NOTICE TO MEMBERS

Subject: Petition No 0102/2023 by Cristian Vasilescu (Romanian) on the alleged irregularity in relation to investments in “Accelerating the digitalisation of film production and distribution” under the National Recovery and Resilience Plan for Romania

1. Summary of petition

The petitioner questions the formulation by the Project Management Unit within the Ministry of Culture in Romania of the eligibility criteria for the Investment 7 of the pillar IV component 11 - Tourism and Culture” of the National Resilience and Recovery Plan which refers to “Accelerating the digitalisation of film production and distribution in Romania”. In his opinion, although the aim of this investment is to support the film industry in Romania, the requirement that “the applicant has to have completed at least one film production and/or distribution project in the last 5 years, prior to the date of launching of the call for projects’ is not respecting entirely the European and national legal provisions related to the film industry. He is concerned that this interpretation of “film production/ distribution” allows the eligibility of audio-visual productions, which do not legally qualify as “cinematic films”, implying the suspicion of misuse of EU funds and embezzlement. By comparing the list of the first 50 eligible applicants with the data included in the Cinematography Register in Romania, he is concluding that as only 18 of them are registered there, solely 36% of the amount allocated to the film industry in Romania through the National Recovery and Resilience Plan will be actually reaching the intended beneficiaries, while the rest is at risk of being misused.

2. Admissibility

Declared admissible on 9 May 2023. Information requested from Commission under Rule 227(6).

3. Commission reply, received on 29 August 2023
The European Commission understands the concerns of the petitioner regarding the investment in question. The Commission services have completed the examination of the complaint. Based on the information, petitioner supplied and of further analysis, the Commission established that Romanian authorities did not breach European Union law. In this respect, petitioner’s concerns regarding the adherence to the eligibility criteria for investment C11.I7 “Accelerating the digitalisation of film production and distribution” do not result in a violation of the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Romania of 26 October 2021 (“Council Implementing Decision”). Moreover, they do not amount to an infringement of Article 3 (2) (a) and (b) of Directive (EU) 2017/1371 and Article 1 (2) of Regulation (EC) No 2988/1995.

The petitioner has raised a concern regarding the eligibility criteria under investment C11.I7 "Accelerating the digitalisation of film production and distribution," specifically the requirement for applicants to have completed at least one film production and/or distribution project in the last 5 years. In response to this concern, the Commission services conclude that the list of eligible activities, as set forth by the Romanian authorities in their Recovery and Resilience Plan, is not exclusively limited to the production of "cinematic films" as defined by national or European legal provisions concerning the film industry. The criteria instead encompass a broader range of eligible projects, including "audio-visual cultural content" and the "production and distribution of digital content," as specified in the Annex to the Council Implementing Decision. This Annex provides Romania with the flexibility to support various types of audio-visual production. European and national legal provisions concerning the definition on the cinematic film are therefore not applicable in this case.

The petitioner has also raised a concern that such design of eligibility criteria under investment C11.I7 "Accelerating the digitalisation of film production and distribution," can raise a suspicion of misuse and embezzlement of the EU funds, breaching Article 3 (2) (a) and (b) of Directive (EU) 2017/1371 and Article 1 (2) of Regulation (EC) No 2988/1995. Please note that Romania has not yet requested the disbursement of funds for investment C11.I7. The Commission services will assess whether the Romanian authorities have fulfilled all the criteria laid down in the Council Implementing Decision and its Annex, only in the context of the request by Romania for disbursement of the fifth instalment of funds under its Recovery and Resilience Plan. It should be noted that the governance of Recovery and Resilience Plans and the planning and preparation of the measures to be financed under them lie within the Member States, in accordance with the Regulation of the Recovery and Resilience Facility (RRF). The role of the Commission is to ensure the compatibility of the measures included in plans with the assessment criteria laid down in the Regulation and to ensure that the conditions set out in the Council Implementing Decision approving the national Recovery and Resilience Plans are respected before disbursing the respective instalments. It does not fall within the Commission’s remit to decide whether a specific project should be funded under the RRF.

**Conclusion**

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2. Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests
Based on the analysis above, we wish to inform you that we will close this case. Investments to receive EU funds need to be evaluated and selected by the Member States but need to be in line with the Regulation of the Recovery and Resilience Facility as well as the milestones and targets included in the Council Implementing Decision on the approval of the assessment of the Recovery and Resilience Plan for Romania.