

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



GERMANY
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

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Germany	Filmförderungsanstalt (FFA; federal level)	46,903,000	Nat	N/A	N/A	N/A	N/A	N/A	N/A	Y (A 4)
	FilmFernsehFonds Bayern GmbH (Bavaria)	29,081,510	Reg	N/A	150% (First loan) 100% (Success loan) (3.2) <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	N/A	N/A	N/A	N/A	
	MFG Medien- und Filmgesellschaft Baden-Württemberg mbH (Baden-Württemberg)	10,362,633	Reg	N/A	At least 120% (4.2) <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	N/A	N/A	N/A	N/A	

Medienboard Berlin-Brandenburg GmbH (Berlin-Brandenburg)	25,397,318	Reg	N/A	N/A	N/A	<p>Art. 1.3.9 explicitly provides that film project costs should as far as possible be spent within Berlin-Brandenburg.</p> <p><u>Practice</u> reveals that these expenditures should be spent in Berlin-Brandenburg at least up to the level of the aid granted (so-called “regional impact”)</p> <p><u>Limited to:</u> At least 20% of all production costs can be spent in another MS (5.2)</p>	N/A	<u>Practice</u> reveals that these local expenditures should be at least 100%
Filmförderung Hamburg GmbH (Hamburg)	7,000,000	Reg	N/A	At least 150% (6.2)	N/A	N/A	N/A	N/A

	Filmstiftung NRW GmbH (North Rhine-Westphalia)	30,899,544	Reg	N/A	At least 150% (7.2) 100% For production with a total budget of up to EUR 750.000,00 <u>Limited to:</u> At least 20% of all production costs can be spent in another MS (7.2)	N/A	N/A	N/A	N/A	
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	MDM Mitteldeutsche Medienförderung GmbH for Saxonia, Saxony-Anhalt and Thuringia	12,725,877	Reg	N/A	At least 100% (8.2) <u>Limited to:</u> At least 20% of all production costs can be spent in another MS (7.2)	N/A	In the context of “package funding”, no percentage is provided but Art. 3.3.3 of the MDM Regulations requires that aid should be spent in Central Germany as far as possible, and that the projects shall be locally produced as far as it is possible. The producer must state in detail the items of the production costs that will be spent locally	N/A	N/A	
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	Nord Media Die Mediengesellschaft Niedersachsen / Bremen mbH	10,457,620	Reg.	For film production 75% (80% for smaller production)	For film production 125% (100% for smaller film) For other film activities 100% Possibility of exceptions (9.2)	N/A	N/A	N/A	N/A
	Hessische Filmförderung (Hessen)	1,019,551	Reg.	N/A	N/A	N/A	Y The recipient of the State aid for film production must spend locally an amount not quantified (10.2)	N/A	N/A
	MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH	1,383,116	Reg.	N/A	At least 100% (11.2) <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	N/A	N/A	N/A	N/A

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
Germany	Filmförderungsanstalt (FFA; federal level)	N	N/A	N/A	N	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A

	FilmFernsehFonds Bayern GmbH (Bavaria)	N/A	N/A	N/A	N	N/A	N/A	N	N/A	N/A
	MFG Medien- und Filmgesellschaft Baden-Württemberg mbH (Baden-Württemberg)	N/A	N/A	N/A	Y The conditions referring to economic interest as one of the eligibility criteria can qualify as indirect territorialisation that is not quantifiable (4.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (4.6)	N/A	N/A
	Medienboard Berlin-Brandenburg GmbH (Berlin-Brandenburg)	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (5.6)	N/A	N/A

Filmförderung Hamburg GmbH (Hamburg)	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (6.6)	N/A	N/A
Filmstiftung NRW GmbH (North Rhine-Westphalia)	N/A	N/A	N/A	Y To be eligible for funding, film projects must <i>inter alia</i> have the potential to contribute to the cultural quality and commercial viability of German cinema (7.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (7.6).	N/A	N/A
MDM Mitteldeutsche Medienförderung GmbH for Saxonia, Saxony-Anhalt and Thuringia	N/A	N/A	N/A	Y The criteria refer <i>inter alia</i> to economic interest of local culture (8.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (8.6)	N/A	N/A

	Nord Media Die Mediengesellschaft Niedersachsen / Bremen mbH	N/A	N/A	N/A	N	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (9.6)	N/A	N/A
	Hessische Filmförderung (Hessen)	N/A	N/A	N/A	Y The criteria for selective aid refer to the promotion of local film and of cinema culture (10.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (10.6)	N/A	N/A
	MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH	N/A	N/A	N/A	Y The criteria for selective aid refer to the promotion of local film and of cinema culture (11.4)	N/A	N/A	Y The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable (11.6)	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 ¹	Degree of the territorialisation ²		
				Funding Scheme Level ³	Funding body level	Member State Level ⁴
Germany	Filmförderungsanstalt (FFA; federal level)	46,903,000	no requirement	=0	No territorialisation	80 %
	FilmFernsehFonds Bayern GmbH (Bavaria)	29,081,510	150% (First loan) 100% (Success loan) <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	>1	No data	
	MFG Medien- und Filmgesellschaft Baden-Württemberg mbH (Baden-Württemberg)	10,362,633	120% <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	>1	Moderate	
	Medienboard Berlin-Brandenburg GmbH (Berlin-Brandenburg)	25,397,318	No requirement <u>But:</u> film project costs should as far as possible be spent within Berlin-Brandenburg <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	>1	High	

	Filmförderung Hamburg GmbH (Hamburg)	7,000,000	At least 150%	>1	High
	Filmstiftung NRW GmbH (North Rhine-Westphalia)	30,899,544	At least 150% 100% for production with a total budget of up to EUR 750.000,00 <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	>1	No data
	MDM Mitteldeutsche Medienförderung GmbH for Saxonia, Saxony-Anhalt and Thuringia	12,725,877	100% <u>Limited to:</u> At least 20% of all production costs can be spent in another MS For “package funding”, no percentage is provided but Art. 3.3.3 of the MDM Regulations requires that aid should be spent in Central Germany as far as possible	>1	No data
	Nord Media Die Mediengesellschaft Niedersachsen / Bremen mbH	10,457,620 (2005)	75% (80%) of film budget 125% (100%) of the aid granted	<1	High

	Hessische Filmförderung (Hessen)	1,019,551	unquantified requirement (connection to Hessen)	<1	No data	
	MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH	1,383,116	At least 100% <u>Limited to:</u> At least 20% of all production costs can be spent in another MS	?	No data	

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
Germany	Australia	September 12, 2001	Y: Co-Production Agreement with the countries as follows are currently under negotiation: Argentina Hungary Ireland Korea Poland Russia Serbia Montenegro
	Belgium	July 7, 1964	
	Brazil	signed February 17, 2005, not yet ratified	
	France	February 4, 2002	
	France II	November 23, 2001	
	Great Britain	January 30, 1975	
	Israel	May 27, 1971	
	Italy	November 5, 2002	
	Canada	June 22, 2004	
	Luxembourg	September 22, 2003	
	New Zealand	February 9, 2005	
	Austria	May 16, 1990	
	Portugal	April 29, 1988	
	Sweden	June 14, 1977	
	Switzerland	June 6, 1984	
	Spain	December 13, 2000	
	South Africa	January 7, 2005	
	Croatia (Revalidation Note)	October 26, 1992	
	Macedonia (Revalidation Note)	January 26, 1994	
	Bosnia-Herzegovina (Revalidation Note)	November 16, 1992	
European Co-Production Agreement	March 24 1995		
Eurimages	October 26, 1988		

Germany is currently a party to the European Convention on Cinematographic Co-production Agreement and the European Fund for Co-productions (EURIMAGES). In addition Germany is a party to 21 bilateral conventions on co-production agreements. Co-production agreements are currently under negotiation with Argentina, Hungary, Ireland, Korea, Poland, Russia, Serbia and Montenegro.

In Germany there is a funding scheme at the federal level with 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 €1m (one million) in 2005 (FFA *Filmförderungsanstalt*-German Federal Film Board). Furthermore there are nine funding schemes at the state (*Länder*) level: *Der Beauftragte der Bundesregierung für Kultur und Medien (BKM)*, *MFG Medien- und Filmgesellschaft Baden-Württemberg mbH*, *FilmFernsehFonds Bayern GmbH*, *Medienboard Berlin-Brandenburg GmbH*, *Filmförderung Hamburg GmbH*, *Filmstiftung NRW GmbH*, *MDM Mitteldeutsche Medienförderung GmbH*, *NORD MEDIA Fonds GmbH*, *Hessische Filmförderung*, *MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH*.

2 Synopsis of conventions on co-production agreements

There are 21 bilateral conventions on co-production agreements. In addition, Germany is party to the European Co-production Agreement and the European Fund for Co-productions (EURIMAGES; see the list: reply A.3).

At the federal level, the *Filmförderungsanstalt* (“FFA”) is entrusted with the task of promoting and providing support to co-productions between German and foreign producers (see Federal scheme: reply B.12). Germany is currently negotiating further conventions on co-production agreements (see Section 5 below).

3 Synopsis of formal nationality certification procedures

At the federal level, independent film productions are subject to the nationality certification procedure provided by Art. 15, 16 and 16a *FFG* (German Film Promotion Act).

Indirect territorialisation requirements are located under the rules for the formal nationality certification procedure. The formal criteria for granting German nationality to a motion picture can be summarized as follows: the place of domicile of the producer and of the studios, production and post-production services, German language of at least one of the final versions of the film, the nationality of the film director and of the crew members, the place of the film’s

premiere and the indication that the film is German when released in major film festivals (see reply A.14 for the detailed list of criteria).

However, even if these criteria are not met, the Board of the FFA has the discretion to decide that a film is German by taking into account the film's economic consequences in Germany and abroad.

The *Bundesamt für Wirtschaft und Ausfuhrkontrolle* (BAWA) delivers the certificate confirming that a film corresponds to the German nationality requirements. A refusal to grant the nationality certificate can be appealed before the FFA, and ultimately before the *Bundesbeauftragte für Kultur und Medien* (BKM).

4 Synopsis of expected developments

Germany is currently negotiating or revising several co-production agreements. Agreements with Argentina, Hungary, Ireland, Korea, Poland, Russia, Serbia and Montenegro are currently under negotiation (see replies A.3 and A4).

Furthermore, the *Bundesbeauftragte für Kultur und Medien* has announced that for the years 2007 to 2009 the amount of €60m (sixty million) per year will be available as a refund for production expenditure in Germany for films which meet (a) the criteria required for the nationality certification (see Section 1.3 above), and (b) a German culture test. The refund will be 20% for productions up to a certain budget amount and 15% for larger productions. The definition of "German expenditure" as well as the criteria for the cultural test are still under discussion (see reply A.6).

B The German funding schemes

1 Overview

In Germany, there is one funding scheme at the national (federal) level, the *Filmförderungsanstalt* (“FFA” or “Federal Funding Scheme”), which is under the control of the *Beauftragte der Bundesregierung für Kultur und Medien* (“BKM”) acting as supervisory body, and nine funding schemes that are operated on the regional (“Länder”) level, namely, the *MFG Medien- und Filmgesellschaft Baden-Württemberg mbH* (“Baden-Württemberg Funding Scheme”), the *FilmFernsehFonds Bayern GmbH* (“Bavaria funding scheme”), *Medienboard Berlin-Brandenburg GmbH* (“Berlin-Brandenburg Funding Scheme”), *Filmförderung Hamburg GmbH* (“Hamburg Funding Scheme”), *Filmstiftung NRW GmbH* (“NRW Funding Scheme”), *MDM Mitteldeutsche Medienförderung GmbH for Saxony, Saxony-Anhalt and Thuringia* (“MDM Funding Scheme”), *Nord Media Fonds GmbH* (“Nord Media Funding Scheme”), *Hessische Filmförderung* (“Hessen Funding Scheme”) and *MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH* (“MSH Funding Scheme”).

In Germany, State aid is granted both selectively and automatically (see replies B.12 and B.13 for FFA- Federal funding scheme). Criteria for the grant of automatic aid on the federal level refer to the nationality certification procedure. This type of aid, therefore, comes close to selective aid. This is the case when the Board of the FFA uses its discretion to classify as German a film project that does not otherwise meet the criteria of the certification procedure. For the time being, there are no tax incentive schemes in this country.

2 Analysis of the Federal funding scheme (“FFA Funding Scheme”)

2.1 Description of the funding scheme

The Federal Funding Scheme (FFA) is based on the *Filmförderungsgesetz* (Federal Film Promotion Act), which came into force on 1 January 2004 and applies for a limited period of time until December 2008. There is a set of regulations issued by the FFA detailing the procedure and the formalities to be followed.

There were regulatory changes during the reference period from 2001 to 2005. The current version of the law is different from the previous one that expired on December 31, 2003. These differences, however, relate mainly to the financing of the scheme itself and the division of the funds between the selective and automatic aid as well as the calculation of the automatic subsidy. They do not substantially affect the question of territorialisation requirements (see reply B.4 for the FFA Funding Scheme).

For contact information see reply B.14 for the FFA Funding Scheme, and for additional information on this scheme its website <http://www.ffa.de/>

2.2 Synopsis of objective explicit territorialisation requirements

2.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme. However, to be eligible to apply for State aid under this funding scheme, the film project must be certified as a German production (see reply B.5 for the Federal scheme and point 2.3 below).

2.2.2. Practice

There is no relevant judicial or administrative practice reported.

2.2.3. Discussion

N/A

2.2.4. Conclusion

No objective explicit territorialisation requirements apply to this funding scheme.

2.3 *Synopsis of indirect territorialisation requirements*

2.3.1 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 selectively but also automatically.

2.3.2 Discussion

Selective aid is granted according to Art. 32 FFG (see Section 2.4 below).

Automatic aid is generated for all films qualifying for the certificate under Art. 17 FFG (see for the complete list of criteria reply A.4 for Germany). The Board of the FFA can accept film projects as German productions even if the other criteria listed under art. 15 of the German Film Promotion Act are not fulfilled. When using this discretion the Board of the FFA must take into consideration the economic consequences in Germany and abroad. Furthermore, under the criteria for selective aid, the film project must “improve the quality and the economic

situation of film in Germany” (see reply B.13 for the Federal funding scheme referring to art. 32 FFG). These criteria are to be applied in the context of assessing the script and the cast and crew list (see reply B.13 for the Federal funding scheme). One can, therefore, define two categories of indirect territorialisation conditions, one based on the requirement to deliver a German version of the film, and the other based on the discretion of the Board of the FFA for the nationality certification procedure and of the experts making the selection of film projects based the contents of the script and the composition of the staff. Automatic aid is, therefore, also available for co-productions produced under existing co-production agreements or the European Co-production Convention. Automatic aid is calculated on the basis of the number of tickets sold in Germany and the success achieved by the film at national and international festivals (see below 2.5).

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

However, at the same time the applicable regulation also refers to the rules governing the nationality certification procedure and to the selective aid criteria (see replies B.10 and B.13 for the Federal funding scheme) where local economic objectives must be taken into account (see above A 3 below 2.4)

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

The FFA scheme grants State aid selectively according to Art. 32 FFG

State aid may be granted if the film project on the basis of the script and the cast and crew list gives reason to believe that a film will be produced which will be in a position to improve the quality and the economic situation of film in Germany.

It is expressly stipulated also that projects of talented newcomers should receive selective aid in an appropriate proportion. The quality of the screenplays and the composition of the cast and crew are the main criteria for providing selective aid (Art. 32 FFG).

Film projects must contribute to improve the quality and the economic situation of cinema in Germany in order to qualify for State aid (see reply B.13 for the Federal funding scheme).

Selective aid for international co-productions should only be granted to co-productions in which the share of the German domiciled or resident producer is higher than 50%. This restriction, however, does not apply to co-productions which are produced according to an international Co-production Agreement. There are arguably no objective explicit criteria to assess the quality of a

screenplay beyond some purely formal considerations. This leaves a great margin of discretion to the experts selecting film projects for State aid. In addition, in the case of the Federal funding scheme, the criteria for granting selective aid expressly refer also to the staff and to the improvement of the economic situation of cinema in Germany (see reply B.13 for the Federal funding scheme). Experts in charge of the selection under this scheme may seek to justify such refusals either on the grounds of the insufficient quality of the screenplay or the lack of local staff or any positive effect on the German film economy. Decisions for film funding can only be reviewed to a very limited extent (formal mistakes/misuse of discretion).

The conditions for selective aid referring to the aim of promoting the German film economy can be interpreted in a way that gives scope for indirect territorialisation that is not quantified in the law.

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

International co-productions qualify under § 16 FFG if the following criteria are met.

- One of the producers is domiciled in Germany or, if the producer is domiciled in the EU or the EEA, maintains a permanent establishment in Germany and is responsible for carrying out the film project.
- At least one of the final versions of the film is in the Germany language.
- The criteria of a Co-production Agreement entered into between the Federal Republic of Germany and one or more other states are being met. This means that either the criteria of the European Co-production Convention or any of the Co-production Agreements entered into by Germany have to be met.
- Alternatively, it will also be sufficient, if the producer, having a German domicile or a German permanent establishment (see above), has a substantial financial share in the production and there is a corresponding artistic and technical involvement of at least 30% of cast and crew members who have German nationality or a nationality of another member state of the EU or another state of the EEA.

In cases in which the producer, having a German domicile or German permanent establishment (see above), has a majority involvement in the film, the film needs to have its premiere in the German language in Germany or has to be entered in one of the major festivals as the German entry.

As regards the artistic and technical involvement, at least the following persons should have German nationality or a nationality of one of the member states of the EU or another member state of the EEA:

- one main role and one secondary role or, if this is not possible, two important roles
- the assistant to the director or another artistic or technical crew member and either the script writer or the dialogue writer

Since there are no objective explicit territorialisation requirements applying to the Federal funding scheme, no conflict of rules or inconsistency between the FFG and the various conventions on co-production can occur (see reply B.5 for the Federal funding scheme). In the context of selective aid granted under this scheme for international co-productions, the contribution of the German-domiciled or resident producer must be higher than 50%. This restriction, however, does not apply to co-productions which are produced according to international agreements on co-productions (see reply B.8 for the Federal funding scheme).

Automatic aid is, therefore, also available for co-productions produced under existing Co-production Agreements or the European Co-production Convention. Automatic aid is calculated on the basis of the number of tickets sold in Germany and the success achieved by the film at national and international festivals. Each visitor accounts for one point. The participation in one of the internationally acknowledged festivals, a nomination for the European Film Prize, or the winning of national or international film prizes will bring between 50.000 and 300.000 additional points. There is a minimum threshold of points a film has to obtain in order to receive automatic aid. This minimum number is between 25,000 (for documentary films) and 50,000 (for films that are being nominated or have been nominated for a festival or have won a film prize) or (standard) 100.000. The maximum amount of automatic aid is €2m (two million). In the case of international co-productions, the automatic aid will not be higher than the contribution to the cost of the film by the producer having its domicile or its permanent establishment in Germany (see reply B.12 for Germany for the FFA Funding Scheme for further details on the criteria for automatic State aid).

There is formally no scope for conflicts between territorialisation requirements based on the producer's obligation to be domiciled or have an establishment in Germany and co-production agreements when these co-productions take place in the framework of international conventions to which Germany is a party.

There are no obvious indications that the freedom to conclude co-production agreements is limited by indirect territorialisation requirements.

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

On the constitutional level, the Federal State places the authority for legislation in the cultural sector mainly on the *Länder*. The Federal State coordinates important legislation in the field. Special cultural clauses concerning territorialisation do

not exist at the constitutional level. Both the Federal and the *Länder* constitutions only regulate the general authority for cultural issues.

The FFG articulates the general objective (“purposes clause”) and specific cultural justifications of this funding scheme.

Art 1 of the FFG states that the FFA shall promote the structure of the German film industry and the creative and artistic quality of the German film as a precondition for its success in Germany and abroad.

According to Art. 2 Nr. 4 FFG, one of the aims of the FFA is to support co-productions between German and foreign producers. Representatives from the associations of the creative contributors to the production of films play an important role within the bodies of the FFA (see Art. 6, 7, 8, 8a FFG). The artistic success of films at festivals has become an important factor in establishing the amount to be received by a film as automatic subsidy (see Art. 22, 23 FFG; see reply B.12 for Germany for the Federal Funding Scheme).

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

3 Analysis of the FilmFernsehFonds Bayern GmbH (“Bavaria Funding Scheme”)

3.1 Description of the funding scheme

The Bavaria Funding Scheme is based on the *Richtlinien für die bayerische Film- und Fernsehförderung* (Guidelines for the Bavarian Film and TV Funding) of 30 May 2001. There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Bavaria Funding Scheme, and for additional information on this scheme its website <http://www.fff-bayern.de/>.

3.2 Synopsis of objective explicit territorialisation requirements

3.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme.

The Guidelines of the Bavaria funding scheme provide a so-called “Bavaria Effect” (“*Bayern Effekt*”) according to which at least one-and-a-half times the amount awarded by the Bavaria funding scheme for a project should be spent in Bavaria (Sec. 3.7 of the FFF Guidelines). In individual cases, this local spending requirement may be waived in part or in its entirety, if it is ensured that, in return, the subsidy programme of another federal state waives its local spending requirement in the same amount to the benefit of Bavaria on another project. However, at least 20% of all production costs can be spent in another member state of the European Union.

Within a period of three years following the repayment of the first loan instalment, the applicant may request a new loan up to the amount of capital and interest repaid (*Erfolgsdarlehen*, success loan). The success loan shall be granted if the applicant's new project promises a film worthy of being funded on the basis of quality and economic potential. The FFF Guidelines expressly require that this success loan must be used in Bavaria in its entirety (Sec. 3.11 of the FFF Guidelines).

In cooperation with the FFF Bavarian funding scheme, the Bavarian Bank Fund (BBF) is an additional resource for financing projects which promise economic success (see www.fff-bayern.de/en/?rub=foerderung). The territorialisation requirements of the FFF Bavarian funding scheme apply also to the BBF funding scheme (Sec. 11 of the BBF Guidelines of 2 November 2002; see www.fff-bayern.de/assets/download/bankenfond_e.pdf). However the Bavarian Bank fund can not be regarded as state subsidy. The Bavarian Bank fund is composed of

Bayerische Landesbank, LfA Förderbank Bank Bayern and two private banks, *Hypo Vereinsbank* and *Reuschel & Co.* First of all, the fund does not provide continual sums. According to the Bavarian Bank fund's rules, productions can only profit, when they promise to be economically successful. This criterion is applied in a way that funding would have to be given in the same way under usual economic conditions on the market. Furthermore, the funding is not backed by the State.

3.2.2 Practice

There is no relevant judicial or administrative practice reported.

3.2.3 Discussion

The Bavaria funding scheme contains objective explicit territorialisation requirements.

At least one-and-a-half times the amount awarded for a project should be spent in Bavaria, Sec. 3.7 of the Guidelines. Success loans should be spent in Bavaria, Sec. 3.11. of the Guidelines. Notwithstanding all this, at least 20% of the total production costs may be spent in other parts of the country or other EU countries.

3.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient state aid must spend locally (within the *Land-Bavaria*) one-and-a-half times (150%) the amount awarded by the Bavaria funding scheme. Moreover the 20% of the film budget may be spent in other states or EU Member states.

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 Germany for Bavaria Funding Scheme; see below Section 3.6).

3.4 Synopsis of selective State aid granting procedures

The Bavarian funding scheme grants State aid in a selective way based on **Sec. 1.3.5, 1.3.9 (General Funding Condition), Sec. 3.14. (Special Support for New Film Making Talents) and Sec. 3.2 of the Guidelines (see reply B.12 for the Bavaria Funding scheme).**

Loans will be granted on condition that the film project promises a film worthy of being funded on the basis of quality and economic potential (Art. 1.1 and 1.3.5 of the FFF Bavarian funding scheme and the additional citations in the reply B.12 for the Bavarian funding scheme).

The relevant clauses describing the purpose of the FFF Bavaria funding scheme expressly mention as a criterion for the selection of film projects to be publicly funded the aim of contributing to the strengthening of the audio-visual sector in Europe (Art. 1.1 of the FFF Bavaria funding scheme guidelines).

Moreover Sec. 3.2 states that “the production of feature films (motion pictures) may receive funding of up to 30% of reasonable production costs, but not more than €1.6m (one million six hundred thousand), if the producer is a resident of, or has a branch office located in Germany, and the refinancing of the funded portion on the national and international market seems possible”.

Sec. 13.9 of the Guidelines states that “for larger commercial motion pictures without any particular cultural objective, accumulated funding should not exceed 50%”. Sec. 1.3.5 of the FFF Bavaria funding scheme guidelines: “Loans will be granted on condition that the film project promises a film worthy of being funded on the basis of quality and economic potential”.

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

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

International co-productions qualify for grants under the Guidelines; European co-productions may be especially funded, Sec. 3.7 of the Guidelines. The application for film production aid is to be made by the producer (see further Section 2.6 above).

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

The guidelines of the FFF Bavaria funding scheme expressly and specifically mention that funding is intended to ensure cultural diversity but also “contribute to the strengthening of the audio-visual sector in Europe” (Art. 1.1 of the FFF Bavaria funding scheme guidelines). Moreover, Sec. 1.3.5 states that “loans will

be granted on condition that the film project promises a film worthy of being funded based on the criteria of quality and economic potential”.

The rules applying to this funding scheme include a reference to the promotion of cultural policies.

Since this cultural purpose constitutes one among other equally important criteria for the selection of film projects, experts in charge of allocating the aid have a great freedom of discretion.

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

4 Analysis of MFG Medien- und Filmgesellschaft Baden-Württemberg mbH (“Baden-Württemberg Funding Scheme”)

4.1 Description of the funding scheme

The Baden-Württemberg Funding Scheme is based on the *Vergabeordnung zur Filmförderung* (Regulations on the Grant of Aid to the Film Industry). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study.

For contact information see reply B.14 for the Baden-Württemberg Funding Scheme, and for additional information on this scheme its website <http://www.mfg.de/>.

4.2 Synopsis of objective explicit territorialisation requirements

4.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 1.1 and Art. 2.1 of the Regulations on the Grant of Aid to Film Industry (“Baden-Württemberg Regulations”).

4.2.2 Practice

There is no judicial and administrative practice reported.

4.2.3 Discussion

Art. 1.1 requires that at least 120% of the total public aid that is awarded in each year should be spent in Baden-Württemberg for the purposes of strengthening the

local “film economic location” (see reply B.11 for the Baden-Württemberg funding scheme).

Furthermore, as a prerequisite for State aid from Baden-Wurttemberg, the individual film project must either have a “cultural or other connection to Baden-Württemberg” or be of “economic interest to Baden-Württemberg” (Art. 2.1 of the Baden-Württemberg Regulations). In the latter case, both alternatives also mention the quality of the film project as a criterion to apply in addition to the cultural connection or the economic interest criteria, respectively (see reply B.11 for the Baden-Württemberg funding scheme). Art. 2.1 of the Baden-Württemberg Regulations further defines the economic interest for Baden-Württemberg if at least 120% of the aid awarded in Baden-Württemberg is spent in Baden-Württemberg in documented form (so-called “Baden-Wurttemberg effect”; for the “cultural connection”, see Point 4.6 below).

However, the Baden-Württemberg Regulations also specify that the producers can spend at least 20% of the total budget of their film project in other countries (Art. 2.4 of the Baden-Württemberg Regulations). The Regulations require that the producer indicate in the application the items of the budget to be locally spent (Art. 4.1.5 of the Baden-Württemberg Regulations). If possible, the applicant shall provide adequate film training opportunities in Baden-Württemberg during production (Art. 4.1.7 of the Baden-Württemberg Regulations).

4.2.4 Conclusions

The objective explicit territorialisation requirements that apply to the Baden-Württemberg funding scheme can be summarized as follows. The recipient of the state aid must spend locally 120% of the aid awarded.

4.3 Synopsis of indirect territorialisation requirements

4.3.1 Practice

There is no judicial and 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 Germany for Baden-Württemberg Funding Scheme; see below Sections 4.4 and 4.6).

4.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way based on its Regulations. Selective aid under the Baden-Württemberg Funding Scheme must comply with the main objective set forth in its Regulations (see discussion on the cultural clause under point 4.6 below).

Art. 1.1 of the Baden-Württemberg Regulations provides that culturally significant films of diverse genres and culturally significant television and video productions as well as film production that significantly contributes to advancing the local film industry should have funding priority (see reply B.12 for the Baden-Württemberg funding scheme; see also discussion on objective explicit territorialisation requirements under Section 4.2 above).

The Baden-Württemberg funding scheme further distinguishes between film projects with a budget that is higher than €500,000 on the one hand, and film projects with a budget up to €500,000 on the other hand. Film projects of the former category are eligible for support if they are ambitious projects that will contribute to successful, high-quality programming both theatrically as well as on television (Art. 4.2.1 of the Baden-Württemberg Regulations). For film projects falling under the latter category preference is given to productions by young authors and/or graduates in film and media studies from an educational institution located in Baden-Württemberg (Art. 4.3.1 of the Baden-Württemberg Regulations). Moreover, according to Art. 4.1.7, the applicant shall provide adequate film training opportunities in Baden-Württemberg.

Furthermore, the Baden-Württemberg funding scheme is also open to television programmes and video productions. Under this third category, independent television film productions of outstanding quality and outstanding cultural significance for Baden-Württemberg are eligible for support (Art. 4.4.1 of the Baden-Württemberg Regulations). Exceptionally, this funding scheme can also subsidise productions made solely for television if they substantially serve to assist young film professionals, preferably from an educational institution located in Baden-Württemberg (Art. 4.4.2 of the Baden-Württemberg Regulations). Finally, the Baden-Württemberg funding scheme can also give support to the production of outstanding video and other audio-visual productions of great cultural importance (Art. 4.5.1 of the Baden-Württemberg Regulations).

The provisions on the funding objective (Art. 1.1), the general conditions of support (Art. 2.1) and on the eligibility of film, television and video projects (Art. 4.2 to 4.5) refer not only to local preferences to be considered when granting aid, but refer also to cultural and quality criteria that are not further defined and that remain, therefore, to a large extent outside of judicial review.

Besides the objective explicit requirements to take into consideration the economic interest of local film, television and video production, the Baden-

Württemberg Regulations base the selection of film, television and video projects on general criteria of quality.

Thus, the conditions referring to economic interest as one of the eligibility criteria can qualify as indirect territorialisation that is not quantifiable.

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

Grants are also available to international co-productions. European co-productions especially may be funded. The application for film production aid is to be made by the producer. International co-productions will be treated as national co-productions in terms of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreements (see Section 2.5 above).

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

The Baden-Württemberg funding scheme has as its main objective to develop, sustain and promote film culture and thereby develop and advance the film industry in Baden-Württemberg, and to present the film production services and opportunities in Baden-Württemberg both nationally and internationally. It is to give funding priority to culturally significant films of diverse genres, to film production that substantially contributes to advancing the film industry in Baden-Württemberg, and to culturally significant television and video productions (Art. 1.1 of the Baden-Württemberg Regulations; see also the full quotation of this provision in reply B.12 for the Baden-Württemberg funding scheme).

The funding objectives of this scheme cover both cultural and economic goals. The cultural goals are expressly linked to the advancement of the local film industry (Art. 1.1 of the Baden-Württemberg Regulations).

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

5 Analysis of Medienboard Berlin-Brandenburg GmbH (“Berlin-Brandenburg funding scheme”)

5.1 Description of the funding scheme

The Berlin-Brandenburg funding scheme is based on the *Vergaberichtlinien für die Filmförderung der Medienboard Berlin-Brandenburg GmbH as of 1 January 2005* (“Berlin-Brandenburg Regulations”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Berlin-Brandenburg funding scheme, and for additional information on this scheme its website www.medienboard.de.

5.2 Synopsis of objective explicit territorialisation requirements

5.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 1.3.9 of the Berlin-Brandenburg Regulations (see reply B.6 for Germany for the Berlin-Brandenburg Funding Scheme). In addition, a special rule applies for aid dedicated to the development of film projects. In principle, producers should be resident in Berlin-Brandenburg and the film projects should be mainly produced and created there in order to be eligible for this type of aid (Art. 2.2.2 of the Berlin-Brandenburg Regulations).

5.2.2 Practice

At least 100% of the grant must be spent in the region. Notwithstanding this, at least 20% of the total production costs may be spent in other countries of the European Community (see reply B.7).

5.2.3 Discussion

Art. 1.3.9 explicitly provides that film project costs should as far as possible be spent within Berlin-Brandenburg.

On principle, these expenditures should be spent in Berlin-Brandenburg at least up to the level of the aid granted (so-called “regional impact”). This regional impact principle may be partially or fully waived if the Berlin-Brandenburg Funding scheme agrees with providers of State aid for film from another German State that this other State aid provider reciprocally waives its regional impact principle at the same level for another project. Nonetheless, at least 20% of production costs may be spent in another country of the European Community.

5.2.4 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 Berlin-Brandenburg, which is estimable as at least the 100% of the grant. Beside this requirement is provided that at least 20 % of production costs may be spent in another country of the European Community.

5.3 Synopsis of indirect territorialisation requirements

5.3.1 Practice

There is no relevant administrative and judicial practice reported.

5.3.2 Discussion

N/A

5.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for the Berlin-Brandenburg Funding Scheme; see below Sections 5.4 and 5.6).

5.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants state aid in a selective way based on Art. 2.3 of the Regulations and on Art. 2.4 for television productions.

The selective aid granted under this scheme distinguishes between production and distribution. In addition, there is also type of aid available for production that combines selective and automatic granting procedures, i.e. State aid that is granted for new projects and that relies on the success of previous films, if these new projects correspond to the quality criteria and funding goals of the Berlin-Brandenburg Funding Scheme (so-called “success-related loan” according to Art. 2.3.10 of the Berlin-Brandenburg Regulations).

As a generally applicable rule, funding under this scheme must be compliant with the funding objectives that are summarized in Section 5.6 below (see Art. 1.3.1 of the Berlin-Brandenburg Regulations).

More specifically, in order to be eligible for selective aid dedicated to film production, the projects must be suitable for commercial exploitation. This condition implies, *inter alia*, that the producers have a distribution agreement

guaranteeing theatrical release in Germany whereas they usually need an international distribution agreement for documentaries.

The production of independent television programmes is eligible for aid (Art. 2.4 of the Berlin-Brandenburg Regulations and reply B.13 for the Berlin-Brandenburg Funding Scheme) provided that:

- they are of special quality
- they are subject to a distribution agreement
- they are either in the interest of Berlin-Brandenburg or are co-produced with international partners
- there is evidence that they will be commercially exploited on the international market

Furthermore, (under Art. 1.3.5 of the Berlin-Brandenburg Regulations; see also reply B.13 for the Berlin-Brandenburg Funding Scheme) this scheme provides funding for the distribution of European films the production of which it funded, provided that:

- they were produced or co-produced by producers resident in Germany
- they will be distributed in German cinemas or on international markets by distributors or world sales companies based in Germany
- funding their distribution is in the particular film-cultural or economic interest of Berlin-Brandenburg

Selective aid under this scheme as well as the success-related loans can always be refused on the basis of quality considerations that are not further defined in the Berlin-Brandenburg Regulations.

This funding scheme does not contain indirect territorialisation requirements under selective aid criteria and procedures.

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

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement (see reply B.8).

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

Art. 1 of the Berlin-Brandenburg Regulations provides the funding objective of this scheme.

The State aid granted under this scheme aims at promoting the development of the Berlin-Brandenburg film culture and film industry in qualitative and quantitative

respects. It also has the objective of strengthening the economic performance of film undertakings, in particular independent film producers, and the corresponding infrastructure in the region. Furthermore, it is meant to facilitate the creation of diverse and high-quality film and television productions in Berlin-Brandenburg, and represent Berlin-Brandenburg at home and abroad. Finally, this scheme is to reinforce the audiovisual sector in Germany and Europe (Art. 1 of the Berlin-Brandenburg Regulations, and reply B.12 for the Berlin-Brandenburg Funding Scheme).

The objective of this funding scheme as stated in its Regulations mentions the promotion of both, the cultural and the economic aspects of the film sector in Berlin-Brandenburg, Germany and Europe.

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

6 Analysis of Filmförderung Hamburg GmbH (“Hamburg Funding Scheme”)

6.1 Description of the funding scheme

The Hamburg Funding Scheme is based on the *Richtlinie zur Filmförderung* of 1 January 2002 (“Hamburg Regulations”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Hamburg Funding Scheme, and for additional information on this scheme its website www.ffhh.de.

6.2 Synopsis of objective explicit territorialisation requirements

6.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 1.1 and Art. 2.2 of the Hamburg Regulations

6.2.2 Practice

There is no relevant judicial and administrative practice reported.

6.2.3 Discussion

Art. 1.1 provides that in order to strengthen the audio-visual media in Hamburg at least 150% of the amount of the funding awarded each year shall be spent locally (in Hamburg). Applicants for aid for the development of film projects must comply with the objective explicit territorialisation requirement that the larger part of the contemplated project must be realised in Hamburg (Art. 2.2 of the Hamburg Regulations; see reply B.9 for the Hamburg Funding Scheme). The Hamburg Funding Scheme mainly focuses on the economic situation of the local film industry and presents territorialisation requirements.

6.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: at least 150% of the amount of the funding awarded each year shall be spent locally (in Hamburg).

6.3 Synopsis of indirect territorialisation requirements

6.3.1 Practice

There is no relevant judicial or administrative practice reported.

6.3.2 Discussion

N/A

6.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for Hamburg Funding Scheme; see below Sections 6.4 and 6.6).

6.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way in accordance with Art. 3 of the Hamburg Regulations.

Aid for the production of films with a budget exceeding €300,000 must either have a commercial potential for their cinema exploitation or have a “special cultural significance for Hamburg” (Art. 3.2.1 of the Hamburg Regulations). Television programmes (films and series) of “excellent quality” may be eligible for production aid under this Scheme if they appear to have a good chance that their production costs will be recouped on the national and international markets (Art. 3.4.1 of the Hamburg Regulations; see Reply B.13 for the Hamburg Funding Scheme).

This funding scheme does not contain indirect territorialisation requirements under selective aid criteria and procedures.

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

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement (see reply B.8 for Germany for Hamburg Funding Scheme; see above section 2.5).

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

Art. 1.1 of the Regulations expressly provides the general and specific explicit cultural purposes of this funding scheme.

Art. 1.1 states expressly that the aim of the film support scheme is to develop, maintain and strengthen film culture and film business in Hamburg. Support should be directed in particular towards:

- film productions that show economic promise
- films of different genres that make an important contribution to film culture
- television films and series of high quality whose content, form and cast make them suitable for international sales
- television and video productions of cultural importance

Projects eligible for funding include those in the area of pre-production and measures to strengthen the areas of distribution and sales as well as theatrical release and presentation.

In order to strengthen the audio-visual media in Hamburg, it is stipulated that at least one-and-a half times the amount of the funding awarded for the current year be spent in Hamburg. A further aim of the support scheme is to safeguard and create employment in Hamburg (see reply B.12 for Germany for Hamburg funding Scheme).

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

7 Analysis of Filmstiftung NRW GmbH (“NRW Funding Scheme”)

7.1 Description of the funding scheme

The NRW Funding Scheme is based on the *Richtlinien der Filmstiftung Nordrhein-Westfalen* of 27 August 1996, most recently amended on 1 May 2004 (“NRW Regulations”), on the *Grundsätze für die Filmförderung durch das Filmbüro Nordrhein-Westfalen e.V.* of 5 October 1998 (“NRW Guidelines”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the NRW Funding Scheme, and for additional information on this scheme its website www.filmstiftung.de.

7.2 Synopsis of objective explicit territorialisation requirements

7.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Articles 3.2.5, 3.2.6, 3.2.8 and 3.2.9 of the NRW Regulations.

7.2.2 Practice

There is no relevant administrative and judicial practice reported.

7.2.3 Discussion

Art. 3.2.5 provides that at least 150% of the State aid granted under the NRW Funding Scheme should be spent in North Rhine-Westphalia.

Regardless of that provision, at least 20% of the total production expenditure may be spent outside of North Rhine-Westphalia, or in a different country of the European Union (Art. 3.2.5 of the NRW Regulations). Furthermore, the producer must contribute to the professional training of persons working in the film industry who have their primary residence in North Rhine-Westphalia in the course of making films that obtained State aid from the NRW Funding Scheme (Art. 3.2.6 of the NRW Regulations). The producer can apply for a new loan that will be granted on a quasi automatic basis if he has reimbursed the previous loan. In this case, the production cost of the new project must again be mainly spent in North Rhine-Westphalia, at least up to the amount for which the new application is made (Art. 3.2.8 of the NRW Regulations; see also replies B.5 to B.9 for the NRW Funding Scheme).

According to Article 3.2.9, for projects with a total budget of up to €750,000 Sec. 3.2.2 to 3.2.8 shall apply, which stipulate that at least the funding granted has to be spent in North-Rhine-Westphalia.

The NRW Regulations contain clear territorialisation requirements for both types of State aid, selective and quasi-automatic loans (Art. 3.2.5 and 3.2.8).

7.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of the State aid must spend locally at least 150% of the amount received from the funding scheme. Furthermore at least 20% of the total production expenditure may be spent outside of North Rhine-Westphalia in other parts of the country or other EU member states.

7.3 Synopsis of indirect territorialisation requirements

7.3.1 Practice

There is no relevant judicial and administrative practice reported.

7.3.2 Discussion

N/A

7.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for NRW funding Scheme; see below Sections 7.4 and 7.6)

7.4 Synopsis of selective State aid granting criteria and procedures

The criteria to be applied for granting selective aid are conditioned by the funding objective of the NRW Regulations.

To be eligible for funding, film projects must have the potential to contribute to the cultural quality and commercial viability of German cinema (see Art. 3.1.1 of the NRW Regulations). In particular, feature films must show promise of having commercial success in their theatrical release and to strengthen cinematographic culture.

Television programme projects must show high quality, and they can also be supported by the NRW Funding Scheme if they are co-produced with European or international partners, if their distribution is to be European or international or if

they are of special interest to North Rhine-Westphalia (Art. 3.2.1 of the NRW Regulations; see also for exceptions to these rules the reply B.12 for the NRW Funding Scheme).

The economic impact of film and television projects on an individual basis is difficult to assess in advance, except with respect to local expenditures during the production stage. The reference to cultural and qualitative considerations leaves a margin of discretion for the experts selecting film and television projects.

This funding scheme arguably contains indirect territorialisation requirements under selective aid criteria and procedures that are not quantifiable in the Regulations.

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

The NRW Funding Scheme specifically provides State aid for European and international co-production agreements (see reply B.8 for the NRW Funding Scheme). For television programme projects, the NRW Regulations specifically require European or international co-production partners as one of the selective aid criteria (see Section 7.4.1 above). The NRW Regulations expressly encourage European and international co-production agreements.

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

The funding objective mentions both cultural and economic considerations on an equal level without establishing a clear link between them (see Section 7.4.1 above and reply B.12 for the NRW Funding Scheme).

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

8 Analysis of MDM Mitteldeutsche Medienförderung GmbH for Saxony, Saxony-Anhalt and Thuringia (“MDM Funding Scheme”)

8.1 Description of the funding scheme

The MDM Funding Scheme is based on the *Richtlinien zur Filmförderung* of 21 December 2004 (“MDM Regulations”). Since the entry into force of the MDM regulation there were no significant regulatory changes affecting the legal questions addressed by this study. For contact information see reply B.14 for the MDM Funding Scheme, and for additional information on this scheme its website www.mdm-online.de

8.2 Synopsis of objective explicit territorialisation requirements

8.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 1.3 and Art. 3 of the MDM Regulations (see reply B.6-B.7 for the MDM Funding Scheme).

8.2.2 Practice

There is no relevant administrative and judicial practice reported.

8.2.3 Discussion

At least the amount of the aid granted by the MDM Funding Scheme should be spent in Saxony, Saxony-Anhalt and Thuringia specifically within the film, television and media sector (so-called “regional effect”). This condition does not need to be fulfilled on in those cases where another regional fund waives its territorialisation requirements for the same amount to the benefit of the MDM Funding Scheme.

At least 20% of the production costs may be spent in another country of the European Union. Furthermore, the MDM Regulations encourage the cooperation between undertakings that are legally linked with the regional broadcaster *Mitteldeutscher Rundfunk* (MDR) and other local undertakings for the purpose of producing film and television projects funded by the MDM Funding Scheme.

In the context of “package funding”, Art. 3.3.3 of the MDM Regulations requires that aid should be spent in Central Germany as far as possible, and that the projects shall be locally produced as far as it is possible. The producer must state in detail the items of the production costs that will be spent locally (Art. 4.1.3 of the MDM Regulations).

8.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follow: at least the 100% the amount received from the funding scheme should be spent in Saxony, Saxony-Anhalt and Thuringia. However at least 20% of the 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.

8.3.2. Discussion

N/A

8.3.3. Conclusion

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for MDM funding scheme; see, however, Sections 8.4 and 8.6 below).

8.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants state aid in a selective way based on objectives of the MDM Funding Schemes expressed in Art. 9.2 of the MDM Regulations and described in Section 8.6 below.

Art. 9.2 states that the managing director of this Scheme may grant selective aid in special cases based on other considerations than those listed in the MDM Regulations, provided that the projects at stake present a particular cultural interest and are in the economic interest of local culture in the fields of film and media (see reply B.13 for Germany for the MDM Funding Scheme).

The funding goals clearly indicate that the local film and television industry is to be promoted in economic terms. Furthermore, they refer to the development of the local culture and to quality considerations. On the other hand, the MDM Regulations expressly encourage co-production agreements and mention that aid under this scheme shall also contribute to the strengthening of the German and European audio-visual sector (see Section 8.6 below).

This funding scheme arguably contains indirect territorialisation requirements under selective aid criteria and procedures that are not quantified in the Regulations.

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

The MDM Regulations provide that aid is specifically available for European and international co-productions (see reply B.8 for the MDM Funding Scheme). This applies also to the television programmes that are eligible for special funding if the projects are of particular quality and are suitable for the international market or are produced with European co-partners (Art. 4.1.1 of the MDM Regulations). Since the MDM Funding Scheme specifically encourages European and international co-productions through its funding policy, one should not expect to find inconsistencies between territorialisation requirements and requirements resulting from co-production agreements. In case of conflicts of rules, one can, therefore, expect that they are solved in favour of the latter arrangements (see in this context also Section 8.4.1 above on the power of the MDM Funding Scheme's managing director to take decisions diverging from the Regulations in special cases).

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

The funding objective of the MDM Funding Scheme consists of the development, maintenance and strengthening of the film, television as well as media culture and economy in Saxony, Saxony-Anhalt and Thuringia. Furthermore, the funding is intended to contribute to the strengthening of the audio-visual sector in Germany and Europe. The MDM Regulations (Art. 1.1 of the MDM Regulations and reply B.12 for the MDM Funding Scheme) especially emphasise:

- strengthening film and media culture, improvement of media competence and, thereby, helping to form cultural identity within the Central German region
- strengthening the performance of the companies in the film, television, and also media culture economy; intensifying the set-up of businesses
- improving and further developing the quality and competitiveness of film, television and media productions
- improving the economic power of Saxony, Saxony-Anhalt and Thuringia in the media sector to ensure employment and training

Since the cultural purpose constitutes one among other equally important goals to be taken into account for the selection of film projects, experts in charge of allocating the aid have considerable discretion in applying cultural and economic considerations.

The condition referring to local economic objectives to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

9 Analysis of Nord Media Die Mediengesellschaft Niedersachsen / Bremen mbH (“Nordmedia Funding Scheme”)

9.1 Description of the funding scheme

The Nordmedia Funding Scheme covering Lower Saxony and Bremen is based on the *Richtlinie zur kulturwirtschaftlichen Film- und Medienförderung der nordmedia Fonds GmbH* (nordmedia Fonds) of 7 November 2001, amended by the resolutions of 20 November and 24 November 2001 (“Nordmedia Regulations”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Nordmedia Funding Scheme, and for additional information on this scheme its website www.nord-media.de.

9.2 Synopsis of objective explicit territorialisation requirements

9.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 1.3 and Art. 4 of the Nordmedia Regulations.

9.2.2 Practice

There is no relevant administrative and judicial precedent reported (reply B.9 for the Nordmedia Funding Scheme).

9.2.3 Discussion

As a rule, film and television projects are eligible for State aid under the Nordmedia Funding Scheme if they can be expected to produce a significant effect for the culture industry of Lower Saxony or Bremen. With reference to objective explicit territorialisation requirements, the Nordmedia Regulations distinguish between aid for the production of film and television programmes, and aid for other purposes (development, distribution etc.).

In the former of aid, the producer must spend locally (in the federal states of Lower Saxony and/or Bremen) at least 125% of the aid granted under this Funding Scheme (100% for smaller productions and productions that are difficult to exploit commercially). In the case of aid for other purposes, this percentage is reduced to 100% (Art. 1.3.2 in combination with Art. 4 of the Nordmedia Regulations and reply B.6 and B.7 for the Nordmedia Funding Scheme).

The grant can be 50% of the total estimated costs of production or 80% for smaller productions.

These territorialisation requirements are subject to various exceptions. On a case-by-case basis, the Nordmedia Funding Scheme accepts a lower degree of territorialisation if content and technical considerations or the avoidance of disproportionately high costs require it.

Furthermore, territorialisation requirements can be waived in case of reciprocity, i.e. if another funding scheme makes the same waiver to the benefit of the Nordmedia Funding Scheme. In all cases, however, the territorialisation requirements under the Nordmedia Funding Schemes must comply with the conditions set forth by the Commission in its *Cinema Communication of 2001* (Art. 1.3 of the Nordmedia Regulations and replies B.6 and B.7 for the Nordmedia Funding Scheme).

It is worth noting that the Nordmedia Regulations explicitly provide for exception to its territorialisation requirements for content and technical reasons as well as in order to avoid disproportionately high production costs.

9.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follows. The recipient of the State aid for film production must spend locally (in the federal states of Lower Saxony and/or Bremen) at least 125% of the amount received from the funding scheme (100% for smaller productions and productions with difficult commercial exploitation). The recipient of State aid for other activities must spend locally (in the federal states of Lower Saxony and/or Bremen) at least 100% of the amount received from the funding scheme. Exceptions to these territorialisation requirements are provided.

9.3 Synopsis of indirect territorialisation requirements

9.3.1 Practice

There is no relevant administrative or judicial practice reported.

9.3.2 Discussion

N/A

9.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for Nordmedia Funding scheme; see below Sections 9.4 and 9.6).

9.4 Synopsis of selective State aid granting criteria and procedures

The experts selecting film and television projects for aid under the Nordmedia Funding Scheme, i.e. the members of the committee for fund allocation headed by this scheme's management (Art. 2.3 of the Nordmedia Regulations), must apply criteria based on the funding objectives set forth in Art. 1.1 of the Nordmedia Regulations (see Section 9.6 below), and, in certain cases, additional criteria defined by this Funding Scheme's shareholders meeting (Art. 2.3 of the Nordmedia Regulations and reply B.13 for the Nordmedia Funding Scheme).

The Nordmedia Funding Scheme grants aid to film and television production projects that present particularly high creative, artistic and programming quality. Producers who can guarantee quality of their projects are eligible to apply (Art. 4.1.1 of the Nordmedia Regulations and reply B.13 for the Nordmedia Funding Scheme).

The allocation of resources can only take place within the scope of the Nordmedia Funding Scheme's revenues (Art. 2.3 and Art. 4.1.2 of the Nordmedia Regulations). The particular structure of this Funding Scheme illustrates the legal complexity resulting from the interaction between public and private suppliers of aid to independent film and television projects. The reference to cultural and qualitative considerations made in Art. 4.1.1 of the Nordmedia Regulations leaves a margin of appreciation for the experts selecting film and television projects. However no indirect territorialisation requirements are located under the selective State aid procedure.

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

The Nordmedia Funding Schemes provides special aid to co-production with European partners, to productions that seem suitable for exploitation on the international market and to other international co-productions (Art. 4.1.1 of the Nordmedia Regulations and reply B.8 for the Nordmedia Funding Scheme). Application for film production aid for co-productions is to be made by a producer domiciled in Germany. International co-productions will be treated as national co-productions in terms of eligibility for grants. The regional guidelines will be interpreted consistently with any international co-production agreement (see also Section 2.5 above).

9.6 Synopsis of cultural clauses applying to the funding scheme

The Nordmedia Funding Scheme aims at quantitatively and qualitatively strengthening and developing the multimedia culture in Lower Saxony and Bremen and at contributing to reinforcing the audiovisual sectors of Germany and Europe.

As such, it shall indirectly improve and consolidate the position of the local audiovisual industry. In particular, it shall contribute to improve the quality, innovation and competitiveness of film, television and multimedia productions, and promote the sustainable development of this industry in Lower Saxony and Bremen (Art. 9.6.1 of the Nordmedia Regulations and reply B.12 for the Nordmedia Funding Scheme).

The funding objectives mention both, cultural and economic goals related to the local film and television industry. However, they also mention the strengthening of the audiovisual sector in Germany and Europe as a specific goal. In addition, they refer to quality considerations that are not further defined. These are drafted in a way that provides a broad margin for interpretation. Since the cultural purpose constitutes one among other equally important goals to be taken into account for the selection of film projects, experts in charge of allocating the aid have considerable discretion in choosing between cultural and economic considerations.

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

10 Analysis of Hessische Filmförderung (“Hessen Funding Scheme”)

10.1 Description of the funding scheme

The Hessen Funding Scheme is based on the *Richtlinien der Hessischen Filmförderung HFF*, which came into force on 1 January 2003 (“Hessen Film Guidelines”) and on the *Richtlinien der Hessischen Rundfunk Filmförderung* of 1 December 2003 (“Hessen Television Guidelines”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Hessen Funding Scheme, and for additional information on this scheme its website www.hessische-filmfoerderung.de.

10.2 Synopsis of objective explicit territorialisation requirements

10.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art.1 and Art. 2 of the Hessen Film Guidelines.

10.2.2 Practice

There is no relevant administrative and judicial practice reported. (see reply B.9 for Germany for the Hessen Funding Scheme).

10.2.3 Discussion

- A film project must have a particular connection to Hessen to be eligible for aid from the Hessen Funding Scheme. Projects without a connection to Hessen will only be funded in exceptional circumstances (e.g. Regional Funding Co-operation). In particular, Article 2 of the Guidelines provides that this connection to Hessen should be expressed by:
- the applicant being based in Hessen with his/her artistic work
- the amount granted to be spent predominantly in Hessen
- the subject of the project covering aspects of Hessen

There is no specific amount that must be spent in the region. The project should, however, have a connection to the area, as explicated above. The regulation allows funding without any connection of the project to Hessen in exceptional circumstances.

10.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of the State aid for film production must spend locally (in Hessen) an unquantified amount of the aid. The regulation allows funding without any connection of the project to Hessen in exceptional circumstances

10.3 Synopsis of indirect territorialisation requirements

10.3.1 Practice

There is no relevant administrative and judicial practice reported. (see reply B.11 for Germany for the Hessen Funding Scheme)

10.3.2 Discussion

N/A

10.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for Hessen Funding Scheme; see below Sections 10.4 and 10.6)

10.4 Synopsis of selective State aid granting criteria and procedures

Pursuant to the funding objective, the Hessen Funding Scheme provides aid to promote the local film and cinema culture in order to increase its diversity and quality and to contribute to building up Hessen's media location (Art. 1 of the Hessen Regulations and reply B.13 for the Hessen Funding Scheme). The criteria for selective aid rely on these objectives.

The criteria for selective aid refer to the promotion of local film and cinema culture as well as to diversity and quality considerations that are not further defined. The reference to cultural and qualitative considerations leaves a margin of discretion for the experts selecting film and television projects.

This funding scheme arguably contains indirect territorialisation requirements under selective aid criteria and procedures that are not quantified in the Guidelines.

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

International co-productions will be treated as national co-productions in respect of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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

The objectives of the Hessen Funding Scheme aim at promoting cultural and economic goals at the local level in the audiovisual sector. In particular, they explicitly mention that State aid shall enhance the diversity and quality of the local film and cinema culture (see Art. 1 of the Hessen Regulations and reply B.11 for the Hessen Funding Scheme).

The requirement to promote the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

11 Analysis of MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH (“MSH Funding Scheme”).

11.1 Description of the funding scheme

The MSH Funding Scheme covering the region of Schleswig-Holstein is based on the *Richtlinien der msh für Fernseh- und Filmförderungsmaßnahmen* of 26 June 2006 (“MSH Guidelines”). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the MSH Funding Scheme, and for additional information on this scheme its website www.m-s-h.org.

11.2 Synopsis of objective explicit territorialisation requirements

11.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 4.10 MSH Guidelines (see reply B.6 for the MSH Funding Scheme).

11.2.2 Practice

There is no relevant administrative and judicial practice reported (see reply B.9 for Germany for the MSH Funding Scheme).

11.2.3 Discussion

At least the full amount granted by the MSH Funding Scheme must be locally spent (Art. 4.10 of the MSH Regulations and reply B.7 for Germany for the MSH Funding Scheme).

The MSH Funding Scheme requires that 100% of the aid granted to film projects must be locally spent, provided that the beneficiaries of this aid remain free to spend at least 20% of the film project’s budget in another Member State of the European Union.

The MSH does not provide for any other exception to these territorialisation requirements.

11.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of State aid for film production must spend locally 100% of the amount granted by the MSH Funding Scheme.

However the beneficiaries of this aid remain free to spend at least 20% of the film project's budget in another Member State of the European Union.

11.3 Synopsis of indirect territorialisation requirements

11.3.1 Practice

There is no relevant administrative and judicial practice reported (see reply B.10 for Germany for the MSH Funding Scheme).

11.3.2 Discussion

N/A

11.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Germany for MSH Funding scheme; see, however, Sections 10.4 and 10.6 below).

11.4 Synopsis of selective State Aid granting criteria and procedures

The funding objectives of the MSH Funding Scheme refer to general quality considerations and specifically to the promotion of the local film economy (art. 1.1 of the MSH Regulations; see point 11.6 below). Experts in charge of granting selective aid to film projects under this Funding Scheme must take their decisions in compliance with these general objectives.

The criteria of selective aid refer to the promotion of local film and of cinema culture as well as to considerations of quality and diversity that are not further defined. The reference to vague cultural and qualitative considerations leaves a broad margin of discretion for the experts selecting film and television projects.

This funding scheme arguably contains indirect territorialisation requirements under selective aid criteria that refer to local economic objectives and that are not quantified in the applicable regulations.

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

International co-productions will be treated as national co-productions in respect of eligibility for grants. The regional guidelines will be interpreted consistently with any international co-production agreements (see Section 2.5 below).

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

The MSH Funding Scheme aims in particular to promote diversity and originality of content for the local film and television sector, to strengthen the cultural and economic performance of local producers, and to further develop the film and television culture of Schleswig Holstein in qualitative and quantitative terms in a market-oriented way (Art. 1.1 of the MSH Regulations and reply B.12 for the MSH Funding Scheme).

The funding objectives mention both cultural and economic goals related to the local film and television industry.

In addition, they refer to considerations of quality, diversity and originality that are not further defined. The requirement of promoting the local film economy arguably qualifies as indirect territorialisation that is not quantifiable.

References:

Legal commentaries:

- von Have/Schwarz in v.Hartlieb/Schwarz, *Handbuch des Film-, Video- und Fernsehrechts*, 2004
- von Have, *Filmförderungsgesetz*, 2005

Attachments:

- Replies to the legal questionnaire by Sabine Richly, attorney at law, Schwarz Kelwing Wicke Westpfahl, Germany
- Regulations for Germany