) The granting of compensatory benefits shall be subject to the availability of allocated budgetary funds.

#### Section 2 Scope

(1) Compensatory benefits may be granted under this Directive to provide compensation for losses sustained in Germany or abroad as a direct result of production disruptions caused by COVID-19 (“**COVID-19 income losses**”). The mechanism shall also cover such losses resulting from a COVID-19 mutation. It shall cover the materialization of risks to both persons and infrastructure resulting from COVID-19; in particular, these shall include officially imposed local, regional and national lockdowns.

(2) The production disruption caused by COVID-19 must have occurred in the period from the date of entry into force of this Directive to 31 March 2023 during the last four weeks of the pre-production stage or during the original shoot (the “**risk period**”).

(3) In principle, the mechanism shall apply to disruptions caused by COVID-19 to the production of cinema films and high-end series receiving financial support from the federal authorities (“**federally supported productions**”). Except where any of the exclusions listed in subsection (4) apply, these productions shall be:

- cinema films receiving financial support from the German Federal Film Fund (DFFF) under Sections 7 to 20 of the DFFF Directive (DFFF I) and/or support for the production of cultural films from the Federal Government Commissioner for Culture and the Media and/or project funding or retroactive funding based on a system of credit points (“reference funding”) from the German Federal Film Board under Sections 59 et seqq. and 73 et seqq. of the German Film Promotion Act (*Filmförderungsgesetz*); and
- series and films receiving financial support from the German Motion Picture Fund (GMPF).

(4) Compensatory benefits shall not be granted in the following cases:

- productions receiving financial support from the German Federal Film Fund under Sections 21 to 31 of the DFFF Directive (DFFF II);
- federally supported projects with no live-action filming;
- productions receiving GMPF support where the filmmaker does not contribute to the funding of the project and retains no rights in respect of the film;
- productions with no funding from the federal authorities, particularly films, series, shows, etc. produced for television.

### **Section 3**

#### **Benefit type and amount; aggregation**

(1) Compensatory benefits under this Directive shall be granted in the event of a loss of income resulting from COVID-19 (“**qualifying contingency**”) as a single, non-refundable payment.

(2) If a qualifying contingency occurs in connection with a federally supported production in a case where the federal support accounts for 50% or more of the total support funding, the amount of the compensatory benefits shall be up to 95% of the recognized COVID-19 income loss but shall not exceed the total cost of making the production. If the total cost of making the production exceeds EUR 1.5 million, the maximum amount of the compensatory benefits shall be EUR 1.5 million. This shall apply regardless of the number of qualifying contingencies. If the production is an international co-production with a German financing share of less than 50%, and if the income loss is a direct result of production disruptions abroad caused by COVID-19, the COVID-19 income loss shall be recognized up to no more than the German financing share on a percentage basis.

(3) If a qualifying contingency occurs in connection with a federally supported production in a case where the federal support accounts for less than 50% of the total support funding, the amount of the compensatory benefits shall be up to 50% of the recognized COVID-19 income loss but shall not exceed 50% of the total cost of making the production or EUR 750,000 per production, likewise regardless of the number of qualifying contingencies. Subsection (2) sentence 4 shall apply, *mutatis mutandi*.

(4) Aggregation with Production Continuation Funds and comparable measures administered by the *Länder* for the same purpose shall be possible. Compensatory benefits granted under this Directive plus financial contributions from the *Länder*, however, must not exceed an aggregated total of EUR 1.5 million. The total amount of aid may not exceed 100% of total production costs either. If this figure would be exceeded, the benefits shall be reduced accordingly.

### **Section 4**

#### **The filmmaker’s own contribution**

In a qualifying contingency, the filmmaker’s own contribution to each production shall amount to 5% of the eligible COVID-19 income loss within the meaning of Section 3 of this Directive, subject to a minimum contribution of EUR 10,000.

## Section 5 Subsidiarity

(1) Compensatory benefits under this Directive shall be subsidiary to other benefits to which the filmmaker is entitled in a qualifying contingency. In particular, compensatory benefits shall be reduced by the amount of:

- payable insurance claims, such as those arising from customary film production policies;
- compensation entitlements under the German Protection against Infection Act (*Infektionsschutzgesetz*);
- ring-fenced aid from third parties (e.g. donations);
- grants or equitability benefits from other federal or *Länder* aid programmes, excluding the benefits referred to in Section 3 (4) of this Directive;
- payments received from other nations' guarantee and production continuation funds as compensation for the risk of income losses resulting from COVID-19 in connection with the production of cinema films and series.

(2) When the amount of the compensatory benefits is determined, expenditure savings made by the filmmaker shall be taken into account and the benefit reduced accordingly.

## Section 6 Benefit and registration entitlement

(1) The receipt of compensatory benefits under this Directive shall be subject to proper registration for the Production Continuation Fund and to a confirmation of registration under Section 7 of this Directive as well as to compliance with all of the conditions of entitlement listed in Section 8 and with all other requirements imposed by this Directive and by all associated implementing provisions ("**benefit entitlement**").

(2) Entitlement to register and to receive benefits, subject to compliance with subsection (1) above, shall accrue to filmmakers who are entitled to apply for federal funding for their respective productions.

(3) Undertakings in difficulties shall be excluded from participation in the Production Continuation Fund. The provisions of the General Block Exemption Regulation (Commission Regulation (EU) No. 651/2014 of 17 June 2014 – GBER) shall apply in the relevant latest version. Companies shall also be excluded if they have failed to comply with an outstanding recovery order following a previous decision of the European Commission declaring an aid award illegal and incompatible with the internal market.

## Section 7 Registration for the Production Continuation Fund; confirmation of registration

(1) Registrations for participation in the Production Continuation Fund shall be submitted to the German Federal Film Board in written form or electronically. Registration is not deemed to have taken place until the filmmaker who is eligible for registration under Section 2 (3) of this Directive ("**eligible filmmaker**") has received a confirmation of registration within the meaning of Section 7.

(2) The registration must, in principle, take place three weeks before the start of the risk period defined in Section 2 (2), but no later than 31 December 2022. Registrations for projects for which the risk period has already elapsed shall be rejected.

(3) By way of derogation from the first sentence of subsection (2) above, in the 10 weeks following the date of entry into force of this Directive, projects for which the risk period has already begun may also be registered. In these cases, compensatory benefits may be granted in a qualifying contingency only in respect of COVID-19 income losses that have been incurred during the risk period after receipt of the confirmation of registration.

(4) Registrations shall be processed and confirmed in chronological order of the start dates for shooting.

(5) By registering, eligible filmmakers declare their consent to the application of this Directive and all associated implementing provisions and undertake to fulfil all of the obligations arising from these instruments. In cases of co-productions, filmmakers shall also provide evidence that their co-producers have made corresponding commitments.

(6) The registration must contain all information and evidence required for verification of eligibility to register and of compliance with tax reporting requirements as well as all necessary items of information and evidence regarding the occurrence of a qualifying contingency that are available at the time of registration. These items shall include, in particular:

- a) in the case of legal entities or partnerships, name and/or trading name;
- b) in the case of natural persons, surname, forename and date of birth;
- c) tax reference number or, only in the case of natural persons, tax identification number;
- d) IBAN for the account into which the benefit is to be paid;
- e) indication of the competent tax office;
- f) address of the seat of the company management;
- g) an indication of the production period and the specific production activities for which compensatory benefits are to be claimed in a qualifying contingency as well as appropriate evidence, including a shooting schedule, a production schedule incorporating the pre-production stage, and cast and crew lists;
- h) a cost projection and financing plan;
- i) evidence of the established or probable percentage of total funding to be provided from each federal or Land support mechanism;
- j) a detailed occupational safety and hygiene concept in accordance with Section 9 (2a) of this Directive and with due regard to, and specification of, any particular risk factors that are known to the eligible filmmaker;
- k) a declaration made by the eligible filmmaker that co-producers, all members of the crew and cast and all other parties involved in the production have been informed and instructed about the applicable hygiene requirements and about their obligation to comply with them;
- l) evidence that co-producers, all members of the crew and cast and all other parties involved in the production have provided the required declarations of consent relating to the claims settlement that is necessary in a qualifying contingency (data disclosure authorization, confidentiality waivers, etc.);
- m) evidence of all other insurance policies taken out in connection with the film production to be safeguarded;
- n) a declaration made by the eligible filmmaker that possible contractual arrangements have been made to provide for the option of cuts or cancellations in the event of a COVID-19 income loss;
- o) in the case of co-productions, a declaration made by all co-producers in accordance with subsection (5) above; for co-productions, as well as the tax reference number and the tax office of the applicant company, the tax reference number and the tax office of each co-producer shall be indicated.

(7) If all conditions for participation in the Production Continuation Fund are met, the German Federal Film Board shall confirm the participation of the eligible filmmaker ("**confirmation of registration**").

(8) Prescription of the administrative formalities, including specification of the individual items of evidence to be submitted, shall be a matter for the German Federal Film Board, acting at its own discretion after due consideration. This shall also encompass the insertion of necessary stipulations and reservations in the confirmation of registration.

(9) All registration documents shall become the property of the Federal Government Commissioner for Culture and the Media and shall remain in the possession of the German Federal Film Board.

## **Section 8**

### **Conditions of benefit entitlement, qualifying contingency procedures**

(1) Compensatory benefits for entitled persons within the meaning of Section 6 of this Directive may be granted in a qualifying contingency, but only in the event of a recognized COVID-19 income loss to which none of the exclusions under Section 9 apply. Whether a COVID-19 income loss can be recognized shall be determined by the German Federal Film Board on the basis of this Directive and subsequent procedural rules. In particular, it shall also be incumbent on the German Federal Film Board to specify any necessary stipulations and reservations in the notice of award. In all other respects, the administration of the Fund shall be subject to the general provisions of budgetary and administrative procedural law, particularly Sections 48 et seqq. of the German Administrative Procedure Act (*Verwaltungsverfahrensgesetz*).

(2) If a production disruption caused by COVID-19 occurs or seems to be imminent during the risk period, the eligible filmmaker shall be under an obligation to report this to the German Federal Film Board by e-mail without delay ("**notice of loss**") and to provide all information that is needed to establish the occurrence and the scale of the qualifying contingency. This obligation shall also include a duty to forward the appropriate records and evidence.

(3) On receipt of a notice of loss, the German Federal Film Board, acting at its own discretion after due consideration, shall engage a suitable firm from the insurance sector, by means of a service contract, to process and coordinate the claim for the disruption

reported in accordance with subsection (2) above and shall provide that firm with all documentation at its disposal that is required for settlement of the claim. The engaged firm, using insurance specialists and, where necessary, medical examiners with knowledge of the insurance sector, shall establish whether and to what extent the reported loss is recognizable under the terms of this Directive and shall communicate its findings to the German Federal Film Board.

(4) The remuneration of the engaged firm from the insurance sector for its services, including the cost of hiring specialists and medical examiners to assess the loss, shall be part of the eligible COVID-19 income loss.

(5) The German Federal Film Board shall review the assessment made by the firm from the insurance sector in the light of this Directive. If the result of this review is satisfactory, the German Federal Film Board, having regard to subsection (4) above, shall confirm to the entitled filmmaker the award of an amount of compensatory benefits corresponding to the recognized COVID-19 income loss and shall transfer that amount to the filmmaker's business account.

(6) Acting at its own discretion after due consideration, the German Federal Film Board may grant payments on account. This course of action may be particularly appropriate if the disruption presents the filmmaker with cash-flow difficulties that jeopardize the completion of the film or series.

(7) Before the disbursement of compensatory benefits, including payments on account, the entitled filmmaker shall make a statutory declaration that the compensatory benefits will be used for the sole purpose of making good the recognized COVID-19 income loss.

(8) The disbursement period for compensatory benefits shall end on 15 June 2023. Compensatory benefits may no longer be paid out after that date.

(9) No payments of compensatory benefits may be made to companies that have ceased trading or filed for bankruptcy.

(10) Filmmakers shall repay compensatory benefits they have received if the confirmation of registration has been based on the submission of incorrect or incomplete information significantly affecting the decision whether to issue a confirmation of registration or to recognize a COVID-19 income loss (cf. Sections 48 et seqq. of the Administrative Procedure Act). In the case of co-productions, the co-producers shall be jointly and severally liable.

(11) Following the completion of the film production, the filmmaker shall provide the German Federal Film Board with proof that the compensatory benefits received were necessary to cover the recognized COVID-19 income loss and were used for that purpose. Any surpluses shall be repaid to the German Federal Film Board. The second sentence of subsection (10) above shall apply, *mutatis mutandis*.

## **Section 9**

### **Exclusion from and reduction of benefits**

(1) Compensatory benefits shall not be awarded if the occurrence of the COVID-19 income loss has been caused intentionally or through gross negligence. The eligible filmmaker shall be held accountable for culpable action on the part of engaged or employed persons or of co-producers.

(2) Exclusion from benefits may be particularly appropriate if the eligible filmmaker breaches one of the following obligations intentionally or through gross negligence and a COVID-19 income loss results:

- a) During the period covered by the Production Continuation Fund, eligible filmmakers are required to comply with an occupational safety and hygiene concept that contains decidedly pandemic-related necessary and appropriate measures to protect against infection. The occupational safety and hygiene concept must be designed in accordance with the current BG ETEM guidelines, as long as and insofar as the BKM does not stipulate otherwise. Co-producers, all members of cast and crew and all other parties involved in the project registered for participation in the Production Continuation Fund shall be adequately informed of these occupational safety and hygiene requirements and shall be bound to comply with them.
- b) Eligible filmmakers shall endeavour, as far as possible, to avert and minimize disruptions (duty of damage limitation). They shall, as a matter of principle, obey instructions from the German Federal Film Board and act on the recommendations of the firm from the insurance sector engaged by the German Federal Film Board and of the specialist charged with the assessment of income loss and shall seek instructions where circumstances require it.
- c) Eligible filmmakers shall take precautions wherever possible to prevent the occurrence of any losses. In particular, agreements shall be concluded to provide scope for a reduction of contractual obligations in the event of a COVID-19

income loss.

- d) Eligible filmmakers are bound to report the occurrence of a qualifying contingency to the German Federal Film Board without delay and to provide any information that is required to establish such an occurrence and to assess the amount of the eligible loss. This obligation shall also include allowing representatives of the German Federal Film Board, the Federal Government Commissioner for Culture and the Media, insurance companies, specialists and medical examiners to enter production premises and to peruse all relevant documentation.
- e) Eligible filmmakers are bound to report imminent changes in the progression of the project, particularly changes in the shooting schedule, to the German Federal Film Board without delay. This applies especially to impending delays.

(3) In the event of less serious breaches of obligation caused intentionally or through gross negligence, the German Federal Film Board, acting at its own discretion after due consideration and in consultation with the Federal Government Commissioner for Culture and the Media, may refrain from excluding the filmmaker and, if all other conditions for the payment of benefits are fulfilled, reduce the amount of the compensatory benefits accordingly.

(4) A reduction of compensatory benefits may also be made for breaches of obligation caused by minor negligence and resulting in a COVID-19 income loss. The second sentence of subsection (1) above shall apply, *mutatis mutandis*.

## **Section 10**

### **Tax information**

(1) Equitability benefits received under the foregoing conditions shall be taxable and shall be taken into account as business receipts in accordance with the general tax regulations when the taxpayer's profits are calculated.

(2) The authorizing body shall, of its own motion, inform the tax authorities electronically of each liquidity grant awarded to an applicant; in so doing, it shall comply with the requirements of the German Fiscal Code (*Abgabenordnung*), the Notification of Tax Authorities Ordinance (*Mitteilungsverordnung*) and any other applicable provisions of fiscal law.

(3) The authorizing body shall inform the applicant that the equitability benefit is taxable and that the tax office will be notified of the award.

(4) Recipients of compensatory benefits shall comply with the conditions relating to tax havens set out in Section 6 (3) (d) of the Implementation Guidelines for granting Corona bridging aid for small and medium-sized enterprises (Annex to the Administrative Agreement between the Federal Government and the *Länder*).

## **Section 11**

### **Final provisions**

(1) The German Federal Film Board, acting in consultation with the Federal Government Commissioner for Culture and the Media, shall be responsible for prescribing the applicable administrative formalities.

(2) In special cases, the Federal Government Commissioner for Culture and the Media, having regard to the applicable requirements of budgetary law, may authorize exemptions from the provisions of this Directive unless these provisions relate directly to Section 53 of the Federal Budget Code.

## **Section 12**

### **Entry into force, duration**

This Directive shall enter into force on the date of its publication and shall remain in force until 30 June 2023. The final settlement of qualifying contingency claims may also be effected after 30 June 2023.