

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

Member State:	BELGIUM
Re:	Follow Up Reply
Date:	29 November 2006

(...)

Reference is made to your e-mail of November 20, 2006.

Please find below our responses to your additional questions.

1) Is my understanding correct that on the Federal level (tax shelter) and for the Flemish funding schemes no formal nationality or "regionality" certification procedures apply? - If my understanding is not correct, please provide us with a description of these nationality/"regionality" certification procedures as you did for the procedures applying to the funding scheme of the French speaking community.

Yes, your understanding is correct: no formal nationality or "regionality" certification procedures apply for the **Flemish** funding schemes.

2) Could you provide us a summary of the selective aid criteria and procedures for the Flemish funds, i.e the Support for Development - Ontwikkelingssteun, Support for Production – Productiesteun and Support for Scriptwriting – Scenariosteun, as requested by question B.13 - it is important for us to have this information since implicit territorialisation can take place under cover of quality considerations in the context of selective aid granting mechanisms, i.e. a funding schemes refuses aid to a project arguing its lack of quality, originality, cultural value etc., but in fact the implied reason is that the project does not comply with certain implicit territorialisation requirements.

The Vlaams Audiovisueel Fonds has recently issued **priority notes for each assessment committee** that provide the necessary context in selecting the projects. These priority notes serve in the selection phase (which is the second phase) for all applications that in principle qualify for support (after the formal admissibility inquiry, which is phase 1). This selection has the status of an advice to the Board of Directors of the Fonds, which takes the final decision (phase three). It offers the assessment committee a framework wherein it analyses and selects projects at its own discretion.

The assessment committee makes a distinction between major and minor projects, which take different places within the strategy of the Fonds and therefore need to be judged according to different criteria.

Primary-Flemish projects

In the first place, the VAF wants to support applications that have, in a broad sense, a cultural link with the Flemish Community. This link can exist through the identity of the **artistic team**, through the content of the **project**, or through both of them. However, firstly, emphasis is put on the fact that creators from other countries, regions or with a different ethnic or cultural background can be part of the Flemish Community, as well as Flemish people living in other countries or regions. Secondly, the connection of the project with the Flemish Community has to be interpreted broadly. It is not a narrow-Flemish point of view.

The **context of production** can as well be an essential factor in labeling a project as primarily Flemish: when the producer who bears the final responsibility for the production is Flemish or when the majority share in the financing is Flemish.

The most important criteria for the determination of the primary-Flemish character of a project are thus the following:

- the artistic team
- the project itself
- the context of production

When at least two of the three criteria are fulfilled, the project can generally be considered to be primary-Flemish.

Economical reasons (*i.e.* employment of more technical nature, other spending in Flemish community, ...) are not as such a decisive criterion for falling under the primary-Flemish regime.

Lastly, the choice of language is an important element when it comes to fiction, but does not play a role in deciding whether or not the primary or secondary regime is applicable or not.

Secondary-Flemish projects

These are projects that fulfill only one or none of the abovementioned requirements. Priority partners are the Netherlands and the French Community.

Here as well, economical reasons (*i.e.* employment of more technical nature, other spending in Flemish community, ...) can play a role, but are not as such a decisive criterion.

Possible reasons to give support:

- a Flemish producer gets a chance to acquire support from another region for a primary project
- important foreign "opportunities"

- important enhancement of professional expertise (extra specialization) of a Flemish maker/producer through participation to a foreign project.

Source: Prioriteitennota's beoordelingscommissies (animatie, documentaire, experimentele mediakunst, fictie) (Priority notes assessment committees (animation, documentary, experimental media art, fiction))

<http://www.vaf.be/frames.asp?page=1&lang=1>

3) Eventually, we do not understand your description of the territorialisation requirements that apply to the coproduction convention Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds. Could you provide us a clearer description of these requirements and how they work?

The only requirement is in fact not a territorialisation requirement, but an “**obligation to spend**”: the authority of the secondary state of co-production, the VAF or, as the case may be, its Dutch counterpart (the Nederlands Fonds voor de Film), provides a contribution of EUR 200,000 per film, and requires that 60 % of this contribution has to be spent in the secondary state, *i.e.* Belgium, or, as the case may be, the Netherlands.

Member State:	BELGIUM
Re:	Follow Up Question
Date:	25 November 2006

(...)

Thank you for your reply of 20 November 2006.

As mentioned in our last email of 21 November 2006, we have a final round of follow-up requests for clarification as follows:

- 1) Is our understanding correct that on the Federal level (tax shelter) and for the Flemish funding schemes no formal nationality or "regionality" certification procedures apply? - If my understanding is not correct, please provide us with a description of these nationality/"regionality" certification procedures as you did for the procedures applying to the funding scheme of the French speaking community.
- 2) Could you provide us a summary of the selective aid criteria and procedures for the Flemish funds, i.e the Support for Development - Ontwikkelingssteun, Support for Production – Productiesteun and Support for Scriptwriting – Scenariosteun, as requested by question B.13 - it is important for us to have this information since implicit territorialisation can take place under cover of quality considerations in the context of selective aid granting mechanisms, i.e. a funding schemes refuses aid to a project arguing its lack of quality, originality, cultural value etc., but in fact the implied reason ist that the project does not comply with certain implicit territorialisation requirements.
- 3) Eventually, we do not fully understand your description of the territorialisation requirements that apply to the coproduction convention Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds. Could you provide us a clearer description of these requirements and how they work?

(...)

Member State:	BELGIUM
Re:	Follow Up Question
Date:	21 November 2006

(...)

We have a second (...) round of follow-up questions as follows:

1) Is my understanding correct that on the Federal level (tax shelter) and for the Flemish funding schemes no formal nationality or "regionality" certification procedures apply? - If my understanding is not correct, please provide us with a description of these nationality/"regionality" certification procedures as you did for the procedures applying to the funding scheme of the French speaking community.

2) Could you provide us a summary of the selective aid criteria and procedures for the Flemish funds, i.e the Support for Development - Ontwikkelingssteun, Support for Production – Productisteun and Support for Scriptwriting – Scenariosteun, as requested by question B.13 - it is important for us to have this information since implicit territorialisation can take place under cover of quality considerations in the context of selective aid granting mechanisms, i.e. a funding schemes refuses aid to a project arguing its lack of quality, originality, cultural value etc., but in fact the implied reason ist that the project does not comply with certain implicit territorialisation requirements.

3) Eventually, we do not understand your description of the territorialisation requirements that apply to the coproduction convention Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds. Could you provide us a clearer description of these requirements and how they work?

(...)

Member State:	BELGIUM
Re:	Follow Up Reply
Date:	20 November 2006

(...)

Reference is made to your e-mail of October 10, 2006.

Please find below our answers to your follow-up questions regarding State aid to cinema in Belgium.

1) We assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in Belgian national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which Belgium is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law (B.8). Should this principle exceptionally not apply in Belgium 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.

In short, the hierarchy of norms between international conventions/treaties and the Belgian national/internal legislation is not regulated by the Belgian Constitution.

According to the case-law of the Belgian Supreme Court (*Cour de Cassation – Decision of May 27, 1971, Fromagerie franco-suisse “Le Ski”*), international treaties, however, prevail over the national or internal legal provisions, provided that (i) they have a direct effect and (ii) that they entered into force in accordance with Belgian law.

As a consequence, an internal rule may not be applied by a Judge if it is contrary to an international convention/treaty, no matter whether the convention is anterior or posterior.

It is worth noting, however, that the priority of international conventions/treaties over the Constitution (and therefore not over the laws and regulations at stake) is controversial and rejected by the Belgian *Cour d’Arbitrage*.

Since this is a rather complex matter, please let us know, should you require further information regarding hierarchy of norms under Belgian law.

We are, however, not aware of any exception to the above principles that would exceptionally apply to the concrete case of territorialization requirements.

2) Please provide information on cultural clauses, including relevant constitutional norms and provision articulating funding objectives and rationales that apply to the schemes (B.12).

As already indicated in our previous memorandum, the sole “cultural clauses” that we could find in the relevant legislation are the following:

- **Article 1 of the Royal Decree of June 22, 1967:**

“Dans les limites des crédits inscrits à cet effet au budget, des subventions et des primes peuvent être accordées, dans les conditions déterminées ci-après, en vue de promouvoir la culture cinématographique d’expression française ». (Free translation : « within the limit of the credits provided in the budget to that effect, the subsidies and aids may be granted, under the conditions set forth hereinafter, with an aim to promote the French speaking cinematographic culture”)

- **Article 1 of the Management Agreement entered into between the Dutch Speaking Community and the Dutch Audiovisual Fund:**

“Doel - [...] Het Fonds heeft, binnen het Vlaams audiovisueel beleid, tot doel om binnen de Vlaamse Gemeenschap op geïntegreerde, autonome wijze de onafhankelijke audiovisuele productie en auteurscreatie te stimuleren. De finaliteit blijft daarbij steeds het verwerven van een kwaliteitsimago voor de Vlaamse audiovisuele creaties [...] Het VAF zal er naar streven dat de Vlaamse multiculturele en diverse realiteit weerspiegeld wordt in de producties die ze stimuleert [...]”. (Free translation: “Goal - [...] The Fonds has, within the Flemish audiovisual policy, the goal to stimulate in an integrated, autonomous manner the independent audiovisual production and creation by authors within the Flemish Community. [...] The finality always remains acquiring an image of quality for the Flemish audiovisual creations [...]. The VAF will strive to reflect the Flemish multicultural and diverse reality in the productions its stimulates.”)

http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

- **Moreover, it may also be referred to Article 23 of the Belgian Constitution which provides, notably, that :**

“Chacun a le droit de mener une vie conforme à la dignité humaine. A cette fin, la loi, le décret ou la règle visée à l'article 134 garantissent, en tenant compte des obligations correspondantes, les droits économiques, sociaux et culturels, et déterminent les conditions de leur exercice.

Ces droits comprennent notamment :

5° le droit à l'épanouissement culturel et social. »

(Free translation: « Everyone has the right to lead a life in conformity with human dignity. To this end, the law, the decree or the rule referred to in Article 134 guarantees, taking into account the corresponding obligations, economic, social and cultural rights, and determine the conditions for exercising them.

These rights include notably:

5° the right to enjoy cultural and social fulfillment”.

3) Please provide relevant information on the "/Fond Spécial/".

The « Fonds Spécial » is a special fund allocated by the Belgian French Speaking Community since 1993 to stimulate the coproduction of audiovisual works between the RTBF (*Radio Télévision Belge Francophone*) and independent producers (according to a convention signed on March 2, 1994 between the Minister in charge of the audiovisual sector, the RTBF and the professional organization representing the independent production - PROSPERE, UPPF, UPPT-).

Under the fund, the French speaking Community allocation amounts to 1.214.678 € annually.

The choice of projects is left up to the RTBF, which was given a "*droit de tirage*" (drawing right) for an amount equivalent to that paid into the fund each year.

The 1.214.678 € cannot be used for acquiring broadcasting rights, but is to be added on to the financial contributions made by the RTBF in co-productions with independent producers.

A committee has been set up to appraise and monitor the application of the agreement, to introduce new perspectives according to results obtained and to set out how to use income generated by productions financed under the agreement. The committee is made up of the "Administration de l'Audiovisuel" (Ministry of Culture), the Film Selection Committee ("Commission de sélection des films"), the professional organizations that are signatories to the convention and the RTBF.

The French Community gives the independent producer of each project selected a sum equivalent to that allocated to the project by the RTBF. The independent producer has delegate producer powers and is responsible for managing the subsidy.

The "Cellule technique" of the Audiovisual Administration is responsible for the drawing-up and performance of the contracts signed between the French Community and independent producers, within the framework of the agreement.

In 2005 and 2006, the fund was allocated as follows:

- feature-length fiction film : 470.998,00 EUR;
- Documentary : 272.683,00 EUR;
- Téléfilm : 470.998,00 EUR.

(...)

Member State:	BELGIUM
Re:	Follow Up Question
Date:	10 November 2006

(...)

We have the follow-up questions and requests for clarifications as follows:

1) 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.

2) Please provide us information on cultural clauses, including relevant constitutional norms and provision articulating funding objectives and rationales that apply to the schemes (B.12).

3) Please provide us with relevant information on the "/Fond Spécial/" you mentioned in your report.

(...)

Member State:	BELGIUM
Re:	Follow Up Question
Date:	13 October 2006

(...)

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.

(...)

Member State:	BELGIUM
Re:	Reply
Date:	02 October 2006

(...)

Please find attached hereto our input regarding the legal questionnaire on State aid for independent film and audiovisual production and distribution in Belgium. As per your request, we limited the scope of the study to funding schemes with an annual budget of at least € 1 million in 2005.

Please note that (...) this work was completed by Mid-level and junior associates.

(...) The attached document remains therefore subject to (...) final review and approval.

(...)

Attachments to e-mail of 02 October 2006

- BRUDOCs-#474820-v2-Questionnaire_on_State_Aid_to_Cinema_-_Sept__2006.DOC

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS
(Version of October 1st, 2006)**

(...)

PART A

GENERAL QUESTIONS

Please use only one form per Member State.

OVERVIEW

A.1 Country / region:

Belgium / French Speaking Community
Belgium / Dutch Speaking Community
Belgium / Federal State

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 works¹ 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):

Funding schemes in the French-speaking Community and Walloon Region :

1. Aide à la production (Support for Production) - Centre du Cinéma et de l'Audiovisuel
2. Aide à la production de programmes télévisuels (Support for Production of Television programs) - Centre du Cinéma et de l'Audiovisuel
3. Subvention à la diffusion et prime à la qualité - (Grant on the basis of distribution and quality award) - Centre du Cinéma et de l'Audiovisuel
4. Fonds Spécial (Special Fund) - Centre du Cinéma et de l'Audiovisuel
5. Financement d'oeuvres audiovisuelles (Finance for Audiovisual Works) - Wallimage

Funding schemes in the Dutch-speaking Community :

6. Ontwikkelingssteun (Support for development) - Vlaams Audiovisueel Fonds

¹ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

7. Productiesteun (Support for production) - Vlaams Audiovisueel Fonds
8. Promotiesteun (Support for promotion) - Vlaams Audiovisueel Fonds
9. Scenariosteun (Support for Scriptwriting) - Vlaams Audiovisueel Fonds

Funding schemes at the federal level:

10. Tax-shelter

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:

According to the report issues by the “*Centre de l’Audiovisuel et des Médias*”, Belgium entered into Co-production agreements with the following countries :

- France (agreement entered into on 20/09/1962) as revised in 2004.
- Germany (agreement entered into on 27/07/1964)
- Italy (agreement entered into on 15/10/1970)
- Israel (agreement entered into on 08/10/1971)
- Tunisia (agreement entered into on 11/03/1976)
- Canada (agreement entered into on 24/02/1984)
- Switzerland (agreement entered into on 09/01/1989)

The Belgian French-speaking Community (*Centre du Cinéma et de l’Audiovisuel*) also entered into five co-production agreements with:

- Portugal (agreement entered into on 12/03/1993)
- Tunisia (agreement entered into on 29/09/1997)
- Morocco (agreement entered into on 16/02/2000)
- Italy (agreement entered into on 31/08/2000)
- France (agreement entered into on 18/05/2004)

The Centre du Cinéma also entered into a « *protocole d’entente sur la coopération en matière de cinéma et de production télévisuelle* », as well as a « *entente sur la distribution de films* » with the Sodec (Société de développement des entreprises culturelles) in Québec.

The Dutch-speaking Community also entered into the following co-productions agreement with :

- the Netherlands (agreement entered into on 1/12/2005): Vlaams Audiovisueel Fonds VZW – Nederlands Fonds voor de Film

It is also worth noting that in 2004, Belgium ratified the European Convention on cinematographic co-production.

Meetings with representatives of English, Dutch and German institutions are expected to take place in 2006.

(Source : Bilan de la production, de la promotion et de la diffusion cinématographique et audiovisuelles – Centre du cinéma et de l’Audiovisuel – Service général de l’Audiovisuel et des Multimédias Ministère de la Communauté française de Belgique <http://www.cfwb.be/aV/fram001.htm> and Vlaams Audiovisueel Fonds www.vaf.be)

NATIONALITY 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:²

French-Speaking Community:

Authority in charge :

“Commission de Sélection des films” and “groupe d’agrément”

Formal Procedure:

The mission of the Films Selection Commission is to give an opinion on each request for support which is submitted by applicants.

The Commission motivated opinions are communicated to the Minister who takes a decision with regard to support. Projects that are accepted by the Minister are then examined from a technical and financial viability point of view by the “groupe d’agrément”.

Criteria for eligibility:

According to Article 3 of the Royal Decree of June 22, 1967, as amended, regarding subventions to the films production, to be considered as “Belgian”, films must meet the following conditions:

- a) they must be produced by natural or legal persons with Belgian nationality, whose technical and commercial activity is exercised principally in Belgium. Moreover, the producers may not be under the dependence or the control of a foreign company. However, foreigners that may justify to be Belgian resident and exercising the activity of producer in Belgium may also benefit from the aids, subject to reciprocity (reciprocity is, however, not required for members of the European Economic Area).
- b) The films must be made in Belgium. Exteriors may be made abroad if required by the scenario or the climate. All laboratory and studio works must be carried out in Belgium.
- c) Workers and figurants participating to the film must have Belgian nationality or have a Belgian work permit.

² E.g. the French “Procédure d’agrément”.

According to Article 22 of the Royal Decree of June 22, 1967, as amended, regarding subventions to distribution and quality award, will be recognized as Belgian in French language, films that met the following criteria:

1° to be turned in original French speaking version. Only a small part (max. 25 %) of the dialogues may be in other languages

2° to have been granted a selective aid to production by the Belgian French-speaking Community;

3° if no selective aid was granted, films will be recognized as Belgian if they have been produced in accordance with international agreements or that they may be granted at least ten points from the following list:

- a) three points are granted to a film whose producer is a French speaking Belgian;
- b) two points are granted to a film whose lead role is attributed to a French speaking Belgian actor;
- c) two points are granted to a film whose delegated producer is a French speaking Belgian;
- d) one point is granted to a film whose scenario is an adaptation of a work written by a Belgian author (French language);
- e) one point is granted to a film whose scenarist is a French speaking Belgian;
- f) one point is granted to a film whose music compositor is a French speaking Belgian;
- g) one point is granted to a film whose picture director is a French speaking Belgian;
- h) one point is granted to a film whose music compositor is a French speaking Belgian;
- i) one point is granted to a film whose sound engineer is a French speaking Belgian;
- j) one point is granted to a film whose “chef-monteur” is a French speaking Belgian;

4°) at least 50 percent of the fees remuneration and reimbursable costs paid to all persons that collaborated intellectually, artistically or technically to the production of the film must be paid to EU nationals.

EXPECTED DEVELOPMENTS

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

No information available at this stage.

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 2006,³ and indicate the name and address of the administration of these funding schemes:⁴

REFERENCES TO LOCAL STUDIES

- 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):

Bilan de la production, de la promotion et de la diffusion cinématographique et audiovisuelles – Centre du cinema et de l’Audiovisuel – Service général de l’Audiovisuel et des Multimédias Ministère de la Communauté française de Belgique
<http://www.cfwb.be/aV/fram001.htm>

Vlaams Audiovisueel Fonds (www.vaf.be); Jaarverslag/Annual Report (pdf file);
http://www.juridat.be/cgi_loi/wetgeving.pl

Beheersovereenkomst (management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

Bijlage 1 (Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

Brochure edited by the Federal Public Service of Finance “Tax Shelter - Tax incentives for audiovisual productions” 2006, available at
<http://minfin.fgov.be/portail1/nl/brochure/publicaties/pdf/TAX%20SHELTER%20GB.pdf#search=%22tax%20shelter%20audiovisual%20%22>

³ 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.

⁴ E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

PART B
FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)⁵ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.⁶

Please use for each funding scheme a separate form.

1.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / French-speaking Community

B. Name of the funding scheme:

Support for Production

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

Ministère de la Communauté française de Belgique – Service général de l'Audiovisuel et des Multimédias –
Centre du Cinéma et de l'Audiovisuel – Commission de Sélection des Films (article 11 et seq. of the Royal Decree of June 22, 1967).

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,

⁵ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

- 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).

1) Arrêté royal du 22 juin 1967 tendant à promouvoir la culture cinématographique (tel que modifié les 17 février 1976, 24 mars 1978, 4 avril 1995, 25 mars 1996, 21 décembre 1998, 5 mai 1999 et 18 décembre 2001)

(Royal Decree of June 22, 1967 tending to promote cinematographic culture (as modified by royal decreed of February 17, 1976, March 24 1978, April 4, 1995, march 25, 1996, December 21, 1998 and December 18, 2001)



Loi 22 juin 1967.rtf

available at

http://www.juridat.be/cgi_loi/loi_F.pl?cn=2001121865

http://www.juridat.be/cgi_loi/loi_F.pl?cn=1998122143

It is worth noting, however, that the Minister for Audiovisual of the Belgian French-speaking community is currently working on a new decree regarding aids to the cinematographic production. It must indeed be mentioned that, for the time being, this matter is only partly governed by a very old and un-adapted legislation (the Royal Decree of June 22, 1967) and is therefore mostly governed, in practice, by the “general provisions” issued by the administration.

Please note that our answers below therefore reflect those “general provisions” applied by the administration. This rules will, however, be adapted by the future decree.

2) Centre du Cinéma et de l’Audiovisuel de la Communauté française de Belgique – Demandes d’aides soumises à l’avis de la commission de sélection des films – Disposition générales – Avril 2004

available at <http://www.cfwb.be/AV/doctel/CSFDispGen.pdf>.

3) Décret du 22 décembre 1994 portant diverses mesures en matière d’audiovisuel et d’enseignement (*Decree of December 22, 1994 adopting several measures regarding audiovisuals matters*) creating the « Centre du Cinéma et de l’Audiovisuel)., available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=1994122289.

TERRITORIAL CONDITIONS⁷

⁷ 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.

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

If 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 Royal Decree of June 22, 1967 does not contain any specific territorialisation requirements.

In practice, however, the “general provisions” applied by the Commission de Sélection de films provides that “*le demandeur devra apporter la preuve que 100% de l’aide est dépensée en Belgique ou au profit de personnes physiques ou morales résidant fiscalement en Belgique (7. Utilisation de l’aide)*». (Free English translation “*Applicants must supply proof that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers (7. use of the aid)*”)

- 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 already mentioned, the territorialisation requirements applied, in practice, by the Commission de Sélection requires that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. This requirement is however not included in any legislation for the time being. Depending on the negotiations surrounding the implementation of a new Decree regarding aid to cinema, this requirement might be included in the new legislation. We have, however, no information as to this new legislation.

- 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):

N/A

- 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):

See answer to question B.7.

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

If 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):

Article 4 of the Decree of June 22, 1967 provides that, to be considered as being of Belgian nationality, the films must (a) be produced by legal or moral persons with Belgian nationality whose technical or commercial activity is exercised principally in Belgium, and that producers may not be under the dependence or the control of a foreign company (foreigners that may justify to be Belgian resident and exercising the activity of producer in Belgium may also benefit from the aids, subject to reciprocity – reciprocity is, however, not required for members of the European Economic Area); (b) the films must be made in Belgium (exteriors may be made abroad if required by the scenario or the climate, but all laboratory and studio works must be carry out in Belgium), (c) workers and figurants participating to the film must have Belgian nationality or have a Belgian work permit.

According to the “general provisions” applied in practice by the Commission de Sélection, applicants must be registered independent production companies,

constituted as an S.C.R.L., an S.A. or an S.P.R.L., established in the French-speaking Community of Belgium, and of which the project leader, its administrator and the majority of its directors are of Belgian nationality or nationals of EU Member States.

Besides, only productions considered as majority Belgian, i.e. whose producer, lead role and a technician (photo director, sound engineer, customer director, ‘monteur image’) have the Belgian nationality, may apply for support with the third committee (dealing with request for support for a third or following works of a Belgian producer).

CULTURAL CLAUSES

- 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:

Article 1 of the Royal Decree of June 22, 1967:

“Dans les limites des crédits inscrits à cet effet au budget, des subventions et des primes peuvent être accordées, dans les conditions déterminées ci-après, en vue de promouvoir la culture cinématographique d’expression française ».

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁸ 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 rapport issued by the ‘Centre du Cinéma et de l’Audivisuel’ relating to the cinematographic production, promotion and diffusion mentions that, in its assessment of projectn the ‘Commission de Sélection des Films’ takes into account different criteria likely to guarantee the quality of the project such as the scenario, the intent note written by the applicant and the elements of production.

At a second stage (after a promise of support has been granted by the Ministry upon advice of the Commission), the “groupe d’agrément” will exanimate the technical and financial viability of the project, i.e. list of responsible persons, technicians and interpreters, provisory financial plans and forecasts, fee estimates, provisory justifications of financing, insurances contract projects, etc., to grant a provisory certification.

CONTACT DETAILS

⁸ 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.

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

COMMISSION DE SÉLECTION DES FILMS :

Fatmire Blakaj tel. 02.413.33.51 fax 02.413.20.68
fatmire.blakaj@cfwb.be

Francis Dujardin tel 02.413.22.33 fax 02.413.20.68
francis.dujardin@cfwb.be

Véronique Pacco tel. 02.413.33.42 fax 02.413.20.68
veronique.pacco@cfwb.be

GROUPE D'AGRÉMENT :

Emmanuel Roland tel. 02.413.22.31 fax 02.413.20.68
emmanuel.roland@cfwb.be

Bernadette Vandenabeele tel. 02.413.22.30 fax. 02.413.20.68
Secrétariat bernadette.vandenabeele@cfwb.be

2.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / French-speaking Community

B. Name of the funding scheme:

Aide à la production de programmes télévisuels

(Support for Production of Television programs)

(covers applications for support for production of one or more audiovisual works, whether part of a series or not, in the following genre

1) creative documentary

2) animation

3) short film)

In 2005, 78 request for production support have been examined by the Commission, 24 projects have received a favourable opinion for a total of 1.086.750 EUR.

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

Ministère de la Communauté française de Belgique – Service général de l'Audiovisuel et des Multimédias

Centre du Cinéma et de l'Audiovisuel

Commission de Sélection des Films (article 11 et seq. of the Royal Decree of June 22, 1967).

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).

1) Arrêté royal du 22 juin 1967 tendant à promouvoir la culture cinématographique (tel que modifié les 17 février 1976, 24 mars 1978, 4 avril 1995, 25 mars 1996, 21 décembre 1998, 5 mai 1999 et 18 décembre 2001)

(Royal Decree of June 22, 1967 tending to promote cinematographic culture (as modified by royal decreed of February 17, 1976, March 24 1978, April 4, 1995, march 25, 1996, December 21, 1998 and December 18, 2001)

available at

http://www.juridat.be/cgi_loi/loi_F.pl?cn=2001121865

http://www.juridat.be/cgi_loi/loi_F.pl?cn=1998122143

It is worth noting, however, that the Minister for Audiovisual of the Belgian French-speaking community is currently working on a new decree regarding aids to the cinematographic production. It must indeed be mentioned that, for the time being, this matter is only partly governed by a very old and un-adapted legislation (the Royal Decree of June 22, 1967) and is therefore mostly governed, in practice, by the “general provisions” issued by the administration.

Please note that our answers below therefore reflect those “general provisions” applied by the administration. This rules will, however, be adapted by the future decree.

2) Centre du Cinéma et de l’Audiovisuel de la Communauté française de Belgique – Demandes d’aides soumises à l’avis de la commission de sélection des films – Disposition générales – Avril 2004

available at <http://www.cfwb.be/AV/doctel/CSFDispGen.pdf>.

3) Décret du 22 décembre 1994 portant diverses mesures en matière d'audiovisuel et d'enseignement (*Decree of December 22, 1994 adopting several measures regarding audiovisuals matters*) creating the « Centre du Cinéma et de l’Audiovisuel), available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=1994122289.

TERRITORIAL CONDITIONS⁹

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

If 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*

⁹ 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.

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

The Royal Decree of June 22, 1967 does not contain any specific territorialisation requirements.

In practice, however, the “general provisions” applied by the Commission de Sélection de films provides that “*le demandeur devra apporter la preuve que 100% de l’aide est dépensée en Belgique ou au profit de personnes physiques ou morales résidant fiscalement en Belgique (7. Utilisation de l’aide)*». (Free English translation “*Applicants must supply proof that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers (7. use of the aid)*”)

- 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 already mentioned, the territorialisation requirements applied, in practice, by the Commission de Sélection requires that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. This requirement is however not included in any legislation for the time being. Depending on the negotiations surrounding the implementation of a new Decree regarding aid to cinema, this requirement might be included in the new legislation. We have, however, no information as to this new legislation.

- 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*):

N/A

- 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*):

See answer to question B.7.

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

If 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*):

Article 4 of the Decree of June 22, 1967 provides that, to be considered as being of Belgian nationality, the films must (a) be produced by legal or moral persons with Belgian nationality whose technical or commercial activity is exercised principally in Belgium, and that producers may not be under the dependence or the control of a foreign company (foreigners that may justify to be Belgian resident and exercising the activity of producer in Belgium may also benefit from the aids, subject to reciprocity – reciprocity is, however, not required for members of the European Economic Area); (b) the films must be made in Belgium (exteriors may be made abroad if required by the scenario or the climate, but all laboratory and studio works must be carry out in Belgium), (c) workers and figurants participating to the film must have Belgian nationality or have a Belgian work permit.

According to the “general provisions” applied in practice by the Commission de Sélection, applicants must be registered independent production companies, constituted as an S.C.R.L., an S.A. or an S.P.R.L., established in the French-speaking Community of Belgium, and of which the project leader, its administrator and the majority of its directors are of Belgian nationality or nationals of EU Member States.

Besides, a minimum number of Belgian or EU national personnel must be employed by the production company:

- 1) the director or scriptwriter
- 2 heads of department (technicians)

Applying producers must alternate requests for minority and majority Belgian works in the genres relevant to this support scheme (two requests for minority works may not be introduced in a row). Majority work is defined as director or scriptwriter of Belgian nationality AND the lead (delegate) production company is Belgian and holds the majority share of rights to the production

CULTURAL CLAUSES

- 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:

Article 1 of the Royal Decree of June 22, 1967:

“Dans les limites des crédits inscrits à cet effet au budget, des subventions et des primes peuvent être accordées, dans les conditions déterminées ci-après, en vue de promouvoir la culture cinématographique d’expression française ».

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹⁰ 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 rapport issued by the ‘Centre du Cinéma et de l’Audivisuel’ relating to the cinematographic production, promotion and diffusion mentions that, in its assessment of projects the ‘Commission de Sélection des Films’ takes into account different criteria likely to guarantee the quality of the project such as the scenario, the intent note written by the applicant and the elements of production.

At a second stage (after a promise of support has been granted by the Ministry upon advice of the Commission), the “groupe d’agrément” will examine the technical and financial viability of the project, i.e. list of responsible persons, technicians and interpreters, provisory financial plans and forecasts, fee estimates, provisory justifications of financing, insurance contracts, etc., to grant a provisory certification.

CONTACT DETAILS

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

COMMISSION DE SÉLECTION DES FILMS :

Fatmire Blakaj tel. 02.413.33.51 fax 02.413.20.68
fatmire.blakaj@cfwb.be

Francis Dujardin tel 02.413.22.33 fax 02.413.20.68

¹⁰ 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.

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Véronique Pacco

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GROUPE D'AGRÉMENT :

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Bernadette Vandenabeele

tel. 02.413.22.30

fax. 02.413.20.68

Secrétariat bernadette.vandenabeele@cfwb.be

3.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / French-speaking Community

B. Name of the funding scheme:

Subvention à la diffusion et prime à la qualité - (Grant on the basis of distribution and quality award)

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

Ministère de la Communauté française de Belgique – Service général de l'Audiovisuel et des Multimédias –
Centre du Cinéma et de l'Audiovisuel – Commission du film (Article 30 of the Royal Decree of June 22, 1967).

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).

1) Arrêté royal du 22 juin 1967 tendant à promouvoir la culture cinématographique (tel que modifié les 17 février 1976, 24 mars 1978, 4 avril 1995, 25 mars 1996, 21 décembre 1998, 5 mai 1999 et 18 décembre 2001)

(Royal Decree of June 22, 1967 tending to promote cinematographic culture (as modified by royal decreed of February 17, 1976, March 24 1978, April 4, 1995, march 25, 1996, December 21, 1998 and December 18, 2001)



Loi 22 juin 1967.rtf

available at

http://www.juridat.be/cgi_loi/loi_F.pl?cn=2001121865

http://www.juridat.be/cgi_loi/loi_F.pl?cn=1998122143

2) Décret du 22 décembre 1994 portant diverses mesures en matière d'audiovisuel et d'enseignement (*Decree of December 22, 1994 adopting several measures regarding audiovisuals matters*) creating the « Centre du Cinéma et de l'Audiovisuel), available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=1994122289.

TERRITORIAL CONDITIONS¹¹

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

If 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 Royal Decree of June 22, 1967 does not contain any specific territorialisation requirements.

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*).

N/A

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*

¹¹ 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.

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

N/A

- 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):*

N/A.

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

If 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)*:

According to Article 20 of the Royal Decree of June 22, 1967, the film must have been officially recognised as having Belgian nationality and a French language original version by the Centre du Cinéma to be eligible for support (criteria are listed at Article 22 of Royal Decree of 22 June 1967 as amended).

According to Article 22 of the Royal Decree of June 22, 1967, as amended, regarding subventions to distribution and quality award, will be recognized as having Belgian nationality in French language, films that met the following criteria:

1° to be turned in original French speaking version. Only a small part (max. 25 %) of the dialogues may be in other languages;

2° to have been granted a selective aid to production by the Belgian French-speaking Community;

3° if no selective aid was granted, films will be recognized as Belgian if they have been produced in accordance with international agreements or that they may be granted at least ten points from the following list:

- a) three points are granted to a film whose producer is a French speaking Belgian;
- b) two points are granted to a film whose lead role is attributed to a French speaking Belgian actor;
- c) two points are granted to a film whose delegated producer is a French speaking Belgian;
- d) one point is granted to a film whose scenario is an adaptation of a work written by a Belgian author (French language);
- e) one point is granted to a film whose scenarist is a French speaking Belgian;
- f) one point is granted to a film whose music compositor is a French speaking Belgian;
- g) one point is granted to a film whose picture director is a French speaking Belgian;
- h) one point is granted to a film whose music compositor is a French speaking Belgian;
- i) one point is granted to a film whose sound engineer is a French speaking Belgian;
- j) one point is granted to a film whose “chef-monteur” is a French speaking Belgian;

4°) at least 50 percent of the fees remuneration and reimbursable costs paid to all persons that collaborated intellectually, artistically or technically to the production of the film must be paid to EU nationals.

CULTURAL CLAUSES

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:

Article 1 of the Royal Decree of June 22, 1967:

“Dans les limites des crédits inscrits à cet effet au budget, des subventions et des primes peuvent être accordées, dans les conditions déterminées ci-après, en vue de promouvoir la culture cinématographique d’expression française ».

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹² 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:

N/A, except for Quality award for short films.

Quality awards for short films.

The Film Commission fixes the number of films qualifying for the award and divides the sum available between the films depending on the number of films retained

The quality award is divided 20% to the director, 60% to the delegate producer, and 20% for the scriptwriter(s).

CONTACT DETAILS

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

Pascale Joyeux

tel. 02.413.23.12

fax 02.413.20.68

pascale.joyeux@cfwb.be

¹² 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.

4.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / French-speaking Community

B. Name of the funding scheme:

Fond special (Special Fund)

Through the creation of the Special Fund, the French-speaking Community of Belgium intends to involve broadcasters in the development of the independent audiovisual production sector, and to both strengthen and give structure to the partnerships which link film and audiovisual production to television: broadcasters need original programming and producers need partners and access to air time.

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

Ministère de la Communauté française de Belgique – Service général de l'Audiovisuel et des Multimédias –
Centre du Cinéma et de l'Audiovisuel

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).

1) Décret du 27 février 2003 du Gouvernement de la Communauté française sur la radiodiffusion (Decree of February 27, 2003 of the Government of the French-speaking Community on broadcasting), available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=2003022760.

TERRITORIAL CONDITIONS¹³

¹³ 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.

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*)?

N/A

If 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*):

N/A

- 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*).

N/A

- 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*):

N/A

- 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*):

N/A

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*)?

N/A

If 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*):

N/A

CULTURAL CLAUSES

- 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:

N/A

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹⁴ 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:

N/A

CONTACT DETAILS

¹⁴ 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.

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

RTBF :

Emmanuel Roland tel. 02.413.22.31 fax. 02.413.20.68
emmanuel.roland@cfwb.be

RTL-TVI / BE TV / BTV / MCM :

Eric Franssen tél. 02.413.22.46 fax. 02.413.30.50
eric.franssen@cfwb.be

5.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Walloon Region

B. Name of the funding scheme:

Financement d'oeuvres audiovisuelles (Finance for Audiovisual Works)

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

Wallimage SA (which the Regional government has entrusted with the role of generating a structuring effect on the Walloon Region's growing audiovisual industry) Sowlim, its financial subsidiary which, in response to the recommendations and analyses of the Wallimage team, supports audiovisual Works and Service Companies likely to have an impact on the economy and the employment in the region.

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).

- Décision du gouvernement wallon du 24 février 2000 – Création de Wallimage (Decision of the Walloon government of February 24, 2000 – creation of Wallimage)
- Regulation of Wallimage (applicable as from January 1st, 2004)



Wallimage.pdf

TERRITORIAL CONDITIONS¹⁵

¹⁵ 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.

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

If 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*):

“ 1. Financement d’œuvres audiovisuelles produites par des sociétés de production wallonnes.

Le principe de ces investissements est le suivant : pour la production d’une œuvre déterminée, l’investissement du Fonds wallon est consentie en deux parties ; l’une sous forme de prêt et l’autre sous forme d’apport en participation dans la production de l’œuvre audiovisuelle dont l’importance est liée à la hauteur des dépenses audiovisuelles éligibles en Wallonie.

Le bénéficiaire s’engage à dépenser un minimum de 100% de la somme octroyée en dépenses audiovisuelles en Région Wallonne. » (Nouveau règlement Wallimage – entrée en application le 1^{er} janvier 2004).

(Free English translation : “1. Financing of audiovisual works produced by Walloon company productions.

The principle of those investments is the following : for the production of a determined work, the investment of the Walloon funds is divided in two parts: the first part under the form of a loan and the other under the form of a participation in the production of the audiovisual work whose importance is linked to the eligible audiovisual expenditures in Wallonia.

The beneficiary undertakes to spend a minimum of 100% of the granted sum in audiovisual expenditures in the Walloon Region.”

- 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*).

No information available.

- 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*):

N/A

- 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*):

N/A

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.

If 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*):

As the purpose of Wallimage is the generation of activity and employment in the Walloon region, it has set up a system of selective aid, the main principle of which is that every Euro entrusted to a producer should generate at least 1 Euro of audiovisual expenditure in Wallonia.

In the interests of clarity for both Belgian and international producers, Wallimage regulations outline their contributions on the basis of a pattern comparable to that of the Belgian federal Tax Shelter. In other words, the sums provided to the producer are, a priori, broken down into:

- 60% co-production investment, which gives us access to the work's revenue
- 40% loan, which can be used by the production for a maximum period of 3 years.

However, for strategic rather than fiscal reasons, Wallimage offers its partners the option to automatically reduce the loan share of the money provided. Each time a production exceeds the compulsory 100% regional expenditure by 5%, its loan share is reduced by 1%, until a threshold of 10% loan for 90% co-production investment is reached.

Besides, in order to be eligible a request must

- be presented to us by a production company based in Wallonia (acting, associate or executive producer),
- have already raised 30% of its financing,
- **demonstrate that a minimum of €250,000 audiovisual expenditure will take place in Wallonia.**

Exceptions can be made to this rule for documentaries, which must show minimum local expenditure equivalent to 15% of the production's total budget.

CULTURAL CLAUSES

- 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:

N/A

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹⁶ 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 investment approved by the Image Centre, in both the "Works" and "Service Companies" lines, constitute selective aid, and it is our Board of Directors, appointed by the Government of the Walloon Region, which assesses appropriateness on the basis of 4 main criteria:

- The structuring effect on the audiovisual sector in Wallonia
- The viability of the project and the possibilities for return on our investment
- The credibility of the project's promoter and his or her team
- The budget funds available

CONTACT DETAILS

¹⁶ 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.

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

WALLIMAGE sa
Rue du Onze Novembre, 6
7000 Mons
Tél. (32) (0)65 40 40 33 - Fax (32) (0)65 40 40 39

6.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Dutch Speaking Community

B. Name of the funding scheme:

Ontwikkelingssteun (Support for Development)

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

Vlaams Audiovisueel Fonds
Handelskaai 18/3
1000 Brussel
Tel: 02/226 06 30
Fax: 02/219 19 36
info@vaf.be
www.vaf.be

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

- Decreet van 13 april 1999, "houdende de machtiging van de Vlaamse regering om toe te treden tot en mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds". (Decree of April 13, 1999, "with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds".)

- Besluit van 25 oktober 2002 van de Vlaamse regering houdende uitvoering van de bepalingen van de artikelen 12 en 15 van het decreet van 13 april 1999 houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds. (Decision of October 25, 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of April 13, 1999, with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds.)

- Beheersovereenkomst tussen het Vlaams Audiovisueel Fonds en de Vlaamse Gemeenschap, afgesloten voor een periode van 3 jaar, in uitvoering van artikel 6 en 7 van het decreet (Management agreement between the Vlaams Audiovisueel Fonds and the Flemish Community, concluded for a period of 3 years, in execution of article 6 and 7 of the decree.)

- Bijlage 1 bij de beheersovereenkomst “Procedures, regels en voorwaarden om voor steun door het Fonds in aanmerking te komen”. (Appendix 1 of the management agreement “Procedures, rules and conditions to qualify for support by the Fonds”).

- the dates when these laws and regulations entered into force,

Het decreet is in werking getreden op 23 september 1999. (The decree entered into force on September 23, 1999.)

Het besluit is in werking getreden op 1 november 2002. (The decision entered into force on November 1, 2002.)

De beheersovereenkomst en de bijlage 1 zijn in werking getreden in 2002, en in 2005 verlengd, hoogstwaarschijnlijk tot 2007. (The management agreement and the appendix 1 entered into force in 2002, and their application has been extended in 2005 most likely until 2007.)

- 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),

Amendement van artikel 14 van het decreet op 1 november 2002. (Amendment of article 14 of the decree on November 1, 2002).

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

Source: Vlaams Audiovisueel Fonds (www.vaf.be); Jaarverslag/Annual Report (pdf file); http://www.juridat.be/cgi_loi/wetgeving.pl

Beheersovereenkomst (management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

Bijlage 1 (Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

TERRITORIAL CONDITIONS¹⁷

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

If 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*):

Source: Artikel 9 Bijlage 1 (Article 9 Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

9. Bestedingsverplichting

In ruil voor het door het Fonds toegekende steunbedrag, moet 100 % ervan besteed worden in de Vlaamse Gemeenschap (of Vlaams Gewest en Brussels Hoofdstedelijk Gewest). Hiervan kan in onderling akkoord met het Fonds worden afgeweken, indien gemotiveerde omstandigheden (b.v. bij opnames in het buitenland) een lagere bestedingsverplichting verantwoorden. De besteding mag evenwel nooit lager liggen dan 60 % van het door het Fonds toegekende bedrag. De aanvrager behoudt alleszins het recht om minimum 20 % van het productiebudget van de audiovisuele creatie in andere lidstaten van de E.U. uit te geven zonder dat de toegekende steun van het Fonds hierom wordt verminderd.

(9. Obligation to spend

In exchange for the support granted by the Fonds, 100% of the amount must be spent in the Flemish Community (or the Flemish Region and the Brussels Capital Region). One can deviate from this

¹⁷ 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.

in mutual agreement with the Fonds, when motivated circumstances (f.e. recording abroad) justify a lower obligation to spend. However, the spending may not be lower than 60 % of the amount the Fonds has granted. In any case, the applicant has the right to spend at least 20 % of the production budget of the audiovisual creation in other member states of the E.U. without this causing the Fonds to lessen the granted support.)

- 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*).

No information available.

- 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*):

Samenwerkingsovereenkomst van 1 december 2005 tussen het Nederlands Fonds voor de Film en het Vlaams Audiovisueel Fonds vzw, in werking getreden op 1 januari 2006. (Co-operation agreement of 1 december 2005 between the Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds vzw, entered into force January 1, 2006).

Artikel 5.2 - Per film wordt een bijdrage verleend van maximaal €200.000,--.Hiervan dient 60% te worden besteed in het minoritaire coproductieland. (Article 5.2 – By film a contribution is given of maximum €200.000. – 60% of this contribution has to be spent in the minoritarian state of co-production.)

Source: <http://www.vaf.be/frames.asp?page=2&lang=1>

- 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*):

No information available.

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

If 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*):

CULTURAL CLAUSES

- 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:

Artikel 1. Doel - [...] Het Fonds heeft, binnen het Vlaams audiovisueel beleid, tot doel om binnen de Vlaamse Gemeenschap op geïntegreerde, autonome wijze de onafhankelijke audiovisuele productie en auteurscreatie te stimuleren. De finaliteit blijft daarbij steeds het verwerven van een kwaliteitsimago voor de Vlaamse audiovisuele creaties [...] Het VAF zal er naar streven dat de Vlaamse multiculturele en diverse realiteit weerspiegeld wordt in de producties die ze stimuleert [...]

(Article 1. Goal - [...] The Fonds has, within the Flemish audiovisual policy, the goal to stimulate in an integrated, autonomous manner the independent audiovisual production and creation by authors within the Flemish Community. [...] The finality always remains acquiring an image of quality for the Flemish audiovisual creations [...]. The VAF will strive to reflect the Flemish multicultural and diverse reality in the productions its stimulates.)

Source: Artikel 1 Beheersovereenkomst (Article 1 management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹⁸ 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:

No information

CONTACT DETAILS

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

¹⁸ 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.

7.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Dutch Speaking Community

B. Name of the funding scheme:

Productiesteun (Support for production)

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

Vlaams Audiovisueel Fonds
Handelskaai 18/3
1000 Brussel
Tel: 02/226 06 30
Fax: 02/219 19 36
info@vaf.be
www.vaf.be

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

- Decreet van 13 april 1999, “houdende de machtiging van de Vlaamse regering om toe te treden tot en mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds”. (Decree of April 13, 1999, “with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds”.)
- Besluit van 25 oktober 2002 van de Vlaamse regering houdende uitvoering van de bepalingen van de artikelen 12 en 15 van het decreet van 13 april 1999 houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds. (Decision of October 25, 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of April 13, 1999, with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds.)
- Beheersovereenkomst tussen het Vlaams Audiovisueel Fonds en de Vlaamse Gemeenschap, afgesloten voor een periode van 3 jaar, in uitvoering van artikel 6 en 7 van het decreet (Management agreement between the Vlaams Audiovisueel Fonds and the Flemish Community, concluded for a period of 3 years, in execution of article 6 and 7 of the decree.)

- Bijlage 1 bij de beheersovereenkomst “Procedures, regels en voorwaarden om voor steun door het Fonds in aanmerking te komen”. (Appendix 1 of the management agreement “Procedures, rules and conditions to qualify for support by the Fonds”).

- the dates when these laws and regulations entered into force,

Het decreet is in werking getreden op 23 september 1999. (The decree entered into force on September 23, 1999.)

Het besluit is in werking getreden op 1 november 2002. (The decision entered into force on November 1, 2002.)

De beheersovereenkomst en de bijlage 1 zijn in werking getreden in 2002, en in 2005 verlengd, hoogstwaarschijnlijk tot 2007. (The management agreement and the appendix 1 entered into force in 2002, and their application has been extended in 2005 most likely until 2007.)

- 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),

Amendement van artikel 14 van het decreet op 1 november 2002. (Amendment of article 14 of the decree on November 1, 2002).

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

Source: Vlaams Audiovisueel Fonds (www.vaf.be); Jaarverslag/Annual Report (pdf file); http://www.juridat.be/cgi_loi/wetgeving.pl

Beheersovereenkomst (management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

Bijlage 1 (Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

TERRITORIAL CONDITIONS¹⁹

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

If 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*):

Source: Artikel 9 Bijlage 1 (Article 9 Appendix 1)

http://www.vaf.be/uploaded_images/bijlage.doc

9. Bestedingsverplichting

In ruil voor het door het Fonds toegekende steunbedrag, moet 100 % ervan besteed worden in de Vlaamse Gemeenschap (of Vlaams Gewest en Brussels Hoofdstedelijk Gewest). Hiervan kan in onderling akkoord met het Fonds worden afgeweken, indien gemotiveerde omstandigheden (b.v. bij opnames in het buitenland) een lagere bestedingsverplichting verantwoorden. De besteding mag evenwel nooit lager liggen dan 60 % van het door het Fonds toegekende bedrag. De aanvrager behoudt alleszins het recht om minimum 20 % van het productiebudget van de audiovisuele creatie in andere lidstaten van de E.U. uit te geven zonder dat de toegekende steun van het Fonds hierom wordt verminderd.

(9. Obligation to spend

In exchange for the support granted by the Fonds, 100% of the amount must be spent in the Flemish Community (or the Flemish Region and the Brussels Capital Region). One can deviate from this

¹⁹ 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.

in mutual agreement with the Fonds, when motivated circumstances (f.e. recording abroad) justify a lower obligation to spend. However, the spending may not be lower than 60 % of the amount the Fonds has granted. In any case, the applicant has the right to spend at least 20 % of the production budget of the audiovisual creation in other member states of the E.U. without this causing the Fonds to lessen the granted support.)

- 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*).

No information available.

- 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*):

Samenwerkingsovereenkomst van 1 december 2005 tussen het Nederlands Fonds voor de Film en het Vlaams Audiovisueel Fonds vzw, in werking getreden op 1 januari 2006. (Co-operation agreement of 1 december 2005 between the Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds vzw, entered into force January 1, 2006).

Artikel 5.2 - Per film wordt een bijdrage verleend van maximaal €200.000,--.Hiervan dient 60% te worden besteed in het minoritaire coproductieland. (Article 5.2 – By film a contribution is given of maximum €200.000. – 60% of this contribution has to be spent in the minoritarian state of co-production.)

Source: <http://www.vaf.be/frames.asp?page=2&lang=1>

- 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*):

No information available.

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

If 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*):

CULTURAL CLAUSES

- 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:

Artikel 1. Doel - [...] Het Fonds heeft, binnen het Vlaams audiovisueel beleid, tot doel om binnen de Vlaamse Gemeenschap op geïntegreerde, autonome wijze de onafhankelijke audiovisuele productie en auteurscreatie te stimuleren. De finaliteit blijft daarbij steeds het verwerven van een kwaliteitsimago voor de Vlaamse audiovisuele creaties [...] Het VAF zal er naar streven dat de Vlaamse multiculturele en diverse realiteit weerspiegeld wordt in de producties die ze stimuleert [...]

(Article 1. Goal - [...] The Fonds has, within the Flemish audiovisual policy, the goal to stimulate in an integrated, autonomous manner the independent audiovisual production and creation by authors within the Flemish Community. [...] The finality always remains acquiring an image of quality for the Flemish audiovisual creations [...]. The VAF will strive to reflect the Flemish multicultural and diverse reality in the productions its stimulates.)

Source: Artikel 1 Beheersovereenkomst (Article 1 management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,²⁰ 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:

No information

CONTACT DETAILS

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

mdeboeck@vaf.be iverroken@vaf.be
bvanelslande@vaf.be

²⁰ 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.

8.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Dutch Speaking Community

B. Name of the funding scheme:

Promotiesteun / Support for promotion

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

Vlaams Audiovisueel Fonds
Handelskaai 18/3
1000 Brussel
Tel: 02/226 06 30
Fax: 02/219 19 36
info@vaf.be
www.vaf.be

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

- Decreet van 13 april 1999, “houdende de machtiging van de Vlaamse regering om toe te treden tot en mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds”. (Decree of April 13, 1999, “with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds”.)
- Besluit van 25 oktober 2002 van de Vlaamse regering houdende uitvoering van de bepalingen van de artikelen 12 en 15 van het decreet van 13 april 1999 houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds. (Decision of October 25, 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of April 13, 1999, with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds.)
- Beheersovereenkomst tussen het Vlaams Audiovisueel Fonds en de Vlaamse Gemeenschap, afgesloten voor een periode van 3 jaar, in uitvoering van artikel 6 en 7 van het decreet (Management agreement between the Vlaams Audiovisueel Fonds and the Flemish Community, concluded for a period of 3 years, in execution of article 6 and 7 of the decree.)

- Bijlage 1 bij de beheersovereenkomst “Procedures, regels en voorwaarden om voor steun door het Fonds in aanmerking te komen”. (Appendix 1 of the management agreement “Procedures, rules and conditions to qualify for support by the Fonds”).

- the dates when these laws and regulations entered into force,

Het decreet is in werking getreden op 23 september 1999. (The decree entered into force on September 23, 1999.)

Het besluit is in werking getreden op 1 november 2002. (The decision entered into force on November 1, 2002.)

De beheersovereenkomst en de bijlage 1 zijn in werking getreden in 2002, en in 2005 verlengd, hoogstwaarschijnlijk tot 2007. (The management agreement and the appendix 1 entered into force in 2002, and their application has been extended in 2005 most likely until 2007.)

- 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),

Amendement van artikel 14 van het decreet op 1 november 2002. (Amendment of article 14 of the decree on November 1, 2002).

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

Source: Vlaams Audiovisueel Fonds (www.vaf.be); Jaarverslag/Annual Report (pdf file); http://www.juridat.be/cgi_loi/wetgeving.pl

Beheersovereenkomst (management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

Bijlage 1 (Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

TERRITORIAL CONDITIONS²¹

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

If 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*):

Source: Artikel 9 Bijlage 1 (Article 9 Appendix 1)

http://www.vaf.be/uploaded_images/bijlage.doc

9. Bestedingsverplichting

In ruil voor het door het Fonds toegekende steunbedrag, moet 100 % ervan besteed worden in de Vlaamse Gemeenschap (of Vlaams Gewest en Brussels Hoofdstedelijk Gewest). Hiervan kan in onderling akkoord met het Fonds worden afgeweken, indien gemotiveerde omstandigheden (b.v. bij opnames in het buitenland) een lagere bestedingsverplichting verantwoorden. De besteding mag evenwel nooit lager liggen dan 60 % van het door het Fonds toegekende bedrag. De aanvrager behoudt alleszins het recht om minimum 20 % van het productiebudget van de audiovisuele creatie in andere lidstaten van de E.U. uit te geven zonder dat de toegekende steun van het Fonds hierom wordt verminderd.

(9. Obligation to spend

In exchange for the support granted by the Fonds, 100% of the amount must be spent in the Flemish Community (or the Flemish Region and the Brussels Capital Region). One can deviate from this

²¹ 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.

in mutual agreement with the Fonds, when motivated circumstances (f.e. recording abroad) justify a lower obligation to spend. However, the spending may not be lower than 60 % of the amount the Fonds has granted. In any case, the applicant has the right to spend at least 20 % of the production budget of the audiovisual creation in other member states of the E.U. without this causing the Fonds to lessen the granted support.)

- 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*).

No information available.

- 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*):

Samenwerkingsovereenkomst van 1 december 2005 tussen het Nederlands Fonds voor de Film en het Vlaams Audiovisueel Fonds vzw, in werking getreden op 1 januari 2006. (Co-operation agreement of 1 december 2005 between the Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds vzw, entered into force January 1, 2006).

Artikel 5.2 - Per film wordt een bijdrage verleend van maximaal €200.000,--.Hiervan dient 60% te worden besteed in het minoritaire coproductieland. (Article 5.2 – By film a contribution is given of maximum €200.000. – 60% of this contribution has to be spent in the minoritarian state of co-production.)

Source: <http://www.vaf.be/frames.asp?page=2&lang=1>

- 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*):

No information available.

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

If 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*):

CULTURAL CLAUSES

- 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:

Artikel 1. Doel - [...] Het Fonds heeft, binnen het Vlaams audiovisueel beleid, tot doel om binnen de Vlaamse Gemeenschap op geïntegreerde, autonome wijze de onafhankelijke audiovisuele productie en auteurscreatie te stimuleren. De finaliteit blijft daarbij steeds het verwerven van een kwaliteitsimago voor de Vlaamse audiovisuele creaties [...] Het VAF zal er naar streven dat de Vlaamse multiculturele en diverse realiteit weerspiegeld wordt in de producties die ze stimuleert [...]

(Article 1. Goal - [...] The Fonds has, within the Flemish audiovisual policy, the goal to stimulate in an integrated, autonomous manner the independent audiovisual production and creation by authors within the Flemish Community. [...] The finality always remains acquiring an image of quality for the Flemish audiovisual creations [...]. The VAF will strive to reflect the Flemish multicultural and diverse reality in the productions its stimulates.)

Source: Artikel 1 Beheersovereenkomst (Article 1 management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,²² 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:

No information

CONTACT DETAILS

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

mdeboeck@vaf.be
iverroken@vaf.be
bvanelslande@vaf.be

²² 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.

9.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Dutch Speaking Community

B. Name of the funding scheme:

Scenariosteun (Support for scriptwriting)

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

Vlaams Audiovisueel Fonds
Handelskaai 18/3
1000 Brussel
Tel: 02/226 06 30
Fax: 02/219 19 36
info@vaf.be
www.vaf.be

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

- Decreet van 13 april 1999, “houdende de machtiging van de Vlaamse regering om toe te treden tot en mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds”. (Decree of April 13, 1999, “with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds”.)

- Besluit van 25 oktober 2002 van de Vlaamse regering houdende uitvoering van de bepalingen van de artikelen 12 en 15 van het decreet van 13 april 1999 houdende machtiging van de Vlaamse regering om toe te treden tot en om mee te werken aan de oprichting van de vereniging zonder winstgevend doel Vlaams Audiovisueel Fonds. (Decision of October 25, 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of April 13, 1999, with respect to the authorization of the Flemish government to join and assist in the foundation of the association without profitable goal Vlaams Audiovisueel Fonds.)

- Beheersovereenkomst tussen het Vlaams Audiovisueel Fonds en de Vlaamse Gemeenschap, afgesloten voor een periode van 3 jaar, in uitvoering van artikel 6 en 7 van het decreet (Management agreement between the Vlaams Audiovisueel Fonds and the Flemish Community, concluded for a period of 3 years, in execution of article 6 and 7 of the decree.)

- Bijlage 1 bij de beheersovereenkomst “Procedures, regels en voorwaarden om voor steun door het Fonds in aanmerking te komen”. (Appendix 1 of the management agreement “Procedures, rules and conditions to qualify for support by the Fonds”).

- the dates when these laws and regulations entered into force,

Het decreet is in werking getreden op 23 september 1999. (The decree entered into force on September 23, 1999.)

Het besluit is in werking getreden op 1 november 2002. (The decision entered into force on November 1, 2002.)

De beheersovereenkomst en de bijlage 1 zijn in werking getreden in 2002, en in 2005 verlengd, hoogstwaarschijnlijk tot 2007. (The management agreement and the appendix 1 entered into force in 2002, and their application has been extended in 2005 most likely until 2007.)

- 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),

Amendement van artikel 14 van het decreet op 1 november 2002. (Amendment of article 14 of the decree on November 1, 2002).

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

Source: Vlaams Audiovisueel Fonds (www.vaf.be); Jaarverslag/Annual Report (pdf file); http://www.juridat.be/cgi_loi/wetgeving.pl

Beheersovereenkomst (management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

Bijlage 1 (Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

TERRITORIAL CONDITIONS²³

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

If 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*):

Source: Artikel 9 Bijlage 1 (Article 9 Appendix 1)
http://www.vaf.be/uploaded_images/bijlage.doc

9. Bestedingsverplichting

In ruil voor het door het Fonds toegekende steunbedrag, moet 100 % ervan besteed worden in de Vlaamse Gemeenschap (of Vlaams Gewest en Brussels Hoofdstedelijk Gewest). Hiervan kan in onderling akkoord met het Fonds worden afgeweken, indien gemotiveerde omstandigheden (b.v. bij opnames in het buitenland) een lagere bestedingsverplichting verantwoorden. De besteding mag evenwel nooit lager liggen dan 60 % van het door het Fonds toegekende bedrag. De aanvrager behoudt alleszins het recht om minimum 20 % van het productiebudget van de audiovisuele creatie in andere lidstaten van de E.U. uit te geven zonder dat de toegekende steun van het Fonds hierom wordt verminderd.

(9. Obligation to spend

In exchange for the support granted by the Fonds, 100% of the amount must be spent in the Flemish Community (or the Flemish Region and the Brussels Capital Region). One can deviate from this

²³ 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.

in mutual agreement with the Fonds, when motivated circumstances (f.e. recording abroad) justify a lower obligation to spend. However, the spending may not be lower than 60 % of the amount the Fonds has granted. In any case, the applicant has the right to spend at least 20 % of the production budget of the audiovisual creation in other member states of the E.U. without this causing the Fonds to lessen the granted support.)

- 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*).

No information available.

- 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*):

Samenwerkingsovereenkomst van 1 december 2005 tussen het Nederlands Fonds voor de Film en het Vlaams Audiovisueel Fonds vzw, in werking getreden op 1 januari 2006. (Co-operation agreement of 1 december 2005 between the Nederlands Fonds voor de Film and the Vlaams Audiovisueel Fonds vzw, entered into force January 1, 2006).

Artikel 5.2 - Per film wordt een bijdrage verleend van maximaal €200.000,--.Hiervan dient 60% te worden besteed in het minoritaire coproductieland. (Article 5.2 – By film a contribution is given of maximum €200.000. – 60% of this contribution has to be spent in the minoritarian state of co-production.)

Source: <http://www.vaf.be/frames.asp?page=2&lang=1>

- 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*):

No information available.

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

If 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*):

CULTURAL CLAUSES

- 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:

Artikel 1. Doel - [...] Het Fonds heeft, binnen het Vlaams audiovisueel beleid, tot doel om binnen de Vlaamse Gemeenschap op geïntegreerde, autonome wijze de onafhankelijke audiovisuele productie en auteurscreatie te stimuleren. De finaliteit blijft daarbij steeds het verwerven van een kwaliteitsimago voor de Vlaamse audiovisuele creaties [...] Het VAF zal er naar streven dat de Vlaamse multiculturele en diverse realiteit weerspiegeld wordt in de producties die ze stimuleert [...]

(Article 1. Goal - [...] The Fonds has, within the Flemish audiovisual policy, the goal to stimulate in an integrated, autonomous manner the independent audiovisual production and creation by authors within the Flemish Community. [...] The finality always remains acquiring an image of quality for the Flemish audiovisual creations [...]. The VAF will strive to reflect the Flemish multicultural and diverse reality in the productions its stimulates.)

Source: Artikel 1 Beheersovereenkomst (Article 1 management agreement)
http://www.vaf.be/uploaded_images/beheersovereenkomst.doc

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,²⁴ 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:

No information

CONTACT DETAILS

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

mdeboeck@vaf.be

iverroken@vaf.be

²⁴ 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.

10.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Belgium / Federal State

B. Name of the funding scheme:

Tax-Shelter

(The tax shelter is a tax incentive meant to encourage the production of audiovisual works and films. This tax regime allows a company wishing to invest by providing financial backing for audiovisual productions to benefit from exemption of any retained taxable profits worth up to 150% of the sums actually paid.)

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

Federal State – Finance Ministry – Federal Public Service Finance

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).

- Loi-programme du 2 août 2002 (Program Act of August 2, 2002), available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=2002080245

- Loi-programme du 22 décembre 2003 (Act of December 22, 2003)



Loi-programme 22
déc. 2003.pdf

- Loi du 17 mai 2004 (Act of May 17, 2004, amending Article 194ter of the 1992 Income Tax Code on the tax shelter regulation benefiting audiovisual production (Belgian Official Gazette, 4 June 2004), available at http://www.juridat.be/cgi_loi/loi_F.pl?cn=2004051737

- Arrêté royal du 3 mai 2003 fixant la date d'entrée en vigueur des articles 128 et 129 de la loi-programme du 2 août 2002 (Royal decree of May 3, 2003 fixing the entry into force of articles 128 and 129 of the Act of August 2, 2002)



AR 3 mai 2003.pdf

- Directive du Conseil du 3 octobre 1989 visant à la coordination de certaines dispositions législatives, réglementaires et administratives des États membres relatives à l'exercice d'activités de radiodiffusion télévisuelle (89/552/CEE)

TERRITORIAL CONDITIONS²⁵

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

If 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*):

Article 194ter du Code des impôts sur les revenus 1992 :

“ § 1er. Pour l'application du présent article, on entend par :

3° **oeuvre audiovisuelle belge agréée** : - un long métrage de fiction, documentaire ou d'animation, destiné à une exploitation cinématographique, une collection télévisuelle d'animation, un programme télévisuel documentaire et agréé par les services compétents de la Communauté concernée comme oeuvre européenne telle que définie par la directive "Télévision sans frontières" du 3 octobre 1989 (89/552/EEC), amendée par la directive 97/36/EC du 30 juin 1997 et ratifiée par la Communauté française le 4 janvier 1999, la Communauté flamande le 25 janvier 1995 et la Région de Bruxelles-Capitale le 30 mars 1995; - **pour laquelle les dépenses de production et**

²⁵ 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.

d'exploitation, effectuées en Belgique dans un délai maximum de 18 mois à partir de la date de conclusion de la convention-cadre destinée à la production d'une oeuvre audiovisuelle, s'élèvent au moins à 150 p.c. des sommes globales affectées en principe, autrement que sous la forme de prêts, à l'exécution d'une convention-cadre en exonération des bénéfices conformément au § 2; »

Free English translation :

« Article 194ter of the fiscal Code 1992 :

For the application of this article, it is means by:

Certified Belgian audiovisual work : a work of fiction (...) – for which the expenditures of production and exploitation, effectuated in Belgium in a deadline of maximum 18 months as of the date of conclusion of the frame-agreement for the production of an audiovisual work, amount at least to 150 per cent of the total sums affected in principle, other than in the form of loan, to the execution of the frame-agreement with exoneration of the benefits in accordance with § 2; »

- 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*).

Expenditure in Belgium for production and exploitation must amount to at least 150% of the tax shelter risk capital (spent within 18 months after concluding the framework agreement by the Belgian production house).

As a matter of law, the exemption is only granted and maintained if the resident audiovisual production company fulfils the following conditions:

1. The production and operating costs for the audiovisual work incurred in Belgium must amount to at least 150% of the sums allocated – except for loans – in compliance with the framework agreement.

Example:

A company invests 100.000,00 EUR in a film (60.000,00 EUR in the form of a co-production and 40.000,00 EUR in the form of loans). It can be granted an exemption of 150.000,00 EUR, if the expenses incurred in Belgium amount to 150% of 60.000,00 EUR; i.e. 90.000,00 EUR for the production and operating costs.

2. The production and operating costs for the audiovisual work must be incurred within a maximum of 18 months after signing the framework agreement.

3. The total sum actually paid in compliance with the framework agreement must not exceed 50% of the total budget for the costs of the audiovisual work.

4. The total sums invested as loans must not exceed 40% of the sums allocated in compliance with the framework agreement.

If one of the conditions for granting and maintaining the exemption is no longer

observed in any taxable period, any profits exempted earlier will be regarded as profits made during the course of that taxable period.

- 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*):

No information available.

- 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*):

No information available.

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.

If 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*):

The tax exemption implies a number of conditions, such as:

- the financing must be intended for audio-visual productions involving a Belgian production house;
- the investment must not exceed 50% of the overall cost
- obligatory certificate delivered by the Community concerned.

The following companies can benefit from this tax regime: all resident companies and Belgian establishments of non-resident companies with the exception of:

- companies whose main purpose is the development and the production of audiovisual works;
- television broadcasting companies.

The following companies can benefit from investments: resident audiovisual production companies (a television broadcasting company or a company linked to Belgian or foreign broadcasting companies is not regarded as a resident audiovisual production company).

CULTURAL CLAUSES

- 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:

No information.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,²⁶ 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:

²⁶ 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

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

Mr Danny DELVAUX (Federal Public Service FINANCE)
Tel.: 0257/641 05 – e-mail: danny.delvaux@minfin.fed.be

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

Daniel Fesler and Elisabeth Dehareng – Backer & McKenzie Bussels

Date of the data collection and processing:

September 2006

Member State:	BELGIUM
Re:	Follow-Up Question
Date:	21 September 2006

(...)

Please find attached the Flemish reply to the Commission's questionnaire (...).

(...)

Attachments to e-mail of 21 September 2006

- Estonia and Flemish Community of Belgium.pdf