

**CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS**  
**(Annex to Part A)**

**MEMBER STATE LEGAL REVIEW**



**BELGIUM**  
**SYNTHESIS SHEET**

**July 2007**

**This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on [www.eufilmstudy.eu](http://www.eufilmstudy.eu)**

## **Acknowledgements**

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## A Overview of the legal situation in Belgium

### 1 Summary of main findings

**Table A – Direct Territorialisation Requirements**

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law		
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
									Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N

<b>Belgium</b>	Tax Shelter (Federal funding scheme)	4,900.000 (Flanders), 7,930.000 (French Part)	Nat	N/A It is provided that expenditure in Belgium for production and exploitation must amount to at least 150% of the tax shelter risk capital. (2.2)	N/A	N/A	N/A	N/A	N/A	N
	Aide a la production	969,045 (2002) <sup>1</sup>	Reg	N/A	100% (3.2)	N/A	N/A	N/A	N/A	
	Aide à la production de programmes télévisuels	495,790	Reg	N/A	100% (4.2)	N/A	N/A	N/A	N/A	
	Subvention à la diffusion et prime à la qualité	1,142,789	Reg	N/A	N/A	N/A	N/A	N/A	N/A	
	Fond Spécial	964,589	Reg	N/A	N/A	N/A	N/A	N/A	N/A	

	Financement d'œuvres audiovisuelles	2,500,000	Reg	Documentaries, must show a minimum local expenditure equivalent to 15% of the production's total budget  <u>Moreover:</u> Company applying for aid must demonstrate that a minimum of €250,000 audiovisual expenditure will take place in the Walloon region.	100% (7.2)	N/A	N/A	N/A	N/A	
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	Support for Development - <i>Ontwikkelingssteun</i>	9,700,000	Reg	N/A	100% Exceptions are provided but the spending may not be lower than 60% of the amount the VAF has granted. <u>Limited:</u> at least 20% of all production costs can be spent in another MS without any reduction in the support.	N/A	N	N/A	N/A	
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	Support for Production – <i>Productisteun</i> <sup>2</sup>		Reg	N/A	100% Exceptions are provided but the spending may not be lower than 60% of the amount the VAF has granted. <u>Limited:</u> at least 20% of all production costs can be spent in another MS without any reduction in the support.	N/A	N	N/A	N/A	
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	Support for Scriptwriting – <i>Scenariosteun</i>		Reg	N/A	100% Exceptions are provided but the spending may not be lower than 60% of the amount the VAF has granted. <u>Limited:</u> at least 20% of all production costs can be spent in another MS without any reduction in the support.	N/A	N	N/A	N/A	
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<sup>1</sup> In 2005, 78 requests for production support have been examined by the Commission, 24 projects have received a favourable opinion for a total of 1.086.750 EUR.

<sup>2</sup> Budget only available on funding body level. But since territorialisation degree is similar for each scheme it makes no difference.



**Table B – Indirect territorialisation Requirements**

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”		Indirect territorialization requirements located under selective aid criteria and procedures		Indirect territorialization based on any other provisions in the law that forces the producer to make local spending	
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget
			Estimation of the X% of how much local expending this involves in relation to the total aid available		Estimation of the X% of how much local expending this involves in relation to the total aid available		Estimation of the X% of how much local expending this involves in relation to the total aid available

<b>Belgium</b>	Tax Shelter (Federal funding scheme)	N/A	N/A	N/A	N/A	N/A	N/A	N	N/A	N/A
	Aide à la production	Y  All laboratory and studio works must be carried out in Belgium. The film shall be in French language (A 3 and 3.4)	N/A	N/A	Y  The eligibility criteria requires the Belgian certification (which imply that the film shall be made in Belgium). Moreover the selective aid criteria is based on the referring to “elements of production” (including financial plans and fees) cannot exclude indirect territorialisation not quantifiable (3.4)	N/A	N/A	N	N/A	N/A
	Aide à la production de programmes télévisuels	Y  All laboratory and studio works must be carried out in Belgium The film shall be in French language (A 3 and 4.4)	N/A	N/A	Y  The eligibility criteria requires the Belgian certification (which imply that the film shall be made in Belgium). Moreover the selective aid criteria is based on the referring to “elements of production” (including financial plans and fees) cannot exclude indirect territorialisation not quantifiable (4.4)	N/A	N/A	N	N/A	N/A

	Subvention à la diffusion et prime à la qualité	Y All laboratory and studio works must be carried out in Belgium. The film shall be in French language (5.4)	N/A	N/A	Y The eligibility criteria requires the Belgian certification (which imply that the film shall be made in Belgium). Moreover the selective aid criteria is based on the referring to “elements of production” (including financial plans and fees) cannot exclude indirect territorialisation not quantifiable (5.4)	N/A	N/A	N	N/A	N/A
	Fond Spécial	N	N/A	N/A	N	N/A	N/A	N	N/A	N/A
	Financement d’œuvres audiovisuelles	N	N/A	N/A	Y The main principle of the selective aid is that every Euro of aid given to a producer should generate at least one euro of audiovisual expenditure in the Walloon Region (structuring effect) (7.4)	N/A	N/A	Y The requirement to promote the Wallon Region audiovisual economy arguably qualifies as indirect territorialisation that is not quantifiable (7.6)	N/A	N/A

	Support for Development - <i>Ontwikkelingssteun</i>	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the Flemish audiovisual production arguably qualifies as indirect territorialisation that is not quantifiable (8.6)	N/A	N/A
	Support for Production – <i>Productisteun</i>	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the Flemish audiovisual production arguably qualifies as indirect territorialisation that is not quantifiable (9.6)	N/A	N/A
	Support for Scriptwriting – <i>Scenarioosteun</i>	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the Flemish audiovisual production arguably qualifies as indirect territorialisation that is not quantifiable (10.6)	N/A	N/A

**Table C – Budget and Territorialisation Intensity**

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law <sup>3</sup>	Degree of the territorialisation <sup>4</sup>		
				Funding Scheme Level <sup>5</sup>	Funding body level	Member State Level <sup>6</sup>
Belgium	Tax Shelter (Federal funding scheme)	4,900.000 (Flanders), 7,930.000 (French Part)	It is provided that expenditure in Belgium for production and exploitation must amount to at least 150% of the tax shelter risk capital. (2.2)		No data available	48 %
	Aide a la production	969,045 (2002) <sup>7</sup>	100% of the amount awarded		No data available	
	Aide à la production de programmes télévisuels	495,790	100% of the amount awarded		No data available	
	Subvention à la diffusion et prime à la qualité	1,142,789	No requirement		No data available	
	Fond Spécial	964,589	No requirement		No data available	
	Financement d'œuvres audiovisuelles	2,500,000	100% of the amount awarded  Documentaries, must show a minimum local expenditure equivalent to 15% of the production's total budget.		High	
	Support for Development – <i>Ontwikkelingssteun</i> <sup>8</sup>	9,700,000	100% of the amount awarded		Moderate	

	Support for Production – <i>Productisteun</i>		100% of the amount awarded			
	Support for Scriptwriting – <i>Scenariosteun</i>		100% of the amount awarded			

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<sup>3</sup> Assessment based on replies from local lawyers (see synthesis sheet)

<sup>4</sup> High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” >1  
Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or <1  
No territorialisation: total amount subject to territorialisation = 0

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

<sup>5</sup> Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

<sup>6</sup> “total amount subject to territorialisation”/“total budget available”

Assessment (Cambridge Econometrics/Ramboll) based on the methodology outlined in Appendix G

<sup>7</sup> In 2005, 78 requests for production support have been examined by the Commission, 24 projects have received a favourable opinion for a total of 1,086,750 EUR.

<sup>8</sup> Budget only available on funding body level. But since territorialisation degree is similar for each scheme it makes no difference.

**Table D – Co-Production Agreements**

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Belgium	France	20 September 1962, revised in 2004	
	Germany	27 July 1964	
	Italy	15 October 1970	
	Israel	08 October 1971	
	Tunisia	11 March 1976	
	Canada	24 February 1984	
	Switzerland	09 January 1989	
	<p>The Belgian French-speaking Community (<i>Centre du Cinéma et de l'Audiovisuel</i>) also entered into five co-production agreements with:</p> <ul style="list-style-type: none"> <li>• Portugal (agreement entered into force on 12 March 1993)</li> <li>• Tunisia (agreement entered into force on 29 September 1997)</li> <li>• Morocco (agreement entered into force on 16 February 2000)</li> <li>• Italy (agreement entered into force on 31 August 2000)</li> <li>• France (agreement entered into force on 18 May 2004)</li> </ul>		
	<p>The Centre du Cinéma also entered into a « <i>protocole d'entente sur la coopération en matière de cinéma et de production télévisuelle</i> », as well as a « <i>entente sur la distribution de films</i> » with the Sodec (Société de développement des entreprises culturelles) in Québec.</p>		
	<p>The Dutch-speaking Community also entered into the following co-productions agreement with :</p> <ul style="list-style-type: none"> <li>• the Netherlands (agreement entered into on 1 Dec 2005): Vlaams Audiovisueel Fonds VZW – Nederlands Fonds voor de Film</li> </ul>		
European Convention on cinematographic co-production	2004		





Belgium is currently a party to the European Convention on Cinematographic Co-production. In addition there are a number of bilateral conventions on co-production agreements (see reply A.3 for Belgium).

The Belgian French-speaking community has entered into five co-production agreements (see reply A.3 for Belgium; see below Section 2).

The Belgian Flemish-speaking community has entered into a co-production agreement with the Netherlands (see reply A.3 for Belgium; see below Section 2).

In Belgium there is one funding scheme on the national (federal) level and nine funding schemes on the regional level. In the French-speaking Community and Walloon Region (*Région wallonne*) there are five funding schemes and in the Flemish-speaking Community (*Vlaams Gewest*) there are four funding schemes (see reply A.2 for Belgium; see below Section B1).

## **2 Synopsis of conventions on co-production agreements**

Belgium is a party to the European Convention on Cinematographic Co-production, which was ratified in 2004.

According to the “*Centre de l’Audiovisuel et des Médias*”, Belgium has entered into co-production agreements with France, Germany, Italy, Israel, Tunisia, Canada and Switzerland (see reply A.3 for Belgium).

The French-speaking Community (according to the *Centre du Cinéma et de l’Audiovisuel*) has also entered into five co-production agreements with Portugal, Tunisia, Morocco, Italy and France (see reply A.3 for Belgium).

The Flemish-speaking Community has also entered into a co-production agreement with the Netherlands (see reply A.3 for Belgium).

## **3 Synopsis of formal nationality certification procedures**

On the federal level, there is no formal procedure to assess and certify the nationality of an independent television production. However Article 194ter of the Fiscal Code defines a “certified Belgian audiovisual work” with respect to production and exploitation expenditures in Belgium (see Section B 2.2 below, and reply B.6 for Belgium for “Tax Shelter”).

Independent film productions are subject to the nationality certification procedure applied in the French-speaking Community (See reply A.4 for Belgium).

The Authority responsible for assessing and certifying the nationality of an independent film or television production is the “*Commission de Sélection des films*” (CSF), which contains a specialist technical committee, the “*Groupe d’agrément*” (Accreditation Committee; see Section B 3.4 below). The CSF gives its opinion, and the Minister takes the final decision about support.

Article 3 of the Royal Decree of 22 June 1967 provides that a film can be qualified as Belgian if it is 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 dependent on or under the control of a foreign company. Nonetheless, foreigners who are resident in Belgium and are carrying out the production activities in Belgium may also benefit from the aid. Furthermore, it is provided that all laboratory and studio works must be carried out in Belgium and that workers and performers must have Belgian nationality or have a Belgian work permit.

Article 22 of the Royal Decree of 22 June 1967 provides that a film shall be qualified as a Belgian film in the French language if it is shot in French and if it has been granted selective aid for production by the Belgian French-speaking Community. If no selective aid has been granted, a film shall be recognized as Belgian if it is produced in accordance with international agreements or if it is granted at least ten points according to the Points System set out in Article 22 of the Royal Decree of 22 June 1967. The Points System evaluates “Belgian French-speaking elements” (see reply A.4 for Belgium).

No formal nationality or “regionality” certification procedures apply to the Flemish funding schemes.

#### **4. Synopsis of expected legal developments**

In Belgium there is no information on new co-production agreements expected as of 1 January 2007 (see reply A.5 for Belgium).

However, it should be noted that meetings with representatives of English, Dutch and German institutions were scheduled to take place in 2006 (see reply A.3 for Belgium).

No new schemes containing territorialisation requirement are expected (see reply A.6 for Belgium).

## **B The Belgian funding schemes**

### **1 Overview**

In Belgium there is one funding scheme on the national (federal) level, the “Tax Shelter”, and nine funding schemes on the regional level.

The federal scheme is a tax incentive scheme aimed at encouraging the production of audiovisual works and films (see Section 2 below).

In the French-speaking Community and Walloon Region there are five funding schemes: the “*Aide à la production*”, the “*Aide à la production de programmes télévisuels*”, the “*Subvention à la diffusion et prime à la qualité*” and the “*Fonds Spécial Financement d'oeuvres audiovisuelles*”.

In the Flemish-speaking Community there are four funding schemes the “*Ontwikkelingssteun*”, the “*Productiesteun*”, the “*Promotiesteun*” and the “*Scenariosteun*”.

### **2 Analysis of the “Tax Shelter”**

#### **2.1 Description of the funding scheme**

The “Tax Shelter” is the federal funding scheme. It is based on the *Loi-programme du 2 août 2002* (Act of 2 August 2002), on the *Loi-programme du 22 décembre 2003* (Act of 22 December 2003), on the *Loi du 17 mai 2004* (Act of 17 May 2004) and on the *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 3 May 2003 fixing the date of entry into force of articles 128 and 129 of the Act of 2 August 2002).

The Act of 22 December 2003 and the Act of 17 May 2004 amended Article 194ter of the 1992 Income Tax Code on the tax shelter regulation benefiting audiovisual production.

As a result of this legislation there were significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this report.

The tax shelter is a tax incentive to encourage the production of audiovisual works and films. This tax regime allows a company wishing to provide financial backing for audiovisual productions to exempt from tax any retained taxable profits worth up to 150% of the sums actually paid in financial backing. Thus the “Tax Shelter” supervisory authorities are the Finance Ministry and the Federal Public Service Finance. For contact information see reply B.14 for Belgium for “Tax Shelter”.

## 2.2 Synopsis of Objective territorialisation requirements

### 2.2.1 Rules

The following provision containing objective explicit territorialisation requirements applies to the “Tax Shelter”: Article 194ter of the 1992 Fiscal Code as recently amended by Act of 22 December 2003 and by the Act of 17 May 2004 (see reply B.5 for Belgium for “Tax Shelter”).

### 2.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 2.2.3 Discussion

Article 194ter of the 1992 Fiscal Code provides that a “Certified Belgian audiovisual work” is a “work of fiction (...) – for which the expenditures of production and exploitation, effected in Belgium by a deadline of a maximum of 18 months from the date of conclusion of the frame-agreement for the production of an audiovisual work, amount to at least 150% of the total sums allocated in principle, other than in the form of a loan, to the execution of the frame-agreement with exoneration of the benefits in accordance with § 2”.

The tax exemption is only granted and maintained if the production and operating costs for the audiovisual work incurred in Belgium amount to at least 150% of the sums allocated. Moreover it is provided that the production and operating costs for the audiovisual work must be incurred within a maximum of 18 months after signing the framework agreement and that 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. The total sums invested as loans must not exceed 40% of the sums allocated in compliance with the framework agreement (see reply B.7 for Belgium for “Tax Shelter”).

Article 194ter provides that expenditure in Belgium for production and exploitation must amount to at least 150% of the tax shelter risk capital. It means that, if a company invests €100,000 in a film (€60,000 in the form of a co-production and €40,000 in the form of loans), a tax exemption on €150,000 can be granted provided that the expenses incurred in Belgium for the production and operating costs amount to 150% of €60,000 (i.e. €90,000).

### 2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: expenditures in Belgium for production and exploitation must amount to at least 150% of the tax shelter risk capital.

## 2.3 Synopsis of indirect territorialisation requirements

### 2.3.1 Practice

There is no relevant judicial and administrative practice reported (see reply B.10 for Belgium for “Tax Shelter”).

### 2.3.2 Discussion

N/A

### 2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Belgium for “Tax Shelter”).

## 2.4. Synopsis of State aid selective granting criteria and procedures

There is no selective granting procedure under this scheme. However, the decision on granting a subsidy is based on objective criteria for eligibility: the objective territorial condition (see above Section 2.2) and other objective conditions to be fulfilled which imply indirect territorialisation.

## 2.5 Synopsis of the relation between territorialisation requirements and co-production agreements

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

However, 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 prevail over the national or internal legal provisions, provided that (i) they have a direct effect and (ii) they came 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*.

## 2.6 Synopsis of purpose and cultural clauses applying to the funding scheme

At the federal level there are, arguably, no cultural clauses even though Art. 23 of the Belgian Constitution expressly mentions “cultural rights”. This provision states that: “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 determines the conditions for exercising them. These rights include notably: [...] 5 the right to enjoy cultural and social fulfilment”.

At the regional level, however, there are general provisions expressing cultural goals.

Article 1 of the Royal Decree of 22 June 1967 contains a general cultural clause, stipulating that, within the limits set on this type of aid in the budget, assistance and grants may be given, according to the conditions set down hereafter, with the aim of promoting film culture in the French language.

Article 1 of the “Management Agreement” provides that the VAF (*Vlaams Audiovisueel Fonds, Flemish Audiovisual Fund*) has, within the ambit of Flemish audiovisual policy, the goal of stimulating independent audiovisual production and creation by authors within the Flemish Community. The aim of the VAF is to implement “an image of quality for Flemish audiovisual creations”. The VAF is also to strive to reflect the multicultural and diverse reality of Flemish culture in the productions it supports.

No indirect territorialisation requirements are located under the purpose and cultural clauses at the federal level. The following sections discuss this matter in relation to the regional funding schemes.

### **3. Analysis of the “Aide à la production”**

#### **3.1 Description of the funding scheme**

The “*Aide à la production*” (“Support for Production”) is based on the *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 22 June 1967 aiming to promote cinematographic culture as modified by Royal Decrees of 17 February 1976, 24 March 1978, 4 April 1995, 25 March 1996, 21 December 1998 and 18 December 2001.

This funding scheme is also based on the *Décret du 22 décembre 1994 portant diverses mesures en matière d'audiovisuel et d'enseignement* -Decree of 22 December 1994 adopting several measures regarding audiovisual and educational matters, and creating the “*Centre du cinéma et de l'audiovisuel*” (“CCA Decree”) and on the Guidelines of April 2004, “*CCA Guidelines*” (*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).*

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However, it should be mentioned that the Minister for Audiovisual Affairs of the Belgian French-speaking Community is currently working on a new decree covering aid to cinematographic production (see reply B.4 for Belgium for “*Aide à la production*”).

This scheme is a regional funding scheme. The Authorities in charge of its administration and supervision are the Ministère de la Communauté française de Belgique – Service général de l’Audiovisuel et des Multimédias and the Centre du Cinéma et de l’Audiovisuel Commission de Sélection des Films. For contact information see reply B.4 for Belgium for *Aide à la production*”.

## 3.2 Synopsis of objective territorialisation requirements

### 3.2.1 Rules

The provisions set out in the “CCA Guidelines” containing objective explicit territorialisation requirements apply to this funding scheme (see reply B.5 for Belgium for “*Aide à la production*”).

The Royal Decree of June 22, 1967 does not contain any specific territorialisation requirements. However, the “CCA Guidelines” applied by the *Commission de Sélection de films* require that: the person making a claim for aid must demonstrate the firm intention of spending 100% of the aid either in Belgium or to the advantage of persons or entities registered for taxation in Belgium. Thus it is necessary that applicants convincingly prove that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. The objective territorialisation requirement provided by the mentioned bylaw, is strictly applied by the Commission in charge of the selection.

### 3.2.2 Practice

There is no relevant judicial practice reported.

### 3.2.3 Discussion

It is necessary that applicants convincingly prove that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. However, this territorialisation requirement has not been yet included in any legislative act (see replies B.6 and B.7 for Belgium for “*Aide à la production*”).

### 3.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid must spend locally 100% of the received amount.

## 3.3 Synopsis of indirect territorialisation requirements

### 3.3.1 Practice

There is no relevant judicial or administrative practice reported.

### 3.3.2 Discussion

N/A

### 3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Belgium). However, the “*Aide à la production*” funding scheme contains indirect territorialisation requirements which take the form of the eligibility criteria within the nationality certification procedure and of the purpose clauses (see below Sections 3.4 and 3.6).

## 3.4. Synopsis of State aid selective granting criteria and procedures

To be eligible to apply for State aid under this funding scheme, the film project must be certified as a Belgian production according to Article 4 of the Royal Decree of 22 June 1997. It should be noted that certain criteria for nationality certification arguably qualify as indirect territorialisation requirements, e.g. the film must be shot in Belgium (see above Section A.3).

Moreover, according to the “CCA Guidelines” applicants must be registered as 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. Furthermore, it is provided that the project leader, its administrator and the majority of its directors must be of Belgian nationality or nationals of EU Member States.

Fulfilled these eligibility criteria, the decision on granting a subsidy is based on a qualitative evaluation. The report issued by the “*Centre du Cinéma et de l’Audiovisuel*” relating to cinematographic production, promotion and diffusion mentions that the “*Commission de Sélection des Films*” takes into account different criteria to guarantee the quality of the project. In particular the scenario,



the intent note written by the applicant and the elements of production are taken into account. After a promise of support by the Ministry based upon advice of the Commission, the *Groupe d'agrément (Accreditation Committee)* examines the technical and financial feasibility of the project, i.e. the list of responsible persons, technicians and interpreters, provisional financial plans and forecasts, fee estimates, provisional justifications of financing, insurance, project contracts and so forth. On this basis the *Groupe d'agrément* grants a provisional certification (see reply B.13 for Belgium for “*Aide à la production*”).

The selective aid criteria referring to “elements of production” cannot exclude the possibility of indirect territorialisation that is not quantifiable. Furthermore the eligibility criteria requiring the Belgian certification (which requiring shooting in Belgium) can qualify as indirect territorialisation that is not quantifiable.

### 3.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

### 3.6 *Synopsis of purpose and cultural clauses applying to the funding scheme*

Article 1 of the Royal Decree of 22 June 1967 contains a general cultural clause, stipulating that, within the limits set on this type of aid in the budget, assistance and grants may be given, according to the conditions set down hereafter, with the aim of promoting film culture in the French language.

The very aim of this scheme is to promote French culture. No indirect territorialisation requirements are located under the purpose and cultural clauses.

## **4. Analysis of the “Aide à la production de programmes télévisuels” (Support for Production of Television programs)**

### 4.1 Description of the funding scheme

The *Aide à la production de programmes télévisuels* (Support for Production of TV Programmes) is based on the *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 22 June 1967 aiming to promote cinematographic culture as modified by Royal Decrees of 17 February 1976, 24 March 1978, 4 April 1995, 25 March 1996, 21 December 1998 and 18 December 2001.

This funding scheme is also based on the *Décret du 22 décembre 1994 portant diverses mesures en matière d'audiovisuel et d'enseignement* -Decree of 22 December 1994 adopting several measures regarding audiovisual and educational matters, and creating the “*Centre du cinéma et de l’audiovisuel*” (“CCA Decree”) and on the Guidelines of April 2004, “CCA Guidelines” (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).

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However, it should be mentioned that the Minister for Audiovisual Affairs of the Belgian French-speaking Community is currently working on a new decree covering aid to cinematographic production (see reply B.4 for Belgium for “*Aide à la production*”)

This scheme is a regional funding scheme and provides objective territorialisation requirements. The authorities in charge of its administration and supervision are the “*Ministère de la Communauté française de Belgique – Service général de l’Audiovisuel et des Multimédias*”, the “*Centre du Cinéma et de l’Audiovisuel Commission de Sélection des Films*”. For contact information see reply B.14 for Belgium for “*Aide à la production de programmes télévisuels*”

## 4.2 Synopsis of objective territorialisation requirements

### 4.2.1 Rules

The provisions set out in the “CCA Guidelines” containing objective explicit territorialisation requirements apply to this funding scheme (see reply B.5 for Belgium for *Aide à la production de programmes télévisuels* and Section 4.2.2 below).

The Royal Decree of June 22, 1967 does not contain any specific territorialisation requirements. However, the “CCA Guidelines” applied by the *Commission de Sélection de films* require that: the person making a claim for aid must demonstrate the firm intention of spending 100% of the aid either in Belgium or to the advantage of persons or entities registered for taxation in Belgium. Thus it is necessary that applicants convincingly prove that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. The objective territorialisation requirement provided by the mentioned bylaw, is strictly applied by the Commission in charge of the selection.

### 4.2.2 Practice

There is no relevant judicial practice reported..

#### 4.2.3. Discussion

It is necessary that applicants convincingly prove that 100% of the support is to be spent in Belgium or to the profit of Belgian corporate or individual tax payers. However, this territorialisation requirement has not been yet included in any legislative act (see replies B.6 and B.7 for Belgium for “*Aide à la production*”).

#### 4.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient state aid must spend locally 100% of the received amount.

### 4.3 Synopsis of indirect territorialisation requirements

#### 4.3.1 Practice

There is no relevant judicial or administrative practice reported.

#### 4.3.2 Discussion

N/A

#### 4.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Belgium for *Aide à la production de programmes télévisuels*). However, this funding scheme contains indirect territorialisation requirements which take the form of the eligibility criteria within the nationality certification procedure and of the purpose clauses (see below Sections 4.4 and 4.6).

### 4.4. Synopsis of State aid selective granting criteria and procedures

To be eligible to apply for State aid under this funding scheme, the film project must be certified as a Belgian production according to Article 4 of the Royal Decree of 22 June 1997. It should be noted that certain criteria of the nationality certification arguably qualify as indirect territorialisation requirements, e.g. the film must be shot in Belgium (see above Section A.3).

Moreover, according the “CCA Guidelines” applicants must be registered as 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. Furthermore, it is provided that the project leader, its administrator and the majority of its directors must be of Belgian nationality or nationals of EU Member States.

Provided that these eligibility criteria have been met, the decision on granting a subsidy is based on a qualitative evaluation. The report issued by the “*Centre du Cinéma et de l’Audiovisuel*” relating to cinematographic production, promotion and diffusion mentions that the “*Commission de Sélection des Films*” takes into account different criteria to guarantee the quality of the project. In particular, the scenario, the intent note written by the applicant and the elements of production are taken into account. After a promise of support by the Ministry based upon advice of the Commission, the “*Groupe d’agrément (Accreditation Committee)*” examines the technical and financial feasibility of the project, i.e. the list of responsible persons, technicians and interpreters, provisional financial plans and forecasts, fee estimates, provisional justifications of financing, insurance, project contracts and so forth. On this basis the “*Groupe d’agrément (Accreditation Committee)*” grants a provisional certification (see reply B.13 for Belgium for “*Aide à la production de programmes télévisuels*”)

The selective aid criteria referring to “elements of production” cannot exclude the possibility of indirect territorialisation that is not quantifiable. Furthermore the eligibility criteria requiring the Belgian certification (which requiring shooting in Belgium) can qualify as indirect territorialisation that is not quantifiable.

#### 4.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above (see reply B.8 for Belgium for “*Aide à la production programmes télévisuels*”).

#### 4.6 *Synopsis of purpose and cultural clauses applying to the funding scheme*

See Section 3.6 above.

The very aim of this scheme is to promote French culture. No indirect territorialisation requirements are located under the purpose and cultural clauses.

### **5 Analysis of “Subvention à la diffusion et prime à la qualité” (Aid for distribution and grant for quality)**

#### 5.1 Description of the funding scheme

The *Subvention à la diffusion et prime à la qualité* (Aid for distribution and grant for quality) is based on the *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 22 June 1967 aiming to promote cinematographic culture as

modified by Royal Decrees of 17 February 1976, 24 March 1978, 4 April 1995, 25 March 1996, 21 December 1998 and 18 December 2001.

This funding scheme is also based on the *Décret du 22 décembre 1994 portant diverses mesures en matière d'audiovisuel et d'enseignement* -Decree of 22 December 1994 adopting several measures regarding audiovisual and educational matters, and creating the “*Centre du cinéma et de l’audiovisuel*” (“CCA Decree”) and on the Guidelines of April 2004, “CCA Guidelines” (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).

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study.

The authorities in charge of its administration and supervision are the “*Ministère de la Communauté française de Belgique – Service général de l’Audiovisuel et des Multimédias*”, the “*Centre du Cinéma et de l’Audiovisuel Commission de Sélection des Films*”. For contact information see reply B.14 for Belgium for *Subvention à la diffusion et prime à la qualité*.

## 5.2 Synopsis of objective territorialisation requirements

### 5.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme (see reply B.5 for Belgium for *Subvention à la diffusion et prime à la qualité*). However to be eligible to apply for State aid under this funding scheme, the film project must be certified as a Belgian production.

### 5.2.2 Practice

There is no relevant judicial and administrative practice reported.

### 5.2.3 Discussion

N/A

### 5.2.4 Conclusions

No objective explicit territorialisation requirements apply to the *Subvention à la diffusion et prime à la qualité* funding scheme.

## 5.3 Synopsis of indirect territorialisation requirements

### 5.3.1 Practice

There is no relevant judicial and administrative practice reported addressing indirect territorialisation requirements. However it should be recalled that State aid under the Federal funding scheme is granted to the film projects certified as Belgian productions. In order to obtain a grant under this funding scheme the film must be certified as Belgian. 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. See above Sections 3.3 and 4.3 (see reply B.11 for Belgium for *Subvention à la diffusion et prime à la qualité*).

### 5.3.2 Discussion

N/A

### 5.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. However, this funding scheme contains indirect territorialisation requirements which take the form of the eligibility criteria within the nationality certification procedure and of the purpose clauses (see Sections 4.4 and 4.6 above).

## 5.4 Synopsis of State aid selective granting criteria and procedures

To be eligible to apply for State aid under this funding scheme, the film project must be certified as a Belgian production according to Article 4 of the Royal Decree of 22 June 1997. It should be noted that certain criteria of the nationality certification arguably qualify as indirect territorialisation requirements, e.g. the film must be shot in Belgium (see Sections 4.4 and A3 above)

The decision on granting a subsidy is based on a qualitative evaluation only with respect to “Quality award for short films”. The “*Commission du Film*” 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).

## 5.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

## 5.6 Synopsis of purpose and cultural clauses applying to the funding scheme

See Section 4.6 above.

## 6. Analysis of “Fond Spécial”

### 6.1 Description of the funding scheme

The “*Fond Spécial*” (Special Fund), is intended to involve broadcasters in the development of the independent audiovisual production sector, and to both strengthen and give structure to the link between film and audiovisual production. This funding scheme is based on the *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.

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study.

The *Fonds Spécial* is a special fund allocated by the Belgian French Speaking Community since 1993 to stimulate the co-production 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, UPFF, UPPT-). Under the fund, the French speaking Community allocation amounts to €1,214,678 each year. The “*Fond Spécial*” supervisory authorities are the *Ministère de la Communauté française de Belgique -Service général de l’Audiovisuel et des Multimédias* and the *Centre du Cinéma et de l’Audiovisuel*.

For contact information see replies B.4 and B.14 for Belgium for “*Fond Spécial*”.

### 6.2 Synopsis of Objective territorialisation requirements

#### 6.2.1 Rules

The *Fond Spécial* does not contain any objective territorial condition. There is no obligation, under the Regulations, to spend a minimum proportion of the budget in Belgium (see reply B.5 for Belgium for “*Fond Spécial*”).

#### 6.2.2 Practice

There is no relevant judicial or administrative practice reported.

#### 6.2.3 Discussion

N/A

#### 6.2.4 Conclusions

No objective explicit territorialisation requirements apply to this funding scheme (see reply B.5 for Belgium for "*Fond Spécial*").

### 6.3 Synopsis of indirect territorialisation requirements

#### 6.3.1 Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for Belgium for *Fond Spécial*)

#### 6.3.2 Discussion

N/A

#### 6.3.3. Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.11 for Belgium for "*Fond Spécial*").

### 6.4 Synopsis of State aid selective granting criteria and procedures

The *Fonds Spécial* is a special fund allocated by the Belgian French Speaking Community since 1993 to stimulate the co-production of audiovisual works between the RTBF (*Radio Télévision Belge Francophone*) and independent producers (according to an 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).

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. There is no proper selective granting procedure (see reply B.13 for Belgium for "*Fond Spécial*"). 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.



- 6.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

- 6.6 Synopsis of purpose and cultural clauses applying to the funding scheme

See Section 2.6 above.

There are no reported specific provisions cultural objectives and justifications (see reply B.12 for Belgium for “*Fond Spécial*”).

## 7. Analysis of “Financement d’œuvres audiovisuelles”

- 7.1 Description of the funding scheme

The *Financement d’œuvres audiovisuelles* (Financing for Audiovisual Works) (FAW) is based on the *Décision du gouvernement wallon du 24 février 2000 – Création de Wallimage* (Decision of the Walloon government of February 24, 2000 – Creation of *Wallimage*) and on the *Wallimage Regulation* which came into force on 1 January 2004.

There arguably were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However it should be noted that the *Wallimage Regulation*, which contains territorial requirements, came into force in 2004.

The supervisory authority for FAW is Wallimage SA, whose role is to develop the audiovisual industry. There is also a financial subsidiary body, Sowalim, which is in charge of supporting audiovisual production and services companies, upon Wallimage recommendation, that are judged likely to have an impact on the economy and employment in the region

For contact information see replies B.4 and B.14 for Belgium for FAW.

- 7.2 Synopsis of Objective territorialisation requirements

- 7.2.1 Rules

The following provision containing objective explicit territorialisation requirements applies to this funding scheme: Article 1 of “*Wallimage Regulation*”.

- 7.2.2 Practice

There is no relevant judicial or administrative practice reported (see reply B.5 for Belgium for *FAW*). .

### 7.2.3 Discussion

This funding scheme provides two forms of financing: a loan and a participation in the production of the audiovisual work whose size is linked to the eligible audiovisual expenditures in the Walloon Region. Furthermore it is requested that “the beneficiary undertakes to spend a minimum of 100% of the granted sum in audiovisual expenditures in the Walloon Region.”

There is, however, a provision that for every 5% by which expenditure in the Walloon region exceeds the compulsory 100% of the aid granted, the share of the aid treated as a loan is reduced by 1% until a ratio of 10% loan to 90% co-production investment is reached.

A high degree of territorialisation is arguably implied by the eligibility criteria. One eligibility criterion is that the company applying for aid must demonstrate that a minimum of €250,000 of audiovisual expenditure will take place in the Walloon region. Nevertheless, exceptions can be made to this rule for documentaries, provided that they show a minimum local expenditure equivalent to 15% of the production’s total budget (see Article 5 of *Wallimage Regulation*).

### 7.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient state aid must spend locally (in the Walloon region) the amount awarded by the funding scheme.

## 7.3 Synopsis of indirect territorialisation requirements

### 7.3.1 Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for Belgium for *FAW*).

### 7.3.2 Discussion

N/A

### 7.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. However, under the criteria for selective aid, it is provided that the project should have a “structuring effect on the audiovisual sector in Walloon Region (see Section 7.4 below).

#### 7.4 Synopsis of State aid selective granting criteria and procedures

The FAW funding scheme grants State aid in a selective way. The investment approved by the Image Centre, in both the “Works” and “Service Companies” lines, constitutes selective aid, and it is the Board of Directors, appointed by the Government of the Walloon Region, which assesses appropriateness on the basis of four main criteria:

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

For the selective granting procedure see reply B.13 for Belgium for *FAW*.

The main principle of the selective aid is that every euro of aid given to a producer should generate at least one euro of audiovisual expenditure in the Walloon Region (structuring effect). This arguably qualifies as an indirect territorialisation requirement, located under the criteria and procedures for granting selective State aid.

#### 7.5. Synopsis of the relation between territorialisation requirements and co-production agreements

See Section 2.5 above.

#### 7.6 Synopsis of purpose and cultural clauses applying to the funding scheme

There are no provisions reported on cultural objectives and justifications (see reply B.12 for Belgium for *FAW*). However the main express purpose of *Wallimage* is to implement activity and employment in the Walloon Region.

The requirement to promote the audiovisual economy of the Walloon Region arguably qualifies as an indirect territorialisation requirement that is not quantifiable.

## 8. Analysis of “Ontwikkelingssteun” (Support for Development)

### 8.1 Description of the funding scheme

The *Ontwikkelingssteun* (Support for Development) is based on the *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 13 April 1999 with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds*, which came into force on 23 September 1999 (the “1999 Decree”) most recently amended in the *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 25 October 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of 13 April 1999, with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds*, which came into force on 1 November 2002 (the “2002 Decision”) and the *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, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Management Agreement”).

This funding scheme is also based on the *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”, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Appendix 1”).

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However, it should be noted that the “2002 Decision”, the “Management Agreement” and the “Appendix 1” to this Agreement came into force in 2002. Moreover, Article 14 of the “1999 Decree” was amended in 2002.

The “Support for Development” supervisory authority is the “*Vlaams Audiovisueel Fonds*” (“VAF”). For contact information see replies B.4 and B.14 for Belgium for “Support for Development”.

## 8.2 Synopsis of Objective territorialisation requirements

### 8.2.1 Rules

The following provision containing objective explicit territorialisation requirements applies to this funding scheme: Article 9 of Appendix 1 (see reply B.5 for Belgium for “Support for Development”).

### 8.2.2 Practice

There is no relevant administrative and judicial practice reported.

### 8.2.3 Discussion

Article 9 of Appendix 1 provides that in exchange for the support granted by the VAF, 100% of the amount must be spent in the Flemish Community (or in the Flemish Region and the Brussels Capital Region). It is possible to make an exception from this rule under special circumstances. In such circumstances the producer granted the aid is allowed to spend a lower amount in the Flemish Region. However, the spending may not be lower than 60% of the amount the VAF 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 European Union without any reduction in the support.

### 8.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid must spend as much as possible in the Walloon Region or in Brussels Capital, which is treated as equivalent to at least 100% of the grant. Beside this requirement, it is provided that at least 20% of production costs may be spent in another country of the European Union.

## 8.3 Synopsis of indirect territorialisation requirements

### 8.3.1 Practice

There is no relevant administrative and judicial practice reported (see reply B.11 for Belgium for “Support for Development”).

### 8.3.2 Discussion

N/A

### 8.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see below Section 8.6).

### 8.4 Synopsis of State aid selective granting criteria and procedures

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 takes place in the first phase). This selection phase 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 within which to analyse and select 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.

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, first, emphasis is put on the fact that creators from other countries or 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. Second, 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 also be an essential factor in labelling a project as primarily Flemish: i.e. 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 three: 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 primarily Flemish. Economic reasons (e.g. employment of more technical nature, other spending in the Flemish community) are not, as such, a decisive criterion for falling under the primary-Flemish regime (see follow-up reply for Belgium for “Support for Development”).

No indirect territorialisation requirements are located under the selective State aid granting criteria and procedures.

## 8.5 Synopsis of the relation between territorialisation requirements and co-production agreements

For general terms see Section 2.5 above.

Article 5 Para. 2 of the Co-operation agreement of 1 December 2005 between the Nederlands *Fonds voor de Film* and the *Vlaams Audiovisueel Fonds*, which came into force on 1 January 2006, imposes a territorial requirement on expenditure. In particular, it stipulates that 60% of this contribution has to be spent in the minority state of co-production.

## 8.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The cultural clause provided by the “Management Agreement” states that “The VAF will strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates”. In particular, Article 1 of the “Management Agreement” provides that the VAF has, within the Flemish audiovisual policy, the goal of stimulating independent audiovisual production and creation by authors within the Flemish Community.

The VAF aims to bring about “an image of quality for Flemish audiovisual creations”. The VAF is also to strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates.

The funding objectives of this scheme cover both cultural and economic goals. The cultural goals are expressly linked to the advancement of the local audiovisual production.

The requirement of promoting the local audiovisual production arguably qualifies as indirect territorialisation that is not quantifiable.

## 9. Analysis of “Productiesteun” (Support for Production)

### 9.1 Description of the funding scheme

*Productiesteun* (Support for Production) is based on the *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 13 April 1999 with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds*, which came into force on 23 September 1999 (the “1999 Decree”) most recently amended in the *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 25 October 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of 13 April 1999, with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds*, which came into force on 1 November 2002 (the “2002 Decision”) and the *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, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Management Agreement”).

This funding scheme is also based on the *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 Funds”, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Appendix 1”).

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However, it should be noted that the “2002 Decision”, the “Management Agreement” and the “Appendix 1” to his Agreement came into force in 2002. Moreover, Article 14 of the “1999 Decree” was amended in 2002.

The “Support for Production” supervisory authority is the *Vlaams Audiovisueel Fonds* (VAF). For contact information see replies B.4 and B.14 for Belgium for “Support for Production”.

## 9.2 Synopsis of objective territorialisation requirements

### 9.2.1 Rules

The following provision containing objective explicit territorialisation requirements applies to this funding scheme: Article 9 of the “Appendix 1” (see reply B.5 for Belgium for “Support for Production”).

### 9.2.2 Practice

There is no relevant administrative and judicial practice reported.

### 9.2.3. Discussion



Article 9 of Appendix 1 provides that, in exchange for the support granted by the VAF, 100% of the amount must be spent in the Flemish Community (or in the Flemish Region and the Brussels Capital Region). It is possible to make an exception from this rule under special circumstances. In such circumstances the producer granted the aid is allowed to spend a lower amount in the Flemish Region. However, the spending may not be lower than 60% of the amount the VAF 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 European Union without any reduction in the support.

#### 9.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid must spend as much as possible in the Flemish Region or in Brussels Capital, which is treated as at least 100% of the grant. Beside this requirement, it is provided that at least 20% of production costs may be spent in another country of the European Union.

### 9.3 Synopsis of indirect territorialisation requirements

#### 9.3.1 Practice

There is no relevant administrative and judicial practice reported (see reply B.11 for Belgium for “Support for Production”).

#### 9.3.2 Discussion

N/A

#### 9.3.3 Conclusions

There is no reported practice on indirect territorialisation.

### 9.4 Synopsis of State aid selective granting criteria and procedures

See Section 8.4 above.

### 9.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Sections 2.5 and 8.5 above.

## 9.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The cultural clause provided by the “Management Agreement” states that “The VAF will strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates”. In particular, Article 1 of the “Management Agreement” provides that the VAF has, within the Flemish audiovisual policy, the goal of stimulating independent audiovisual production and creation by authors within the Flemish Community.

The VAF aims to bring about “an image of quality for Flemish audiovisual creations”. The VAF is also to strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates.

The funding objectives of this scheme cover both cultural and economic goals. The cultural goals are expressly linked to the advancement of the local audiovisual production.

## 10. Analysis of “Scenariosteun” (Support for Scriptwriting)

### 10.1 Description of the funding scheme

*Scenariosteun* (Support for Scriptwriting) is based on the *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 13 April 1999 with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds*, which came into force on 23 September 1999 (the “1999 Decree”) most recently amended in the *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 25 October 2002 of the Flemish government with respect to the execution of the provisions of articles 12 and 15 of the decree of 13 April 1999, with respect to the authorisation of the Flemish government to join and assist in the foundation of the non-profit association *Vlaams Audiovisueel Fonds* which entered into force on 1 November 2002 (the “2002 Decision”) and the *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, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Management Agreement”).

This funding scheme is also based on the *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 Funds”, which came into force in 2002, and whose application was extended in 2005 most likely until 2007 (the “Appendix 1”).

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However, it should be noted that the “2002 Decision”, the “Management Agreement” and the “Appendix 1” to his Agreement came into force in 2002. Moreover, Article 14 of the “1999 Decree” was amended in 2002.

The “Support for Scriptwriting” supervisory authority is the “*Vlaams Audiovisueel Fonds*” (“VAF”). For contact information see replies B.4 and B.14 for Belgium for “Support for Scriptwriting”.

## 10.2 Synopsis of objective territorialisation requirements

### 10.2.1 Rules

The following provision containing objective explicit territorialisation requirements applies to this funding scheme: Article 9 of the “Appendix 1” (see however reply B.5 for Belgium for “Support for Scriptwriting”).

### 10.2.2 Practice

There is no relevant administrative and judicial practice reported.

### 10.2.3 Discussion

Article 9 of Appendix 1 provides that, in exchange for the support granted by the VAF, 100% of the amount must be spent in the Flemish Community (or in the Flemish Region and the Brussels Capital Region). It is possible to make an exception from this rule under special circumstances. In such circumstances the producer granted the aid is allowed to spend a lower amount in the Flemish Region. However, the spending may not be lower than 60% of the amount the VAF 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 European Union without any reduction in the support.

### 10.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid must spend as much as he can in the Flemish Region or in Brussels Capital, which is estimable as at least the 100% of the grant. Beside this requirement, it is provided that at least 20% of production costs may be spent in another country of the European Union.

### 10.3 Synopsis of indirect territorialisation requirements

#### 10.3.1 Practice

There is no relevant administrative and judicial practice reported (see however reply B.10 for Belgium for “Support for Scriptwriting”).

#### 10.3.2. Discussion

N/A

#### 10.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

### 10.4 Synopsis of State aid selective granting criteria and procedures

See Section 8.4 above.

### 10.5 Synopsis of the relation between territorialisation requirements and co-production agreements

See Sections 2.5 and 8.5 above.

### 10.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The cultural clause provided by the “Management Agreement” states that “The VAF will strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates”. In particular, Article 1 of the “Management Agreement” provides that the VAF has, within the Flemish audiovisual policy, the goal to stimulate independent audiovisual production and creation by authors within the Flemish Community.

The VAF aims to bring about “an image of quality for Flemish audiovisual creations”. The VAF is also to strive to reflect the multicultural and diverse reality of Flanders in the productions it stimulates.

The funding objectives of this scheme cover both cultural and economic goals. The cultural goals are expressly linked to the advancement of the local audiovisual production.

## References

*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](http://www.vaf.be)); Jaarverslag/Annual Report (pdf file); [http://www.juridat.be/cgi\\_loi/wetgeving.pl](http://www.juridat.be/cgi_loi/wetgeving.pl)

Beheersovereenkomst (management agreement)  
[http://www.vaf.be/uploaded\\_images/beheersovereenkomst.doc](http://www.vaf.be/uploaded_images/beheersovereenkomst.doc)

Bijlage 1 (Appendix 1)  
[http://www.vaf.be/uploaded\\_images/bijlage.doc](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>

## Attachments

Replies to the legal questionnaire by Daniel Fesler and Elisabeth Dehareng, attorneys at law, Backer & McKenzie Brussels

Regulations for Belgium