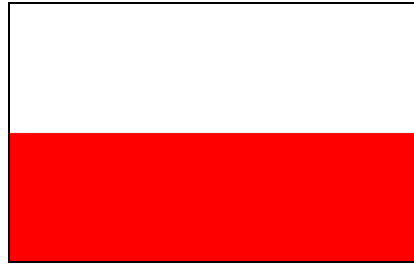


**CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS**  
(Annex to Part A)

**MEMBER STATE LEGAL REVIEW**



**POLAND**  
**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](http://www.eufilmstudy.eu)**

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### **Legal Report by Germann Avocats**

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## A Overview of the legal situation in Poland

### 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

<b>Poland</b>	Polish Institute of Cinematographic Arts (PICA)	20,500,000 (total budget 2007; sources allocated for film production: 14,100,000 Euro)	Nat	N/A	<p>clause to be included in the contract of subsidisation (no direct obligation) to spend locally up to the 80% of the subsidy</p> <p>Amended in 2006: the obligation to spend 80% of the subsidy 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 (2.2)</p>	N/A	N/A	N/A	N/A	<p>Amendment of the PICA.</p> <p>New funding scheme in 2006: <i>Telewizja Polska S.A. – Agencja Filmowa</i></p> <p>No other expected funding scheme</p>
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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
Poland	Polish Institute of Cinematographic Arts (PICA)	N/A	N/A	N/A	Y The criteria include <i>inter alia</i> the development and employment of modern technologies in the area of recording and projection of films, the territorial scope of the project and the expected economic results. (2.4)	N/A	N/A	N	N/A	N/A

**Table C – Budget and Territorialisation Intensity**

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law <sup>1</sup>	Degree of the territorialisation <sup>2</sup>		
				Funding Scheme Level <sup>3</sup>	Funding body level	Member State Level <sup>4</sup>
<b>Poland</b>	Polish Institute of Cinematographic Arts (PICA)	20,500,000 (total budget 2007; sources allocated for film production: 14,100,000 Euro)	Local spending shall be up to the 80% of the subsidy (no direct obligation)		No data	80 %

<sup>1</sup> Assessment based on replies from local lawyers (see synthesis sheet)

<sup>2</sup> 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

<sup>3</sup> 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

<sup>4</sup> “total amount subject to territorialisation”/“total budget available”

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

**Table D – Co-Production Agreements**

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Poland	European Convention on film co-production	1 <sup>st</sup> April 2003	N
	Albania	17 June 2004 (end of validity: 31 December 2006)	
	Belarus	29 April 1996	
	Brasil	14 August 1992	
	Canada	3 September 1999	
	France	28 October 1970	
	Israel	Not yet (2004)	
	Yugoslavia for 2002, 2003, 2004, 2005	28 January 2003	
	Lithuania	5 January 2002	
	Latvia	30 December 1992	
	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		

Poland is currently a party to the European Convention on Cinematographic Co-production. In addition there are 16 bilateral conventions on co-production (see reply A.3 for Poland).

In Poland there is one funding scheme: the Polish Institute of Cinematographic Arts.





## **2 Synopsis of conventions on co-production agreements**

Poland is a party to the European Convention on Cinematographic Co-production, which came into force on 1 April 2003.

Poland is a party to 16 bilateral conventions on co-production (see reply A.3 for Poland for the detailed list)<sup>1</sup>.

The Polish Ministry of Culture and National Heritage is in charge of administration and supervision of these conventions. In particular, the Department of Film of the Ministry is currently responsible for co-production issues (see reply A.3 for Poland; for additional information see the website <http://www.msz.gov.pl>).

## **3 Synopsis of formal nationality certification procedures**

In Poland there is no formal procedure of assessment of nationality of the project as Polish. Furthermore, in Poland there is a selective State aid granting procedure provided by the Act on Cinematography of 30 June 2005 and by the Regulation of the Minister of Culture on granting financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts (PICA Subsidies Regulation) of 27 October 2005.

Pursuant to §11.8 of the Regulation of 27 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 30<sup>th</sup> 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, there is no procedure for 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 has been included in the application.

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

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<sup>1</sup> This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

The Institute is empowered to control the realization of the project (also during the course of such realization) 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 realization of the project granted the subsidy (see reply A.4 for Poland and the follow-up reply of 16 November 2006; see below Section B.2.4).

#### **4 Synopsis of expected legal developments**

There are no new co-production agreements expected as of 1 January 2007 (see reply A.5 for Poland).

On 19 August 2005 the Act on Cinematography establishing the Polish Institute of Cinematographic Arts PICA came into force. The Act (see below Part B) does not include any territorialisation requirements. However, on the basis of Article 23 Para. 6 of the Act, the PICA Subsidies Regulation was adopted. Article 10 Para. 2 of the PICA Subsidies Regulation provides that the contract on subsidisation can include a territorialisation clause concerning expenditures (see reply A.6 for Poland; see below Section B.2). However, this Regulation was amended on 5 May 2006: the obligation to spend 80% of the subsidy granted by the PICA within the territory of the Republic of Poland 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 (see reply B.4 for Poland for PICA funding scheme).

The *Telewizja Polska S.A. – Agencja Filmowa* (Polish Television Co. – Film Agency) was established by Articles 19 and 31 point 23 of the Act on Cinematography which came into force later [than the main Act] on 1 January 2006 (see replies A.2 and A.6 for Poland).

## **B The Polish funding schemes**

### **1 Overview**

The *Polski Instytut Sztuki Filmowej* (Polish Institute of Cinematographic Art, PICA) is currently the basic public funding scheme for film production in Poland.

### **2 Analysis of the Programme for the Development of Cinema in Poland**

#### **2.1 Description of the funding scheme**

The PICA is based on the *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 on Cinematography of 30 June 2005, Act on Cinematography), which came into force on 19 August 2005 (except for Articles 19 and 32 point 23 which came into force on 1 January 2006; see above Part A point 5) and on the *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 on granting financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts of 27 October 2005), which came into force on 31 October 2005, most recently amended by the Regulation of the Minister for Culture and National Heritage amending Regulation on granting financial subsidies for undertakings in the area of cinematography by the Polish Institute of Cinematographic Arts of 5 May 2006 which came into force on 9 May 2006 (PICA Subsidies Regulation).

Furthermore the PICA is regulated by the *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.)* (Ordinance of the Minister of Culture on the adoption of the statute of the Polish Institute of Cinematographic Arts of 2 September 2005), which came into force on 12 September 2005.

Two further regulations are also relevant:

- the *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 on the specific procedure and methods of exercising control over subjects receiving financial subsidies from the Polish Institute of Cinematographic Arts, of 24 November 2005), which came into force on 27 December 2005

- the *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 on the competition for the post of Director of the Polish Institute of Cinematographic Arts, of the 18 August 2005), which came into force on 24 August 2005.

There were significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study, as the PICA itself was established in 2005.

The PICA supervisory authority, pursuant to Article 10 Para. 1 of the Act on Cinematography, is the *Ministerstwo Kultury i Dziedzictwa Narodowego* (Ministry of Culture and National Heritage).

For contact information see reply B.14 for Poland for PICA. For additional information see also the website [www.pisf.gov.pl](http://www.pisf.gov.pl).

## 2.2 Synopsis of objective territorialisation requirements

### 2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Article 10 of the PICA Subsidies Regulation.

### 2.2.2 Practice

There is no relevant judicial and administrative practice reported (see replies B.6 and B.9 for Poland for PICA).

### 2.2.3 Discussion

Before the 2006 amendments, Article 10 of the PICA Subsidies Regulation, after a general clause stating that 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, provided that the contract on financial subsidy could contain a territorial requirement.

In particular Article 10 stated that the contract on financial subsidy could contain an obligation binding the subject receiving financial subsidy, to spend up to 80% of funds received from the Institute within the territory of the Republic of Poland. Before the 2006 amendments, there was no direct obligation, under the Regulations, that a proposal for an independent film should indicate that a minimum proportion of the budget would be spent in Poland. However this objective territorial condition could be included in the contract on financial subsidy.

As of 9 May 2006, the amendment of Article 10 of the PICA Subsidies Regulation came into force. Currently the provision states that: “The subject receiving financial subsidy for an undertaking referred to in § 1 point 1 (b) 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” (see reply B.5 for Poland for PICA).

#### 2.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of state aid can be obliged to spend locally (within Poland) up to 80% of the amount awarded by the PICA funding scheme. This requirement on expenditure shall be inserted in the contract on financial subsidy (see reply B.5 for Poland for PICA).

### 2.3 Synopsis of indirect territorialisation requirements

#### 2.3.1 Practice

There is no relevant judicial and administrative practice reported addressing indirect territorialisation requirements.

#### 2.3.2 Discussion

N/A (see reply B.10 and B.13 for Poland for PICA; and Section B 2.4 below).

#### 2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see sections B 2.4 and B 2.6 below).

#### 2.4. Synopsis of State aid selective granting criteria and procedures

Para. 6 of the PICA Subsidies Regulation states that decisions on granting a subsidy are taken by the Director of the Polish Institute of Cinematographic Arts (PICA), on an application from the interested party.

Article 24 of the Act on Cinematography of 30 June 2005 provides that such a decision is taken according to the opinion of experts on the artistic value of the film (Article 22 Para. 3 of the act on Cinematography). These experts are appointed by the Minister of Culture and National Heritage and chosen from among filmmakers and opinion formers. After this decision the contract on financial subsidy can be concluded.

The eligibility criteria are provided by Article 22 of the Act on Cinematography and by Para. 1 of the PICA Subsidies Regulation.

Pursuant to Article 22 Para. 1 of the Act on Cinematography, any subject from Poland or other Member State of the European Union or from an EFTA Member that is party to the EEA, can apply for subsidies, regardless of its organisational or legal form or the structure of ownership thereof.

The decision on granting a subsidy is based on qualitative criteria provided by Article 22 Para. 3 of the Act on Cinematograph, including, *inter alia*, artistic, explorative and ethical features and significance to national culture and the strengthening of the Polish language and tradition.

Furthermore, Para. 4 of the PICA Subsidies Regulation states that the evaluation of significance to national culture and of contribution to strengthening the Polish language and traditions should take into account, *inter alia*, the invocation of national cultural heritage in the film. Moreover, enhancing national identity and promoting patriotic contents, in particular in works addressed to children and youth, as well as protection and maintenance of the heritage of Polish film culture are taken into account.

Among the criteria, the foreseeable effects of the planned undertaking, including development and employment of modern technologies in the area of recording and projection of films, the territorial scope of the project and the expected economic result of the undertaking are also taken into account (for further details see reply B.13 for Poland for PICA).

There is formal control of the application before it is forwarded to the experts and further processed. Applications that do not meet the formal requirements are not subject to review.

The decision on granting the subsidy taken by the Director of the Institute must meet the criteria of administrative decision stipulated in Article 107 of the Code.

It is possible to appeal against the decision on. In case of an unsuccessful result of the appeal, it is possible to bring a complaint to the Voivodship-(*Wojwódstwo*, i.e. regional) Administrative Court in Warsaw.

The fact that the conditions taken into account for selective aid include the development and employment of modern technologies in the area of recording and projection of films, the territorial scope of the project and the expected economic result of the undertaking can be interpreted in a way that gives scope for indirect territorialisation that is not quantified in the law.

For further details see reply A.4 for Poland and reply B.13 for Poland for PICA.

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

According to Article 91 Para. 2 of the Constitution of the Republic of Poland, provisions of international agreements have priority of application over domestic statutes. Therefore the possible territorialisation clauses allowed by the PICA Subsidies Regulation must be interpreted in conformity with international agreements. Where necessary, norms of international agreements have supremacy of application over the internal law of Poland (see reply B.8 for Poland for PICA).

Furthermore the European Convention on Cinematographic Co-production excludes discrimination between European cinematographic works as regards the grant of subsidies, although this should not alter the contractual obligation contained within a territorialisation clause (see B.8 for Poland for PICA).

Nevertheless there is no obvious legal inconsistency between co-production agreements and territorialisation requirements (see B.8 for Poland for PICA).

## 2.6 Synopsis of purposes and cultural clauses applying to the funding scheme

Article 3 Para. 1 of the Act on Cinematography provides that the State holds patronage over activities in the area of cinematography, as a part of the national culture. In particular, according to this provision, the State shall support the production and promotion of cinema, the diffusion of film culture and protection of cultural heritage in the field of cinema (see reply B.12 for Poland for PICA).

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

**References:****Attachments:**

- Replies to the legal questionnaire by Marcin Górski, attorney at law, Law firm Tataj Górski Adwokaci Sp.P. (Partnership Co.), Poland
- Regulations for Poland