

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



NETHERLANDS
SYNTHESIS SHEET

July 2007

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

Acknowledgements

Legal Report by Germann Avocats

Part A of the EU Film Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions was written by Dr. Christophe Germann with important contributions for the Member States Synthesis Sheets, Output Tables and Charts from:

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A Overview of the legal situation in the Netherlands

1 Summary of main findings

Table A – Direct Territorialisation Requirements

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law		
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
									Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N

Netherlands	Film Investment Tax Scheme (FIT)	20,000,000 ¹	Nat	>50% The production costs incurred by a film company can be deducted if from the total production costs more than 50% relate to production in the Netherlands and the total production costs do not exceed € 15,000,000 (2.2)	N/A	N/A	N	N/A	N/A	N
	Dutch Film Fund	14,739,809	Nat	N/A	N/A	N/A	N	N/A	N/A	

¹ The FIT inform that the tax scheme has been put out of order from 2006.

	Rotterdam Film Fund	2,700,000	Nat	N/A	200% of the loan must be spent with Rotterdam facilities companies For international coproduction 150%	N/A	Y The recipient of the loan must be only a natural or legal person whose entire company activities are “demonstrably, permanently and exclusively carried out in or from the Rotterdam region” (4.2)	N/A	N/A	
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Table B – Indirect territorialisation Requirements

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”			Indirect territorialization requirements located under selective aid criteria and procedures			Indirect territorialization based on any other provisions in the law that forces the producer to make local spending		
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
Netherlands	Film Investment Tax Scheme (FIT)	N/A	N/A	N/A	N	N/A	N/A	Y It is expressly provided that project financed shall strengthen the film industry in the Netherlands (2.6)	N/A	N/A
	Dutch Film Fund	N/A	N/A	N/A	N	N/A	N/A	N	N/A	N/A

	Rotterdam Film Fund	N/A	N/A	N/A	Y <i>Inter alia</i> the criteria include the express requirement to promote the Rotterdam audiovisual sector	N/A	N/A	N	N/A	N/A
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Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ²	Degree of the territorialisation ³		
				Funding Scheme Level ⁴	Funding body level	Member State Level ⁵
Netherlands	Film Investment Tax Scheme (FIT)	20,000,000 ⁶	Y more than 50% of production cost must be spent locally		No data	14 %
	Dutch Film Fund	14,739,809	no requirement	= 0	No data	
	Rotterdam Film Fund	2,700,000	Y 200% of the loan must be spent with Rotterdam facilities companies		High	

² Assessment based on replies from local lawyers (see synthesis sheet)

³ High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” > 1
 Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or < 1
 No territorialisation: total amount subject to territorialisation = 0

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

⁴ Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.

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

⁵ “total amount subject to territorialisation”/“total budget available”

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

⁶ The FIT inform that the tax scheme has been put out of order from 2006.

Table D – Co-Production Agreements

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Netherlands	European Convention on Cinematographic Co-Production	1 July 1995	N
	France	1 January 1989	But the “Rotterdam Film Fund” is exploring the possibilities of concluding agreements with the Flemish Audiovisual Fund
	Belgium	1 January 2004	
	Filmstiftung Nordrhein-Westfalen (Germany)	1 January 2000	
	Mexico	18 February 1998	
	Germany	4 January 1999	
	Romania	1 March 1995	
	Slovak Republic	22 October 2001	
	Tunisia	24 July 1967	
	Turkey	7 April 2003	
	Ukraine	22 November 1999	

The Netherlands is currently a party to the European Convention on Cinematographic Co-production. In addition there are three bilateral conventions on co-production agreements (see reply A.3 for the Netherlands).

In the Netherlands there are three funding schemes: the “Film Investment Tax Scheme”, the “Dutch Film Fund”, the “Rotterdam Film Fund” (see reply A.2 for the Netherlands; see Section B.1 below).

2 Synopsis of conventions on co-production agreements

The Netherlands is a party to the European Convention on Cinematographic Co-production, which came into force on 1 July 1995. The Ministry of Foreign Affairs is in charge of its administration and supervision.

The Netherlands is a party to a bilateral treaty with France on co-production of film which came into force on 1 July 1989. The Ministry of Foreign Affairs is in charge of its administration and supervision.

There is also an Agreement between the Dutch Film Fund and the Flemish Audiovisual Fund (Belgium) which came into force on 1 January 2004 and an Agreement between the Dutch Film Fund and the Filmstiftung Nordrhein-Westfalen (Germany) which came into force on 1 January 2000. The Dutch Film Fund is in charge of the administration and supervision of these agreements. For additional information see <http://www.filmfund.nl> (see reply A.3 for the Netherlands).

3 Synopsis of formal nationality certification procedures

In the Netherlands 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” (“DFP”) can only be requested by natural persons or legal persons who have lived (natural persons) in the Netherlands or have been located (legal persons) in the Netherlands for a period longer than two years, and whose main activity is writing, developing, producing, distributing or exploiting films (and who are not a public or commercial licensed broadcaster). See reply A.4 for the Netherlands; see below Section B2.4 for “DFP”.

Funding from the “Rotterdam Film Fund” (“RFF”) can only be requested by companies located in the Rotterdam region as defined in the regulations (see reply A.4 for the Netherlands; see below Part B point 2.4 for “RFF”).

4 Synopsis of expected legal developments

In the Netherlands no new co-production agreements are expected by the “Dutch Film Fund”.

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 yet (see reply A.5 for the Netherlands).

No new schemes are expected. The existing tax incentive scheme remains in force until 1 July 2007. It should be renewed after that date, or replaced by a similar scheme (see reply A.6 for the Netherlands).

B The Dutch funding schemes

1 Overview

In the Netherlands there are three funding schemes: the *Regeling aanwijzing filminvesteringen* (Film investment tax scheme), the *Nederlands Fonds voor de Film* (Dutch Film Fund, DFF) and the *Rotterdams Fonds voor de Film en audiovisuele media* (Rotterdam Film Fund, RFF).

2 Analysis of the “Film investment tax scheme” (FIT)

2.1 Description of the funding scheme

The *Regeling aanwijzing filminvesteringen* - “Film Investment Tax scheme” (“FIT”) is based on 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)*, which came into force on 6 April 2006 (the “Regulation”).

See for more details

http://www.senternovem.nl/film/publicaties/tekst_van_de_regeling.asp.

Similar tax schemes have been in existence since 1999. Between 1999 and 2002 the schemes had only a limited effect on investment in the national film industry. In 2002, two new systems were created: the *Film Investerings Aftrek* (“Film Investment Tax Deduction”) and the *Willekeurige Afschrijving Film* (“Discretionary Depreciation Film”), which ceased on 31 December 2005.

There were significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. First, new systems came into force (the “Film Investment Tax Deduction” and the “Discretionary Depreciation Film”). Furthermore, two important amendments were made before the European Commission’s approval of the Dutch funding schemes: 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.

The supervisory authority of the FIT funding scheme is the *SenterNovem*. For contact information see reply B.14 for the Netherlands for the FIT funding scheme. For additional information see also the website www.senternovem.nl.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme (see reply B.5 for the Netherlands for the FIT funding scheme).

The “Regulation” provides an expenditure requirement. In particular it states that “the production costs incurred by a film company [...] in relation to a film [...] can be deducted at [the producer’s] discretion, if from the total production costs more than half relate to production in the Netherlands and the total production costs do not exceed €15,000,000” (see reply B.6 for the Netherlands for “FIT”).

2.2.2 Practice

There is no judicial and administrative practice reported (see reply B.9 for the Netherlands for “FIT”)

2.2.3 Discussion

It is provided that the applicant must submit the film budget and indicate that more than 50% of the production costs will be spent in the Netherlands.

The *SenterNovem* is in charge of verifying that the application fulfils this condition. The tax inspector will grant a ‘ruling’ that the proposed project can benefit from the tax scheme and will assess the fulfilment of the expenditure obligation (see reply B.7 for the Netherlands for “FIT”).

The “Regulation” sets forth an objective territorialisation requirement, i.e. 50% of the costs of production must be spent in the Netherlands in order to obtain the tax reduction. It should be noted that the tax reduction is also linked to a declaration of the Minister of Culture. As a matter of fact it is necessary that the Minister declare that the film is important “to strengthen the film industry in the Netherlands”.

2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of a tax reduction must spend locally 50% of the production cost (see reply B.5 for the Netherlands for “FIT”).

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial and administrative practice reported (see reply B.10 for the Netherlands for “FIT”)

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for the Netherlands for “FIT”).

2.4. Synopsis of State aid selective granting criteria and procedures

The decision on granting a subsidy is based on qualitative criteria contained in the “Regulation” (see reply B.13 for the Netherlands for the FIT funding scheme).

Furthermore the applicant is required to submit budget and financing details for the project which arguably are evaluated within the selective procedure (for further details see reply B.13 for the Netherlands for the FIT funding scheme).

Arguably the above-mentioned qualitative criteria leave a great discretion to the authority in charge of the decision on granting the subsidy. However no indirect territorialisation requirements are located under the selective State aid granting criteria and procedures.

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

In case of a conflict or an inconsistency between the rules on territorialisation contained in the national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which the country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law.

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

There are no provisions in the Constitution or in any specific act on cultural objectives and justifications. Nor does the *Wet op het specifieke Cultuurbeleid* (Act on the Specific Cultural Policy) provide any cultural clause (see reply B.12 for the Netherlands for the FIT funding scheme).

However, 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 merely contains the following general provision as to the policy standards, which does not relate to national culture: “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”.

Furthermore it is expressly provided that the project financed shall strengthen the film industry in the Netherlands (see B.11 for the Netherlands for “FIT”). Such a requirement arguably qualifies as indirect territorialisation that is not quantifiable.

3 Analysis of the “Dutch Film Fund”

3.1 Description of the funding scheme

The *Nederlands Fonds voor de Film* - “Dutch Film Fund” (“DFF”) is based on *Bijdragenreglement* (Regulation on contributions), which came into force in 1994, most recently amended in 2002, on the *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* (Executive regulation on the requests for a financial contribution to the development, realisation, post-production, promotion and marketing of a long feature film and the realisation and post-production of a short feature film) (“Short feature film Regulation”), which came into force in 2002 and was most recently amended on 20 January 2005, and on the *Uitvoeringsreglement inzake aanvragen voor een financiële bijdrage voor de ontwikkeling van een commerciële film* (Executive regulation on the requests for a financial contribution to the development of a commercial film) (“Commercial film Regulation”), which came into force in 2003 and was most recently amended on 20 May 2005.

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

The authority in charge of the funding scheme administration and supervision is the “Dutch Film Fund” (“DFF”). For contact details see reply B.14 for the Netherlands for “DFF”. For additional information see the website www.filmfund.nl.

This scheme does not contain any objective territorialisation requirements (see reply B.5 for Netherlands for “DFF”). However this scheme contains indirect territorialisation requirements (see reply B.10 for the Netherlands for the “DFF”).

3.2 Synopsis of objective territorialisation requirements

3.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme (see reply B.10 for the Netherlands for the “DFF”).

3.2.2. Practice

There is no relevant judicial or administrative practice reported.

3.2.3. Discussion

N/A

3.2.4. Conclusion

No objective explicit territorialisation requirements apply to this funding scheme (see reply B.10 for the Netherlands for the “DFF”).

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for the Netherlands for the “DFF”).

3.3.2 Discussion

N/A

3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements.

3.4 Synopsis of State Aid selective granting criteria and procedures

The funding scheme grants aid in an automatic way (see reply B.13 for the Netherlands for the “DFF”)

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

See Section 2.5 above.

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

There are no provisions in the Constitution or in any specific act providing cultural clauses. Nor does the *Wet op het specifieke Cultuurbeleid* (Act on Specific Cultural Policy) contain any cultural clause (see reply B.12 for the Netherlands for “DFF”). See Section 2.6 above.

The “DFF” has the objective purpose to “contribute to the quality and diversity of the Dutch film climate” and to “advance a climate receptive to the art of film”.

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

4. Analysis of the Rotterdam Film Fund & Commission (“RFF”)

4.1 Description of the funding scheme

The *Rotterdams Fonds voor de Film en audiovisuele media* - Rotterdam Film Fund & Commission (“RFF”) is based on the *Reglement Rotterdams Fonds Voor De Film en Audiovisuele Media* (“RFF Regulation”), which came into force on 26 June 2006.

The “RFF” provides “loans to Rotterdam (co-)producers”. Loans can be granted to Rotterdam productions as well as national or international (co-)productions.

Since 2002, the regulations have been amended three times, but not significantly. It is relevant to this study 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.

For contact information see reply B.14 for the Netherlands for “RFF” and for additional information on this funding scheme see its website www.rff.rotterdam.nl.

4.2 Synopsis of objective territorialisation requirements

4.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Clause 2.3 RFF Regulation.

4.2.2 Practice

There is no judicial practice reported.

Regarding the administrative practice it must be noticed that the Fund informally checks whether the producer is indeed established in Rotterdam. A temporary establishment can also fulfil the requirements of the “RFF Regulation”. Producers must show a certain track record in the film industry indicating their experience in film production. The applicant is also requested to indicate from which Rotterdam companies s/he is intending to purchase goods and services, how many days s/he intends to shoot in Rotterdam (either in studios or on location), etc. (see reply B.7 for the Netherlands for “RFF”).

4.2.3 Discussion

Clause 2.3 of the RFF Regulation requires that “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 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 (...).”

However the RFF Regulation provides, *inter alia*, that, to be eligible to apply for State aid under this scheme, the applicant must be a natural or legal person whose entire company activities are “demonstrably, permanently and exclusively carried out in or from the Rotterdam region” (see Clause 1.4 of the “RFF Regulation”; replies B.6 and B.7 for the Netherlands for “RFF”). There arguably is an

objective territorialisation also with respect to the requirement that the company's activities must be carried out in or from the Rotterdam region. In addition, there is the administrative practice of requesting that the applicant indicate e.g. from which Rotterdam companies s/he is intending to purchase goods and services.

4.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follow: the recipient of the loan must be a natural or legal person whose entire company activities are “demonstrably, permanently and exclusively carried out in or from the Rotterdam region” and must spend 200% (150% in case of international co-production) of the loan in the Rotterdam region.

4.3 Synopsis of indirect territorialisation requirements

4.3.1 Practice

There is no judicial and administrative practice reported.

4.3.2 Discussion

N/A

4.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.12 for the Netherlands for “RFF”).

4.4 Synopsis of State aid selective granting criteria and procedures

The selective granting procedure is based on eligibility criteria, which determine whether a subject is eligible to apply for loans to “RFF”. However, in addition to the fulfilment of such eligibility criteria (see above Section 4.2), the loan is granted on the basis of the RFF's Board evaluation. According to Clause 2.1 Para. 2 of the “RFF Regulation”, the Board is free to apply other (unspecified) criteria in its decision-making process.

Nevertheless, Clause 2.2 of the “RFF Regulation” provides that 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.

The “RFF Regulation” provides that 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” (see Clause 1.3 of the “RFF Regulation”).

Furthermore, Clause 1.3 of the “RFF Regulation” provides that all types of co-productions, except animated film, must promote the “public image of the Rotterdam region”.

The absence of legally-determined selective criteria and the eligibility criteria including the express requirement to promote the Rotterdam audiovisual sector qualify as indirect territorialisation that is not quantifiable.

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

See Section 2.5 above.

It must also be noticed that the “RFF” funding scheme applies to “Rotterdam co-producers”. Under this funding scheme, Dutch producers are stimulated to act as co-producers with foreign producers even if the role of the Dutch co-producer is limited (see reply B.8 for the Netherlands for “RFF”). Within the “RFF” funding scheme international co-productions are generally treated favourably (see reply B.8 for the Netherlands for “RFF”).

4.6 Synopsis of purpose and cultural clauses applying to the funding scheme

There are no provisions on cultural objectives and justifications either in the Constitution, or in any specific legislation, in particular in the *Wet op het specifieke Cultuurbeleid*-Act (see reply B.12 for the Netherlands for “RFF”; see section 2.6 above).

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

References:

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/Ziegelaar), *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](http://parlando.sdu.nl/cgi/login/anonymous; annex to parliament Bill 25434, document nr. 18 (letter from the government to parliament), 24-9-2003)

Attachments:

- Replies to the legal questionnaire by Diederik Stols, attorney at law, DLA Piper Nederland N.V., Netherlands
- Regulations for the Netherlands