

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



HUNGARY
SYNTHESIS SHEET

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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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Legal Report by Germann Avocats

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Dr. Delia Ferri
(main legal Consultant for the Synthesis
Sheets)

Johanna Jaeger
(main Consultant for the Output Tables and
Charts)

Dr. Marwa Daoudy
(Consultant)

Gritt Knirie Sogaard
(Consultant)

Brigitte Vézina
(Consultant)

Andrzej Jakubowski
(Consultant)

John Morijn
(Consultant)

Ljuba Kostadinova
(Consultant)

Dr. Cristina Poncibò
(Consultant)

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1 Summary of main findings

Table A – Direct Territorialisation Requirements

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

Hungary	Foundation of the Hungarian Historical Motion Picture' Direct Subsidy	1,659,055	Nat	N/A	Before 2006 no more than 80% of the subsidy granted must be spent in Hungary (after 2006 60%)	N/A	N/A	N/A	N/A	N
	Direct subsidy- National Cultural Fund	3 044 463 ¹	Nat	N/A	N/A	N/A	N/A	N/A	N/A	
	Direct Subsidy- Broadcasting Fund	For public service broadcast: approx. 2,624,000 € (2005) For public service program: approx. 5,415,000 € (2005) ²	Nat	N/A	N/A	N/A	N/A	N/A	N/A	
	Hungarian National Film Office's Indirect Subsidy (Tax Incentive Scheme)	29,212,773	Nat	The requirement consists in refunding the 20% of local film production costs which incurred in Hungary	N/A	N/A	N/A	N/A	N/A	

¹ In 2005: HUF 355,000,000

² both figures not from Korda Database but from the local counsel.

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
Hungary	Foundation of the Hungarian Historical Motion Picture’ Direct Subsidy	Y The nationality of a film is established according to the score achieved on the base of a table evaluating Hungarian elements (A 3)	N/A	N/A	N/A	N/A	N/A	Y The purpose clauses concerning the development of local film industry and infrastructure arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A

	Direct Subsidy National Cultural fund	Y The nationality of a film is established according to the score achieved on the base of a table evaluating Hungarian elements (A 3)	N/A	N/A	N	N/A	N/A	N	N/A	N/A
	Direct Subsidy Broadcasting Fund	N/A	N/A	N/A	N	N/A	N/A	N	N/A	N/A
	Hungarian National Film Office's Indirect Subsidy (Tax Incentive Scheme)	Y The nationality of a film is established according to the score achieved on the base of a table evaluating Hungarian elements (A 3)	N/A	N/A	N	N/A	N/A	Y The purpose clauses concerning the development of local film industry and infrastructure arguably qualifies as indirect territorialisation that is not quantifiable (5.6)	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 ³	Degree of the territorialisation ⁴		
				Funding Scheme Level ⁵	Funding body level	Member State Level ⁶
Hungary	Foundation of the Hungarian Historical Motion Picture' Direct Subsidy	1,659,055	Before 2006 no more than 80% of the subsidy granted must be spent in Hungary (after 2006 60%)	< 1 (moderate)	No data	13 %
	Direct subsidy-National Cultural Fund	3 044 463 ⁶	no requirement	= 0		
	Direct subsidy-Broadcasting Fund	For public service broadcast: approx. 2,624,000 € (2005) For public service program: approx. 5,415,000 € (2005) ⁷	no requirement	= 0	No data	
	Hungarian National Film Office's Indirect Subsidy (Tax Incentive Scheme)	29,212,773	The objective territorial requirement consists in refunding the 20% of local film production costs which incurred in Hungary	< 1 (moderate)	No data	

³ Assessment based on replies from local lawyers (see synthesis sheet)

⁴ High territorialisation: ratio "total amount subject to territorialisation"/"total budget available" >1

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
Hungary	European Convention on Cinematic Co-production	1 February 1997	Y
	France	19 July 1970	
	Italy	2 November 1984	
	(Canada)	(1985; never entered into force)	

Hungary is a party to the European Convention on Cinematographic Co-production. According to the Registrar of Agreements of the Legal Department of the Ministry of Foreign Affairs for the Republic of Hungary, there is also an agreement between Hungary and France on co-production and exchange of films and an agreement between Italy and Hungary on co-production of films.

There was also an agreement in 1985 between Hungary and Canada on co-production, but this never came into force (see reply A.3 for Hungary).

In Hungary funding schemes can be divided into direct or indirect forms of support (see reply A.2 for Hungary; see below Part B point 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

⁵ 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

⁶ “total amount subject to territorialisation”/“total budget available”

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

⁷ In 2005: HUF 355,000,000

⁸ Both figures come not from Korda Database but from the local counsel.

2 Synopsis of conventions on co-production agreements

Hungary is a party to the European Convention on Cinematographic Co-production. The governmental decree promulgating the Convention came into force on 31 January 1998 (for further details see reply A.3 for Hungary). The “Hungarian Film Office” (“HFO”) is the authority in charge of issuing certificates of entitlement to support under this Convention.

The Authority in charge of the administration is the Ministry of Culture and Education.

According to the Registrar of Agreements of the Legal Department of the Ministry of Foreign Affairs for the Republic of Hungary there are three agreements.

1. The Agreement between Hungary and France on co-production and exchange of films, concluded on 17 February 1970, came into force on 19 July 1970.
2. The Agreement between Italy and Hungary on co-production of films, concluded on 21 January 1982, came into force on 2 November 1984.
3. The Agreement between Hungary and Canada on co-production of films was concluded on 7 May 1985. However, this agreement did not come into force and therefore it was never promulgated.

Furthermore, a new co-production agreement is being prepared with Italy.

For additional information and contact details see reply A.3 for Hungary. For more information see <http://www.kulugyminiszterium.hu>.

3 Synopsis of formal nationality certification procedures

In Hungary, one must take into consideration the distinction between “commissioned works” (made upon commission from and with exclusive financing by the owner of the rights), and “non-commissioned works”.

Productions falling into the first category (“commissioned works”) do not receive direct state support.

The category of “non-commissioned works” may qualify for direct support (see reply A.4 for Hungary). This means that the producers of such works can apply for state subsidy if they comply with the conditions set forth by the nationality certification procedure.

The nationality of a film is established by the “Hungarian National Film Office” (“HNFO”) upon the producer’s request, on the basis of a point system (“Point System”). This Point System is described in Section 3 of the Act II of 2004 on motion pictures (Film Act), most recently amended on 1 April 2006. Feature films must fall under one of the categories (Hungarian film, co-production film with Hungarian participation, and other films with Hungarian participation) according to the score achieved on the basis of a table evaluating Hungarian elements.

Under this system, a Hungarian Director receives ten points (twelve points as from 1 April 2006); a production in Hungarian receives 15 points (under the Point system effective before the amendments of 2006). For further details see Section 3 of the Film Act⁴.

In order to qualify as Hungarian, a film must receive at least 75 points. At least 30 points are needed to reach the qualification of “Co-production work with Hungarian participation”. The films reaching at least 15 points are qualified as “other films with Hungarian participation”. Films receiving fewer than 15 points are placed in the category “Other Films” (see reply A.4 for Hungary; see also Section B2.1, below).

According to Section 13 (6) of the Film Act, direct state subsidy may be granted to “Hungarian films”, to “co-production films with Hungarian participation”, to “Other films with Hungarian participation”.

Direct state aid can be granted to a film belonging to the category “Other films” if 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 an international agreement/convention” (see reply A.4 for Hungary).

In granting the direct state aid, the level of Hungarian participation is taken into consideration.

In the case of a film production with minority Hungarian participation qualifying as European co-production, the direct state subsidy may not exceed the degree of the Hungarian producer’s participation.

Following the amendments of 1 April 2006, the Film Act provides that, in the case of a Hungarian film, direct and indirect state subsidies may not exceed 50% the production costs. Before 1 April 2006 the upper limit on direct and indirect state subsidies, in the case of a Hungarian film, was 80% of the production costs (see reply A.4 for Hungary).

The Film Act also contains objective territorialisation requirements, determining a minimum percentage of the subsidy to be spent in Hungary (see reply A.4 for Hungary; see also Section B2.2 below).

4 Synopsis of expected legal developments

According to information from the Hungarian Film Office (“HFO”), a co-production agreement is being prepared with Italy (see replies A.3 and A.5 for Hungary; see above Section 2).

In Hungary no new funding schemes containing territorialisation requirements are expected to enter into force as of 1 January 2006 (see reply A.6 for Hungary).

B The Hungarian funding schemes

1 Overview

In Hungary funding schemes may be divided into direct or indirect forms of support. Direct support is provided by the Ministry of Cultural Heritage according to the “Act on Hungarian Budget”, by the “Motion Picture Public Foundation of Hungary” (“MPPFH”), by the “Hungarian History Film Public Foundation” (“HHFPF”), by the “National Cultural Fund” (“NFC”) and by the Broadcasting Fund (direct funding scheme).

Indirect support is provided in the form of film production incentives in corporate income tax (see reply A.2 for Hungary).

The “Hungarian National Film Office” assesses the nationality of film projects for which producers apply for State aid, and keeps records of all direct and indirect State aid granted to a film production.

2 Analysis of the Direct Subsidy-MPPFH/HHFPF

2.1 Description of the funding scheme

The Direct Subsidy funding scheme is based on the *A mozgóképéről szóló 2004. évi II. törvény* (Act II of 1 April 2004, “Film Act”), most recently amended on 1 April 2006, to bring it into line with the principles set out in the Commission’s *Cinema Communication* COM (2001)534 final of 26 September 2001 and on *Magyar Mozgókép Közalapítvány – Támogatási Szabályzata* (By-laws on providing subsidies, as adopted by the Hungarian Motion Picture Public Foundation, HMPPF Bylaws on subsidies”) of 28 August 2006, which is an internal set of rules of the Public Foundation.

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

The authority in charge of the administration and of the supervision is the “Hungarian Motion Picture Public Foundation” (“HMPPF”). For contact information see replies B.3 and B.14 for Hungary for “Direct Subsidy”. For further details see www.mmka.hu.

The HMPPF is responsible for granting direct subsidies. Direct subsidies may be granted to “Hungarian films”, to “Co-production works with Hungarian participation”, to “Other films with Hungarian participation” and to “Other films” which have a minority share of a Hungarian producer and are qualified as a

European co-production on the basis of an international agreement/convention (see below Part A point 1; see reply A.4 for Hungary).

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective territorialisation requirements apply to this funding scheme: Section 13 (4) of Film Act of 31 December 2005.

2.2.2 Practice

There is no relevant judicial practice reported.

It is worth noting that the “HMPPF” is in practice in charge of verifying compliance with the territorialisation requirements set out in the Film Act on the basis of original invoices (see replies B.7 and B.9 for Hungary for “Direct Subsidy”).

2.2.3 Discussion

The Film Act contains objective territorial conditions stating that a minimum percentage of the subsidy shall be spent in the territory of Hungary. Prior to the amendments of 1 April 2006 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”. After the amendments the percentage has been reduced to 60%.

The “HMPPF” is in charge of granting the support. It may determine a higher amount to be spent in Hungary. In any case this amount may not exceed the 80% of the granted support. Nevertheless “HMPPF” may also give an exemption from such a general rule and may allow the recipient of the State aid to spend up to 60% of the support in other countries.

In addition according to the By-laws on granting the subsidies, the “HMPPF” also has “Controlling By-laws” which set out the detailed rules of this granting procedure.

It should be noted that the level of Hungarian participation is taken into consideration when granting direct state subsidy. This Hungarian participation can be evaluated on the basis of the nationality certification procedure (see reply A.4 for Hungary; see above Section 3). Furthermore, it should be noted that, in case of a film production with minority Hungarian participation, 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.

2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid must spend locally (in Hungary) no more than the 80% (after 2006 the 60%) of the support. However exemptions are allowed by the Film Act.

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for Hungary for “Direct Subsidy”)

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. However the nationality certification criteria (see Section A3 above) arguably contain indirect territorialisation requirements. Furthermore the purpose and the selective aid criteria arguably provide indirect territorialisation requirements (see Sections 2.4 and 2.6 below).

2.4. Synopsis of State aid selective granting criteria and procedures

Direct funding on the basis of the Film Act is provided selectively on the basis of qualitative criteria.

The Film Act states that State aid under the Direct Subsidy funding scheme is granted to the film producer, film distributor or any other applicants on the basis of the decision of the supporting body. This decision is based on the evaluation of the individual request based on the “characteristics of the film (in particular script, budget, artistic value, the identity of the authors, producers, and actors of the film)” or on the nature of another objective to be supported (see reply B.13 for Hungary for “Direct Subsidy”).

Arguably the above-mentioned qualitative criteria give a great discretion to the supporting body selecting film projects for State aid. One cannot exclude the possibility that the criteria such as “other objective to be supported” can be interpreted in a way that gives scope for indirect territorialisation.

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

The territorialisation requirements provided by the Film Act apply also in the context of co-production agreements. As general rule, the intensity of the direct and indirect state subsidy altogether may not exceed 50% of the participation of the Hungarian producer in the production costs (before 1 April 2006 this figure was 80%). In the case of co-productions the maximum percentage (80% prior to 1 April 2006) of the direct subsidy to be spent in Hungary is applied to the Hungarian portion of the production budget.

In general it must be noticed 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”) regulates 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. 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 are obliged to act accordingly.

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

Section 4 of the Film Act states that the purposes of the Act are:

- to ensure wide-range access to the values of Hungarian motion picture culture and to increase the number of viewers
- 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

- 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

Furthermore, the Act shall contribute “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” (see Section 4 of the Film Act; see reply B.12 for Hungary for “Direct Subsidies”).

Moreover Section 5 of the Film Act 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, and, in short, to achieve the objectives determined in the Act.

The general purposes provided by the Film Act reveal a particular attention to the development of the Hungarian cinema. These policy goals concerning the development of local film industry and infrastructure arguably qualify as indirect territorialisation that is not quantifiable.

3 Analysis of the Direct Subsidy-National cultural Fund Scheme

3.1 Description of the funding scheme

The *Nemzeti Kulturális Alap* (National Cultural Fund) Scheme is based on the *a Nemzeti Kulturális Alapról szóló 1993. XXIII. Törvény* (Act XXIII of 1993 on the National Cultural Fund) which came into force on 1 April 1993, on *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 Fund). This decree was replaced by *9/2006. (V.9.) NKÖM rendelet a Nemzeti Kulturális Alapról szóló 1993. évi XXIII. törvény végrehajtásáról* (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) which came into force on 17 May 2006). There were no significant regulatory changes during between 2001 and 2005 affecting the legal questions addressed by this study.

The National Cultural Fund (Fund) was an independent central budgetary fund between 1993 and 1999. From 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.

This funding scheme is administered by the National Cultural Fund. For contact information see replies B.4 and B.14 for Hungary for National Cultural Fund.

3.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The National Cultural Fund does not contain any objective territorial conditions.

3.2.2 Practice

There is no relevant judicial or administrative practice reported.

3.2.3 Discussion

N/A

3.2.4 Conclusions

No objective territorialisation requirements apply to this funding scheme (see reply B.5 for Hungary for the National Cultural Fund).

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial practice reported.

Regarding the administrative practice it should be noticed that 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 any rules issued by the Fund, the practice of the Fund is that grants are normally awarded to Hungarian-related-projects/professionals/artists (see reply B.10 for Hungary for the National Cultural Fund).

3.3.2 Discussion

N/A

3.3.3 Conclusions

There is no reported judicial practice on indirect territorialisation requirements.

Regarding the administrative practice the Fund usually grants aid to Hungarian-related-projects/professionals/artists.

3.4 Synopsis of State aid selective granting criteria and procedures

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.

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

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

See Section 2.5 above.

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

The Act on the National Cultural Fund of 31 December 2005 provides that 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.

No territorialisation requirements are located under the cultural clauses.

4. Analysis of Direct Subsidy-Broadcasting fund

4.1 Description of the funding scheme

The *Műsorszolgáltatási Alap* (Broadcasting Fund) is primarily based on the *a rádiózásról és a televíziózásról szóló 1996. évi I. törvény* (Act I of 1996 on radio and television broadcasting) which came into force on 1 February 1996, and on the *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) which came into force on 1 January 2005. There were no significant regulatory changes during between 2001 and 2005 affecting the legal questions addressed by this study.

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). For contact information see reply B.14 for Hungary for Broadcasting Fund.

4.2 Synopsis of objective territorialisation requirements

4.2.1 Rules

The Broadcasting Fund does not contain any objective territorial conditions.

4.2.2 Practice

There is no relevant judicial or administrative practice reported

4.2.3 Discussion

N/A

4.2.4 Conclusions

No objective territorialisation requirements apply to this funding scheme (see reply B.5 for Hungary for Broadcasting fund).

4.3 Synopsis of indirect territorialisation requirements

4.3.1 Practice

There is no relevant judicial or administrative practice reported.

4.3.2 Discussion

N/A

4.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

4.4 Synopsis of State aid selective granting criteria and procedures

This funding scheme grants State aid in a selective way based on the criteria and the purposes set forth in Section 2, item 18 and 19 of Act I of 1996.

The provision of Section 2-18 defines a “Public service broadcast” as 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.

Section 2-19 states that a public-service programme is 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 programmes, and educational and general information programmes 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.

There are no objective requirements for local expenditure.

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

See Section 2.5 above.

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

N/A

5. Analysis of the Indirect Subsidy funding scheme

- 5.1 Description of the funding scheme

The “Indirect Subsidy” Scheme is based on the *A mozgóképéről szóló 2004. évi II. törvény* (Act II of 1 April 2004, “Film Act”), most recently amended on 1 April 2006, to bring it into line with the principles set out in the Commission’s *Cinema Communication COM (2001)534 final* of 26 September 2001, and on the *14/ 2004. (VI.9.) NKÖM-PM együttes rendelet a Nemzeti Filmiroda szervezetének, működésének és eljárásának részletes szabályairól* (Decree No 14/ 2004. (VI.9.) NKÖM-PM issued jointly by the Ministry of National Cultural Heritage and the Ministry of Finance, the “Decree”), which came into force on 9 June 2004, and on the *A társasági adóról és osztalékadóról szóló 1996. évi*

LXXXI. törvény (Act No LXXXI of 1996 on corporate tax and dividend tax, “Tax Act”), which came into force on 23 November 2004.

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

The authority in charge of the administration and of the supervision of the “Indirect Subsidy” is the “Hungarian National Film Office” (“HNFO”). For contact information see reply B.14 for Hungary for “Indirect Subsidy”. For further details see www.nemzetifilmiroda.hu.

This Indirect Subsidy funding scheme consists of a tax relief. This tax relief system introduced by the Film Act has a dual purpose: to make Hungary one of the most attractive and competitive film production locations within Central Europe and to create new resources for the Hungarian film sector. The tax relief system offers opportunities for refunds in order to encourage foreign film producers to come and produce their films in Hungary. Furthermore, this funding scheme is intended to work as an incentive for Hungarian entities to invest in national film production and in co-production (see reply B.7 and B.8 and see the document “Tax Relief System in the Film Industry”)

5.2 Synopsis of objective territorialisation requirements

5.2.1. Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Section 4 item 36 of the Act No LXXXI of 1996 on corporate tax and dividend tax.

5.2.2 Practice

There is no judicial practice reported.

Concerning the administrative practice it should be noticed that the first few months of the tax relief system have proved that a sufficient amount of private resources can be mobilised in order to support film production if the right incentives are applied. The system has proved to be feasible: the first productions in relation to which the new rules were applied have already received 20% support, and sponsoring enterprises are eligible for corporate tax relief (see the document “Tax Relief System in the Film Industry”).

3.2.3 Discussion

Section 4 item 36 of the Act No LXXXI of 1996 on corporate tax and dividend tax provides that the value of subsidy “may not exceed 20% of the direct costs of

producing the film incurred in Hungary” (see replies B.6, B.7 and B.8 for Hungary for “Indirect Funding Scheme”).

The objective territorial requirement consists in refunding the 20% of local film production costs incurred in Hungary (e.g. Preproduction, shooting and postproduction work in Hungary to the first master print).

Moreover the “Act No LXXXI of 1996 on corporate tax and dividend tax” (“Tax Act”) provides at Section 4, item 36 that the indirect support (“tax incentive”) is granted on the basis of a “Support certificate” issued by the “HNFO”. It is a document issued by the “HNFO” for supporters of a film produced on order according to Section 2 Para 23 of the “Film Act, or of a film produced not on order according to Section 2 Para 24, the “Film Act”. In the case of “films produced on order” the parties have contractual obligations towards each other. The Hungarian film production company agrees to register itself and the production with the “Hungarian National Film Office” (“HNFO”); to order and provide the services and other items required for the production of the film under the contract concluded with the foreign producer; to use the assumed services in Hungary. The Hungarian taxpaying enterprise agrees to follow the issue of a tax certificate by the “HNFO” Film Office and to pay 20% of the Hungarian production cost to the foreign producer (see the document “Tax Relief System in the Film Industry”). In the case of “films not produced on order”, the Hungarian production company requests the registration of the production at the “HNFO”. After this registration and the completion of the production in Hungary takes place. After the completion of production in Hungary (or a specific phase thereof) the “HNFO” reviews the accounting of the production and specifies the total of production costs in Hungary, and issues a certificate with eligibility for tax benefits up to maximum 20% of the production costs.

It is worth noting that between a company which spends 75% of its production budget in Hungary and a company which produces its complete film in Hungary the larger savings are achieved by the second one (see the document “Tax Relief System in the Film Industry”).

3.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the producer is refunded 20% of local film production costs incurred in Hungary. The production costs are intended to be all payments contained in the budget of the film that were made to Hungarian taxpayers, with the exception of royalties and indirect expenses.

5.3 Synopsis of indirect territorialisation requirements

5.3.1 Practice

There is no relevant judicial or administrative 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 Hungary for “Indirect Funding Scheme”).

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

This funding scheme does not grant State aid in a selective way (see reply B.13 for Hungary for “Indirect Funding Scheme”)

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

See Section 2.5 above.

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

The cultural clauses applying to this funding scheme are contained in the Film Act (see reply B.12 for Hungary for “Indirect Subsidy”).

Section 4 of the Film Act states that the purposes of the Act are:

- to ensure wide-range access to the values of Hungarian motion picture culture and to increase the number of viewers
- to preserve and enhance the values of Hungarian motion picture culture by supporting the creation of films and artistic, scientific and educational activities related to motion pictures
- 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

The general purposes stated in the Film Act reveal a particular attention to the development of Hungarian cinema. Moreover the tax relief system itself has a dual purpose: to make Hungary one of the most attractive and competitive film production locations within Central Europe and to create new resources for the Hungarian film sector.

The general purposes expressed in the Film Act reveal a particular attention to the development of Hungarian cinema. These policy goals concerning the development of local film industry and infrastructure arguably qualify as indirect territorialisation that is not quantifiable.

References:

- www.hungarianfilm.com – a regular 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
- 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

Attachments:

- Replies to the legal questionnaire by Tamas Tercsak and Gyorgy Bacsatyi, attorneys at law, Szabó, Kővári, Tercsák and Partners Attorneys, Hungary
- Regulations for Hungary