

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



LUXEMBOURG
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

Acknowledgements

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A Overview of the legal situation in Luxembourg

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		
				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
									Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N

Luxembourg	Certificats d'investissement audiovisuel	32,673,380	Nat	N/A	N/A	N/A	The tax advantage is proportionate to the local costs. However the CAI does not provide for any percentage of funding to be spent locally. (2.2)	N/A	N/A	Law governing the funding scheme "Certificats d'Investissement Audiovisuel" (Certificates of Audiovisual Investment) is expected to be amended
	Aides Financières sélectives	3,928,775	Nat	N/A	N/A	N/A	N/A	N/A	N/A	

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
Luxembourg	Certificats d’investissement audiovisuel	N	N/A	N/A	Y The film project must have a positive impact on the culture and economy of Luxembourg in order to be eligible for State aid in the form of tax advantages (2.4)	N/A	N/A	Y The purpose clause to promote local film economy arguably qualifies as indirect territorialisation requirement that is not quantifiable in the Law (2.6)	N/A	N/A

	Aides Financières sélectives	N	N/A	N/A	Y	N/A	N/A	Y	N/A	N/A
					Criteria governing the grant of State aid refer to the film's cultural identity and quality relate to the effective involvement of the Luxembourg producer and to the purpose to promote local economy. (3.4)			This funding scheme aims also to achieve economic objectives. The purpose clause to promote local film economy arguably qualifies as indirect territorialisation requirement that is not quantifiable in the Law (3.6)		

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ¹	Degree of the territorialisation ²		
				Funding Scheme Level ³	Funding body level	Member State Level ⁴
Luxembourg	Certificats d'investissement audiovisuel	32,673,380	Not quantified requirement: the tax advantage is proportionate to the local costs.	= 0 / N/A	No data	0 %/ N/A
	Aides Financières sélectives	3,928,775	no requirement	= 0 / N/A	No territorialisation	

¹ Assessment based on replies from local lawyers (see synthesis sheet)

² 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

³ 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

⁴ “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
Luxembourg	European Convention on Cinematographic Co-production	2 May 1996	Y
	Canada	4 May 1996	
	France	27 July 2003	
	Germany	12 August 2003	

Luxembourg is currently a party to the European Convention on Cinematographic Co-production approved by the law of 2 May 1996. The authority in charge of the administration and supervision of this convention is the “Centre National de l’audiovisuel”.

In Luxembourg there are two funding schemes: “*Aides Financières sélectives*”, and the “*Certificats d’investissement audiovisuel*”

2 Synopsis of conventions on co-production agreements

Luxembourg is currently a party to the European Convention on Cinematographic Co-production approved by the law of 2 May 1996. The authority in charge of the administration and supervision of this convention is the “*Centre National de l’audiovisuel*”.

Luxembourg has concluded the following co-production conventions:

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

The bilateral co-production agreements are supervised and administered by the “*Fond National de soutien à la Production Audiovisuelle*”.

3 Synopsis of formal nationality certification procedures

There are very few cases where certification is demanded by the Luxembourg authorities and there is neither legal basis nor formal procedure for the delivery of such a certificate. The authority responsible is the *Centre National de l’audiovisuel*.

Most Luxembourg films are co-productions, and such co-productions are mainly European and therefore governed by the European Convention on cinematographic co-production.

4 Synopsis of expected legal developments

A co-production agreement between Austria and Luxembourg (under the supervision and administration of the “*Fonds National de soutien à la production audiovisuelle*”) will be approved in the coming months.

The law governing the funding scheme “*Certificats d’Investissement Audiovisuel*” (Certificates of Audiovisual Investment) is also expected to be amended in the near future so as to replace the requirement that State-aided films are to be released mainly on the territory of the Grand Duchy of Luxembourg with the requirement that the work must be released “in the European Union, and in particular on the territory of the Grand Duchy of Luxembourg”. The purpose of such a 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 aims at encouraging production companies established in Luxembourg to enter into foreign co-productions.

B The Luxembourg funding schemes

1 Overview

There are two funding schemes, the “*Certificats d’investissement audiovisuel*” (Certificates of audiovisual investment) and the “*Aides Financières sélectives*” (Selective Financial Assistance).

2 Analysis of the Scheme “Certificats d’investissement audiovisuel”

2.1 Description of the funding scheme

The *Certificats d’investissement audiovisuel* (Certificates of Audiovisual Investment-CAI) is a tax-incentive scheme, based on:

- the Law of 21 December 1998 (which came into force on 27 December 1998, modifying and remodeling the modified law of 13 December 1988), which established a special and temporary tax system for audiovisual investment certificates
- the law of 11 April 1990, which set up a national Fund for the support of audiovisual production
- the Regulation of 16 March 1999 putting into effect the modified law of 13 December 1988 which established a special and temporary tax system for audiovisual investment certificates.

There were no significant regulatory changes during the reference period from 2001 to 2005.

The certificates are issued 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*, which is in charge of the administration and supervision of this funding scheme.

For contact information see reply B.14 for Luxembourg for CAI funding schemes. For additional information on this scheme see CAI website www.filmfund.lu.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective territorialisation requirements apply to this funding scheme: Article I (articles 4 and 5) of the Law of 21 December 1998.

2.2.2 Practice

There is no relevant administrative or judicial practice reported.

2.2.3 Discussion

The rules governing this funding scheme contain objective territorial requirements as a condition for benefiting from its tax incentives. According to Article I (article 5, 1st paragraph) of the Law of 21 December 1998, the tax advantages granted under this scheme are proportionate to the amount of money locally spent. Furthermore, the work must be principally created and produced in the Grand Duchy of Luxembourg.

2.2.4 Conclusions

The objective territorialisation requirements that apply to this scheme can be summarized as follow: the tax advantage is proportionate to the local costs. However the CAI does not require any percentage of funding to be spent locally.

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

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

No real “administrative practice” is developed in Luxembourg on this matter. However it is worth nothing that according to Article I (articles 4 and 5) of the Law of the 21st December 1998 in order to obtain a certificate, the Law only requires that the work be principally realised in the Grand Duchy of Luxembourg. The reported practice addressing this indirect territorialisation requirement can be summarized as follows: at least half of the work must be made in Luxembourg.

2.3.2 Discussion

N/A

2.3.3 Conclusions

The reported practice addressing this indirect territorialisation requirement can be summarized as follows: at least half of the work must be made in Luxembourg. Further reference is made to Sections 2.4 and 2.6 below.

2.4. Synopsis of selective State aid granting *procedures*

Article I (article 4) of the Law of 21 December 1998 (see reply B) contains selective requirements based on qualitative criteria. In particular, the work must contribute to the development of the audiovisual production industry of Luxembourg, as well as providing cultural and economic benefits on the local level.

The rules governing this funding scheme require that the film project must have a positive impact on the culture and economy of Luxembourg in order to be eligible for State aid in the form of tax advantages.

The requirement to promote the local film economy arguably qualifies as an indirect territorialisation requirement.

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

The criteria under a co-production agreement remain the same: the work can obtain a certificate if it is realised principally in Luxembourg; if it is not realised principally in Luxembourg, it is not entitled to a certificate.

2.6 Synopsis of cultural clauses applying to the funding schemes

There are no real cultural clauses in the Law and Regulation currently in force. As for the *Aides sélectives* scheme, cultural justifications and goals are expressed in the grounds of the Law adopted in 1998: "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".

Financial assistance given to Luxembourg producers as advances against receipts aim principally to give expression to the specific character and cultural identity of our country and to support its cultural influence.

A main cultural issue is the promotion of the *Luxembourgish* language.

Cultural objectives are also mentioned in Article II (article 3), of the same Law with reference to the selective aid scheme (see Section 3.4 below).

The requirement of promoting the local film economy arguably qualifies as an indirect territorialisation requirement

3 Analysis of the Scheme “Aides Financières Sélectives”:

3.1 Description of the funding scheme

The “*Aides Financières Sélectives*” (Selective Financial Aid funding scheme-SFA) consists of a system of “advance on receipts” based on:

- the Law of 21 December 1998 (which came into force on 27 December 1998, modifying and remodeling the modified law of 13 December 1988), which established a special and temporary tax system for audiovisual investment certificates
- the law of 11 April 1990, which set up a national Fund for the support of audiovisual production
- the Regulation of 16 March 1999 putting into effect the modified law of 13 December 1988 which established a special and temporary tax system for audiovisual investment certificates.

There were no significant regulatory changes during the reference period from 2001 to 2005.

This scheme provides three different types of grants:

- for writing and development
- for production and co-production
- for distribution

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

For contact information see reply B.14 for Luxembourg for SFA funding schemes. For additional information on this scheme see SFA website www.filmfund.lu.

3.2 Synopsis of objective territorialisation requirements

3.2.1 Rules

There are no objective territorialisation requirements under this funding scheme.

3.2.2 Practice

There is no administrative or judicial practice reported.

3.2.3 Discussion

N/A

3.2.4 Conclusions

There is no reported practice on indirect territorialisation requirements.

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial or administrative practice reported.

3.3.2 Discussion

N/A

3.3.3 Conclusions

There are arguably indirect territorialisation requirements that apply to this funding scheme. Further reference is made to section A3 above, and to B 3.4 and 3.6 below.

3.4 Synopsis of selective State aid granting criteria and procedures

To obtain selective State aid under this funding scheme, the producer and the film project, respectively, must meet the following conditions:

1. The contribution of the Luxembourg producer must reach at least 10% of the total cost of the production concerned, and the contribution of a foreign co-producer cannot be less than the same percentage.
2. There must be joint-ownership in the original copy (master or “negative copy” of pictures and sounds) of the work co-produced that allows reproduction of copies for distribution by all the co-producers.
3. The Luxembourg producer must own a share of the intellectual property rights pertaining to the work that is proportionate to his/her financial contribution to the co-production.
4. The participation of the Luxembourg producer must be real on the operational level.

It must be noticed that a “Luxembourg producer” has to be understood as a production company established in Luxembourg and governed by Luxembourg law.

According to Article I (article 4) “*instruction des demandes d’aides*” of the Regulation of 16 March 1999, a demand for an *Aide Selective* is assessed by different panels of experts, one being the “*Comité de Lecture*”, the other the “*Comité d’Analyse Economique et Financière*”. All the projects applying for the attribution of a grant are assessed.

While the “*Comité d’Analyse Economique et Financière*” only assesses the economic and financial aspects of the project, the “*Comité de Lecture*” is focused on the cultural quality of the project. The criteria are, *inter alia*, the quality of the scenario, the track record of the person involved in the project, the quality of the artistic team.

The “*Comité de Lecture*” is focused also on the ability of the project to promote Luxembourg culture and Luxembourg identity.

The “*Comité de Lecture*” is composed of independent experts (journalists specialized in audiovisual issues, foreign experts, cinema directors, etc).

The criteria governing the grant of State aid under the *Aides sélectives* funding scheme refer to the film’s cultural identity and quality essentially and relate to the effective involvement of the Luxembourg producer. These requirements and the purpose of promoting the local (see below Section 3.6) film economy arguably qualify as indirect territorialisation requirements that are not quantifiable.

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

If there is a conflict or an inconsistency between local rules on territorialisation and international rules (including the conventions on co- production agreements to which Latvia is member), the international legal norms shall prevail.

In general, in case of a conflict, international provisions prevail over domestic provisions, as for other matters (*Conseil d'Etat*, 21 November 1984). Such conflicts have not arisen yet in Luxembourg (source "*Fond National de Soutien à la Production audiovisuelle*").

In most of the co-production 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 Co-production 1992).

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

There are no express rules of law governing the *Aides Sélectives* funding scheme that articulate cultural objectives and justifications. However, in line with the comments on the rules applying to this funding scheme, the purpose of State intervention in the field of independent film and television production consists in promoting investment in the production in order to attract national and international funding towards domestic audiovisual production. These comments mention in particular that the objective shall be the creation of a sustainable economic sector aimed at generating employment (comments on the Law adopted in 1998; see reply B.12 for the *Aides Sélectives* funding scheme).

This funding scheme aims also to achieve economic objectives. The requirement of promoting the local film economy arguably qualifies as an indirect territorialisation requirement that is not quantifiable in the Law.

References:

None

Attachments:

- Replies to the legal questionnaire by Antoine Laniez, attorney at law, Étude De Meester, Luxembourg
- Regulations for Luxembourg