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Ordinance on the Quota for European Films and Investments in Swiss Film Production

FQIO

of ...

The Swiss Federal Council,

on the basis of Articles 24a paragraph 3, 24e paragraph 1 and 34 paragraph 1 of the Film Act of 14 December 2001¹ (FiA),

ordains:

Chapter 1 General Provisions

Section 1 Subject Matter

Art. 1

This Ordinance regulates:

- a. monitoring compliance with the obligation to contribute to the diversity of the film offer with on-demand services;
- b. monitoring compliance with the obligation, in television and on-demand services, to take account of independent Swiss film production (the investment obligation) and collecting the subsidiary levy;
- c. registration and reporting by television and on-demand services;
- d. reporting paid on-demand viewings of films;
- e. providing the public with information.

¹ SR 443.1

Section 2 Definitions

Art. 2 Eligible films

¹ *Eligible films* are films including series in accordance with Article 2 paragraph 1 FiA that can be assigned to the genres of documentary, fiction film or animated film and audio-visual works that are structured in their narrative or creatively designed in a comparable way.

² The following are not eligible films:

- a. programmes on topical events, news reports and news features;
- b. entertainment programmes, in particular talk shows, reality shows and games;
- c. live broadcasts and recordings, in particular of sports events, concerts and theatre performances;
- d. computer games;
- e. films that are not eligible for financial support under Article 16 paragraph 1 letters a and b FiA;
- f. promotional films
- f. films that are completely excluded from film promotion under Article 16 paragraph 2 FiA.

Art. 3 Further definitions

In this Ordinance:

- a. *media offer* means audio-visual content that is offered to the public for consumption;
- b. *television service* means a media offer that includes eligible films and which is broadcast in a linear programme service in accordance with Article 2 letter a of the Federal Act of 24 March 2006² on Radio and Television (RTVA);
- c. *on-demand service* means a media offer that includes eligible films and which is offered as a catalogue on the internet or via other electronic communications networks to view on demand.
- d. *feature-length film* means:
 1. a fiction film or animated film of at least 60 minutes duration or a series of the same genre that has a total duration of at least 120 minutes per season,
 2. a documentary of at least 50 minutes duration or a series of the same genre with a total duration of at least 100 minutes per season,
 3. other eligible films of at least 50 minutes duration.

² SR 784.40

Section 3: Scope of Application

Art. 4 Companies not subject to the Film Act

(Art. 24a para. 3 and 24e para.2 FiA)

¹ The following are not subject to the obligations under the FiA:

- a. companies that only broadcast third-party programme services;
- b. companies that are based abroad whose media offer can be received in Switzerland but which do not target a Swiss audience.

² The following criteria apply when assessing whether a company that is based abroad targets a Swiss audience:

- a. the thematic selection of the films and the targeting of the other media content as well as the way in which the media offer is presented,
- b. the pricing structure and payment options for the television or on-demand service;
- c. the origin of the advertising customers;
- d. the target group for the advertising, in particular that shown in connection with the film offer.

Art. 5 Exempted companies

(Art. 24a para. 3 and 24e para. 2 FiA)

¹ Companies that offer television and on-demand services in Switzerland are exempted from the duties under Articles 24a–24f FiA if they:

- a. achieve a turnover in Switzerland through these services of less than 2.5 million francs per calendar year,
- b. show or offer no more than twelve eligible feature-length films per calendar year; or
- c. offer only a time-delayed television service in Switzerland (Art. 61a para. 1 RTVG³);

² On application, the following shall be exempted from the duties under Articles 24a–24f FiA:

- a. companies for which compliance with the obligations is impossible or unreasonable, in particular because their media offer is made to a cultural or linguistic minority and no related European films, films of Swiss origin or independently produced films are available;
- b. companies that do not themselves compose their media offer, but take that of a third party and offer it unchanged.

³ SR 784.40

³ An exemption in accordance with paragraphs 1 and 2 does not relieve the company concerned of its obligation to register and report under Section 3 of Chapter 3a FiA. Reporting is governed by Article 25 paragraph 3.

Chapter 2: Promoting the Diversity of the Films Offered by On-Demand Services

Art. 6 European films

(Art. 24a para. 1 FiA)

European films are eligible films which:

- a. have been produced as Swiss films as defined in Article 2 FiA or have been recognised as Swiss-foreign co-productions;
- b. originate from a country in the European Union;
- c. originate from a country that has signed the European Convention of 5 May 1989⁴ on Transfrontier Television; or
- d. have been produced as co-productions in accordance with the European Convention of 2 October 1992⁵ on Cinematographic Co-production or the Council of Europe Convention of 30 January 2017⁶ on Cinematographic Co-production.

Art. 7 Calculation of the percentage of European films

¹ The calculation of the percentage of European films in the catalogue of an on-demand service is based on the number of eligible feature-length films.

² If requested by the company, the calculation shall be based on the total duration of the eligible films, provided the company submits the relevant information on the film offer.

Chapter 3 Promoting Independent Swiss Film Production

Section 1 General Provisions

Art. 8 Films of Swiss origin

¹ Films of Swiss origin are:

- a. Swiss films as defined in Article 2 paragraph 2 FiA;
- b. recognised Swiss-foreign co-productions.

⁴ SR 0.784.405

⁵ SR 0.443.2

⁶ SR 0.443.3

² Proof of origin is provided by the certificate of origin or the FOC's recognition of the film concerned as a co-production.

³ In the case of commissioned films (Art. 12), the FOC shall verify and confirm Swiss origin on request. The requirements placed on the production company shall be fulfilled by the executive production company and the remuneration of the company subject to the investment obligation and its rights shall be attributed to it as its own share. The application may be submitted by the company subject to the investment obligation or by the executive production company.

Art. 9 Independent third parties

(Art. 24c para. 1 FiA)

¹ Independent third parties are persons and legal entities that are neither owned nor significantly influenced by, nor have close economic links with companies subject to the investment obligation.

² Production companies are deemed to be independent third parties if they additionally meet the following requirements:

- a. They meet the requirements of Article 2 paragraph 2 letter b FiA.
- b. They are professionally organised.
- c. They have been producing films in Switzerland for more than two years.
- d. In the last five years or since their establishment, no more than half of the films that they have made have been commissioned films of the company subject to the investment obligation.

³ If a new production company is established solely for a specific film project, the requirements of paragraph 2 letters c and d do not apply; instead, producers who have several years' experience of carrying out independent film projects must be responsible for the project.

Section 2: Eligible Expenses

Art. 10 Eligible expenses for films

Only expenses under Article 24c paragraphs 1 and 2 letters a–c FiA are eligible for eligible films:

Art. 12 Eligible expenses for acquisition

(Art. 24c para. 1 and 2 let. a-c FiA)

¹ The acquisition fee paid to an independent third party for the use, limited in time and place, of an independently produced film in a company's own media offer is an eligible expense.

² Contractual performance shall be based on a written agreement with the person concerned as the rights holder to the film in question. The agreement may relate to a film that has already been produced or a film that is still to be produced.

³ The licence rights granted must revert to the rights holder after no more than 5 years or if the option of an extension has been agreed, after no more than 15 years.

Art. 12 Eligible expenses for producing a commissioned film

(Art. 24c para. 1 and 2 let. b FiA)

¹ The contribution paid to an independent executive production company to produce a commissioned film and to transfer the exploitation rights is an eligible production expense for the production of a commissioned film.

² The exploitation rights for uses other than media offers of the company subject to the investment obligation may remain with or be transferred back to the executive production company if the price attributable thereto does not exceed 10 per cent of the production costs.

Art. 13 Eligible expenses for a co-production

(Art. 24c para. 1 and 2 let. c FiA)

¹ Financial contributions paid on the basis of a written agreement with an independent production company for the production of and the transfer of the exploitation rights to a film realised on the initiative and under the economic and artistic responsibility of the independent production company are eligible as a co-production expense.

² The rights remaining with the production company must enable it to exploit the film outside the television or on-demand services of the company subject to the investment obligation.

³ The rights granted to the company subject to the investment obligation must revert to the production company after no more than 7 years, or if the option of an extension has been agreed, after no more than 15 years.

Art. 14 Payments made to authorised collective rights management organisations

(Art. 24c para. 2 let. a FiA)

¹ Payments made to Swiss collective rights management organisations are eligible to the extent that they relate to eligible Swiss films.

² Payments made to Swiss collective rights management organisations as part of a voluntary collective rights management arrangement, in particular fees for broadcasting rights, are eligible if:

- a. the collective rights management organisation exercises the rights in accordance with a model contract customary in the industry; and
- b. the collective rights management organisation bills its services on the basis of a standard tariff.

Art. 15 Expenses incurred by television services in advertising and marketing films

(Art. 24c para. 2 let. d FiA)

¹ The following are eligible expenses for advertising and marketing films of Swiss origin or for supporting Switzerland as a location for film production, up to a maximum of 500,000 francs per annum and television programme service:

- a. own contributions, in particular providing airtime in the television programme service for advertising an eligible independently produced film; the own contribution must be provided on the basis of an agreement with the independent production company as the rights holder; the agreement may be concluded before or after completion of the film;
- b. expenses incurred in producing reviews of new films of Swiss origin in the television programme service and any fees paid for image rights;
- c. payments to independent film-related organisations, in particular:
 1. magazines and electronic media that report regularly on current film production,
 2. film archives and institutions that predominantly preserve Swiss films and make such films publicly accessible,
 3. film festivals with national appeal,
 4. institutions that contribute to basic and continuing education and training in the film-related professions,
 5. institutions that advertise the Swiss films and recognised co-productions in Switzerland and abroad or Switzerland as a location for film production.

² Own advertising and expenses in accordance with paragraph 1 letters a-c that relate to the use of films in the television or on-demand services of a company subject to the investment obligation, in particular references to programme services, are not eligible.

³ Expenses that are not incurred in the form of a cash payment are eligible at rates that are customary in the market.

⁴ Any considerations provided in return in accordance with letter c shall be deducted.

Art. 16 Expenses for recognised film funding institutions

(Art. 24c para. 2 let. e FiA)

¹ Payments made to recognised film funding institutions that such institutions use in their entirety to fund screenplays or the development and production of independent film projects by authors under Article 2 paragraph 2 letter a FiA are eligible as expenses.

² The institution must provide confirmation of receipt of the payment and of the eligible use.

Art. 17 Recognition of film funding institutions

¹ The FOC shall recognise film funding institutions that guarantee in personnel and organisational terms the irreproachable conduct of business, in particular in that they:

- a. apply quality criteria in selecting the films eligible for funding;
- b. use a selection process for fundable films that is independent from persons and companies that are associated with companies subject to the investment obligation or that have a personal interest in the matter, in particular because they are involved in a film project that is eligible for selection or could in some other way be impartial in the selection process;
- c. use a fair and transparent procedure for awarding funding contributions; and
- d. provide applicants that are rejected on request with the grounds for the decision so as to enable them to request a review of the decision with regard to an infringement of the law or an incorrect assessment of the factual circumstances.

² The FOC shall publish the list of recognised institutions on its website.

Section 3: Relevant Time for Calculating Expenses**Art. 18**

¹ Expenses are eligible at the time of contractual performance, and in particular the time that payment is made.

² In the case of own contributions by companies with television services for advertising and marketing films, the time of transmission applies.

Section 4: Ascertaining the Relevant Gross Revenues**Art. 19** Relevant gross revenue

(Art. 24b para. 1 FiA)

¹ The relevant gross revenue of a company subject to the investment obligation is the turnover achieved in Switzerland in any calendar year excluding value added tax (VAT).

² In the case of companies liable to VAT, the turnover that the company declares to the Federal Tax Administration is taken as the basis.

³ The annual accounts must be submitted to the FOC, together with copies of the VAT returns and any accruals and adjustments in accordance with Article 20.

Art. 20 Assessment of companies with a different main activity

(Art. 24d FiA)

¹ In the case of companies that operate networks, and companies that demonstrate that they do not earn the majority of their gross revenue in Switzerland from television or on-demand services, only the revenue from television or on-demand services shall be considered.

² This revenue shall include:

- a. income from the sale or rental of audio-visual content;
- b. income from the films shown or offered as part of the subscription service or in return for making a flat-rate payment;
- c. income from advertising shown on the television or on-demand service;
- d. income from passing on or using data collected in connection with the use of the television or on-demand service.

³ If the portion of revenue from television and on-demand services cannot be reliably distinguished from the overall revenue or if media offers to the public are made wholly or partly free of charges, the relevant gross revenue shall be calculated according to the percentage of the overall operating costs of the company that are attributable to the television and on-demand services.

Art. 21 Joint accounting for companies that are economically linked to each other.

¹ Companies that are economically linked to each other, in particular through a holding structure or through ownership, may request that their respective relevant gross revenues and the expenses incurred by them be added together.

² The FOC may make joint accounting dependent on the companies having a joint representative and undertaking to be jointly and severally liable. The joint accounting applies in each case for one investment period.

Chapter 4: Procedures**Section 1: General Provisions****Art. 22** Register

(Art. 24g FiA)

The FOC shall maintain the public register under Article 24g FiA.

Art. 23 Registration

¹ Companies providing television or on-demand services subject to registration must apply to the FOC without having to be requested to do so.

² The following information must be provided in the application:

- a. name, address, business objects, registered office and business identification number of the company as well as, for legal entities, the members of the management board; companies that are not based in Switzerland shall provide a postal address in Switzerland;
- b. the type and number of television or on-demand services;
- c. the business model;
- d. the turnovers achieved in the most recent two financial years from television or on-demand services in Switzerland;
- e. the internet addresses, if applicable;
- f. if applicable the information required for an exemption under Article 5.

³ Changes in the information specified in paragraph 2 must be reported to the FOC within 30 days without having to be requested to do so.

⁴ The information mentioned in paragraph 2 letters a–c and e shall be made available for public inspection in the register.

Art. 24 Notification of the obligations that apply to the companies registered

¹ On registration, the FOC shall establish the statutory obligations that apply to the company concerned, and notify the company of these obligations.

² If a company does not agree, the FOC shall issue a contestable ruling.

Art. 25 Reporting

(Art. 24h FiA)

¹ Companies providing on-demand services shall file a report for each on-demand service annually by 30 April of the following year without having to be requested to do so on the fulfilment of their obligation to promote the diversity of programming. In particular, they shall provide documents on:

- a. the total number of eligible films offered in Switzerland;
- b. the eligible European films that they offer in Switzerland, and in particular a list with the titles of the films, country of production and, if applicable, the length of the films;
- c. the way in which they meet the requirement to specifically identify European films and make them easy to find.

² Companies providing television or on-demand services shall file a report annually by 30 April of the following year without having to be requested to do so on the fulfilment of their obligation to take account of independent Swiss film production. In particular, they shall provide documents on:

- a. the gross revenues that they have achieved: annual accounts, VAT calculations, and if applicable a list of Swiss revenues for each television and on-demand service and relevant share of the operating costs in accordance with Article 20.

- b. the expenses claimed as investments in the form of lists with:
 1. information about the nature of the expenses,
 2. the titles of the films, the production companies and the directors,
 3. the amounts and the recipients of the payment, together with the legal grounds.

³ Companies providing television or on-demand services that are exempted in accordance with Article 5 shall file a report without having to be requested to do so if the circumstances relevant to their exemptions have changed, and shall provide the related documents.

Section 2: Procedure for Promoting the Diversity of the Films Offered by On-Demand Services

Art. 26 Exemptions from reporting

Companies providing on-demand services that are based in a member state of the European Union are exempt from reporting under Article 24*h* paragraph 1 letter a FiA if the film offer in Switzerland essentially corresponds to the film offer in the country where the service is based.

Art. 27 Reporting of paid on-demand viewings

(Art. 24*i* FiA)

¹ Companies that are subject to the reporting requirement under Article 24*i* FiA shall report the following information annually by 30 April for each on-demand service for each eligible feature-length film that is viewed on demand:

- a. the original title and the title used in Switzerland's official languages;
- b. the ISAN numbers;
- c. the persons primarily responsible for the production, in particular the director,
- d. the film genre;
- e. the country of production;
- f. the language versions in which the film is available;
- g. the year of production;
- h. the date on which its own exploitation started;
- i. the duration in minutes;
- j. the proprietor/holder of the distribution rights for Switzerland; in particular the licensor;
- k. the number of paid on-demand viewings.

² The following need not report their paid on-demand viewings:

- a. companies that use the identical film catalogue of another company registered with the FOC, where they have reached an agreement on reporting, and provided the other company does in fact report the viewings;
- b. companies that offer films from programme services of Swiss and foreign television broadcasters in Switzerland with a time-delay.

Section 3

Procedure for Taking Account of Independent Swiss Film Production

Art. 28 Annual audit of the investment obligation

¹ Based on the reports on the television and on-demand services (Art. 25), the FOC shall calculate the amount invested in the previous year, verify the expenses incurred and notify the company concerned of the result of its audit.

² Before issuing a ruling, it shall grant the companies concerned the right to be heard.

³ If the FOC is unable to obtain the information required for the calculation, or cannot do so without incurring disproportionate costs, it may determine the investment amount as it deems appropriate.

Art. 29 Ruling on the subsidiary levy

On expiry of the four-year investment period, the FOC shall rule, if applicable, on a shortfall charge amounting to the difference between the expenses incurred and the investments due.

Art. 30 Changes within the investment period

¹ If the conditions for a company relevant to the investment obligation change significantly within the four-year investment period, in particular due to restructuring, closure, a fall in turnover, or bankruptcy, the company shall prepare an interim account for the FOC without having to be requested to do, attaching the relevant documents.

² If there is no intention or possibility of dividing or transferring the investment obligation or the eligible expenses incurred, the ruling on any subsidiary levy due shall be based on an interim account for an accounting period which has been reduced accordingly.

Art. 31 Due date for the subsidiary levy and default interest

¹ The subsidiary levy becomes due for payment when the ruling becomes legally binding.

² Payment shall be made within 30 days from the due date. In special cases the FOC may extend the payment deadline.

³ On expiry of the payment deadline, the FOC shall grant the person liable to pay the levy, in writing or in another form that allows proof by text, an additional period of 20 days to make payment. It shall also notify the person liable to pay the levy that the

Federal Finance Administration will be instructed to collect the debt on expiry of the additional period.

⁴ The person liable to pay the levy shall be deemed to be in default if the additional period is granted. The default interest amounts to five per cent.

Art. 32 Limitation period for the subsidiary levy

¹ The subsidiary levy is subject to a limitation period of five years after it becomes due.

² The limitation period shall be interrupted by any administrative act asserting the claim for the levy from the person liable to pay the levy.

³ The limitation period starts again from the beginning if it is interrupted.

Chapter 5: Enforcement Agencies and Other Procedural Provisions

Art. 33 Recording data and statistics

¹ The Swiss Federal Statistical Office (FSO) is responsible for recording the data under Article 24*i* FiA and under Article 27 paragraph 1 of this Ordinance.

² The FSO shall compile the data required to analyse the diversity of programming and to verify compliance with the obligation to promote the diversity of the films on offer. It shall transmit the data in a non-anonymised form to the FOC.

Art. 34 Forms

¹ The FOC and the FSO may provide forms for registration under Article 23, reporting paid on-demand viewings under Article 27 paragraph 1, and the annual reports under Article 25.

² They shall ensure that the required information can also be submitted electronically.

³ Where there are forms, these must be used.

Art. 35 Information and auditing of accounts

¹ The FOC may request additional information and supporting documents and obtain information from cantonal authorities and federal authorities.

² If the annual accounts, the lists in accordance with Article 20, the interim accounts in accordance with Article 30, or the invoices for expenses for films of Swiss origin have not been audited by an independent person or accountancy firm licensed as an auditor under the Auditor Oversight Act of 16 December 2005⁷, the FOC shall have the company's records audited on the company's premises by an independent firm of auditors.

⁷ SR 221.302

³ Audits of accounts by foreign auditors are deemed equivalent if the requirements imposed on them in the country in question are comparable with the requirements imposed on Swiss auditors, in particular with regard to independence and impartiality. The BAK may request confirmation of this from the auditor.

⁴ If the auditor identifies significant discrepancies during an audit in accordance with paragraph 2, the FOC may require the company to pay the costs of the audit.

Chapter 6 Confidentiality Protection and Provision of Information to the Public

Art. 36 Confidentiality

¹ The business figures reported to or obtained by the FOC, and in particular information about the gross revenues, operating costs, expenses incurred and the number of paid on-demand viewings, are confidential.

² They may only be inspected with consent of the company from which they originate, subject to the provisions on the inspection of files in administrative proceedings in accordance with the Administrative Procedure Act of 20 December 1968⁸.

³ Articles 35 and 37 are reserved.

Art. 37 Providing information to the public

¹ The FSO shall publish an annual summary of:

- a. films viewed on demand according to country of production and film genre;
- b. on-demand viewings according to business model.

² The FOC shall publish details of the following annually:

- a. which companies fulfil the quota with which on-demand service for European films of at least 30 per cent a and which do not and how European films are specifically identified;
- b. the total of expenses accounted for by companies providing television or on-demand services according to their type;
- c. the total of deferred investments;
- d. the total of subsidiary levies received;
- e. the use of the subsidiary levy by the FOC.

⁸ SR 172.021

Chapter 7: Final Provisions

Art. 38 Amendment of other legislation

The Radio and Television Ordinance of 9 March 2007⁹ is amended as follows:

Art. 6

Repealed

Art. 39 Transitional provisions

¹ The obligation of television broadcasters with a national or regional-language programme service to promote Swiss Films is governed until the 31 December 2023 by Article 7 RTVA¹⁰ in its version of The Federal Office of Communications is responsible for monitoring compliance.

² Expenses allowed by the Federal Office of Communications under Article 7 paragraph 2 RTVA in its version of 26 September 2014 are not eligible as expenses under the FiA.

³ The four-year investment period under Article 24b FiA begins on 1 January 2024 for companies providing television or on-demand services that are in existence when this Ordinance comes into force.

⁴ Companies required to register must do so within 90 days of this Ordinance coming into force.

⁵ The requirement for companies providing on-demand services to report paid on-demand viewings in accordance with Article 27 paragraph 1 applies to films distributed from 1 January 2024.

Art. 40 Commencement

This Ordinance comes into force on

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On behalf of the Swiss Federal Council

The President: Alain Berset

The Federal Chancellor: Walter Thurnherr

⁹ SR 784.401]

¹⁰ SR 784.40