

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

MEMBER STATE LEGAL REVIEW



**PORTUGAL
SYNTHESIS SHEET**

July 2007

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

Acknowledgements

Legal Report by Germann Avocats

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

Dr. Delia Ferri
(main legal Consultant for the Synthesis
Sheets)

Johanna Jaeger
(main Consultant for the Output Tables and
Charts)

Dr. Marwa Daoudy
(Consultant)

Gritt Knirie Sogaard
(Consultant)

Brigitte Vézina
(Consultant)

Andrzej Jakubowski
(Consultant)

John Morijn
(Consultant)

Ljuba Kostadinova
(Consultant)

Dr. Cristina Poncibò
(Consultant)

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A Overview of the legal situation in Portugal

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

Portugal	Instituto do Cinema, Audiovisual e Multimédia (ICAM) – <i>Sistema de Apoio Financeiro Directo</i> (“Direct Financial Support Scheme”)	3,242,000 (2002) ¹	Nat	N/A	N/A	N/A	N	N/A	N/A	Y <i>Fundo de Investimento para o Cinema e Audiovisual</i> (A 4)
	ICAM – <i>Sistema de Apoio Financeiro Selectivo</i> (“Selective Financial Support Scheme”)	9,498,826 (2002) ²	Nat	N/A	N/A	N/A	N	N/A	N/A	
	Ibermedia	3,242,000 (2002) ³	/	/	/	/	/	/	/	

¹ 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.

² 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.

³ 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.

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
Portugal	Instituto do Cinema, Audiovisual e Multimédia (ICAM) – <i>Sistema de Apoio Financeiro Directo</i> (“Direct Financial Support Scheme”)	Y <i>Inter alia</i> a minimum of 50% of shooting or production time take place on Portuguese territory, and the original version is in Portuguese language, (A 3)	N/A	N/A	N	N/A	N/A	N	N/A	N/A

	ICAM – <i>Sistema de Apoio Financeiro Selectivo</i> (“Selective Financial Support Scheme”)	Y <i>Inter alia</i> a minimum of 50% of shooting or production time take place on Portuguese territory, and the original version is in Portuguese language, (A 3)	N/A	N/A	N	N/A	N/A	N	N/A	N/A
	Ibermedia	/	/	/	/	/	/	/	/	/

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ⁴	Degree of the territorialisation ⁵		
				Funding Scheme Level ⁶	Funding body level	Member State Level ⁷
Portugal	Instituto do Cinema, Audiovisual e Multimédia (ICAM) – Sistema de Apoio Financeiro Directo (“Direct Financial Support Scheme”)	3,242,000 (2002)*	no requirement	= 0	No data	0 %
	ICAM – Sistema de Apoio Financeiro Selectivo (“Selective Financial Support Scheme”)	9,498,826 (2002)*	no requirement	= 0	No data	
	Ibermedia	3,242,000 (2002)*	no requirement	= 0	No data	

⁴ Assessment based on replies from local lawyers (see synthesis sheet)

⁵ 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

⁶ 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

⁷ “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
Portugal	Brazil	May 1981	N
	France	June 1981	
	Spain	July 1989	
	Cabo Verde	August 1989	
	Germany	October 1989	

Portugal has concluded nine co-production agreements. Portugal has been a party to the European Convention on Cinematographic Co-Production since 1996.

In Portugal, there are two funding schemes for the financial support of cinema, the *Sistema de Apoio Financeiro Directo* (“Direct Financial Support Scheme”), and the *Sistema de Apoio Financeiro Selectivo* (“Selective Financial Support Scheme”). Both schemes are managed by the *Instituto do Cinema, Audiovisual e Multimedia* (“ICAM”, Institute for Cinema, the Audiovisual and Multimedia) and are regulated by the *Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção* (“Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films”) from 2003. In 2005, the two funding schemes were supporting approximately six films.

2 Synopsis of conventions on co-production agreements

Portugal is a party to nine co-production agreements. Five co-production agreements are with former colonies and Portuguese-speaking countries (Angola, Brazil, Cabo Verde, Mozambique, São Tomé e Príncipe). The four other co-production agreements are with European countries, namely France, Italy, Germany and Spain.

It should be noticed that Brazil was, in 1981, the first country to agree on a legal framework for co-production with Portugal (see reply A.3 for Portugal)⁴.

Furthermore, Portugal is a party to the European Convention on Cinematographic Co-Production which came into force in 1996.

The competent authority in charge of the supervision of all co-production agreements as well as of the European Convention is the ICAM.

No new co-production agreements are to be expected in the near future.

3 Synopsis of formal nationality certification procedures

In Portugal there is a nationality certification procedure for audiovisual and cinematographic production. The authority in charge of this procedure is the ICAM- *Instituto do Cinema, Audiovisual e Multimedia*.

According to Article no. 11 of Law no. 42/2004 a cinematographic or audiovisual work shall be deemed of Portuguese nationality if it fulfils the following requirements.

1. A minimum of 50% of the authors are Portuguese nationals or nationals of an EU member state
2. A minimum of 50% of the technical staff are Portuguese nationals or nationals of an EU member state
3. A minimum of 50% of the protagonists in leading and secondary roles are Portuguese nationals or nationals of an EU member state
4. A minimum of 50% of shooting or production time take place on Portuguese territory, save exceptions demanded by the script
5. The original version is in the Portuguese language, save for 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.

⁴ This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

There is no specific formal procedure to assess and certify the nationality of an independent film or television production (see Art. 11 of Law no. 42/2004 and reply A.4 for Portugal).

4 Synopsis of expected legal developments

As a consequence of the coming into force of this law, the funding procedures are currently undergoing major changes. Decree-law no. 227/2006, of 15 November 2006 was 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.

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). In particular, 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 schemes to be enacted in the future 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).

The specific regulations for each funding scheme are expected to be published soon, and they can be expected to come into force during 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 (for further details see reply A.6 for Portugal).

B The Portuguese funding schemes

1 Overview

In Portugal, there are two funding schemes for the financial support of cinema, the *Sistema de Apoio Financeiro Directo* (“Direct Financial Support Scheme”), and the *Sistema de Apoio Financeiro Selectivo* (“Selective Financial Support Scheme”).

The authority in charge of their administration and supervision is *Instituto do Cinema, Audiovisual e Multimedia* (“ICAM”, Institute for Cinema, the Audiovisual and Multimedia).

They are regulated by the *Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção* from 2003 (“Regulation for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films”).

2 Analysis of the Direct Financial Support Scheme (Sistema de Apoio Financeiro Directo)

2.1 Description of the funding scheme

The Direct Financial Support Scheme is based on the *Lei de Arte Cinematográfica e Audiovisual* (law n. 42/2004, “Law of Cinematographic and Audiovisual Art”) of 18 August 2004, and on the *Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção* (“Regulation” for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films) of 29 June 2003.

There have been no significant changes of regulations affecting the legal questions addressed by this study during the reference period from 2001 to 2005.

The authority in charge of its administration and supervision is *Instituto do Cinema, Audiovisual e Multimedia* (“ICAM”, Institute for Cinema, the Audiovisual and Multimedia). For contact information see reply B.14 for the Portuguese Direct Financial Support Scheme, and for additional information on this scheme the website of the ICAM <http://www.icam.pt>.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 11 of Law no. 42/2004 (see reply A.4 for Portugal).

2.2.2 Practice

There is no relevant judicial or administrative practice reported.

2.2.3 Discussion

N/A

2.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follow: in order to be eligible to receive State aid half of the shooting and the use of studios shall be in Portugal; regarding this requirement no percentage is mentioned by the law.

One cannot generally assess the degree of intensity of the territorialisation requirement (that shooting time should take place in Portugal) in terms of percentage of the film production budget since the corresponding local expenditures caused by the shooting in Portugal will vary from one film to the other.

Since this requirement is located under the formal nationality certification procedures, it qualifies as an indirect territorialisation requirement (see Section A3 above).

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial or administrative practice reported.

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Portugal for Direct Financial Support Scheme). However, the nationality certification criteria (see replies A.4 for Portugal and B.11 for Portugal for Direct Financial Support Scheme) arguably contain indirect territorialisation requirements.

2.4. Synopsis of State aid selective granting criteria and procedures

The Direct Financial Support funding scheme grants State aid both selectively and automatically.

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, video-graphic edition and other media;
- e) distribution strategies.

Each criterion is evaluated on a scale of 0 to 10 and then the points are weighted according to the following formula: $(3 \times a + 2.5 \times b + 2 \times c + 1.5 \times d + e) / 10$

See reply B.13 for Portugal on the Direct Financial Support Scheme.

No indirect territorialisation requirements are located under the selective aid granting criteria and procedure.

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

In case of conflict or inconsistency between a requirement and an international agreement, the rules contained in the international convention on co-production agreements will prevail over national law. As a matter of fact 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.

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

At the constitutional level Article 9 of the Portuguese Constitution states that “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 (...)”.

Article 78 of the Portuguese constitution provides that: “It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguarding and

valorization 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; (...)"

According to Article 3 of the Law on film funding of 2004, the State supports "cinematographic and audiovisual creation [...] and] diffusion [...] 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 regard to deepening relations with countries of Portuguese language" (see reply B.12 for Portugal on the Direct Financial Support Funding Scheme and Law no. 42/2004 of 18 August 2004).

It is also worth noting that the Direct Financial Support funding scheme aims at supporting cinematographic and audiovisual creation, and at promoting the Portuguese image in the world as stated in Portugal's Constitution (see Section A4 above).

The legal provision articulating cultural objectives that apply to this funding scheme is drafted in a general way. No indirect territorialisation requirements are located under the purpose and cultural clauses.

3 Analysis of the Sistema de Apoio Financeiro Selectivo ("Selective Financial Support Scheme")

3.1 Description of the funding scheme

The Selective Financial Support Scheme is based on the *Lei de Arte Cinematográfica e Audiovisual* (law n. 42/2003, "Law of Cinematographic and Audiovisual Art") of 18 August, 2003, and on the *Regulamento de Apoio Financeiro à Produção Cinematográfica de Filmes de Longa Metragem de Ficção e de Curta Metragem de Ficção* ("Regulation" for Financial Support to Cinematographic Production of Fiction Full-Length Films and Short-Length Films) of 29 June 2003.

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 for the Portuguese Selective Financial Support Scheme, and for additional information on this scheme the website of the ICAM <http://www.icam.pt>.

3.2 Synopsis of objective territorialisation requirements

3.2.1 Rules

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme: Art. 11 of Law no. 42/2004 (see reply A.4 for Portugal).

3.2.2. Practice

There is no relevant judicial or administrative practice reported.

3.2.3 Discussion

N/A

3.2.4 Conclusions

The objective territorialisation requirements that apply to this funding scheme can be summarized as follows: in order to be eligible to receive State aid half of the shooting and the use of studios shall be in Portugal; regarding this requirement no percentage is mentioned by the law.

One cannot generally assess the degree of intensity of the territorialisation requirement (that shooting time should take place in Portugal) in terms of percentage of the film's production budget since the corresponding local expenditures caused by the shooting in Portugal will vary from one film to another.

Since this requirement is located under the formal nationality certification procedures, they qualify as indirect territorialisation requirements (see Section A3 above).

3.3 Synopsis of indirect territorialisation requirements

3.3.1. Practice

There is no relevant judicial or administrative practice reported.

3.3.1. Discussion

N/A

3.3.1. Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Portugal for Direct Financial Support Scheme). However, the nationality certification criteria (see replies A.4 for Portugal and B.11 for Portugal for Direct Financial Support Scheme) arguably contain indirect territorialisation

requirements. Furthermore the purpose and the selective aid criteria arguably provide indirect territorialisation requirements (see Sections 2.4 and 2.6 below).

3.4. Synopsis of State aid selective granting criteria and procedure

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.

Each criterion is evaluated in a scale of 0 to 10 and the points are then weighted according to the following formulae.

If the application is presented by the producer $(3.5 \times a + 2.5 \times b + 2.5 \times c + 1.5 \times d) / 10$

If the application is presented by the director $(4 \times a + 3 \times b + 3 \times c) / 10$

See Art. 21 of the Selective Support funding scheme and reply B.13 for Portugal for the Selective Financial Support Scheme

No indirect territorialisation requirements are located under the selective aid granting criteria and procedure.

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

See Section 2.5 above.

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

At the constitutional level Article 9 of the Portuguese Constitution states that “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 (...)”.

Article 78 of the Portuguese constitution provides that: “It is the State's task, in collaboration with all cultural entities: (...) to promote the safeguarding and valorization 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; (...).”

According to Article 3 of the Law on film funding of 2004, the State supports “cinematographic and audiovisual creation [...] and] diffusion [...] 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 regard to deepening relations with countries of Portuguese language” (see reply B.12 for Portugal on the Direct Financial Support Funding Scheme and Law no. 42/2004 of 18 August 2004).

It is also worth noting that the Direct Financial Support funding scheme aims at supporting cinematographic and audiovisual creation, and at promoting the Portuguese image in the world as stated in Portugal’s Constitution (see Section A4 above).

The legal provision articulating cultural objectives that apply to this funding scheme is drafted in a general way. No indirect territorialisation requirements are located under the purpose and cultural clauses.

References:

None

Attachments:

- Replies to the legal questionnaire by Miguel Pena Machete, attorney at law, Serra Lopes, Cortes Martins & Associados – Sociedade de Advogados, RL, Portugal
- Regulations for the Portugal