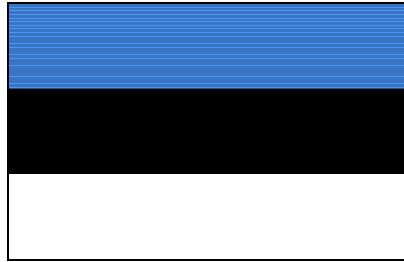


CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



ESTONIA
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

Acknowledgements

Legal Report by Germann Avocats

Part A of the EU Film Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions was written by Dr. Christophe Germann with important contributions for the Member States Synthesis Sheets, Output Tables and Charts from:

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The authors would like to thank the national lawyers from the 25 Member States who advised us, and everyone else who helped us in the production of this report, in particular Robert Gujski for the database.

A Overview of the legal situation in Estonia

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			Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N
				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	
Estonia	Film development and production funds	2,843,450	Nat	N/A	N/A	N/A	N	N/A	N/A	N

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	Estimation of the X% of how much local expending this involves in relation to the total aid available	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	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
Estonia	Film development and production funds	N	N/A	N/A	Y The economic evaluation referring to the “economic merits” of the film cannot arguably exclude indirect territorialisation (2.4)	N/A	N/A	N	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 ¹	Degree of the territorialisation ²		
				Funding Scheme Level ³	Funding body level	Member State Level ⁴
Estonia	Film development and production funds	2,843,450	No requirement	= 0	Moderate	0 %

¹ Assessment based on replies from local lawyers (see synthesis sheet)

² 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

³ 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

⁴ “total amount subject to territorialisation”/“total budget available”

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

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
Estonia	European Convention on Cinematographic Co-Production	1 September 1997	N
	Canada	4 November 2004	

Estonia is currently a party to the European Convention on Cinematographic Co-production and two co-production conventions with Canada (see reply A.3 for Estonia).

In Estonia there is a funding scheme the “Film development and production funds” (see reply A.2 for Estonia; see below Part B point 1).

2 Synopsis of conventions on co-production agreements

Estonia is a party to three co-production conventions, i.e. the Co-production agreement between Canada and Estonia, which was signed and came into force on 4 May 1996, the European Convention on Cinematographic Co-Production, which came into force on 1 September 1997, and the Audio-Visual Co-production Agreement between the Government of the Republic of Estonia and the Government of Canada, which came into force on 4 November 2004. The authority in charge of its supervision is the Estonian Ministry of Culture (see reply A.3 for Estonia)¹.

3 Synopsis of formal nationality certification procedures

There is no formal procedure to assess the nationality of a production. However, the following definitions apply: a “National film” for the purpose of this funding scheme is a film in the Estonian language, produced by an independent producer registered and residing in Estonia, whereas an “international co-operation film” is a film with an Estonian co-producer who owns the intellectual rights in the film in an amount proportional to his participation in the film and which must be at least 10% (see reply A.4 for Estonia).

4 Synopsis of expected legal developments

No new funding schemes containing territorialisation requirements and no new co-production agreements are expected in the near future (see reply A.4 for Estonia).

¹ This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

B The Estonian funding scheme

1 Overview

Estonia has one funding scheme: the *Eesti filmi sihtasutus*- “Film development and production funds”. The Estonian Film Foundation (*Eesti Filmi Sihtasutuse asutamine*) is the authority in charge of its administration. The Estonian Film Foundation is supervised by the Estonian Ministry of Culture.

2 Analysis of the Scheme

2.1 Description of the funding scheme

The *Eesti filmi sihtasutus*- “Film development and production funds” is based on *Eesti Filmi Sihtasutuse toetuste eraldamise eeskirj* (Regulations on Funding by the Estonian Film Foundation) which came into force on 24 January 2005 and on the “*Eesti Filmi Sihtasutuse asutamine* Regulation (Regulation of the Government of Estonia No. 345 of 8 May 1997 on the Estonian Film Foundation). There were no significant regulatory changes in the period from 2001 to 2005 affecting the legal questions addressed by this study.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

No objective territorialisation requirements apply to this funding scheme.

2.2.2. Practice

N/A

2.2.3. Discussion

N/A

2.2.4. Conclusion

No objective territorialisation requirements apply to this funding scheme (see reply B.5 for Estonia for Estonian Funding Scheme)

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial and administrative practice reported.

2.3.2. Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Estonia for Estonian Funding Scheme)

2.4. Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid on a selective basis to independent film production.

The criteria refer to the artistic and entrepreneurial track record of the applicants and the authors, respectively. The criteria for granting selective aid are: the artistic and production ability and professionalism of the applicant and the film authors and their earlier experience and achievements in the film area.

Evaluations are made concerning the artistic, economic or legal characteristics of the project, as decided and ordered by the Estonian Film Foundation. Projects must include a sufficient budget for such evaluations.

Projects that have passed the initial phase of selection are evaluated substantively. An evaluation of the budget shall be made if the total budget of the project exceeds 500,000 Estonian kroon (ca €32,000); a legal evaluation shall be made if the total budget of the project exceeds one million Estonian kroon (ca €64,000).

Independent experts shall evaluate the artistic, legal and economic merits of the film projects.

Evaluation requirements and experts used are decided by the Estonian Film Foundation for each financial year separately.

Substantive evaluation has to take into account, inter alia, the Estonian context in comparing the project with Estonian films of the same category in recent years, and the potential of the film project on the Estonian and foreign markets.

The criteria on the basis of which State aid is granted to independent film production are subject to interpretation. The economic evaluation referring to the “economic merits” of the film cannot arguably exclude indirect territorialisation.

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

For films made according to the conventions on international co-productions to which Estonia is a party, the Estonian participation in the film shall be proportionate to the Estonian financing and amount to at least 10% of the film’s total budget. Such a film must be exhibited in Estonian cinemas with Estonian as its original language or with Estonian subtitles or dubbed in the Estonian language within one year after the end of production.

In case of conflict generally, according to § 123 of the Estonian Constitution, "If laws or other legislation of Estonia are in conflict with international treaties ratified by the Parliament (*Riigikogu*), the provisions of the international treaty shall apply." However there is virtually no national legislation that could be in conflict with the conventions mentioned. The only law concerned is the Regulation of the Government No. 345 of 08.05.1997 founding the Estonian Film Foundation. The only regulation on the basis of which state aid is granted in sums that qualify for this report is a set of rules issued by the Estonian Film Foundation itself. If these rules should be in conflict with any international convention or treaty, the latter shall prevail, as such rules have no legal character.

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

In the preamble of the Constitution there is a general cultural clause that can be considered as covering all Estonian legislation. However, there are no specific cultural clauses that apply to the funding scheme.

The purpose of this funding scheme is to support only National films or International co-operation films (see the definition of these terms in Section A.3 above).

No indirect territorialisation requirements are located under the purpose and cultural clauses.

References

[Source: Estonian Film Foundation]

Attachments:

- Replies to the legal questionnaire by Aet Bergmann, attorney at law, Law office Luiga Mody Hääl Borenius, Estonia
- Regulations for Estonia