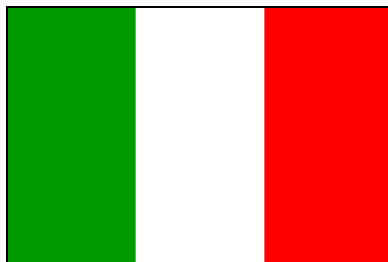


**CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS**  
(Annex to Part A)

**MEMBER STATE LEGAL REVIEW**



**ITALY**  
**SYNTHESIS SHEET**

July 2007



**This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on [www.eufilmstudy.eu](http://www.eufilmstudy.eu)**

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### **Legal Report by Germann Avocats**

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# A Overview of the legal situation in Italy

## 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	

Italy	Direzione Generale per il Cinema	83,626,139	Nat	30%* *Since this requirements is located under the formal nationality certification procedure, it qualifies as indirect territorialisation requirements	N/A	N/A	N/A	N/A	N/A	N
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**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
Italy	Direzione Generale per il Cinema	Y Obligations to proceed to local shooting; use Italian technical industries; spend at least 30% of the total budget of the film in Italy (A.3)	30%	N/A	N	N/A	N/A	N	N/A	N/A

**Table C – Budget and Territorialisation Intensity**

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law <sup>1</sup>	Degree of the territorialisation <sup>2</sup>		
				Funding Scheme Level <sup>3</sup>	Funding body level	Member State Level <sup>4</sup>
Italy	Direzione Generale per il Cinema	83,626,139	30%*  *Since this requirements is located under the formal nationality certification procedure, it qualifies as indirect territorialisation requirements	< 1 / N/A	No data	0 % / N/A

<sup>1</sup> Assessment based on replies from local lawyers (see synthesis sheet)

<sup>2</sup> High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” >1

Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or <1

No territorialisation: total amount subject to territorialisation = 0

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

<sup>3</sup> 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

<sup>4</sup> “total amount subject to territorialisation”/“total budget available”

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

**Table D – Co-Production Agreements**

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Italy	Albania	1 June 2004	N
	Algeria	Not yet (1989)	
	Argentina	19 July 1990	
	Australia	12 December 1996	
	Austria	1 July 1968	
	Belgium	15 October 1970	
	Belgium French Community	Not yet (2000)	
	Brazil	4 July 1974	
	Bulgaria	29 July 1967	
	Canada	14 December 1999	
	Czech Republic	25 March 1968	
	China	Not yet (2004)	
	Cuba	23 August 1999	
	Chile	Not yet (2004)	
	France	1 June 2003	
	Germany	5 November 2002	
	Hungary	2 November 1984	
	India	Not yet (2005)	
	Israel	23 September 1987	
	Macedonia	Not yet (2002)	
	Mexico	28 June 1974	
	Morocco	4 June 1999	
	New Zealand	15 February 2000	
	Portugal	27 July 2000	
	Romania	5 December 1967	
	Russian Federation	15 June 2006	
	Slovak Republic	25 March 1968	
	South Africa	Not yet (2003)	
	Spain	3 June 1998	
	Sweden	24 July 1968	
Switzerland	23 December 1993		
Tunisia	3 August 2005		
Turkey	Not yet (2006)		
Uruguay	6 May 2004		

Italy is currently a party to 36 co-production agreements (see reply A.3 for Italy).

In Italy there is one funding scheme named *Fondo unico per lo Spettacolo* (“Italian funding scheme”). The authority in charge of its supervision is the *Ministero per i beni e le attività culturali* (“Ministry of Culture”).

## **2 Synopsis of conventions on co-production agreements**

Italy has concluded 36 co-production agreements (for the detailed list see reply A.3 for Italy). The oldest co-production agreement was concluded with Bulgaria in 1967.

Italy has also signed co-production agreements with Algeria, the French community of Belgium, China, Chile, India, Macedonia, South Africa and Turkey, but none of these conventions has yet come into force (see reply A.3 for Italy).

## **3 Synopsis of formal nationality certification procedures**

Indirect territorialisation requirements are located under the rules on formal nationality procedures that apply to the Italian funding scheme.

The assessment of Italian nationality of an independent film or television production is a necessary step in order to obtain financial aid provided by the Legislative Decree n. 28 of 22 January (i.e. incentives to production, contributions, loans, etc.). The authority in charge of the procedure is the Ministry of Culture, according to Article 1 b) of the Legislative Decree. The criteria for assessing 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 (for a detailed list see reply A.4 for Italy).

Among them the provision explicitly mentions:

- Italian film director
- Italian author of the subject or majority of the authors Italian
- Italian screenwriter or majority of the screenwriters Italian
- Majority of principal actors Italian
- direct sound take in Italian language
- Italian crew
- shooting and use of studios in Italy (see also below Section B 2.2)
- use of Italian technical industries
- spending at least 30% of the total budget of the film in Italy

Applicants must prove their Italian nationality and a “cultural interest” of their film projects to the Ministry of Culture. For more detailed information see reply A.4 for Italy.

Citizens of EU Member States are treated like Italian citizens. Italian citizens are registered in a database at the Ministry of Culture after having been certified as such. A provisional certification procedure starts with the beginning of work on the film and takes 120 days at most. After the film is completed, the certification procedure on nationality is finalised.

## **4 Synopsis of expected legal developments**

No new funding schemes are expected as of 1 January 2007.

No new co-production agreements are expected to be concluded in the near future. Some co-production agreements are at an early negotiating stage and the co-production agreement with Argentina is under renovation.



## **B The Italian funding scheme**

### **1 Overview**

In Italy, there is one funding scheme, the *Fondo Unico per lo Spettacolo*, which was originally governed by the Law 163/1985 of 30 April 1985, and completely reformed in 2004 by the decree *Decreto legislativo del 22 gennaio 2004 n. 28 dal titolo “Riforma della disciplina in materia di attività cinematografiche, a norma dell’art. 10 della legge 6 luglio 2002 n. 137”*.

The authority in charge of its supervision is the *Ministero per i beni e le attività culturali*, the Ministry of Culture.

This funding scheme serves for various types of cultural undertakings. In 2005, the part of the budget dedicated to cinema amounted to 18%, i.e. €83,626,139. This budget is divided into two different financing categories: an indirect financing category (*Fondo per la produzione, la distribuzione, l’esercizio e le industrie tecniche*), and direct aid to cinema (i.e. contributions to film production based on the receipts of the film, quality prize and other forms of contributions which must not be returned).

### **2 Analysis of the “Fondo Unico per lo Spettacolo”-Italian Funding Scheme**

#### **2.1 Description of the funding scheme**

The *Fondo Unico per lo Spettacolo* (“Italian funding scheme”) is based on the *Decreto Legislativo, n. 28 – Riforma della disciplina in materia di attività cinematografiche, a norma dell’articolo 10 della legge 6 luglio 2002, n. 137* (“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”) of 22 January 2004, which came into force on 6 February 2004, most recently amended on 21 May 2004 (“*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 into law, with amendments, of the decree-law of 22 March 2004, n. 72, providing measures to act against the illegal diffusion of audiovisual material on the internet and to support cinematography activities and spectacle”). It is also based on other secondary regulations providing guidelines (eight Ministerial decrees passed in 2004 amended by eight Ministerial Decrees adopted on 3 October 2005 (published in the Official Journal n. 263 of 11 November 2005 and coming into force 15 days after their publication (for further details, see reply B. 4 for Italy).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study.

For contact information, see reply B.14 for the Italian Funding Scheme, and for additional information on this scheme consult [www.cinema.beniculturali.it](http://www.cinema.beniculturali.it).

## 2.2 Synopsis of objective territorialisation requirements

### 2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 5 n. 2 sub q) of the Legislative Decree n. 28.

### 2.2.2 Practice

The judicial practice related to the implementation of territorialisation requirements (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 not yet developed as the mentioned requirement was introduced for the first time in Italy by the Legislative Decree in 2004. The judicial case law mostly relates 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.

The administrative practice on the implementation of the territorialisation requirements was implemented by the “*Circolare relativa agli adempimenti connessi alla riforma del settore cinematografico*” (Circular on the accomplishments related to the reform of the cinematography sector) of 2 November 2004.

According to the *Circolare Ministeriale*, the main condition for any request of State aid and at the same time as a prerequisite for the implementation of the territorialisation requirements 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 entitle the companies to different types of State aid (for details see reply B.9 for the Italian funding scheme).

### 2.2.3 Discussion

To be eligible for funding, a film must be considered to be of Italian nationality and of “cultural interest”. For this purpose, applicants must *inter alia* “spend at least 30% of the total budget of the film in Italy [...]” (see replies A.4 and B.6 and B.7 for the Italian funding scheme). However, the Legislative Decree does not provide detailed specifications for the implementation of the territorialisation requirement. The legal representative of the film declares in the application that the film complies with the territorialisation requirements. If the film does not comply with these requirements once it is completed, the Italian nationality and cultural interest recognition may be revoked.

### 2.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follows: in order to be eligible to receive State aid at least 30% of the film budget shall be spent in Italy. It is also provided that the shooting and the use of studios shall be in Italy; regarding this requirement no percentage is mentioned by the law.

Since these requirements are located under the formal nationality certification procedures, they qualify as indirect territorialisation requirements (see point A 3 above).

## 2.3 Synopsis of indirect territorialisation requirements

### 2.3.1 Practice

No judicial or administrative practice addressing indirect territorialisation is reported (see reply B.10 for Italy for the Italian Funding Scheme).

### 2.3.2 Discussion

Indirect territorialisation requirements that are partially quantifiable are located under the rule of formal nationality certification procedure (see Section A.3 above).

### 2.3.3 Conclusions

The obligations to

- proceed to local shooting;
- use Italian technical industries
- spend at least 30% of the total budget of the film in Italy (for a detailed list see reply A.4 for Italy)

qualify as indirect territorialisation requirements since they are located under the criteria and procedures governing formal nationality certification (see Section A.3 above and reply B.10 for Italy for the Italian Funding Scheme).

There is no relevant judicial or administrative practice reported.

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

The funding scheme grants State aid in a selective way based on the legislative Decree n. 28. Selective State aid is granted to Italian feature films on the bases of a quality evaluation.

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

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

The rules on Italian nationality, including the objective and indirect territorialisation requirements resulting from this condition, are not applicable to the extent that they conflict with the applicable co-production conventions.

The territorialisation requirement provided by Art. 5 of the Legislative Decree n. 28 does not affect co-production agreements, as they are considered to have Italian nationality. For co-production conventions with non EU Member States the Italian participation must amount to at least 20%.

Films produced within the framework of a co-production agreement with Member States of the European Union are considered to be of Italian nationality, independently from the criteria normally applied to ascertain this nationality as a requirement for eligibility for State aid.

Objective and indirect territorialisation requirements appear to be consistent with the rules of co-production conventions to which Italy is a party.

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

On the constitutional level, Art. 9 of the Italian Constitution provides that the State shall promote the development of culture.

General cultural clauses are also provided by Art. 1, Art. 6 and art. 11 of the “Code of cultural heritage and landscape” (Legislative Decree n. 42 of 2004). These provisions postulate for the cultural sector, inter alia, a permanent organisation of resources, structures and networks.

Art. 1 of the Decree n. 28 provides the legal basis of the funding scheme and states that Italy shall promote the development of the cinematography industry [...] and initiatives oriented to the valorisation and the dissemination [...] of the national cinema, with a particular focus on films with a cultural interest, encourage and support the initiatives oriented to the valorisation and the diffusion by any means of the national cinema, with particular regard to films with a cultural interest.

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

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## Attachments:

- Replies to the legal questionnaire by Daniela Marrani, attorney at law, Portolano Colella Cavallo Studio Legale, Italy
- Regulations for Italy