

**PART A OF THE CINEMA STUDY  
REPLIES TO THE LEGAL QUESTIONNAIRE FOR AUSTRIA**

<b>Member State:</b>	<b>AUSTRIA</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>04 December 2006</b>

(...)

Please see the attached document!

(...)

<b>Attachment to e-mail of 04 December 2006: GermannE02.pdf</b>
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(...)

Reference is made to your e-mail dated 25 November 2006. In reply to and using the numbering scheme of your request we may comment as follows:

**1) ÖFI Funding Scheme:**

B.5 – B.7: It is correct that the Federal Film Funding Act as well as the Film Funding Guidelines issued by the ÖFI do not provide for percentages of funding to be spent locally.

B.9: We may underline that there is no subjective right of an applicant to receive film funding through meeting certain requirements. On the contrary, the Austrian Film Institute may grant funding, if the requirements are met and must not grant funding, if not. Thus, as there is no possibility to appeal against negative funding decisions, there is no relevant case law of Austrian authorities. As regards published practice, the Austrian Film Institute only publishes a list of funded projects, however, no details in relation to the extent such funding has been spent in Austria.

**2) Film and TV Agreement 2006:**

In the reference period from 2001 to 2005, this scheme was already in force, however, based on previous versions of the Film and TV Agreement, in particular the Film and TV Agreement dated 7 March 1989, as amended on 5 January 1994 and 24 February 2003.

The mechanics of the funding scheme, however, remained largely unchanged. The changes consist of a split between a licence fee part and a financing part of the funding as well as more detailed rules on specific licence rights the ORF has to be granted by the producer. We may note that the main characteristic of the Film and TV Agreement scheme is that the ORF in exchange for the funding receives certain distribution and broadcasting rights in relation to the funded film. Thus, funds injected by the ORF may not qualify as a public subsidy at all.

B.5 / B.13: Films funded under the Film and TV Agreement scheme have to meet the requirements as set forth in the Austrian Film Funding Act. Therefore, the requirements are listed under the respective replies for the Austrian Film Institute. The ORF Act does not contain provisions of relevance in connection with the study which is why they are not listed in detail.

**3) Vienne Film Fund scheme:**

B.9: The Funding Guidelines of the Vienna Film Fund scheme do not contain a practice that is relevant for the study and differs from the description of the relevant provisions. In order to provide for a transparent calculation of the Austrian expenditures, the Film Funding Guidelines sets forth rules for acceptable production costs. For purposes of the study, however, the general principle remains unchanged that at least 20 % of the total production cost may be spent freely in other EU Member States.

#### **4) Culture Department of the City of Vienna:**

B.13: This scheme publishes neither Funding Guidelines, nor can statutory law provide further guidance in relation to the term “Vienna-Reference”, which is used in public communications. We are, therefore, not in a position to provide sound information on the term “Vienna-Reference” based on official sources.

#### **5) Cine Styria Film and Cine Tirol funding schemes:**

There is no practice in the Funding Guidelines of Cine Styria Film and Cine Tirol funding schemes to which we refer that is relevant for the purposes of the Study and differs from the description of the relevant provisions.

(...)

<b>Member State:</b>	<b>AUSTRIA</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>25 November 2006</b>

(...)

We have a final round of follow-up requests for clarification as follows:

1) At the ÖFI funding scheme:

- B.5 – B.7: Is our understanding correct that there is no indication of percentages of State to be spent locally based on the explicit territorialisation requirements you refer to under these points?

- B.9: Is our understanding correct that there is no published practice and case law on this question?

2) At the Film and TV Agreement 2006:

- Is our understanding correct that this scheme was already in force during the reference period from 2001 to 2005? – If so, please provide us with the corresponding dates of entry into force of the various versions of these regulations that are relevant for our study.

- B.5 and B.13: Is our understanding correct that requirements introduced by the ORF-Act are all listed under respective replies for the Austrian Film Institute?

3) At Vienna Film Fund scheme

- B.9: Is there any practice in the Funding Guidelines to which you refer that is relevant for our study and that differs from your description of the relevant provisions?

4 ) At Culture Department of the City of Vienna

- B.13 Could you provide us more detailed information on the “Vienna-Reference”

5) At Cine Styria Film and Cine Tirol funding schemes:

- Is there any practice in the Funding Guidelines to which you refer that is relevant for our study and that differs from your description of the relevant provisions?

(...)

<b>Member State:</b>	<b>AUSTRIA</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>16 October 2006</b>

(...)

Please find the attached document!

(...)

<b>Attachment to e-mail of 16 October 2006: GermannE01.pdf</b>
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(...)

Reference is made to your question concerning the relationship between international coproduction agreements and national Austrian law raised in your e-mail dated 13 October 2006.

Austrian international co-production agreements prevail over national Austrian law. This, however, is not the result of an automatic mechanism of superiority of international agreements (which only exists in relation to supranational law, in particular EU-law).

Generally speaking, international agreements of law-changing or -amending nature (such as coproduction agreements), are treated on a national level as legislative proposals which require approval by the Austrian Parliament in the same way as national law. Their hierarchical level (and consequently, the quorum of approval by the Austrian Parliament) depends on their content. Co-production agreements typically change or amend "simple" federal law (*einfache Bundesgesetze*) and, thus, are adopted by the Austrian Parliament as such.

As another general principle of Austrian Law, specific statutory law overrules statutory law of more general applicability. Obviously, international co-production agreements set forth very specific funding rules for co-productions involving citizens of the contracting states and that, under certain conditions, national funding rules shall be applied to citizens of both contracting states. There is no Austrian national law of similar specificity; thus, less specific Austrian law of more general applicability is overruled.

As detailed in the questionnaire forms relating to the different funding schemes, there is a rather restricted set of Austrian federal law governing film funding. The Federal Austrian Film Funding Act, the only federal law of considerable specificity, only governs federal funding by the "Austrian Filminstitut", and explicitly provides for international co-production agreements anyway.

The bigger part of the relevant provisions consists of general art-funding laws on the provincial level (*Landesrecht*), which may not overrule federal law. Funding guidelines (*Förderrichtlinien*) issued by the funding schemes themselves do not qualify as statutory law at all.

(...)

<b>Member State:</b>	<b>AUSTRIA</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>13 October 2006</b>

(...)

With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

(...)

<b>Member State:</b>	<b>AUSTRIA</b>
<b>Re:</b>	<b>Reply</b>
<b>Date:</b>	<b>02 October 2006</b>

(...)

please find attached the completed questionnaire in relation to film funding in Austria.  
We (...) will review the document once again for typos.

(...)

<b>Attachments to e-mail of 02 October 2006</b>
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- Memo\_20061002.doc
- TirolKulturförderungsG.pdf
- StmkKunstKulturfoederungsG.pdf
- NoeKulturfoederungsG.pdf
- KommAustriaG\_asof20051231.pdf
- Kunstförderungsgesetz\_asof20051231.pdf
- FilmfoederungsG\_gesetz\_asof20051231.pdf

## PART A

## GENERAL QUESTIONS

## Overview

## A.1 Country / Region:

The information provided in this memorandum is limited to Austria and Austrian law.

A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works<sup>1</sup> of at least €1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):

In 2005, the annual budget of the following Austrian film funding schemes exceeded EUR 1 million:

Name of the Scheme	approx. budget 2005
Austrian Film Institute ( <i>Österreichisches Filminstitut</i> )	9,600,000 <sup>2</sup>
Film and TV Agreement 2006 ( <i>Film/Fernsehabkommen 2006</i> )	5,960,370 <sup>3</sup>
Federal Chancellery ( <i>Bundeskanzleramt</i> )	1.234.123,60 <sup>4</sup>
TV Fund Austria ( <i>Fernsehfonds Austria</i> )	7,500,000 <sup>5</sup>
Vienna Film Fund ( <i>Filmfonds Wien</i> )	7,995,000 <sup>6</sup>
Culture Department of the City of Vienna ( <i>Kulturabteilung MA7 Stadt Wien</i> )	>1,000,000 <sup>7</sup>
Film Promotion of the Province of Lower Austria ( <i>Filmförderung des Landes Niederösterreich</i> )	>1,000,000 <sup>8</sup>
Cine Styria Film Fund	1,000,000 <sup>9</sup>

<sup>1</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

<sup>2</sup> Source: Federal Finance Law (*Bundesfinanzgesetz*) 2005, Partial Book (*Teilheft*) 13: Art (*Kunst*), available at the Austrian Ministry of Finance: <http://www.bmf.gv.at/Budget/Budgets/2005/teilhefte/ak13.pdf>

<sup>3</sup> Sec 2 Film/TV Agreement.

<sup>4</sup> Art Report 2005 of the Federal Chancellery (*Kunstbericht 2005: Bericht über die Kunstförderung des Bundeskanzleramts*): <http://www.bundeskanzleramt.at/Docs/2006/4/20/Kunstbericht%202005.pdf>

<sup>5</sup> Source: Section 9f of the Federal Act on the Establishment of a Communication Authority Austria (*Bundesgesetz über die Einrichtung einer Kommunikationsbehörde Austria* (“KommAustria”), Federal Law Gazette I No. 32/2001 as amended.

<sup>6</sup> Source: budget and closing of accounts (*Rechnungsabschluss*) 2005 of the City of Vienna, available on the Internet on <http://www.wien.gv.at/finanzen/budget/va05/>

<sup>7</sup> Authentic data for 2005 not available.

<sup>8</sup> Authentic data for 2005 not available.

## Coproduction Agreements

A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision.

The Federal Ministry for Economy and Labour (*Bundesministerium für Wirtschaft und Arbeit*) is in charge of administration and supervision of co-production agreements and has issued guidelines in the form of checklists in relation to international co-productions.<sup>10</sup>

Name of the Convention	Counterparty	BGBL III No. <sup>11</sup>	in force since:
Convention between the Government of the Republic Austria and the Government of the Federal Republic of Germany on the Relations as regards Films together with Attachment and Correspondence ( <i>Abkommen zwischen der Regierung der Republik Österreich und der Regierung der Bundesrepublik Deutschland über die Beziehungen auf dem Gebiet des Films samt Anlage und zwei Briefwechseln</i> )	Germany	695/1990	1.11.1990
Convention between the Government of the Republic of Austria and the Government of the Republic of France on the Relations as regards Films together with Attachment and Correspondence ( <i>Abkommen zwischen der Regierung der Republik Österreich und der Regierung der Französischen Republik über die filmwirtschaftlichen Beziehungen samt Anlage und Briefwechsel</i> )	France	163/1997	1.10.1997
Convention between the Austrian Federal Government and the Italian Government on the Mutual Relations in the Area of Films ( <i>Abkommen zwischen der österreichischen Bundesregierung und der Italienischen Regierung über die Regelung der gegenseitigen filmwirtschaftlichen Beziehungen</i> )	Italy	197/1968	1.7.1968
Audio-Visual Co-Production Agreement between the Government of the Republic of Austria and the Government of Canada together with Attachment	Canada	85/2005	18.5.2005

<sup>9</sup> Budget and Closing of Accounts 2005 of the Land Styria, available on the Internet via <https://sterz.stmk.gv.at/lve/public/SiteCostEstimation.do>

<sup>10</sup> [http://www.fafu.at/download/Filmabkommen/Filmabkommen\\_formale\\_Voraussetzung.pdf](http://www.fafu.at/download/Filmabkommen/Filmabkommen_formale_Voraussetzung.pdf)

<sup>11</sup> Abbr. for the Federal Law Gazette (*Bundesgesetzblatt*)



<i>(Abkommen über audiovisuelle Gemeinschaftsproduktionen zwischen der Regierung der Republik Österreich und der Regierung von Kanada samt Anhang)</i>			
Convention between the Government of the Republic of Austria and the Swiss Federal Council on the Relations as regards Films together with Attachment and Correspondence <i>(Abkommen zwischen der Regierung der Republik Österreich und dem Schweizerischen Bundesrat über die Beziehungen auf dem Gebiete des Films (Koproduktionsabkommen Österreich - Schweiz) samt Anlage und Briefwechsel)</i>	Switzerland	642/1990	1.11.1990
Convention between the Government of the Republic of Austria and the Government of Spain on the Relations as regards Films <i>(Abkommen zwischen der österreichischen Bundesregierung und der Regierung von Spanien über die Beziehungen auf dem Gebiete des Filmwesens)</i>	Spain	87/1970	10.4.1970
Convention between the Government of the Republic of Austria and the Government of the Grand Duchy of Luxembourg on the Relations in the Audiovisual Area <i>(Abkommen zwischen der Regierung der Republik Österreich und der Regierung des Großherzogtums Luxemburg über Beziehungen im audiovisuellen Bereich)</i>	Luxembourg	n/a	signed 23.1.2006, not yet in force
European Convention on Cinematographic Co-Production <i>(Europäisches Übereinkommen über die Gemeinschaftsproduktion von Kinofilmen samt Anhängen)</i>	diverse	803/1994	1.1.1995

## National Certification Procedures

A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:<sup>12</sup>

There are no general criteria to assess and certify the nationality of production applicable to all funding schemes in Austria. The most important federal scheme, the Austrian Film Institute, however is subject to the following rules of the Federal Film Funding Act as described below.

### A. Eligibility Criteria

<sup>12</sup> E.g. the French "Procédure d'agrément".

Federal funding provided by the Austrian Film Institute is subject to the provisions of the Federal Film Funding Act ("FFA") as amended (*Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz)*, BGBl 557/1980 idF BGBl 170/2004).

Pursuant to Sec 11 FFA, funding may only be provided if the project is an Austrian Film or an Austrian-foreign co-production. A film qualifies as an Austrian film if:

- (a) the film is produced in the name and on the account of an applicant, who either is an Austrian citizen and is resident in Austria, **or**, in case the applicant is not a natural person, if it has its seat in Austria or in a EEA member state and a branch office or place of operation in Austria and is responsible for realization the of the film project; **and**
- (b) the persons responsible for administrative or artistic matters of the film project are Austrian citizens and the remainder of the film crew consists predominantly of Austrian citizens; **and**
- (c) a final version of the film is produced in German; **and**
- (d) the film is shot in Austria except for scenes requiring foreign locations.

A film qualifies as an Austrian-foreign international co-production if:

- (a) one of the partners fulfils the requirements under (a) above **and** the project complies with an international co-production agreement. If there is no such co-production agreement, the Austrian financial, artistic and technical contribution shall each amount to at least 30%, whereas exemptions may be granted in individual cases.
- (b) a final version of the film is produced in German; **and**
- (c) as to the fulfilment of criteria (b) and (d) above, the provisions of the co-production agreement are met or, if there is no such co-production agreement, these criteria are met to the extent of the Austrian and foreign financial participation.

Additionally, a foreign film qualifies as an Austrian film even if the Austrian participation is only of financial nature, if:

- (a) the cultural identity of the film project is strengthened by such participation and the project features a recognised technical and artistic quality; **and**
- (b) the Austrian participation is a minority participation of at least 10% of the production cost; **and**
- (c) the project qualifies for receiving a certificate of origin of and under the provisions of the country in which the majority producer is seated; **and**
- (d) the agreement with the co-producer features provisions on the distribution of the utilisation proceeds, **and**
- (e) reciprocity as regards film funding is guaranteed in relation to the countries in which the other co-producers are seated.

## B. Authority in Charge and Formal Procedure

Whether or not a film project meets the criteria for eligibility as outlined above is reviewed by the Austrian Film Institute on the grounds of the information supplied by the applicant in the application form.

Co-productions need to be filed with the Federal Ministry of Economy and Labour for recognition under a co-production agreement, and applicants for funding by the Austrian Film Institute need to undertake to make such filing in the application form. Filing criteria for co-production agreements are covered in these agreements.

## **Expected Developments**

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A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision.

As indicated in the table under A.3 above, a co-production agreement with the Government of Luxembourg has been signed on 23 January 2006 and, in accordance with its terms, will enter into force on the first day of the second month after the contracting parties have notified each other that the intrastate requirements for the entering into force of the agreement have been fulfilled, which is not yet the case.

A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,<sup>13</sup> and indicate the name and address of the administration of these funding schemes:<sup>14</sup>

Apart from those presented under A.2 above, we have no knowledge of funding schemes containing territorialisation requirements which are to be expected to enter into force in Austria with a budget of at least EUR 1 million. We however note that regional schemes, in particular schemes of the Federal Provinces dispose of budgets which vary from year to year and may drop below, but also exceed such level. For instance, the “Cine Culture Carinthia” scheme of the Federal Province of Carinthia in force until 2004 has been abolished completely.

It might be that the funding regulations as used by the most recently introduced Austrian funding schemes (e.g. Cine Styria) may serve as a template for funding regulations of Austrian funding schemes yet to come.

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<sup>13</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

<sup>14</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

## References to Local Studies

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A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

### A. Studies on Legal Aspects

*Eisenberger*, Filmförderungsmaßnahmen im Spannungsverhältnis zwischen Gemeinschaftsrecht und innerstaatlichem Recht, Graz 2004 (PhD thesis, University of Graz);

### B. Reports on Film Funding in Austria

*Austrian Film Institute*, Austrian Film Economy Report 2006: Facts & Figures 04 (German only):

[http://www.filminstitut.at/downloads/11533875Filmwirtschaftsbericht\\_endfassung.pdf](http://www.filminstitut.at/downloads/11533875Filmwirtschaftsbericht_endfassung.pdf)

*Austrian Film Institute*, Film Financing and Funding in Austria (German only):

<http://www.filminstitut.at/downloads/10960185Filmfinanzierung.pdf>

Activity report 2005 of the TV Fund Austria (German only):

[http://www.rtr.at/web.nsf/lookuid/EAC0593E3A3FB932C125719C00271761/\\$file/TaetigkeitsberichtFFAT\\_2005.pdf](http://www.rtr.at/web.nsf/lookuid/EAC0593E3A3FB932C125719C00271761/$file/TaetigkeitsberichtFFAT_2005.pdf)

Art report 2005 of the Federal Chancellery (German only)

<http://www.bundeskanzleramt.at/Docs/2006/4/20/Kunstbericht%202005.pdf>

### C. Laws and Funding Guidelines

Austrian Film Funding Act: English translation available on the Internet at:

<http://www.filminstitut.at/downloads/11151230FILM%20FUNDING%20ACT%202005.pdf>

Funding Guidelines of the Austrian Film Institute (German only):

[http://www.filminstitut.at/downloads/11527990FRL\\_Juli\\_%202006\\_komplett.pdf](http://www.filminstitut.at/downloads/11527990FRL_Juli_%202006_komplett.pdf)

Funding Guidelines of the Vienna Film Fund (German only):

<http://www.filmfonds-wien.at/en/upload/downloads/F%F6rderungsrichtlinien.pdf>

Funding Guidelines of the TV fund Austria (German only):

[http://www.rtr.at/web.nsf/deutsch/Foerderungen\\_Fernsehfonds\\_Richtlinien](http://www.rtr.at/web.nsf/deutsch/Foerderungen_Fernsehfonds_Richtlinien)

Funding Guidelines of Cine Styria (German only):

[http://www.cinestyria.steiermark.at/cms/dokumente/10224870\\_3582672/703d712c/CS%20Richtlinien%20KOM\\_Aktuell\\_M%C3%A4rz%202006.pdf](http://www.cinestyria.steiermark.at/cms/dokumente/10224870_3582672/703d712c/CS%20Richtlinien%20KOM_Aktuell_M%C3%A4rz%202006.pdf)

Funding Guidelines of Cine Tyrol:

<http://homes.tiscover.com/prjt/cine-tirol/downloads/richtli06-eng.pdf>

D. Material more generally related to Film Funding in Austria

*Berger*, Die Kulturpolitik der Europäischen Union am Beispiel der Filmförderung , Innsbruck 2001 (master thesis at the University of Innsbruck)

*Pfann*, Filmförderung in Österreich : Aktuelle Entwicklungen und Perspektiven, Vienna 2003 (master thesis at the University of Vienna)

*Semmelrock*, Filmfinanzierung in Österreich, Entwicklungsgeschichte und Möglichkeiten, Vienna, 2001 (master thesis at the University of Vienna)

*Maislinger*, Filmförderung als ein Mittel der Filmfinanzierung , Salzburg 2005 (master thesis, University of Salzburg)

**PART B**  
**FUND SPECIFIC QUESTIONS**

**Identification of the Funding Scheme**

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**B.1** *Country/region:*

Austria / Federal.

**B.2** *Name of the funding scheme:*

**Österreichisches Film Institut** (*Austrian Film Institute*), ÖFI

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The Austrian Film Institute is a corporation governed by administrative law (*Körperschaft öffentlichen Rechts*) established by Federal Act. Pursuant to Section 9 FFA (as defined below), the activities and financial management of the ÖFI are supervised by the Federal Chancellor (*Bundeskanzler*), Minoritenplatz 3, 1014 Vienna.

The ÖFI features a director appointed by the Federal Chancellor (*Bundeskanzler*) and, as a supervisory body, a Supervisory Board consisting of representatives delegated by

- the Federal Chancellery (*Bundeskanzleramt*), Minoritenplatz 3, 1014 Vienna;
- the Federal Minister for Economics and Labour (*Bundesminister für Wirtschaft und Arbeit*), Stubenring 1, 1011 Vienna;
- the Federal Minister for Finance (*Finanzminister*), Himmelfortgasse 4-8, 1010 Vienna; and
- the State Attorney (*Finanzprokuratur*), Singerstraße 17-19, 1011 Vienna.

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

The ÖFI has been established pursuant to and is governed by the Federal Film Funding Act, as most recently amended by Federal Law Gazette No 170/2004 (*Bundesgesetz vom 25. November 1980 über die Förderung des österreichischen Films (Filmförderungsgesetz)*, BGBl 557/1980 idF BGBl 170/2004, the „FFA“).

The FFA has been last amended with effect of 1 January 2005. The territoriality conditions indicated below however have not been substantially changed by such amendment.

Pursuant to Sec 14 FFA, prerequisites for the granting of funding, as far as not provided for in the FFA, shall be regulated in funding guidelines to be agreed on by the Supervisory Board. The ÖFI has issued such funding guidelines as most recently amended on 4 July 2006 which are available on the ÖFI's website (German only)<sup>15</sup>.

A copy of the FFA is attached as Annex 1.

## **Territorial Conditions<sup>16</sup>**

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### **Explicit territorial conditions**

**B.5** Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes.

**B.6** Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Pursuant to Sec 11 para 1 letter d) FFA, only Austrian films are eligible to funding, whereas pursuant to Sec. 11 para 2 letter d) FFA, films are only considered Austrian if, among others, they are shot in Austria (except for scenes requiring foreign locations). Pursuant to Sec 11 para 2 letter b) FFA, the majority of the crew have to be Austrian citizens. As to co-productions, the terms of the respective co-production agreements apply.

#### English Working Translation

“§ 11 (1) Funding may only be granted under the following conditions:

[...]

d) The undertaking to be funded is an Austrian film or an Austrian co-production.

[...]

(2) A film shall be considered an Austrian film as defined by this Federal Act, provided that

a) [...]

b) The decision-makers in creative and managerial terms are Austrian nationals and the crew is mainly Austrian,

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<sup>15</sup> [http://www.filminstitut.at/downloads/11527990FRL\\_Juli\\_%202006\\_komplett.pdf](http://www.filminstitut.at/downloads/11527990FRL_Juli_%202006_komplett.pdf)

<sup>16</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

c) [...]

d) The film is shot in Austria except for scenes requiring foreign locations.

(3) An Austria-international co-production is considered an Austrian film as defined by this Federal Act, provided that

a) [...]

b) The prerequisites pursuant to para.2 lit. c are fulfilled and

c) The intergovernmental film agreements are complied with in respect of the requirements of para.2 lit. b and d or, where no such agreement exists, the prerequisites relating to the percentage shares of Austrian and non-Austrian financial participation are fulfilled.”

§ 11 Abs 1ff Film Funding Act (German Original):

*(“§ 11 (1) Förderungen dürfen nur unter folgenden Voraussetzungen gewährt werden: [...]*

*d) Das zu fördernde Vorhaben muss einen österreichischen Film oder eine österreichisch-ausländische Gemeinschaftsproduktion betreffen.  
[...]*

*(2) Ein Film gilt als österreichischer Film im Sinne dieses Bundesgesetzes, wenn*

*a) [...]*

*b) die bei der Herstellung des Films oder des österreichischen Anteils des Films künstlerisch oder organisatorisch entscheidungsberechtigten Personen die österreichische Staatsbürgerschaft besitzen und der übrige Mitarbeiterstab überwiegend aus österreichischen Staatsbürgern besteht,*

*c) [...]*

*d) der Film, abgesehen von thematisch notwendigen Aufnahmen im Ausland, in Österreich gedreht wird.*

*(3) Als österreichischer Film im Sinne dieses Bundesgesetzes gilt auch eine österreichisch-ausländische internationale Koproduktion, wenn*

*a) [...]*

*b) die Voraussetzungen des Abs. 2 lit c erfüllt werden und*

*c) hinsichtlich der Voraussetzungen des Abs. 2 lit. b und d die zwischenstaatlichen Filmabkommen eingehalten oder, falls ein solches Abkommen nicht vorliegt, diese Voraussetzungen im Verhältnis der österreichischen und ausländischen finanziellen Beteiligungen erfüllt werden. ”)*

These provisions are mirrored verbatim in Section 3 of the Funding Guidelines of the Austrian Film Institute.

**B.7** Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

The provisions described above are mandatory Austrian law. The Austrian Film Institute is not allowed to grant funding if the aforementioned requirements are not



met. Thus, the applicant will have to provide sufficient reason if scenes are to be shot outside of Austria by providing the necessary information in his/her application.

**B.8** Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

As explained under B.6 above, Austria-international co-productions are considered as Austrian films eligible to funding by the ÖFI under certain conditions (Sec 11 para 3 FFA). As a prerequisite, the co-productions have to meet the requirements of the respective intergovernmental co-production agreement. The territorialisation clauses as outlined above in relation to Austrian films are overruled by respective clauses of the intergovernmental co-production agreement. In the absence of such co-production agreement, they however have to be fulfilled to the extent of the Austrian participation in the project.

Co-production agreements typically provide for provisions setting forth that the film has to be shot in one of the contracting countries and that the crew has to consist of citizens of one of the countries or a EEA member state.

**B.9** Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

There is neither judicial practice nor legal commentary addressing the implementation of territorialisation requirements in connection with film funding described above in Austria.

When granting funding, the ÖFI acts as a private and not as a public entity. As the applicant has no right to receive funding, there is no room for administrative procedure if the application is rejected. The legal relationship between ÖFI and the recipient of funding is governed by contract ("Funding Agreements"), thus by civil law. Whereas it is not beyond reason that claims might be based on or directed against territorialisation clauses under such contracts, we have no knowledge of related Austrian case law having been officially published. As to the administrative practice, we may point you to the Funding Guidelines of the ÖFI.

### **Implicit or *de facto* territorial conditions**

**B.10** Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005*)

*and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005)?*

Yes.

**B.11** Please describe the implicit or de facto territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Pursuant to Section 6(1) of the Funding Guidelines, a pre-requisite of production funding is that the project, also taking into account the script, the crew and the cast of characters, is deemed to contribute to the improvement of the quality of Austrian films, as well as to the technical and economic situation of the Austrian film industry. Under such provision, it is not beyond reason that the funding decision might, at least in extreme cases, be influenced by the amount of funds to be spent by the project in Austria (thus resulting in economic benefit for the Austrian film industry).

## **Cultural Clauses**

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**B.12** Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Cultural policy goals are provided for in the Austrian Federal Constitution Act, Federal Law Gazette No. 1/1930 as most recently amended by No. 121/2005 (*Bundes-Verfassungsgesetz, BGBl. Nr. 1/1930 idF BGBl. I Nr. 121/2005*), which is however geared towards the preservation of the cultural diversity within Austria. Further to Article 8 para 2:

“The Republic (federation, provinces and municipalities) avows itself to its grown linguistic and cultural diversity, which is expressed by different ethnic groups. Language, Culture, existence and preservation of these ethnic groups is to be respected, warranted and promoted.”

*(“Die Republik (Bund, Länder und Gemeinden) bekennt sich zu ihrer gewachsenen sprachlichen und kulturellen Vielfalt, die in den autochthonen Volksgruppen zum Ausdruck kommt. Sprache und Kultur, Bestand und Erhaltung dieser Volksgruppen sind zu achten, zu sichern und zu fördern.”)*

The FFA expresses goals, among those cultural policy goals, of federal film funding in Austria. Further to Section 1 FFA, the ÖFI: “... provides comprehensive funding for the Austrian film industry in its cultural and economic aspects and particularly aims at strengthening the Austrian film industry and the creative and artistic qualities of Austrian film to ensure its domestic and international success.” („*Das Österreichische Filminstitut fördert als bundesweite Filmförderungseinrichtung das österreichische Filmwesen nach kulturellen und wirtschaftlichen Aspekten, insbesondere die Stärkung der österreichischen Filmwirtschaft und die kreativ-künstlerische Qualität des*

*österreichischen Films als Voraussetzung für seinen Erfolg im Inland und im Ausland.“)*

Further to Section 2 FFA, film funding aims at:

“a) Supporting the production, dissemination and marketing of Austrian films which seem likely to achieve both audience approval and international recognition, thereby enhancing the economic viability, quality, autonomy and cultural identity of Austrian film productions,

b) Supporting the cultural, economic and international aspects of the Austrian film industry, especially by measures aimed at developing new talent and by drafting an annual film industry report,

c) Improving the international orientation of Austrian film and, hence, the basis for the dissemination and market-oriented exploitation of Austrian films in Austria and its economic and cultural impact at international level, particularly by supporting the presentation of Austrian film domestically and abroad.”

(„§ 2. (1) Ziel der Filmförderung ist es,

a) die Herstellung, die Verbreitung und Vermarktung österreichischer Filme zu unterstützen, die geeignet sind, sowohl entsprechende Publikumsakzeptanz als auch internationale Anerkennung zu erreichen und dadurch die Wirtschaftlichkeit, die Qualität, die Eigenständigkeit und die kulturelle Identität des österreichischen Filmschaffens zu steigern,

b) die kulturellen, gesamtwirtschaftlichen und internationalen Belange des österreichischen Filmschaffens zu unterstützen, insbesondere durch Maßnahmen zur Nachwuchsförderung sowie durch Erstellung eines jährlichen Filmwirtschaftsberichts,

c) die internationale Orientierung des österreichischen Filmschaffens und damit die Grundlagen für die Verbreitung und marktgerechte Auswertung des österreichischen Films im Inland und seine wirtschaftliche und kulturelle Ausstrahlung im Ausland zu verbessern, insbesondere durch die Förderung der Präsentation des österreichischen Films im In- und Ausland“)

## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>17</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The ÖFI distributes funding (except for ex-post economic success-based funding (*Referenzfilmförderung*) selectively. The applicant has no claim to receive grants when meeting certain prerequisites. Each application which complies with the FFA and the Funding Guidelines is reviewed by a Project Commission (consisting of the Director of the ÖFI as well as expert members) which selects those eligible for funding according to the project principle (Sec 6 FFA).

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<sup>17</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Funding of scripts is only granted pursuant to Sec 4 Funding Guidelines if a film can be expected which is deemed to improve the quality and economy of the Austrian film (Sec 12 FFA, Sec 4 FG).

Production funding is only granted if the project, taking into account the script, the crew and the cast of characters, is deemed eligible to contribute to an improvement of the quality of the Austrian film and the technical and economic situation of the Austrian movies. The ÖFI can waive these requirements if justified by the assessment of the film as a whole, in particular with a view to its economic impact in Austria and abroad (Sec 12 FFA, Sec 6 FG).

Cofinancing is funded only if the film project strengthens the cultural identity and is of recognized technical and artistic quality (Sec 12 FFA, Sec 8 FG).

## Contact Details

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**B.14** Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Mag. Roland Teichmann
Function:	Director
Postal Address:	Österreichisches Filminstitut Spittelberggasse 3 1070 Wien
Phone:	(+ 43) 1 526 97 30
Fax:	(+ 43) 1 526 97 30 440
Email:	<a href="mailto:office@filminstitut.at">office@filminstitut.at</a> <a href="mailto:roland.teichmann@filminstitut.at">roland.teichmann@filminstitut.at</a>

## PART B

### FUND SPECIFIC QUESTIONS

#### **Identification of the Funding Scheme**

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**B.1** *Country/region:*

Austria / Federal.

**B.2** *Name of the funding scheme:*

Film and TV Agreement 2006 (*Film/Fernsehabkommen 2006*), ÖFI

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The scheme is administrated and supervised by the Austrian Film Institute ("ÖFI") and the Austrian Broadcasting Corporation ("ORF").

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

As to the ÖFI, we may refer to the related questionnaire. The ORF is governed by the ORF Act, Federal Law Gazette No I 379/1984 as most recently amended by No I 83/2001 (*ORF – Gesetz, BGBl.Nr. 379/1984 zuletzt geändert durch BGBl. I Nr. 83/2001*).

The funding is governed by the Film/TV Agreement<sup>18</sup>. Generally, projects have to comply with the requirements of the Film Funding Act (as described in the Austrian Film Institute questionnaire), the ORF injects additional funds and, in turn, receives limited broadcast rights.

As the ORF-G is of minor relevance in connection with territorialisation provisions, it is not attached hereto.

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<sup>18</sup> Available on the Website of the Austrian Film Institute:  
<http://www.filminstitut.at/downloads/11592876FilmFernsehAbkommenmitZusatzvom%2018.09.2006.pdf>

### Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes. Further to § 1 Film/TV Agreement, projects have to comply with the requirements of the Film Funding Act and the ORF-Act. As detailed in the related questionnaire, the film funding act contains territorialisation provisions.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

See questionnaire Austrian Film Institute.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

See questionnaire Austrian Film Institute.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

See questionnaire Austrian Film Institute.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to*

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<sup>19</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

*former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005):*

See questionnaire Austrian Film Institute.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes. See questionnaire Austrian Film Institute.

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

See questionnaire Austrian Film Institute.

### **Cultural Clauses**

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

See questionnaire Austrian Film Institute.

### **Selective Schemes**

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B.13 If this scheme distributes aid selectively,<sup>20</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

See questionnaire Austrian Film Institute. Projects are however selected by a combined jury consisting of members of both the Austrian Film Institute and the ORF (Sec 3 Film/TV Agreement). Furthermore, films have to comply with the criteria for films to be broadcasted by the ORF, which however contains no territorial implications of relevance.

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<sup>20</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Mag. Roland Teichmann
Function:	Director
Postal Address:	Österreichisches Filminstitut Spittelberggasse 3 1070 Wien
Phone:	(+ 43) 1 526 97 30
Fax:	(+ 43) 1 526 97 30 440
Email:	<a href="mailto:office@filminstitut.at">office@filminstitut.at</a> <a href="mailto:roland.teichmann@filminstitut.at">roland.teichmann@filminstitut.at</a>



## PART B

### FUND SPECIFIC QUESTIONS

#### Identification of the Funding Scheme

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**B.1** *Country/region:*

Austria / Federal

**B.2** *Name of the funding scheme:*

**Federal Chancellery** (*Bundeskanzleramt*), BKA

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The Federal Chancellery (*Bundeskanzleramt*), Minoritenplatz 3, 1014 Vienna, is an administrative unit comparable to a ministry led by the Federal Chancellor (*Bundeskanzler*), who is also responsible for executing the AFA (as defined under B.4 below).

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

The scheme is governed by the Federal Art Funding Act, Federal Law Gazette No 96/1997 and 132/2000 (*Kunstförderungsgesetz 1988, BGBl. Nr.146/1988 idF BGBl. I Nr.95/1997 und BGBl. I Nr.132/2000*, "AFA") which came into force on 19 March 1988 and was most recently amended with effect on 30 December 2000.

A copy of the AFA in German is attached as Annex 2.

The AFA is detailed in Guidelines of the Federal Chancellery on the granting of funds under the AGA (*Richtlinien des Bundeskanzleramtes für die Gewährung von Förderungen nach dem Kunstförderungsgesetz*) which, in their latest version, came into effect on 1 June 2004.<sup>21</sup>

The Framework Guidelines for Federal Funding, federal law gazette II No 51/2004 (*Verordnung des Bundesministers für Finanzen über Allgemeine Rahmenrichtlinien für die Gewährung von Förderungen aus Bundesmitteln (ARR 2004), BGBl II, Nr. 51/2004*) apply to federal funding in general.

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<sup>21</sup> <http://www.bundeskanzler.at/site/4110/default.aspx>

**Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

No.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

Not applicable.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to*

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<sup>22</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

*former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005):*

Not applicable.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

No.

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Not applicable.

### **Cultural Clauses**

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Not applicable.

### **Selective Schemes**

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B.13 If this scheme distributes aid selectively,<sup>23</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The Federal Chancellery provides selective funding for the development, production and distribution of experimental-, animation, documentary and (short) movies as well as combined formats of artistic content in the area of independent, innovative film. The applicant has no claim to receive grants when meeting certain prerequisites<sup>24</sup>.

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<sup>23</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

<sup>24</sup> Funding criteria available under: [http://www.bundestkanzler.at/Docs/2006/9/27/FKFBeirat\\_25092006\\_Druck.pdf](http://www.bundestkanzler.at/Docs/2006/9/27/FKFBeirat_25092006_Druck.pdf)

Projects are eligible for funding

- which are deemed to qualify as independent and, as regards their content, quality works due to their non-commercial, independent way of production;
- which deliberately give attention to the media film and cinema, and, as regards technique, aesthetics, means, material and content, promise works, which follow the artistic and cultural traditions of cinema, its genuine way of expression and their contemporary developments;
- which deal critically and thoroughly with themes of social and cultural relevance, and address the reality of life of the potential audience;
- which generally ask questions, identify problems and bring artistic and social developments to light without just reproducing;
- which are conceived for distribution in cinemas or genre-specific festivals.

## Contact Details

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**B.14** Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Mag. Johannes Hörhan
Postal Address:	Bundeskanzleramt Sektion II – Kunstangelegenheiten Abteilung II / 3 Minoritenplatz 3, 1014 Wien
Phone:	++43-1-531 15-0
Fax:	+43-1-531 15-7538
Email:	johannes.hoerhan@bka.gv.at

## PART B

### FUND SPECIFIC QUESTIONS

#### Identification of the Funding Scheme

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**B.1** *Country/region:*

Austria.

**B.2** *Name of the funding scheme:*

**TV Fund Austria** (*Fernsehfonds Austria*)

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The TV Fund Austria is established with and supervised by the Austrian Regulatory Authority for Broadcasting and Telecommunications (*Rundfunk und Telekom Regulierungs-GmbH (RTR-GmbH)*), Mariahilfer Straße 77-79, 1060 Vienna, a limited liability company established by statutory law.

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

The scheme is established and governed by Sections 9f to 9b of the Austrian Communications Act, federal law gazette I No. 32/2001 (*KommAustriaG, BGBl I Nr. 32/2001*, "ACA"), whereas the relevant provisions have been most recently amended with effect on 1 January 2004.

A copy of the ACA in German is attached as Annex 3.

The fund has issued Guidelines for Grants from the Fernsehfonds Austria (*Richtlinien über die Gewährung von Mitteln aus dem Fernsehfonds Austria*) which, after approval by the European Union, are effective as of 1 June 2005.<sup>25</sup>

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<sup>25</sup> Available in English at: [http://www.rtr.at/web.nsf/englisch/Foerderungen\\_Fernsehfonds\\_Richtlinien](http://www.rtr.at/web.nsf/englisch/Foerderungen_Fernsehfonds_Richtlinien)

### Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

The Guidelines for Grants include the following explicit territorialisation obligations:

“(2) The expenses incurred in Austria should equal at least 1.5 times the amount of the grant awarded and must not be lower than the grant amount. In any case, 20% of the production costs can be incurred in other member states of the European Economic Area.

In grant award decisions, applications which involve an especially high share of spending in Austria will be given special consideration.”

*(“Die Aufwendungen, die in Österreich umgesetzt werden, sollen mindestens dem 1,5-fachen der gewährten Fördermittel entsprechen und dürfen diesen Förderungsbetrag nicht unterschreiten. 20% der Herstellungskosten können jedenfalls in anderen Mitgliedstaaten des Europäischen Wirtschaftsraumes ausgegeben werden.*

*Im Rahmen der Förderentscheidung ist auf Anträge, die einen hohen Anteil an in Österreich umgesetzten Aufwendungen aufweisen, besonders Bedacht zu nehmen.”)* .

These obligations are based on Sec 9g KommAustriaG, which sets forth that the Guidelines of the Fernsehfonds Austria may include provisions setting forth that a certain percentage of the works has to be carried out in Austria. Such provisions may only cover 80% of the production budget of a project which has been awarded a grant. The grant may only amount to 20% of the production budget.

*(“In die Richtlinien können auch Bestimmungen aufgenommen werden, die die Gewährung einer Förderung davon abhängig machen, dass ein bestimmter Anteil der Arbeiten im Inland durchgeführt werden muss. Derartige Bedingungen dürfen nur für*

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<sup>26</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

*maximal 80% des Produktionsbudgets eines geförderten Werks vorgesehen werden. Die Höhe der Förderung kann maximal 20% des Produktionsbudgets betragen.”)*

- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

As detailed above, the minimum amount to be spent in Austria must equal the grant amount. On the contrary, and in line with criterion 2.3 b) (2) of the European Commission Communication COM(2001) 534 final, a minimum of 20% of the production cost can be incurred in other EEA member states.

Further to the Activity report 2005 of the Fernsehfonds Austria, 25 production companies have been granted funds in the amount of EUR 7.447.088. The planned total production cost of the projects amounted to EUR 48 Mio, the funds planned to be spent in Austria amount to EUR 24 Mio, i.e. three times the grants awarded.<sup>27</sup>

- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Guidelines do not provide for specific rules on international co-productions or the application of the territorialisation provisions in the context of co-production agreements.

Further to the Activity Report 2005 of the Fernsehfonds Austria, 21 of the funded projects have been co-productions with 20 foreign production companies, 18 projects are Austrian only.

- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

There is neither judicial practice nor legal commentary addressing the implementation of territorialisation requirements in connection with film funding described above by the Fernsehfonds Austria.

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<sup>27</sup>[http://www.rtr.at/web.nsf/lookuid/EAC0593E3A3FB932C125719C00271761/\\$file/TaetigkeitsberichtFFAT\\_2005.pdf](http://www.rtr.at/web.nsf/lookuid/EAC0593E3A3FB932C125719C00271761/$file/TaetigkeitsberichtFFAT_2005.pdf)

In the Fernsehfonds Austria's Activity Report 2005, a short descriptive summary of negative grant decisions is provided. Further to such report, projects have, among others, also been rejected due to a low quota of funds intended to be spent in Austria.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes.

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Further to Sec 1.1 of the Funding Guidelines, the Fernsehfonds Austria supports "the creation of cultural productions of Austrian character in the form of television films, series and documentaries. The purpose of the fund is to contribute to improving the quality of television production and the capacity of the Austrian film industry, and to ensure the diversity of the cultural landscape. In addition, the fund is also intended to contribute to strengthening the audiovisual sector in Europe."

*(„1.1 Zur Unterstützung der Herstellung von Kulturgütern mit österreichischer Prägung in der Form von Fernsehfilmen, -serien und -dokumentationen stehen der RTR-GmbH jährlich 7,5 Millionen Euro zur Verfügung. Die Förderung soll zur Steigerung der Qualität der Fernsehproduktion und der Leistungsfähigkeit der österreichischen Filmwirtschaft beitragen und für eine vielfältige Kulturlandschaft Gewähr leisten. Darüber hinaus soll die Förderung einen Beitrag zur Stärkung des audiovisuellen Sektors in Europa leisten.“)*

### **Cultural Clauses**

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

See the questionnaire re Austrian Film Institute.



## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>28</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

There is no funding automatism, funds are provided selectively. Applications are reviewed by an expert panel (*Fachbeirat*), which takes into account several qualitative criteria. In connection therewith, the Funding Guidelines require

- necessary professional qualification and experience of the applicant with a view to the scope of the project (Section 3.2);
- adequate contribution of applicant's own funds (Section 3.3);
- a production eligible for funding in terms of quality and economic efficiency (Section 3.4).

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Dr. Alfred Grinschgl
Postal Address:	Rundfunk und Telekom Regulierungs-GmbH Mariahilfer Straße 77-79 1060 Vienna
Phone:	+43 (0) 1 58058 - 0
Fax:	+43 (0) 1 58058 – 91 91
Email:	<a href="mailto:filmfoerderung@rtr.at">filmfoerderung@rtr.at</a>

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<sup>28</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## PART B

### FUND SPECIFIC QUESTIONS

#### **Identification of the Funding Scheme**

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##### **B.1** *Country/region:*

Austria / Federal Province of Vienna.

##### **B.2** *Name of the funding scheme:*

**Vienna Film Fund** (*Filmfonds Wien*)

##### **B.3** *Name and address of the funding scheme's administration and supervisory authority:*

Whereas the Vienna Film Fund has legal personality and is administrated by its own staff (in particular its managing director, Dr. Peter Zawrel, 1070 Wien, Stiftgasse 6/2/3) it is supervised by the Fund Authority (*Fondsbehörde*), the Magistrate of the City of Vienna (*Magistrat der Stadt Wien*), Rathausstraße 1, 1082 Vienna.

##### **B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

The Vienna Film Fund, has been established as a non-profit entity with legal personality pursuant to the Viennese Act on Foundations and Funds, Viennese Law Gazette No. 14/1988, as most recently amended by Act No. 36/2003 (*Gesetz über Stiftungen und Fonds (Wiener Landes-Stiftungs- und Fondsgesetz)*, *LGBl Nr. 14/1988 idF LGBl 36/2003*). Such law however only covers the organisation of the Film Fund and does not set forth funding criteria, in particular territorialisation clauses and is therefore not attached.

The Vienna Film Fund has issued Funding Guidelines, which have been most recently amended on 28 March 2006 which will become effective as of 15 August 2006 after approval by the European Commission.<sup>29</sup>

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<sup>29</sup> <http://www.filmfonds-wien.at/upload/downloads/F%D6RILI%20neu%20Juli%202006.pdf>

**Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Further to Sec 3 of the Guidelines, the decisive funding criteria are the relevance of the project for the cultural development, the creation of added value for the film industry at the location Vienna as well as its fitness for commercialisation.

The economic impact of the project is assessed on the basis of the “Vienna Film Industry Effect” of the project, which is described in Sec 3.2 of the Guidelines as follows:

“The decisive criterion for evaluating economic significance for the City of Vienna is the Viennese film industry effect. It results from all projected expenditures, from which the film industry in Vienna and the “Vienna Region” will benefit in the course of carrying out the project. The “Vienna Region” includes – in line with the agreements between the provinces Vienna and Lower Austria in force – the districts of Lower Austria neighbouring to Vienna.

The Vienna Film Industry effect in particular includes

- the employment of staff in creative, technical or administrative functions;
- the utilisation of the infrastructure for film production.

The habitual residence is decisive for the evaluation of this effect resulting from salary's, fees and other staff expenditures. For all other expenditures, the company's seat is decisive.

Costs which do not involve payments of money may also be considered in the calculation of this effect, if relevant for the production.

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<sup>30</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

Expenditures from which the Viennese film industry benefits for subsidized productions must amount to at least 100% of the grant awarded by the FILM FUND, excluding the share of the contingency reserve, however in any case not more than 80% of the total production cost in another EU member state. Upon presentation of a statement of accounts, the economic effect on the film industry will be calculated on the basis of the actual expenditures.

*(“Maßgebliches Kriterium für das filmwirtschaftliche Interesse Wiens ist der Wiener Filmbrancheneffekt. Dieser ergibt sich aus allen voraussichtlichen Aufwendungen, die der Filmwirtschaft in Wien und in der „Vienna Region“ bei der Durchführung eines Vorhabens zugute kommen. Die „Vienna Region“ schließt – entsprechend den jeweils geltenden Vereinbarungen zwischen den Ländern Wien und Niederösterreich – die an Wien angrenzenden Bezirke des Landes Niederösterreich mit ein.*

*Zum Filmbrancheneffekt zählen insbesondere Ausgaben zur*

- *Beschäftigung von Filmschaffenden in künstlerischen, technischen und organisatorischen Funktionen und zur*
- *Nutzung der filmspezifischen Infrastruktur*

*Für die Anerkennung des Filmbrancheneffektes ist bei Gagen, Honoraren und anderen Personalausgaben das Wohnsitzprinzip (Ort des Lebensmittelpunktes) maßgeblich. Bei allen übrigen Ausgaben ist das Firmensitzprinzip (Ort der Rechnungslegung) ausschlaggebend.*

*Auch Aufwendungen, die nicht zu tatsächlichen Zahlungsströmen führen, können zur Berechnung des Filmbranchen-Effektes herangezogen werden, wenn diese für die Durchführung des Vorhabens von Relevanz sind.*

*Das geförderte Vorhaben hat einen Wiener Filmbrancheneffekt von mindestens 100% der vom FILMFONDS gewährten Förderungsmittel exklusive des Förderungsanteiles des FILMFONDS an einer etwaigen Überschreitungsreserve, höchstens jedoch 80 % der Gesamtherstellungskosten zu gewährleisten. Die Herstellerin ist in jedem Fall frei, mindestens 20% der Gesamtherstellungskosten in einem anderen EU-Mitgliedsstaat auszugeben. Bei Vorliegen der Abrechnung wird der Filmbranchen-Effekt anhand der tatsächlichen Aufwendungen überprüft.”)*

**B.7** Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

Applications are reviewed for compliance with the Guidelines before they are forwarded to a jury for evaluation. The Vienna Film Industry effect is one criterion among others which influences the decision whether funding is granted. The proportions detailed under B.6 above apply.

The Filmfonds Wien publishes a yearly report (*Kunst- und Kulturbericht 2005*)<sup>31</sup>, Further to such report, the Vienna Film fund awarded 124 projects out of 183

<sup>31</sup> <http://www.filmfonds-wien.at/upload/downloads/FFW-Jahresbericht%202005.pdf>

applications a grant with a total grant volume of apporx. 8.3 mio EUR. Funding was provided for 25 international co-productions, whereas 60% of the production cost in Austria has been directed to the Viennese film sector.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

The Guidelines do not provide for specific rules on the application of the territorialisation provisions in the context of co-production agreements. As detailed above, 25 international co-productions have been funded by the Vienna Film Funds in 2005.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

There is neither judicial practice nor legal commentary addressing the implementation of territorialisation requirements in connection with film funding by the Vienna Film Fund. As to administrative practice of the Vienna Film Funds, we may refer to the Funding Guidelines.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes.

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Further to Sec. 3.3. of the Funding Guidelines, the projects will be given special consideration in the following cases (amongst others):

- Projects with crew members regularly working in Vienna or plan to do so, thus likely resulting in long term effects of the project and the grant;

- The applicant has received other, in particular international financing, which become effective in Vienna;
- The applicant, apart from the subsidised project, carries on other projects in Vienna in the film sector or evidences his/her intention to do so in the future.

*(“Unter allen Vorhaben, welche die Voraussetzungen gemäß Punkt 3.1 und 3.2 erfüllen, werden folgende besonders berücksichtigt:*

- [...]
  - *die bei der Realisierung beschäftigten Filmschaffenden sind kontinuierlich in Wien tätig oder haben die Absicht, dies zu sein, sodass mit einer Nachhaltigkeit des Vorhabens und seiner Förderung zu rechnen ist;*
  - *der Antragstellerin stehen auch andere, insbesondere internationale Finanzierungsmittel zur Verfügung, die in Wien wirksam werden;*
- [...]
  - *die Förderungswerberin entfaltet in Wien neben dem beantragten Vorhaben auch andere, filmbranchenspezifische Tätigkeiten oder beabsichtigt nachweislich, solches hinkünftig zu tun.“)*

## Cultural Clauses

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**B.12** Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

See the provisions under the Austrian Constitution quoted in the questionnaire re Austrian Film Institute.

## Selective Schemes

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**B.13** If this scheme distributes aid selectively,<sup>32</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Other than from commercial success-based funding (*Referenzfilmförderung*), the scheme grants funding selectively, in particular based on the quality of the application, treatment, script, crew and cast of characters, quality of the production and exploitation concept (Sec 3 Funding Guidelines).

*(“Der für die Stadt Wien aufgrund der künstlerischen Qualität des Vorhabens zu erwartende kulturelle Effekt wird von einem unabhängigen Expertinnengremium (Jury) nach der Qualität der eingereichten Unterlagen, insbesondere des Treatments, Drehbuchs und der Stab- und Besetzungslisten beurteilt, aber auch aufgrund der produktionswirtschaftlichen und produktionstechnischen Qualität des Projektes und*

<sup>32</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

*des erwarteten Verwertungserfolges auf der Grundlage des vorgelegten Verwertungskonzeptes.“)*

In particular, the cultural effect is decisive, whereas, among others, the following criteria may influence the decision (Sec 3.1 Funding Guidelines):

- taking into account the cultural heritage of Vienna, especially with regard to film;
- awareness and presentation of specifically European or, in particular, Austrian and Viennese cultural and linguistic diversity;
- treatment of regional lifestyles and history, in particular in the “Centrope”-region;
- creation of original content dealing with Vienna;
- contribution to contemporary and internationally oriented film culture in Vienna;
- development and employment of new technologies and media;
- improvement of the access to creative content dealing with cultural and social matters;
- international networking with other sectors of art production in Vienna and the rest of Europe.

- (“- die Anknüpfung an das kulturelle, insbesondere filmkulturelle Erbe Wiens;*
- die Beachtung und Darstellung einer spezifisch europäischen und insbesondere Wiener sprachlichen und kulturellen*
  - Vielfalt;*
  - die Auseinandersetzung mit regionalen Lebensweisen und regionaler Geschichte, vorzugsweise in der „Centrope“-Region;*
  - die Schaffung neuer Programminhalte, die Wien zum Thema haben;*
  - die Stärkung einer zeitgemäßen und international orientierten Wiener Filmkultur;*
  - die Entwicklung und der Einsatz neuer Technologien und Trägermedien;*
  - die Verbesserung der Zugangsmöglichkeiten zu kreativen Programminhalten unter kulturellen und sozialen*
  - Aspekten;*
  - die grenzüberschreitende Vernetzung mit anderen Bereichen des Wiener und internationalen Kunst- und*
  - Kulturschaffens.“)*

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	MMag. Thomas Heskia
Function:	Controlling
Postal Address:	Filmfonds Wien Stiftgasse 6 1070 Wien
Phone:	+43 1 526 50 88 - 16
Fax:	+43 1 526 50 88 - 20
Email:	<a href="mailto:heskia@filmfonds-wien.at">mailto:heskia@filmfonds-wien.at</a>

## PART B

### FUND SPECIFIC QUESTIONS

#### Identification of the Funding Scheme

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**B.1** *Country/region:*

Austria/Vienna.

**B.2** *Name of the funding scheme:*

**Culture Department of the City of Vienna** (*Kulturabteilung der Stadt Wien*)

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The scheme is administrated by the Magistrate of the City of Vienna, Department 7 (Magistrat der Stadt Wien, MA7), Friedrich-Schmidt-Platz 5, A-1080 Vienna.

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

There are no specific provisions of relevance in the context of territorialization requirements.

#### Territorial Conditions<sup>33</sup>

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##### Explicit territorial conditions

**B.5** Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

No.

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<sup>33</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.



B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

Not applicable.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Not applicable.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

No related information available.

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Not applicable.

## Cultural Clauses

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Not applicable.

## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>34</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The Department decides freely on grants based on the artistic quality of the project. Pursuant to information publicly available, among the qualitative criteria a certain “Vienna-Reference” is required.

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Faßl-Vogler Sylvia, Mag.
Function:	
Postal Address:	Kulturabteilung der Stadt Wien Friedrich-Schmidt-Platz 5 1082 Wien
Phone:	+43 1 4000 84740
Fax:	+43 1 4000 9984740
Email:	<a href="mailto:vog@m07.magwien.gv.at">vog@m07.magwien.gv.at</a>

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<sup>34</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## PART B

### FUND SPECIFIC QUESTIONS

#### Identification of the Funding Scheme

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**B.1** *Country/region:*

Austria/Province of Lower Austria.

**B.2** *Name of the funding scheme:*

**Province of Lower Austria** (*Filmförderung des Landes Niederösterreich*)

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

The scheme is administrated by the government of the Province of Lower Austria, Department of Culture and Science (*Amt der NÖ Landesregierung, Abteilung Kultur und Wissenschaft*), Landhausplatz 1, 3109 St. Pölten.

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

Funding is provided in line with the provisions of the more general Lower Austria Culture Promotion Act, Provincial Law Gazette No. 5301-0 (*Niederösterreichisches Kulturförderungsgesetz 1996, NÖ LGBl. 5301-0, "CPA"*) as well as the Guidelines for Funding under the Lower Austria Culture Promotion Act (*Richtlinien für die Förderung nach dem NÖ Kulturförderungsgesetz 1996*) as most recently amended and published on 27. Juni 2006.

The CPA is attached hereto as Annex 4.

#### Territorial Conditions<sup>35</sup>

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##### **Explicit territorial conditions**

**B.5** Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and,*

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<sup>35</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

*only in case of significant changes, the situation before this date during the period from 2001 to 2005)?*

No.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

Not applicable.

B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Not applicable.

B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Not applicable.

### **Implicit or *de facto* territorial conditions**

B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes.

**B.11** Please describe the implicit or de facto territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Under Section 3 para 1 of the Funding Guidelines, the project must contribute to the goals as set forth in the Culture Promotion Act, the Regional Culture Concept, the Regional Development Concept or other Regional Concepts in the area of Art, Culture, Education and Science.

*(„Das Vorhaben (Projekt) leistet einen Beitrag zur Erreichung der Ziele, wie sie im NÖ Kulturförderungsgesetz 1996, im Landeskulturkonzept, im Landesentwicklungskonzept und in anderen Landeskonzepten für die Bereiche Kunst, Kultur, Bildung und Wissenschaft festgelegt sind.“)*

Under Section 3 para 2, funding can only be provided if the applicant is a Lower Austria resident or in case of a legal person, is seated in Lower Austria or the project is carried on in Lower Austria. If these requirements are not met, funding can only be provided if

- It serves the strengthening of the cultural autonomy of the Province of Lower Austria or
- The funding, with a view to the activity to be funded, is in the interest of the Province of Lower Austria.

*(„Bei einer natürlichen Person befindet sich der Hauptwohnsitz (§ 1 Abs. 7 des Meldegesetzes 1991, BGBl. Nr. 9/1992, in der Fassung BGBl. I Nr. 151/2004), bei einer juristischen Person der Sitz des Förderungswerbers in Niederösterreich oder das zu fördernde Vorhaben (Projekt) findet in Niederösterreich statt. Wenn diese Voraussetzung nicht zutrifft, kann eine Förderung nur vergeben werden, wenn*

- *sie einer Bekräftigung der kulturellen Eigenständigkeit des Landes Niederösterreich dient oder*
- *die Förderung aufgrund der zu fördernden Tätigkeit im Interesse des Landes Niederösterreich liegt.“)*

Pursuant to information provided by the liaison person at the funding scheme, as essential decision criteria for film production funding, apart from general, formal funding criteria, the following artistic and economic factors apply, which are assessed separately or in combination:

- percentage of Lower Austrian staff members participating in the project;
- expenditures in Lower Austria in the course of the production;
- participation of Lower Austrian companies (production companies located in Lower Austria, suppliers, catering and hotels, transport, income effects of the salaries, tax revenue, macroeconomic benefit)

## Cultural Clauses

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**B.12** Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit

territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The Constitution of the Province of Lower Austria, Lower Austria Law Gazette No.0001, as last amended on 26 January 2004 (*Niederösterreichische Landesverfassung, NÖ Landesgesetzblatt Nr. 0001*) provides for economic and cultural policy goals in its Article 4 as follows:

“Goals and principles of public administration:

[..]

2. Living Conditions:

The Province of Lower Austria, within its scope of responsibility, has to ensure the living conditions of the Lower Austrian population in the municipalities and regions, taking into consideration its economic, social and cultural needs. [...]

3. Economy

The Province of Lower Austria has to promote the development of the economy taking into account social, ecological and regional necessities.”

5. Culture, Science and Education

Art and culture, science, education and promotion of the homeland are to be promoted, taking into account its freedom and independence, as much as possible.

(“Artikel 4

*Ziele und Grundsätze des staatlichen Handelns:*

[...]

2. *Lebensbedingungen:*

*Das Land Niederösterreich hat in seinem Wirkungsbereich dafür zu sorgen, dass die Lebensbedingungen der niederösterreichischen Bevölkerung in den einzelnen Gemeinden und Regionen des Landes unter Berücksichtigung der abschätzbaren, wirtschaftlichen, sozialen und kulturellen Bedürfnisse gewährleistet sind. [...]*

3. *Wirtschaft:*

*Das Land Niederösterreich hat die Entfaltung der Wirtschaft unter Berücksichtigung sozialer, ökologischer und regionaler Notwendigkeiten zu fördern.*

[...]

5. *Kultur, Wissenschaft und Bildung:*

*Kunst und Kultur, Wissenschaft, Bildung und Heimatpflege sind unter Wahrung ihrer Freiheit und Unabhängigkeit soweit wie möglich zu fördern.“)*

## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>36</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Pursuant to information provided by the liaison person at the scheme, in addition to the territorial factors as described under B.11 above, in particular the following qualitative criteria are of relevance for the funding decision:

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<sup>36</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

- production of contemporary, creative films for current and next generations, which strive to be innovative in an aesthetic sense as well as critical, social and educational, while openness to the new and foreign is of special significance;
- presentation of the cultural and scenic diversity of the regions of Lower Austria;
- presentation of the diverse touristic assets of the Province at the shooting locations;
- presentation of Lower Austria, in a cultural as well as geographic sense, as a “wide country” surrounding the federal capital Vienna within a networked Europe of cultures.

## Contact Details

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**B.14** Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Mag. Angelika Wild
Postal Address:	Amt der NÖ Landesregierung, Abteilung Kultur und Wissenschaft Landhausplatz 1 3109 St. Pölten
Phone:	+43 2742/9005 - 13110
Fax:	+43 2742/9005 - 13029
Email:	noe-filmfoerderung@noel.gv.at

**PART B**

**FUND SPECIFIC QUESTIONS**

**Identification of the Funding Scheme**

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**B.1 Country/region:**

Austria/Province of Styria.

**B.2 Name of the funding scheme:**

**Cine Styria Film Fund**

**B.3 Name and address of the funding scheme's administration and supervisory authority:**

Cine Styria is a non-profit association funded by the Province of Styria. It is established as a non-governmental entity, and administrated by its own staff. It functions as an interface to the Styrian government

**B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)**

The funding scheme is governed by the Styrian Culture- and Art Promotion Act 2005, Styrian Law Gazette No. 80/2005, (*Gesetz vom 24. Mai 2005 über die Förderung der Kultur und der Kunst in der Steiermark (Steiermärkisches Kultur- und Kunstförderungsgesetz 2005)*, LGBl Nr. 80/2005, „CAP“).

Furthermore, Cinestyria has issued separate Funding Guidelines for commercial (as amended in March 2006) as well as artistic projects (as amended in April 2006)<sup>37</sup>.

The CAP is attached hereto as Annex 5.

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<sup>37</sup> Commercial projects: [http://www.cinestyria.steiermark.at/cms/dokumente/10224870\\_3582672/703d712c/CS%20Richtlinien%20KOM\\_Aktuell\\_M%C3%A4rz%202006.pdf](http://www.cinestyria.steiermark.at/cms/dokumente/10224870_3582672/703d712c/CS%20Richtlinien%20KOM_Aktuell_M%C3%A4rz%202006.pdf)  
Artistic projects: [http://www.cinestyria.steiermark.at/cms/dokumente/10224914\\_3582672/21dc1ff8/CS%20FILMKUNST%20F%C3%96RDERUNGSRICHTLINIEN%20April%202006.pdf](http://www.cinestyria.steiermark.at/cms/dokumente/10224914_3582672/21dc1ff8/CS%20FILMKUNST%20F%C3%96RDERUNGSRICHTLINIEN%20April%202006.pdf)



### Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Further to Sec 2.1 of the Funding Guidelines for commercial projects (*Cine Styria Filmcommission and Fonds*), projects have to aim at a maximum “Regional Effect”, i.e. that an amount of the production cost as high as possible, however at least 1,5 times to grant amount, is spent in Styria. 20 % of the production cost may however in any case be spent in other EER-member states. Decisions on funding have to give special considerations to applications, which plan a high amount of production cost to be spent in Styria.

Projects having a higher Regional Effect will be preferred to those which have a lower Regional Effect as regards their eligibility for funding as well as the amount of funding granted.

*(“Anzustreben ist, dass ein größtmöglicher Anteil, zumindest aber das Eineinhalbfache der vergebenen Fördersumme, in der Steiermark ausgegeben wird. 20% der Herstellungskosten können jedenfalls in anderen Mitgliedstaaten des Europäischen Wirtschaftsraumes ausgegeben werden. Im Rahmen der Förderentscheidung ist auf Anträge, die einen hohen Anteil an in der Steiermark umgesetzten Aufwendungen aufweisen besonders Bedacht zu nehmen.*

*Projekte, welche einen höheren Regionaleffekt erzielen, werden solchen, welche einen geringeren Regionaleffekt erzielen in Bezug auf deren Förderbarkeit, sowie in Bezug auf die Höhe der Fördersumme, vorgereiht.”)*

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

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<sup>38</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

The territorialisation requirements as described above influence the grant decision of the scheme and, if fulfilled, will cause the project to receive preferential treatment. Projects with a Regional effect lower than the grant will only be chosen if there are no other projects with more interesting characteristics. Again, the maximum amount of 80% corresponds with criterion 2.3 b) (2) of the Commission Communication COM(2001) 534 final.

- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Under the Funding Guidelines, there are no specific provisions on international co-productions.

- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

There is neither judicial practice nor legal commentary addressing the implementation of territorialisation requirements in connection with film funding by Cine Styria. As to administrative practice, we may refer to the Funding Guidelines.

### **Implicit or *de facto* territorial conditions**

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

Yes.

- B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

Further to Sec 2.1 of the Funding Guidelines for commercial projects (*Filmcommission and Fonds*), a project to be funded, as regards content and/or production, has to a certain extent to be related to Styria and Graz, respectively, and be eligible to have positive economic effects in Styria. This is the case if the project, at least in part, is realised in Styria and Graz, respectively.

*(“Das zur Förderung eingereichte Projekt muss wesentliche inhaltliche und/oder produktionstechnische Merkmale aufweisen, welche im Kontext zur Steiermark, respektive zu Graz stehen, bzw. geeignet sind, wirtschaftliche Effekte in der Steiermark zu erzielen. Dies ist in erster Linie dadurch der Fall, dass das Projekt zumindest teilweise in der Steiermark, respektive in Graz realisiert wird.”)*

## Cultural Clauses

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The Styrian Art and Culture Promotion Act sets forth cultural policy goals in its Section 1 as follows:

“(1) The Province of Styria as of civil rights undertakes to promote cultural activities in Styria or specially related to Styria.

[...]

(4) Culture and Culture promotion of the Province of Styria has to mind the following goals:

5. The preservation and use of the cultural heritage of Styria as an element of the contemporary self-consciousness aiming at making these institutions, achievements and works accessible for the present time and available for cultural productive use.

6. To preserve and promote the cultural diversity of the regions of Styria originated from the different ethnic influences.”

*(„(1) Das Land Steiermark als Träger von Privatrechten verpflichtet sich, in der Steiermark oder in besonderer Beziehung zur Steiermark ausgeübte kulturelle Tätigkeiten zu fördern.*

[...]

*(4) Die Kultur und Kunstförderung des Landes hat insbesondere folgende Ziele zu beachten:*

[...]

*5. die Erhaltung und Nutzung des kulturellen Erbes des Landes Steiermark als ein bestimmendes Element des gegenwärtigen Selbstverständnisses mit dem Ziel, diese Einrichtungen, Errungenschaften und Werke für die Gegenwart zu erschließen und kulturell produktiver Nutzung verfügbar zu machen;*

*6. die durch die verschiedenen ethnischen Einflüsse getragene kulturelle Vielfalt der Regionen des Landes Steiermark zu erhalten und zu fördern.”)*

## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>39</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Grants are made on the grounds of an opinion of Cine Styria's advisory board (*Beirat*) by the executive board (*Vorstand*) of Cine Styria. In the separate funding categories for funding of commercial projects, qualitative criteria apply. Applicants for production funding have to have the necessary professional, artistic and economic qualifications (Sec 3.1.2). Projects should be internationally exploitable (Sec 3.1.3).

The applicant has to contribute sufficient own funds to the project.

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Enrico Jakob
Function:	General Secretary
Postal Address:	CINE STYRIA Filmcommission & Fonds, Förderung und Service Burggasse 4/II 8010 Graz,
Phone:	+43 / (0)316 / 877-2435
Fax:	+43 / (0)316 / 877-2477
Email:	<a href="mailto:office@cinestyria.at">office@cinestyria.at</a>

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<sup>39</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

## PART B

### FUND SPECIFIC QUESTIONS

#### Identification of the Funding Scheme

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**B.1** *Country/region:*

Austria/Province of Tyrol

**B.2** *Name of the funding scheme:*

**Cine Tirol** (Cine Tirol Filmförderung – Film Commission & Fund)

**B.3** *Name and address of the funding scheme's administration and supervisory authority:*

Cine Tirol is a common initiative of the Provincial Government of Tyrol and the Tirol Tourist Board (*Cine Tirol, c/o Tirol Tourist Board, Maria-Theresien-Str. 55, 6010 Innsbruck*). It is a organisational unit within the Tirol Tourist Board (*Tirol Werbung GmbH*) and funded by the Province of Tyrol.

**B.4** *List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate the dates when these laws and regulations entered into force, whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force), and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only)*

Film Funding is subject the Tyrolean Culture Promotion Act, Tyrolean Law Gazette No. 35/1979 (*Tiroler Kulturförderungsgesetz, LGBl Nr. 35/1979, "CPA"*). Based on such Act, the Tyrolean Government has issued internal Guidelines for the Promotion of Culture (*Kulturförderungsrichtlinien*).

As regards film funding, Cine Tirol has issued Funding Guidelines as most recently amended on 5 May 2006.<sup>40</sup>

The CPA is attached hereto as Annex 6.

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<sup>40</sup> <http://homes.tiscover.com/prjt/cine-tirol/downloads/richtli06-eng.pdf>

### Explicit territorial conditions

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

Yes.

B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):

Pursuant to Section 2 of the Funding Guidelines,

“An imperative in funding is that the project submitted shall be entirely or at least partially produced in the Tirol.

The commercial an/or cultural significance of the project for the Tirol constitutes further important funding criterion, i.e. the commercial Tirol effect and/or the cultural Tirol Reference. The commercial Tirol Effect comprises the total expenditure involved in the implementation of a film project in the Tirol and/or becoming taxable in the Tirol by way of indirect profitability. The Tirol effect relates to the income both of private sector companies and of the public sector.

The Tirol Effect is calculated by taking the following cost areas into account:

- Use of film industry facilities (film an sound studios, hire of equipment, casting office);
- The employment of filmmakers, either resident or resident for tax purposes in Tirol, in artistic, technical and organizational functions.
- other expenditure involved in the course of the project in the Tirol (e.g. catering, hotel costs, board, rent, transport etc.)
- utilization of small industry facilities (workshops, tailors, joiners, etc.)

An appropriate Tirol effects exists when expenditure in the Tirol is shown to amount to at least twice that provided by cine Tirol. Part of the overall Tirol-factor is the Tirolean film branch factor. In order to calculate this it is necessary to take into account the exploitation of domestic film industry facilities and the employment of film producers resident in the Tirol. The Tirol film branch factor should amount to 100% of the subsidy; the applicant must submit detailed evidence to this effect. A film

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<sup>41</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

productions is said to have a Tirol reference when it is in the specific cultural and/or touristic interests of the Tirol, i.e. when the Tirol is clearly recognizable (visually, verbally or in respect of content as the location and/or when social and regional circumstances constitute an essential part of the action.“

*(“Unbedingte Voraussetzung für die Zuerkennung einer Förderung ist, dass das eingereichte Projekt zur Gänze oder zumindest in Teilen in Tirol realisiert wird.*

*Wesentlich sind weiters die wirtschaftlichen und/oder kulturelle Bedeutung des Projektes für Tirol: der wirtschaftliche Tirol-Effekt und/oder der kulturelle Tirol-Bezug.*

*Unter dem wirtschaftlichen Tirol-Effekt wird die Summe aller Ausgaben verstanden, die bei der Herstellung eines Filmvorhabens in Tirol getätigt wird und/oder im Zuge der Umwegrentabilität in Tirol steuerwirksam werden. Der Tirol-Effekt betrifft sowohl Einnahmen privatwirtschaftlicher Unternehmen als auch solche des öffentlichen Haushaltes.*

*Der Tirol-Effekt errechnet sich aus der Summe folgender Kostenbereiche:*

- *Nutzung von Einrichtungen der Filmbranche /Film- und Tonstudios, Geräteverleih, Castingbüro)*
- *Beschäftigung der in Tirol ansässigen, bzw. im Land steuerlich veranlagten Filmschaffenden in künstlerischen, technischen und organisatorischen Funktionen.*
- *Sonstige Ausgaben, die im Zuge des Projektes in Tirol getätigt werden (zB Catering, Hotelkosten, Verpflegung, Mieten, Transport, etc.)*
- *Nutzung von Einrichtungen der Kleinindustrie (Werkstätten, Schneidereien, Tischlereien etc.)*

*Ein angemessener Tirol-Effekt liegt vor, wenn nachweislich mindestens das Zweifache der von Cine Tirol bereitgestellten Mittel in Tirol ausgegeben werden. Eine Teilmenge des gesamten Tirol-Effektes ist der Tiroler Film-Branchen-Effekt, für dessen Berechnung die Nutzung von Einrichtungen der heimischen Filmbranche sowie die Beschäftigung der in Tirol ansässigen Filmschaffenden berücksichtigt werden. Der Tiroler Film-Branchen-Effekt sollte 100% der geförderten Mittel erreichen; dazu muss ein detaillierter Nachweis des Antragstellers vorliegen.*

*Eine Produktion hat Tirol-Bezug, wenn sie im kulturellen und/oder tourismusspezifischen Interesse Tirols liegt: wenn Tirol eindeutig als Ort des Geschehens erkennbar wird (visuell, verbal, oder inhaltlich) und/oder soziale und regionale Gegebenheiten einen wesentlichen Bestandteil der Handlung darstellen.“)*

As regards production funding (Section 3 Funding Guidelines):

“The main criteria are the artistic quality of the project, its worth as an internationally exploitable product, the appropriate Tirol Effect and/or Tirol Reference. Shooting work on the funded project must entirely or at least partially be carried out in the Tirol. An amount equivalent to at least twice the amount funded by Cine Tirol must be spent in the Tirol, of this a Tirol film branch factor of 100% of the funding should be achieved. Other percentages may be agreed upon in exceptional circumstances.“

*(„Hauptkriterien sind die künstlerische Qualität des Projektes, dessen internationale Verwertbarkeit, der angemessene Tirol-Effekt und/oder Tirol-Bezug. Die Dreharbeiten des geförderten Projektes müssen zur Gänze oder zumindest in Teilen in Tirol realisiert werden. Es muss mindestens das Zweifache der von Cine Tirol bereitgestellten Mittel in Tirol ausgegeben und davon sollte ein Tiroler Film-Branchen-Effekt von 100 % der geförderten Mittel erreicht werden. In Ausnahmefällen können andere Prozentsätze vereinbart werden.“)*

- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).

The applicant has to prove the Tirol-Effect in the course of the application. A Tirol-effect of less than 200% of the grant amount can only be waived under exceptional circumstances, thus, typically, projects with such lower Tirol-Effect will not receive funding.

- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Under the Funding Guidelines, there are no specific provisions on international co-productions.

- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

There is neither judicial practice nor legal commentary addressing the implementation of territorialisation requirements in connection with film funding by Cine Tirol. As to administrative practice, we may refer to the Funding Guidelines.

### **Implicit or *de facto* territorial conditions**

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case*



*of significant changes, the situation that prevailed before this date during the period from 2001 to 2005)?*

Yes.

B.11 Please describe the implicit or de facto territorialisation requirements that are practised by this funding scheme *(as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005)*:

Please refer to B.6 above.

## Cultural Clauses

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B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

Further to Section 1 para 1 Tyrolean Culture Promotion Act

“The Province, being vested with civil rights, has to promote cultural activities so far as this is in the interest of the Province and its population and they are carried on in the Province or refer to the Province in a special way.”

*(„Das Land hat als Träger von Privatrechten die kulturelle Tätigkeit zu fördern, soweit dies im Interesse des Landes und seiner Bevölkerung liegt und sie im Land ausgeübt wird oder in einer besonderen Beziehung zum Land steht.“)*

Section 7 Tyrolean Constitution, Tyrolean Law Gazette No 61/1988 as most recently amended by Tyrolean Law Gazette 125/2003 (*Tiroler Landesordnung, LGBL No 61/1988, idF LGBL 125/2003*) contains policy goals for the province. Among these, para 2 sets forth that:

“The Province of Tyrol has to provide for a co-ordinated development of the Province as a whole, thereby taking into account the social, economic and cultural needs of its population [...]“

*(„(2) Das Land Tirol hat für die geordnete, den sozialen, wirtschaftlichen und kulturellen Bedürfnissen der Landesbewohner entsprechende Gesamtentwicklung des Landes zu sorgen [...]“)*

## Selective Schemes

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B.13 If this scheme distributes aid selectively,<sup>42</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

We may refer to the definition of the criteria for production funding as presented under B.6 above. Among the main criteria are the artistic quality of the project, and its worth as an internationally exploitable product. Furthermore, Cine Tirol only funds projects which are likely to yield financial returns (Sec 3 para (15) Funding Guidelines).

## Contact Details

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B.14 Name, function and contact information (postal address, phone and email) of the liaison person at the funding scheme:

Contact:	Johannes Köck
Postal Address:	Cine Tirol c/o Tirol Tourist Board Maria-Theresien-Str. 55 6010 Innsbruck Austria
Phone:	+43-512-5320-180
Fax:	+43-512-5320-140
Email:	<a href="mailto:johannes.koeck@tirolwerbung.at">johannes.koeck@tirolwerbung.at</a>

Name of the lawyer and law firm in charge of the data collection:

Dr. Johannes Juranek / Dallmann & Juranek Rechtsanwälte GmbH

Date of the data collection and processing:

September 2006.

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<sup>42</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Anneces:

1.     Filmförderungsgesetz 2005
2.     Kunstförderungsgesetz 1988
3.     KommAustriaG
4.     Niederösterreichisches Kulturförderungsgesetz 1996
5.     Steiermärkisches Kultur- und Kunstförderungsgesetz 2005
6.     Tiroler Kulturförderungsgesetz