

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

Member State:	POLAND
Re:	Follow Up Reply
Date:	16 November 2006

(...)

thank you for your question. The issue of the nationality assessment procedure was indeed rather vague.

Please find attached the explanation on that point. I hope it makes the issue more transparent.

(...)

Attachment to e-mail of 16 November 2006

- The explanation concerning point A.4.doc

**Attachment to Follow Up Reply of 16 November 2006:
The explanation concerning point A.4.doc**

Subject: the formal procedure to assess the nationality of film and television project as Polish (EU-EEA).

Preliminary remark: the procedure of assessment must be distinguished from the procedure of control of the realisation of the project and meeting the statutory criteria for subsidisation.

There is no formal procedure of assessment of nationality of the project as Polish. Pursuant to § 11.8 of the Regulation of 27th October 2005, the applicant shall include a statement in the application for subsidy, confirming that the nationality criterion resulting from Article 22.1 of the Act of 30th June 2005 has been met.

Such statement is not verified when the application is brought. No specific documents confirming the nationality of the project need to be attached.

Therefore the conclusion is that there is no procedure of assessing the nationality of the project apart from the simple check (performed by the Director of the Institute, who is in charge of the formal verification of the completeness of the documentation attached to the application) whether or not the statement referred to hereabove has been included in the application.

Another issue that must be mentioned is the question of control procedure referred to in Articles 23.4 and 26.1 of the Act.

The Institute is empowered to control the realisation of the project (also in the course of such realisation) and the appropriateness of the usage of the subsidies granted by the Institute. In the course of such control, the officers of the Institute have the mandate to check the documents and other sources of information which have or are likely to have significance for the assessment of the appropriateness of the usage of the subsidy granted for the project. They can also demand oral or written information regarding the realisation of the project granted the subsidy.

(...)

Member State:	POLAND
Re:	Follow Up Question
Date:	09 November 2006

(...)

We are currently in the process of finalizing our country report on your jurisdiction based on your information. We have the follow-up questions as follows:

Under point A.4, you mention the selective granting procedure although the question address the nationality certification procedure. Please specify if there is a formal procedure to assess the nationality of film and television project as Polish.

(...)

Member State:	POLAND
Re:	Follow Up Reply
Date:	16 October 2006

(...)

please find attached the reply to your question concerning the problem of resolving conflicts between the co-production agreements and the domestic provisions on the territorialization requirements.

The answer was a bit complex and complicated so we prepared a supplement to the report. I hope it clears any possible doubts. As a general rule we must assume that the territorialization requirement is not altered by the provisions of international agreements concluded by Poland. There are three exceptions to this rule which we managed to identify.

(...)

Attachments to e-mail of 16 October 2006

- The problem of resolving inconsistencies between the rules of international agreements addressing the co.doc

**Attachment to Follow Up Reply of 16 October 2006:
The problem of resolving inconsistencies between the rules of international agreements addressing the co.doc**

The problem of resolving inconsistencies between the rules of international agreements addressing the co-production issues and national law (territorialization requirements)

/supplement to the Polish report/

The problem of the hierarchy of application of the norms of international agreements and national provisions is rather complex.

As a starting point one must assume that the Poland's constitutional architecture of the sources of law, as regards international agreements binding upon the state, is a hybrid system with strong tendency to the monism doctrine. Therefore, in case of conflicts of norms, provisions of international agreements generally prevail. Therefore norms of international agreements conflicting with national legislation apply with supremacy over the domestic law (statutes, regulations etc.).

However, this only occurs where the norm of international agreement in question is capable of being directly applicable and effective. Specifically since in these circumstances only it is possible to invoke the provisions of international agreements.

Such norm must be (like in the EC law) clear and precise, unconditional and complete.

The norms of bilateral international agreements referring to the issue of co-production do not meet these criteria (with three exceptions which shall be discussed at the end).

Let us take the example of the cultural agreement with Ukraine (mentioned in the report). The provision concerning co-production is worded as follows:

„Artykuł 7

Umawiające się Strony sprzyjać będą rozwijaniu bezpośredniej współpracy w dziedzinie kinematografii poprzez m.in. popieranie:

- (...)
- podejmowania wspólnej produkcji filmowej (...)",

which means in English:

„Article 7

The Contracting Parties **shall support** the development of direct co-operation in the area of cinematography, among others, by **enhancing**:

- (...)
- the undertaking of joint film production (...)",

The norm hereabove is a typical incomplete norm. It provides the parties to the agreement only with a very broad political goal to achieve, without however imposing thereon any clear legal obligation and without (in particular) constituting any rights to the interested subjects

(such as the film producers). Therefore such norm cannot modify the provisions of the domestic law, concerning the problem of territorialization.

Another issue which should be considered here is the problem of indirect effect of the treaties. Even where the norm of an international agreement is not capable of having direct effect, such norm can be indirectly effective (influence interpretation of the domestic law). One must remember though that the indirect effect only occurs “as far as possible”, i.e. the norm as quoted above cannot influence the interpretation of internal law so as to revert its clear and precise meaning.

The construction of norms of the co-production agreements concluded by the Republic of Poland varies. As it was mentioned there are three exceptions to the rules general mode of setting relations between co-production provisions of international agreements and the domestic law. These exceptions concern agreements with Canada, Israel and France.

Let us discuss them in details.

Canada.

Article I.4. of the agreement with Canada reads:

“Any co-production proposed within the framework of the present Agreement shall be considered by both states and in each of these states to be a **national production for any possible purposes**. However, only the Polish co-producer shall have a right to benefits granted to national productions in the Republic of Poland and only the Canadian co-producer shall have a right to benefits granted to national productions in Canada”.

As one can see, this provision can influence the provisions concerning the territorialization requirement in the domestic law of Poland. Namely, the co-production undertaken under this agreement is considered a Polish production regardless the territory in which the subsidy granted by the national subsidization scheme is spent. However, it is only the Polish co-producer who can actually be granted the subsidy and spend it.

Israel.

Article I.2 of the agreement with the State of Israel reads:

“Film co-productions undertaken within the framework of the present Agreement shall be treated by the authorities of both states as the domestic film productions and **are entitled to benefits** concerning the film production business in accordance with the internal laws of both Parties.”

This provision (being clear, precise, unconditional and complete) eliminates any territorialization requirements in force in the regulations of both Parties to the Agreement.

France.

Article I.1. of the agreement with France reads:

“Films realized in co-production within the framework of the present Agreement are treated by the authorities of both countries as domestic film productions.

They obtain full benefits deriving from the legal provisions in force in both countries”.

This provision (being clear, precise, unconditional and complete) also (just as it was in case of the agreement with Israel) eliminates any territorialization requirements in force in the regulations of both Parties to the Agreement.

Even though the agreement was concluded long before the enactment of the new Constitution of 1997 (providing for the primacy of norm of international agreements), it nevertheless takes priority over the domestic laws and regulations.

Concluding: international agreements on co-production do not alter the territorialization requirements unless the norms of the former are clear, precise, unconditional and complete. **None** of the bilateral agreements (more precisely: their co-production provisions) as enumerated in the report appears to be an agreement capable of being directly effective and applicable, as far as the co-production related provisions are concerned, except for the agreements with Canada, Israel and France. Therefore one must conclude that the application of the national provisions on the territorialization requirements is not altered by the provisions of bilateral co-production agreements concluded by the Republic of Poland (apart from the three agreements referred to in the preceding sentence).

Member State:	POLAND
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:	POLAND
Re:	Reply
Date:	02 October 2006

(...)

please find attached the Polish report on territorialisation and the legal acts quoted in B.4 of the questionnaire.

(...)

Attachments to e-mail of 02 October 2006

- Act on Cinematography
- CG Legal Questionnaire 160906 (1) - Poland.doc
- ordinance of 2.09.2005
- Regulation of 18.08.005
- regulation of 24.11.2005
- regulation of 27.10.2005.pdf

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS
(Version of 15 September 2006)**

PRELIMINARY REMARK

This questionnaire is divided in two parts. Part A concerns general questions and part B specific questions related to State aid for independent film and television production, including State aid based on co-production agreements, in the context of territorialisation requirements.

Some information that could be relevant for this questionnaire is available on-line, e.g.:

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: http://korda.obs.coe.int/web/recherche_fonds.php 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: **Poland**

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):

1. **Polski Instytut Sztuki Filmowej [Polish Institute of Cinematographic Arts]**
2. **Telewizja Polska S.A. – Agencja Filmowa [Polish Television Co. – Film Agency]. This funding scheme shall not be referred to in Part B of this questionnaire, since the provisions establishing this instrument of subsidisation entered into force on 1th January 2006 (see: A.6 below *in fine*).**

(source of information: Polski Instytut Sztuki Filmowej, Ms. Kinga Gałuszka, Telewizja Polska S.A., Ms. Maria Walichnowska)

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:

In all cases the Ministry of Culture and National Heritage is in charge of administration and supervision of such conventions or agreements. The detailed structure of the Ministry is subject to frequent changes, however the Department of Film is at the moment responsible for co-production issues.

The agreements:

1. **Europejska Konwencja o koprodukcji filmowej [European Convention on film co-production], Strasbourg, 2nd October 1992, entry into force: 1th April 2003.**
2. **Program współpracy kulturalnej między Ministrem Kultury Rzeczypospolitej Polskiej a Ministerstwem Kultury, Młodzieży i Sportu Republiki Albanii na lata 2004-2006 [The Co-operation Programme between the Minister of Culture of the Republic of Poland and the Ministry of Culture, Youth and Sports of the Republic of Albania for 2004-2006], Warsaw, 13th August 2004, entry into force: 17th June 2004 (end of validity: 31th December 2006) – Article 11.**
3. **Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Białoruś o współpracy w dziedzinie kultury, nauki i oświaty [Agreement**

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

- between the Government of the Republic of Poland and the Government of the Republic of Belarus on the co-operation in the area of culture, science and education], Warsaw, 27th November 1995, entry into force: 29th April 1996 – Article 6.
4. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Federacyjnej Republiki Brazylii o współpracy kulturalnej [Agreement between the Government of the Republic of Poland and the Government of the Federal Republic of Brasil on the cultural co-operation], Brasilia, 29th July 1991, entry into force: 14th August 1992, Article II.
 5. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Kanady o koprodukcji filmowej [Agreement between the Government of the Republic of Poland and the Government of Canada on the film co-production], signed: 27th May 1996, entry into force: 3rd September 1999.
 6. Umowa Polsko-Francuska o współpracy w dziedzinie kinematografii [Polish-French agreement on the co-operation within the field of cinematography], signed: 5th June 1970, entry into force: 28th October 1970.
 7. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Państwa Izrael o koprodukcji filmowej [Agreement between the Government of the Republic of Poland and the Government of the State of Israel on the film co-production], signed: 16th February 2004, not yet entered into force.
 8. Program współpracy w dziedzinie kultury między rządem Rzeczypospolitej Polskiej i Rządem Federalnym Federalnej Republiki Jugosławii na lata 2002, 2003, 2004, 2005 [Co-operation Programme in the field of education and culture between the Government of the Republic of Poland and the federal Government of the Federal Republic of Yugoslavia for 2002, 2003, 2004, 2005], Warsaw, 28th January 2003, entry into force: 28th January 2003 – Article 29.
 9. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Litewskiej o współpracy w dziedzinach kultury, oświaty i nauki [Agreement between the Government of the Republic of Poland and the Government of the Lithuanian Republic on the co-operation in the fields of culture, education and science], Vilnius, 17th December 1998, entry into force: 5th January 2002 – Article 13.
 10. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Łotewskiej o współpracy kulturalnej, naukowej i oświatowej [Agreement between the Government of the Republic of Poland and the Government of the Latvian Republic on cultural, scientific and educational co-operation], Riga, 1st July 1992, entry into force: 30th December 1992 – Article 13.
 11. Umowa o współpracy w dziedzinie edukacji i kultury między Rządem Rzeczypospolitej Polskiej a Rządem Meksykańskich Stanów Zjednoczonych [Agreement between the Government of the Republic of Poland and the Government of the United States of Mexico], Warsaw, 12th June 1997, entry into force: 18th February 1998 – Article 11.
 12. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Federalnej Niemiec o współpracy kulturalnej [Agreement between the Government of the Republic of Poland and the Government of the Federal Republic of Germany on cultural co-operation], Bonn, 14th July 1997, entry into force: 4th January 1999 – Article 11.
 13. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Rumunii o współpracy w zakresie nauki, szkolnictwa i kultury [Agreement between the Government of the Republic of Poland and the Government of Romania on

- the co-operation within the field of science, education and culture], Warsaw, 23rd June 1994, entry into force: 1st March 1995 – Article 17.
14. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Słowackiej o współpracy kulturalnej, oświatowej i naukowej [Agreement between the Government of the Republic of Poland and the Government of the Slovak Republic on cultural, educational and scientific co-operation], Bratislava, 23rd March 2000, entry into force: 22nd October 2001 – Article 16.
 15. Umowa o współpracy kulturalnej między Rządem Polskiej Rzeczypospolitej Ludowej a Rządem Republiki Tunezyjskiej [Agreement on cultural co-operation between the Government of the Polish People's Republic and the Government of the Tunisian Republic], Tunis, 27th April 1966, entry into force: 24th July 1967 – Article II.
 16. Program realizacji umowy między Rządem Rzeczypospolitej Polskiej a Rządem Republiki Turcji o współpracy w dziedzinie nauki, oświaty i kultury na lata 2003-2006 [Agreement execution programme between the Government of the Republic of Poland and the Government of the Republic of Turkey on the co-operation within the field of science, education and culture in for 2003-2006], Ankara, 7th April 2003, entry into force: 7th April 2003 – Article 25.
 17. Umowa między Rządem Rzeczypospolitej Polskiej a Rządem Ukrainy o współpracy w dziedzinie kultury, nauki i oświaty [Agreement between the Government of the Republic of Poland and the Government of Ukraine within the field of culture, science and education], Kiev, 20th May 1997, entry into force: 22nd November 1999 – Article 7.

(source of information: <http://www.msz.gov.pl/apps/apps/?portlet=bpt/searchD> – Internet treaty database of the Ministry of Foreign Affairs)

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

<p>I. Polski Instytut Sztuki Filmowej [Polish Institute of Cinematographic Arts]</p>

1. Formal procedure of assessment and certification of the production's nationality

Pursuant to § 6 of the Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts (O.J. 2005, No 219, item 1870), the decision on granting a subsidy is taken, on application of the

² E.g. the French “Procédure d’agrément”.

interested subject, by the Director of the Polish Institute of Cinematographic Arts (Institute) following the opinion from the experts referred to in Article 24 of the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111). These experts are appointed by the Minister of Culture and National Heritage from among the representatives of the filmmakers and opinion makers. Such opinion only covers the criteria referred to in Article 22.3 of the Act though (“substantive criteria”).

2. Eligibility criteria

Legal basis: Article 22 of the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111) – hereafter Act; § 1 of the Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts (O.J. 2005, No 219, item 1870) – hereafter: Regulation.

Criteria named in the Act:

1) Nationality criterion

Pursuant to Article 22.1 of the Act, any subject originating from Poland or other Member State of the European Union or from an EFTA Member – party to the EEA, can apply for subsidies, regardless of its organisational or legal form or the structure of ownership thereof.

2) Public law related criterion

Pursuant to Article 22.2 of the Act, an applicant shall not be:

- sentenced under a final judgement for certain criminal offences such as these against the authenticity of documents or against property, fiscal penal law offences or other related to the pursuit of economic activity,
- a legal person/an organisational unit other than a legal person whose member of the management or a shareholder is a person referred to in the preceding indent,
- indebted under public law, being in the course of bankruptcy procedure etc.

3) Substantive (qualitative) criteria

Pursuant to Article 22.3 of the Act, the following eligibility criteria are taken into consideration while assessing an application:

- artistic, explorative and ethical features,
- significance to national culture and strengthening Polish language and tradition,
- enhancing European cultural diversity,
- expected effects of the planned undertaking,
- economic and financial conditions of realisation.

The Regulation provides for more detailed elements to be taken into account while defining the scope of criteria enumerated above (see details in B.13 below).

3. Scope of certification

The applicant must include, in the application for subsidy, the statement confirming that the criteria referred to both in the Act and the Regulation are met (§ 11 of the Regulation). The Director of the Institute has to review the application within 90 days on the receipt thereof (§ 11.2 of the Regulation). Applications that do not meet the formal requirements referred to in § 11 of the Regulation are not subject to review (there is formal control of the application before it is forwarded to the experts and further processed). Since § 6 of the Regulation provides that the decision on granting the subsidy is taken by the

Director of the Institute (and only once such decision is issued the contract on subsidisation can be concluded), such a decision cannot but be treated as administrative decision within the meaning of the Code of Administrative Procedure. Therefore such decision must meet the criteria of administrative decision stipulated in Article 107 of the Code. If the interested party (the applicant) disagrees with the decision, it is possible to appeal therefrom to the Minister of Culture and National Heritage and (in case of unsuccessful result of the appeal) to bring a complaint to the Voivodship Administrative Court in Warsaw (judicial-administrative procedure consists of two instances).

II. Telewizja Polska S.A. – Agencja Filmowa [Polish Television Co. – Film Agency]

Pursuant to Article 19.7 of the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111), the public broadcaster (Telewizja Polska S.A.) is obliged to spend at least 1,5% of its yearly gross income, achieved from the statutory fee for the possession of TV-sets, on film production. The Act does not encompass any specific provisions regulating the eligibility criteria (in particular – nationality criterion). The decision on the choice of a production to realise rests with the public broadcaster.

(source of information: legal acts)

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

Assessing whether the entry into force of any new co-production agreements is expected in the incoming year is not possible because of the very limited amount of data available to the public.

(source of information: Department of International Co-operation and Department of Film of the Ministry of Culture and National Heritage)

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

On 19th August 2005 the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111) entered into force (except for Articles 19 and 31 point 23, which entered into force on 1st January 2006), establishing the Polish Institute of Cinematographic Arts. This Institute is currently the basic public funding

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.

scheme for film production in Poland. The Act as such does not contain any territorialisation requirements, however on the basis of Article 23.6 of the Act the Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts (O.J. 2005, No 219, item 1870) was adopted. In accordance with § 10.2 of the Regulation, the contract on subsidisation can include a territorialisation clause. Pursuant to such clause subject receiving the subsidy can be obliged to spend up to 80% of the subsidy granted by the Institute within the territory of the Republic of Poland. After the amendment of the Regulation of 5th May 2006, such obligation must not cover the costs of preparation of film project, distribution and broadcasting insofar as they are included in the costs of producing the film. Before this amendment, the clause could not be included in the contract where, taking into account the undertaking concerned, it would be impossible, highly complicated or unjustifiable. Article 19 of the Act encompasses provisions relating to subsidisation by the public broadcaster (see: A.4 point II above).

(source of information: legal acts)

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):
There are none.

(source of information: according to the knowledge accessible to the researcher and information supplied by the relevant government agencies, no such reports, studies or other materials are made available to the public, have they ever been prepared)

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: **Poland**
- B. Name of the funding scheme: **Polski Instytut Sztuki Filmowej [Polish Institute of Cinematographic Arts]**
- B.3 Name and address of the funding scheme's administration and supervisory authority:
Funding scheme: Polski Instytut Sztuki Filmowej, ul. Krakowskie Przedmieście 21/23, 00-071 Warszawa, Poland
Supervisory authority (pursuant to Article 10.1 of the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111): Ministerstwo Kultury i Dziedzictwa Narodowego, ul. Krakowskie Przedmieście 15/17, 00-071 Warszawa, Poland

(source of information: legal acts, Internet: www.pisf.gov.pl)

- 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).

1. *Ustawa z dnia 30 czerwca 2005 r. o kinematografii, Dz. U. z 2005 r., nr 132, poz. 1111 (weszła w życie w dn. 19 sierpnia 2005 r., z wyjątkiem art. 19 i art. 32 pkt. 23, które weszły w życie w dn. 1 stycznia 2006 r.).*

Act of 30th June 2005 on Cinematography, O.J. 2005, No 132, item 1111, (entered into force on 19th August 2005, except for Articles 19 and 32 point 23 which entered into force on 1st January 2006.

2. *Rozporządzenie Ministra Kultury z dnia 27 października 2005 r. w sprawie udzielania przez Polski Instytut Sztuki Filmowej dofinansowania przedsięwzięć z zakresu kinematografii, Dz. U. z 2005 r., nr 219, poz. 1870 (weszło w życie w dn. 31 października 2005 r.), zmienione rozporządzeniem Ministra Kultury i Dziedzictwa Narodowego z dnia 5 maja 2006 r. zmieniającym rozporządzenie w sprawie udzielania przez Polski Instytut Sztuki Filmowej dofinansowania przedsięwzięć z okresu kinematografii, Dz. U. z 2006 r., nr 78, poz. 545 (weszło w życie w dn. 9 maja 2006 r.).*

Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts, O.J. 2005, No 219, item 1870 (entered into force on 31st October 2005), as amended by Regulation of the Minister for Culture and National Heritage of 5th May 2006 amending Regulation on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts, O.J. 2006, No 78, item 545 (entered into force on 9th May 2006)⁷.

3. *Rozporządzenie Ministra Kultury i Dziedzictwa Narodowego z dnia 24 listopada 2005 r. w sprawie szczegółowego trybu i sposobu przeprowadzania kontroli podmiotów otrzymujących dofinansowanie z Polskiego Instytutu Sztuki Filmowej, Dz. U. z 2005 r., nr 242, poz. 2044 (weszło w życie w dn. 27 grudnia 2005 r.).*

Regulation of the Minister of Culture and National Heritage of 24th November 2005 on the specific procedure and methods of exercising control over the subjects receiving financial subsidies from the Polish Institute of Cinematographic Arts, O.J. 2005, No 242, item 2044 (entered into force on 27th December 2005).

4. *Rozporządzenie Ministra Kultury z dn. 18 sierpnia 2005 r. w sprawie konkursu na dyrektora Polskiego Instytutu Sztuki Filmowej, Dz. U. z 2005 r., nr 160, poz. 1352 (weszło w życie w dn. 24 sierpnia 2005 r.).*

Regulation of the Minister of Culture of 18th August 2005 on the competition for the post of Director of the Polish Institute of Cinematographic Arts, O.J. 2005, No 160, item 1352 (entered into force on 24th August 2005).

5. *Zarządzenie Ministra Kultury z dnia 2 września 2005 r. w sprawie nadania statutu Polskiemu Instytutowi Sztuki Filmowej, M.P. z 2005 r., nr 52, poz. 722 (weszło w życie w dn. 12 września 2005 r.).*

⁷ This amendment was a result of state aid notification procedure initiated by the Government of the Republic of Poland on 4th October 2005 (SG (2005) A/9026), referring to subsidisation of film production by the Polish Institute of Cinematographic Arts. The Commission presented objections concerning *inter alia* the territorialisation clause in the Regulation of 27th October 2005. Subsequently the Minister of Culture and National Heritage issued the Regulation of 5th May 2006 amending the Regulation of 27th October 2006. The Commission issued a notification of 16th May 2006 concluding that the state aid scheme (as amended) is in conformity with the EC Treaty (see: K (2006) 1862 of 16th May 2006).

Ordinance of the Minister of Culture of 2nd September 2005 on the adoption of the statute of the Polish Institute of Cinematographic Arts, *Monitor Polski* 2005, No 52, item 722 (entered into force on 12th September 2005).

(source of information: www.pisf.gov.pl)

TERRITORIAL CONDITIONS⁸

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 / No

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*):

Rozporządzenie Ministra Kultury z dnia 27 października 2005 r. w sprawie udzielania przez Polski Instytut Sztuki Filmowej dofinansowania przedsięwzięć z zakresu kinematografii, Dz. U. z 2005 r., nr 219, poz. 1870 (weszło w życie w dn. 31 października 2005 r.), zmienione rozporządzeniem Ministra Kultury i Dziedzictwa Narodowego z dnia 5 maja 2006 r. zmieniającym rozporządzenie w sprawie udzielania przez Polski Instytut Sztuki Filmowej dofinansowania przedsięwzięć z okresu kinematografii, Dz. U. z 2006 r., nr 78, poz. 545 (weszło w życie w dn. 9 maja 2006 r.).

Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts, O.J. 2005, No 219, item 1870 (entered into force on 31st October 2005), as amended by Regulation of the Minister for Culture and National Heritage of 5th May 2006 amending Regulation on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts, O.J. 2006, No 78, item 545 (entered into force on 9th May 2006)

§ 10.1. Podmiot otrzymujący dofinansowanie przedsięwzięcia może korzystać z uzyskanych środków w dowolnym państwie członkowskim Unii Europejskiej lub innym państwie będącym stroną umowy o Europejskim Obszarze Gospodarczym

⁸ 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.

2. W umowie o dofinansowanie podmiot otrzymujący dofinansowanie może zostać zobowiązany do wydatkowania do 80% uzyskanych z Instytutu środków na terytorium Rzeczypospolitej Polskiej, chyba że z uwagi na przedmiot przedsięwzięcia byłoby to niemożliwe, wysoce utrudnione lub nieuzasadnione.

§10.1. The subject receiving financial subsidy for an undertaking can use the funds in any Member State of the European Union and/or other state being party to the Agreement on European Economic Area.

2. The contract on financial subsidy can contain an obligation, binding upon the subject receiving financial subsidy, to spend up to 80% of funds received from the Institute within the territory of the Republic of Poland, unless it is impossible, highly complicated or unjustifiable taking into account the object of the undertaking.

As of 9th May 2006 the amendment of §10.1. of the Regulation entered into force, reading as follows:

2. Podmiot otrzymujący dofinansowanie przedsięwzięcia, o którym mowa w § 1 pkt 1 lit. b, może zostać zobowiązany do wydatkowania maksymalnie do 80% uzyskanych z Instytutu środków na terytorium Rzeczypospolitej Polskiej. Zobowiązanie to nie może dotyczyć kosztów przygotowania projektów filmowych, dystrybucji i rozpowszechniania, jeśli są wliczone w koszty produkcji filmu.

2. The subject receiving financial subsidy for an undertaking referred to in § 1 point 1 (b)⁹ can be obliged to spend up to a maximum of 80% of funds received from the Institute within the territory of the Republic of Poland. This obligation shall not concern costs of preparation of film projects, distribution and broadcasting, insofar as they are included in the costs of producing the film.

(source of information: legal acts)

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*).

○ **Article 23.6. point 2 of the Act of 30th June 2005 on Cinematography (O.J. 2005, No 132, item 1111) delegates the power to adopt a regulation specifying essential elements of civil law-based contracts, being legal basis for granting the financial subsidies, to the Minister of Culture and National Heritage. Regulation of the Minister of Culture of 27th October 2005 contains such provisions in its Chapters 2-4. Nonetheless, the Regulation leaves (to certain extent) wide discretionary power of the Director of the Institute to define the content of contracts for subsidisation. § 16 of the Regulation of the Minister of Culture of 27th October 2005 contains only very general conditions to be met by such contracts, such as that they shall encompass “the scope of planned works and dates of their realisation”, adding that the contract may contain other supplementary elements which, in the opinion of the Director of the Institute, can be useful for enhancing the effectiveness of granted subsidy, its proper usage and balancing. Nevertheless, taking into account the wording of §10.1 and §10.2 of the Regulation of the Minister of Culture of 27th October 2005, contracts for subsidisation of film production can contain the territorialisation clauses establishing a minimum sum**

⁹ § 1 of the Regulation generally defines the subject matter of the Regulation, being *inter alia* the specific conditions and methods of granting the financial subsidies by the Institute for producing films (point 1 (b)).

(derived from the subsidy) to be spent within the territory of Poland. The maximum level defined in the Regulation is 80%.

Since the Republic of Poland acceded to the European Union on 1st May 2004, the beneficiaries of subsidies are free to spend the rest of the subsidy (ranging from 20% to 100% depending on the circumstances of the given contract) within the territory of the EU Member States and states being Members of the EFTA – parties to the EEA Agreement. It is not permitted though to spend the funds outside the EU/EEA states.

(source of information: legal acts)

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*):

Pursuant to Article 91.2 of the Constitution of the Republic of Poland of 2nd April 1997, provisions of international agreements ratified under the approval from the *Sejm* (lower chamber of the Parliament) expressed in statutes, have priority of application over domestic statutes. Therefore the territorialisation clause contained in the Regulation of the Minister of Culture of 27th October 2005 must be interpreted in conformity with international agreements binding upon the Republic of Poland and, where necessary, norms of international agreements have supremacy of application over internal law of Poland. Taking into account the wording of agreements referred to in A.3 above, none of them can influence the way in which the territorialisation clause is to be interpreted. Referring in particular to the Strasbourg Convention (A.3 (1)), the provision contained in Article 4 thereof excludes discrimination of European cinematographic works (as defined pursuant to Annex II to the Convention) as regards application for subsidies, nonetheless it does not alter the obligation based on the territorialisation clause. Therefore co-producers can apply for and be granted a subsidy, but it does not change their obligation to spend the funds so obtained within the territory of the Republic of Poland if the contract of subsidisation so provides.

As regards the remaining agreements referred to in A.3 above it should be observed that all of them constitute a political obligation to support co-production rather than a legally binding norm providing for obligation to extend national fund schemes onto co-productions. In particular none of them excludes the territorialisation clause.

(source of information: legal acts)

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*):

The novelty of the legal environment referred to above is the reason why no jurisprudence based thereon has been developed. As for administrative practice – no guidelines were issued.

(source of information: www.nsa.gov.pl – website of the Supreme Administrative Court)

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/**No**

The selection criteria referred to in A.4.I.2.3 above (substantive criteria as enumerated in the Act and defined in more detailed manner in the Regulation) do not leave any scope for territorial conditions to be applied implicitly or factually. Moreover, Polish authorities declared that they would not employ the substantive criteria so as to discriminate film productions other than those realised within the territory of Poland (see: par. 49 of the notification of the Commission of 16th May 2006, K (2006) 1862).

(source of information: notification of the Commission, legal acts)

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*):

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:

Ustawa z dnia 30 czerwca 2005 r. o kinematografii, Dz. U. z 2005 r., nr 132, poz. 1111
Act of 30th June 2005 on Cinematography, O.J. 2005, No 132, item 1111

Art. 3.1. Państwo sprawuje mecenat nad działalnością w dziedzinie kinematografii, jako części kultury narodowej, polegający w szczególności na wspieraniu produkcji i promocji filmu, upowszechnianiu kultury filmowej oraz ochronie dziedzictwa kulturowego w dziedzinie filmu.

Article 3.1. The State holds patronage over activities in the area of cinematography, as a part of national culture, consisting of, in particular, supporting the production and

promotion of cinema, diffusing the film culture and protection of cultural heritage in the field of cinema.

(source of information: legal acts)

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:

The scheme distributes aid selectively. Selection is based on evaluation of each project according to the following qualitative criteria (§ 4 of the Regulation Regulation of the Minister of Culture of 27th October 2005 on granting the financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts, O.J. 2005, No 219, item 1870):

- 1. Artistic, explorative and ethical values, including:**
 - a) precision of drama construction, psychological profundity of characters, quality of dialogues,**
 - b) application of innovative forms of expression,**
 - c) exploration of new topical fields and current social problems,**
 - d) promotion of ethical and educational values, also among children and youth.**
- 2. Significance to national culture and strengthening Polish language and tradition, including:**
 - a) invocation of national cultural heritage,**
 - b) highlighting significant historical issues,**
 - c) enhancing national identity and promoting patriotic contents, in particular in works addressed to children and youth,**
 - d) presenting heritage and diversity of regions,**
 - e) protection and maintenance of the heritage of Polish film culture.**
- 3. Enhancing European cultural diversity, including:**
 - a) realisation of common international projects,**
 - b) promotion of European cultural heritage,**
 - c) fostering the common values of the European culture.**
- 4. Foreseeable effects of the planned undertaking, including:**
 - a) development and employment of modern technologies in the area of recording and projection of movies,**
 - b) international range of the project,**
 - c) diversification of the structure of audience and participants,**
 - d) territorial scope of the project,**
 - e) development of independent film production and small- and medium-sized enterprises,**
 - f) realisation of horizontal policies of the European Union.**
- 5. Economic and financial conditions of realisation, including:**
 - a) share of extra-public resources in the budget of the undertaking,**
 - b) involvement of international resources,**
 - c) expected economic result of the undertaking,**

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.

d) the producer's and director's professional experience.

(source of information; legal acts)

CONTACT DETAILS

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

Ms. Kinga Galuszka

in charge of co-productions

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