

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

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>22 December 2006</b>

(...)

According to the information we have gathered, the Ibermedia Programme grants aid to eligible cinematographic co-productions, in the form of loans. The yearly aid granted to co-productions between Portugal and other countries in 2005 was of a total amount of USD 797.000,00. Therefore, this amount falls short of the questionnaire requisite of EUR 1 million in aid.

(...)

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>22 December 2006</b>

(...)

Please confirm that our understanding is correct according to which "Ibermedia" has not granted State aid to Portuguese independent film or television productions and distribution during the reference period from 2001 to 2005 or has done so without an annual budget for these purposes of at least Euro 1 million. If this is not the case, please cover this scheme as well.

(...)

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>06 December 2006</b>

(...)

Please find enclosed an updated version of our report (marked up and clean versions) , which takes into account recent legislation published on November 15th 2006, as well as a copy of such legislation. While the funding schemes we describe in Parts B of the questionnaire remain in force, this is a provisional situation until new regulations are enacted.

Since the new legislation providing the guidelines for the future funding schemes contains territorialisation provisions, we provide a description of such provisions under item A.6 of the questionnaire.

The specific regulations for each funding scheme are expected to be published soon, and they can certainly be expected to enter into force during year 2007. Therefore, the information provided is subject to further developments and changes in such specific regulations for the new funding schemes.

(...)

<b>Attachments to e-mail of 06 December 2006</b>
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- Portugal Answer to the CG Legal Questionnaire 04.12.2006.doc
- Portugal Answer to the CG Legal Questionnaire 04.12.2006 clean.doc
- decree-law 227-2006.pdf
- (...)

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION  
REQUIREMENTS  
(Version of 18 September 2006)**

**PART A**

**GENERAL QUESTIONS**

**OVERVIEW**

A.1 Country / region: **PORTUGAL**

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 works<sup>1</sup> 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) Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo», and**

**2) Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»,**

**Both schemes are provided in the Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Funding provided for each scheme in year 2005 reached €1.950.000, divided by three films given €650.000 each in the form of non-reimbursable advancements.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

**COPRODUCTION AGREEMENTS**

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

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:

- 1) **Films Co-Production Agreement between Brazil and Portugal: published as Decree no. 48/81, of May 21<sup>st</sup>**
- 2) **Films Co-Production Agreement between France and Portugal: published as Decree no. 73/81, of June 16<sup>th</sup>**
- 3) **Films Co-Production Agreement between Spain and Portugal: published as Decree no. 29/89, of July 5<sup>th</sup>**
- 4) **Films Co-Production Agreement between Cabo Verde and Portugal: published as Decree no. 33/89, of August 10<sup>th</sup>**
- 5) **Films Co-Production Agreement between Germany and Portugal: published as Decree no. 43/89, of October 12<sup>th</sup>**
- 6) **Films Co-Production Agreement between Mozambique and Portugal: published as Decree no. 52/90, of December 11<sup>th</sup>**
- 7) **Films Co-Production Agreement between Angola and Portugal: published as Decree no. 12/92, of February 20<sup>th</sup>**
- 8) **Films Co-Production Agreement between São Tomé e Príncipe and Portugal: published as Decree no. 17/94, of June 17<sup>th</sup>**
- 9) **European Convention on Cinematographic Co-Production: published as Decree no. 21/96, of July 23<sup>rd</sup>**
- 10) **Films Co-Production Agreement between Italy and Portugal: published as Decree no. 15/2000, of July 20<sup>th</sup>**

**Competent authority:**

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1<sup>o</sup>  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

[Source: Official Journal («Diário da República»)]

## **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:<sup>2</sup>

**According to Article no. 11 of Law no. 42/2004, of August 18<sup>th</sup>, a cinematographic or audiovisual work shall be deemed of Portuguese nationality if it fulfils the following requisites:**

- a) a minimum of 50% of the authors are Portuguese nationals or nationals of a EU member state;**
- b) a minimum of 50% of the technical staff are Portuguese nationals or nationals of a EU member state;**
- c) a minimum of 50% of the protagonists in leading and secondary roles are Portuguese nationals or nationals of a EU member state;**
- d) a minimum of 50% of shooting or production time take place on Portuguese territory, save exceptions demanded by the script;**
- e) the original version is in Portuguese language, save exceptions demanded by the script.**

**All and any works co-produced under the terms of international agreements, the European Convention on Cinematographic Co-production, and other EU legislation applicable, shall also be considered as national works.**

**There is no specific formal procedure to assess and certify the nationality of an independent film or television production.**

**The authority in charge of all funding schemes is ICAM – Instituto do Cinema, Audiovisual e Multimedia (contact details above).**

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

## **EXPECTED DEVELOPMENTS**

A.5 Indicate whether new co-production agreements are currently to be expected in your jurisdiction, 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.

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<sup>2</sup> E.g. the French “Procédure d’agrément”.

N.A.

- 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,<sup>3</sup> and indicate the name and address of the administration of these funding schemes:<sup>4</sup>

**The legal basis for cinematographic and audiovisual works has recently been revised by the above mentioned Law no. 42/2004, of August 18<sup>th</sup>. As a consequence of the entering into force of this law, the funding procedures are currently undergoing major changes. Decree-law no. 227/2006, of November 15<sup>th</sup> has just been published, providing the guidelines for the new funding schemes and creating the Investment Fund for Cinema and Audiovisual Works («Fundo de Investimento para o Cinema e Audiovisual»). According to said Decree-law, the specific regulations implementing the revised funding schemes are expected to be published very soon.**

**At the present date, most of the applicable regulations regarding said funding schemes are regulations enacted under the terms of the previous legislation, Decree-law no. 350/93, of October 7<sup>th</sup>, which are provisionally in force until the new regulations are enacted.**

**While still subject to further execution by way of said regulations, Decree-law no. 227/2006 provides some new criteria for the granting of state aid to cinema and audiovisual productions. As such, we hereby provide a brief description of the provisions of said Decree-law which can be construed as territorialization requirements:**

**The legal definitions of distributor, exhibitor and independent producer, for the purposes of applying for state funding, all now contain the wording «with head office or a stable branch in Portuguese territory» (Article no. 2 of Decree-law no. 227/2006).**

**Cinematographic and audiovisual companies must be registered with ICAM – Instituto do Cinema, Audiovisual e Multimedia in order to apply to all and any funding schemes (Articles no. 5 and 44 of Decree-law no. 227/2006). Only companies with head office or a stable branch in Portuguese territory are allowed to register with ICAM (Article no. 43 of Decree-law no. 227/2006).**

**The beneficiaries of funding granted under the future schemes to be enacted will be subject to the fulfilment of several legal obligations. Among such obligations, it is provided that at least 75% of the granted funding must be spent in Portuguese territory, except when justified by the screenplay requirements, on in the case of a cinematographic or audiovisual work under a co-production scheme (Article no. 12 of Decree-law no. 227/2006).**

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<sup>3</sup> 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.

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

**As a general rule, the granted funding for any project must not exceed 80% of its total cost. Therefore, a film with a budget of €1.000.000 would be eligible for state funding up to a maximum of €800.000, of which €600.000 (i.e. 75% of the granted funding) must correspond to production expenses made in Portuguese territory, save for the above mentioned exceptions.**

**Competent authority:**

**ICAM – Instituto do Cinema, Audiovisual e Multimédia (contact details above)**

**As previously mentioned, the specific regulations for each funding scheme are expected to be published soon. While it is unlikely that such regulations will be in force on January 1<sup>st</sup> 2006, they can certainly be expected to enter into force during year 2006. Therefore, the information above, which derives from the provisions of Decree-law no. 227/2006, is subject to further developments and changes in such specific regulations for the new funding schemes.**

**[Source: Law no. 42/2004, of August 18<sup>th</sup> ; Decree-law no. 227/2006, of November 15<sup>th</sup>]**

**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):

**N.A.**



## PART B

### FUND SPECIFIC QUESTIONS

#### **IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: **Portugal**

B.2 Name of the funding scheme:

**Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo»**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

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

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

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

**Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>.**

**Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à**

**Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>5</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

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<sup>5</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

B.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:

N.A.

### **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?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Articles no. 9 and 78 of the Portuguese Constitution:**

**«São tarefas fundamentais do Estado: (...) proteger e valorizar o património cultural do povo português, (...) defender o uso e promover a difusão internacional da língua portuguesa (...)»**

***The State's fundamental tasks are: (...) to protect and value the Portuguese people's cultural resources, (...) to defend the use and promote the international diffusion of the Portuguese language (...)***

**«Incumbe ao Estado, em colaboração com todos os agentes culturais: (...) promover a salvaguarda e a valorização do património cultural, (...) desenvolver as relações culturais com todos os povos, especialmente os de língua portuguesa, e assegurar a defesa e a promoção da cultura portuguesa no estrangeiro; (...)»**

*It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguard and valorisation of cultural resources, (...) to develop cultural relations with all peoples, especially those of Portuguese language, and ensure the defence and promotion of Portuguese culture abroad; (...)*

Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:

**«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»**

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes described.

[Source: Law no. 42/2004, of August 18<sup>th</sup>; Portuguese Constitution]

## **SELECTIVE SCHEMES**

- B.13 If this scheme distributes aid selectively,<sup>6</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Direct Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
<b>«GELO»</b>	<b>Luís Galvão Teles</b>	<b>FADO FILMES</b>	<b>€650.000</b>
<b>«A OUTRA MARGEM»</b>	<b>Luís Filipe Rocha</b>	<b>MADRAGOA</b>	<b>€650.000</b>
<b>«BELLE TOUJOURS»</b>	<b>Manoel de Oliveira</b>	<b>FILBOX</b>	<b>€650.000</b>

<sup>6</sup> 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.

While this scheme is officially entitled a Direct Financial Support Scheme, according to the criteria formulated in this question it would be better described as a selective or mixed scheme, as it includes both qualitative and quantitative criteria.

Selective criteria are provided in Article no. 28 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- a) Producer's and producer's partners' curricula, with consideration to the relevance of the respective financial participations;
- b) Director's curriculum;
- c) Screenplay's communication potential with the public;
- d) Number of viewers per exhibition room of the director's last two works, as well as their respective diffusion in television, videographic edition and other media;
- e) Distribution strategies.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formula:

$$(3 \times a + 2,5 \times b + 2 \times c + 1,5 \times d + e) / 10$$

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

## PART B

### FUND SPECIFIC QUESTIONS

#### **IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: **Portugal**

B. Name of the funding scheme:

**Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

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

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

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

**Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>**

**Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta**

**Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>)**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>7</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

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:

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<sup>7</sup> 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.

N.A.

### **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*)?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Articles no. 9 and 78 of the Portuguese Constitution:**

**«São tarefas fundamentais do Estado: (...) proteger e valorizar o património cultural do povo português, (...) defender o uso e promover a difusão internacional da língua portuguesa (...))»**

***The State's fundamental tasks are: (...) to protect and value the Portuguese people's cultural resources, (...) to defend the use and promote the international diffusion of the Portuguese language (...)***

**«Incumbe ao Estado, em colaboração com todos os agentes culturais: (...) promover a salvaguarda e a valorização do património cultural, (...) desenvolver as relações culturais com todos os povos, especialmente os de língua portuguesa, e assegurar a defesa e a promoção da cultura portuguesa no estrangeiro; (...))»**



*It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguard and valorisation of cultural resources, (...) to develop cultural relations with all peoples, especially those of Portuguese language, and ensure the defence and promotion of Portuguese culture abroad; (...)*

**Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:**

**«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»**

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

**This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes described.**

**[Source: Law no. 42/2004, of August 18<sup>th</sup>; Portuguese Constitution]**

## **SELECTIVE SCHEMES**

- B.13 If this scheme distributes aid selectively,<sup>8</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Selective Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
<b>«MAL NASCIDA»</b>	<b>João Canijo</b>	<b>CLAP FILMES</b>	<b>€650.000</b>
<b>«ÁGUAS MIL»</b>	<b>Ivo M. Ferreira</b>	<b>FILMES DO TEJO II</b>	<b>€650.000</b>
<b>«ROSTO»</b>	<b>Vítor Gonçalves</b>	<b>ROSA FILMES</b>	<b>€650.000</b>

<sup>8</sup> 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.

Selective criteria are provided in Article no. 21 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- a) Artistic and technical qualities of the cinematographic screenplay;
- b) Screenplay's communication potential with the public;
- c) Director's curriculum;
- d) Producer's curriculum.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formulas:

If candidacy is presented by the producer;

$$(3,5 \times a + 2,5 \times b + 2,5 \times c + 1,5 \times d) / 10$$

If candidacy is presented by the director;

$$(4 \times a + 3 \times b + 3 \times c) / 10$$

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)  
[info@icam.pt](mailto:info@icam.pt)**

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

**Lawyer: Miguel Pena Machete**

**Law Firm: Serra Lopes, Cortes Martins & Associados – Sociedade de Advogados, RL**

Date of the data collection and processing:

**6th of December, 2006**

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION  
REQUIREMENTS  
(Version of 18 September 2006)**

**PART A**

**GENERAL QUESTIONS**

**OVERVIEW**

A.1 Country / region: **PORTUGAL**

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 works<sup>9</sup> 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) Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo», and**

**2) Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»,**

**Both schemes are provided in the Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Funding provided for each scheme in year 2005 reached €1.950.000, divided by three films given €650.000 each in the form of non-reimbursable advancements.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

**COPRODUCTION AGREEMENTS**

<sup>9</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

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:

- 11) **Films Co-Production Agreement between Brazil and Portugal: published as Decree no. 48/81, of May 21<sup>st</sup>**
- 12) **Films Co-Production Agreement between France and Portugal: published as Decree no. 73/81, of June 16<sup>th</sup>**
- 13) **Films Co-Production Agreement between Spain and Portugal: published as Decree no. 29/89, of July 5<sup>th</sup>**
- 14) **Films Co-Production Agreement between Cabo Verde and Portugal: published as Decree no. 33/89, of August 10<sup>th</sup>**
- 15) **Films Co-Production Agreement between Germany and Portugal: published as Decree no. 43/89, of October 12<sup>th</sup>**
- 16) **Films Co-Production Agreement between Mozambique and Portugal: published as Decree no. 52/90, of December 11<sup>th</sup>**
- 17) **Films Co-Production Agreement between Angola and Portugal: published as Decree no. 12/92, of February 20<sup>th</sup>**
- 18) **Films Co-Production Agreement between São Tomé e Príncipe and Portugal: published as Decree no. 17/94, of June 17<sup>th</sup>**
- 19) **European Convention on Cinematographic Co-Production: published as Decree no. 21/96, of July 23<sup>rd</sup>**
- 20) **Films Co-Production Agreement between Italy and Portugal: published as Decree no. 15/2000, of July 20<sup>th</sup>**

**Competent authority:**

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1<sup>o</sup>  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

[Source: Official Journal («Diário da República»)]

## **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:<sup>10</sup>

**According to Article no. 11 of Law no. 42/2004, of August 18<sup>th</sup>, a cinematographic or audiovisual work shall be deemed of Portuguese nationality if it fulfils the following requisites:**

- f) a minimum of 50% of the authors are Portuguese nationals or nationals of a EU member state;**
- g) a minimum of 50% of the technical staff are Portuguese nationals or nationals of a EU member state;**
- h) a minimum of 50% of the protagonists in leading and secondary roles are Portuguese nationals or nationals of a EU member state;**
- i) a minimum of 50% of shooting or production time take place on Portuguese territory, save exceptions demanded by the script;**
- j) the original version is in Portuguese language, save exceptions demanded by the script.**

**All and any works co-produced under the terms of international agreements, the European Convention on Cinematographic Co-production, and other EU legislation applicable, shall also be considered as national works.**

**There is no specific formal procedure to assess and certify the nationality of an independent film or television production.**

**The authority in charge of all funding schemes is ICAM – Instituto do Cinema, Audiovisual e Multimedia (contact details above).**

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

## **EXPECTED DEVELOPMENTS**

- A.5 Indicate whether new co-production agreements are currently to be expected in your jurisdiction, 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.

**N.A.**

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<sup>10</sup> E.g. the French “Procédure d’agrément”.

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,<sup>11</sup> and indicate the name and address of the administration of these funding schemes:<sup>12</sup>

**The legal basis for cinematographic and audiovisual works has recently been revised by the above mentioned Law no. 42/2004, of August 18<sup>th</sup>. As a consequence of the entering into force of this law, the funding procedures are currently undergoing major changes. Decree-law no. 227/2006, of November 15<sup>th</sup> has just been published, providing the guidelines for the new funding schemes and creating the Investment Fund for Cinema and Audiovisual Works («Fundo de Investimento para o Cinema e Audiovisual»). According to said Decree-law, the specific regulations implementing the revised funding schemes are expected to be published very soon.**

**At the present date, most of the applicable regulations regarding said funding schemes are regulations enacted under the terms of the previous legislation, Decree-law no. 350/93, of October 7<sup>th</sup>, which are provisionally in force until the new regulations are enacted.**

**While still subject to further execution by way of said regulations, Decree-law no. 227/2006 provides some new criteria for the granting of state aid to cinema and audiovisual productions. As such, we hereby provide a brief description of the provisions of said Decree-law which can be construed as territorialization requirements:**

**The legal definitions of distributor, exhibitor and independent producer, for the purposes of applying for state funding, all now contain the wording «with head office or a stable branch in Portuguese territory» (Article no. 2 of Decree-law no. 227/2006).**

**Cinematographic and audiovisual companies must be registered with ICAM – Instituto do Cinema, Audiovisual e Multimedia in order to apply to all and any funding schemes (Articles no. 5 and 44 of Decree-law no. 227/2006). Only companies with head office or a stable branch in Portuguese territory are allowed to register with ICAM (Article no. 43 of Decree-law no. 227/2006).**

**The beneficiaries of funding granted under the future schemes to be enacted will be subject to the fulfilment of several legal obligations. Among such obligations, it is provided that at least 75% of the granted funding must be spent in Portuguese territory, except when justified by the screenplay requirements, on in the case of a cinematographic or audiovisual work under a co-production scheme (Article no. 12 of Decree-law no. 227/2006).**

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<sup>11</sup> 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.

<sup>12</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

**As a general rule, the granted funding for any project must not exceed 80% of its total cost. Therefore, a film with a budget of € 1.000.000 would be eligible for state funding up to a maximum of €800.000, of which €600.000 (i.e. 75% of the granted funding) must correspond to production expenses made in Portuguese territory, save for the above mentioned exceptions.**

**Competent authority:**

**ICAM – Instituto do Cinema, Audiovisual e Multimédia (contact details above)**

**As previously mentioned, the specific regulations for each funding scheme are expected to be published soon, and they can be expected to enter into force during year 2007. Therefore, the information above, which derives from the provisions of Decree-law no. 227/2006, is subject to further developments and changes in such specific regulations for the new funding schemes.**

**[Source: Law no. 42/2004, of August 18<sup>th</sup> ; Decree-law no. 227/2006, of November 15<sup>th</sup>]**

**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):

**N.A.**

**PART B**  
**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

- B.1 Country/region: **Portugal**
- B.2 Name of the funding scheme:  
**Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo»**
- B.3 Name and address of the funding scheme's administration and supervisory authority:  
**ICAM – Instituto do Cinema, Audiovisual e Multimedia**  
  
**Rua S. Pedro de Alcântara, 45, 1º**  
**1269-138 Lisboa**  
**PORTUGAL**  
  
**Tel:           +351 21 3230800**  
**+351 21 0334700**  
  
**Fax:           +351 21 3431952**  
  
**Email:       [mail@icam.pt](mailto:mail@icam.pt)**  
  
**[info@icam.pt](mailto:info@icam.pt)**
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate
- the dates when these laws and regulations entered into force,
  - whether these laws and regulations were amended during the period from 2001 to 2005 (if so and if the amendments were significant, indicate their dates of entry in force),
- and provide a copy of these laws and regulations in the version as of 31 December 2005 (in the national language only).
- Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>.**
- Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à**



**Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>13</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

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<sup>13</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

B.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:

N.A.

### **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?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Articles no. 9 and 78 of the Portuguese Constitution:**

**«São tarefas fundamentais do Estado: (...) proteger e valorizar o património cultural do povo português, (...) defender o uso e promover a difusão internacional da língua portuguesa (...)»**

***The State's fundamental tasks are: (...) to protect and value the Portuguese people's cultural resources, (...) to defend the use and promote the international diffusion of the Portuguese language (...)***

**«Incumbe ao Estado, em colaboração com todos os agentes culturais: (...) promover a salvaguarda e a valorização do património cultural, (...) desenvolver as relações culturais com todos os povos, especialmente os de língua portuguesa, e assegurar a defesa e a promoção da cultura portuguesa no estrangeiro; (...)»**

*It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguard and valorisation of cultural resources, (...) to develop cultural relations with all peoples, especially those of Portuguese language, and ensure the defence and promotion of Portuguese culture abroad; (...)*

Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:

**«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»**

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes described.

[Source: Law no. 42/2004, of August 18<sup>th</sup>; Portuguese Constitution]

## **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>14</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Direct Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
<b>«GELO»</b>	<b>Luís Galvão Teles</b>	<b>FADO FILMES</b>	<b>€650.000</b>
<b>«A OUTRA MARGEM»</b>	<b>Luís Filipe Rocha</b>	<b>MADRAGOA</b>	<b>€650.000</b>
<b>«BELLE TOUJOURS»</b>	<b>Manoel de Oliveira</b>	<b>FILBOX</b>	<b>€650.000</b>

<sup>14</sup> 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.

While this scheme is officially entitled a Direct Financial Support Scheme, according to the criteria formulated in this question it would be better described as a selective or mixed scheme, as it includes both qualitative and quantitative criteria.

Selective criteria are provided in Article no. 28 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- f) Producer's and producer's partners' curricula, with consideration to the relevance of the respective financial participations;
- g) Director's curriculum;
- h) Screenplay's communication potential with the public;
- i) Number of viewers per exhibition room of the director's last two works, as well as their respective diffusion in television, videographic edition and other media;
- j) Distribution strategies.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formula:

$$(3 \times a + 2,5 \times b + 2 \times c + 1,5 \times d + e) / 10$$

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1<sup>o</sup>  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

**PART B**  
**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: **Portugal**

B. Name of the funding scheme:

**Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

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

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

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

**Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>**

**Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à**

**Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>)**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>15</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

---

<sup>15</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

B.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:

N.A.

### **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*)?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Articles no. 9 and 78 of the Portuguese Constitution:**

**«São tarefas fundamentais do Estado: (...) proteger e valorizar o património cultural do povo português, (...) defender o uso e promover a difusão internacional da língua portuguesa (...)»**

***The State's fundamental tasks are: (...) to protect and value the Portuguese people's cultural resources, (...) to defend the use and promote the international diffusion of the Portuguese language (...)***

**«Incumbe ao Estado, em colaboração com todos os agentes culturais: (...) promover a salvaguarda e a valorização do património cultural, (...) desenvolver as relações culturais com todos os povos,**

especialmente os de língua portuguesa, e assegurar a defesa e a promoção da cultura portuguesa no estrangeiro; (...)»

*It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguard and valorisation of cultural resources, (...) to develop cultural relations with all peoples, especially those of Portuguese language, and ensure the defence and promotion of Portuguese culture abroad; (...)*

Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:

«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes described.

[Source: Law no. 42/2004, of August 18<sup>th</sup>; Portuguese Constitution]

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>16</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Selective Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
«MAL NASCIDA»	João Canijo	CLAP FILMES	€650.000
«ÁGUAS MIL»	Ivo M. Ferreira	FILMES DO TEJO II	€650.000

<sup>16</sup> 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.



«ROSTO»	Vítor Gonçalves	ROSA FILMES	€650.000
---------	-----------------	-------------	----------

Selective criteria are provided in Article no. 21 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- a) Artistic and technical qualities of the cinematographic screenplay;
- b) Screenplay's communication potential with the public;
- c) Director's curriculum;
- d) Producer's curriculum.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formulas:

If candidacy is presented by the producer;

$$(3,5 \times a + 2,5 \times b + 2,5 \times c + 1,5 \times d) / 10$$

If candidacy is presented by the director;

$$(4 \times a + 3 \times b + 3 \times c) / 10$$

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

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

**Lawyer: Miguel Pena Machete**

**Law Firm: Serra Lopes, Cortes Martins & Associados – Sociedade de Advogados, RL**

Date of the data collection and processing:

**6th of December, 2006**

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>03 December 2006</b>

(...)

Thank you for your reply of 17 October 2006.

We have the follow-up requests for clarification as follows:

1) At B. 12: Please quote and summarize all rules of law that articulate cultural objectives and/or justifications and that may directly or indirectly apply to State aid granted to the independent film and television sector. In your replies to our questionnaire, you mentioned the cultural clauses in the regulations specifically governing the two Portuguese funding scheme. We would like to be informed about further cultural clauses, including constitutional and legal ones, that may be invoked to justify implicit territorialisation requirements e.g. based selective aid criteria.

(...)

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>17 October 2006</b>

(...)

As we have answered in B.5, there are currently no territorialization requirements in the applicable regulations on State aid to cinema.

Should any such requirements hypothetically apply according to the Portuguese law, any rules contained in international conventions, co-production agreements and/or EU law would prevail over the former, i.e. international agreements prevail over Portuguese internal law.

(...)

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>13 October 2006</b>

(...)

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.

(...)

<b>Member State:</b>	<b>PORTUGAL</b>
<b>Re:</b>	<b>Reply</b>
<b>Date:</b>	<b>05 October 2006</b>

(...)

Please find attached the answer to the Questionnaire referring to the country Portugal.

(...)

<b>Attachment to e-mail of 05 October 2006</b>
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- Portugal Answer to the CG Legal Questionnaire 05.10.2006.doc

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION  
REQUIREMENTS  
(Version of 18 September 2006)**

**PART A**

**GENERAL QUESTIONS**

**OVERVIEW**

A.1 Country / region: **PORTUGAL**

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 works<sup>17</sup> 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) Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo», and**

**2) Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»,**

**Both schemes are provided in the Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Funding provided for each scheme in year 2005 reached €1.950.000, divided by three films given €650.000 each in the form of non-reimbursable advancements.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

**COPRODUCTION AGREEMENTS**

<sup>17</sup> “Independent” means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

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:

- 21) **Films Co-Production Agreement between Brazil and Portugal: published as Decree no. 48/81, of May 21<sup>st</sup>**
- 22) **Films Co-Production Agreement between France and Portugal: published as Decree no. 73/81, of June 16<sup>th</sup>**
- 23) **Films Co-Production Agreement between Spain and Portugal: published as Decree no. 29/89, of July 5<sup>th</sup>**
- 24) **Films Co-Production Agreement between Cabo Verde and Portugal: published as Decree no. 33/89, of August 10<sup>th</sup>**
- 25) **Films Co-Production Agreement between Germany and Portugal: published as Decree no. 43/89, of October 12<sup>th</sup>**
- 26) **Films Co-Production Agreement between Mozambique and Portugal: published as Decree no. 52/90, of December 11<sup>th</sup>**
- 27) **Films Co-Production Agreement between Angola and Portugal: published as Decree no. 12/92, of February 20<sup>th</sup>**
- 28) **Films Co-Production Agreement between São Tomé e Príncipe and Portugal: published as Decree no. 17/94, of June 17<sup>th</sup>**
- 29) **European Convention on Cinematographic Co-Production: published as Decree no. 21/96, of July 23<sup>rd</sup>**
- 30) **Films Co-Production Agreement between Italy and Portugal: published as Decree no. 15/2000, of July 20<sup>th</sup>**

**Competent authority:**

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1<sup>o</sup>  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**



[Source: Official Journal («Diário da República»)]

## **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:<sup>18</sup>

**According to Article no. 11 of Law no. 42/2004, of August 18<sup>th</sup>, a cinematographic or audiovisual work shall be deemed of Portuguese nationality if it fulfils the following requisites:**

- k) a minimum of 50% of the authors are Portuguese nationals or nationals of a EU member state;**
- l) a minimum of 50% of the technical staff are Portuguese nationals or nationals of a EU member state;**
- m) a minimum of 50% of the protagonists in leading and secondary roles are Portuguese nationals or nationals of a EU member state;**
- n) a minimum of 50% of shooting or production time take place on Portuguese territory, save exceptions demanded by the script;**
- o) the original version is in Portuguese language, save exceptions demanded by the script.**

**All and any works co-produced under the terms of international agreements, the European Convention on Cinematographic Co-production, and other EU legislation applicable, shall also be considered as national works.**

**There is no specific formal procedure to assess and certify the nationality of an independent film or television production.**

**The authority in charge of all funding schemes is ICAM – Instituto do Cinema, Audiovisual e Multimedia (contact details above).**

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

## **EXPECTED DEVELOPMENTS**

A.5 Indicate whether new co-production agreements are currently to be expected in your jurisdiction, 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.

**N.A.**

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<sup>18</sup> E.g. the French “Procédure d’agrément”.

- 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,<sup>19</sup> and indicate the name and address of the administration of these funding schemes:<sup>20</sup>

**The legal basis for cinematographic and audiovisual works has recently been revised by the above mentioned Law no. 42/2004, of August 18<sup>th</sup>. As a consequence of the entering into force of this law, new regulations implementing the funding schemes are expected to be published soon.**

**Presently, most of the applicable regulations regarding said funding schemes are regulations enacted under the terms of the previous law, Decree-Law no. 350/93, of October 7<sup>th</sup>, which are provisionally in force until the new regulations are enacted.**

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

#### **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):

**N.A.**

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<sup>19</sup> 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.

<sup>20</sup> E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

**PART B**  
**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: **Portugal**

B. Name of the funding scheme:

**Direct Financial Support Scheme, «Sistema de Apoio Financeiro Directo»**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

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

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

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

**Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>.**

**Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à**

**Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>).**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>21</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

---

<sup>21</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

B.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:

N.A.

### **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?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:**

**«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»**

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes.

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

### **SELECTIVE SCHEMES**

B.13 If this scheme distributes aid selectively,<sup>22</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Direct Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
«GELO»	Luís Galvão Teles	FADO FILMES	€650.000
«A OUTRA MARGEM»	Luís Filipe Rocha	MADRAGOA	€650.000
«BELLE TOUJOURS»	Manoel de Oliveira	FILBOX	€650.000

While this scheme is officially entitled a Direct Financial Support Scheme, according to the criteria formulated in this question it would be better described as a selective or mixt scheme, as it includes both qualitative and quantitative criteria.

Selective criteria are provided in Article no. 28 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- k) Producer's and producer's partners' curricula, with consideration to the relevance of the respective financial participations;
- l) Director's curriculum;
- m) Screenplay's communication potential with the public;
- n) Number of viewers per exhibition room of the director's last two works, as well as their respective diffusion in television, videographic edition and other media;
- o) Distribution strategies.

<sup>22</sup> 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.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formula:

$$(3 \times a + 2,5 \times b + 2 \times c + 1,5 \times d + e) / 10$$

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

**PART B**  
**FUND SPECIFIC QUESTIONS**

**IDENTIFICATION OF THE FUNDING SCHEME**

B.1 Country/region: **Portugal**

B. Name of the funding scheme:

**Selective Financial Support Scheme, «Sistema de Apoio Financeiro Selectivo»**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
1269-138 Lisboa  
PORTUGAL**

**Tel:           +351 21 3230800  
                  +351 21 0334700**

**Fax:           +351 21 3431952**

**Email:       [mail@icam.pt](mailto:mail@icam.pt)**

**[info@icam.pt](mailto:info@icam.pt)**

B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

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

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

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

**Law of Cinematographic and Audiovisual Art, «Lei de Arte Cinematográfica e Audiovisual», published in the Official Journal («Diário da República») as Law no. 42/2003, of August 18<sup>th</sup>**

**Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films, «Regulamento de Apoio Financeiro à**



**Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>)**

**Copies of said law and regulation are provided as annexes 1 and 2 to this Questionnaire.**

**[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]**

## **TERRITORIAL CONDITIONS<sup>23</sup>**

### **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?

**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:

**N.A.**

B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum.

**N.A.**

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:

**N.A.**

---

<sup>23</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

B.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:

N.A.

### **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*)?

No.

If yes,

B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme:

N.A.

### **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:

**Article no. 3 of Law no. 42/2004, of August 18<sup>th</sup>:**

**«O Estado apoia a criação, a produção, a distribuição, a exibição, a difusão e a promoção cinematográfica e audiovisual enquanto instrumentos de desenvolvimento integral da pessoa humana, de cultura, afirmação da identidade nacional, protecção da língua e valorização da imagem de Portugal no mundo, em especial no que respeita ao aprofundamento das relações com os países de língua portuguesa.»**

*The State supports cinematographic and audiovisual creation, production, distribution, exhibition, diffusion and promotion as instruments of integral development of the human being, of culture, affirmation of national identity, protection of the language and promotion of the Portuguese image in the world, with special regards to deepening relations with countries of Portuguese language.*

This legal provision is mainly programmatic and currently does not translate into any specific territorial requisites in the regulations implementing the funding schemes.

[Source: Law no. 42/2004, of August 18<sup>th</sup>]

### **SELECTIVE SCHEMES**

- B.13 If this scheme distributes aid selectively,<sup>24</sup> please indicate the total aid selectively distributed, and 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:

<b>Results of the Contest for Selective Financial Support to the Production of Full-Length Fiction Films - 2005</b>			
<b>Title</b>	<b>Director</b>	<b>Producer</b>	<b>Amount Provided</b>
«MAL NASCIDA»	João Canijo	CLAP FILMES	€650.000
«ÁGUAS MIL»	Ivo M. Ferreira	FILMES DO TEJO II	€650.000
«ROSTO»	Vítor Gonçalves	ROSA FILMES	€650.000

Selective criteria are provided in Article no. 21 of «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção»:

- a) Artistic and technical qualities of the cinematographic screenplay;
- b) Screenplay's communication potential with the public;
- c) Director's curriculum;
- d) Producer's curriculum.

Criteria are evaluated in a scale of 0 to 10 and then are pondered according to the following formulas:

If candidacy is presented by the producer;

$$(3,5 \times a + 2,5 \times b + 2,5 \times c + 1,5 \times d) / 10$$

If candidacy is presented by the director;

$$(4 \times a + 3 \times b + 3 \times c) / 10$$

<sup>24</sup> 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.

[Sources: «Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção», published in the Official Journal («Diário da República») as «Portaria no. 653/2003», of June 29<sup>th</sup>; [www.icam.pt](http://www.icam.pt)]

#### **CONTACT DETAILS**

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

**ICAM – Instituto do Cinema, Audiovisual e Multimedia**

**Rua S. Pedro de Alcântara, 45, 1º  
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PORTUGAL**

**Tel: +351 21 3230800  
+351 21 0334700**

**Fax: +351 21 3431952**

**Email: [mail@icam.pt](mailto:mail@icam.pt)  
[info@icam.pt](mailto:info@icam.pt)**

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

**Lawyer: Miguel Pena Machete**

**Law Firm: Serra Lopes, Cortes Martins & Associados – Sociedade de Advogados, RL**

Date of the data collection and processing:

**9th of October, 2006**