MINISTERIAL REGULATION

**Film Estonia support scheme**

This Regulation is established on the basis of section 531 of the State Budget Act.

**Chapter 1**

**General provisions**

**§ 1. Scope of application**

1. The Regulation sets out the conditions and procedure for supporting the production of audiovisual works involving both Estonian and foreign film producers in Estonia.
2. The relevant legislation of the European Union and the Administrative Procedure Act shall apply to issues not covered by this Regulation.
3. The Regulation shall not apply to the cases referred to in Article 1(2), (4) and (5) of Commission Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in the application of Articles 107 and 108 of the Treaty (OJ L 187 of 26 June 2014) as amended by Commission Regulation (EU) No 2017/1084 (OJ L 156 of 20 June 2017) (referred to below as ‘the Block Exemption Regulation’).
4. The Regulation shall not apply to an applicant who is subject to an outstanding recovery order on the basis of a prior decision of the European Commission or the European Court of Justice declaring aid unlawful or misused and incompatible with the internal market.

**§ 2. Definitions**

For the purposes of this Regulation:

1. ‘applicant’ means a legal person specified in subsection 5 (1) of this Regulation that has submitted an application for support;
2. ‘recipient’ means an applicant whose application has been granted;
3. ‘partner’ means a foreign company named in an application, the principal activity of which is the production of audiovisual works, which has signed a cooperation agreement with the applicant aimed at the production of an audiovisual work in Estonia, participates in the implementation of the supported activities in the Estonian production phase of the project (referred to below as the ‘project’) and incurs costs during that process, and whose bank account will be credited with the support funds in accordance with subsection 18 (1) of this Regulation;
4. ‘granting authority’ means the Estonian Film Institute, which is responsible for the implementation of this Regulation.

**§ 3. Objectives and results of granting support**

Support shall be granted to facilitate the inflow of foreign capital into Estonia and cooperation between Estonian and foreign film producers for the production of audiovisual works in Estonia.

As a result of granting support, additional jobs shall be created, the qualifications of the employees shall be improved, the state shall receive additional tax revenue, investments in infrastructure and a positive impact on regional development shall be made, international cooperation shall be improved and the international competitiveness of the Estonian film industry shall be increased.

**§ 4. Supported activities and State aid**

* 1. Support shall be granted to projects that will contribute towards the objectives and results set out in section 3 of this Regulation, for the production of the following types of audiovisual works:
		1. feature films with a running time of at least 60 minutes;
		2. documentary films with a running time of at least 45 minutes;
		3. animated films with a running time of at least 3 minutes;
		4. animated series;
		5. high-quality television series.
1. A prerequisite for the grant of support shall be that the audiovisual work is produced in Estonia.
	1. Support for activities specified in subsection 1 of this section shall be deemed to be State aid as defined in subsection 30 (1) of the Competition Act.
	2. State aid shall be granted in accordance with section 342 of the Competition Act and Article 54 of the Block Exemption Regulation.
	3. Support shall not be granted for amateur film production; television programmes; educational, promotional or commercial films; games; pornographic films; or projects promoting racism, hatred or violence.
	4. Support shall not be granted for projects in which the activities specified in subsection 1 of this section have been completed or fully implemented before the submission of the application for support.

**Chapter 2**

**Requirements for applicants and applications, and applying for support**

**§ 5. Requirements for applicants**

1. An applicant shall be a corporate entity registered in Estonia or a branch of a corporate entity of another European Union Member State or a contracting party to the EEA Agreement which is registered in the Estonian commercial register, or the Estonian subsidiary or branch of a corporate entity registered outside the European Union and the EEA.
2. Applicants shall meet the following requirements:
3. applicants shall have no tax debts or payment debts to the state or the debt has been deferred to be paid in instalments;
4. applicants shall not be bankrupt, undergoing liquidation or compulsory dissolution, or have received a current warning regarding deletion from the commercial register;
5. applicants shall not be in difficulty within the meaning of Article 2(18) of the Block Exemption Regulation;
6. if the granting authority has issued a decision to recover support from the applicant with regard to a previous project, the applicant shall not have overdue payments arising from the decision;
7. applicants shall not be overdue in submitting an annual report;
8. applicants shall have been active in the audiovisual production sector for at least two years prior to the application;
9. during 12 months before the submission of an application, the corporate entity of the applicant shall have employees who are Estonian residents for tax purposes within the meaning of subsection 6 (1) of the Income Tax Act. The aggregated labour taxes paid on the employees of the corporate entity during that period shall equal at least the amount of labour taxes payable on double the average gross wage in Estonia according to the data of Statistics Estonia;
10. applicants shall have a bank account with a credit or financial institution operating under the Credit Institutions Act, which shall be the only bank account used for external funds and other income received to finance the project and settle the costs of the project;
11. applicants shall have no other outstanding obligations to the granting authority.

**§ 6. Requirements for applications**

* 1. The eligibility period of the project shall conform to the conditions set out in section 9 of this Regulation.
	2. The amount and intensity of support applied for shall conform to the conditions set out in section 10 of this Regulation.
	3. The application shall contain the following information and documents:
		1. general data of the applicant, partner and co-production companies;
		2. a synopsis and the script of the audiovisual work;
		3. the filmographies and short descriptions of the previous activities of the applicant, partner and co-production companies;
		4. the CVs and filmographies of the creative team and producers;
		5. the names of the members of the creative team of the project;
		6. a description of the implementation of the project;
		7. the overall schedule of the audiovisual work and the schedule for the implementation of the project;
		8. the consolidated budget and financing plan for the audiovisual work;
		9. the consolidated budget, detailed budget, financing plan and cash-flow schedule for the project;
		10. a cooperation agreement or subcontract between the applicant and the partner, which establishes the rights and obligations of the parties, the amount of external funding, the payment schedule and the division of work;
		11. the contracts signed with or letter of commitment from the funders;
		12. a contract for the transfer or licensing of the economic rights arising from the copyrights of the authors of the audiovisual work to the partner;
		13. an extract from the commercial register for the applicant and partner;
		14. written confirmation from the applicant and partner regarding compliance with the requirement specified in clause 5 (2) 3) of this Regulation;
		15. Annex 1 to the Declaration of income and social tax, unemployment insurance premiums and contributions to mandatory funded pension;
		16. an authorisation if the person representing the applicant acts under authorisation.
	4. The costs in the application budget shall be specified exclusive of value added tax, unless the applicant is not registered for value added tax.
	5. If the applicant has applied for support for the project or some activities within the project simultaneously from several sources or from other state budget, European Union or foreign-aid funds, the application shall specify so.

**§ 7. Submission of applications**

1. Applications shall be accepted on an ongoing basis.
2. For application rounds in which applications are accepted on an ongoing basis, the granting authority shall publish the opening date and budget of the round on its website at least 30 calendar days before the day the round opens.
3. Applications shall be signed digitally and submitted electronically on the application form approved by the granting authority.
4. Applications shall be submitted by an authorised representative prior to the commencement of the work related to the project or activities.
5. For projects that have received minority co-production support under Regulation No 25 of the Minister of Culture of 31 December 2018, the application shall be submitted by the Estonian minority co-producer.

**Chapter 3**

**Eligible costs and rate of support**

**§ 8. Eligible costs**

1. Costs are eligible if necessary for carrying out the activities, justified, incurred upon carrying out supported activities performed during the project’s period of eligibility, made by the recipient, incurred to purchase goods from a legal person registered in Estonia or pay for work and/or service provided by a legal person registered in Estonia, and in compliance with the legal requirements, including the following:
	* 1. costs shall be paid from the bank account specified in clause 5 (2) 8) of this Regulation;
		2. costs shall be supported by documentary evidence;
		3. costs shall be incurred in compliance with the principles of the Public Procurement Act and shall conform with clause 19 3) of this Regulation;
		4. costs shall be described in the accounts in a clearly distinguishable manner and in compliance with the Estonian standard of financial reporting.
2. Costs shall be deemed to be justified if suitable, necessary and effective for achieving the objectives and results specified in section 3 of this Regulation and incurred in the course of activities specified in subsection 4 (1) of this Regulation.
3. The combined general costs and production fees up to 15 % of the total eligible project costs shall be deemed eligible.
4. Personnel costs shall be the wages of the applicant’s, subcontractor’s or partner’s employees who are Estonian residents for tax purposes and any taxes and fees paid on the wages.
5. The minimum share of personnel costs in the total eligible project costs shall be as follows:
	* 1. 25 % for feature films, documentary films and high-quality television series with eligible costs up to 2,000,000 euros;
		2. 500,000 euros for feature films, documentary films and high-quality television series with eligible costs of 2,000,001 euros or more;
		3. 40 % for animated films and series.
6. Non-eligible costs are:
	* 1. costs of acquiring real estate or fixed assets and costs of acquiring movables not directly associated with the use of the support;
		2. cost of acquiring office equipment and furnishings;
		3. value added tax, unless non-refundable under the Value Added Tax Act;
		4. fines and pecuniary charges;
		5. costs of judicial proceedings, including the procedural expenses of the opposing party and a third person;
		6. expenses paid for in cash;
		7. international passenger transport that neither starts nor ends in Estonia;
		8. costs that the recipient of the support has been compensated for from other measures, state budget, or other public-sector or foreign-aid funds.

**§ 9. Period of eligibility of a project**

* 1. A project’s period of eligibility is the period specified in the application during which the project activities begin and are completed, and the costs necessary for carrying out the project are incurred.
	2. The period of the eligibility of the project may begin on the date of submitting the application or a later date specified in the application.
	3. The recipient of support may apply for an extension of the project’s period of eligibility under the following conditions:
		1. circumstances that are beyond the control of the recipient of the support, extraordinary and/or unforeseen have become evident during the implementation of the project, and
		2. the recipient of the support has submitted an application for extending the project’s period of eligibility before the expiry of the project’s period of eligibility.
	4. An application for extending the project’s period of eligibility shall be submitted by an authorised representative of the recipient of the support in a format that can be reproduced in writing.
	5. The granting authority shall notify the recipient of the support about granting or rejecting the application for extending the project’s period of eligibility in a format that can be reproduced in writing within 10 calendar days of submitting the application.
	6. If the application for extending the project’s period of eligibility is granted, the deadline specified in the amendment application shall be deemed to be the date of the expiry of the project’s period of eligibility.
	7. The granting authority shall deem the project completed following the approval of the final report and shall notify the recipient of the support thereof.

**§ 10. Support intensity**

1. The maximum support intensity depends on the general budget of the audiovisual work and on the eligible costs of the project. Support intensity shall be calculated only based on eligible costs.
2. The general budget of an audiovisual work shall be:
	* 1. at least 1,000,000 euros for a feature film;
		2. at least 200,000 euros for a documentary film;
		3. at least 250,000 euros for an animated film;
		4. at least 500,000 euros for an animated series;
		5. at least 200,000 euros per episode for a high-quality television series.
3. The amount of eligible costs of a project shall be:
	* 1. at least 200,000 euros for a feature film;
		2. at least 70,000 euros for a documentary film, animated film, animated series or high-quality television series;
		3. at least 30,000 euros for the post-production of a feature film, documentary film, animated film, animated series or high-quality television series.
4. Support intensity shall be 20 % for projects with eligible costs as follows:
	* 1. 200,000–400,000 euros for a feature film;
		2. 70,000–100,000 euros for a documentary film, animated film, animated series or high-quality television series;
		3. 30,000–50,000 euros for the post-production of a feature film, documentary film, animated film, animated series or high-quality television series.
5. Support intensity shall be 25 % for projects with eligible costs as follows:
	* 1. 400,001–500,000 euros for a feature film;
		2. 100,001–150,000 euros for a documentary film, animated film, animated series or high-quality television series;
		3. 50,001–80,000 euros for the post-production of a feature film, documentary film, animated film, animated series or high-quality television series.
6. Support intensity shall be 30 % for projects with eligible costs as follows:
	* 1. 500,001 euros or more for a feature film;
		2. 150,001 euros or more for a documentary film, animated film, animated series or high-quality television series;
		3. 80,001 euros or more for the post-production of a feature film, documentary film, animated film, animated series or high-quality television series.
7. The granting authority may increase the support intensity specified in subsection 4 of this section to 25 % if one Estonian creative worker is involved in the project and the support intensity specified in subsection 4 or 5 of this section to 30 % if at least two Estonian creative workers are involved in the project.
8. An Estonian creative worker is a natural person who is an Estonian resident for tax purposes, including:
	* 1. for a feature film or quality television series – a scriptwriter, director, cinematographer, artist, composer, editor, location sound engineer, costume designer, make-up artist, colourist, 2D animator, 3D animator, compositor, leading actor/actress and supporting actor/actress;
		2. for an animated film or series, a screenwriter, director, main artist, character designer, cinematographer, composer, sound editor, editor, animatic artist, animator, background artist, compositor and colourist;
		3. for a documentary film, a screenwriter, director, background researcher (other than the screenwriter or director), cinematographer, composer, editor, sound editor, location sound engineer, colourist, 2D animator, 3D animator and compositor;
		4. for post-production, an editor, sound editor, colourist, 2D animator, 3D animator and compositor.
9. Support shall be granted in accordance with the cumulation rules specified in Article 8 of the Block Exemption Regulation.

**Chapter 4**

**Processing of applications**

**§ 11. Processing of applications**

1. Applications shall be processed within 30 calendar days from their submission.
2. Once the total amount of support requested in the applications that have been received but not yet decided on is equal to or exceeds the remaining budget of the application round, the applications shall be processed in the order of their submission.
3. The granting authority may dismiss without review any further applications once the remaining budget of the application round is equal to the total amount of support requested in the applications that have been accepted for processing but not yet decided on.
4. In the course of processing an application, the granting authority may require the applicant to provide explanations or additional information, or to make additions or changes to the application should the authority find that the application is not clear enough, contains deficiencies and/or provides insufficient information for evaluating the application.
5. The granting authority may suspend the processing of an application for up to five working days to allow the applicant to correct the deficiencies referred to in subsection 4 of this section. The granting authority shall dismiss the application without review if the applicant fails to correct the deficiencies by the deadline specified in this subsection and shall notify the applicant thereof in a format that can be reproduced in writing within five working days of the expiry of the deadline. A requirement to correct a deficiency shall be deemed fulfilled once the deficiency is corrected.
6. The granting authority may propose that the applicant change its application budget and proposed project activities, provided that the amount and intensity of the support applied for does not increase and the objectives of the project do not change.
7. The granting authority shall deem the applicant and application to be compliant if all the requirements set out in sections 5 and 6 of this Regulation are met.

**§ 12. Conditions and procedure for granting or rejecting applications**

1. The decision to grant or reject an application shall be made by the granting authority.
2. An application shall be granted if the applicant and the application comply with the requirements specified in this Regulation.
3. An application may be granted partially if it cannot be granted in full due to the limited budget of the application round and/or if it were inappropriate to grant it in full considering the amount of support applied for, the project activities and their results. A proposal for a partial grant shall include a proposal to reduce the amount of support applied for or amend the planned project activities to be supported. An application may be granted partially only if the applicant agrees to this. The applicant may agree to the partial grant of an application on the condition that the objectives specified in the application can be achieved with a partial grant.
4. A secondary condition, as defined in section 53 of the Administrative Procedure Act, may be imposed on a decision to grant an application if it is likely that a necessary requirement for taking a final decision will be fulfilled by the deadline specified in the secondary condition and if establishing a secondary condition is reasonable. When a secondary condition is properly fulfilled, this information shall be added to the decision to grant the application.
5. A decision to conditionally grant an application shall not give the recipient of the support the right to receive support payments. The recipient of the support shall obtain the right to receive support payments after the granting authority determines that the relevant condition has been fulfilled. The granting authority shall determine this based on information submitted by the recipient of the support, unless the authority can retrieve the relevant information from its information system or another source of data.
6. An application shall be rejected if:
	* 1. the applicant and/or application fail(s) to comply with at least one of the requirements specified in sections 5 and 6 of this Regulation or other requirements specified in this Regulation;
		2. the applicant influences the processing of the application through fraud or threat or in some other unlawful manner;
		3. the applicant makes it impossible to verify the conformity of the application;
		4. the limited budget of the application round makes it impossible to support the project;
		5. the applicant does not agree to the proposal to partially grant the application in accordance with subsection 3 of this section by reducing the support amount or changing the planned project activities to be supported.
7. An application accepted for processing shall be rejected if the amount of support applied for exceeds the available balance of the application round and the application cannot be granted partially.
8. The decision taken with regard to an application shall be sent to the applicant electronically if the applicant has agreed to this or by registered mail.

**§ 13. Hearing of applicants and recipients of support**

* 1. Applicants shall be given the opportunity to submit their opinions before:
		1. the partial granting of an application;
		2. the rejection of an application, unless the decision is based on the information submitted in the application and the information and explanations submitted for the correction of deficiencies.
	2. Recipients of the support shall be given the opportunity to submit their opinions before:
		1. the revocation or amendment of the decision to grant an application, except where the application of the recipient of the support is granted in full;
		2. a decision to recover the support.

**§ 14. Filing of challenges**

* 1. Challenges concerning an administrative act or measure shall be filed with the granting authority within 30 calendar days of the day when the applicant or recipient of the support becomes or should become aware of the administrative act or measure being challenged.
	2. An applicant or recipient of support whose challenge is rejected or rights violated during challenge proceedings has the right to file an action with an administrative court in accordance with the conditions and procedure provided by the Code of Administrative Court Procedure. An applicant or recipient may also bring an action with an administrative court without filing a challenge.

**Chapter 5**

**Amendment and revocation of decisions to grant support**

**§ 15. Amendment of decisions to grant support**

1. A decision to grant support shall be amended at the initiative of the granting authority or based on an appropriate written request from the recipient of the support.
2. A decision to grant support may be amended until the expiry of the project's period of eligibility, but not after the completion of project activities, and retroactively from the date of the submission of the amendment application if this helps to achieve the results of the project and the amendment is justified.
3. The granting authority may refuse to amend a decision to grant support if the requested amendment threatens the achievement of the expected results of the project or the completion of project activities within the project’s period of eligibility.
4. The granting authority shall decide on amending a decision to grant support within 30 calendar days after receiving a request to that effect.

**§ 16. Revocation of decisions to grant support**

1. A decision to grant support shall be fully or partially revoked in the following cases:
	* 1. circumstances become evident which would not have allowed the application to be granted or would have allowed it to be granted only partially;
		2. incorrect or incomplete information has been knowingly submitted or information has been knowingly omitted upon application or carrying out the project;
		3. for decision to grant support subject to a secondary condition, if the secondary condition is not fulfilled;
		4. a request by the recipient of the support to amend the decision to grant support is rejected and the recipient is unable to continue using the support under the prescribed conditions;
		5. the recipient of the support submits a request to forgo the support.
2. In the event of a decision to partially or fully revoke a decision to grant support, the recipient of the support shall repay the support accordingly.

**Chapter 6**

**Submission of reports and conditions for the payment of support**

**§ 17. Submission of reports on the use of support**

1. A recipient of support shall submit an interim report and final report on the project to the granting authority by the deadlines specified in the decision to grant the application.
2. The granting authority shall establish the report forms and publish these on its website.
3. The granting authority shall process the reports within 30 calendar days from their submission.
4. The deadline for the submission of a report may be extended by up to 30 calendar days in justified cases based on a request from the recipient of the support, provided that the recipient submits the application for an extension before the expiry of the deadline set in accordance with subsection 1 of this section.
5. If there are deficiencies in the report, the granting authority may suspend the processing of the report, and extend the period specified in subsection 3 of this section by up 14 calendar days to allow the recipient of the support to correct the deficiencies.
6. The granting authority shall approve the report if the recipient of the support has corrected the deficiencies by the deadline set in accordance with subsection 5 of this section and the granting authority has not identified any violations.
7. A report shall contain:
	* 1. the data of the recipient and partner;
		2. a comparison of the costs and revenue of the project against its budget and financing plan, which shall distinguish the eligible costs of the project and those covered from other measures, the state budget, or other public-sector or foreign-aid funds;
		3. an activity report on the work carried out and the results achieved;
		4. significant agreements and contracts entered into during the period of using the support;
		5. a bank account statement;
		6. copies of original financial documents for eligible costs, including invoices, instruments documenting the receipt of assets and contracts that prove the conduct of the corresponding economic transactions;
		7. a document verifying the payment of personnel costs.

**§ 18. Conditions for payment of the support**

1. Support shall be paid to the partner in accordance with the actual costs incurred by the recipient of support within 10 working days after the eligibility of the costs has been verified and the report approved.
2. If a secondary condition is imposed on the decision to grant an application, the support shall be paid after the fulfilment of the secondary condition in accordance with subsection 1 of this section.

**Chapter 7**

**Rights and obligations of the recipient and the granting authority**

**§ 19. Obligations of the recipient of the support**

The recipient of the support shall be obliged to:

* + 1. ensure the management and successful implementation of the project in accordance with the conditions set out in this Regulation and the decision to grant support;
		2. submit the required information and reports to the granting authority in due time;
		3. comply with the principles specified in section 3 of the Public Procurement Act when purchasing services to implement the activities, and obtain at least two comparable price offers from independent bidders with regard to all the expenses to be incurred by the recipient of the support when purchasing services or tangible/intangible assets of the same type for an amount of at least 30,000 euros, exclusive of value added tax, to implement the activities. If two independent price offers cannot be submitted or if the lowest offer is not chosen, an appropriate justification shall be submitted;
		4. keep separate accounts for eligible and non-eligible costs and revenues associated with the implementation of the activities;
		5. provide oral and written explanations and information to the granting authority regarding the implementation of activities, including the use of the support, and provide extracts from the accounting software and bank statements within three working days of being requested to do so and allow the granting authority to make copies or extracts of the documents;
		6. allow the granting authority to check the use of the support on site and provide any assistance to that effect;
		7. promptly notify the granting authority in writing, or in a format that can be reproduced in writing, of any changes to the information submitted in the application or related to the project, any circumstances that prevent the implementation of the project, including bankruptcy or liquidation proceedings, reductions or increases in project costs, or the transfer of project-related assets to another person or institution;
		8. repay support if the granting authority issues a recovery claim for the support;
		9. preserve documents relating to the support application, documents verifying the eligibility of costs and other evidence for 10 years after receiving the support;
		10. use the Film Estonia logo in the opening and/or closing credits of the audiovisual work.

**§ 20. Rights of the recipient of the support**

The recipient of the support shall have the right to:

* + 1. receive from the granting authority information and advice associated with the requirements and obligations of the recipient of the support set out in the legislation, this Regulation or the decision to grant the support;
		2. submit their opinions in cases set out in subsection 13 (2) of this Regulation and when correcting deficiencies;
		3. examine the information included in a document drawn up with regard to them, or information integral to the document, in accordance with the procedure set out in the Public Information Act;
		4. forgo or repay support in full at any time.

**§ 21. Obligations of the granting authority**

The granting authority shall be obliged to:

1. communicate decisions covered by this Regulation to the applicant or recipient of the support within the deadlines set out in this Regulation;
2. ensure that State aid information is entered in the register of State aid and de minimis aid, and ensure the performance of other obligations provided for in Chapter 6 of the Competition Act;
3. preserve documents that provide evidence of applying for and allocating the support and prove the eligibility of costs as well as evidence associated with other documents and information for 10 years from making a decision to satisfy an application;
4. verify project implementation;
5. make application and report forms as well as the relevant guidance materials available on its website;
6. promptly notify the recipient of the support of any amendments to this Regulation or other legislation regulating the use of the support;
7. carry out other activities provided for in this Regulation, applicable legislation or a decision to grant support.

**§ 22. Rights of the granting authority**

The granting authority shall have the right to:

* + 1. inspect expense receipts associated with the project and check project implementation on the territory of the recipient of the support, including verifying that the support is used in accordance with this Regulation and the decision to grant the support;
		2. examine documents drawn up in the course of preparing the project and implementing the activities;
		3. require the submission of additional information and documents regarding the duration, activities, objectives, results and costs of the project to prove that the project implemented and the obligations of the recipient of the support are performed in accordance with the requirements;
		4. cease paying support and/or recover support partially or in full if the recipient of the support violates the conditions set out in this Regulation and/or the decision to grant support;
		5. proportionally reduce the amount of support if the cost of the project is reduced compared to the cost approved in the decision to grant support;
		6. increase the amount of support if this is justified and the budget of the application round allows for the amount to be increased;
		7. refuse to pay support if the financial situation of the recipient of the support has deteriorated to an extent that threatens the [appropriate] use of the support or implementation of the project;
		8. exercise discretion when deciding on the extent to which the support shall be recovered under section 23 of this Regulation;
		9. extend the deadline for implementing a project, and consequently the project eligibility period, if circumstances become evident that are beyond the control of the recipient of the support and the recipient has requested such an extension.

**Chapter 8**

**Recovery of support**

**§ 23. Recovery and repayment of support**

(1) The granting authority shall have discretionary power to recover the support partially or in full if:

* + 1. the recipient of the support has submitted false information or withheld information;
		2. the support has been paid out and used to cover non-eligible costs;
		3. the granting of the support would violate the rules of State aid.
	1. Support shall not be recovered if the recipient of the support has discovered and notified the granting authority in writing at the first opportunity of having been compensated for non-eligible costs and has repaid the support.
	2. A decision to recover support may be made within three years from the conclusion of the performance of the last obligation of the recipient of the support.
	3. A decision to recover support in the case of unlawful or misused State aid may be made within 10 years from the grant of the support to the recipient of the support.
	4. The recipient of the support shall repay the support specified in the recovery decision within 30 calendar days of the day when the decision comes into effect.
1. In the case of unlawful State aid, the support shall be recovered with interest as of the payment of the support based on the rates established by the European Commission.
2. If it becomes evident that the recipient of the support has violated their obligations or the requirements established for them and the violation has a financial impact, but the granting authority cannot evaluate the financial impact, the amount of support shall be reduced by an amount commensurate with the severity of the violation and its impact on the eligibility of costs.
3. Repayable support may be recovered in instalments if the recipient of the support submits a justified request to that effect and a single payment would cause significant solvency problems for the recipient.
4. In order to apply for repayment of the support in instalments, the recipient of the support shall submit a request to the granting authority, specifying the reason for the need to pay in instalments and a proposed time schedule for the repayments, no later than within 10 working days of receiving the decision to recover the support. The recipient of the support shall add to the request for payment in instalments documents describing its financial status as required by the granting authority.
5. The granting authority shall decide on granting or rejecting the request for repayment in instalments within 10 calendar days of receiving the request. Where justified, the deadline for taking a decision may be extended by a reasonable time, notifying the recipient of the support.
6. The period for the repayment of the support in instalments shall be determined by the granting authority.
7. The decision to grant or reject a request for repayment in instalments may be made in conjunction with the decision to recover the support. The decision to grant or reject a request for repayment in instalments shall be sent to the recipient of the support via email or by registered mail.
8. If the recipient of the support fails to keep to the schedule for the repayment of the support in instalments, the decision to allow repayment in instalments may be revoked. If the decision to allow payment in instalments is revoked, the recipient of the support shall repay the support within 30 calendar days after the revocation enters into effect.
9. If the repayable support is not repaid on time, the granting authority shall recover the repayable support in accordance with private-law provisions applicable to unjust enrichment.

**Chapter 9**

**Implementation of the Regulation**

**§ 24. Implementing provision**

The processing of any applications submitted and the implementation of projects based on applications granted before the entry into force of this Regulation shall be completed in accordance with the requirements set out in the document “Conditions and procedure for the allocation of Film Estonia grants” issued by the granting authority on 21 December 2015 and its subsequent amendments.

**Explanatory memorandum to the draft Regulation of the Minister of Culture regarding the Film Estonia support scheme**

**1. Introduction and purpose**

The Regulation is established on the basis of section 531 of the State Budget Act.

The draft Regulation of the Minister of Culture (‘the draft Regulation’) sets out the procedure for supporting the Estonian production phase projects of audiovisual works co-produced by Estonian and foreign film producers.

The objective of the support grant is to facilitate the inflow of foreign capital into Estonia and cooperation between Estonian and foreign film producers, thereby generating additional tax revenue for the state and stimulating the local economy. One of the objectives of the measure is to promote Estonia as a destination for the international film industry.

The terms and conditions for the support grant have already been implemented for several years and were not drawn up during the drafting of the Regulation; they had previously been established in the document “Conditions and procedure for the allocation of Film Estonia grants” issued by the Estonian Film Institute (EFI). The aim of the legislative drafting is to establish for the first time the conditions for the support grant as a consolidated text by a regulation of the Minister of Culture. The target group of the support and the activities eligible for support will remain unchanged. Some changes have been made to set out the conditions in more detail, primarily to make the measure easier to implement.

The draft Regulation and explanatory memorandum were prepared by Piret Tibbo-Hudgins, EFI Head of Production (email: piret@filmi.ee; phone: 627 6064), Nele Paves, Head of Film Estonia (email: nele@filmi.ee; mobile: 51 41 014) and attorney at law Toomas Seppel (email: toomas.seppel@hedman.ee; phone: 664 5250). A legal analysis of the draft Regulation was carried out by Kadri Kilvet, Legal Adviser of the Legal Affairs and Property Management Department, Ministry of Culture (email: kadri.kilvet@kul.ee; phone: 628 2224).

The draft Regulation is not related to any other draft legislation currently undergoing proceedings, the implementation of European Union law or the action programme of the Government of the Republic.

**2. Content and comparative analysis of the draft Regulation**

The draft Regulation consists of 9 chapters and 24 sections.

1. **Chapter**

**General provisions**

Section 1 establishes the scope of the draft Regulation.

According to subsection 1, the draft Regulation sets out the conditions and procedure for supporting the production of audiovisual works involving both Estonian and foreign film producers in Estonia.

Subsection 2 requires the application of the relevant European Union legislation, insofar as the support will be granted as State aid, and the Administrative Procedure Act for issues not covered by the Regulation. The relevant European Union legislation means legal acts that contain State aid rules and are directly applicable to Estonia, upon which stakeholders are required to rely directly when establishing the draft Regulation and performing the tasks of granting support. The provisions of the Administrative Procedure Act are applicable to administrative procedures in accordance with the procedures and specifications set out in the draft Regulation.

Subsections 3 and 4 limit the scope of the application of the Regulation, stipulating that it is not applicable to aid for export-related activities towards third countries or Member States, namely aid directly linked to the quantities exported, to the establishment and operation of the distribution network or to other current costs linked to export activity. The Regulation is also not applicable to undertakings in difficulty. The definition of an undertaking in difficulty is provided under the description of content in clause 5 (2) 3) of the explanatory memorandum.

In addition to the above, the Regulation is not applicable to undertakings that are subject to an outstanding recovery order following a previous European Commission or Court of Justice decision declaring aid illegal or misused and incompatible with the common market. This requirement also derives from the State aid rules and excludes the possibility that an applicant with an outstanding recovery order may submit a new application as long as the repayment is not overdue. No support is granted to those who have not returned support that is repayable according to a previously issued recovery order, regardless of whether the repayment deadline has expired.

Section 2 provides the definitions of key concepts.

Clause 1 defines applicant as a legal person that has submitted an application for support to the granting authority.

Clause 2 defines recipient as a legal person whose application has been granted, who incurs the project costs and whose costs are covered by a partner.

Clause 3 defines partner as a legal person that is involved in the implementation of the project, participates in the implementation of the supported activities and covers the eligible costs of the recipient, which the recipient submits to the granting authority after the partner has incurred the costs, in order for the costs to be compensated by the granting authority. The partner must produce audiovisual works as its principal activity and have a signed a cooperation agreement with the applicant aimed at producing audiovisual works in Estonia. For the purposes of the draft Regulation, a project is part of the Estonian production phase of an audiovisual work.

According to clause 4, ‘granting authority’ means the Estonian Film Institute (EFI), which is authorised by the Minister of Culture on the basis of a contract under public law concluded in accordance with subsection 531 (2) of the State Budget Act to perform the respective administrative duty. EFI is responsible for announcing and coordinating application rounds in which applications are accepted on an ongoing basis, including informing possible applicants and the public about the opportunity to apply for support, processing applications and deciding which applications are to be granted. A more detailed list of the rights and obligations of the granting authority is provided in the descriptions of sections 21 and 22 below.

Section 3 sets out the objectives and results of granting support.

According to subsection 1, the objective of the support grant is to facilitate the inflow of foreign capital into Estonia and cooperation between Estonian and foreign film producers for the production of audiovisual works in Estonia.

Subsection 2 describes the expected results of the grant and use of the support. The supported projects must: create additional jobs in the Estonian audiovisual industry and other sectors that provide services to the industry; increase the tax revenue received by the state; improve the expertise of the people engaged in the audiovisual sector; bring about investments in the infrastructure and technical support for the audiovisual sector; improve the involvement of Estonian regions in the creative processes of audiovisual works; extend international cooperation; and increase the international competitiveness of the Estonian film industry.

Section 4 establishes the eligible activities and the application of State aid rules.

According to subsection 1, support will be granted to projects that will contribute towards the objectives and results set out in section 3 of the draft Regulation, and will support the production of audiovisual works in Estonia.

According to subsection 2, a prerequisite for the support grant is that the expenses be incurred in Estonia. The relevant costs include those related to shooting, animation or post-production carried out in Estonia either in part or in full.

According to subsection 3, support granted for activities specified in section 3 of the draft Regulation must be deemed to be State aid as defined in subsection 30 (1) of the Competition Act. According to subsection 30 (1) of the Competition Act, State aid means the aid specified in Article 107(1) of the Treaty on the Functioning of the European Union (TFEU). Although the TFEU does not specifically define State aid, Article 107(1) states that 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 is, in so far as it affects trade between Member States, incompatible with the internal market.

Subsection 4 provides the legal basis for granting State aid, citing the relevant regulations. Although State aid is generally incompatible with the internal market and as such prohibited, there are certain exceptions. One such exception is support granted to the audiovisual sector as State aid covered by the block exemption. The production of audiovisual works can be supported under Article 54 of the Block Exemption Regulation.

According to subsection 5, support will not be granted for amateur film production; educational, promotional or commercial films; television programmes; games; pornographic films; or projects promoting racism, hatred or violence. The purpose of the restriction is to exclude the support grant for audiovisual works with no direct connection to cinematography as an art form. Given the difficulty of defining cinematography as an art form, the restriction is defined in terms of types of audiovisual works. The types of audiovisual works are defined based on the practices of the film industry. Some of the concepts used in this subsection are defined in other laws, such as the Act to Regulate the Dissemination of Works which Contain Pornography or Promote Violence or Cruelty.

According to subsection 6, support must not be granted for activities that have been completed before the submission of the application for support. It is important that the supported activities not be completed or fully implemented before the submission of the application for support. The requirement is that a project must not be supported if it has been implemented before the support application is submitted. The word “activities” is in plural. Therefore, the requirement is violated if all the activities have been implemented. If a project inspection reveals that support has been granted to a project that was completed before applying for the support, a recovery decision must be issued and any support already paid out must be recovered.

**Chapter 2**

**Requirements for applicants and applications, and applying for support**

Section 5 establishes the requirements for applicants.

Subsection 1 specifies the target group of the support.

Subsection 2 sets out the more detailed requirements for applicants. The requirements are used to establish whether an applicant has the necessary capacity to carry out the project.

Clause 1 stipulates that applicants must have no tax debts or payment debts to the state or the debt must have been deferred to be paid in instalments. The requirement is not met if the applicant has outstanding non-deferred tax or payment debts. The purpose of taking into account the absence of tax and payment debts is to support applicants that have no financial debt to the state.

Clause 2 requires the applicants to be checked to ensure that they are not bankrupt, undergoing liquidation or compulsory dissolution. If they are, it will be assumed that they lack the financial, administrative and operational capacity required to implement the project. Information on bankruptcy, liquidation and compulsory dissolution proceedings is available in the commercial register and the official publication *Ametlikud Teadaanded*.

Clause 3 stipulates that the applicants must not be in difficulty for the purposes of European Union law. The definition of an undertaking in difficulty is provided in Article 2(18) of the Block Exemption Regulation. None of the following circumstances must occur in respect of an applicant.

1. In the case of a limited liability company other than a small or medium-sized enterprise (SME) that has been in existence for less than three years or, where more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the company’s own funds) leads to a negative cumulative amount that exceeds half of the subscribed share capital. For the purposes of this provision, a limited liability company is a private limited company or a public limited company the share capital of which is divided into shares.

2. In the case of a company where at least some members have unlimited liability for the debt of the company other than an SME that has been in existence for less than three years, where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses.

3. Where the undertaking is subject to collective insolvency proceedings or fulfils the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors. Insolvency characterises the situation of a company that is in financial difficulty, but it does not necessarily imply bankruptcy (which is regulated by the Bankruptcy Act). The main characteristic of insolvency is that the debtor is unable to meet the claims of the creditors and, due to the debtor’s financial situation, this inability is not temporary. A debtor who is a legal person is insolvent also if the assets of the debtor are insufficient for covering the debtor's obligations and, due to the debtor’s financial situation, the insufficiency is not temporary. Insolvency must be verified based on the company’s annual report (balance sheet).

4. Where the undertaking has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan. States may grant two types of State aid: rescue aid or restructuring aid. These are given to companies experiencing difficulty to bring them out of difficulty. Such aid may be granted once every 10 years. Restructuring aid is given to support the restructuring of the recipient.

5. In the case of an undertaking that is not an SME, where, for the past two years: (i) the undertaking’s book debt to equity ratio has been greater than 7.5 and (ii) the undertaking’s EBITDA interest coverage ratio has been below 1.0. The target group of this support includes only SMEs.

Clause 4 stipulates that no support will be granted if the granting authority has issued a decision to recover support from the applicant in respect of a previous project and the applicant has overdue payments arising from the decision. This refers to situations whereby the deadline set for the repayment of the support has expired, including deadlines based on a schedule for deferred payments, but the support has not been repaid in the prescribed amount within the deadline. The purpose of the requirement is not to oblige recipients to repay the recoverable support before the deadline for repayment; instead, it is an incentive for recipients to return any repayable support by the prescribed deadline.

Clause 5 stipulates that applicants must not be overdue in submitting an annual report to the commercial register.

Clause 6 requires applicants to have been active in the audiovisual production sector for at least two years prior to submitting the support application. With this, the applicants establish that they have the necessary expertise and experience to carry out foreign projects in Estonia.

Clause 7 stipulates that during 12 months before the submission of an application, the corporate entity of the applicant must have employees who are Estonian residents for tax purposes within the meaning of subsection 6 (1) of the Income Tax Act. The aggregated labour taxes paid on the employees of the corporate entity during that period shall equal at least the amount of labour taxes payable on double the average gross wage in Estonia. The average gross wage is calculated on the basis of the average gross wage in the calendar year preceding the submission of the application according to Statistics Estonia.

Clause 8 stipulates that applicants must use a separate bank account with a credit or financial institution operating under the Credit Institutions Act for external funds and other income received to finance the project and settle the costs of the project. The requirement is necessary to distinguish the revenue and expenses of the particular project from the other economic activities of the applicant.

Clause 9 requires that applicants have no other outstanding obligations to the granting authority. For the purposes of the provision, other outstanding obligations include the failure to submit an interim report or final report in due time.

Section 6 lays down detailed requirements for applications.

Subsection 1 stipulates that the application must state that the supported project activities are implemented in compliance with the conditions set out in section 9 of the draft Regulation. The applicant must specify the eligibility period of the project according to the planned schedule for the implementation of the project activities.

Subsection 2 stipulates that the application must specify the amount of support applied for and what share that amount represents relative to total eligible costs, which must be within the limits set out in section 10 of the draft Regulation.

Subsection 3 lists the information and documents that must be included in the application. The list is not exhaustive, as the application must also contain the information required in the application form approved by the granting authority.

Subsection 4 stipulates that the costs in the budget set out in the application must be specified exclusive of value added tax, unless the applicant is not registered for value added tax.

Subsection 5 requires applicants to submit additional information. In order to avoid double financing of the same activities or similar objectives and results, applicants are required to inform the granting authority if they have applied for support for the project or some activities within the project simultaneously from another measure or from domestic or foreign-aid funds. Applicants must not apply for support for costs in respect of which they have already been allocated support. Supported project activities, or costs, must not be double-financed.

Section 7 regulates the submission of applications.

Subsection 1 and 2 provide for applications to be accepted on an ongoing basis. For application rounds in which applications are accepted on an ongoing basis, the granting authority must publish the opening date of the round on its website at least 30 calendar days before the day the round opens.

Subsection 3 stipulates that applications be signed digitally and submitted electronically in the prescribed manner and on the appropriate form accompanied by the required documents.

Subsection 4 requires applications to be submitted by an authorised representative prior to the commencement of the work related to the project. The restriction arises from Article 6 of the Block Exemption Regulation, which requires aid to have an incentive effect. In order to fulfil the incentive effect criterion, the project work must not start before the application for support is submitted. In particular, this means that the applicant must not enter into binding agreements that result in costs prior to submitting the application. Entering a binding agreement before submitting an application does not necessarily or always rule out the incentive effect of the support. If the applicant is able to get out of the agreement without excessive difficulty or significant cost, support applied for after entering into a binding agreement may also have an incentive effect and meet the criteria for permissible State aid.

According to subsection 5, the application must be submitted by the Estonian minority co-producer for projects that have received minority co-production support under Regulation No 25 of the Minister of Culture of 31 December 2018. The requirement serves to distinguish project costs supported under the draft Regulation from costs covered from minority co-production support. For better traceability and verifiability, it is important that only one Estonian company be involved in each project.

**Chapter 3**

**Eligible costs and rate of support**

Section 8 establishes the rules governing the eligibility of costs.

Subsection 1 stipulates that costs are eligible if necessary for carrying out the activities, justified, incurred during the project’s period of eligibility by the recipient, and in compliance with the European Union and national law. This is the general principle for the eligibility of costs. While the costs must be incurred during the project’s period of eligibility, they need not be paid within that period. Economic transactions (such as the receipt of goods or services) must be recorded within the period of eligibility, regardless of when they are settled. Another important condition is that the costs must be incurred to purchase goods from or to pay for work and/or services provided by a legal person registered in Estonia. This requirement is related to the overall objective of the measure to stimulate the Estonian economy.

As the draft Regulation does not contain all the legal requirements for the eligibility of costs, it is important to emphasise that the use of support must comply with both national and European Union legislations regulating support. For example, European Union law requires that all documents related to the application for support must be preserved for at least ten years, because the support qualifies as State aid. In order to comply with national law, the recipient must comply with the restrictions arising from Estonian tax laws and the Public Procurement Act among others.

Subsection 2 specifies the criteria for costs to be deemed justified. Costs are justified if suitable, necessary and effective for achieving the prescribed objectives and results, and incurred in the course of the supported activities. This is manifested through the requirement of justification, in the sense that there must be an identifiable causal link from which it can be inferred that the costs were incurred in the course of the supported activities.

Subsection 3 stipulates the percentage share of the general costs and production fees in relation to the total eligible project costs. General costs include costs of office supplies, communication services, postal services and electronic data communications, the maintenance and repair of IT and office equipment, utilities, rent, the opening and administration of the bank account related solely to the project, transfer fees, security services, land tax, etc. General costs are eligible insofar as they are based on the actual costs of implementing the project and are directly necessary for the implementation of the project. In the application budget, general costs are to be calculated as a percentage of the direct costs of the project. In the report, the recipient must submit expense receipts certifying the general costs.

Subsections 4 and 5 specify the eligibility conditions and percentage rates for personnel costs. Personnel costs are deemed to include the wages of only those employees of the applicant, subcontractor or partner who are Estonian residents for tax purposes, and any taxes and fees paid on the wages.

Subsection 6 sets out a list of ineligible costs.

Section 9 establishes the eligibility period for supported activities.

Subsection 1 defines a project’s period of eligibility as the period specified in the application during which the project activities begin and are completed, and the costs necessary for carrying out the project are incurred. Applicants must plan their project implementation periods in accordance with the conditions for the period of the eligibility of a project set out in the draft Regulation.

According to subsection 2, the period of the eligibility of a project cannot begin before the date of submitting the application.

Subsection 3 provides for the possibility of extending the eligibility period of a project. The recipient of support may apply for an extension of the period of eligibility during the implementation of the project, provided that circumstances which are beyond the control of the recipient of the support, extraordinary and/or unforeseen have become evident during the implementation of the project. As a rule, the amendment of the project period is initiated by the recipient, by submitting an appropriate application during the eligibility period and providing, among other things, the reasons for requesting the amendment. The eligibility period may be changed until the end of the project eligibility period but not retroactively after the project activities have been completed.

Subsections 4–6 specify the procedures for the submission, grant or rejection of applications for the extension of the project’s eligibility period.

Subsection 7 stipulates that the granting authority deem the project completed following the approval of the final report.

Section 10 establishes the requirements for support intensity.

Subsection 1 stipulates that the maximum support intensity depends on the size of the general budget of an audiovisual work and on the amount of the eligible costs of a project.

Subsections 2 and 3 set out the requirements for the size of the general budget of an audiovisual work and the amount of the eligible costs of a project.

Subsections 4–6 establish support intensity in relation to different ranges of eligible project costs. On the basis of the objective of the measure, the support intensity increases as the eligible costs of a project for an audiovisual work increase.

Subsection 7 provides for the possibility to increase the support intensity if Estonian creative workers are involved in the project.

Subsection 8 defines the concept of an Estonian creative worker.

Subsection 9 requires that support be applied for and granted in accordance with the cumulation rules for State aid. The support applied for and granted under the draft Regulation may be cumulated with any other State aid as long as those measures concern different identifiable eligible costs. Where the different sources of aid are related to the same – partly or fully overlapping – identifiable eligible costs, cumulation is allowed as long as the maximum support intensity or support amount that is applicable to the aid under the Block Exemption Regulation is not exceeded.

**Chapter 4**

**Processing of applications**

Section 11 establishes the procedure for the processing of applications.

Subsection 1 stipulates that the granting authority must process the applications within 30 calendar days of their submission. According to subsection 35 (4) of the Administrative Procedure Act, the term for administrative proceedings that commence with the submission of an application starts from the registration of the received application and ends with the granting authority’s reaching a decision.

Subsection 2 stipulates that, starting from when the total amount of support requested in the applications that have been received but not yet decided on is equal to or exceeds the remaining budget of the application round, the applications are to be processed in the order of their submission.

Subsection 3 allows the granting authority to dismiss without review any further applications once the remaining budget of the application round is equal to the total amount of support requested in the applications that have been accepted for processing but not yet decided on.

Subsections 4 and 5 allow the granting authority to require the applicant to provide explanations and additional documents concerning the information submitted in the application, or to make additions or changes to the application if the processing of the application reveals that it is not clear enough or contains deficiencies. The granting authority must notify the applicant thereof, describing the circumstances that require further clarification or additional information and specifying a deadline for correcting the deficiencies. The granting authority may allow the applicant up to five working days to correct the deficiencies; during this time the processing of the application will be suspended, extending the time limit specified in subsection 11 (1) of the draft Regulation accordingly. A requirement to correct a deficiency shall be deemed fulfilled once the deficiency is corrected.

The granting authority will not review the application if the applicant fails to correct the deficiencies by the deadline provided in subsection 11 (5) of the draft Regulation or if the additional information submitted in the course of correcting the deficiencies is still insufficient to consider the requirement to be met. The applicant is to be notified of this within five working days after the expiry of the deadline.

Subsection 6 allows the granting authority to propose that the applicant change the project budget and activities, provided that the amount and intensity of the support applied for does not increase and the objectives of the project do not change.

Subsection 7 allows the granting authority to deem the applicant and application to be compliant only if all the requirements set out in sections 5 and 6 of the draft Regulation are met.

Section 12 establishes the conditions, procedure and the general principles for granting or rejecting applications.

Subsection 1 specifies the authority that makes the decision to grant or reject an application.

Subsection 2 stipulates that an application is to be granted if the applicant and the application comply with the requirements specified in the draft Regulation.

Subsection 3 allows an application to be granted partially. Partial granting means that one or more aspects, such as the amount of support, project activities or results, are not supported to the extent or in the form specified in the original application. A decision to grant an application partially must be agreed with the applicant in advance and it must specify the extent to which the application will be granted.

A proposed amendment is justified, for example, if the project activities performed to the extent requested in the application are not suitable, necessary or sufficiently effective, and if the amendment of an aspect specified in the application allows the project to contribute more effectively towards the expected results of the measure or the activity in question. A proposed amendment may also be justified by the fact that the budget planned for the application round does not allow for the amount requested in the application to be covered in full. In such cases, the applicants will be allowed to consider whether they would agree to carry out the project with a reduced amount of support or, if necessary, amend their project. The applicant has the right to be heard when an amendment is proposed. If the applicant agrees to amend the project, the granting authority must make sure that the amended application meets the requirements and criteria. This may require another compliance check of the application and the amended project. If the applicant refuses to amend the project, and therefore no agreement is reached, the application will be rejected.

Subsection 4 allows a secondary condition to be imposed on a decision to grant an application. An application may be granted subject to a secondary condition if a requirement has not been met by the time of processing the application but the non-compliance does not prevent the application from being processed, and if it is likely that the requirement can be met within a reasonable time and certainly before the completion of the project. When imposing a secondary condition, the granting authority must specify what it requires the recipient to do or what circumstance must be verified and by what time. When a secondary condition is properly fulfilled, this information is added to the decision to grant the application.

Conditional decisions to grant an application are processed following the normal procedure. The only difference is that the support must not be paid before the secondary condition is fulfilled.

Subsection 5 stipulates that the decision to conditionally grant an application does not give the recipient the right to receive support payments. Payments may be made only after the recipient has submitted information to the granting authority on the fulfilment of the secondary condition. The recipient need not submit this information if the authority can obtain the information itself.

Subsection 6 stipulates that an application must be rejected if: the applicant and/or application fail(s) to comply with at least one of the requirements established in the draft Regulation; the applicant influences the processing of the application through fraud or threat or in some other unlawful manner; the applicant makes it impossible to verify the conformity of the application; the limited budget of the application round makes it impossible to support the project; or the applicant does not agree to the proposal to partially grant the application by reducing the support amount or amending the planned project activities to be supported.

Subsection 7 stipulates that an application must be rejected if the total amount of support requested in the applications that have been accepted for processing but not yet decided on exceeds the available balance of the application round and the application cannot be granted partially.

Subsection 8 requires that the decision taken with regard to an application be sent to the applicant electronically if the applicant has agreed to this or by registered mail.

Section 13 regulates the hearing of applicants and recipients of support.

Applicants have the right to be heard within the meaning of section 40 of the Administrative Procedure Act. The right to be heard in administrative proceedings means that the party to the proceedings must be able to sufficiently explain their opinion on the matter in question and, where appropriate, take a position on the documents submitted by the administrative authority in the course of the proceedings.

Subsections 1 and 2 specify in which cases, while complying with the procedural terms set out in the draft Regulation, the granting authority must give the applicant/recipient the opportunity to submit relevant explanations before the authority decides whether to grant support. In accordance with clause 40 (3) 4) of the Administrative Procedure Act, there will be no hearing if the decision is made in favour of the applicant/recipient.

Subsections 1 and 2 essentially repeat clause 40 (3) 2) of the Administrative Procedure Act*,* according to which administrative proceedings may be conducted without hearing the participant in the proceedings if there is no deviation from the information provided by the participant in the application or explanation and there is no need for additional information. Namely, if a decision to reject an application is based solely on the information submitted in the application for support or to correct deficiencies during the proceedings, the applicant can be considered to have been heard according to this procedure.

Section 14 provides for the right to file challenges. Challenges are to be resolved in accordance with the Administrative Procedure Act.

**Chapter 5**

**Amendment and revocation of decisions to grant support**

Section 15 lays down the conditions for amending decisions to grant support.

Subsection 1 sets out the conditions under which decisions to grant support may be amended and on whose initiative.

The granting authority must evaluate all information, because a piece of information may essentially qualify as a request or notice of the amendment of the decision to grant support, regardless of how the recipient has phrased the application. In a situation where the amendment of a decision would require a further decision to be issued, the granting authority must apply discretion in deciding whether or not to do so. As a rule, amendments are made on the initiative of the recipient; for example, if the recipient considers it necessary to modify the project (change, add or remove a supported activity) or to change the total amount of eligible costs or the share of support relative to the eligible costs. Allowing for amendment is both appropriate and necessary, as the applicants may not be able to foresee all the activities or the scope of the activities required to achieve the result at the time of applying for support. Therefore, it would not be justified to require applicants to keep rigorously to the original action plan. The objective and the expected results of the project must not be changed, as this would essentially result in a new project.

Subsection 2 stipulates that a decision to grant support may be amended until its expiry. An administrative act remains in force until the complete execution of the right or obligation granted by the act. A decision to grant support may be changed until the end of the project’s eligibility period but not after the project activities have been completed.

Subsection 3 gives the granting authority the right to refuse to amend a decision to grant support if, due to changed circumstances, the project no longer meets the conditions set out in the draft Regulation, the requested amendment threatens the achievement of the expected results, or it has become unlikely that the project activities would be completed within the project’s period of eligibility. In such cases, the recipient’s application to amend the decision must not be granted and the recipient will not be able to continue to use the grant under the prescribed conditions; the decision to grant support will be either fully or partially revoked.

Subsection 4 specifies the deadline for the review of applications to amend a decision to grant support and the period for the entry into force of decisions amending a decision to grant support. Recipients must promptly notify the granting authority in a format that can be reproduced in writing of any changes to projects as soon as these become apparent. The granting authority may backdate its decisions amending a decision to grant support if this contributes to the uninterrupted implementation of the action plan and achievement of the expected results of the project. The date of entry into force of a decision amending a decision to grant support must not be earlier than the date of submission of the relevant application for amendment to the granting authority.

Section 16 describes the grounds for the revocation of decisions to grant support.

Subsection 1 specifies the cases in which a decision to grant support will be fully or partially revoked. A decision to grant support is to be fully or partially revoked in the following cases: circumstances become evident which would not have allowed the application to be granted or would have allowed it to be granted partially; incorrect or incomplete information has been knowingly submitted or information has been knowingly omitted upon application or carrying out the project; in the case of decisions to grant support subject to a secondary condition, if the secondary condition is not fulfilled; a request by the recipient of the support to amend the decision to grant support is rejected and the recipient is unable to continue using the support under the prescribed conditions; or the recipient of the support submits a request to forgo the support. A decision to grant support is also revoked if it is annulled by a decision to recover the support.

In revoking a decision to grant support, the requirement of proportionality and the right to be heard must be respected, while ensuring that no decision to grant support that is contrary to the provisions of the draft Regulation remains in force. The intentional submission of false information must not be tolerated under any circumstances, which means that if such circumstances are identified, the decision to grant support must be revoked.

The difference between the revocation of a decision to grant support on the one hand and a decision to recover support under section 23 of the draft Regulation on the other hand is that a decision is to be revoked only if the support should not have been granted in the first place or if, after the decision to grant support has been made, circumstances become evident which make it impossible or unnecessary to implement the project to the extent or in the way originally planned, including if the recipient no longer wants support for the project. A decision to recover support due to a violation of the conditions of use, requirements or obligations related to the support does not constitute revocation. However, the two types of decision do share a common effect – the amount of support to which the recipient is entitled is reduced, possibly down to zero. If it becomes clear that the support will not be used to the extent specified in the original decision to grant support, the preferable approach is to amend the original decision, but alternatively the support may also be partially revoked. In cases where part of the originally granted support can be expected to remain unused, the support should be reduced by the appropriate amount before project implementation is completed. In this way, the unused support of one project can, for example, be allocated to another project.

Subsection 2 stipulates that if a decision to grant support is revoked, the recipient must repay the support received without a legal basis to the granting authority.

## Chapter 6

## Submission of reports and conditions for the payment of support

Section 17 sets out the principles for the submission of reports on the use of support.

Subsections 1 and 2 require the recipient of support to submit an interim report and final report on the project. The reporting frequency and deadlines are to be specified in the decision to grant support. The granting authority must establish the report forms and publish these on its website.

Subsection 3 specifies a time limit for the processing of reports by the granting authority.

Subsection 4 allows the recipients to have the deadline for the submission of a report extended by up to 30 calendar days in justified cases based on a request from the recipient. To do this, the recipient must submit the application for an extension before the expiry of the deadline set in accordance with subsection 17 (1) of the draft Regulation.

Subsection 5 allows the granting authority to require the applicant to provide explanations and additional documents concerning the information submitted in the application or to make additions to the application in order to correct any deficiencies revealed during the processing of the application. The granting authority may allow the applicant up to 14 calendar days to correct the deficiencies; during this time the processing of the application will be suspended, extending the time limit specified in subsection 17 (3) of the draft Regulation accordingly. A requirement to correct a deficiency is to be deemed fulfilled once the deficiency is corrected.

Subsection 6 sets out the conditions for the approval of reports.

Subsection 7 lists the information that must be included in a report.

Section 18 sets out the conditions for the payment of support.

Subsection 1 stipulates that support must be paid to the partner based on the actual costs incurred by the recipient of support and in accordance with the conditions provided in the draft Regulation and the decision to grant support.

Subsection 2 limits the commitment taken by the granting authority if the decision to grant support is subject to a secondary condition. The support will be paid after the secondary condition is fulfilled.

**Chapter 7**

**Rights and obligations of the recipient and the granting authority**

Section 19 establishes the obligations of the recipient of support, which apply as of the entry into force of the decision to grant support.

Clause 1 requires the recipient to ensure the performance of the obligations and successful implementation of the project in accordance with the terms and conditions set out in the draft Regulation and the decision to grant support. Ensuring the performance of the obligations means that the recipient itself must fulfil the obligation.

Clause 2 imposes on the recipient an obligation that requires general correctness in the submission of information and reports, including compliance with the relevant formal requirements, the provision of clear explanations, and the timely submission of correct data and the required documents. This obligation also implies that the documents certifying the costs and payments must comply with the requirements for accounting.

Clause 3 requires the recipient to comply with the principles of the Public Procurement Act when purchasing services to implement the activities, even if the recipient is not a contracting authority/entity within the meaning of the Act. A recipient that is not a contracting authority/entity within the meaning of the Public Procurement Act must prove that the purchase price has been established in accordance with the requirements of section 3 of the Act. The reason why the obligation imposed on recipients that are not contracting authorities/entities for the purposes of the Public Procurement Act is harmonised with that imposed on contracting authorities/entities within the meaning of the Act is that both cases involve the use of public resources. Recipients of the support must obtain at least two comparable price offers for transactions of 30,000 euros or more without value added tax.

Clause 4 requires the recipients to ensure that the principle of sound financial management is applied, including in respect to reporting the financial data related to project implementation. The financial data of a project, including the project costs and their value, must be clearly distinguishable, including the distinction between eligible and non-eligible costs. A failure to comply with this obligation may result in recovery, as it may give rise to the suspicion that some of the financial information related to the project is not identifiable and is therefore unreliable.

Clauses 5 and 6 require the recipient of support to facilitate the granting authority’s supervisory activities, as the recipient is in particular obliged to verify the eligibility of the costs and the accuracy of the information submitted. This includes the obligation to submit the relevant accounting and banking documents, contracts and management decisions to convince the granting authority that no fraud or double financing is involved. A failure to comply with this obligation may result in the reduction or recovery of support, in particular because it makes it impossible for the granting authority to establish whether all the costs are eligible and obligations fulfilled.

Clause 7 requires recipients to promptly notify the granting authority in writing of any changes to the information submitted in the application or related to the implementation of the project. Based on the information received, the granting authority must assess whether the conditions for the implementation of the project and the prerequisites for the support grant have remained the same or whether the decision to grant support has to be amended. If the changes require the decision to be amended, the recipient must request approval for the amendment of the conditions for the use of the support, including the project activities, results, budget and deadlines.

Clause 8 requires the recipient to repay any support that is subject to a recovery claim.

Clause 9 requires the recipient to preserve the documents verifying the eligibility of the costs and other evidence for 10 years after receiving the support.

Clause 10 requires the recipient to use the Film Estonia logo in the opening and/or closing credits of the audiovisual work.

Section 20 establishes the rights of the recipients of the support.

Clause 1 gives the recipients the right to receive from the granting authority information and advice regarding the requirements and obligations of the recipient set out in the legislation on the use of the support. Recipients may contact the granting authority for guidance on the proper implementation of the project, including for an ex-ante evaluation of any planned changes to the project or for clarifications on the eligibility of costs and other conditions set out in the draft Regulation.

Clause 2 gives the recipients the right to submit opinions. The right to be heard in administrative proceedings means that the party to the proceedings must be able to sufficiently explain their opinion on the matter in question and, where appropriate, take a position on the documents submitted by the administrative authority in the course of the proceedings.

Clause 3 gives the recipients the right to examine the information included in a document drawn up with regard to them or information integral to the document. The recipients have the right to examine the information contained in such a document in so far as it concerns them, and to receive extracts if the document contains restricted information. Information that allows evaluations to be associated with individual officials or employees of the granting authority or an external evaluator involved is not to be disclosed. The protection of evaluators is important to ensure the evaluation is not carried out under any threat and cannot be traced back to a specific evaluator, and to minimise post-evaluation judging of the evaluators personally.

Clause 4 reaffirms the recipients’ right to forgo or repay support at any time.

Section 21 establishes the obligations of the granting authority.

The main responsibility of the granting authority is to select suitable projects for funding. This includes processing applications and paying support based on applications granted, verifying the eligibility of costs and, if necessary, recovering support.

Clause 1 obliges the granting authority to follow the procedure established in the draft Regulation and to keep to the time limits for the notification of its decisions.

Clauses 2 requires the granting authority to ensure the performance of the obligations provided for in Chapter 6 of the Competition Act when granting State aid. The above chapter establishes the national rules for the granting of State aid and sets out the obligations of the granting authority when granting State aid covered by the block exemption.

Clause 3 requires the granting authority to preserve the documents verifying the eligibility of the costs and other evidence for 10 years as of making the decision to grant support.

Clauses 4–7 require the granting authority to verify project implementation, including reviewing the reports as well as issuing appropriate guidance materials and making them available to the applicants/recipients. The granting authority must, either on its own initiative or on the initiative of the recipient, clarify the rules for the grant and use of the support and inform the recipient immediately of any changes in the rules.

Section 22 establishes the rights of the granting authority.

Clauses 1–3 establish the right of the granting authority to check project implementation and request the submission of additional relevant information. This includes the right to perform on-the-spot checks of eligible costs on the premises of the recipient. During on-the-spot checks, the granting authority can verify the performance of the obligations by the recipient, including the performance and progress of the project activities, i.e. the achievement of the results based on which the support was granted, the existence of separate accounts for the costs and revenues of the project, and the accounting records of transactions. The on-the-spot checks will also verify that the documents submitted to the granting authority regarding eligible costs correspond to the original documents.

Clauses 4–9 give the granting authority the right to revoke decisions to grant support either partially or in full, to issue decisions to recover support (essentially decisions to reduce or revoke support), and to make other decisions provided for in the draft Regulation, including to extend a project’s eligibility period or increase the amount of support if this is justified and the budget balance allows it.

## Chapter 8

## Recovery of support

Section 23 regulates the making of decisions to recover support and the repayment of support on the basis of those decisions. When applying for support, the applicant agrees to the terms and conditions of the support grant, including the obligation to repay the support if it has been received for non-eligible costs or in the event of other grounds for recovery. A decision to recover support is an administrative act within the meaning of the Administrative Procedure Act.

Subsection 1 establishes when a decision to recover support partially or in full is to be made.

For example, support must be recovered when it becomes evident that a cost submitted for compensation is not eligible. This will be the case if the same cost has already been used as a basis for requesting compensation, or if the type of cost is non-eligible or eligible but unrelated to the supported activity.

Support must also be recovered when it becomes evident that it has already been paid out to cover non-eligible costs. In such cases, the granting authority has no discretionary power as to whether or not to take a decision to recover the support. There is also no discretionary power when the granting of the support is contrary to the rules of State aid.

Subsection 2 stipulates that a decision to recover support is not to be issued if the relevant deficiency is corrected, obligation fulfilled or requirement met, or if the recipient of the support has discovered and notified the granting authority of having been compensated for non-eligible costs and has repaid the support, i.e. if all the conditions for the voluntary repayment of support have been fulfilled.

Subsection 3 allows for a three-year reserve period for deciding on the recovery of support and formalising that decision; in other words, a decision to recover support may be made within three years from the conclusion of the performance of the last obligation of the recipient of the support.

Subsection 4 provides for a derogation from subsection 3 in the case of State aid that is unlawful, misused or incompatible with the internal market. In such cases, a decision to recover support may be made within 10 years of the grant of the support to the recipient of the support. Unlawful State aid is the aid referred to in Article 1(f) of Council Regulation (EU) No 2015/1589 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (codification) (OJ L 248 of 24 September 2015). The misuse of State aid is defined in Article 1(g) of Council Regulation (EU) No 2015/1589. Unlawful State aid is new support allocated in contravention of the rules of State aid. Misused aid is support used by the recipient in contravention of the conditions for the support grant and the decision to grant support.

Subsection 5 requires the recipient to repay the support within 30 calendar days of the day when the decision to recover the support comes into effect. In accordance with subsection 61 (1) of the Administrative Procedure Act, a decision to recover support as an administrative act enters into force as of its notification or delivery to the addressee in conjunction with clause 62 (2) 2) of the Act, which requires parties to the proceedings to be notified of administrative acts by delivery when a previous administrative act is repealed or amended.

The recipient must repay the support in the amount and by the deadline indicated in the decision to recover the support. If the decision to recover support annuls the support grant in full, then the decision to grant the support must be annulled. One of the reasons for this is that, if the recovery decision precludes the grant of support completely, the annulment of the decision to grant support will also release the recipient of support from the other obligations, including the obligation to complete the supported activities.

Before making a decision to recover support, the recipient must be given the opportunity to explain the circumstances, i.e. to be heard in accordance with section 13 of the draft Regulation. This is to ensure that recipients are aware of any ongoing proceedings against them and are given the opportunity to explain the circumstances during the decision-making, and that the granting authority is able to consider these circumstances when making the decision.

Subsection 6 stipulates that support constituting unlawful State aid must be repaid with interest as of the disbursement of the support, in accordance with Article 14(2) of Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ L 83 of 27 March 1999), the implementing provisions of which are provided in Articles 9–11 of Commission Regulation No 794/2004 implementing Council Regulation (EC) No 659/1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ L 140 of 30 April 2004).

In accordance with Article 11 of Commission Regulation No 794/2004, the support must be repaid with compound interest, i.e. the interest accruing in the previous year must be subject to interest in each subsequent year, in order to restore the market position of the recipient. The interest rate to be applied must be the rate published in the Official Journal of the European Union at the time of the payment of the support. Therefore, for the supported activities in respect of which support has been paid out, unlawful State aid must be repaid with compound interest from the date on which the unlawful aid was put at the disposal of the recipient, and the reference and discount rate of the Commission must be applied as the interest rate. The compound interest must be paid until the support is repaid in full.

Subsection 7 allows the granting authority to use discretionary power to reduce the amount of support by an amount commensurate with the severity of a violation if the granting authority cannot evaluate the actual financial impact of the violation.

Subsections 8 and 9 allow the recipient to request the repayment of support in instalments in justified cases if a single payment would cause significant solvency problems for the recipient. The recipient may submit a request for repayment in instalments within 10 working days of receiving the decision to recover the support. The request for repayment in instalments must contain a justification for payment in instalments and a rescheduling plan.

Subsections 10 and 11 allow the granting authority 10 calendar days to process a request for repayment in instalments, but the time limit for the proceedings may be extended by a reasonable time, where appropriate, notifying the recipient of the support of this. The period for repayment in instalments is to be determined by the granting authority, but must not be more than four months.

Subsection 12 allows the granting authority to make a decision to grant or reject a request for repayment in instalments in conjunction with a decision to recover the support. The recipient must be notified of the decision via email or by registered mail.

Subsection 13 gives the granting authority the right to revoke a decision to allow repayment in instalments if the recipient fails to keep to the rescheduling plan. The recipient must repay the support within 30 calendar days of the revocation entering into effect.

Subsection 14 allows the granting authority to recover repayable support under subsection 69 (1) of the Administrative Procedure Act and section 1028 of the Law of Obligations Act (provisions applicable to unjust enrichment). This means that recovery decisions are enforceable only through a civil procedure.

**Chapter 9**

**Implementation of the Regulation**

Section 24 contains the provisions for implementing the Regulation. The processing of any applications submitted before the entry into force of this Regulation as well as the grant and use of support based on such applications will be subject to the version of the terms and conditions applicable at the time of the submission of the applications, i.e. the requirements set out in the document “Conditions and procedure for the allocation of Film Estonia grants” issued by the Estonian Film Institute on 21 December 2015 and its subsequent amendments.

**3. Compliance of draft Regulation with European Union law**

The provisions of this draft Regulation that concern State aid covered by the block exemption are in line with the relevant European Union legislation.

**4. Impact of the draft Regulation**

Prior to the entry into force of this draft Regulation, the Film Estonia support scheme has been implemented in accordance with the document “Conditions and procedure for the allocation of Film Estonia grants” issued by the Estonian Film Institute on 21 December 2015. As section 531 of the State Budget Act, which entered into force on 17 July 2017, requires the conditions and procedures for national support programmes to be established by a ministerial regulation, the above procedure for the granting of support will be established by such a regulation. The implementer and target group will not be changed with the adoption of the Regulation. The supported activities will also remain the same.

There will be no impact on other areas or undesirable effects.

**5. Cost of implementing the draft Regulation**

The granting of support under the draft Regulation will be financed from the state budget. The overall budget of the measure was one million euros in 2017 and two million euros in 2018.

The implementation of the draft Regulation will involve no additional costs.

**6. Implementation and entry into force of the draft Regulation**

The draft Regulation will enter into force in accordance with the general procedure.

**7. Approval of the draft Regulation and involvement of stakeholders**

As the draft Regulation does not change the supported activities, the implementer or the target group, it was not submitted for approval in the EIS information system for draft legislation.