

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

Member State:	NETHERLANDS
Re:	Follow Up Reply
Date:	22 December 2006

(...)

The Stimuleringsfonds indeed does not subsidize independent production companies.

"Omroep" means "network" (Rundfunk) in Dutch, i.e. the fund is purely meant for public broadcasters making TV programs such as operas, concerts, music festivals etc.

(...)

Member State:	NETHERLANDS
Re:	Follow Up Question
Date:	22 December 2006

(...)

Thank you for your reply of yesterday to our final round of follow-up questions below.

Please confirm that our understanding is correct according to which "Stimulerin Nederlandse Culturele Omroepproducties" has not granted State aid to independent film or television productions and distribution during the reference period from 2001 to 2005 or has done so without an annual budget for these purposes of at least Euro 1 million (see our question in our email of 26 November 2006 below: "1) You indicated in your follow up replies that the funding scheme "Stimulerin Nederlandse Culturele Omroepproducties" (Co-production Fund for Broadcasting Companies) was not relevant for our study (annual budget of State aid for independent film and television production and distribution of at least Euro 1 million during the reference period from 2001 to 2005). – Is our understanding correct that no State aid directly flows from this fund to independent film and television production? – If this is not the case, please cover this scheme as well.").

(...)

Member State:	NETHERLANDS
Re:	Follow Up Reply
Date:	21 December 2006

(...)

We hereby send you our amended report as per your questions.

(...)

Attachments to e-mail of 21 December 2006
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**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS
(Version of 12 December 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 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

- 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.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

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

Please use only one form per Member State.

OVERVIEW

- A.1 Country / region: Netherlands.
- 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 works¹ 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):

Film investment tax scheme (www.senternovem.nl/film/algemeen/index.asp;
www.fine.nl)

Dutch Film Fund (www.filmfund.nl)

Rotterdam Film Fund (www.rff.rotterdam.nl)

(source financial thresholds:

Dutch Film Fund, *Film Facts and Figures of The Netherlands*, Edition Summer 2005,
http://www.filmfund.nl/algemeen/pdf_files_algemeen/FFF2005.pdf).

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:

European Convention on Cinematographic Co-Production

Entry into force for the Netherlands on 1 July 1995

Ministry of Foreign Affairs, Bezuidenhoutseweg 67, 2594 AC Den Haag
(www.minbuza.nl/english)

Bilateral treaty with France on the coproduction of films

Entry into force as per 1 January 1989

Ministry of Foreign Affairs, Bezuidenhoutseweg 67, 2594 AC Den Haag
(www.minbuza.nl/english)

Agreement between the Dutch Film Fund and the Flemish Audiovisual Fund
(Belgium)

Entry into force as per 1 January 2004

¹ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

Dutch Film Fund
Jan Luykenstraat 2
NL-1071 CM Amsterdam
Tel: 0031 (0)20 570 76 76
Fax: 0031 (0)20 570 76 09
Website: <http://www.filmfund.nl>

Agreement between the Dutch Film Fund and the Filmstiftung Nordrhein-Westfalen
(Germany)

Entry into force as per 1 January 2000

Dutch Film Fund
Jan Luykenstraat 2
NL-1071 CM Amsterdam
Tel: 0031 (0)20 570 76 76
Fax: 0031 (0)20 570 76 09
Website: <http://www.filmfund.nl>

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:²

There is no general procedure applicable to all funding schemes to assess the nationality of a production. Each scheme uses its own criteria to assess the nationality of the applicant. Funding from the Dutch Film Fund can only be requested by natural persons or legal persons who have lived in the Netherlands or have been located in the Netherlands, respectively, for a period longer than two years, and whose main activity is writing, developing, producing, distributing or exploiting films (and is not a public or commercial licensed broadcaster) (*see infra*). Funding from the Rotterdam Film Fund can only be requested by companies located in the Rotterdam region as defined in the regulations (*see infra*).

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

² E.g. the French "Procédure d'agrément".

No new co-production agreements are expected by the Dutch Film Fund (source: oral information Dutch Film Fund, legal department). The Rotterdam Film Fund is exploring the possibilities of concluding such agreements with, for example, the Flemish Audiovisual Fund, but no concrete steps have been taken as of yet (source: oral information director Rotterdam Film Fund).

- 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 2006,³ and indicate the name and address of the administration of these funding schemes:⁴

No new schemes are expected. The existing tax incentive scheme shall be in force until 1 July 2007. It is likely to be renewed after that date, or replaced by a similar scheme (source: Explanatory Memorandum to the 2006 Regulation, paragraph 3.4.1 *in fine*).

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):

J. Drosterij, *Het Europese filmbeleid : eenduidigheid of verdeeldheid? - een onderzoek naar de beleidsuitgangspunten van de Europese unie ten aanzien van haar filmbeleid en de invulling daarvan door de lidstaten Nederland, Duitsland, Frankrijk en Groot-Brittannië*; Doctoraalscriptie Universiteit van Amsterdam, Faculteit der geesteswetenschappen, available in Boekmanstichting library
<http://www.boekman.nl>

Research voor Beleid (Wils/Ziegelhaar), *Eindrapport Sectoronderzoek film en televisie*, Leiden, 16 June 2005;
<http://www.filmbelangen.nl/rapport.pdf>

Bureau Berenschot, *Evaluatie van de Stimuleringsmaatregelen voor de Nederlandse Film*, Utrecht, 4 September 2003;
<http://parlando.sdu.nl/cgi/login/anonymous>; annex to parliament Bill 25434, document nr. 18 (letter from the government to parliament), 24-9-2003

³ 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.

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

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)⁵ 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.⁶

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: Netherlands

B. Name of the funding scheme: Film investment tax scheme (*Regeling aanwijzing filminvesteringen*)

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

SenterNovem
PO Box 10073
8000 GB Zwolle

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

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

⁵ 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).

⁶ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The present Regulation is the *Regeling van de Staatssecretaris van Onderwijs, Cultuur en Wetenschap van 28 april 2006, nr. DK/B&B/2006/18785, tot aanwijzing van films als bedoeld in artikel 3.33 en 3.42b van de Wet inkomstenbelasting 2001 (Regeling aanwijzing filminvesteringen 2006)* (Regulation on the indication of film investments 2006) See http://www.senternovem.nl/film/publicaties/tekst_van_de_regeling.asp.

- Entry into force on 8 April 2006 (source: www.wetten.nl).
- Similar tax schemes have been in existence since 1999. Between 1999 and 2002 the scheme had the actual effect of tax planning by domestic and foreign film companies and the effect of structural stimulation of the national film industry by investors has been limited, as research has showed (source: Bureau Berenschot, *Evaluatie van de Stimuleringsmaatregelen voor de Nederlandse Film*, Utrecht, 4 September 2003).
- In mid 2002 a new system came into existence, the *Film Investerings Aftrek* (Film Investment Tax Deduction) and the *Willekeurige Afschrijving Film* (Random Depreciation Film). This was meant to be in place until 31 December 2004, but Parliament asked the Minister to renew it until 31 December 2005 (source: answers to written parliamentary questions 8 March 2004, www.ocenw.nl).
- The major amendments between 2001 and 2006 were the following (reference is made to the *Staatscourant* (Dutch official Gazette) publication; followed by the European Commission state aid approval confirmation relating to each renewed regulation):

Regulation of 14 December 2001, Stb. 2001, 641; State Aid 746/01, 19 June 2002, C(2002)2138fin

Regulation of 18 December 2003, Stb. 2003, 527; State Aid 530/2003, 16 December 2003, C(2003)4635fin

TERRITORIAL CONDITIONS⁷

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*):

De in een filmonderneming van een medegerechtigde als bedoeld in artikel 3.3, eerste lid, onderdeel a, gemaakte voortbrengingskosten ter zake van een film met betrekking waartoe op een door of namens de gerechtigde na 7 april 2006 gedane aanvraag door Onze Minister van Onderwijs, Cultuur en Wetenschap schriftelijk is verklaard dat sprake is van een film die van belang is in het kader van de versterking van de filmindustrie in Nederland, kunnen willekeurig worden afgeschreven, mits van de totale drukkende voortbrengingskosten van de film meer dan de helft betrekking heeft op voortbrenging in Nederland en de totale voortbrengingskosten € 15 000 000 niet te boven gaan.

Working translation:

The production costs made in a film company [...] in relation to a film [...] about which the Minister of Culture has declared in writing that it concerns a film which is of importance to strengthen the film industry in the Netherlands, can be deducted randomly, if from the total production costs more than half relates to production in the Netherlands and the total production costs do not exceed EUR 15,000,000.

⁷ 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.

- 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 approval process has been mandated to SenterNovem. The applicant submits a budget in which he must indicate that more than 50% of the costs relates to production in the Netherlands. If SenterNovem determines that the application fulfils the criteria, it issues a statement to that effect in the name of the Minister of Economic Affairs, and forwards the application to the tax inspector. The tax inspector will grant a 'ruling' that the proposed project can benefit from the tax scheme. The tax inspector will assess, both before and after the project, that the 50% requirement has indeed been complied with. (source: SenterNovem application form; telephone interviews with SenterNovem and tax inspector).

- 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*):

See under B.7. It follows from the 50% requirement that the other 50% can be spent elsewhere. The 50% requirement has not changed over the course of years.

- 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*):

Our research has not revealed any case law or administrative guidelines.

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*):

The scheme only allows tax credits to Dutch citizens and Dutch companies participating in the production via a Dutch limited partnership (the latter being the owner of the film rights), which has the practical effect that more Dutch than foreign producers will use the scheme.

Implicitly, an application could be denied if the requirement ‘strengthening the film industry in the Netherlands’ is not met. The Minister has not made use of his power to issue policy rules on this issue.

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:

There are no such provisions in the Constitution, which hardly mentions the word ‘culture’. There are no such provisions in any statutes dealing with cultural issues. The main statute dealing with subsidies granted by the Ministry of Education, Culture and Science to artists and cultural institutions in the Netherlands is the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy). It governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands. The Minister is advised once every four years by a Cultural Committee. This Act does not express particular cultural policy goals stimulating Dutch culture as such.

The Act on Specific Cultural Policy merely contains the following general provision as to the policy standards, which does not relate to national culture:

Onze Minister is belast met het scheppen van voorwaarden voor het in stand houden, ontwikkelen, sociaal en geografisch spreiden of anderszins verbreiden van cultuuruitingen; hij laat zich daarbij leiden door overwegingen van kwaliteit en verscheidenheid.

Working translation:

[the Minister of Education, Culture and Science] has the task to create the prerequisites for the conservation, development, social and demographic spread or otherwise spreading cultural expressions; his guiding principles are quality and diversity.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁸ 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:

The criteria are qualitative, not automatic. Applicants must submit:

- a specified project budget;
- a specified financing plan;
- a sales and exploitation plan;
- a marketing and promotion plan;
- a scenario and synopsis;
- information about the film rights (i.e. licence by the author).

(source: summary of Regulation at www.senternovem.nl/film/algemeen/index.asp)

The full text of article 3 of the Regulation is:

Als een film als bedoeld in artikel 3.33 van de wet wordt aangewezen een film die primair is bestemd voor vertoning in bioscopen, doch niet is een reclamefilm of voorlichtingsfilm, aan de voortbrenging waarvan een projectvoorstel ten grondslag ligt, bestaande uit:

- a. het scenario, inclusief synopsis, van de film, ter zake waarvan wordt aangetoond dat de exclusieve verfilmingsrechten, of in ieder geval een optierecht daarop, in handen zijn van de filmonderneming, bedoeld in artikel 3.33 van de wet, dan wel van de aanvrager die deze rechten aan de filmonderneming zal overdragen;*
- b. een gespecificeerde projectbegroting uit welke specificatie onder meer blijkt dat de totale voortbrengingskosten van de film niet hoger zijn dan € 15.000.000;*
- c. een gespecificeerd financieringsplan waaruit blijkt dat ten minste 50% van de totale voortbrengingskosten van de film, zoals opgenomen in de projectbegroting, reeds is gedekt door bijdragen van derden die ofwel schriftelijk zijn toegezegd als garantieopbrengst ofwel schriftelijk zijn toegezegd als subsidie, lening of investering ter dekking van de projectbegroting;*
- d. een gespecificeerd verkoop- en exploitatieplan, uit welke specificatie onder meer blijkt:*
 - 1. een schatting van de opbrengsten, en*
 - 2. dat de schriftelijk toegezegde garantieopbrengsten - zoals tevens opgenomen in het in onderdeel c bedoelde gespecificeerde financieringsplan - tenminste 25% bedragen van de totale voortbrengingskosten, zoals opgenomen in de projectbegroting;*
- e. een gespecificeerd marketing- en promotieplan.*

Working translation:

A film shall be indicated as a film as meant in article 3.33 of the Act if it is primarily meant for screening in cinemas, not being a commercial or an informative film, and if the production thereof is based on a project proposal consisting of:

- a. the scenario, including synopsis, of the film, in relation to which it is demonstrated that the exclusive film rights, or in any event an option thereto, are held by the film

⁸ 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.

company as meant in article 3:33 of the Act, or by the applicant who will assign those rights to the film company;

b. a specified project budget, which demonstrates that the total production costs are not in excess of EUR 15,000,000;

c. a specified financing plan which demonstrates that at least 50% of the total production costs of the film, as recorded in the project budget, is already covered by third party contributions which contributions have either been promised as guaranteed proceeds or which have been promised in writing by way of subsidy, loan or investment to cover the project budget;

d. a specified sales and exploitation plan, which specification demonstrates (*inter alia*):

1. an estimate of the proceeds; and

2. that the guaranteed proceeds promised in writing – as also mentioned in the specified financing plan meant in paragraph c – shall amount to at least 25% of the total production costs as entered in the project budget;

e. a specified marketing and promotion plan.

CONTACT DETAILS

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

SenterNovem
Mr. G.J. Wissink, applications manager
PO Box 10073
NL-8000 GB Zwolle
Direct dial +31 38 455 34 10
frontoffice@senternovem.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.
PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970
diederik.stols@dlapiper.com

Date of the data collection and processing:

9 October 2006

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: Netherlands
- B. Name of the funding scheme: *Nederlands Fonds voor de Film* (Dutch Film Fund).
- B.3 Name and address of the funding scheme's administration and supervisory authority:

Dutch Film Fund
Jan Luyckenstraat 2
NL-1071 CM Amsterdam
Tel: +31 20 570 76 76
Fax: +31 20 570 76 09
Website: <http://www.filmfund.nl>

- 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

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

(a) *Bijdragenreglement* (Regulation on contributions)

Entry into force in 1994.

Last minor amendments in 2002.

(b) *Uitvoeringsreglement inzake aanvragen voor een financiële bijdrage voor de ontwikkeling, realisering, afwerking, promotie en marketing van een lange speelfilm en voor realisering en afwerking van een korte speelfilm* (Execution regulation on the requests for a financial contribution to the development, realization, post-production, promotion and marketing of a long feature film and the realization and post-production of a short feature film)

Entry into force in 2002.

Last minor amendments 20 January 2005.

(c) *Uitvoeringsreglement inzake aanvragen voor een financiële bijdrage voor de ontwikkeling van een commerciële film* (Execution regulation on the requests for a financial contribution to the development of a commercial film)

Entry into force in 2003

Last (minor) amendments 20 May 2005.

TERRITORIAL CONDITIONS⁹

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*)?

No, there is no explicit obligation. The project itself must ‘contribute to the quality and diversity of the Dutch film climate’ and ‘advance a climate receptive for the art of film’, but there are no actual obligations as to budget spending. This requirement has been consistent over the course of years.

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*):

NA

- 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*).

NA

⁹ 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.

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*):

NA

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*):

NA

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*):

As indicated under question A.4, funding can only be requested by natural persons or legal persons who have lived in the Netherlands or have been located in the Netherlands, respectively, for a period longer than two years, and whose main activity is writing, developing, producing, distributing or exploiting films (and is not a public or commercial licensed broadcaster). This can be a barrier for foreign applicants seeking funding from the Dutch Film Fund.

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:

There are no such provisions in the Constitution, which hardly mentions the word 'culture'. There are no such provisions in any statutes dealing with cultural issues. The main statute dealing with subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands is the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy). It governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands. The Minister is advised once every four years by a Cultural Committee. This Act does not express particular cultural policy goals stimulating Dutch culture as such.

Onze Minister is belast met het scheppen van voorwaarden voor het in stand houden, ontwikkelen, sociaal en geografisch spreiden of anderszins verbreiden van cultuuruitingen; hij laat zich daarbij leiden door overwegingen van kwaliteit en verscheidenheid.

Working translation:

[the Minister of Education, Culture and Science] has the task to create the prerequisites for the conservation, development, social and demographic spread or otherwise spreading cultural expressions; his guiding principles are quality and diversity.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹⁰ 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:

NA

¹⁰ 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:

Dutch Film Fund
Mr Hans van der Marck, legal department
Jan Luyckenstraat 2
NL-1071 CM Amsterdam
Tel: +31 20 570 76 76
Fax: +31 20 570 76 09
info@filmfund.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.
PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970

diederik.stols@dlapiper.com

Date of the data collection and processing:

9 October 2006

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: Netherlands
- B.2 Name of the funding scheme: Rotterdam Film Fund & Commission (Rotterdams Fonds voor de Film en audiovisuele media)
- B.3 Name and address of the funding scheme's administration and supervisory authority:

Rotterdam Film Fund & Commission (Rotterdams Fonds voor de Film en audiovisuele media)
Rochussenstraat 3-C
3015 EA Rotterdam
Tel. +31 10 4360747
Fax +31 10 4360553
info@rff.rotterdam.nl
www.rff.rotterdam.nl

- 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

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

- (a) Reglement Rotterdams Fonds voor de Film en Audiovisuele Media

Entry into force on 26 June 2006

Since 2002, the regulations have been amended three times, but not significantly. Relevant to this questionnaire is that the Definition of "Rotterdam producer" has been amended in such a way that the Rotterdam producer must have its main office in Rotterdam and not just a branch office (see clause 1.4 quoted below). This has obviously been done to counter abuse by companies setting up a small branch in order to qualify.

Similarly, the obligation to spend in the Rotterdam region has been amended in such a way that 200% or, for international co-productions, 150% must be spent by hiring audiovisual companies that are demonstrably located in the Rotterdam region.

TERRITORIAL CONDITIONS¹¹

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*):

Clause 2.1 RFF Film Regulations, first and second paragraph:

Het RFF verstrekt alleen leningen aan Rotterdamse (co)producenten. Leningen kunnen zowel aan Rotterdamse producties als aan (inter)nationale (co)producties verleend worden. De aanvrager dient een (rechts-)persoon te zijn waarvan/van wie de volledige bedrijfsactiviteiten aantoonbaar, permanent en uitsluitend in/vanuit de regio Rotterdam plaatsvinden en die aldus in de regio Rotterdam gevestigd is, en waarbij de hoofdactiviteit het produceren van audiovisuele producties is. Dit moet onder meer worden aangetoond door inschrijving in het Handelsregister van de KvK Rotterdam, Rotterdamse facturering en bankrekening, en het in Rotterdam beschikken over professionele bedrijfsruimte (waar in het voorkomende geval aantoonbaar permanent eigen personeel werkzaam is).

Het Bestuur van het RFF kan zich hierover laten adviseren door een onafhankelijke commissie terzake kundig. Het Bestuur van het RFF is vrij andere dan de in dit artikel vermelde relevante criteria in zijn oordeelsvorming te betrekken.

De aanvrager dient rechthebbende te zijn ten aanzien van de productie.

¹¹ 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.

(RFF Film Regulation, clause 2.1, first paragraph)

Working translation:

The RFF only provides loans to Rotterdam (co-)producers. Loans can be granted to Rotterdam productions as well as national or international (co-)productions. The applicant must be a natural or legal person from whom the entire company activities are demonstrably, permanently and exclusively carried out in or from the Rotterdam region and which is thus located in the Rotterdam region, and whose main activity is the (co-)production of audiovisual productions. This must be demonstrated by registration in the commercial register of the Rotterdam Chamber of Commerce, Rotterdam billing and bank account, and availing of professional premises in Rotterdam (the applicant being able to prove that its own personnel works at such premises).

The RFF Board can seek advice on the above from an independent expert committee. The RFF Board is free to apply other relevant criteria than those mentioned in this article in its decision making process.

The applicant must have the rights to the production.

Clause 1.4 RFF Regulations:

Onder een Rotterdamse (co)producent wordt in dit reglement verstaan: een (rechts-) persoon waarvan/van wie de volledige bedrijfsactiviteiten aantoonbaar, permanent en uitsluitend in/vanuit de regio Rotterdam plaatsvinden en die aldus in de regio Rotterdam gevestigd is, en waarbij de hoofdactiviteit het (co)produceren van audiovisuele producties is. [...]. Een nieuw in de regio Rotterdam gevestigde (co)producent dient een 'track record' op te bouwen met producties die aantoonbaar vanuit de Rotterdamse vestiging geproduceerd zijn. De Rotterdamse (co)producent is mede rechthebbende van de te produceren productie.

Working translation:

A Rotterdam (co-) producer as per this Regulation is: a person or legal person of whom the entire company activities are demonstrably, permanently and exclusively carried out in or from the Rotterdam region and which is thus located in the Rotterdam region, and whose main activity is the (co-) production of audiovisual productions [...]. A newly established (co-) producer must build up a 'track record' of productions which have demonstrably been produced out of the Rotterdam branch. De Rotterdam (co-) producer is co-owner of the production.

Clause 2.3 RFF Regulations:

Van de toegekende lening aan een Rotterdamse (co)producent moet minimaal 200% bij 'Rotterdamse facilitaire bedrijven' (zie artikel 2.5) in de audiovisuele sector worden besteed. Daarnaast dient de lening zo 'breed' mogelijk in de audiovisuele sector te worden besteed. Dit houdt in dat de verstrekte lening over diverse uitgavenposten verdeeld dient te zijn en niet aan één post mag worden besteed. (...) Bij een internationale speelfilmcoproductie door een Rotterdamse coproducent geproduceerd moet minimaal 150% van de lening (in overeenstemming met de

Europese standaard) in de audiovisuele sector in de regio Rotterdam worden besteed. (...).

Working translation:

From the loan allocated to the Rotterdam (co-) producer, at least 200% of the loan must be spent with Rotterdam facilities companies (see clause 2.5) in the audiovisual industry. Apart from that the loan must be spent as broadly as possible in the audiovisual industry. This means that the loan must be spent for various expenses and not just one expense (...). For an international co-production for a feature film, the produced by a Rotterdam co-producer, at least 150% (in conformity with the European standard) of the loan must be spent with Rotterdam facilities companies in the audiovisual industry (...)

Clause 2.5 RFF Regulations:

Onder 'Rotterdams facilitaire bedrijven' worden personen en ondernemingen verstaan die in de regio Rotterdam een hoofdvestiging hebben en vanuit deze vestiging de audiovisuele en economische kernactiviteiten ontwikkelen die substantieel bijdragen aan verdere ontwikkeling en continuïteit binnen de audiovisuele sector in de regio Rotterdam.

Dit moet onder meer worden aangetoond door inschrijving in de KvK Rotterdam, Rotterdamse facturering en bankrekening, het in de regio Rotterdam beschikken over professionele bedrijfsruimte (waar in het voorkomend geval aantoonbaar permanent eigen personeel werkzaam is). (...).

Working translation:

A “Rotterdam facilities company” is a natural or legal person who have their main establishment in the Rotterdam region, and carry out their activities from this establishment, which activities contribute substantially to the further development and continuity within the audiovisual industry in the Rotterdam region. This must be demonstrated, *inter alia*, by registration in the commercial register of the Rotterdam Chamber of Commerce, Rotterdam billing and bank account, and availing of professional premises in Rotterdam (the applicant being able to prove that its own personnel works at such premises).(…)

- 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 Fund informally checks whether the producer is indeed established in Rotterdam with some kind of establishment (under circumstances, this can be a temporary establishment). Producers must show a certain track record in the film industry indicating their experience in film production. The applicant must indicate from which Rotterdam companies he is intending to purchase goods and services, how many days he intends to shoot in Rotterdam (either in studios or on location), etc. (source: oral information by RFF director).

- 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*):

International co-productions are generally treated favourably. Dutch producers are stimulated to act as co-producers with foreign producers even if the role of the Dutch co-producer is limited. The Rotterdam region will benefit just as much from an international co-production as from a purely national production; moreover, a Dutch producer can gain experience when working with an international experienced producer, which will in itself enhance the track record of the Dutch producer. (source: oral information by RFF director).

- 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*):

Our research has not revealed any judicial or administrative practice. No applicants have sued the RFF for refusing an application.

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*):

Het RFF verleent, in de vorm van het verstrekken van leningen, financiële ondersteuning aan audiovisuele (co)producties, (co)geproduceerd door in de regio Rotterdams gevestigde (co)producenten. Bij het besluit omtrent deze ondersteuning zal in het bijzonder gelet worden op de bijdrage aan het bevorderen en versterken van de economische AV-sector in de regio Rotterdam. Voor alle soorten (co)producties, uitgezonderd animatie, geldt dat deze aantoonbaar de beeldvorming en, ter

beoordeling van het Bestuur van het RFF, het imago van de regio Rotterdam dienen te versterken (Rotterdam in beeld en/of filminhoudelijk). (source: RFF Regulations, clause 1.3)

Working translation: The RFF provides, in the form of granting loans, financial support to audiovisual (co-) productions, (co-)produced by (co-)producers having their seat in the Rotterdam region. In the decision process when granting the support, particular attention will be given to the supporting and strengthening of the economic audiovisual sector in the Rotterdam region. For all kinds of (co-)productions, except animated film, these productions must demonstrate the image building and, as per the RFF Board's opinion, the public image of the Rotterdam region (either by shooting in Rotterdam and/or in the contents of the film).

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:

There are no such provisions in the Constitution, which hardly mentions the word 'culture'. There are no such provisions in any statutes dealing with cultural issues. The main statute dealing with subsidies granted by the Ministry of Education, Culture and Science to artists and cultural institutions in the Netherlands is the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy). It governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands. The Minister is advised once every four years by a Cultural Committee. This Act does not express particular cultural policy goals stimulating Dutch culture as such.

Onze Minister is belast met het scheppen van voorwaarden voor het in stand houden, ontwikkelen, sociaal en geografisch spreiden of anderszins verbreiden van cultuuruitingen; hij laat zich daarbij leiden door overwegingen van kwaliteit en verscheidenheid.

Working translation:

[the Minister of Education, Culture and Science] has the task to create the prerequisites for the conservation, development, social and demographic spread or otherwise spreading cultural expressions; his guiding principles are quality and diversity.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,¹² 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:

According to clause 1.4 RFF Regulations (quoted above under B.6), newly established producers must show a track record before being able to apply.

According to clause 2.1 second paragraph RFF Regulations (quoted above under B.6) the Board is free to apply other – unspecified – criteria in its decision making process. This gives in fact a full authority to the Board to decide as it pleases. The Regulations also provide for exemptions of all criteria, i.e. they will not always be applied in detail.

According to clause 2.2 RFF Regulations, also the type of establishment of the applicant (e.g. small office in Rotterdam or large production facility in Rotterdam) will determine the amount of the loan.

Bij de beoordeling van de aanvragen door het Bestuur van het RFF zal de soort van vestiging en de meetbare economische activiteiten van de Rotterdamse producent (zie hetgeen staat vermeld in de artikelen 1.4 en 2.1) mede bepalend zijn voor de hoogte van de lening. Bij aanvraag van de lening zal ter beoordeling van het Bestuur van het RFF moeten worden aangetoond dat aan bovengenoemde criteria is voldaan.

When judging the applications by the RFF Board, the type of establishment and other measurable activities of the Rotterdam producer (see the language in articles 1.4 and 2.1) shall also determine the amount of the loan. When applying for the loan, the applicant must demonstrate for the Board's judgement that the above mentioned criteria have been met.

¹² 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:

Rotterdam Film Fund & Commission
Jacques van Heijningen, director
Rochussenstraat 3-C
3015 EA Rotterdam
Tel +31 10 4360747
Fax +31 10 4360553
info@rff.rotterdam.nl
www.rff.rotterdam.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.
PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970

Date of the data collection and processing:

9 October 2006

Member State:	NETHERLANDS
Re:	Follow Up Questions
Date:	26 November 2006

(...)

Thank you for your replies of 23 and 30 October 2006.

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

1) You indicated in your follow up replies that the funding scheme “Stimulerin Nederlandse Culturele Omroepproducties” (Co-production Fund for Broadcasting Companies) was not relevant for our study (annual budget of State aid for independent film and television production and distribution of at least Euro 1 million during the reference period from 2001 to 2005). – Is our understanding correct that no State aid directly flows from this fund to independent film and television production? – If this is not the case, please cover this scheme as well.

2) Please quote and summarize the provisions in the relevant regulations that articulate cultural objectives and/or justifications for all relevant funding schemes (B.12).

3) Please complete your answer to question B.4 for Rotterdam Film Fund. You have attached the corresponding regulations to your replies, but you did not provide any information concerning its entry into force, amendments etc.

4) Please quote and describe the selective aid criteria for all relevant funding schemes your covered (B.13).

(...)

Member State:	NETHERLANDS
Re:	Follow Up Questions
Date:	09 November 2006

(...)

We have the follow-up questions and requests for clarifications as follows:

- 1) 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.
- 2) Please fully cover the "Hubert Bals fund", "Dutch co-production fund for broadcasting companies", "Stimuleren Nederlandse Culturele Omroepproducties", or confirm us that they are not relevant for our study, i.e. that they do not grant State aid of an annual budget of at least Euro one million (these funds are listed in the Korda database).
- 3) Please describe the cultural objectives of all relevant funding schemes (normally the applicable regulations mention the cultural purpose of the State aid - these provisions should be addressed under B.12).
- 4) Please complete your answer to question B.4 for Rotterdam Film Fund. You have attached the corresponding regulations to your replies but you provided no information concerning its entry into force, amendments etc.

(...)

Member State:	NETHERLANDS
Re:	Follow Up Reply
Date:	30 October 2006

(...)

According to my research, the Hubert Bals Fund spends less than EUR 1 million on an annual basis. Could you please tell me the source of your information?

I did not include Stimuleringsfonds and Co production Fund in my report as they are open only to broadcasting organizations, and the instructions of the questionnaire indicated our research should only include funds or schemes which are open to independent production companies. Please explain.

(...)

Member State:	NETHERLANDS
Re:	Follow Up Question
Date:	26 October 2006

(...)

We (...) found additional funding schemes in your jurisdiction that are relevant for our study but not covered by the questionnaire yet.

These are as follows

- Hubert Bals Fund, 1 246 000 EUR

- Stimuleringsfonds Nederlandse Culturele Omroepproducties, 15 992 458 EUR

and

- The Dutch Co-production Fund for Broadcasting Companies, 11 040 650 EUR

(...)

Member State:	NETHERLANDS
Re:	Follow Up Reply
Date:	23 October 2006

(...)

Your presumption is correct. Conventions are directly applicable into national law .

(...)

Member State:	NETHERLANDS
Re:	Follow Up Question
Date:	13 October 2006

(...)

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.

(...)

Member State:	NETHERLANDS
Re:	Reply
Date:	10 October 2006

(...)

I attach the questionnaire for the Netherlands. The relevant regulations are sent in a separate document.

(...)

Attachments to e-mail of 10 October 2006

- 322679_1_NLMATTERS(CG Legal Questionnaire Netherlands).DOC
- 322718_1_NLMATTERS(Legal questionnaire Netherlands - applicable regulations).DOC

**Attachment to Reply of 10 October 2006:
322679_1_NLMATTERS(CG Legal Questionnaire Netherlands).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 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

- 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.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

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: Netherlands.
- 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 works¹³ 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):

Film investment tax scheme (www.senternovem.nl/film/algemeen/index.asp;
www.fine.nl)

Dutch Film Fund (www.filmfund.nl)

Rotterdam Film Fund (www.rff.rotterdam.nl)

(source financial thresholds:

Dutch Film Fund, *Film Facts and Figures of The Netherlands*, Edition Summer 2005,
http://www.filmfund.nl/algemeen/pdf_files_algemeen/FFF2005.pdf).

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:

European Convention on Cinematographic Co-Production

Entry into force for the Netherlands on 1 July 1995

Ministry of Foreign Affairs, Bezuidenhoutseweg 67, 2594 AC Den Haag
(www.minbuza.nl/english)

Bilateral treaty with France on the coproduction of films

Entry into force as per 1 January 1989

Ministry of Foreign Affairs, Bezuidenhoutseweg 67, 2594 AC Den Haag
(www.minbuza.nl/english)

Agreement between the Dutch Film Fund and the Flemish Audiovisual Fund
(Belgium)

Entry into force as per 1 January 2004

¹³ “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

Dutch Film Fund
Jan Luykenstraat 2
NL-1071 CM Amsterdam
Tel: 0031 (0)20 570 76 76
Fax: 0031 (0)20 570 76 09
Website: <http://www.filmfund.nl>

Agreement between the Dutch Film Fund and the Filmstiftung Nordrhein-Westfalen
(Germany)

Entry into force as per 1 January 2000

Dutch Film Fund
Jan Luykenstraat 2
NL-1071 CM Amsterdam
Tel: 0031 (0)20 570 76 76
Fax: 0031 (0)20 570 76 09
Website: <http://www.filmfund.nl>

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:¹⁴

There is no general procedure applicable to all funding schemes to assess the nationality of a production. Each scheme uses its own criteria to assess the nationality of the applicant. Funding from the Dutch Film Fund can only be requested by natural persons or legal persons who have lived in the Netherlands or have been located in the Netherlands, respectively, for a period longer than two years, and whose main activity is writing, developing, producing, distributing or exploiting films (and is not a public or commercial licensed broadcaster) (*see infra*). Funding from the Rotterdam Film Fund can only be requested by companies located in the Rotterdam region as defined in the regulations (*see infra*).

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

¹⁴ E.g. the French “Procédure d’agrément”.

No new co-production agreements are expected by the Dutch Film Fund (source: oral information Dutch Film Fund, legal department). The Rotterdam Film Fund is exploring the possibilities of concluding such agreements with, for example, the Flemish Audiovisual Fund, but no concrete steps have been taken as of yet (source: oral information director Rotterdam Film Fund).

- 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 2006,¹⁵ and indicate the name and address of the administration of these funding schemes:¹⁶

No new schemes are expected. The existing tax incentive scheme shall be in force until 1 July 2007. It is likely to be renewed after that date, or replaced by a similar scheme (source: Explanatory Memorandum to the 2006 Regulation, paragraph 3.4.1 *in fine*).

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):

J. Drosterij, *Het Europese filmbeleid : eenduidigheid of verdeeldheid? - een onderzoek naar de beleidsuitgangspunten van de Europese unie ten aanzien van haar filmbeleid en de invulling daarvan door de lidstaten Nederland, Duitsland, Frankrijk en Groot-Brittannië*; Doctoraalscriptie Universiteit van Amsterdam, Faculteit der geesteswetenschappen, available in Boekmanstichting library
<http://www.boekman.nl>

Research voor Beleid (Wils/Ziegelhaar), *Eindrapport Sectoronderzoek film en televisie*, Leiden, 16 June 2005;
<http://www.filmbelangen.nl/rapport.pdf>

Bureau Berenschot, *Evaluatie van de Stimuleringsmaatregelen voor de Nederlandse Film*, Utrecht, 4 September 2003;
<http://parlando.sdu.nl/cgi/login/anonymous>; annex to parliament Bill 25434, document nr. 18 (letter from the government to parliament), 24-9-2003

¹⁵ 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.

¹⁶ E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

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)¹⁷ 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.¹⁸

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: Netherlands
- B. Name of the funding scheme: Film investment tax scheme (*Regeling aanwijzing filminvesteringen*)
- B.3 Name and address of the funding scheme's administration and supervisory authority:

SenterNovem
PO Box 10073
8000 GB Zwolle

- 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

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

The present Regulation is the *Regeling van de Staatssecretaris van Onderwijs, Cultuur en Wetenschap van 28 april 2006, nr. DK/B&B/2006/18785, tot aanwijzing van films als bedoeld in artikel 3.33 en 3.42b van de Wet inkomstenbelasting 2001*(*Regeling*

¹⁷ 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).

¹⁸ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

aanwijzing filminvesteringen 2006) (Regulation on the indication of film investments 2006)

- Entry into force on 8 April 2006 (source: www.wetten.nl).
- Similar tax schemes have been in existence since 1999. Between 1999 and 2002 the scheme had the actual effect of tax planning by domestic and foreign film companies and the effect of structural stimulation of the national film industry by investors has been limited, as research has showed (source: Bureau Berenschot, *Evaluatie van de Stimuleringsmaatregelen voor de Nederlandse Film*, Utrecht, 4 September 2003).
- In mid 2002 a new system came into existence, the *Film Investerings Aftrek* (Film Investment Tax Deduction) and the *Willekeurige Afschrijving Film* (Random Depreciation Film). This was meant to be in place until 31 December 2004, but Parliament asked the Minister to renew it until 31 December 2005 (source: answers to written parliamentary questions 8 March 2004, www.ocenw.nl).
- The major amendments between 2001 and 2006 were the following (reference is made to the *Staatscourant* (Dutch official Gazette) publication; followed by the European Commission state aid approval confirmation relating to each renewed regulation):

Regulation of 14 December 2001, Stb. 2001, 641; State Aid 746/01, 19 June 2002, C(2002)2138fin

Regulation of 18 December 2003, Stb. 2003, 527; State Aid 530/2003, 16 December 2003, C(2003)4635fin

TERRITORIAL CONDITIONS¹⁹

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,

¹⁹ 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.

- 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*):

De in een filmonderneming van een medegerechtigde als bedoeld in artikel 3.3, eerste lid, onderdeel a, gemaakte voortbrengingskosten ter zake van een film met betrekking waartoe op een door of namens de gerechtigde na 7 april 2006 gedane aanvraag door Onze Minister van Onderwijs, Cultuur en Wetenschap schriftelijk is verklaard dat sprake is van een film die van belang is in het kader van de versterking van de filmindustrie in Nederland, kunnen willekeurig worden afgeschreven, mits van de totale drukkende voortbrengingskosten van de film meer dan de helft betrekking heeft op voortbrenging in Nederland en de totale voortbrengingskosten € 15 000 000 niet te boven gaan.

Working translation:

The production costs made in a film company [...] in relation to a film [...] about which the Minister of Culture has declared in writing that it concerns a film which is of importance to strengthen the film industry in the Netherlands, can be deducted randomly, if from the total production costs more than half relates to production in the Netherlands and the total production costs do not exceed EUR 15,000,000.

- 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 approval process has been mandated to SenterNovem. The applicant submits a budget in which he must indicate that more than 50% of the costs relates to production in the Netherlands. If SenterNovem determines that the application fulfils the criteria, it issues a statement to that effect in the name of the Minister of Economic Affairs, and forwards the application to the tax inspector. The tax inspector will grant a 'ruling' that the proposed project can benefit from the tax scheme. The tax inspector will assess, both before and after the project, that the 50% requirement has indeed been complied with. (source: SenterNovem application form; telephone interviews with SenterNovem and tax inspector).

- 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*):

See under B.7. It follows from the 50% requirement that the other 50% can be spent elsewhere. The 50% requirement has not changed over the course of years.

- 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*):

Our research has not revealed any case law or administrative guidelines.

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*):

The scheme only allows tax credits to Dutch citizens and Dutch companies participating in the production via a Dutch limited partnership (the latter being the owner of the film rights), which has the practical effect that more Dutch than foreign producers will use the scheme.

Implicitly, an application could be denied if the requirement ‘strengthening the film industry in the Netherlands’ is not met. The Minister has not made use of his power to issue policy rules on this issue.

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:

There are no provisions in the Constitution, nor in any specific Acts, such as the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy), which is the act that governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,²⁰ 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:

The criteria are qualitative, not automatic. Applicants must submit:

- a specified project budget;
 - a specified financing plan;
 - a sales and exploitation plan;
 - a marketing and promotion plan;
 - a scenario and synopsis;
 - information about the film rights (i.e. licence by the author).
- (source: summary of Regulation at www.senternovem.nl/film/algemeen/index.asp)

CONTACT DETAILS

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

SenterNovem
Mr. G.J. Wissink, applications manager
PO Box 10073
NL-8000 GB Zwolle
Direct dial +31 38 455 34 10
frontoffice@senternovem.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.
PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970
diederik.stols@dlapiper.com

Date of the data collection and processing:
9 October 2006

²⁰ 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.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: Netherlands

B. Name of the funding scheme: *Nederlands Fonds voor de Film* (Dutch Film Fund).

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

Dutch Film Fund
Jan Luyckenstraat 2
NL-1071 CM Amsterdam
Tel: +31 20 570 76 76
Fax: +31 20 570 76 09
Website: <http://www.filmfund.nl>

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

- the dates when these laws and regulations entered into force,

- whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),

and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

(a) *Bijdragenreglement* (Regulation on contributions)

Entry into force in 1994.

Last minor amendments in 2002.

(b) *Uitvoeringsreglement inzake aanvragen voor een financiële bijdrage voor de ontwikkeling, realisering, afwerking, promotie en marketing van een lange speelfilm en voor realisering en afwerking van een korte speelfilm* (Execution regulation on the requests for a financial contribution to the development, realization, post-production, promotion and marketing of a long feature film and the realization and post-production of a short feature film)

Entry into force in 2002.

Last minor amendments 20 January 2005.

(c) *Uitvoeringsreglement inzake aanvragen voor een financiële bijdrage voor de ontwikkeling van een commerciële film* (Execution regulation on the requests for a financial contribution to the development of a commercial film)

Entry into force in 2003

Last (minor) amendments 20 May 2005.

TERRITORIAL CONDITIONS²¹

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*)?

No, there is no explicit obligation. The project itself must ‘contribute to the quality and diversity of the Dutch film climate’ and ‘advance a climate receptive for the art of film’, but there are no actual obligations as to budget spending. This requirement has been consistent over the course of years.

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*):

NA

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*).

NA

²¹ 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.

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*):

NA

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*):

NA

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*):

As indicated under question A.4, funding can only be requested by natural persons or legal persons who have lived in the Netherlands or have been located in the Netherlands, respectively, for a period longer than two years, and whose main activity is writing, developing, producing, distributing or exploiting films (and is not a public or commercial licensed broadcaster). This can be a barrier for foreign applicants seeking funding from the Dutch Film Fund.

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:

There are no such provisions in the Constitution, which hardly mentions the word 'culture'. There are no such provisions in any statutes dealing with cultural issues. The main statute dealing with subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands is the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy). It governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands. The Minister is advised once every four years by a Cultural Committee. This Act does not express particular cultural policy goals stimulating Dutch culture as such.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,²² 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:

NA

CONTACT DETAILS

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

Dutch Film Fund
Mr Hans van der Marck, legal department
Jan Luyckenstraat 2
NL-1071 CM Amsterdam
Tel: +31 20 570 76 76
Fax: +31 20 570 76 09
info@filmfund.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.

²² 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.

PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970

diederik.stols@dlapiper.com

Date of the data collection and processing:

9 October 2006

IDENTIFICATION OF THE FUNDING SCHEME

- B.1 Country/region: Netherlands
- B.2 Name of the funding scheme: Rotterdam Film Fund & Commission (Rotterdams Fonds voor de Film en audiovisuele media)
- B.3 Name and address of the funding scheme's administration and supervisory authority:
- Rotterdam Film Fund & Commission (Rotterdams Fonds voor de Film en audiovisuele media)
Rochussenstraat 3-C
3015 EA Rotterdam
Tel. +31 10 4360747
Fax +31 10 4360553
info@rff.rotterdam.nl
www.rff.rotterdam.nl
- 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
- the dates when these laws and regulations entered into force,
 - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).

TERRITORIAL CONDITIONS²³

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*)?

²³ 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.

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*):

Het RFF verstrekt alleen leningen aan Rotterdamse (co)producenten. Leningen kunnen zowel aan Rotterdamse producties als aan (inter)nationale (co)producties verleend worden. De aanvrager dient een (rechts-)persoon te zijn waarvan/van wie de volledige bedrijfsactiviteiten aantoonbaar, permanent en uitsluitend in/vanuit de regio Rotterdam plaatsvinden en die aldus in de regio Rotterdam gevestigd is, en waarbij de hoofdactiviteit het produceren van audiovisuele producties is. Dit moet onder meer worden aangetoond door inschrijving in het Handelsregister van de KvK Rotterdam, Rotterdamse facturering en bankrekening, en het in Rotterdam beschikken over professionele bedrijfsruimte (waar in het voorkomende geval aantoonbaar permanent eigen personeel werkzaam is). (RFF Film Regulation, clause 2.1, first paragraph)

Working translation:

The RFF only provides loans to Rotterdam (co-)producers. Loans can be granted to Rotterdam productions as well as national or international (co-)productions. The applicant must be a natural or legal person from whom the entire company activities are demonstrably, permanently and exclusively carried out in or from the Rotterdam region and which is thus located in the Rotterdam region, and whose main activity is the (co-)production of audiovisual productions. This must be demonstrated by registration in the commercial register of the Rotterdam Chamber of Commerce, Rotterdam billing and bank account, and availing of professional premises in Rotterdam (the applicant being able to prove that its own personnel works at such premises).

Onder een Rotterdamse (co)producent wordt in dit reglement verstaan: een (rechts-)persoon waarvan/van wie de volledige bedrijfsactiviteiten aantoonbaar, permanent en uitsluitend in/vanuit de regio Rotterdam plaatsvinden en die aldus in de regio Rotterdam gevestigd is, en waarbij de hoofdactiviteit het (co)produceren van audiovisuele producties is. [...]. Een nieuw in de regio Rotterdam gevestigde (co)producent dient een 'track record' op te bouwen met producties die aantoonbaar vanuit de Rotterdamse vestiging geproduceerd zijn. De Rotterdamse (co)producent is mede rechthebbende van de te produceren productie. (source: RFF Film Regulation, clause 1.4)

A Rotterdam (co-) producer as per this Regulation is: a person or legal person of whom the entire company activities are demonstrably, permanently and exclusively

carried out in or from the Rotterdam region and which is thus located in the Rotterdam region, and whose main activity is the (co-) production of audiovisual productions [...]. A newly established (co-) producer must build up a 'track record' of productions which have demonstrably been produced out of the Rotterdam branch. De Rotterdam (co-) producer is co-owner of the production.

- 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 Fund informally checks whether the producer is indeed established in Rotterdam with some kind of establishment (under circumstances, this can be a temporary establishment). Producers must show a certain track record in the film industry indicating their experience in film production. The applicant must indicate from which Rotterdam companies he is intending to purchase goods and services, how many days he intends to shoot in Rotterdam (either in studios or on location), etc. (source: oral information by RFF director).

- 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*):

International co-productions are generally treated favourably. Dutch producers are stimulated to act as co-producers with foreign producers even if the role of the Dutch co-producer is limited. The Rotterdam region will benefit just as much from an international co-production as from a purely national production; moreover, a Dutch producer can gain experience when working with an international experienced producer, which will in itself enhance the track record of the Dutch producer. (source: oral information by RFF director).

- 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*):

Our research has not revealed any judicial or administrative practice. No applicants have sued the RFF for refusing an application.

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*):

Het RFF verleent, in de vorm van het verstrekken van leningen, financiële ondersteuning aan audiovisuele (co)producties, (co)geproduceerd door in de regio Rotterdams gevestigde (co)producenten. Bij het besluit omtrent deze ondersteuning zal in het bijzonder gelet worden op de bijdrage aan het bevorderen en versterken van de economische AV-sector in de regio Rotterdam. Voor alle soorten (co)producties, uitgezonderd animatie, geldt dat deze aantoonbaar de beeldvorming en, ter beoordeling van het Bestuur van het RFF, het imago van de regio Rotterdam dienen te versterken (Rotterdam in beeld en/of filminhoudelijk). (source: RFF Regulations, clause 1.3)

Working translation: The RFF provides, in the form of granting loans, financial support to audiovisual (co-) productions, (co-)produced by (co-)producers having their seat in the Rotterdam region. In the decision process when granting the support, particular attention will be given to the supporting and strengthening of the economic audiovisual sector in the Rotterdam region. For all kinds of (co-)productions, except animated film, these productions must demonstrate the image building and, as per the RFF Board's opinion, the public image of the Rotterdam region (either by shooting in Rotterdam and/or in the contents of the film).

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:

There are no such provisions in the Constitution, which hardly mentions the word 'culture'. There are no such provisions in any statutes dealing with cultural issues. The main statute dealing with subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands is the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy). It governs the subsidies granted by the Ministry of Culture to artists and cultural institutions in the Netherlands. The Minister is advised once every four years by a Cultural Committee. This Act does not express particular cultural policy goals stimulating Dutch culture as such.

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,²⁴ 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:

According to clause 1.4 RFF Regulations (quoted above), newly established producers must show a track record before being able to apply.

According to clause 2.1 second paragraph RFF Regulations, the Board is free to apply other – unspecified – criteria in its decision making process. This gives in fact a full authority to the Board to decide as it pleases. The Regulations also provide for exemptions of all criteria, i.e. they will not always be applied in detail.

According to clause 2.2 RFF Regulations, also the type of establishment of the applicant (e.g. small office in Rotterdam or large production facility in Rotterdam) will determine the amount of the loan.

CONTACT DETAILS

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

Rotterdam Film Fund & Commission
Jacques van Heijningen, director
Rochussenstraat 3-C
3015 EA Rotterdam
Tel +31 10 4360747
Fax +31 10 4360553
info@rff.rotterdam.nl
www.rff.rotterdam.nl

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

Diederik Stols, advocaat
DLA Piper Nederland N.V.
PO Box 75258
NL-1070 AG Amsterdam

Direct dial +31 20 5419 627
Fax: +31 20 5419 970

²⁴ 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.

Date of the data collection and processing:

9 October 2006