

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

<b>Member State:</b>	<b>LUXEMBOURG</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>08 December 2006</b>

(...)

Please find here attached the replies to your remarks made last Friday.

(...)

<b>Attachment to e-mail of 08 December 2006: Further reply to Media study.doc</b>
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(...)

Regarding to your remarks, a clarification is needed on the cultural aspects of Luxembourgian funding.

It is true that legal provisions are mainly focused on the economic considerations. But as you can read it in the grounds of the law of the 21<sup>st</sup> of December 1998, cultural aspects have also led to the elaboration of the funding schemes. Due to the size of its domestic market, Luxembourg is facing several problems for the defence of its cultural specificity.

For example, a main cultural issue is the promotion of Luxembourgish (language). Indeed, not more than 400.000 people fluently speak Luxembourgian, and as a consequence, cultural offer in Luxembourgish is very reduced and . The Luxembourgian funding schemes are therefore aiming to promote films project in Luxembourgish as it is a means for developing Luxembourgian identity. As a result of the structural problems they are facing in relation of the size of their market, Luxembourgian project have real difficulties to get funding from foreign investors. The funding schemes are aiming to repara this disadvantage, and this may be one of the reasons why they seem focused on economic considerations.

More precisely, and to reply to your second question, there is a specific procedure applied to grant "Aides Sélectives" in Luxembourg.

As mentioned in article I, article 4 "*instruction des demandes d'aides*" of Regulation of the 16<sup>th</sup> of March 1999, joined to questionnaire I previously sent you, a demand for the attribution of an Aide Selective is assessed by different panel of experts, one being the "Comité de Lecture", the other the "Comité d'Analyse Economique et Financière". Please note that all the projects applying for the attribution of a grant are assessed.

If the "Comité d'Analyse Economique et Financière" is only assessing the economic and financial aspects of the project, the "Comité de Lecture" is focused on the cultural

quality of the project. The criteria's are, among others, the quality of the scenario, the track record of the person involved in the project, the quality of the artistic team. They are really focusing on the ability of the project to promote Luxembourgian culture and Luxembourgian identity.

The "Comité de Lecture" is composed of independent experts (journalist specialized in audiovisual issues, foreign expert, cinema directors,etc..) A chart detailing the actual composition the two organs is reproduced below.

Finally, concerning your third question, "Luxembourgian producer" has to be understood as a production company established in Luxembourg and governed by Luxembourg's law.

### COMITE DE LECTURE

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Bob KRIEPS	SACEM	46, rue Goethe	L-1637 Luxembourg	47 55 59	48 02 76	<a href="mailto:bob.krieps@sacem.fr">bob.krieps@sacem.fr</a>
Jean-Louis SCHEFFEN (Président)	LUXEMBURGER WORT	2 rue Christophe Plantin	L-2988 Luxembourg	4993-293	4993-661	<a href="mailto:jscheffen@pt.lu">jscheffen@pt.lu</a> <a href="mailto:jean-louis.scheffen@internet.lu">jean-louis.scheffen@internet.lu</a> <a href="mailto:jean-louis.scheffen@wort.lu">jean-louis.scheffen@wort.lu</a>
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### COMITE D'ANALYSE ECONOMIQUE ET FINANCIERE

Nom	Institution	Adresse		Téléphone	Fax	E-mail
Guy DALEIDEN (Président)	Fonds national de soutien à la production audiovisuelle	5, rue Large	L-1917 Luxembourg	478 2162	22 09 63	<a href="mailto:guy.daleiden@filmfund.etat.lu">guy.daleiden@filmfund.etat.lu</a>
Tom COENE	AC Countants Team	63, rue Emile Claus	B-1180 Bruxelles	+32 2 282 07 07	+32-2-648 49 15	<a href="mailto:Tom.Coene@acct.be">Tom.Coene@acct.be</a>
Alexandra GUARDA-RAUCHS	Ministère de l'Economie	19-21, bd Royal	L-2449 Luxembourg	478 4181	22 16 07	<a href="mailto:alexandra.guarda-rauchs@eco.etat.lu">alexandra.guarda-rauchs@eco.etat.lu</a>
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Fernand WAGENER	Fonds national de soutien à la production audiovisuelle	5, rue Large	L-1917 Luxembourg	478 2169	22 09 63	<a href="mailto:fernand.wagener@filmfund.etat.lu">fernand.wagener@filmfund.etat.lu</a>
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<b>Member State:</b>	<b>LUXEMBOURG</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>01 December 2006</b>

(...)

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

1) We understand that both Luxembourgian funding schemes are mainly dictated by economic considerations and objectives as you stated in your replies B.12 for the “Aides Financières Sélectives” funding scheme and for the “Certificats d’investissement audiovisuel”. Is our understanding correct that neither the Constitution of Luxembourg nor any other domestic law on culture contain any provisions articulating cultural objectives and justification for State intervention in the audiovisual sector. If not, please quote and summarize these rules of law. Please note that under your reply B.6 for the “Certificats d’investissement audiovisuel” you refer to the requirement that the State aided work must “contribute to the development of the audiovisual production in Luxembourg, and the economic, cultural, and long term benefits must be reasonably proportionate to the advantages given via the scheme.” – Are there additional references to “cultural benefits” and like concepts in the regulations governing the Luxembourgian funding schemes?

2) Please quote and summarize the criteria and procedures applied to grant selective aid under the “Aides Financières Sélectives” funding scheme (e.g. in other jurisdictions, selective State aid granting mechanisms typically require that film projects are assessed by independent experts with respect to their artistic quality and the track record of their producers and directors. It is very important for our study to be precisely informed about these selective State aid granting criteria and procedures since, in many cases, they are arguably used to practice implicit territorialisation under cover of artistic quality considerations.

3) Is our understanding correct that the legal definition of a “Luxembourgian” producer solely requires that such producer is “established in Luxembourg and governed by Luxembourgian Law” as you mentioned in your reply B.10 for the “Aides Financières Sélectives” funding scheme? – If not, please clarify the legal definition of “Luxembourgian” work, producer and distributor (e.g. see also your reference to the “Luxembourgian producer” in your reply B.13 for the “Aides Financières Sélectives” funding scheme).

(...)

<b>Member State:</b>	<b>LUXEMBOURG</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>23 October 2006</b>

(...)

I refer to the e-mail reproduce hereunder,

Indeed, in case of a conflict, international provisions prevail over domestic provisions, as for other matters. (Conseil d'Etat, 21st of November 1984).

Please note that in most of the coproduction agreements concluded by Luxembourg, it is written that a co producer will get only the benefits from the country where he is established, and in accordance with such provisions. (see for example article 4 in fine of the European Convention on Cinematic Coproduction 1992).

Such conflicts has not happened yet here in Luxembourg.(source "Fond National de Soutien à la Production audiovisuelle".

(...)

<b>Member State:</b>	<b>LUXEMBOURG</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>16 October 2006</b>

(...)

I shall reply to your question within the coming days.

For instant, please correct the following material errors I noticed in the work I transmitted to you last week:

In part B on "aides sélectives", under B.3 please replace "Law of the 21st of December 2006" by Law of the 21st of 1998"

Also in Part B "Certificat d'investissement audiovisuel", under B.3 please do the same replacements.

I'm very sorry for those material errors.

(...)

<b>Member State:</b>	<b>LUXEMBOURG</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>LUXEMBOURG</b>
<b>Re:</b>	<b>Reply</b>
<b>Date:</b>	<b>09 October 2006</b>

(...)

Please find attached the Questionnaire filled for Luxembourg together with its appendix.

(...)

<b>Attachments to e-mail of 09 October 2006</b>
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- CG Legal Questionnaire final.doc
- Government Bill.pdf
- Law of the 21st December 1998.pdf
- Rapport annuel Fonspa 31-08-2006.doc
- regulation of the 16th of March 1999.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/ukfcdownloads/42/Co\\_production.pdf](http://www.ukfilmcouncil.org.uk/usr/ukfcdownloads/42/Co_production.pdf)

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

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

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

**PART A**  
**GENERAL QUESTIONS**

**OVERVIEW**

A.1 **Country / region:** Grand Duchy of Luxembourg

A.2 **Names of funding schemes:**

- “Aides Financières sélectives ”
- “Certificats d’investissement audiovisuel”

**CO-PRODUCTION AGREEMENTS**

A.3 **Co-production agreements between Luxembourg and other countries:**

- European Convention on cinematographic co-production signed in October 1992, approved by law of the 2<sup>nd</sup> of May 1996.

The authority in charge for the administration and supervision of this convention is the “Centre National de l’audiovisuel”:

5, rue de Zoufftgen

L-3598 Dudelange

Tél: +352 52 24 24 1

Fax: +352 52 06 55

E-mail: [info@cna.etat.lu](mailto:info@cna.etat.lu)

- Co-production agreement between Canada and Luxembourg signed and entered into force on the 4<sup>th</sup> of May 1996.
- Co-production agreement between France and Luxembourg signed in May 2001, approved by law of the 27<sup>th</sup> of July 2003.
- Co-production agreement between Germany and Luxembourg signed in June 2002, approved by law of the 12<sup>th</sup> August 2003.
- Co-production agreement between Austria and Luxembourg signed in January 2006, to be approved.

Please note that all these bilateral co-production agreements are under supervision and administration of the “Fond National de soutien à la Production Audiovisuelle” (Film Fund Luxembourg),  
20, Montée de la Pétrusse, L-2273 Luxembourg.  
Tél: +352 478 1  
Fax: +352 29 21 86

## **NATIONALITY CERTIFICATION PROCEDURES**

- A.4 In Luxembourg most of the films released are co-productions, and such co-productions are mainly European and therefore governed by the European Convention on cinematographic coproduction.  
There are very few cases where certification is demanded of Luxembourg’s authorities.

NB: There is actually no legal basis, nor procedure for delivery of such a certificate. The Centre National Audiovisuel is nevertheless the authority in charge, and able to deliver certification for Luxembourgian nationality.

(Source: Centre National Audiovisuel)

## **EXPECTED DEVELOPMENTS**

- A.5 **New co-production agreements expected in your jurisdiction as of 1 January 2007:**

As mentioned before, a Coproduction Agreement between Austria and Luxembourg should be approved in the coming months.  
It should be under supervision and administration of the “Fonds National de soutien à la production audiovisuelle” (Film Fund)

- A.6 There are currently no new funding schemes containing territorialisation requirements entered into force or about to enter into force in Luxembourg as of 1 January 2006.

A change in the law may happen concerning the “Certificats d’ Investissement Audiovisuel” funding scheme, it may changes some of the legal provisions of this scheme:

The main incidence is the modification of the territorialisation clause requiring the work to be “released mainly on the territory of the Grand Duchy of Luxembourg” to a clause imposing only the work to be released “in the European Union, and in particular on the territory of the Grand Duchy of Luxembourg”.

If adopted, the new legal provisions could have important consequences on this funding scheme.

The purpose of the reform is to allow Luxembourgian production companies to benefit from the scheme even if the work is not produced in the Grand Duchy of Luxembourg. The Law hopes to encourage production companies established in Luxembourg to enter in foreign co-productions.

(See copy of the Government Bill attached in appendix)

## **REFERENCES TO LOCAL STUDIES**

- A.7 There appears to be no significant local studies, reports, or other relevant materials on territorialisation requirements, on co-production agreements or on the legal aspects of the promotion of film related to cultural identity and cultural diversity in Luxembourg.

**PART B**  
**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

**B.1 Country/region:** Grand Duchy of Luxembourg

**B.2 Name of the funding scheme:**

“Aides Financières Sélectives”

It consists of a system of advance on benefits.

This scheme provides three different types of grants:

- Grant for writing and development
- Grant for production and coproduction
- Grant for distribution

The grant is given by the Board of Directors of the “Fond national de soutien à la production audiovisuel”.

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

Article II, article 2 of the Law of the 21<sup>st</sup> of December 2006:

Fond National de soutien à la production audiovisuel  
5, Rue Large  
L-1917 Luxembourg

Tel : + 352 478 21 65

Fax : +352 22 09 63

[www.filmfund.lu](http://www.filmfund.lu)

**B.4 List of the titles of the Laws and regulations governing this funding scheme as of 31 December 2005:**

*« Loi du 21 décembre 1998 portant modification et refonte de la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d’investissements audiovisuel et de la loi du 11 avril 1990 portant création d’un Fonds national de soutien à la production audiovisuelle ».*

“Law of the 21st of December 1998 modifies and remodels the modified law of the 13th of December 1988 establishing a special and temporary tax system for audiovisual investment certificates and the law of the 11<sup>th</sup> of April 1990 setting up a national Fund for the support of audiovisual production.”

- Entry into force: 27<sup>th</sup> of December 1998
- No amendment between 2001 and 2005
- Copy attached

*«Règlement grand ducal du 16 mars 1999 portant exécution de la loi modifiée du 11 avril 1990 portant exécution de la loi modifiée du 11 avril 1990 portant création d'un Fond national de soutien à la production audiovisuelle »*

“Regulation of the 16th of March 1999 executing the modified law of the 11<sup>th</sup> of April 1990 setting up a national Fund for the support of audiovisual production.”

- Entry into force: immediately after publication
- No modification between 2001 and 2005
- Copy attached

## **TERRITORIAL CONDITIONS<sup>1</sup>**

### **Explicit territorial conditions**

B.5 There are no explicit territorial conditions required for the grant of an “Aide Sélective”

### **Implicit or *de facto* territorial conditions**

B.10 “Aides Sélectives” can be granted only to “Luxembourgian producers” according to the law.

“Luxembourgian producer” has to be understood as a “Production Company“ established in Luxembourg and governed by Luxembourgian Law.

(Source: Fond national de soutien à la production audiovisuel)

Yes

B.11 For this point, please see below (B.13) for details.

## **CULTURAL CLAUSES**

### **B.12 Cultural goals expressed in the Law:**

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<sup>1</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 II, article 3 of the Law of the 21<sup>st</sup> of December 1998:

*"Il est créé une aide financière sélective à la production audiovisuelle destinée à promouvoir la création cinématographique au Grand-Duché de Luxembourg et à encourager le développement de la production, la co-production et la distribution d'oeuvres dans ce domaine"*

“An “aide sélective” is created in order to promote cinematographic creation in the Grand-Duchy of Luxembourg and to encourage production, co-production and distribution development.”

For more details on cultural policy goals which can legitimate territorialisation requirements, it is interesting to refer to the grounds of the Law of the 21<sup>st</sup> of December 1998:

*"Au Luxembourg, les producteurs sont confrontés (...) à des problèmes d'ordre structurels, tels que la taille du marché national et un tissu économique spécifique peu développé en l'absence de tradition de production audiovisuelle "*

*"Il n'existe pas de chaîne de télévision investissant dans la création de programmes audiovisuels. "*

*" Les moyens financiers mis à disposition des producteurs luxembourgeois sous forme d'avances sur recettes visent principalement à donner expression à la spécificité et à l'identité culturelle de notre pays et à assurer son rayonnement culturel. Pratiquement toutes les sociétés luxembourgeoises ont recours à ce mécanisme d'aide pour le montage financier de leurs projets. Cette aide constitue directement l'enveloppe financière qui permet aux producteurs luxembourgeois de participer dans des productions européennes. Le site audiovisuel luxembourgeois, qui, jadis était essentiellement axé sur des activités de diffusion, a connu une diversification avec la mise en place d'infrastructures de production et de postproduction et l'établissement de plusieurs sociétés de production et de services audiovisuels. "*

(in « Motifs du projet de loi du 21 décembre 1998 » chambre des députés de Luxembourg)

”In Luxembourg, producers are facing (...) structural problems, such as the size of the domestic market, and an economic structure undeveloped due to a lack of an audiovisual tradition”

“There are no television channels investing in audiovisual productions”

“The financial resources offered to Luxembourgian producers, via a system of advance on benefits, are principally set up for the encouragement the expression of the cultural identity of Luxembourg, and develop its cultural spread. Almost every Luxembourgian producer uses the financial support offered for the financial building of their project. This help allows Luxembourgian producers to take part in European co-productions. The domestic audiovisual sector, which used to be centered on diffusion, is now diversified with the creation of production and postproduction facilities and the setting up of several companies of production and audiovisual services.”

## **SELECTIVE SCHEMES**



- B.13 The main feature of the scheme “Aides Séléctives” is that in order to obtain a grant, the work has to be somehow related to a Luxembourgian producer (Luxembourgian established production company).

Article I, article 2, Regulation of the 16<sup>th</sup> of March 1999 requires the following conditions to be fulfilled:

1. Grant for Writing and Development

- A Luxembourgian producer must be interested by the scenario project and must intend to produce it
- or
- The scenario must have been or will be funded by public funds

2. Grants for Production or Co-production:

Must meet all the following requirements:

- The portion of the Luxembourgian producer(s) must represent at least 10% of the total cost of the production concerned, and the portion of a foreign co-producer can't be below the same percentage.
- The property of the original copy (image and sound) of the work co-produced allowing reproduction of copies for distribution must be the joint property of all the co-producers. The rights belonging to the Luxembourgian producer in the share of rights must be proportionate to his financial contribution to the work.
- The participation of the Luxembourgian producer must be actual.

3. Grants for Distribution:

Luxembourgian producers or distributors receive a grant if they produced, co produced or intends to distribute, one or more cinematographic or audiovisual work.

These works must be Luxembourgian.

NB: benefits of any these grants, the audiovisual works ordered by the “Fond national de soutien à la production audiovisuelle” or the audiovisual work for which the Fond national de soutien à la production audiovisuelle concluded a partnership with natural or legal person.

Please note there weren't any changes during the period from 2001 to 2005.

**CONTACT DETAILS**

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

Marc Warken  
Fond national de soutien à la production audiovisuelle  
5, Rue Large

L-1917 Luxembourg

Tel : + 352 478 21 65

Fax : +352 22 09 63

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

Antoine Laniez

Étude De Meester

3 Rue des Bains/ B.P 848

L-2018 Luxembourg

**Date of the data collection and processing:**

06/10/2006

## **PART B**

### **FUND SPECIFIC QUESTIONS**

#### **IDENTIFICATION OF THE FUNDING SCHEME**

**B.1 Country/region:** Grand Duchy of Luxembourg

**B.2 Name of the funding scheme:**

“Certificats d’investissement audiovisuel”

It is a tax incentive scheme.

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

Article I, article 3, Law of the 21<sup>st</sup> of December 2006:

The certificates are delivered by the Finance Minister, the Minister in charge of the Audiovisual Sector and the Culture Minister, after advisory opinion from the “Fond national de soutien à la production audiovisuelle”.

Article I, article 7 of the Law of the 21<sup>st</sup> of December 2006:

The “Fond national de soutien à la production audiovisuelle” is in charge for the administration and supervision of the funding scheme.

Fond national de soutien à la production audiovisuelle  
5, Rue Large  
L-1917 Luxembourg

Tel : + 352 478 21 65

Fax : +352 22 09 63

[www.filmfund.lu](http://www.filmfund.lu)

**B.4 List of the titles of the Laws and regulations governing this funding scheme as of 31 December 2005:**

*"Loi du 21 décembre 1998 portant modification et refonte de la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d’investissements audiovisuel et de la loi du 11 avril 1990 portant création d’un Fonds national de soutien à la production audiovisuelle"*

"Law of the 21st of December 1998 modifying and remodeling the modified law of the 13th of December 1988 establishing a special and temporary tax system for audiovisual investment certificates and the law of the 11<sup>th</sup> of April 1990 setting up a national Fund for the support of audiovisual production."

- Entry into force: 27<sup>th</sup> of December 1998
- No modification between 2001 and 2005
- Copy attached

*"Règlement grand ducal du 16 mars 1999 portant exécution de la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d'investissement audiovisuel "*

"Regulation of the 16th of March 1999 executing the modified law of the of the 13th of December 1988 establishing a special and temporary tax system for audiovisual investment certificates."

- Entry into force: immediately after publication
- No modification between 2001 and 2005
- Copy attached

## **TERRITORIAL CONDITIONS<sup>2</sup>**

### **Explicit territorial conditions**

B.5 There are explicit territorial conditions in order to benefit from the tax incentives resulting from the attribution of a "Certificat d'investissement audiovisuel".

Yes

If yes,

B.6

First of all, Article I, article 4, Law of the 21<sup>st</sup> December 1998:

*"Les oeuvres susceptibles de bénéficier du régime des certificats d'investissements audiovisuel doivent répondre aux critères ci-après énumérés :*

- *contribuer au développement du secteur de la production audiovisuelle au Grand-duché de Luxembourg, compte tenu d'une proportionnalité raisonnable entre les avantages consentis et les retombées économiques, culturelles et à long terme de la production de ses œuvres ;*
- *être conçues pour être réalisées principalement sur le territoire du Grand-duché de Luxembourg ;*

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<sup>2</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.

- *être exploitées ou co-exploitées par la société de production, notamment par le biais de la détention effective et durable d'une partie des droits ;*
- *offrir des perspectives de retour sur investissements raisonnables"*

"In order to benefit from the scheme, the work has to meet several requirements: It must contribute to the development of the audiovisual production in Luxembourg, and the economic, cultural, and long term benefits must be reasonably proportionate to the advantages given via the scheme.

**Also, the work must be principally realised in the Grand duchy of Luxembourg.**

The production company benefit from the tax incentive must have an actual, long-lasting, and relevant part of the work's rights.

Finally the project must offer reasonable possibilities for return on benefits."

Secondly, article I, article 5, 1st paragraph of the Law of the 21 of December 1998:

*"Le montant des certificats d'investissement audiovisuel à émettre est fixé (...) dans la limite des coûts de production effectivement exposés et des dépenses y relatives effectuées au Grand-Duché de Luxembourg"*

"The amount of the certificates to issue is limited to the amount of production costs and related expenses executed in the Grand-Duchy of Luxembourg."

In other words these provisions of the Law has for consequence that a certificate can only be issued for expenses made in Luxembourg, excluding foreign source costs.

There was no significant change in the Law between 2001 and 2005

#### **B.7 Implementation of the clauses:**

In order to obtain a certificate, the Law only requires the work "be principally realised in the Grand duchy of Luxembourg."

In practice, it means that at least half of the work must be realised in Luxembourg.

(Source: "Fond national de soutien à la production audiovisuelle")

#### **B.8 Incidence of co-production agreements:**

The criteria remain the same: the work is realised principally in Luxembourg and can obtain a certificate, or it is not, and the work won't be delivered a certificate.

(Source: "Fond national de soutien à la production audiovisuelle")

#### **B.9 Judicial and administrative practice addressing the implementation of territorialisation requirements:**

There is actually no judicial practice in Luxembourg on the territorialisation requirements applicable in Luxembourg.

Due to the small amount of works actually realised in Luxembourg, no real “administrative practice” is developed in Luxembourg in this sector in the attribution

(Source: "Fond national de soutien à la production audiovisuelle")

### **Implicit or *de facto* territorial conditions**

B.10 there are one implicit or *de facto* territorial conditions in this funding scheme

Yes

B.11 Article I, article 2 Law of the 21<sup>st</sup> December 1998:

*"Le Gouvernement peut émettre,....,des certificats d'investissement audiovisuel à des sociétés de capitaux **agrées, résidentes et pleinement imposables**, qui ont pour objet social principal la production audiovisuelle et qui produisent effectivement des œuvres audiovisuelles dans des conditions déterminées à l'article 4 de la présente loi "*

"The government can deliver, audiovisual investment certificates to companies agreed, resident and fully taxable, which have as corporate purpose audiovisual production and produces effectively audiovisual work in accordance with conditions detailed in article 4 of the Law."

In other words, only the approved companies can benefit from the scheme, and only production companies established in Luxembourg can get approbation.

### **CULTURAL CLAUSES**

B.12 There are no real cultural clauses in the Law and Regulation currently in force; As for the Aides selective scheme, cultural justifications and goals are expressed in the grounds of the Law adopted in 1998: please find hereafter the most relevant of these for your information:

*"Cette aide indirecte dont l'objectif est de drainer des capitaux nationaux et étrangers, par l'intermédiaire de la place financière, vers la production audiovisuelle nationale, favorise l'investissement dans la production "*

*"(...) les objectifs initiaux, à savoir la création d'une activité économique et durable, laquelle (permettra) d'après de nombreux experts est et sera de plus en plus génératrice d'emplois. "*

"This indirect aid promotes investment in the production and hopes to bring national and international funds to the domestic audiovisual production, via the financial sector. "

"(..) The minimum objective, creation of a long-lasting economic sector, creates and will create employment, according to many experts".

## **SELECTIVE SCHEMES**

B.13 Article I, article 4, Law of the 21<sup>st</sup> December 1998, contains selective requirements based on qualitative criteria (please see B. 6 for quote)

Specifically, the work must contribute to the development of the audiovisual production industry of Luxembourg, as well as provide cultural and economic benefits (*retombées économiques et culturelles* )

Also, the same article of the Law of 21<sup>st</sup> December 1998 excludes the attribution of a certificate for any work which would be considered as against good character or public order (this includes pornographic, violent and racist works). Commercial, political and sports works can't get a certificate.

## **CONTACT DETAILS**

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

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Date of the data collection and processing:

06/10/2006

## **Appendix**

- 1. Law of the 21st of December 1998 modifies and remodels the modified law of the 13th of December 1988 establishing special and temporary tax system for audiovisual investment certificates and the law of the 11<sup>th</sup> of April 1990 setting up a national Fund for the support of audiovisual production.**
- 2. Regulation of the 16th of March 1999 executing the modified Law of the 11<sup>th</sup> of April 1990 setting up a national Fund for the support of audiovisual production, and Regulation of the 16th of March 1999 executing the modified law of the of the 13th of December 1988 establishing a special and temporary tax system for audiovisual investment certificates.**
- 3. Government bill**
- 4. Annual report of the "Fond national de soutien à la production audiovisuelle" for 2005.**