

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

Member State:	HUNGARY
Re:	Follow Up Reply
Date:	22 December 2006

(...)

In response to your emails of yesterday and of November 26, regarding question 1) please find attached the completed Part B for

(i) the Hungarian Cultural Fund (Nemzeti Kulturális Alap), and in relation to this also attached are:

- Act 23 of 1993 on the Hungarian Cultural Fund in Hungarian, as of December 31, 2005;
- Act 23 of 1993 on the Hungarian Cultural Fund in Hungarian, as of January 1, 2006;
- NKOM Decree of the Ministry of the Hungarian Cultural Heritage No 13/1999 on the execution of Act 23 of 1993;
- NKOM Decree of the Ministry of the Hungarian Cultural Heritage No 9/2006, repealing NKOM Decree No 13/1999;

(ii) the Broadcasting Fund (Műsorszolgáltatási Alap), and in relation to this also attached are:

- Act CXVII of 2004 on the 2005 budget of the National Radio and Television Board;
- Act I of 1996 on radio and television broadcasting.

In respect of question 2), we confirm that we were not able to track down any published/reported relevant judicial practice in relation to any of the funding schemes.

In respect of question 3), we note that all the texts of the co-production conventions/agreements have been enacted by the Hungarian parliament, therefore in case of any conflict or inconsistency, such conflict is between two pieces of Hungarian legislations. Act XXXII of 1989 on the Constitutional Court (the "Act") regulate who may turn to the Constitutional Court for a decision on inconsistency with an international agreement (i.e. the piece of legislation promulgating such agreement) and what consequences the Constitutional Court may apply. Accordingly, the below persons may initiate the proceedings of the Constitutional Court:

- a) the Parliament, its committee or any member of Parliament,
- b) the president of the Republic of Hungary,
- c) the government or any member thereof,
- d) the president of the Hungarian State Audit Office,
- e) the president of the Supreme Court,
- f) the Attorney General.

In court proceedings, the judge may, through the Supreme Court, turn to the Constitutional Court to seek a decision in this regard.

Under section 45 of the Act if the Constitutional Court establishes that a piece of legislation in the hierarchy of legislation lower than or equal with the piece of legislation promulgating the international agreement is in conflict with the international agreement, then the Constitutional Court shall annul in whole or in part the piece of legislation in conflict with the international agreement.

Under section 46 of the Act if the Constitutional Court establishes that a piece of legislation in the hierarchy of legislation higher than the piece of legislation promulgating the international agreement is in conflict with the international agreement, then the Constitutional Court shall call upon the state organ/person concluding the international agreement and/or the organ issuing the piece of legislation to resolve the conflict. Such person and/or organ is obliged to act accordingly.

(...)

Attachments to e-mail of 22 December 2006
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- Act 23-1993-Hun- on cultural fund-as of December 31-2005.doc
- Act 23-1993-Hun- on cultural fund-as of January 1-2006.doc
- Act CXVII of 2004 on the budget of Radio&TV Board.doc
- Act I of 1996 - as of December 31-2005.doc
- CG Legal Questionnaire 160906 - HUNGARY - direct subsidy- ORTT (Musorszolgálatasi Alap).doc
- CG Leg-Question- HUNGARY - direct subsidy- NKA Cultural Fund.doc
- NKOM Decree - 9-2006 Hun - as of May 17-2006.doc
- NKOM Decree - 13-1999 Hun - as of December 31-2005.doc

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)¹ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.²

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: HUNGARY

B.2 Name of the funding scheme: **Műsorszolgáltatási Alap** (in English: **Broadcasting Fund**)(direct funding scheme)

1052 Budapest, Váci utca 16/B. (Fontana Irodaház B torony)

Tel.: 327-2020

Fax: 267-5151

Website: <http://alap.ortt.hu>

Annual budget of state aid in 2005:

For public service broadcast: HUF 656,000,000 (approx. EUR 2,624,000)

For public service program: HUF 1,354,000,000 (approx. EUR 5,415,000)

For the definition of public service broadcast and public service program please see B.13.

B.3 Name and address of the funding scheme's administration and supervisory authority:
The Broadcasting Fund is a legal entity and is managed by Országos Rádió és Televízió Testület (in short ORTT, in English: National Radio and Television Board)

1088 Budapest, Reviczky u. 5.

¹ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

² "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

Tel.: 429-8600, 267-2590
Fax: 267-2612
Website: www.ortt.hu

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

1. - a rádiózásról és a televíziózásról szóló 1996. évi I. törvény
- Act I of 1996 on radio and television broadcasting
Entry into force: - February 1, 1996

2. – az Országos Rádió és Televízió Testület 2005. évi költségvetéséről szóló 2004. évi CXVII. törvény
- Act CXVII of 2004 on the budget of year 2005 of the National Radio and Television Board
Entry into force: January 1, 2005

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

There were no significant amendment in respect of the provisions regulating the Broadcasting Fund in the reference period.

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

TERRITORIAL CONDITIONS³

Explicit territorial conditions

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

Yes / No

If yes,

³ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

- B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):
- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).
- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):
- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Implicit or *de facto* territorial conditions

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

Yes/No

If yes,

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

CULTURAL CLAUSES

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

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁴ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Yes, aid distribution is selective. Such selection is based on the criteria set forth in Section 2, item 18 and 19 of Act I of 1996:

- §2. 18. Közszolgálati műsor: az a műsor, melyben a közszolgálati műsorszámok meghatározó szerepet játszanak, és amely a műsorszolgáltató vételkörzetében élő hallgatókat, nézőket rendszeresen tájékoztatja közérdeklődésre számot tartó kérdésekről.
19. Közszolgálati műsorszám: a műsorszolgáltató vételkörzetében (országos, körzeti, helyi) élő hallgatók, nézők tájékoztató, kulturális, állampolgári, életviteli szükségleteit, igényeit szolgáló műsorszám, így különösen:
- a) a művészeti alkotás, az egyetemes, a magyar és a magyarországi nemzeti és etnikai kisebbségek kultúráját, valamint a magyarországi nemzeti és etnikai kisebbségek életét, a kisebbségi álláspontokat bemutató közlés,
 - b) oktatási, képzési célú ismeretek közzététele,
 - c) tudományos tevékenység és eredmények ismertetése,
 - d) a vallásszabadság megvalósulását szolgáló, valamint az egyházi és a hitéleti tevékenységet bemutató műsorok,
 - e) a gyermek- és ifjúsági műsorok, valamint a gyermekvédelem céljait szolgáló ismeretterjesztő, felvilágosító műsorok,
 - f) a mindennapi életvitelt segítő, az állampolgárok jogi és közéleti tájékozódását szolgáló, az egészséges életmódot, a környezetvédelmet, a természet- és tájvédelmet, a közbiztonságot, a közlekedésbiztonságot elősegítő ismeretek terjesztése,
 - g) az életkoruk, testi, szellemi vagy lelki állapotuk, társadalmi körülményeik következtében súlyosan hátrányos helyzetben lévő csoportok számára készített műsorszám,
 - h) a hírszolgáltatás.

In unofficial English translation:

18. Public service broadcast: a broadcast in which public service programmes play a decisive role, and which regularly informs the listeners and viewers living in the area of reception of the broadcaster of issues deserving the attention of the public.

⁴ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

19. Public service programme: a programme serving the informational, cultural, civic and lifestyle needs of the (national, regional, local) listeners and viewers living in the area of reception of the broadcaster, in particular:
- a) artistic work or communication presenting universal and Hungarian culture and the culture of the national and ethnic minorities living in Hungary, the life of the national and ethnic minorities living in Hungary, and the viewpoints of minorities,
 - b) dissemination of information serving educational and training purposes,
 - c) providing information on scientific activities and results,
 - d) broadcasts serving the realization of the freedom of religion, and presenting church and religious activities,
 - e) children and youth programs, and educational and general information programs on child protection,
 - f) dissemination of information making every-day life easier, serving to provide legal and public life information for the citizens, and promoting healthy lifestyles, the protection of the environment, the protection of nature, public security and the safety of traffic,
 - g) programmes created for groups at a serious disadvantage due to their age, physical, mental or psychological state or social circumstances,
 - h) dissemination of news.

CONTACT DETAILS

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

Ms. Antonia Kapocsi, at the address of the Broadcasting Fund (see above)
kapocsi@alap.ortt.hu

We note that the inclusion of Ms. Kapocsi in your study as reference person is still subject to further confirmation.

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

Tamas Tercsak
Gyorgy Bacsatyai
Szabó, Kővári, Tercsák and Partners Attorneys

Date of the data collection and processing:

4-15 December, 2006

PART B

FUND SPECIFIC QUESTIONS

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

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: HUNGARY

B. Name of the funding scheme: Direct funding scheme

B.3 Name and address of the funding scheme's administration and supervisory authority:
Nemzeti Kulturális Alap (in English: National Cultural Fund)

Address: H-1085 Budapest, Gyulai Pál utca 13, Hungary

Phone: (36-1) 327-4444 or (36-1) 327-4445

Fax: (36-1) 327-4470

e-mail: elnok@nka.hu

website: www.nka.hu

President: László Harsányi dr.

Director: Pál Perlik

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

- a Nemzeti Kulturális Alapról szóló 1993. XXIII. törvény

- Act XXIII of 1993 on the National Cultural Fund⁷, entry into force: April 1, 1993

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

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

⁷ We note that the National Cultural Fund („Fund”) was an independent central budgetary fund between 1993 and 1999. Between 1999 and up to December 31, 2005 the Fund was operated by and integrated into the budget of the Ministry of National Cultural Heritage. As of January 1, 2006 the Fund is independent again.

- 13/1999 (VIII. 27.) NKÖM rendelet a Nemzeti Kulturális Alapról szóló 1993. évi XXIII. törvény végrehajtásáról
- 13/1999 (VIII.27.) NKÖM, decree of the Ministry of National Cultural Heritage on the execution of Act XXIII of 1993 on the National Cultural Fund⁸

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force): significant amendment of the Act, entry into force: January 1, 1999, see also footnote 3.

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

TERRITORIAL CONDITIONS⁹

Explicit territorial conditions

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

Yes / **No**

If yes,

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

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

⁸ This decree was replaced by 9/2006. (V.9.) NKÖM rendelet a Nemzeti Kulturális Alapról szóló 1993. évi XXIII. törvény végrehajtásáról (in English: 9/2006. (V.9.) NKÖM, decree of the Ministry of National Cultural Heritage on the execution of Act XXIII of 1993 on the National Cultural Fund, entry into force: May 17, 2006)

⁹ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):
- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

Implicit or *de facto* territorial conditions

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

Yes/No

If yes,

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

On a no-name basis we inquired over the phone regarding the practice of the Fund, and we received the following information:

The Fund grants monetary support/aid on the basis of applications, and although it is not specifically stated in the relevant sources of law and/or the any rules issued by the Fund, the practice of the Fund is that grants are normally awarded to Hungarian-related-projects/professionals/artists, for example, Hungarian script writer graduates, Hungarian registered film production companies, operation and promotion of chain of Hungarian art-cinemas and/or art films, Hungarian film publications, periodicals, professional teams.

Regarding the supporting practice of the fund, we were told that non-Hungarian person and/or entities, other than the few exceptions of applicants from outside of Hungary but with Hungarian origin from the neighboring countries, do not apply for grants.

The application rules, however, allow non-Hungarian private or legal persons to file applications, but in this case, according to the website of the Fund:

“Natural and legal entities as well as business organizations without incorporation may apply for supports from the Fund. Applicants without Hungarian citizenship need an assistant executive (organization, a legal entity registered in Hungary to act on their behalf.”

Once again, we emphasize that the above information was received on a no-name basis over the phone. Therefore, the inclusion of this information in the study, in our view, is subject to the consent of the relevant person on behalf of the Fund. We note that at your request, we will seek such consent.

CULTURAL CLAUSES

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

§1 of the Act on the National Cultural Fund as of December 31, 2005:

“A nemzeti és egyetemes értékek létrehozásának, megőrzésének, valamint hazai és határon túli terjesztésének támogatásával kapcsolatos feladatokat ... a nemzeti kulturális örökség minisztere a Nemzeti Kulturális Alapprogram keretei között látja el.”

Unofficial English translation:

“The tasks related to the creation and preservation of Hungarian and universal cultural values and their propagation domestically and abroad are exercised by the minister (of the national cultural heritage) through the operation of National Cultural Fund.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹⁰ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

Grants are awarded to the applicants on the decision of the supporting body made by way of applications or by evaluating an individual request. Such criteria vary as they are set out in the requests for applications.

CONTACT DETAILS

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

The secretary of the Motion Picture section of the National Cultural Fund:

Viktória Bitskey

¹⁰ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Tel.: +36-1-327-4316
viktorja.bitskey@nka.hu

We note again that we inquired over the phone from Ms. Bitskey regarding the funding practice of the Fund, therefore her inclusion as reference person in the study, in our view, is subject to her confirmation.

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

Tamas Tercsak
Gyorgy Bacsatyai
Kővári Tercsák Salans Attorneys

Date of the data collection and processing:

December 15, 2006

Member State:	HUNGARY
Re:	Follow Up Question
Date:	26 November 2006

(...)

Please provide us your replies to the follow-up requests for clarification as follows so that we can integrate them into our final report on your jurisdiction:

1) Is our understanding correct that there are two additional funding schemes in your jurisdiction that are not relevant for our study because they have annual budget of State aid of less than Euro 1 million during the reference period from 2001 to 2005, i.e. the National Cultural Fund of Hungary (NKA), National Radio and Television Commission (ORTT)? – If this is not the case, please cover them in your replies.

2) Is our understanding correct that there is no relevant judicial practice reported in your jurisdiction (question B.8)? – If this is not the case, please summarize this practice.

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

(...)

Member State:	HUNGARY
Re:	Follow Up Question
Date:	09 November 2006

(...)

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

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

(...)

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

(...)

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

(...)

Member State:	HUNGARY
Re:	Reply
Date:	12 October 2006

(...)

Please find attached hereto:

- a completed questionnaire regarding direct state aid (with Part A),
- a completed questionnaire regarding indirect state aid,
- the point system for the classification of the Hungarian nationality of films effective on December 31, 2005 in working English and original Hungarian
- the point system for the classification of the Hungarian nationality of films effective after April 1, 2006 in working English and original Hungarian
- Act II of 2004 (the "Film Act"), effective on December 31, 2005 in original Hungarian
- the currently effective Film Act in original Hungarian
- Decree No 14/ 2004. (VI.9.) NKÖM-PM issued jointly by the Ministry of National Cultural Heritage and the Ministry of Finance, effective since November 1, 2005, in the original Hungarian,
- Act No LXXXI of 1996 on corporate tax and dividend tax, in which the relevant provisions are effective since November 23, 2004, in the original Hungarian, and
- a short description in English prepared by the Hungarian Film Office as information material regarding the corporate income tax incentive.

We note that all English translations are unofficial and therefore serve information purposes only.

(...)

Attachments to e-mail of 12 October 2006

- CG Legal Questionnaire 160906 - HUNGARY - direct subsidy.doc
- CG Legal Questionnaire 160906 - HUNGARY - indirect subsidy.doc
- Corporate Tax Act.doc
- Decree - procedure of film office - effective since.doc
- FILM Act - currently effective.doc
- FILM Act - Dec 31 2005.doc
- Point System after April 1 - 2006.doc
- Tax_relief_System_In_the_Film_Industry.doc
- The Point System effective on December 31 2005.doc

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS
(Version of 15 September 2006)**

PRELIMINARY REMARK

This questionnaire is divided in two parts. Part A concerns general questions and part B specific questions related to State aid for independent film and television production, including State aid based on co-production agreements, in the context of territorialisation requirements.

Some information that could be relevant for this questionnaire is available on-line, e.g.:

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: http://korda.obs.coe.int/web/recherche_fonds.php and the information on co-production agreements by IRIS Merlin at: <http://merlin.obs.coe.int/search.php>)

- the links to regulating, control and funding bodies in the audiovisual sector (cinema and broadcasting) at:

http://ec.europa.eu/comm/avpolicy/info_centre/links/index_en.htm

- the information on co-production agreements on the Council of Europe website and, e.g. for France and the United Kingdom, on the websites of the Centre National de la Cinématographie and the UK Film Council:

http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/

<http://www.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

http://www.ukfilmcouncil.org.uk/usr/ukfcdownloads/42/Co_production.pdf

However, please consider that this information may not be exhaustive, fully accurate or up-to-date, and may therefore require to be completed for the purposes of this study.

When filling in this questionnaire, please specify in brackets your sources of information at the end of each of your answers.

Please deliver your replies in word format (font type: times new roman; font size: 12).

PART A

GENERAL QUESTIONS

Please use only one form per Member State.

OVERVIEW

A.1 Country / region: HUNGARY

A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works¹¹ of at least € 1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):

Funding schemes may be divided into direct or indirect forms of support:

Direct support provided through the following agencies, organizations:

In 2005:

- Ministry of Cultural Heritage (according to the Act on Hungarian Budget)
- Motion Picture Public Foundation of Hungary – HUF 3,739,000,000,
- Hungarian History Film Public Foundation – HUF 500,000,000
- National Cultural Fund (Motion Picture purposes)- HUF 355,000,000

In 2006: (projection)

- Ministry of Cultural Heritage (according to the Act on Hungarian Budget)
- Motion Picture Public Foundation of Hungary – HUF 6,200,000,000,
- Hungarian History Film Public Foundation – HUF 100,000,000
- National Cultural Fund (Motion Picture purposes)- HUF 399,000,000

Indirect support is provided in the form of film production incentive in the corporate income tax.

COPRODUCTION AGREEMENTS

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

1. European Convention on Cinematic Co-production, entry into force of the governmental decree promulgating the convention is 31 January, 1998, but the Convention itself is applicable as of 1 February, 1997. Based on the Convention, the Hungarian Film Office is in charge of issuing certificates entitling for support. Administration is done by the Ministry of Culture and Education.

2. According to the information of the Hungarian Film Office, a co-production agreement is being prepared with Italy. Italy, however, has also ratified the European Convention.

¹¹ “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

Based on the verbal information from the Hungarian Film Office we note that there are agreements the effectiveness of which is uncertain.

We note also that we contacted the Ministry of Foreign Affairs with this matter. Ms. Gabriella Nemes (works at the Registrar of Agreements of the Legal Department of the Ministry of Foreign Affairs for the Republic of Hungary) is responsible for updating the Registrar. According to her the Registrar contains three agreements:

- Agreement between Hungary and France on co-production and exchange of films, concluded February 17, 1970, date of entry into force: July 19, 1970, promulgated by 1970. évi 33. tvr.,
- Agreement between Italy and Hungary co-production of films, concluded on January 21, 1982, date of entry into force: November 2, 1984, promulgated by 1985/1 Nemzetközi Szerződés,
- Hungary and Canada, an agreement co-production of films, concluded on May 7, 1985, it did not enter into force and therefore never got promulgated.

Contact details of the Ministry of Foreign Affairs:

Tel.: (36-1) 458-1000

Fax: (36-1) 212-5918

For more information:

<http://www.kulugyminiszterium.hu>

NATIONALITY CERTIFICATION PROCEDURES

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

The film industry is making different types of films. From the point of view of the industry (i.e. not from artistic or genre) the film pieces can be divided into two categories:

1. Works made on order:

Where the ordered film piece or parts of it are made upon commission from the rights owner (typically foreign) and with his exclusive financing. The participants of the industry contributing to the implementation will have no other rights with regards to the production beyond their work fee.

Productions falling into this category, the so-called service jobs will not receive direct state support (subsidies) and the participants of the industry contributing to the implementation will under no circumstances become owners of rights of the completed production.

2. Works not made on order:

Where the industry participants (typically production companies or creators) implement the production in collaboration with each other, with various state or other foundations or funds perhaps with foreign co-production partners, mutually ensuring the financial means for the

¹² E.g. the French “Procédure d’agrément”.

production. In this case the parties will become owners of rights of the film piece typically based on their participation.

Productions falling into this second category may qualify for direct support. In order to be able to apply for indirect state subsidy, the nationality of a film is, upon the request of the producer, established by the Hungarian National Film Office on the basis of a point system (“Point System”)¹³ that is set forth in Section 3 of the Act II of 2004 on motion picture, the “Film Act”):

- Hungarian film – at least 75 points
- Co-production works with Hungarian participation – at least 30 points based on the Point System and the share of the film’s budget to be borne by the Hungarian film producer reaches twenty per cent bilateral co-production or ten per cent in the case of multilateral co-production unless otherwise provided by a bilateral or multilateral international agreement
- Other films with Hungarian participation – at least 15 points.
- Other films – not exceeding 15 points

Effective as of April 1, 2006, the Film Act was amended to be in line with the principles set out in the Commission Communication COM (2001)534 final, 26.09.2001, e.g. as a general rule maximum intensity of state aid (direct and indirect together) may not exceed 50%.

According to Section 13 (6) of the Film Act, direct state subsidy may be granted to (i) Hungarian movies, (ii) Co-production works with Hungarian participation, (iii) Other films with Hungarian participation and (iv) Other films, provided that such film is produced with a minority share of a Hungarian producer and such film is qualified as a European co-production on the basis of a international agreement/convention. The level of Hungarian participation is taken into consideration when granting direct state subsidy. In case of a film production with minority Hungarian participation, and which qualifies as a European co-production, the direct state subsidy may not exceed the degree of the Hungarian producer’s participation (in the budget of the film) calculated according to the level of nationality established on the basis of the Point System.

As a general rule, the intensity of the direct and indirect state subsidy altogether may not exceed 50% of (prior to April 1, 2006 this figure was 80%) the production costs in the case of Hungarian movies, and, in the case of co-productions with Hungarian participation, of the participation of the Hungarian producer in the production costs.

The Film Act also allows for deviation from this general rule in cases of the so-called “difficult and /or low-budget films”, thus providing support on cultural grounds. The detailed rules of deviation are set forth in Section 13 (2) – (5).

As already mentioned the support system is based on two types of state support: (a) direct support and (b) indirect support (through tax incentive).

In case of direct support the Film Act explicitly determines a minimum percentage (60 %) of the subsidy that has to be spent in the territory of Hungary. The Hungarian Motion Picture

¹³ The Point System was also amended, effective as of April 1, 2006. Please find attached two charts, one with the Point System in effect as of December 31, 2005 and the other in effect as of April 1, 2006.

Public Foundation, the organization (agency) that is giving the support may determine this amount in a higher level, but it may not exceed 80 % of the granted support in any case. (Nevertheless the supporting organization may also give an exemption from the general rule and it may allow to spend maximum 60 % of the support in other countries.)

Prior to April 1, 2006, that is also at date of December 31, 2005, the Film Act provided that *“The supporting body may require that the supported party must spend no more than 80 % of the subsidy granted in Hungary.”*

We note that the granting of direct subsidy is administered and decided by the Motion Picture Public Foundation of Hungary. The Hungarian National Film Office, as a authority, establishes the level of nationality of a film production, and keeps track of all the state subsidy, direct and indirect, granted to a film production.

EXPECTED DEVELOPMENTS

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

Please see our response to A.3

A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,¹⁴ and indicate the name and address of the administration of these funding schemes:¹⁵

No expected developments.

REFERENCES TO LOCAL STUDIES

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

www.hungarianfilm.com – regularly publish a newsletter

<http://film.lap.hu/> - extensive collection of websites, both Hungarian and English, related to film industry

www.nemzetifilmiroda.hu – website of the regulatory and administrative agency of the Hungarian government, certifying eligibility for tax incentive

www.szakma.film.hu - e-market place for film producers

¹⁴ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

¹⁵ E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

www.filmvilag.hu/linktar.php#magyar – this link is a list of links to all the Hungarian film magazines

www.nemzetifilmiroda.hu/webitems/film_angol.pdf - brochure titled: Hungarian Film

PART B
FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)¹⁶ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.¹⁷

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: HUNGARY
- B. Name of the funding scheme: Direct funding scheme
- B.3 Name and address of the funding scheme's administration and supervisory authority:
Hungarian Motion Picture Public Foundation
Address: Budapest, 1068 Városligeti fasor 38.
Tel.: (+36 1) 4611-300; 4611-310; Fax: (+36 1) 352-8789
E-mail: info@mmka.hu
Website: www.mmka.hu
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- a mozgóképéről szóló 2004. évi II. törvény
 - new development¹⁸

¹⁶ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

¹⁷ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

¹⁸ Magyar Mozcókép Közalapítvány – Támogatási Szabályzata, - By-laws on providing subsidies, as adopted by the Hungarian Motion Picture Public Foundation, - August 28, 2006 (officially promulgated in the ministerial "Cultural Journal". Please note that the By-laws is considered to be an internal set of rules of the Public Foundation.

1. Act II of 2004 ,The Film Act, as earlier defined and as amended from time to time,
- the dates when these laws and regulations entered into force,
 - April 1, 2004
- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

TERRITORIAL CONDITIONS¹⁹

Explicit territorial conditions

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

Yes / No

If yes,

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

As said earlier, Section 13 (4) of Film Act provided on December 31, 2005:

“(4) A támogató szervezet előírhatja, hogy a nyújtott támogatás legfeljebb 80%-át a támogatott Magyarországon köteles elkölteni.”

in unofficial English translation:

The supporting body may require that the supported party must spend no more than 80 % of the subsidy granted in Hungary”

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

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

Tenders are offered for available subsidies. Applications must contain a detailed budget, all the items of which are thoroughly examined, even prior to approving the subsidy, from feasibility point of view. Then subsidies are granted in the framework of a support agreement. Subsequently, territorialisation requirements, that is whether certain percentage of the given subsidy has been spent in Hungary is controlled on the basis of original invoices. In addition to the By-laws on granting the subsidies, the Hungarian Motion Picture Public Foundation also has a Controlling By-laws as well. The Film Act and these By-laws set out the detailed rules of this procedure.

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

As already mentioned, this is related to both intensity and territorialisation requirements. In both cases the key figure was 80% as of December 31, 2005. In other words, up to 80% of the production costs could come from direct and indirect subsidies altogether in the case of Hungarian films, or in the case of co-productions this percentage applied to the Hungarian portion of the production budget. In addition, 80 % of the direct subsidy was to be spent in Hungary.

Direct subsidies are processed by the Hungarian Motion Picture Public Foundation. With respect to the other amounts an organizations indicated under A2 they provide funding in accordance with their own by-laws. Such funding also qualifies as state aid. In case there is funding available from various (direct and/or indirect) sources, then a controller/auditor of one of the organizations administering the funding procedure also monitors the level of state aid granted.

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

Please see above.

Implicit or *de facto* territorial conditions

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

Yes/No

If yes,

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

CULTURAL CLAUSES

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

4. § E törvény célja

a) a magyar mozgóképkultúra értékeinek széles körben való hozzáféréseinek, a nézőszám emelkedésének biztosítása;

b) a magyar mozgóképkultúra értékeinek megőrzése és gyarapítása, a filmalkotások létrehozásának, valamint a mozgóképpel kapcsolatos művészeti, tudományos és oktatási tevékenységek támogatásán keresztül;

c) a megfelelő jogi háttér és pénzügyi erőforrások biztosítása ahhoz, hogy a magyar filmgyártás sikeresen helyt tudjon állni a nemzetközi, különösen az európai audiovizuális piacon;

d) olyan szakmai struktúra megalkotása, amely a rendelkezésre álló költségvetési és egyéb erőforrások hatékony felhasználásával képes biztosítani színvonalas hazai audiovizuális alkotások létrejöttét és terjesztését, valamint a hazai mozgóképipari infrastruktúra fejlesztését;

e) a hazai mozgóképszakma működéséhez szükséges hatósági és egyéb állami feladatok megállapítása;

f) meghatározni a nemzeti filmvagyon megőrzésének és hasznosításának intézményi kereteit, ezzel összefüggésben az államot illető vagyoni jogok egységes rendezését;

g) a nemzetközi, különösen az európai mozgóképszakmai kapcsolatok kiépítésének elősegítése és fejlesztése.

5. § (1) Az e törvényben meghatározott célok elérése érdekében a törvény meghatározza a magyar mozgóképkultúra és mozgóképipar hazai és nemzetközi szerepének betöltéséhez szükséges mértékű költségvetési és költségvetésen kívüli forrás biztosításának módját.

(2) E törvény alkalmazása során úgy kell eljárni, hogy a magyar mozgóképszakma törvényben meghatározott forráselosztó- és intézményrendszerének szakmai és művészeti függetlensége ne sérüljön.

(3) Az e törvényben meghatározott állami támogatási rendszer működtetése során törekedni kell a közpénzek hatékony és eredményes felhasználására, továbbá úgy kell eljárni, hogy az állami támogatások felhasználása átlátható és ellenőrizhető legyen.

(4) E törvény alkalmazása, illetve a törvényben meghatározott állami támogatási rendszer működtetése során úgy kell eljárni, hogy az segítse a különböző társadalmi kisebbségekhez tartozó, valamint a fogyatékkal élő emberek társadalmon belüli esélyegyenlőségének megteremtését.

(4) A támogató szervezet előírhatja, hogy a nyújtott támogatás legfeljebb 80%-át a támogatott Magyarországon köteles elkölteni.

The purpose and principles of the Act

Section 4

The purpose of this Act is:

- a) to ensure wide-range access to the values of Hungarian motion picture culture and to increase the number of viewers;
- b) to preserve and enhance the values of Hungarian motion picture culture by supporting the creation of films and artistic, scientific and education activities related to motion pictures;
- c) to provide an appropriate legal background and financial resources for Hungarian film production to be successful in the international and, in particular, in the European audio-visual market;
- d) to create a professional structure that is able to ensure the production and distribution of high-standard domestic audio-visual works and the development of the Hungarian motion picture industry infrastructure by efficiently using the budgetary and other resources available;
- e) to determine the statutory and other state tasks required for the functioning of the domestic motion picture industry;
- f) to determine the institutional framework for preserving and utilising national film assets, and in connection with this, to set a uniform framework for settling the rights of property value that belong to the state;
- g) to assist and promote the establishment of international and in particular European relations in the motion picture industry.

Section 5

(1) In order to achieve the objectives determined in this Act it defines the method for providing the budgetary resources and resources outside of the budget that are required for the Hungarian motion picture culture and motion picture industry to play its domestic and international role.

(2) In the course of applying this Act procedures shall be conducted in a way so that the professional and artistic independence of the resource distribution and institutional system of the Hungarian motion picture industry defined in the Act should not be infringed.

(3) In the course of operating the state support system defined in this Act efforts must be made to use public funds efficiently and effectively, and procedures must be such that they shall ensure that the use of state subsidies is transparent and controllable.

(4) For the purposes of applying this Act and operating the state support system defined by the Act procedures must be such that they promote the creation of equal opportunities for those who belong to different minorities of society and people living with disabilities within society.

SELECTIVE SCHEMES

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

The Film Act defines the selective subsidy as follows: that is granted to the film producer, film distributor or any other applicants under the Film Act based on the decision of the supporting body made by way of applications or by evaluating an individual request subject to the characteristics of the film (in particular script, budget, artistic value, the identity of the authors, producers, and actors of the film) or the nature of another objective to be supported.

CONTACT DETAILS

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

Hungarian Motion Picture Public Foundation
Address: Budapest, 1068 Városligeti fasor 38.
Tel.: (+36 1) 4611-300; 4611-310; Fax: (+36 1) 352-8789
E-mail: info@mmka.hu
Website: www.mmka.hu

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

Tamas Tercsak
Gyorgy Bacsatyai
Szabó, Kővári, Tercsák and Partners Attorneys

Date of the data collection and processing:

6-10 October, 2006

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

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)²¹ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.²²

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: HUNGARY
- B. Name of the funding scheme: Indirect funding scheme
- B.3 Name and address of the funding scheme's administration and supervisory authority:
Hungarian National Film Office
Address: 1075 Budapest Wesselényi u. 16.
Tel: 327 70 70, 327 02 20 Fax: 321 92 24
E-mail: info@filmoffice.hu
Website: www.nemzetifilmiroda.hu
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
1. a mozgóképéről szóló 2004. évi II. Törvény,
 2. 14/ 2004. (VI.9.) NKÖM-PM együttes rendelet a Nemzeti Filmiroda szervezetének, működésének és eljárásának részletes szabályairól,
 3. a társasági adóról és osztalékadóról szóló 1996. évi LXXXI. törvény
1. Act II of 2004 ,The Film Act, as earlier defined and as amended from time to time,

²¹ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

²² "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

2. Decree No 14/ 2004. (VI.9.) NKÖM-PM issued jointly by the Ministry of National Cultural Heritage and the Ministry of Finance, (“Decree”),
3. Act No LXXXI of 1996 on corporate tax and dividend tax (“Tax Act”)

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

- the Film Act entered into force on April 1, 2004
- the Decree entered into force on June 9, 2004
- the relevant sections of the Tax Act entered into force on November 23, 2004

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

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

TERRITORIAL CONDITIONS^{S23}

Explicit territorial conditions

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

Yes / No

If yes,

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

From the Tax Act:

4. § E törvény alkalmazásában

36. filmiroda által kiadott támogatási igazolás: olyan okirat, amelyet a Nemzeti Filmiroda (a továbbiakban: Filmiroda) a mozgóképről szóló 2004. évi II. törvény (a továbbiakban: Mktv.) 2. § 23. pontja szerinti megrendelésre készült filmalkotás vagy az Mktv. 2. § 24. pontja szerinti nem megrendelésre készült filmalkotás támogatója részére állít ki, és amely tartalmazza a támogatást nyújtó adózó megnevezését, székhelyét, adószámát, illetve a

²³ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

kedvezményre jogosító támogatás összegét. A Filmiroda által egy filmalkotáshoz kiadott, kedvezményre jogosító támogatási igazolások összértéke nem haladhatja meg az Mktv. 2. § 25. pontja szerinti, a Filmiroda által jóváhagyott közvetlen, Magyarországon felmerülő filmgyártási költségek 20 százalékát, azzal, hogy nem állítható ki igazolás, ha a filmalkotást az Mktv. 21. §-a szerinti V. kategóriába kell sorolni.

8. § (1) Az adózás előtti eredményt növeli:

n) az adóévben visszafizetési kötelezettség nélkül adott támogatás, juttatás, véglegesen átadott pénzeszköz és térítés nélkül átadott eszköz könyv szerinti értéke, az átvevő által meg nem térített általános forgalmi adó, valamint az adózó által átvállalt kötelezettségnek az adóévi adózás előtti eredmény terhére elszámolt összege, az adóévben térítés nélkül nyújtott szolgáltatás bekerülési értéke, figyelemmel a (4) bekezdésben foglaltakra, kivéve, ha
nf) az adózó a támogatást filmalkotáshoz juttatta, a Filmiroda által a részére kiadott támogatási igazolásban szereplő összegig, feltéve, hogy a filmalkotást nem kell az Mktv. 21. §-a szerinti V. kategóriába sorolni,

22. § (1) Az adózó a 4. § 36. pontja szerinti, részére kiadott támogatási igazolásban szereplő összegig - döntése szerint - a támogatás juttatásának adóéve és az azt követő három adóév adójából adókedvezményt vehet igénybe.

In case of indirect support Act No LXXXI of 1996 on corporate tax and dividend tax provides:

Section 4, item 36

36. Support certificate issued by the film office: a document issued by the National Film Office (hereinafter: Film Office) for supporters of a film produced on order according to Para 23, Section 2 of Act II of 2004 on motion picture (hereinafter: Motion Picture Act), or a film produced not on order according to Para 24, Section 2 of the Motion Picture Act, which shall contain the name, registered office and tax number of the tax payer who granted the support as well as the amount of support that grants entitlement to the benefit. The value of subsidy certificates issued by the Film Office for one film, which grant entitlement to the benefit, may not exceed 20 per cent of the direct costs of producing the film incurred in Hungary approved by the Film Office in accordance with Para 25, Section 2 of the Motion Picture Act, in respect of the given film, with the proviso that no certificate may be issued if the film has to be classified into category V according to Section 21 of the Motion Picture Act.”

Section 8 (1) Profit before tax shall be increased by:

n) the book value of subsidies, remuneration granted without a repayment obligation, liquid assets provided for final and assets transferred free of charge, value added tax not refunded by the recipient during the tax year, and the amount of liabilities assumed by the tax payer deducted from the profit before tax for the tax year, the purchase cost of services provided free of charge during the tax year, with regard to the items set out in para (4), except if]
“nf) the tax payer has provided the support to film up to the amount set out in the support certificate issued by the Film Office for the tax payer, provided that the film does not have to be classified into category V according to Section 21 of the Motion Picture Act.

Section 22 (1) Tax payers may apply a tax relief up to the amount included in the support certificate issued to the tax payer according to para 36, Section 4 – at the taxpayer’s discretion – from the tax for the tax year of granting the subsidy and the tax of the three subsequent tax years.

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

In case of indirect support we can talk about only indirect territorial conditions. The main principle of the tax incentive system is that only those production costs can be accounted as basis of the tax incentive that were spent in Hungary. The maximum amount of the indirect support (tax incentive) is 20 % of the production costs spent in Hungary. The indirect support has no maximum amount. The higher the production costs spent in Hungary are the higher is the indirect support (20 %).

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

Both for B7 and this section of B8, please find attached hereto a short description called “Tax Relief System in the Film Industry.”

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

Please see above.

Implicit or *de facto* territorial conditions

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

Yes/No

If yes,

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

CULTURAL CLAUSES

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

4. § E törvény célja

- a) a magyar mozgóképkultúra értékeinek széles körben való hozzáféréseinek, a nézőszám emelkedésének biztosítása;
- b) a magyar mozgóképkultúra értékeinek megőrzése és gyarapítása, a filmalkotások létrehozásának, valamint a mozgóképpel kapcsolatos művészeti, tudományos és oktatási tevékenységek támogatásán keresztül;
- c) a megfelelő jogi háttér és pénzügyi erőforrások biztosítása ahhoz, hogy a magyar filmgyártás sikeresen helyt tudjon állni a nemzetközi, különösen az európai audiovizuális piacon;
- d) olyan szakmai struktúra megalkotása, amely a rendelkezésre álló költségvetési és egyéb erőforrások hatékony felhasználásával képes biztosítani színvonalas hazai audiovizuális alkotások létrejöttét és terjesztését, valamint a hazai mozgóképipari infrastruktúra fejlesztését;
- e) a hazai mozgóképszakma működéséhez szükséges hatósági és egyéb állami feladatok megállapítása;
- f) meghatározni a nemzeti filmvagyon megőrzésének és hasznosításának intézményi kereteit, ezzel összefüggésben az államot illető vagyoni jogok egységes rendezését;
- g) a nemzetközi, különösen az európai mozgóképszakmai kapcsolatok kiépítésének elősegítése és fejlesztése.

5. § (1) Az e törvényben meghatározott célok elérése érdekében a törvény meghatározza a magyar mozgóképkultúra és mozgóképipar hazai és nemzetközi szerepének betöltéséhez szükséges mértékű költségvetési és költségvetésen kívüli forrás biztosításának módját.

(2) E törvény alkalmazása során úgy kell eljárni, hogy a magyar mozgóképszakma törvényben meghatározott forráselosztó- és intézményrendszerének szakmai és művészeti függetlensége ne sérüljön.

(3) Az e törvényben meghatározott állami támogatási rendszer működtetése során törekedni kell a közpénzek hatékony és eredményes felhasználására, továbbá úgy kell eljárni, hogy az állami támogatások felhasználása átlátható és ellenőrizhető legyen.

(4) E törvény alkalmazása, illetve a törvényben meghatározott állami támogatási rendszer működtetése során úgy kell eljárni, hogy az segítse a különböző társadalmi kisebbségekhez tartozó, valamint a fogyatékkal élő emberek társadalmon belüli esélyegyenlőségének megteremtését.

(4) A támogató szervezet előírhatja, hogy a nyújtott támogatás legfeljebb 80%-át a támogatott Magyarországon köteles elkölteni.

The purpose and principles of the Act

Section 4

The purpose of this Act is:

- a) to ensure wide-range access to the values of Hungarian motion picture culture and to increase the number of viewers;
- b) to preserve and enhance the values of Hungarian motion picture culture by supporting the creation of films and artistic, scientific and education activities related to motion pictures;
- c) to provide an appropriate legal background and financial resources for Hungarian film production to be successful in the international and, in particular, in the European audio-visual market;
- d) to create a professional structure that is able to ensure the production and distribution of high-standard domestic audio-visual works and the development of the Hungarian motion picture industry infrastructure by efficiently using the budgetary and other resources available;
- e) to determine the statutory and other state tasks required for the functioning of the domestic motion picture industry;
- f) to determine the institutional framework for preserving and utilising national film assets, and in connection with this, to set a uniform framework for settling the rights of property value that belong to the state;
- g) to assist and promote the establishment of international and in particular European relations in the motion picture industry.

Section 5

(1) In order to achieve the objectives determined in this Act it defines the method for providing the budgetary resources and resources outside of the budget that are required for the Hungarian motion picture culture and motion picture industry to play its domestic and international role.

(2) In the course of applying this Act procedures shall be conducted in a way so that the professional and artistic independence of the resource distribution and institutional system of the Hungarian motion picture industry defined in the Act should not be infringed.

(3) In the course of operating the state support system defined in this Act efforts must be made to use public funds efficiently and effectively, and procedures must be such that they shall ensure that the use of state subsidies is transparent and controllable.

(4) For the purposes of applying this Act and operating the state support system defined by the Act procedures must be such that they promote the creation of equal opportunities for those who belong to different minorities of society and people living with disabilities within society.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,²⁴ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

No selective criteria under this scheme.

CONTACT DETAILS

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

Hungarian National Film Office
Address: 1075 Budapest Wesselényi u. 16.
Tel: 327 70 70, 327 02 20 Fax: 321 92 24
E-mail: info@filmoffice.hu
Website: www.nemzetifilmiroda.hu
Mr. Attila Havasi Bálint J.D.
Legal Liaison
balint.havasi@filmoffice.hu

Ms. Krisztina Tamás J.D.
Legal Liaison responsible for international relations.
t.krisztina@filmoffice.hu

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

Tamas Tercsak
Gyorgy Bacsatyai
Szabó, Kővári, Tercsák and Partners Attorneys

Date of the data collection and processing:

6-10 October, 2006

²⁴ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.