

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

|                      |                        |
|----------------------|------------------------|
| <b>Member State:</b> | <b>ITALY</b>           |
| <b>Re:</b>           | <b>Follow Up Reply</b> |
| <b>Date:</b>         | <b>04 January 2007</b> |

(...)

please find attached the final version of the questionnaire with the integrations following to your further questions.

(...)

|  |
|--|
| <b>Attachment to e-mail of 04 January 2007</b> |
|--|

- FINAL VERSION CG Legal Questionnaire 160906.doc

**Attachment to e-mail of 04 January 2007:  
FINAL VERSION CG Legal Questionnaire 160906.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](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](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.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/ukfcddownloads/42/Co\\_production.pdf](http://www.ukfilmcouncil.org.uk/usr/ukfcddownloads/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: Italy

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 works<sup>1</sup> 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):

State aid to independent cinematographic and audiovisual works is financed by a quota of the “Fondo Unico per lo Spettacolo” which summarizes all the public resources for spectacle managed by the “Ministero per i beni e le attività culturali” (“the Ministry”).

The quota for cinema in 2005 was €83 626 139 corresponding to 18% of the total resources of “Fondo Unico per lo Spettacolo”.

The mentioned quota for cinema is divided into two different financing categories:

- “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” which represents a form of indirect financing (guaranties on loans, financing, etc.) managed by a credit institute;
- Forms of direct aid to cinema: contributions to film production based on the receipts of the film (box office), quality prize and other forms of contributions which must not be returned (for example the contributions for cinema festival like the “Biennale di Venezia”).

The creation of “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” is provided by art. 12 of Legislative Decree n. 28 of 22 January 2004 (“the Legislative Decree”), entered into force on 6 February 2004, which set forth a global and coherent reform of the cinema sector.

According to article 12 of the Legislative Decree, the fund substituted (and assembled) the financial resources of five different funding schemes operating (at least the first) since 1965: fondo speciale, fondo particolare, fondo di intervento, fondo di sostegno, fondo di garanzia

---

<sup>1</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

## 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:

| State party              | Signature         | Entry into force           | Authority   |
|--------------------------|-------------------|----------------------------|---|
| Albania                  | 10 May 2002       | 1 June 2004                | Mixed Commission composed of officials and experts designated by competent Governmental Authorities of both States. The Mixed Commission is expected to meet (every two years, yearly or upon request) alternatively in each of the Member States of the Convention. Extraordinary sessions may also be fixed upon request of each Member State. In Italy the competent Authority is: Ministero per i Beni e le Attività Culturali Dipartimento per lo Spettacolo e lo Sport Direzione Generale per il Cinema Via della Ferratella in Laterano, 51 00184 Roma |
| Algeria                  | 26 April 1989     | Not yet entered into force | <i>idem</i>   |
| Argentina                | 9 December 1987   | 19 July 1990               | <i>idem</i>   |
| Australia                | 28 June 1993      | 12 December 1996           | <i>idem</i>   |
| Austria                  | 24 April 1968     | 1 July 1968                | <i>idem</i>   |
| Belgium                  | 15 October 1970   | 15 October 1970            | <i>idem</i>   |
| Belgium French community | 31 August 2000    | Not yet entered into force | <i>idem</i>   |
| Brazil                   | 9 November 1970   | 4 July 1974                | <i>idem</i>   |
| Bulgaria                 | 29 July 1967      | 29 July 1967               | <i>idem</i>   |
| Canada                   | 13 November 1997  | 14 December 1999           | <i>idem</i>   |
| Czech Republic           | 25 March 1968     | 25 March 1968              | <i>idem</i>   |
| China                    | 4 December 2004   | Not yet entered into force | Both competent Governmental Authorities of the Member States of the Convention. In Italy: see above   |
| Cuba                     | 4 February 1997   | 23 August 1999             | Mixed Commission composed of officials and experts designated by competent Governmental Authorities of both States.   |
| Chile                    | 6 October 2004    | Not yet entered into force | <i>idem</i>   |
| France                   | 6 November 2000   | 1 June 2003                | <i>idem</i>   |
| Germany                  | 23 September 1999 | 5 November 2002            | <i>idem</i>   |
| Hungary                  | 21 January 1982   | 2 November 1984            | <i>idem</i>   |
| India                    | 13 May 2005       | Not yet entered into       | <i>idem</i>   |

|                    |                   |                            |             |
|--------------------|-------------------|----------------------------|-------------|
|                    |                   | force                      |             |
| Israel             | 2 January 1985    | 23 September 1987          | <i>idem</i> |
| Macedonia          | 15 November 2002  | Not yet entered into force | <i>idem</i> |
| Mexico             | 19 November 1971  | 28 June 1974               | <i>idem</i> |
| Morocco            | 29 July 1991      | 4 June 1999                | <i>idem</i> |
| New Zealand        | 30 July 1997      | 15 February 2000           | <i>idem</i> |
| Portugal           | 19 September 1997 | 27 July 2000               | <i>idem</i> |
| Romania            | 8 August 1967     | 5 December 1967            | <i>idem</i> |
| Russian Federation | 28 November 2002  | 15 June 2006               | <i>idem</i> |
| Slovak Republic    | 25 March 1968     | 25 March 1968              | <i>idem</i> |
| South Africa       | 13 November 2003  | Not yet entered into force | <i>idem</i> |
| Spain              | 10 September 1997 | 3 June 1998                | <i>idem</i> |
| Sweden             | 24 July 1968      | 24 July 1968               | <i>idem</i> |
| Switzerland        | 15 May 1990       | 23 December 1993           | <i>idem</i> |
| Tunisia            | 29 October 1988   | 3 August 2005              | <i>idem</i> |
| Turkey             | 30 March 2006     | Not yet entered into force | <i>idem</i> |
| Uruguay            | 13 March 2001     | 6 May 2004                 | <i>idem</i> |
| Venezuela          | 19 December 1984  | 28 August 1986             | <i>idem</i> |
| Yugoslavia         | 20 January 1968   | provisional                |             |

## **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:<sup>2</sup>

1. The assessment of Italian nationality of an independent film or television production is essential to obtain financial aid provided by the Legislative Decree (i.e. incentives to production, contributions, loans, etc.).

2. The authority in charge of the procedure is the Ministry, according to article 1 b) of the Legislative Decree.

3. The criteria to assess Italian nationality set forth by article 5, n. 2 of the Legislative Decree are based on the relevant artistic and technical components of the film, as follows:

- a) Italian film director;
- b) Italian author of the subject or majority of the authors Italian;
- c) Italian screenwriter or majority of the screenwriters Italian;

<sup>2</sup> E.g. the French “Procédure d’agrément”.

- d) Principal actors in majority Italian;
- e) Secondary actors for a percentage of  $\frac{3}{4}$  Italian;
- f) Direct sound take in Italian language;
- g) Italian author of the cinematography pictures;
- h) Italian editor;
- i) Italian author of the music;
- l) Italian art director;
- m) Italian costume director;
- n) Italian crew;
- o) Filming and use of theatres in Italy;
- p) Use of Italian technical industries;
- q) Spend at least 30% of the total budget of the film in Italy, with regard to the technical components *sub* n), o), p), and social contributions.

With regard to the mentioned criteria, article 5, n. 4 of the Legislative Decree recognises the Italian nationality to the films complying with:

- all the criteria *sub* a), b), c), f), n) and q);
- at least three of the criteria *sub* d), e), g), h);
- at least two of the criteria *sub* i), l), m); and
- at least one of the criteria *sub* o) and p).

For the purpose of the Legislative Decree, citizens of EU member states are assimilated to Italian citizens.

4. The procedure for assessing the Italian nationality is divided in two phases: the first phase is aimed to obtain the provisional recognition of Italian nationality at the beginning of working the film and the second phase ends with the definitive recognition of the Italian nationality and with the registration of same within the electronic database at the “Direzione generale cinema” of the Ministry.

According to article 5, n. 1 of Legislative Decree and article 1 of the Ministerial Decree 27 January 2004 (Decreto “sostegno alla produzione ed alla distribuzione cinematografica”) the applicant shall file an application to the Ministry (“Direzione generale per il cinema”) for the provisional recognition of the Italian nationality jointly with the notification of starting working the film.

The application must contain the declaration of compliance with the criteria for obtaining the provisional recognition of Italian nationality of the film and the respect of the national labour regulations and the related social imperative provisions. The applicant shall also pay a contribution for administrative costs of the procedure.

The Ministry (in the person of the “Direttore generale per il cinema”) grants the provisional recognition of Italian nationality of the film within 120 days from the application.

Upon the completion of the film, standing the requirements above and not incurring the revocation of the provisional recognition of nationality, the applicant shall file the request of the definitive recognition of the Italian nationality within 30 days from the presentation of a sample copy of the film. The “Direttore generale per il cinema” grants the requested recognition within the following 90 days.

## **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

There are no new co-production agreements expected to be signed by Italy within 1 January 2007.

Some co-production agreements are at an early negotiating stage and the negotiations for the renewal of the co-production agreement with Argentina are engaged.

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 2007,<sup>3</sup> and indicate the name and address of the administration of these funding schemes:<sup>4</sup>

The funding scheme indicated *sub* A.2 is the unique form of State aid with a budget of at least € 1 million operating in Italy at the moment. The creation of the “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” which totalizes the major part of the quota for cinema is very recent (2004). Therefore, new funding schemes with similar characteristics did not enter into force as of 1 January 2006.

## **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):

1) Reports and studies:

- Servizio Studi della Camera dei Deputati, *Disciplina in materia di attività cinematografiche*, in *Pareri al Governo n. 252*, 2 dicembre 2003;

- Ministero per i beni e le attività culturali, *Relazione sull'utilizzazione del Fondo Unico per lo Spettacolo - Anno 2005*, Osservatorio dello Spettacolo, 30 giugno 2006; also in the website: [www.cinema.beniculturali.it](http://www.cinema.beniculturali.it);

---

<sup>3</sup> 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.

<sup>4</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

- Eurispes, *Illusione/Disillusione. Il cinema, un'industria da incentivare e proteggere*, in *Rapporto Italia*, 2002.

## 2) Literature:

DE SANCTIS V.M., *La protezione delle opere dell'ingegno*, Milano, 2004

DI FABIO P., *Il sistema delle sovvenzioni statali al settore cinematografico: inquadramento storico ed assetto attuale*, in *Rivista Dir. Autore*, fasc. 1, 2003, p. 96 e ss.

DI FABIO P., *Le coproduzioni internazionali: profili giuridici e contrattuali alla luce della nuova normativa sulla cinematografia (c.d. «Decreto legislativo Urbani»*, in *Rivista Dir. Autore*, fasc. 2, 2004, p. 181 e ss.

FISICARO E., *Diritto cinematografico*, Milano, 2006

FRAGOLA A., *La legislazione italiana sulla cinematografia*, Milano, 1982

FRAGOLA A., *Prodotti audiovisivi e dichiarazione di nazionalità*, in *Cinema d'oggi*, n. 1/2000

GIARDINA A., *La protection internationale du financement des oeuvres cinematographiques*, in *Rivista di diritto internazionale privato e processuale*, 1991, fasc. 1, p. 5 e ss.

LENER A., *Coproduzioni cinematografiche: un caso "in itinere" di "eccesso di potere legislativo"* (osservazione a ord. Pret. Roma 6 maggio 1982), in *Il Foro italiano*, 1982, fasc. 10, p. 2663 e ss.

MACCHITELLA C., *Nuovo Cinema Italia*, Marsilio ed., Venezia, 2003

PAGAMICI B., *Cinema, in arrivo gli incentivi*, in *Finanziamenti su misura news*, 2004, p. 16 e ss.

PAGAMICI B., *Tutti gli incentivi per l'industria cinematografica*, in *Finanziamenti su misura news*, 2003, p. 16 e ss.

SALVEMINI S., *Il cinema italiano: imprenditorialità, efficienza, innovazione*, in *Scuola di direzione aziendale dell'Università Bocconi di Milano*, ANEC, 1992

SILVERIO A., *Gli accordi bilaterali-internazionali sulla cooperazione cinematografica conclusi dall'Italia*, in *Il diritto d'autore*, 1999, p. 220 e ss.

ZACCARIA R., *Diritto dell'informazione e della comunicazione*, Padova, 2004

ZACCARIA R., *Cinematografia*, in *Dig. disc. pubbl.*, 1991



**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)<sup>5</sup> 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.<sup>6</sup>*

*Please use for each funding scheme a separate form.*

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: Italy

B. Name of the funding scheme: Quota for cinema of the “Fondo Unico per lo Spettacolo”. This quota includes the resources of “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” (See answer A.2).

B.3 Name and address of the funding scheme’s administration and supervisory authority:

Ministero per i Beni e le Attività Culturali  
Dipartimento per lo Spettacolo e lo Sport  
Direzione Generale per il Cinema  
Via della Ferratella in Laterano, 51  
00184 Roma

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

- Decreto Legislativo 22 gennaio 2004, n. 28 – Riforma della disciplina in materia di attività cinematografiche, a norma dell’articolo 10 della legge 6 luglio 2002, n. 137, pubblicato sulla Gazzetta Ufficiale n. 29 del 5 febbraio 2004 ed entrato in vigore il 6 febbraio 2004;

---

<sup>5</sup> 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](http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28) ).

<sup>6</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

(Legislative Decree n. 28 of 22 January 2004 – Reform of the discipline on cinematography activities, based on article 10 of Law 6 July 2002, n. 137. The Legislative Decree was published in the Official Journal n. 29 of 5 February 2004 and entered into force on 6 February 2004).

The Legislative Decree was amended by L. 21 maggio 2004, n. 128 “Conversione in legge, con modificazioni, del decreto-legge 22 marzo 2004, n. 72, recante interventi per contrastare la diffusione telematica abusiva di materiale audiovisivo, nonché a sostegno delle attività cinematografiche e dello spettacolo” (Law 21 May 2004, n. 128 “Conversion in law of the decree 22 March 2004, n. 72 providing the measures to contrast the illegal diffusion of audiovisual on the internet and the support to cinematography activities and spectacle”).

- D.M. 27 settembre 2004 “sostegno alla produzione ed alla distribuzione cinematografica”  
(Ministerial Decree 27 September 2004 “support to the cinematographic production and distribution”)

- D.M. 27 settembre 2004 “definizione degli indicatori del criterio per il riconoscimento dell’interesse culturale dell’opera filmica e organizzazione della Commissione per la cinematografia”  
(Ministerial Decree 27 September 2004 “definition of the indicators’ criteria for the recognition of the cultural interest of the film and organization of the Cinematography Commission”)

- D.M. 27 settembre 2004 “definizione degli indicatori, e dei rispettivi valori, per l’iscrizione delle imprese di produzione nell’elenco di cui all’art. 3 d.lgs. 28/2004”  
(Ministerial Decree 27 September 2004 “definition of the indicators and values for the registration of the production companies within the list indicated by art. 3 of the Legislative Decree 28/2004”)

- D.M. 28 ottobre 2004 “modalità tecniche di gestione e monitoraggio dell’impiego delle risorse destinate alla promozione cinematografica”  
(Ministerial Decree 28 October 2004 “technical modalities of managing and monitoring of the use of the resources destined to cinema production”)

- D.M. 10 giugno 2004 “sostegno all’esercizio ed alle industrie tecniche cinematografiche”  
(Ministerial Decree 10 June 2004 “support to the exercise and to cinema technical industries”)

- D.M. 10 giugno 2004 “criteri concessione premi alle sale d’essai ed alle sale delle comunità ecclesiali”  
(Ministerial Decree 10 June 2004 “criteria for granting prizes to the *sale d’essai* and to the movie houses of the ecclesial communities”)

- D.M. 16 luglio 2004 “erogazione dei contributi percentuali sugli incassi realizzati in sala dalle opere cinematografiche”  
(Ministerial Decree 16 July 2004 “ payment of the contributions calculated on the percentage of box office receipts of the films”)

- D.M. 27 agosto 2004 “determinazione dell’ammontare dei premi di qualità ai lungometraggi riconosciuti di nazionalità italiana”  
(Ministerial Decree 27 August 2004 “ determination of the amount of the quality prizes to the full-length films which have been recognised the Italian nationality”).

All the mentioned Ministerial Decrees were amended by eight Ministerial Decrees adopted on 3 October 2005 (published in the Official Journal n. 263 of 11 November 2005 and entered into force 15 days after their publication).

The amendments were introduced in order to improve the functioning and the efficacy of the technical modalities of State aid to cinema specified in the Ministerial Decrees adopted in 2004.

*A copy of these laws and regulations is enclosed to this questionnaire.*

## **TERRITORIAL CONDITIONS<sup>7</sup>**

### **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

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*):

Articolo 5, comma 2, lett. q) del Decreto Legislativo 22 gennaio 2004, n. 28 – Riforma della disciplina in materia di attività cinematografiche, a norma dell’articolo 10 della legge 6 luglio 2002, n. 137:

“q) effettuazione in Italia di almeno il trenta per cento della spesa complessiva del film, con riferimento alle componenti tecniche di cui alle lettere n), o), p), nonché agli oneri sociali.” (Cfr. prec. A.4)

---

<sup>7</sup> 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.

Article 5, n. 2 sub *q*) of the Legislative Decree n. 28 of 22 January 2004 – Reform of the discipline on cinematography activities, based on article 10 of Law 6 July 2002, n. 137:

“*q*) to spend at least 30% of the total budget of the film in Italy, with regard to technical components sub *n*), *o*), *p*), including social contributions” (See above answer A.4)

- 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*).

The Legislative Decree requires only a minimum proportion (30%) of the film budget to be spent in Italy.

The mentioned criteria, as evidenced above (sub. A.4), is a criteria to obtain the assessment and the certification of the Italian nationality of the film. It is also an essential requirement for the certification of the “cultural interest” of same. Both “Italian nationality” and “cultural interest” are required to grant the State aid.

The Legislative Decree does not provide a detailed discipline on the implementation of the territorialisation requirement. Article 5, n. 1 specifies that the legal representative of the film producer (**i.e. the person who is entitled to express the will of the company that produces the film**) declares in the application the compliance of the film with the requirements for obtaining the certification of Italian nationality (i.e. the territorialisation requirement) according to article 46 of D.P.R. 28 December 2000, n. 445 (regarding “self-certifications”).

Article 1, n. 4 of the Ministerial Decree 27 September 2004 “support to the cinematographic production and distribution” provides that the recognition of Italian nationality may be revoked at the completion of the film if it does not respect the requirements declared in the application.

- 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*):

The territorialisation requirement does not affect the discipline of co-production agreements.

Article 6 of the Legislative Decree recognises the Italian nationality to co-production agreements in derogation with article 5 and 7 of the Legislative Decree (i.e. independently from complying with the above mentioned requirements for obtaining the certification of Italian nationality).

The norm recognises Italian nationality to co-production agreements on the ground of the reciprocity principle. Only a difference is made with regard to E.U. and non E.U. agreements: the last requires an Italian participation to the costs of the film of at least 20%.

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*):

1) The judicial practice related to the implementation of territorialisation requirement (i.e. spending at least 30% of the film budget in Italy with regard principally to social contributions and technical costs of the film) is still not developed as the mentioned requirement was introduced for the first time in Italy by the Legislative Decree in 2004.

The judicial case law is mostly related to the requests for State aid filed on the grounds of the discipline in force before the Legislative Decree and is based on the interpretation and application of the transitory disposition provided by article 27, n. 3 of the Legislative Decree.

2) With regard to the administrative practice and the guidelines on the implementation of the territorialisation requirements the Ministry introduced the “Circolare relativa agli adempimenti connessi alla riforma del settore cinematografico” (Circular on the accomplishments related to the reform of the cinematography sector) on 2 November 2004.

According to the Circular, the main condition for any request of State aid and at the same time for the implementation of the territorialisation requirement is the registration of the company in the lists provided by article 3, n. 1 of the Legislative Decree.

The mentioned lists are divided into two categories which allows the companies to different ranges of State aids.

The registration into the first or the second category is evaluated on the basis of a reference system which takes into account different criteria: the quality of films produced during the last five years and the participation of the production company to festivals, the stability of the company determined through the number of years of activity and the number of films produced and finally the commercial capacity of the company which results from the box office receipts.

### **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

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*):

Implicit territorialisation requirements practised by the funding scheme may find a legitimisation in various legal provisions of the Legislative Decree:

- article 5 set forth several criteria for the certification of Italian nationality which indirectly constitute territorialisation requirements. For example the requirement of the payment of social contributions or the requirement that the crew must be Italian;
- article 10 set forth a discipline on incentives to film production calculated on a percentage of the receipts (box office) deriving from the projection of the film. The contribution must be used to cover the loan endorsed for the production of the film or reinvested in the production of new films which must have the Italian nationality (i.e. comply with requirements indicated in article 5);
- article 15 set forth a discipline on State contributions to exercise companies calculated on the interests fixed in the loan or financial lease agreements. The State contribution is increased if the exercise companies endorse the obligation to program a minimum percentage of films with Italian nationality or with the nationality other EU member States. This condition is applied in relation to: (i) the activation of cinemas in towns with less than 10.000 inhabitants or with no cinemas and (ii) the transformation of the existing cinemas with one movie room (“sale cinematografiche”) into cinemas with many movie rooms (“multisala”) in towns with more than 20.000 inhabitants.

### **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:

The legal provision expressing cultural policy goals that could legitimate the explicit or implicit territorialisation requirements are the following:

- Costituzione della Repubblica (Italian Constitution):

“La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica. Tutela il paesaggio e il patrimonio storico e artistico della Nazione” (art. 9)

“The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation.” (article 9);

• D.Lgs. 22 gennaio 2004, n. 42 “Codice dei beni culturali e del paesaggio, ai sensi dell’art. 10 della L. 6 luglio 2002, n. 137” (Legislative Decree n. 42 of 22 January 2004 “Code of cultural heritage and landscape”):

“La tutela e la valorizzazione del patrimonio culturale concorrono a preservare la memoria della comunità nazionale e del suo territorio e a promuovere lo sviluppo della cultura” (art. 1, comma 2)

“the protection and the valorisation of the cultural heritage contribute to the preservation of the memory of the national community and its territory and to the promotion of the development of culture” (article 1, n. 2);

“La valorizzazione consiste nell’esercizio delle funzioni e nella disciplina delle attività dirette a promuovere la conoscenza del patrimonio culturale e ad assicurare le migliori condizioni di utilizzazione e fruizione pubblica del patrimonio stesso” (art. 6, comma 1)

“The valorisation consists in the exercise of the functions and in the discipline of the activities oriented to the promotion of the knowledge of the cultural heritage and to the promotion of the best conditions for the public use of same” (article 6, n.1);

“Le attività di valorizzazione dei beni culturali consistono nella costituzione ed organizzazione stabile di risorse, strutture o reti, ovvero nella messa a disposizione di competenze tecniche o risorse finanziarie o strumentali, finalizzate all’esercizio delle funzioni e al perseguimento delle finalità indicate all’art. 6.” (art. 111, comma 1)

“ The activities for the valorisation of cultural heritage consist in the permanent constitution and organization of resources, structures and networks, or in the place at the disposal of technical competences or financial or instrumental resources, oriented to the exercise of functions and realization of the finalities indicated in article 6.” (article 111, n. 1);

• Decreto Legislativo n. 28 del 22 Gennaio 2004 (Legislative Decree n. 28 of 22 January 2004 – “the Legislative Decree”):

“La Repubblica, nelle sue articolazioni e secondo le rispettive competenze, favorisce lo sviluppo dell’industria cinematografica nei suoi diversi settori; incoraggia ed aiuta le iniziative volte a valorizzare e a diffondere con qualsiasi mezzo il cinema nazionale, con particolare riguardo ai film di interesse culturale” (art. 1, comma 3)

“The Republic in its articulations and on the basis of internal competences promotes the development of the cinematography industry and its different sectors; encourages and supports the initiatives oriented to the valorisation and the spread by any means of the national cinema, with particular regard to films with a cultural interest” (article 1, n. 3).

## **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>8</sup> 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:

Selective aid to cinema is provided by article 17 of the Legislative Decree and Ministerial Decree 27 September 2004 on the “determination of the amount of the quality prizes to the full-length films which have been recognised the Italian nationality”.

The Italian legislation does not mention international quality prizes, but only Italian quality prizes that are granted by the Ministry through the “Fondo Unico per lo Spettacolo”. Therefore, we assume that only these are eligible for State aid.

A brief consideration should be added with regard to full-length films that are eligible for quality prizes. These are not only Italian films but also co-productions.

For “quality prizes”, art. 17 of the Legislative Decree intends the monetary sum (equal to 250.000 euros, as established by the mentioned Ministerial Decree) that is granted by the Ministry to full-length films (“lungometraggi”) that: (i) have the Italian nationality; (ii) present “particular artistic and cultural qualities”; (iii) obtain an “attestation of quality”, delivered by an independent jury, following to a specific evaluation procedure and defined criteria; and (iv) are effectively programmed in the cinemas.

The granted prize is divided between the different subjects participating in the film: the higher quota (71%) is granted to the film producer (who is obliged to reinvest it in the production of national films within 5 years); a lower quota is provided to the film director (10%), to the author of the subject (3%), etc.

The number of quality prizes has been evolving since 2001 (from 65 in 2001 to 20 in 2005, including full-length films and short-length films), and finally the Ministerial Decree fixed a maximum of 10 quality prizes, only for full-length films, to be granted each year. These are only Italian prizes that may be taken into account for State aid purposes.

On the basis of these considerations, it is possible to affirm that quality prizes constitutes a selective aid because only the full-length films with the recognition of the Italian nationality which obtain the above mentioned “attestation of quality” can benefit of the State aid.

However, the Ministerial Decree does not assess the qualitative criteria for the recognition of the “quality” of the film but only provides that quality prizes are granted to the full-length films that “have particular artistic and cultural qualities”.

According to this orientation, the independent jury is probably expected to determine more precisely the quality criteria in its first meeting, before the evaluation of the films.

## **CONTACT DETAILS**

---

<sup>8</sup> 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.



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

Dr. Gaetano Blandini  
Direttore Generale per il cinema  
Ministero per i beni e le attività culturali  
Via della Ferratella in Laterano, 51  
00184 - Roma (Italy)  
tel. +39 06 77321  
segreteria@cinema.beniculturali.it

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

Daniela Marrani  
Portolano Colella Cavallo Studio Legale  
Via Catone, 3  
00192 Roma  
Tel. +39 0639745437  
Fax. +39 0639745400  
e-mail: daniela.marrani@uniroma1.it

Date of the data collection and processing:

2 October 2006

|                      |                           |
|----------------------|---------------------------|
| <b>Member State:</b> | <b>ITALY</b>              |
| <b>Re:</b>           | <b>Follow Up Question</b> |
| <b>Date:</b>         | <b>26 November 2006</b>   |

(...)

Thank you for your reply of 17 October 2006.

We have a final round of follow-up requests for clarification as follows:

1) You mentioned in your replies “quality prizes” as a criterion to be eligible for State aid. Please further define “quality prizes”, in particular indicate whether Italian and international “quality prizes” have the same value for the purpose of State aid eligibility, and indicate the number and type (Italian or foreign awards) of prizes that are taken into consideration for State aid purposes.

2) You mentioned in your reply the notion of “legal representative” of a film. Please provide a definition of this term.

(...)

|                      |                        |
|----------------------|------------------------|
| <b>Member State:</b> | <b>ITALY</b>           |
| <b>Re:</b>           | <b>Follow Up Reply</b> |
| <b>Date:</b>         | <b>17 October 2006</b> |

(...)

please consider the following specifications regarding the question on a conflict or an inconsistency between the rules on territorialization contained in Italian legislation on State aid to cinema and the rules contained in co-production agreements:

1)the Italian legislation on State aid to cinema set forth a special discipline for co-production agreements (i.e. article 6 of the Legislative Decree);

2)the special discipline allows co-productions to apply for State aid without complying with requirements set forth for Italian film productions, i.e. requirements to obtain the recognition of Italian nationality and cultural interest set forth in article 5 and article 7 n. 2;

3)therefore territorialization requirement set forth by article 5 (i.e. to spend at least 30% of the film total budget in Italy) does not apply to co-productions;

4)according to article 6 of the Legislative Decree, co-productions can apply for State aid to cinema provided that they comply with the following requirements:

- EU co-productions: respect of the discipline contained in the co-production agreement;

- non EU co-productions:

- respect of the discipline contained in the co-production agreement;
- reciprocity agreement on the recognition of the film nationality in order to apply for State aid;
- Italian participation to the film costs of at least 20%;

5)notwithstanding, the co-production agreement may contain some territorialization requirements which may be in conflict or inconsistent with the rules on territorialization contained in Italian legislation on State aid to cinema;

6)in this case as a general principle set forth in Italian jurisdiction International law always prevails over national law: the law of reform of Italian Constitution (Law n. 3 of 18 October 2001) provides an explicit obligation to introduce internal legislation in accordance with international obligations;

7)the solution to possible conflicts or inconsistencies needs to consider the following:

- two mechanisms are set forth in order to provide the adaptation of internal law to international law:

1)the first is based on a new formulation of international rules which are reproduced into internal law;

2)the second is based on a reference to the international law which is made by internal legislation;

- the main problem of conflict or inconsistency has regard with the rank of international law introduced through these mechanisms in Italian jurisdiction: it may be the rank of constitutional or ordinary law or administrative regulation;

- it is clear that any conflict or inconsistency may only be possible between rules having the same rank;

- therefore, when the rules of an internal ordinary law are in conflict or inconsistent with an internal ordinary law set forth in order to introduce international rules into internal jurisdiction the legal mechanism addressing such conflicts or inconsistencies is based on the following:

- internal ordinary law may be interpreted accordingly to international obligations;

- internal ordinary law which intends to derogate to international obligations shall at the same time (i) set forth a discipline in conflict or inconsistent with international obligations and (ii) provide expressly the will to derogate to international obligations.

(...)

|                      |                           |
|----------------------|---------------------------|
| <b>Member State:</b> | <b>ITALY</b>              |
| <b>Re:</b>           | <b>Follow Up Question</b> |
| <b>Date:</b>         | <b>13 October 2006</b>    |

(...)

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.

(...)

|                      |                        |
|----------------------|------------------------|
| <b>Member State:</b> | <b>ITALY</b>           |
| <b>Re:</b>           | <b>Reply</b>           |
| <b>Date:</b>         | <b>02 October 2006</b> |

(...)

As agreed, please find attached the Legal questionnaire as well as the file containing the relevant Italian legislation related to point B.4 of the questionnaire.

(...)

|   |
|---|
| <b>Attachments to e-mail of 02 October 2006</b> |
|---|

- CG Legal Questionnaire 160906.pdf
- Laws and regulations governing the funding scheme.pdf

**Attachment to e-mail of 02 October 2006: CG Legal Questionnaire 160906.pdf**

**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](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](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.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/ukfcdDownloads/42/Co\\_production.pdf](http://www.ukfilmcouncil.org.uk/usr/ukfcdDownloads/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: Italy

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 works<sup>1</sup> 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):

State aid to independent cinematographic and audiovisual works is financed by a quota of the “Fondo Unico per lo Spettacolo” which summarizes all the public resources for spectacle managed by the “Ministero per i beni e le attività culturali” (“the Ministry”).

The quota for cinema in 2005 was € 83 626 139 corresponding to 18% of the total resources of “Fondo Unico per lo Spettacolo”.

The mentioned quota for cinema is divided into two different financing categories:

- “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” which represents a form of indirect financing (guaranties on loans, financing, etc.) managed by a credit institute;
- Forms of direct aid to cinema: contributions to film production based on the receipts of the film (box office), quality prize and other forms of contributions which must not be returned (for example the contributions for cinema festival like the “Biennale di Venezia”).

The creation of “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” is provided by art. 12 of Legislative Decree n. 28 of 22 January 2004 (“the Legislative Decree”), entered into force on 6 February 2004, which set forth a global and coherent reform of the cinema sector.

According to article 12 of the Legislative Decree, the fund substituted (and assembled) the financial resources of five different funding schemes operating (at least the first) since 1965: fondo speciale, fondo particolare, fondo di intervento, fondo di sostegno, fondo di garanzia

---

<sup>1</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

## 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:

| State party              | Signature         | Entry into force           | Authority   |
|--------------------------|-------------------|----------------------------|---|
| Albania                  | 10 May 2002       | 1 June 2004                | Mixed Commission composed of officials and experts designated by competent Governmental Authorities of both States. The Mixed Commission is expected to meet (every two years, yearly or upon request) alternatively in each of the Member States of the Convention. Extraordinary sessions may also be fixed upon request of each Member State. In Italy the competent Authority is: Ministero per i Beni e le Attività Culturali Dipartimento per lo Spettacolo e lo Sport Direzione Generale per il Cinema Via della Ferratella in Laterano, 51 00184 Roma |
| Algeria                  | 26 April 1989     | Not yet entered into force | <i>idem</i>   |
| Argentina                | 9 December 1987   | 19 July 1990               | <i>idem</i>   |
| Australia                | 28 June 1993      | 12 December 1996           | <i>idem</i>   |
| Austria                  | 24 April 1968     | 1 July 1968                | <i>idem</i>   |
| Belgium                  | 15 October 1970   | 15 October 1970            | <i>idem</i>   |
| Belgium French community | 31 August 2000    | Not yet entered into force | <i>idem</i>   |
| Brazil                   | 9 November 1970   | 4 July 1974                | <i>idem</i>   |
| Bulgaria                 | 29 July 1967      | 29 July 1967               | <i>idem</i>   |
| Canada                   | 13 November 1997  | 14 December 1999           | <i>idem</i>   |
| Czech Republic           | 25 March 1968     | 25 March 1968              | <i>idem</i>   |
| China                    | 4 December 2004   | Not yet entered into force | Both competent Governmental Authorities of the Member States of the Convention. In Italy: see above   |
| Cuba                     | 4 February 1997   | 23 August 1999             | Mixed Commission composed of officials and experts designated by competent Governmental Authorities of both States.   |
| Chile                    | 6 October 2004    | Not yet entered into force | <i>idem</i>   |
| France                   | 6 November 2000   | 1 June 2003                | <i>idem</i>   |
| Germany                  | 23 September 1999 | 5 November 2002            | <i>idem</i>   |
| Hungary                  | 21 January 1982   | 2 November 1984            | <i>idem</i>   |

|                    |                   |                            |             |
|--------------------|-------------------|----------------------------|-------------|
| India              | 13 May 2005       | Not yet entered into force | <i>idem</i> |
| Israel             | 2 January 1985    | 23 September 1987          | <i>idem</i> |
| Macedonia          | 15 November 2002  | Not yet entered into force | <i>idem</i> |
| Mexico             | 19 November 1971  | 28 June 1974               | <i>idem</i> |
| Morocco            | 29 July 1991      | 4 June 1999                | <i>idem</i> |
| New Zealand        | 30 July 1997      | 15 February 2000           | <i>idem</i> |
| Portugal           | 19 September 1997 | 27 July 2000               | <i>idem</i> |
| Romania            | 8 August 1967     | 5 December 1967            | <i>idem</i> |
| Russian Federation | 28 November 2002  | 15 June 2006               | <i>idem</i> |
| Slovak Republic    | 25 March 1968     | 25 March 1968              | <i>idem</i> |
| South Africa       | 13 November 2003  | Not yet entered into force | <i>idem</i> |
| Spain              | 10 September 1997 | 3 June 1998                | <i>idem</i> |
| Sweden             | 24 July 1968      | 24 July 1968               | <i>idem</i> |
| Switzerland        | 15 May 1990       | 23 December 1993           | <i>idem</i> |
| Tunisia            | 29 October 1988   | 3 August 2005              | <i>idem</i> |
| Turkey             | 30 March 2006     | Not yet entered into force | <i>idem</i> |
| Uruguay            | 13 March 2001     | 6 May 2004                 | <i>idem</i> |
| Venezuela          | 19 December 1984  | 28 August 1986             | <i>idem</i> |
| Yugoslavia         | 20 January 1968   | provisional                |             |

## **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:<sup>2</sup>

1. The assessment of Italian nationality of an independent film or television production is essential to obtain financial aid provided by the Legislative Decree (i.e. incentives to production, contributions, loans, etc.).

2. The authority in charge of the procedure is the Ministry, according to article 1 b) of the Legislative Decree.

3. The criteria to assess Italian nationality set forth by article 5, n. 2 of the Legislative Decree are based on the relevant artistic and technical components of the film, as follows:

a) Italian film director;

<sup>2</sup> E.g. the French “Procédure d’agrément”.

- b) Italian author of the subject or majority of the authors Italian;
- c) Italian screenwriter or majority of the screenwriters Italian;
- d) Principal actors in majority Italian;
- e) Secondary actors for a percentage of  $\frac{3}{4}$  Italian;
- f) Direct sound take in Italian language;
- g) Italian author of the cinematography pictures;
- h) Italian editor;
- i) Italian author of the music;
- l) Italian art director;
- m) Italian costume director;
- n) Italian crew;
- o) Filming and use of theatres in Italy;
- p) Use of Italian technical industries;
- q) Spend at least 30% of the total budget of the film in Italy, with regard to the technical components *sub* n), o), p), and social contributions.

With regard to the mentioned criteria, article 5, n. 4 of the Legislative Decree recognises the Italian nationality to the films complying with:

- all the criteria *sub* a), b), c), f), n) and q);
- at least three of the criteria *sub* d), e), g), h);
- at least two of the criteria *sub* i), l), m); and
- at least one of the criteria *sub* o) and p).

For the purpose of the Legislative Decree, citizens of EU member states are assimilated to Italian citizens.

4. The procedure for assessing the Italian nationality is divided in two phases: the first phase is aimed to obtain the provisional recognition of Italian nationality at the beginning of working the film and the second phase ends with the definitive recognition of the Italian nationality and with the registration of same within the electronic database at the “Direzione generale cinema” of the Ministry.

According to article 5, n. 1 of Legislative Decree and article 1 of the Ministerial Decree 27 January 2004 (Decreto “sostegno alla produzione ed alla distribuzione cinematografica”) the applicant shall file an application to the Ministry (“Direzione generale per il cinema”) for the provisional recognition of the Italian nationality jointly with the notification of starting working the film.

The application must contain the declaration of compliance with the criteria for obtaining the provisional recognition of Italian nationality of the film and the respect of the national labour regulations and the related social imperative provisions. The applicant shall also pay a contribution for administrative costs of the procedure.

The Ministry (in the person of the “Direttore generale per il cinema”) grants the provisional recognition of Italian nationality of the film within 120 days from the application.

Upon the completion of the film, standing the requirements above and not incurring the revocation of the provisional recognition of nationality, the applicant shall file the request of the definitive recognition of the Italian nationality within 30 days from the presentation of a

sample copy of the film. The “Direttore generale per il cinema” grants the requested recognition within the following 90 days.

## **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

There are no new co-production agreements expected to be signed by Italy within 1 January 2007.

Some co-production agreements are at an early negotiating stage and the negotiations for the renewal of the co-production agreement with Argentina are engaged.

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 2007,<sup>3</sup> and indicate the name and address of the administration of these funding schemes:<sup>4</sup>

The funding scheme indicated *sub* A.2 is the unique form of State aid with a budget of at least € 1 million operating in Italy at the moment. The creation of the “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” which totalizes the major part of the quota for cinema is very recent (2004). Therefore, new funding schemes with similar characteristics did not enter into force as of 1 January 2006.

## **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):

1) Reports and studies:

- Servizio Studi della Camera dei Deputati, *Disciplina in materia di attività cinematografiche*, in *Pareri al Governo n. 252*, 2 dicembre 2003;

---

<sup>3</sup> 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.

<sup>4</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

- Ministero per i beni e le attività culturali, *Relazione sull'utilizzazione del Fondo Unico per lo Spettacolo - Anno 2005*, Osservatorio dello Spettacolo, 30 giugno 2006; also in the website: [www.cinema.beniculturali.it](http://www.cinema.beniculturali.it);

- Eurispes, *Illusione/Disillusione. Il cinema, un'industria da incentivare e proteggere*, in *Rapporto Italia*, 2002.

## 2) Literature:

DE SANCTIS V.M., *La protezione delle opere dell'ingegno*, Milano, 2004

DI FABIO P., *Il sistema delle sovvenzioni statali al settore cinematografico: inquadramento storico ed assetto attuale*, in *Rivista Dir. Autore*, fasc. 1, 2003, p. 96 e ss.

DI FABIO P., *Le coproduzioni internazionali: profili giuridici e contrattuali alla luce della nuova normativa sulla cinematografia (c.d. «Decreto legislativo Urbani»)*, in *Rivista Dir. Autore*, fasc. 2, 2004, p. 181 e ss.

FISICARO E., *Diritto cinematografico*, Milano, 2006

FRAGOLA A., *La legislazione italiana sulla cinematografia*, Milano, 1982

FRAGOLA A., *Prodotti audiovisivi e dichiarazione di nazionalità*, in *Cinema d'oggi*, n. 1/2000

GIARDINA A., *La protection internationale du financement des oeuvres cinematographiques*, in *Rivista di diritto internazionale privato e processuale*, 1991, fasc. 1, p. 5 e ss.

LENER A., *Coproduzioni cinematografiche: un caso "in itinere" di "eccesso di potere legislativo"* (osservazione a ord. Pret. Roma 6 maggio 1982), in *Il Foro italiano*, 1982, fasc. 10, p. 2663 e ss.

MACCHITELLA C., *Nuovo Cinema Italia*, Marsilio ed., Venezia, 2003

PAGAMICI B., *Cinema, in arrivo gli incentivi*, in *Finanziamenti su misura news*, 2004, p. 16 e ss.

PAGAMICI B., *Tutti gli incentivi per l'industria cinematografica*, in *Finanziamenti su misura news*, 2003, p. 16 e ss.

SALVEMINI S., *Il cinema italiano: imprenditorialità, efficienza, innovazione*, in *Scuola di direzione aziendale dell'Università Bocconi di Milano*, ANEC, 1992

SILVERIO A., *Gli accordi bilaterali-internazionali sulla cooperazione cinematografica conclusi dall'Italia*, in *Il diritto d'autore*, 1999, p. 220 e ss.

ZACCARIA R., *Diritto dell'informazione e della comunicazione*, Padova, 2004

ZACCARIA R., *Cinematografia*, in *Dig. disc. pubbl.*, 1991

**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)<sup>5</sup> 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.<sup>6</sup>*

*Please use for each funding scheme a separate form.*

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: Italy

B. Name of the funding scheme: Quota for cinema of the “Fondo Unico per lo Spettacolo”. This quota includes the resources of “Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche” (See answer A.2).

B.3 Name and address of the funding scheme’s administration and supervisory authority:

Ministero per i Beni e le Attività Culturali  
Dipartimento per lo Spettacolo e lo Sport  
Direzione Generale per il Cinema  
Via della Ferratella in Laterano, 51  
00184 Roma

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

- Decreto Legislativo 22 gennaio 2004, n. 28 – Riforma della disciplina in materia di attività cinematografiche, a norma dell’articolo 10 della legge 6 luglio 2002, n. 137, pubblicato sulla Gazzetta Ufficiale n. 29 del 5 febbraio 2004 ed entrato in vigore il 6 febbraio 2004;

---

<sup>5</sup> 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](http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28) ).

<sup>6</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

(Legislative Decree n. 28 of 22 January 2004 – Reform of the discipline on cinematography activities, based on article 10 of Law 6 July 2002, n. 137. The Legislative Decree was published in the Official Journal n. 29 of 5 February 2004 and entered into force on 6 February 2004).

The Legislative Decree was amended by L. 21 maggio 2004, n. 128 “Conversione in legge, con modificazioni, del decreto-legge 22 marzo 2004, n. 72, recante interventi per contrastare la diffusione telematica abusiva di materiale audiovisivo, nonché a sostegno delle attività cinematografiche e dello spettacolo” (Law 21 May 2004, n. 128 “Conversion in law of the decree 22 March 2004, n. 72 providing the measures to contrast the illegal diffusion of audiovisual on the internet and the support to cinematography activities and spectacle”).

- D.M. 27 settembre 2004 “sostegno alla produzione ed alla distribuzione cinematografica”  
(Ministerial Decree 27 September 2004 “support to the cinematographic production and distribution”)

- D.M. 27 settembre 2004 “definizione degli indicatori del criterio per il riconoscimento dell'interesse culturale dell'opera filmica e organizzazione della Commissione per la cinematografia”  
(Ministerial Decree 27 September 2004 “definition of the indicators’ criteria for the recognition of the cultural interest of the film and organization of the Cinematography Commission”)

- D.M. 27 settembre 2004 “definizione degli indicatori, e dei rispettivi valori, per l'iscrizione delle imprese di produzione nell'elenco di cui all'art. 3 d.lgs. 28/2004”  
(Ministerial Decree 27 September 2004 “definition of the indicators and values for the registration of the production companies within the list indicated by art. 3 of the Legislative Decree 28/2004”)

- D.M. 28 ottobre 2004 “modalità tecniche di gestione e monitoraggio dell'impiego delle risorse destinate alla promozione cinematografica”  
(Ministerial Decree 28 October 2004 “technical modalities of managing and monitoring of the use of the resources destined to cinema production”)

- D.M. 10 giugno 2004 “sostegno all'esercizio ed alle industrie tecniche cinematografiche”  
(Ministerial Decree 10 June 2004 “support to the exercise and to cinema technical industries”)

- D.M. 10 giugno 2004 “criteri concessione premi alle sale d'essai ed alle sale delle comunità ecclesiali”  
(Ministerial Decree 10 June 2004 “criteria for granting prizes to the *sale d'essai* and to the movie houses of the ecclesial communities”)

- D.M. 16 luglio 2004 “erogazione dei contributi percentuali sugli incassi realizzati in sala dalle opere cinematografiche”



(Ministerial Decree 16 July 2004 “ payment of the contributions calculated on the percentage of box office receipts of the films”)

- D.M. 27 agosto 2004 “determinazione dell’ammontare dei premi di qualità ai lungometraggi riconosciuti di nazionalità italiana”

(Ministerial Decree 27 August 2004 “ determination of the amount of the quality prizes to the full-length films which have been recognised the Italian nationality”).

All the mentioned Ministerial Decrees were amended by eight Ministerial Decrees adopted on 3 October 2005 (published in the Official Journal n. 263 of 11 November 2005 and entered into force 15 days after their publication).

The amendments were introduced in order to improve the functioning and the efficacy of the technical modalities of State aid to cinema specified in the Ministerial Decrees adopted in 2004.

*A copy of these laws and regulations is enclosed to this questionnaire.*

## **TERRITORIAL CONDITIONS<sup>7</sup>**

### **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

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*):

Articolo 5, comma 2, lett. q) del Decreto Legislativo 22 gennaio 2004, n. 28 – Riforma della disciplina in materia di attività cinematografiche, a norma dell’articolo 10 della legge 6 luglio 2002, n. 137:

---

<sup>7</sup> 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.

“q) effettuazione in Italia di almeno il trenta per cento della spesa complessiva del film, con riferimento alle componenti tecniche di cui alle lettere n), o), p), nonché agli oneri sociali.” (Cfr. prec. A.4)

Article 5, n. 2 sub q) of the Legislative Decree n. 28 of 22 January 2004 – Reform of the discipline on cinematography activities, based on article 10 of Law 6 July 2002, n. 137:

“q) to spend at least 30% of the total budget of the film in Italy, with regard to technical components sub n), o), p), including social contributions” (See above answer A.4)

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*).

The Legislative Decree requires only a minimum proportion (30%) of the film budget to be spent in Italy.

The mentioned criteria, as evidenced above (sub. A.4), is a criteria to obtain the assessment and the certification of the Italian nationality of the film. It is also an essential requirement for the certification of the “cultural interest” of same. Both “Italian nationality” and “cultural interest” are required to grant the State aid.

The Legislative Decree does not provide a detailed discipline on the implementation of the territorialisation requirement. Article 5, n. 1 specifies that the legal representative of the film producer declares in the application the compliance of the film with the requirements for obtaining the certification of Italian nationality (i.e. the territorialisation requirement) according to article 46 of D.P.R. 28 December 2000, n. 445 (regarding “self-certifications”).

Article 1, n. 4 of the Ministerial Decree 27 September 2004 “support to the cinematographic production and distribution” provides that the recognition of Italian nationality may be revoked at the completion of the film if it does not respect the requirements declared in the application.

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*):

The territorialisation requirement does not affect the discipline of co-production agreements.

Article 6 of the Legislative Decree recognises the Italian nationality to co-production agreements in derogation with article 5 and 7 of the Legislative Decree (i.e. independently from complying with the above mentioned requirements for obtaining the certification of Italian nationality).

The norm recognises Italian nationality to co-production agreements on the ground of the reciprocity principle. Only a difference is made with regard to E.U. and non E.U. agreements: the last requires an Italian participation to the costs of the film of at least 20%.

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*):

1) The judicial practice related to the implementation of territorialisation requirement (i.e. spending at least 30% of the film budget in Italy with regard principally to social contributions and technical costs of the film) is still not developed as the mentioned requirement was introduced for the first time in Italy by the Legislative Decree in 2004.

The judicial case law is mostly related to the requests for State aid filed on the grounds of the discipline in force before the Legislative Decree and is based on the interpretation and application of the transitory disposition provided by article 27, n. 3 of the Legislative Decree.

2) With regard to the administrative practice and the guidelines on the implementation of the territorialisation requirements the Ministry introduced the “Circolare relativa agli adempimenti connessi alla riforma del settore cinematografico” (Circular on the accomplishments related to the reform of the cinematography sector) on 2 November 2004.

According to the Circular, the main condition for any request of State aid and at the same time for the implementation of the territorialisation requirement is the registration of the company in the lists provided by article 3, n. 1 of the Legislative Decree.

The mentioned lists are divided into two categories which allows the companies to different ranges of State aids.

The registration into the first or the second category is evaluated on the basis of a reference system which takes into account different criteria: the quality of films produced during the last five years and the participation of the production company to festivals, the stability of the company determined through the number of years of activity and the number of films produced and finally the commercial capacity of the company which results from the box office receipts.

### **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

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*):

Implicit territorialisation requirements practised by the funding scheme may find a legitimisation in various legal provisions of the Legislative Decree:

- article 5 set forth several criteria for the certification of Italian nationality which indirectly constitute territorialisation requirements. For example the requirement of the payment of social contributions or the requirement that the crew must be Italian;
- article 10 set forth a discipline on incentives to film production calculated on a percentage of the receipts (box office) deriving from the projection of the film. The contribution must be used to cover the loan endorsed for the production of the film or reinvested in the production of new films which must have the Italian nationality (i.e. comply with requirements indicated in article 5);
- article 15 set forth a discipline on State contributions to exercise companies calculated on the interests fixed in the loan or financial lease agreements. The State contribution is increased if the exercise companies endorse the obligation to program a minimum percentage of films with Italian nationality or with the nationality other EU member States. This condition is applied in relation to: (i) the activation of cinemas in towns with less than 10.000 inhabitants or with no cinemas and (ii) the transformation of the existing cinemas with one movie room (“sale cinematografiche”) into cinemas with many movie rooms (“multisala”) in towns with more than 20.000 inhabitants.

#### **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:

The legal provision expressing cultural policy goals that could legitimate the explicit or implicit territorialisation requirements are the following:

- Costituzione della Repubblica (Italian Constitution):

“La Repubblica promuove lo sviluppo della cultura e la ricerca scientifica e tecnica. Tutela il paesaggio e il patrimonio storico e artistico della Nazione” (art. 9)

“The Republic promotes the development of culture and scientific and technical research. It protects the landscape and the historical and artistic heritage of the Nation.” (article 9);

- D.Lgs. 22 gennaio 2004, n. 42 “Codice dei beni culturali e del paesaggio, ai sensi dell’art. 10 della L. 6 luglio 2002, n. 137” (Legislative Decree n. 42 of 22 January 2004 “Code of cultural heritage and landscape”):

“La tutela e la valorizzazione del patrimonio culturale concorrono a preservare la memoria della comunità nazionale e del suo territorio e a promuovere lo sviluppo della cultura” (art. 1, comma 2)

“the protection and the valorisation of the cultural heritage contribute to the preservation of the memory of the national community and its territory and to the promotion of the development of culture” (article 1, n. 2);

“La valorizzazione consiste nell’esercizio delle funzioni e nella disciplina delle attività dirette a promuovere la conoscenza del patrimonio culturale e ad assicurare le migliori condizioni di utilizzazione e fruizione pubblica del patrimonio stesso” (art. 6, comma 1)

“The valorisation consists in the exercise of the functions and in the discipline of the activities oriented to the promotion of the knowledge of the cultural heritage and to the promotion of the best conditions for the public use of same” (article 6, n.1);

“Le attività di valorizzazione dei beni culturali consistono nella costituzione ed organizzazione stabile di risorse, strutture o reti, ovvero nella messa a disposizione di competenze tecniche o risorse finanziarie o strumentali, finalizzate all’esercizio delle funzioni e al perseguimento delle finalità indicate all’art. 6.” (art. 111, comma 1)

“ The activities for the valorisation of cultural heritage consist in the permanent constitution and organization of resources, structures and networks, or in the place at the disposal of technical competences or financial or instrumental resources, oriented to the exercise of functions and realization of the finalities indicated in article 6.” (article 111, n. 1);

- Decreto Legislativo n. 28 del 22 Gennaio 2004 (Legislative Decree n. 28 of 22 January 2004 – “the Legislative Decree”):

“La Repubblica, nelle sue articolazioni e secondo le rispettive competenze, favorisce lo sviluppo dell’industria cinematografica nei suoi diversi settori; incoraggia ed aiuta le iniziative volte a valorizzare e a diffondere con qualsiasi mezzo il cinema nazionale, con particolare riguardo ai film di interesse culturale” (art. 1, comma 3)

“The Republic in its articulations and on the basis of internal competences promotes the development of the cinematography industry and its different sectors; encourages and

supports the initiatives oriented to the valorisation and the spread by any means of the national cinema, with particular regard to films with a cultural interest” (article 1, n. 3).

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>8</sup> 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:

Selective aid to cinema is provided by article 17 of the Legislative Decree and Ministerial Decree 27 September 2004 on the “determination of the amount of the quality prizes to the full-length films which have been recognised the Italian nationality”.

Quality prizes constitutes a selective aid because only the full-length films with the recognition of the Italian nationality which obtain the attestation of quality delivered by an independent jury following to a specific evaluation procedure and defined criteria can benefit of the State aid.

However, the Ministerial Decree does not assess the qualitative criteria for the recognition of the “quality” of the film but only provides that quality prizes are granted to the full-length films that “have particular artistic and cultural qualities”.

According to this orientation, the independent jury is probably expected to determine more precisely the quality criteria in its first meeting, before the evaluation of the films.

---

<sup>8</sup> 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.

## **CONTACT DETAILS**

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

Dr. Gaetano Blandini  
Direttore Generale per il cinema  
Ministero per i beni e le attività culturali  
Via della Ferratella in Laterano, 51  
00184 - Roma (Italy)  
tel. +39 06 77321  
segreteria@cinema.beniculturali.it

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

Daniela Marrani  
Portolano Colella Cavallo Studio Legale  
Via Catone, 3  
00192 Roma  
Tel. +39 0639745437  
Fax. +39 0639745400  
e-mail: daniela.marrani@uniroma1.it

Date of the data collection and processing:

2 October 2006