

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



SPAIN
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

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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 Spain

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			Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N
				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	
Spain	Medidas de fomento a la cinematografía (central level)	64,550,000	Nat.	N/A	N/A	N/A	N/A	N/A	N/A	
	Impuesto de sociedades (central level)	N/A ¹	Nat.	N/A	N/A	N/A	N/A	N/A	N/A	

¹ Note that there is a same degree of territorialisation as in Medidas de formento a la cinematografía.

Ayudas a la Producción Audiovisual (Valencia)	1,202,020	Reg.	N/A	N/A	N/A	N/A	N/A	N/A
Subvenciones automáticas a la industria audiovisual catalana (Catalonia)	8,025,000 (2006) ²	Reg.	N/A	N/A	N/A	N/A	N/A	N/A
Subvenciones selectivas a la industria audiovisual catalana (Catalonia)	5,982,672 ³	Reg.	between 50% - 75% depends on the kind of audiovisual production (B 6.2) there are also special rules for Spanish or international co-productions agreements (B 6.2, B 6.5)	N/A	N/A	N/A	N/A	N/A
Medidas de fomento del uso del catalán (Catalonia)	2,193,263 ⁴	Reg.	N/A	N/A	N/A	N/A	N/A	N/A
Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual (Catalonia)	22,226,100	Reg.	N/A	N/A	N/A	N/A	N/A	N/A
Ayudas al desarrollo de proyectos y la producción de obras audiovisuales (Andalusia)	1,224,000	Reg.	N/A	N/A	N/A	N/A	N/A	N/A

² <http://www.catalanfilms.net/recursos/doc/document21317.pdf>

³ According to Korda

⁴ It is not clear if this budget is part of the overall 64 MEUR budget of the central level Medidas de fomento a la cinematographica.

	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Galicia)	4,178,123	Reg.	As a minimum limit the recipient of State aid is required to spend to spend locally at least 25 % of production budget (B 10.2)	N/A	N/A	N/A	N/A	N/A
	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Euskadi, País Vasco)	1,860,527	Reg.	N/A	N/A	N/A	N/A	N/A	N/A
	Financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi (Euskadi, País Vasco)	N/A	Reg.	N/A	N/A	N/A	N/A	N/A	N/A

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
Spain	Medidas de fomento a la cinematografía (central level)	- nationality of the production authors (at least 75% of Spanish or EU citizens); - Spanish language (or one of the official Spanish languages); - domicile or permanent establishment of the production or postproduction services (A 3)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	Impuesto de sociedades (central level)	- nationality of the production authors (at least 75% of Spanish or EU citizens); - Spanish language (or one of the official Spanish languages); - domicile or permanent establishment of the production or postproduction services (A 3)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Ayudas a la Producción Audiovisual (Valencia)	N/A	N/A	N/A	Y Recipient of State aid is required to use local resources and services	N/A	N/A	Y Cultural condition of selective State aid granting procedure to use local resources and services	N/A	N/A
	Subvenciones automáticas a la industria audiovisual catalana (Catalonia)	Y Recipient of State aid is required to have Spanish or Catalan nationality certification, the requirements: - nationality of the production authors; - language; - domicile or permanent establishment of the production or postproduction services (A 3)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Subvenciones selectivas a la industria audiovisual catalana (Catalonia)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

	Medidas de fomento del uso del catalán (Catalonia)	N/A	N/A	N/A	Y Recipient of State aid is required to broadcast, distribute and promote the audiovisual production locally (B 7.4)	N/A	N/A	Y Cultural conditions of selective State aid granting procedure as broadcasting, distribution and promotion of the audiovisual production locally (B 7.6)	N/A	N/A
	Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual (Catalonia)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Ayudas al desarrollo de proyectos y la producción de obras audiovisuales (Andalusia)	N/A	N/A	N/A	Y - create an employment; - use local human and material resources (B 9.4)	N/A	N/A	N	N/A	N/A
	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Galicia)	N/A	N/A	N/A	Y - create employment in the region of Galicia (B 10.4)	N/A	N/A	Y - State aid is aimed at facilitating audiovisual production	N/A	N/A

	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Euskadi, País Vasco)	N/A	N/A	N/A	Y Recipient of State aid is required to promote the local film production; there are applied several requirements: - place of production; - crew and employees' domicile and residency in the Euskadi; - use of Euskara language (B 11.4)	N/A	N/A	N/A	N/A	N/A
	Financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi (Euskadi, País Vasco)	N/A	N/A	N/A	Y Recipient of State aid is required to be domiciled or permanently established in Euskadi (B 12.4)	N/A	N/A	N/A	N/A	N/A

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ⁹	Degree of the territorialisation ¹⁰		
				Funding Scheme Level ¹¹	Funding body level	Member State Level ¹²
Spain	Medidas de fomento a la cinematografía (central level)	64,550,000	no requirement	= 0	No data	0 %
	Impuesto de sociedades (central level)	N/A ⁵	no requirement	= 0	No data	
	Ayudas a la Producción Audiovisual (Valencia)	1,202,020	no requirement	= 0	No data	
	Subvenciones automáticas a la industria audiovisual catalana (Catalonia)	8,025,000 (2006) ⁶	no requirement	= 0	No data	
	Subvenciones selectivas a la industria audiovisual catalana (Catalonia)	5,982,672 ⁷	between 50% - 75% of the film budget	< 1	No data	
	Medidas de fomento del uso del catalán (Catalonia)	2,193,263 ⁸	no requirement	= 0	No data	
	Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual (Catalonia)	22,226,100	no requirement	= 0	No data	

⁵ Note that there is a same degree of territorialisation as in Medidas de fomento a la cinematografía.

⁶ <http://www.catalanfilms.net/recursos/doc/document21317.pdf>

⁷ According to Korda

⁸ It is not clear if this budget is part of the overall 64 MEUR budget of the central level Medidas de fomento a la cinematográfica.

⁹ Assessment based on replies from local lawyers (see synthesis sheet)

¹⁰ 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

¹¹ 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

¹² “total amount subject to territorialisation”/“total budget available”

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

	Ayudas al desarrollo de proyectos y la producción de obras audiovisuales (Andalucía)	1,224,000	no requirement	= 0	No data	
	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Galicia)	4,178,123	Spend locally at least 25% of the film budget	< 1	No data	
	Concesión de ayudas a la creación, desarrollo y producción audiovisual (Euskadi, País Vasco)	1,860,527	no requirement	= 0	No data	
	Financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi (Euskadi, País Vasco)	N/A	no requirement		No data	

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
Spain	Germany	5 December 2000	Y Spain is currently negotiating co-production conventions with Austria, New Zealand and India
	Argentina	28 August 1969	
	Brazil	2 December 1963	
	Canada	14 January 1985	
	Cuba	31 January 1990	
	Chile	November 2003	
	France	20 March 1989, Addenda: 30 June 2005	
	Italy	03 June 1998	
	Morocco	27 April 1998	
	Mexico	30 January 2004	
	Portugal	08 November 1989, amended 24 March 2004	
	Puerto Rico	27 May 2003	
	Tunisia	02 November 1971	
	Russia	08 October 1991	
	Venezuela	18 February 1997	
	European Convention on Cinematographic Co-production	01 February 1997	
	Convenio de Integración Cinematográfica Iberoamericana	08 May 1991	
adhesión de España al Acuerdo Latinoamericano de Coproducción Cinematográfica	08 October 1992		
IBERMEDIA	09 November 1997		
the Regions of Galicia, Cataluña and Andalucía have signed a Co-production agreement with Argentina, known as “Raíces”	21 January 2005 (Andalusia from 22 September 2006)		

Spain is currently a party to the European Convention on Cinematographic Co-production. In addition, there are 15 bilateral and two multilateral conventions on co-production agreements. Spain is also a member of the IBERMEDIA – special fund for stimulating co-productions between its member states through low interest loans. Co-production agreements with Austria, New Zealand and India are

currently being negotiated. Moreover, the Regions of Galicia, Catalonia and Andalucía (the last-mentioned entered the agreement on 22 September 2006) have signed a co-production agreement “Raíces” with Argentina.

In Spain, there are eleven funding schemes, governing by nine different authorities, with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works with a budget of at least €1m (one million euros) in 2005. These schemes can be classified under three general categories, according to their administration and supervisory authorities:

- federal (under Spanish constitutional terminology: “central”) funding schemes
- regional funding schemes governed by independent agencies for audiovisual management
- regional funding schemes administered directly by the culture departments of the autonomous Regions of Andalucía, Galicia and Euskadi (País Vasco)

On the federal level, there is a formal procedure to assess and certify the nationality of an independent audiovisual production. However, nationality is not a decisive criterion for granting State aid. In addition, on the regional level, in the Regions of Catalonia and Valencia there are applied criteria (in force from 2006) of the Catalan or Valencian nationality of the production.

2 Synopsis of conventions on co-production agreements

There are 15 bilateral conventions on co-production agreements. Spain is also a party to the European Convention on Cinematographic Co-production, which entered into force in 1997, and has signed two conventions on co-production agreements with countries of Latin America (Convenio de Integración Cinematográfica Iberoamericana and Acuerdo Latinoamericano de Coproducción Cinematográfica). For further details see the list: reply A.3 for Spain⁹, Points 1 and 2.

The authority in charge of administration and supervision of all these international agreements is the Instituto de la Cinematografía y de las Artes Audiovisuales (“ICAA”), Subdirección General de Promoción y Relaciones Internacionales (see reply A.3 for Spain, Point 2).

In addition, Spain is a member of the IBERMEDIA – fund created for stimulating co-productions between its member states via low interest loans (for more details see reply A.3 for Spain, Point 3). This agreement is administered by Programa Ibermedia and came into force on 8 November 1997 (see reply A.3 for Spain, Point 3).

The Regions of Galicia, Catalonia and Andalucía (the last-mentioned entered this agreement on 22 September 2006) have signed a co-production agreement “RAÍCES” with Argentina (see reply A.3 for Spain, Point 4).

This co-production agreement is administered and supervised by the respective regional authorities (see reply A.3 for Spain, point 4).

⁹ This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

Spain is currently negotiating further conventions on co-production agreements with Austria, New Zealand and India (see reply A.5 for Spain; see Section A.4 below).

3 Synopsis of formal nationality certification procedures

In Spain, indirect territorialisation requirements are located under the rules on formal nationality certification procedures that apply to independent film or television productions. The competent authority in charge of this procedure is the Instituto de Cinematografía y Artes Audiovisuales (“ICAA”). Pursuant to Art. 2 of the *Ley 15/2001 de fomento y promoción de la cinematografía y el sector audiovisual* (Law 15/2001 on fostering and promotion of cinematography and the audiovisual sector), which came into force on 11 July 2001, the formal criteria for granting Spanish nationality to a motion picture production are the nationality of the production’s authors (at least 75% Spanish or other EU citizens) and crew members (Spanish or other EU citizens), Spanish language (or one of the languages of Spain) and the domicile of the production and post-production services. During this procedure, applicants have to provide a complete documentation certifying the compliance with all the abovementioned criteria. If the nationality certification is denied, an appeal can be submitted to the superior authority of the ICAA within the period of one month (for further details see reply A.4 for Spain).

Although it is not a decisive factor it is preferable that productions applying to the ICAA for federal aid fulfill Spanish nationality requirements (see reply B.11 for Spain, for Medidas de fomento Funding Scheme).

In general, the criterion of Spanish nationality of a motion picture production is not relevant on the regional level. The basic requirement applied to film production companies in regional procedures for granting aid is the domicile or the permanent establishment of the company in the relevant region. In addition, in the regions of Catalonia and Valencia (as from 2006), the criterion of the Catalan or Valencian identity of the film is applied. This criterion is certified through the regional funding schemes (see reply A.4 for Spain).

4 Synopsis of expected legal developments

Spain is currently negotiating co-production conventions with Austria, New Zealand and India (see reply A.5 for Spain).

No new schemes containing territorialisation requirements are expected.

B The Spanish funding schemes

1 Overview

In Spain, according to the domestic terminology, funding schemes are classified under the names of their administration and supervisory authority. In accordance with this rule, the Spanish system of funding schemes for audiovisual production is structured as follows:

On the federal (central) level, there are two funding schemes:

- “*Medidas de fomento a la cinematografía*” (Measures to foster cinematography) administered by the Instituto de la Cinematografía y de las Artes Audiovisuales
- “*Impuesto de sociedades*” (tax incentive scheme) administered by the Agencia Tributaria

On the regional level, there are five funding schemes governed by the special, independent agencies for audiovisual management:

- “*Ayudas a la Producción Audiovisual*” (Assistance to audiovisual production), administered by the Instituto Valenciano de Cinematografía (“IVAC”)
- “*Subvenciones automáticas a la industria audiovisual catalana*” (Automatic subventions to the Catalan audiovisual industry) and the “*Subvenciones selectivas a la industria audiovisual catalana*” (Selective subventions to the Catalan audiovisual industry), both administered by the Institut Català de les Indústries Culturals (“ICIC”)
- “*Medidas de fomento del uso del catalán*” (Measures to foster the use of Catalan) administered by the Secretaría de Política Lingüística de la Generalitat de Cataluña
- “*Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual*” (Loans for investment in audiovisual production) administered by the Instituto Catalán de Finanzas

Another four funding schemes on the regional level are administered and supervised by the culture departments of the autonomous Regions of Andalucía, Galicia and Euskadi (País Vasco):

- “*Ayudas al desarrollo de proyectos y la producción de obras audiovisuales*” (Assistance for the development of projects and the production of audiovisual works) administered by the Consejería de Cultura of the Junta de Andalucía
- “*Concesión de ayudas a la creación, desarrollo y producción audiovisual*” (Granting of assistance for audiovisual creation, development and production), administered by the Conselleria de Cultura of the Xunta de Galicia
- “*Concesión de ayudas a la creación, desarrollo y producción audiovisual*” (Granting of assistance for audiovisual creation, development and production) and “*Financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi*” (Financing for the fostering of audiovisual production in the Autonomous Community of Euskadi) administered by the Departamento de Cultura of the Comunidad Autónoma de Euskadi (País Vasco)

For further detailed information see reply A.2. for Spain.

In Spain, State aid for audiovisual productions is granted both selectively and automatically on the federal as well as on the regional level. The aid is distributed not only through public subsidies but also by tax incentive and credit schemes.

2 Analysis of Medidas de fomento a la cinematografía (“Medidas de fomento Funding Scheme”)

2.1 Description of the funding scheme

The Medidas de fomento Funding Scheme is a federal scheme, for the fostering of cinema, based on the provisions of the following laws and regulations: *Ley 15/2001 de fomento y promoción de la cinematografía y el sector audiovisual* (Law 15/2001 for the fostering and promotion of the film and audiovisual sector), which came into force on 11 July 2001; the *Real Decreto 526/2002 por el que se regulan medidas de fomento y promoción de la cinematografía y la realización de películas en coproducción* (Royal Decree 526/2002 regulating provisions for the fostering and promotion of films and co-productions), which came into force on 29 June 2002; *Orden ECD/2240/2003, por la que se dictan normas de aplicación del Real Decreto 526/2002* (Order ECD/2240/2003, which implements the Royal Decree 526/2002), which came into force on 8 August 2003.

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For more information, see the copies of respective laws and provisions attached to the questionnaire for Spain for Medidas de fomento Funding Scheme.

The Medidas de fomento Funding Scheme supervisory authority is Instituto de la cinematografía y de las artes audiovisuales (“ICAA”) which is a part of the Federal Culture Department. For contact information see reply B.14 for Spain for Medidas de fomento Funding Scheme; for additional information on this scheme see the website of the *Ministerio de Cultura* – Spanish Ministry of Culture:

http://www.mcu.es/jsp/plantilla_wai.jsp?id=2&area=cine.

2.2 Synopsis of objective explicit territorialisation requirements

2.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

2.2.2 Practice

There is no relevant judicial and administrative practice reported.

2.2.3 Discussion

N/A

2.2.4 Conclusions

No objective explicit territorialisation requirements apply.

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial and administrative practice reported.

2.3.2 Discussion

Indirect territorialisation requirements are located under the rules on formal nationality certification procedure that applies to this funding scheme. These criteria are based on the provisions of Art. 7 of *Real Decreto 526/2002* which states that, even though it is not a decisive factor, it is preferable that a film that is a subject of public aid will be shot in a Spanish language, on the territory of Spain and with a majority of Spanish or EU crew members.

These criteria should not be used in case of co-production between a Spanish company and a foreign company (see reply B.11 for Spain, for Medidas de fomento Funding Scheme). See the analysis of indirect territorialisation under Section A.3 above.

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. Indirect territorialisation requirements are located under the rules on formal nationality certification procedure. Further reference is made to Section A.3 above.

2.4 Synopsis of selective State aid granting criteria and procedures

25% of the total amount of annual State aid of this funding scheme is granted in a selective way.

These selective criteria can be summarized as follows:

- quality and artistic value of production
- proportionate budget for the project
- production-financing plan

In addition, an applicant company has to be solvent and have no debts in respect to ICAA, in any case.

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

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

The ICAA, the Medidas de Fomento Funding Scheme's authority, is an institution in charge of administration and supervision of most conventions on co-production agreements (see reply A.3 for Spain). On the basis of the *Real Decreto 526/2002 por el que se regulan medidas de fomento y promoción de la cinematografía y la realización de películas en coproducción*, it promotes and facilitates film co-productions. Furthermore, the criteria of the national certification should not be applied to projects based on co-production agreements. See reply B.11 for Spain, for

Medidas de fomento Funding Scheme; see Section 2.3 above; for additional information on cultural co-operation, see the website of the *Ministerio de Cultura* – Spanish Ministry of Culture:

http://www.mcu.es/jsp/plantillaAncho_wai.jsp?id=6&area=cine.

Arguably, there are no formal obstacles resulting from territorialisation requirements under the Medidas de fomento Funding Scheme for the conclusion and implementation of co-production agreements.

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

General provisions concerning Spanish cultural policy applied to the Medidas de fomento Funding Scheme are articulated in *La Constitución Española* (the Spanish Constitution), which came into force on 6 December 1978. Art. 149.2 states: “Without prejudice to the competences that may be assumed by the Self-governing Communities, the State shall consider the promotion of culture as a duty and an essential function and shall facilitate cultural communication among the Self-governing Communities, in cooperation with them”.

The goals of Spanish federal policy in cinematographic and audiovisual production are also formulated in the *Ley 15/2001, Ley de fomento y promoción de la cinematografía y el sector audiovisual* (Law on fostering and promoting cinematography and the audiovisual sector), under Art 1, 4, 5 which states that culture is an objective in need of state aid and in the *Ley 38/2003 General de Subvenciones* - Spanish State Subvention law under Art. 2.c.

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

3 Analysis of Impuesto de sociedades (“Impuesto de sociedades Funding Scheme”)

3.1 Description of the funding scheme

The Impuesto de sociedades Funding Scheme is a federal tax incentive scheme applied exclusively to audiovisual (independent film and/or television) distribution and production companies. It is based on the provisions of Art. 35 and Art. 38 of the *Real Decreto Legislativo 4/2004, texto refundido de la ley de Impuesto sobre sociedades* (here in after referred as “Rdleg 4/2004”) (Royal Decree on company tax law), which came into force on 12 March 2004. This provides tax relief for companies investing or in audiovisual productions or in their distribution. There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study.

The incentive for companies investing in productions consists of a reduction of the contingent amounting to 20% of annual company tax declaration. In addition, a company engaged in executive co-productions can also be granted a tax reduction of 5% of the amount invested, providing that its share amounts to between 10% and 25 % of all production costs (see reply B.7 for Spain for Impuesto de sociedades Funding Scheme).

The scheme provides also an incentive for distribution of audiovisual productions. A company can be granted a bonus tax reduction up to 99% of the investment costs, which must to be reinvested in further distribution (see reply B.7 for Spain for Impuesto de sociedades Funding Scheme).

The Impuesto de sociedades Funding Scheme is governed by the Agencia Tributaria, but the supervision and administration depend on the regional authorities. For contact information see reply B.3 and B.14 for Spain for Impuesto de sociedades Funding Scheme, for more information see the website: <http://www.aeat.es>.

3.2 Synopsis of objective explicit territorialisation requirements

3.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

3.2.2 Practice

There is no relevant judicial or administrative practice reported.

3.2.3 Discussion

N/A

3.2.4 Conclusions

No objective explicit territorialisation requirements apply.

3.3 Synopsis of indirect territorialisation requirements

3.3.1 Practice

There is no relevant judicial and administrative practice reported.

3.3.2 Discussion

Indirect territorialisation requirement are located under the rules on formal nationality certification procedures that apply to this funding scheme. State aid can be granted only to companies investing in audiovisual productions (or their distribution) that fulfill the requirements of Spanish nationality certification (see reply B.7 for Spain for Impuesto de sociedades Funding Scheme).

Moreover, to be eligible for State aid under the Impuesto de sociedades Funding Scheme, it is required (under Art. 34 and Art. 38 of the Rdleg 4/2004) that companies investing in audiovisual productions or their distribution have domicile or permanent establishment in Spain. The tax reduction is applied to a company's annual tax declaration; consequently the company must be taxable in Spain. (see reply B.6 and B.7 for Spain for Impuesto de sociedades Funding Scheme).

See the analysis of indirect territorialisation requirements under Section A.3 above.

3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. Indirect territorialisation requirements are located under the rules on formal nationality certification procedure. Further reference is made to Section A.3 above.

3.4 Synopsis of selective State aid granting procedures

N/A

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

Under the Impuestos de sociedades Funding Scheme, a tax reduction can be granted only to companies, which are taxable in Spain. This criterion is also applied to the co-productions agreements (see reply B.8 for Spain for Impuestos de sociedades Funding Scheme).

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

General provisions concerning Spanish cultural policy applied to the Impuestos de sociedades Funding Scheme are articulated in *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978. Art. 44.1 states that “the public authority shall promote and grant access to culture, to which all are entitled”, and Art. 46 states that “the public authority shall assure the promotion of the historical, cultural and artistic patrimony of Spain”. See reply B.12 for Spain, for Impuestos de sociedades Funding Scheme.

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

4. Analysis of Ayudas a la Producción Audiovisual (Ayudas a la Producción Funding Scheme)

4.1 Description of the funding scheme

The Ayudas a la Producción Funding Scheme covering Comunidad Autónoma de Valencia is based on the *Ley 5/1998, de 18 de junio, de Creación del Instituto Valenciano de Cinematografía Ricardo Muñoz Suay* (Law 5/1998 on the Creation of the Instituto Valenciano de cinematografía), which came into force on 24 June 1998, and on the *Orden de 30 de diciembre 2004 por la que se convoca la concesión de ayudas para creación audiovisual* (Order of 30 December 2004 on State aid for audiovisual creation). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for Spain for Ayudas a la Producción Funding Scheme).

The Ayudas a la Producción Funding Scheme supervisory authority is the Instituto Valenciano de Cinematografía (“IVAC”). For contact information see reply B.14 for Spain for Ayudas a la Producción Funding Scheme; for additional information on this scheme: <http://www.ivac-lafilmoteca.es/pagina.asp>.

4.2 Synopsis of objective explicit territorialisation requirements

4.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

4.2.2 Practice

There is no relevant judicial and administrative practice reported.

4.2.3 Discussion

N/A

4.2.4 Conclusions

No objective explicit territorialisation requirements apply.

4.3 Synopsis of indirect territorialisation requirements

4.3.1 Practice

There is no judicial practice reported.

The administrative practice reported concerning indirect territorialisation requirements can be summarized as follows: under this scheme, public aid can be granted to production companies which have their domicile or permanent establishment in the Region of Valencia. The scheme applies several non-decisive territorial criteria including: place of production, domicile of the crew members and domicile of audiovisual companies.

4.3.2 Discussion

See the analysis of indirect territorialisation requirements under Sections 4.4 and 4.6 below.

4.3.3 Conclusions

There is no judicial practice on indirect territorialisation requirements.

The scheme applies several non-decisive territorial criteria including: place of production, domicile of the crew members and domicile of audiovisual companies. Further reference is made to Sections 4.4 and 4.6 below.

4.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way based on an evaluation of each project and on the following economic, qualitative and territorial criteria.

First, the applicant must prove that it is solidly financed.

Second, the following qualitative conditions are applied: the aid granting authority evaluates whether the proposed project is creative, original and interesting.

Third, the scheme's authority takes into consideration professional experience of a production company and crew members. One must also draw attention to the point that it may also count in favour of a project's selection for funding that the project would be made in a co-production.

Finally, the funding scheme applies non-decisive territorial criteria, in particular: domicile of the crew members and audiovisual production or postproduction companies, usage of local resources and services, place of shooting and production. The territorial requirements are evaluated on the basis of the *ad hoc* value scale issued by the local federation for audiovisual production, Federació Valenciana de l'Audiovisual ("FEVA"). For more detailed information see reply B.11 and B.13 for Spain for Ayudas a la Producción Funding Scheme.

The condition requiring the use of local resources and services qualifies as indirect territorialisation requirement.

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

According to its selective criteria of aid granting, the Ayudas a la Producción Funding Scheme facilitates audiovisual co-productions with companies domiciled in the Region of Valencia.

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

General legal provisions expressing cultural goals of the Region of Valencia are based on Section 148 of *La Constitución Española* (Spanish Constitution), which came into force on 06 December 1978, and on the *Ley orgánica de Estatuto de Autonomía de la Comunidad Autónoma Valenciana, Ley 5/1982* (Federal law that regulates administrative and political organization in the Region of Valencia).

The priorities of regional cultural policy in the Region of Valencia are formulated in the following legislation issued by the Parliament of Valencia: the *Ley 5/1998, de 18 de junio, de Creación del Instituto Valenciano de Cinematografía Ricardo Muñoz Suay* (Law 5/1998 on the Creation of the Instituto Valenciano de cinematografía), which came into force on 24 June 1998, and on the *Orden de 30 de diciembre 2004 por la que se convoca la concesión de ayudas para creación audiovisual* (Order of 30 December 2004 on State aid for audiovisual creation).

See reply B.4 and B.12 for Spain for Ayudas a la Producción Funding Scheme.

These legal provisions contain conditions on the use of local resources and services which arguably may be qualified as indirect territorialisation requirement.

5. Analysis of Subvenciones automáticas a la industria audiovisual catalana (“Subvenciones automáticas Funding Scheme”)

The most complex system of public aid in the cinematography sector has been introduced in Catalonia. In 2000, the Parliament of Catalonia created the Institut Català de Les Indústries Culturals to facilitate and promote the development of audiovisual industries in the Region of Catalonia. Since then, the Institut has become a key factor in building-up a local film industry and new financing formulas, in supporting export of cultural products and in guaranteeing the presence of Catalan audiovisual productions in the Spanish and Catalan market.

The Institut Català de les Indústries Culturals has developed an active audiovisual policy in Catalonia, supporting all aspects of the audiovisual industry. It administers and supervises the entire system of aid granting in the two funding schemes that cover automatic and selective aid for the audiovisual industry in this region: the “*Subvenciones automáticas a la industria audiovisual catalana*”, and the “*Subvenciones selectivas a la industria audiovisual catalana*”.

In addition, State aid for audiovisual productions in the region of Catalonia is also granted through another funding scheme: “*Medidas de fomento del uso del catalán*” designated to the support of the use of Catalan language and administered by the Secretaría de Política Lingüística de la Generalitat de Cataluña (see Section B7 below). Moreover, in this region, there has been introduced a special credit line for investments in the audiovisual production sector: the “*Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual*”, administered by the Instituto Catalán de Finanzas (see Section B8 below).

5.1 Description of the funding scheme

The Subvenciones automáticas Funding Scheme covering the Comunidad Autónoma de Cataluña is based on the following laws and decrees: *Ley 20/2000, de 29 de diciembre, de Creación del Instituto Catalán de las Industrias Culturales* (Federal Law 20/2000 of 29 December 2000 creating the Instituto Catalán de las Industrias Culturales), *Decreto 100/2001 Estatutos del Instituto Catalán de las Industrias Culturales* (Decree on the Statutes and Rules of the Instituto Catalán de las Industrias Culturales), *Decreto, 470/2004, de 28 de diciembre 2004, por el que se atribuyen funciones internacionales al Instituto Catalán de las Industrias Culturales* (Decree 470/2004 of 28 December 2004 granting international competences to the Instituto Catalán de las Industrias Culturales).

The framework of the Subvenciones automáticas Funding Scheme for 2005 was based on four regulations: *Resolució CLT/336/2005, de 7 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions per a la producció en versió original catalana i l'estrena en versió catalana de llargmetratges cinematogràfics i produccions en gran format* (Decree of 7 February 2005 on public aid for the

production and screening of full-length film productions in the Catalan language); *Resolució CLT/337/2005, de 4 de febrer, per la qual es convoca concurs public per a la concessió de subvencions a empreses catalanes per a l'assistència i participació a fires, festivals i mercats internacionals durant l'any 2005* (Decree opening a public competition for public aid for Catalan companies to participate in international film festivals, film markets etc. in 2005); *Resolució CLT/275/2005, de 7 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions per a l'explotació de llargmetratges cinematogràfics i de produccions en gran formats* – Decree on state aid for full-length film production and distribution); *Resolució CLT/271/2005, de 8 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions per a la promoció i publicitat de llargmetratges cinematogràfics i de produccions de gran format* – Decree of 8 February on state aid for full-length film promotion and publicity)

For further information, see reply B.4 for Spain for Subvenciones automáticas Funding Scheme.

The Subvenciones automáticas Funding Scheme supervisory authority is the Institut Català de les Indústries Culturals (“ICIC”). For contact information see reply B.14 for Spain for Subvenciones automáticas Funding Scheme; for more information see the website: <http://cultura.gencat.net/icic/index.htm>

5.2 Synopsis of objective explicit territorialisation requirements

5.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

5.2.2 Practice

There is no relevant judicial and administrative practice reported.

5.2.3 Discussion

N/A

5.2.4 Conclusions

No objective explicit territorialisation requirements apply.

5.3 Synopsis of indirect territorialisation requirements

5.3.1 Practice

There is no judicial and administrative practice reported.

5.3.2 Discussion

N/A

5.3.3 Conclusions

There is no judicial and administrative practice reported.

Indirect territorialisation requirements are located under the rules on formal nationality (Spanish or Catalan) certification procedures that apply to this funding scheme. Moreover, it is required that applicant companies have domicile or at least permanent establishment in Catalonia. Next, State aid for film production can be granted only to a production in which the original language version is Catalan. Finally, productions which received public aid under this scheme must be shown for at least a whole week in one of the well-known cinemas in Barcelona.

5.4 Synopsis of selective State aid granting criteria and procedures

N/A

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

N/A

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

General legal provisions expressing cultural goals of the region of Catalonia are articulated in *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and in the *Ley Orgánica 4/1979 de creación del Estatuto de Cataluña* (Federal Law regulating administrative and political organization of the region of Catalonia). For further details see reply B.4 and B.12 for Spain for Subvenciones automáticas Funding Scheme.

The priorities of regional cultural policy in Catalonia are also formulated in the regulations of public aid in the sector of cinematography issued by the Parliament of Catalonia. For further details see reply B.4 and B.12 for Spain for Subvenciones automáticas Funding Scheme.

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

6. Analysis of Subvenciones selectivas a la industria audiovisual catalana (“Subvenciones selectivas Funding Scheme”)

6.1 Description of the funding scheme

The Subvenciones selectivas Funding Scheme covering the Comunidad Autónoma de Cataluña is based on the following laws and decrees: *Ley 20/2000, de 29 de diciembre, de Creación del Instituto Catalán de las Industrias Culturales* (Federal Law 20/2000

of 29 November 2000 constituting the Instituto Catalán de las Industrias Culturales); *Decreto 100/2001 Estatutos del Instituto Catalán de las Industrias Culturales* (Decree on the Statutes and Rules of the Instituto Catalán de las Industrias Culturales); *Decreto, 470/2004, de 28 de diciembre, por el que se atribuyen funciones internacionales al Instituto Catalán de las Industrias Culturales* (Decree 470/2004 of 28 December granting international competences to the Instituto Catalán de las Industrias Culturales).

The State aid in the framework of the Subvenciones selectivas Funding Scheme for 2005 has been regulated in several resolutions issued by the Parliament of Catalonia: *Resolució CLT/334/2005, de 7 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions a empreses de producció independents per a la realització de documentals, destinats a ser emesos per televisió* (Decree CLT/334/2005 of 7 February on State aid for documentaries destined for television broadcasting); *Resolució CLT/281/2005, de 4 de febrer, per la qual es convoca concurs public per a la concessió de subvencions a la producció de curtmetratges cinematogràfics* (Decree CLT/281/2005 of 4 February opening a public competition for State aid for short-film productions); *Resolució CLT/273/2005, de 7 de febrer, per la qual es convoca concurs public per a la concessió de subvencions per tal d'impulsar la coproducció de llargmetratges cinematogràfics amb empreses productores independents de Argentina i Galícia, dins del marc de l'acord Raíces* (Decree CLT/273/2005 of 7 February opening a public competition for State aid to facilitate co-productions of full-length films with independent Argentinian and Galician production companies in the framework of the "Raíces" agreement); *Resolució CLT/335/2005, de 7 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions a empreses de producció independents per a la realització de llargmetratges televisius de ficció destinats a ser emesos per televisió* (Decree CLT/335/2005 of 7 February on State aid for fictional film productions destined for television broadcasting); *Resolució CLT/283/2005, de 4 de febrer, per la qual es convoca concurs public per a la concessió de subvencions per a la producció de llargmetratges cinematogràfics que siguin l'opera prima o el segon llargmetratge d'un nou realitzador* (Decree CLT/283/2005 of 4 February opening a public competition for State aid to facilitate a new director's first production or second full-length production); *Resolució CLT/3391/2005, de 24 de novembre, per la qual s'obre convocatòria per a la concessió de subvencions a empreses de producció independents per a la realització de llargmetratges televisius de ficció, destinats a ser emesos per televisió* (Decree CLT/3391/2005 of 24 November opening a public competition for State aid to independent production companies for fictional film productions destined for television broadcasting, *Resolució CLT/274/2005, de 7 de febrer, per la qual s'obre convocatòria per a la concessió de subvencions a empreses de producció independents per al desenvolupament de series d'animació, destinades a ser emesos per televisió* – Decree CLT/274/2005 of 7 February on State aid for animation films destined for television broadcasting, *Resolució CLT/282/2005, de 4 de febrer, per la qual es convoca concurs public per a la concessió de subvencions per a la creació d'obres que articulin una nova mirada sobre l'audiovisual, dirigides per realitzadors que vinguin d'altres disciplines artístiques diferents de la cinematografia i la producció per a televisió* (Decree CLT/282/2005 of 4 February opening a public competition for State aid for the creation of works bringing a new perspective to the audiovisual field, from directors coming from artistic areas outside cinematography and television production); *Resolució CLT/272/2005, de 7 de febrer, per la qual es*

convoca concurs public per a la concessió de subvencions per tal de promoure el cinema d'autor (Decree CLT/272/2005 of 7 February opening a public competition for State aid for promotion of screenwriters' cinema productions).

The scheme administration and supervisory authority is the Institut Català de les Indústries Culturals ("ICIC"). For contact information see reply B.14 for Spain for Subvenciones selectivas Funding Scheme; for additional information: <http://cultura.gencat.net/icic/index.htm>.

6.2.1 Rules

The requirements under this funding scheme for granting State aid to independent film and television productions are governed by regional orders that are updated and amended on an annual basis. These provide conditions of application, time limits and criteria for granting aid.

The following provisions containing objective explicit territorialisation requirements apply to this funding scheme:

6.2 Synopsis of objective explicit territorialisation requirements

- Art. 4e of the Resolució CLT/334/2005 (State aid for TV documentaries)
- Art. 4c of the Resolució CLT/281/2005 (State aid for short-film productions)
- Art. 4 of the Resolució CLT/273/2005 (State aid for co-productions based on the Raíces co-production agreement (see reply A.3.4 for Spain, for Subvenciones selectivas Funding Scheme)
- Art. 5b of the Resolució CLT/335/2005 (State aid for production of fiction films made for TV)
- Art. 4c Resolució CLT/283/2005 (State aid for a new director's first production or second full-length production)
- Art. 5b of the Resolució CLT/3391/2005 (State aid Aid for production of TV fiction films)
- Art. 4c of the Resolució CLT/274/2005 (State aid for animation films made for TV)
- Art. 4e of the Resolució CLT/282/2005 (State aid for directors from other artistic areas, who start in the area of film)
- Art. 4c of the Resolució CLT/272/2005 (State aid for promotion of screenwriters' cinema productions)

For the complete original titles of the resoluciones see reply B.6 for Spain for Subvenciones selectivas Funding Scheme.

6.2.2 Practice

There is no relevant judicial or administrative practice reported (see reply B.9 for Spain for Subvenciones selectivas Funding Scheme).

6.2.3 Discussion

The objective explicit territorialisation requirements under the Subvenciones selectivas Funding Scheme are regulated separately for different kinds of audiovisual productions:

Art. 4e of the Resolució CLT/334/2005 (State aid for TV documentaries) states:

“At least 50% of the total production costs must be invested in activities by workers or companies, which are located in Catalonia. However, in the case of Spanish or international co-productions, at least 50% of the Catalan investment, both public and private, shall be invested in activities by workers or companies, which are permanently domiciled in Catalonia. The participation of artistic and technical crew must be balanced in reference to the percentage of their participation in the co-production. Only those international co-productions, in which the participation is a minimum of 10% in the production, will be eligible to apply for this aid.”

In brief, the scheme requires that as regards State aid for TV documentaries more than half of the production costs must be spent locally in the region of Catalonia. This condition is also applied to Spanish or international co-productions: at least 50% of the Catalan investment, both public and private, must be spent locally.

Art. 4c of the Resolució CLT/281/2005 (State aid for short-film productions) states:

“At least 75% of the production and postproduction costs of the Catalan investment in the film must be invested in activities performed by workers or companies, which are located in Catalonia.”

In brief, the scheme requires that as regards State aid for short-film productions at least 75% of the production and postproduction costs of the Catalan investment in the film must be spent locally in the region of Catalonia.

Art. 4 of the Resolució CLT/273/2005 (State aid for co-productions based on the Raíces co-production agreement) states:

“In order to qualify for the aid, the following requirements must be met:

- a) Co production companies must arrange a co-production agreement, which determines the co-production investment quote.
- b) The investment by each of the co-production companies cannot be less than 20% of the total production costs. Those co-producers whose investment is financial will not qualify for the aid.
- c) Films wanting to qualify for this aid will not be allowed to have more than a 30% investment of co-producers not located in Galicia, Catalonia or Argentina. In any case the major co producer has to be a company located in Catalonia, Galicia or Argentina.
- d) At least 20% of the total production cost shall be invested in activities performed by workers or companies, which are located in Catalonia, but this, shall be equally executed.
- e) The contribution of technique and artistic crew shall be made equally to the co-production quote.
- f) An executive producer from one of these three countries should be appointed.”

In brief, the scheme requires that as regards State aid for co-productions based on the Raíces co-production agreement at least 70% of the production costs must come from local investors from Galicia, Catalonia and Argentina. Moreover, at least 20% of the total production cost shall be invested in activities performed by workers or companies, which are located in Catalonia.

Art. 5b of the Resolució CLT/335/2005 - State aid for production of fiction films made for TV states:

“At least 75% of the total production costs must be invested in activities by workers or companies, which are located in Catalonia. However, in the case of Spanish or international co-productions, at least 75% of the Catalan investment, both public and private, shall be invested in activities by workers or companies, which are permanently domiciled in Catalonia. The participation of artistic and technical crew must be balanced in reference to the percentage of their participation in the co production. Only those international co productions, in which the participation is a minimum of 10% in the production, will be eligible to apply for this aid.”

In brief, the scheme requires that as regards State aid for production of fiction films made for TV at least 75% of the production costs must be spent locally in the region of Catalonia. This condition is also applied to Spanish or international co-productions: at least 75% of the Catalan investment, both public and private, must be spent locally.

Art. 4c Resolució CLT/283/2005 (State aid for a new director’s first production or second full-length production) states:

“In case of fictional films, at least 75% of the production and postproduction costs of the Catalan investment in the film must be invested in activities performed by workers or companies, which are located in Catalonia.”

In brief, the scheme requires that as regards State aid for a new director’s first production or second full-length production at least 75% of the production and postproduction costs of the Catalan investments in the film must be spent locally in the region of Catalonia.

Art. 5b of the Resolució CLT/3391/2005 (State aid Aid for production of TV fiction films) states:

“At least 75% of the total production costs must be invested in activities by workers or companies, which are located in Catalonia. However, in the case of Spanish or international co-productions, at least 75% of the Catalan investment, both public and private, shall be invested in activities by workers or companies, which are permanently domiciled in Catalonia. The participation of artistic and technical crew must be balanced in reference to the percentage of their participation in the co production. Only those international co productions, in which the participation is a minimum of 10% in the production, will be eligible to apply for this aid.”

In brief, the scheme requires that as regards State aid Aid for production of TV fiction films at least 75% of production must be spent locally in the region of Catalonia.

Art. 4c of the Resolució CLT/274/2005 (State aid for animation films made for TV) states:

“At least 75% of the production and postproduction costs of the Catalan investment in the film must be invested in activities performed by workers or companies, which are located in Catalonia.”

In brief, the scheme requires that as regards State aid for animation films made for TV at least 75% of the production and postproduction costs of the Catalan investment in the film must be spent locally in the region of Catalonia.

Art. 4e of the Resolució CLT/282/2005 State aid for directors from other artistic areas, who start in the area of film states:

“At least 75% of the production and postproduction costs of the Catalan investment in the film must be invested in activities performed by workers or companies, which are located in Catalonia.”

In brief, the scheme requires that as regards State aid for directors from other artistic areas, who start in the area of film at least 75% of the production and postproduction costs of the Catalan investment in the film must be spent locally in the region of Catalonia.

Art. 4c of the Resolució CLT/272/2005 (State aid for promotion of screen-writers' cinema productions) states:

“In case of fictional films, at least 50% of the production and postproduction costs of the Catalan investment in the film must be invested in activities performed by workers or companies, which are located in Catalonia.”

In brief, the scheme requires that as regards State aid for promotion of screen-writers' cinema productions at least 50% of the production and postproduction costs of the Catalan investment in the film must be spent locally in the region of Catalonia.

For the quotation of the above legal provisions in the national language and for more detailed information see reply B.6 and reply B.7 for Spain, the Subvenciones selectivas Funding Scheme.

6.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of State aid must spend a minimum proportion of the entire production costs in Catalonia. In general, this proportion is in a range between 50% and 75%, provided that, in the case of feature-film production intended for television broadcasting, the required level is 75% (see reply B.7 for Spain, the Subvenciones selectivas Funding Scheme).

6.3 Synopsis of indirect territorialisation requirements

6.3.1 Practice

There is no relevant judicial and administrative practice reported.

6.3.2 Discussion

N/A

6.3.3 Conclusions

There is no practice on indirect territorialisation requirements.

6.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way based on an evaluation of each project on the basis of qualitative and economic criteria. The evaluation test is divided into two phases. The first stage consists in an evaluation of film projects based on qualitative criteria including the professional experience of the director and the artistic and technical staff as well as on the originality and artistic values of the project. In a second phase, the scheme applies economic criteria referring to the track record of the producer, financial robustness of the production, adequate budget and financing plan and sales expectations (see reply B.11 for Spain for Subvenciones selectivas Funding Scheme).

No indirect territorialisation requirements are located under the selective State aid granting and procedures.

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

One can define two different regimes regulating the co-production agreements. The first one concerns the international co-production agreement “Raíces”, signed by the Regions of Andalucía, Catalonia and Galicia with Argentina, and the second one covers all other co-production agreements.

The requirements applied to the co-production agreement “Raíces” are as follows.

- The Catalan production company must obtain a share of at least 20% in the co-production;
- The shares of producers from states other than the parties of the “Raíces” agreement cannot exceed more than 30% of the co-production.
- 20% of the whole production budget must be spent in Catalonia.
- All co-producers must have positions as executive producers from the States where they have their business seats.
- Technical and artistic staff from Catalonia must be proportionately represented.

For co-productions under other agreements, Catalan producers must have a share of at least 10% in the co-production.

For further details see reply B.8 for Spain, for Subvenciones selectivas Funding Scheme.

6.6 *Synopsis of purpose and cultural clauses applying to the funding scheme*

General legal provisions expressing cultural goals are based on Art. 148 of *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and on the *Ley Orgánica 4/1979 de creación del Estatuto de Cataluña* (Federal Law regulating administrative and political organisation of Cataluña).

The priorities of regional cultural policy in Catalonia are also formulated in the regulations on State aid in the sector of cinematography issued by the Parliament of Catalonia. For further details see reply B.4 and B.12 for Spain for Subvenciones selectivas Funding Scheme.

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

7. **Analysis of Medidas de fomento del uso del catalán (“Medidas de fomento catalán Funding Scheme”)**

7.1 Description of the funding scheme

The Medidas de fomento catalán Funding Scheme covering Comunidad Autónoma de Cataluña is based on the following legal provisions: Art. 28c of the *Ley 1/1998 del Parlamento de Cataluña de 7 de Enero de Política lingüística* (Law 1/1998 of Parliament of Catalonia of 7 January 1998 on linguistic policy), which came into force on 3 March 1998; Art. 3f of the *Decreto 216/2005 del Parlamento de Cataluña de estructura orgánica de la Secretaría de política lingüística* (Art. 3f of the Decree 216/2005 on the organizational structure of the Secretaría de política lingüística [Department for Language Policy]), which came into force on 3 November 2005; *Orden PRE/26/2005, de 14 de febrero, por la que se aprueban las bases reguladoras de la concesión de subvenciones para iniciativas destinadas a aumentar la presencia en videoclubes, librerías y otros circuitos comerciales de producciones cinematográficas en soporte DVD dobladas y/o subtituladas en lengua catalana* - Order Pre/26/2005 of 14 February 2005 regulating the State aid for projects intended to increase the presence in video clubs, shops and other commercial outlets of films in DVD format (dubbed or with subtitles in the Catalan language); *Orden PRE/27/2005, de 14 de febrero, por la que se aprueban las bases reguladoras de la concesión de subvenciones para iniciativas destinadas a aumentar los estrenos comerciales de películas dobladas o subtituladas en lengua catalana* (Order PRE/27/2005 of 14 February 2005 regulating aid for projects aimed at increasing the number of premieres of films dubbed or subtitled in Catalan).

There were no other significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study (see reply B.4 for Spain for Medidas de fomento catalán Funding Scheme).

The Medidas de fomento catalán Funding Scheme supervisory authority is the Secretaría de Política Lingüística de la Generalitat de Catalunya. For contact information see reply B.14 for Spain for Medidas de fomento catalán Funding Scheme; for additional information on this scheme:

<http://www6.gencat.net/llengcat/index.htm>.

The State aid under this scheme is granted primarily to distribution companies, which can also cover the print and advertising expenses (“P&A expenses). For further information, see reply B.2 and B.11 for Spain, for Medidas de fomento catalán Funding Scheme.

7.2 Synopsis of objective explicit territorialisation requirements

7.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

7.2.2. Practice

There is no relevant judicial and administrative practice reported.

7.2.3. Discussion

N/A

7.2.4 Conclusions

No objective explicit territorialisation requirements apply.

7.3 Synopsis of indirect territorialisation requirements

7.3.1 Practice

- There is no relevant judicial or administrative practice reported

7.3.2 Discussion

N/A

7.3.3 Conclusions

There is no relevant practice reported. However, it must be noted that indirect territorialisation requirements are provided under the State aid granting procedure on the basis of selective criteria. Moreover applicant companies must be registered in the funding scheme’s register of audiovisual companies (see reply B.11 for Spain, for Medidas de fomento catalán Funding Scheme; see section B 7.4 below).

7.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way based on an evaluation of each project and follows selective criteria.

First, during the selection procedure, the funding scheme's authority has discretion in evaluating the artistic importance and value of applications, the significance of the target audience and the expected profit of audiovisual production or its distribution (for example, sale in DVD format).

Second, it is required that applicants provide a Catalan language version (dubbing or subtitles) of the audiovisual productions. Moreover, the P&A for distribution must be expressed in Catalan.

Third, the funding scheme examines whether a proposed production or its distribution would be broadcast in Catalan media and promoted in Catalan-speaking regions.

Finally, the estimated advertising costs in the Catalan language are taken into account.

The conditions for broadcasting, distributing and promoting the audiovisual production locally qualify as indirect territorialisation requirements.

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

According to its selective criteria of aid granting, the Medidas de fomento catalán Funding Scheme facilitates audiovisual co-productions with companies domiciled in the Region of Catalonia.

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

General legal provisions expressing cultural goals of this funding scheme are based on Art. 148.17 of *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and on Art. 3 and 9 of the *Ley Orgánica 4/1979 de creación del Estatuto de Cataluña* (Federal law on administrative and political organisation of Catalonia) as well as on the regional legislation of Catalonia (see reply B.4 and B.12 for Spain, for Medidas de fomento catalán Funding Scheme).

The cultural conditions of the procedure for granting selective State aid that cover broadcasting, distribution and promotion of audiovisual production locally may arguably be described as indirect territorialisation requirements.

8. Analysis of Instituto Catalán de Finanzas, línea de préstamos para inversiones en el sector de la producción audiovisual (“Instituto Catalán de Finanzas Funding Scheme“)

8.1 Description of the funding scheme

The Instituto Catalán de Finanzas Funding Scheme covering Comunidad Autónoma de Cataluña is based on the provisions of the *Ley 2/1985, de 14 de enero, del Instituto*

Catalán de Finanzas (Law 2/1985 of 14 January establishing the Institut Català de Finances), which came into force in February 1985. There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For further information, see reply B.4 for Spain, for Instituto Catalán de Finanzas Funding Scheme.

The administration and supervisory authority for the Instituto Catalán de Finanzas Funding Scheme is the Instituto Catalán de Finanzas. For contact information see reply B.14 for Spain for Instituto Catalán de Finanzas Funding Scheme. For additional information on this scheme, see the website of the Instituto Catalán de Finanzas: <http://www.icfinances.com>.

The Instituto Catalán de Finanzas Funding Scheme is a special credit line for investments in the audiovisual production sector in the Region of Catalonia.

The Institut Català de Finances has not collaborated with the local counsel and did not provide it with any answers to the questionnaire. Due to this lack of information it is therefore not possible to examine the degree of territorialisation. See the explanations, reply B.5 for Spain for Instituto Catalán de Finanzas Funding Scheme.

8.2 Synopsis of objective explicit territorialisation requirements

8.2.1 Rules

N/A

8.2.2 Practice

N/A

8.2.3 Discussion

N/A

8.2.4 Conclusions

N/A

8.3 Synopsis of indirect territorialisation requirements

8.3.1 Practice

N/A

8.3.2 Discussion

N/A

8.3.3 Conclusions

N/A

8.4 Synopsis of selective granting procedures

N/A

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

N/A

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

N/A

9 Analysis of Ayudas al desarrollo de proyectos y la producción de obras audiovisuales („Ayudas al desarrollo Funding Scheme“)

9.1 Description of the funding scheme

The Ayudas al desarrollo Funding Scheme covering Comunidad Autónoma de Andalucía is based on the *Decreto 489/2004, por el que se aprueba la estructura orgánica de la consejería de cultura* (Decree on organisation structure of Culture Department), which came into force on 18 September 2004), and on the *Orden de 30/09/2005 de la Consejera de Cultura, por la que se convoca la concesión de ayudas a la creación, desarrollo y producción audiovisual* (Order of the Culture Department of 30 September 2005 establishing State aid for creation, development and audiovisual production in 2005). There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For more information, see the copies of respective laws and provisions attached to the questionnaire for Spain for Ayudas al desarrollo Funding Scheme.

The Ayudas al desarrollo Funding Scheme supervisory authority is Consejería de Cultura, Dirección General de Fomento y Promoción Cultural. For contact information see reply B.14 for Spain for Ayudas al desarrollo Funding Scheme, for additional information on this scheme, see the website of the Consejería de Cultura: <http://www.juntadeandalucia.es/cultura/web/publico/index.jsp>.

9.2 Synopsis of objective explicit territorialisation requirements

9.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

9.2.2 Practice

There is no relevant judicial or administrative practice reported.

9.2.3 Discussion

N/A

9.2.4 Conclusions

No objective explicit territorialisation requirements apply.

9.3 Synopsis of indirect territorialisation requirements

9.3.1 Practice

There is no judicial practice reported.

The administrative practice can be summarized as follows: this scheme requires that applicant audiovisual companies have their domicile in Andalucía. Furthermore, such applicants must be registered as audiovisual companies in the funding scheme's register.

Moreover, indirect territorialisation requirements are located under the selective granting procedure.

9.3.2 Discussion

N/A

9.3.3 Conclusions

There is no judicial practice reported.

The administrative practice can be summarized as follows: this scheme requires that applicant audiovisual companies have their domicile in Andalucía. Furthermore, such applicants must be registered as audiovisual companies in the funding scheme's register.

Indirect territorialisation requirements are located under the selective granting procedure: the Ayudas al desarrollo Funding Scheme grants State aid based on an evaluation of each project and on the basis of qualitative and territorial criteria. Among others factors, it takes into consideration whether an audiovisual production would generate employment in the region of Andalucía and whether local resources will be used for the contemplated production (see reply B.11 for Spain, for Ayudas al desarrollo Funding Scheme).

9.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way based on an evaluation of each project and follows qualitative and territorial criteria. The qualitative test is divided into two phases.

The first phase consists of an evaluation of whether the projects are creative and original, as well as being economically-viable, and whether the staff have sufficient experience. As regards short films, at this stage, the funding scheme may, at its discretion, also evaluate whether the proposed production can create employment in Andalucía and whether sufficient local human and material resources will be used.

In the second phase, the criteria applied are primarily territorial. As in the case of short films in the first phase, the funding scheme evaluates whether the proposed production can create employment in Andalucía and whether sufficient local human and material resources will be used. At this stage, the experience of the staff and production company are also taken into consideration (see reply B.11 for Spain for Ayudas al desarrollo Funding Scheme).

The criterion of creating employment and using local human and material resources qualifies as an indirect territorialisation requirement.

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

N/A

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

General legal provisions expressing cultural goals are based on Art. 148 of *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978, and on the *Ley orgánica de Estatuto de Autonomía de Andalucía, Ley orgánica 6/1981* (Federal Law 6/1981 on Autonomous Administration and Organization of Andalucía). See reply B.12 for Spain for Ayudas al desarrollo Funding Scheme.

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

10. Analysis of Concesión de ayudas a la creación, desarrollo y producción audiovisual (“Concesión de ayudas Xunta de Galicia Funding Scheme”)

10.1 Description of the funding scheme

The Concesión de ayudas Xunta de Galicia Funding Scheme covering Comunidad Autónoma de Galicia is based on: the *Ley 6/1999 audiovisual de Galicia* (Galician audiovisual law 6/1999), which came into force on 09 September 1999; *Decreto 172/2001 sobre incentivos para desarrollo económico y fomento de la actividad empresarial en la Comunidad Autónoma de Galicia* (Decree 172/2001 on incentives

for the economic development and fostering of enterprise activity in Galicia), which came into force on 24 July 2001; *Orden de 23 de diciembre de 2004 de subvención de empresas audiovisuales para desarrollar proyectos en lengua gallega* [in Galician: *Orde do 23 de decembro de 2004 pola que se convocan subvencións a empresas vinculadas co sector audiovisual para apoiar o desenvolvemento de proxectos de produción audiovisual en lingua galega así como a produción audiovisual en lingua galega* (Order of 23 December 2004 announcing subventions to enterprises connected to the audiovisual sector for supporting the development of audiovisual production projects in the Galician language and also for audiovisual production in Galician)], which came into force on 1 January 2005.

There were no other significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For more information, see the copies of respective laws and provisions attached to the questionnaire for Spain for Concesión de ayudas Xunta de Galicia Funding Scheme.

The Concesión de ayudas Xunta de Galicia Funding Scheme's supervisory authority is the Consellería de Cultura e Deporte (Department for Culture and Sport). For contact information see reply B.14 for Spain for Concesión de ayudas Xunta de Galicia Funding Scheme; for additional information on this scheme see the website: <http://www.xunta.es/conselle/cultura>.

10.2 Synopsis of objective explicit territorialisation requirements

10.2.1 Rules

The provisions containing objective explicit territorialisation requirements that apply to this funding scheme are set out in Art. 2 of the *Orden de 23 de diciembre de 2004 de subvención de empresas audiovisuales para desarrollar proyectos en lengua gallega*.

10.2.2 Practice

There is no relevant judicial or administrative practice reported.

10.2.3 Discussion

Under Art. 2 of the *Orden de 23 de diciembre de 2004 de subvención de empresas audiovisuales para desarrollar proyectos en lengua gallega*, State aid can be granted to audiovisual producers and multimedia companies from the European Union, which possess representation agencies in Galicia. The Concesión de ayudas Xunta de Galicia Funding Scheme explicitly imposes on independent film and audiovisual projects the requirement that they spend at least 25% of their production budget in the region of Galicia (see replies B.6 and B.7 for Spain for Concesión de ayudas Xunta de Galicia Funding Scheme).

10.2.4 Conclusions

The objective explicit territorialisation requirements that apply to this funding scheme can be summarized as follows: the recipient of State aid must spend locally at least 25% of the film budget in the region of Galicia.

10.3 Synopsis of indirect territorialisation requirements

10.3.1 Practice

There is no judicial and administrative practice reported.

Indirect territorialisation requirements are located under the Selective granting procedure.

10.3.2 Discussion

N/A

10.3.3 Conclusions

There is no judicial and administrative practice reported.

Indirect territorialisation requirements are located under the Selective granting procedure (see Sections 10.4 and 10.6, below).

10.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way on the basis of the following main criteria: the creativity and originality of the project, the film producer's solid financial base, the crew's citizenship or place of residency in Galicia, the experience of the staff and a link between the project and the cultural heritage of Galicia. In addition, the production must create employment in the Region and contribute to the cultural development of Galicia (see reply B.13 and B.11 for Spain for Concesión de ayudas Xunta de Galicia Funding Scheme).

The requirement of creating employment in the region of Galicia arguably qualifies as an indirect territorialisation requirement.

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

The Concesión de ayudas Xunta de Galicia Funding Scheme requires that companies, applying for funding for an audiovisual project in co-production, have domicile or permanent establishment (or at least an agency) in Galicia. In addition, 25% of the production budget must be spent in the region.

Apart from the Concesión de ayudas Xunta de Galicia Funding Scheme, State aid is also granted under the co-production agreement "Raices" administered by the Consorcio Audiovisual Gallego (see reply A.3 for Spain). However, the amount of annual State aid for audiovisual productions is limited to €150.000.

The general conditions of State aid under the Concesión de ayudas Xunta de Galicia Funding Scheme on domicile and residence requirements are also applicable to projects based on co-production agreements.

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

General cultural provisions for State aid in the sector of audiovisual production in Galicia are based on art. 148 of *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and on Art. 27 of the *Ley orgánica de Estatuto de Autonomía de Galicia, Ley orgánica 1/1981* (Federal law 1/1981 regulating the administrative and political organisation of Galicia).

In addition, the *Orden de 23 de diciembre de 2004 de subvención de empresas audiovisuales para desarrollar proyectos en lengua gallega* states clearly that the State aid is aimed at facilitating audiovisual production in the Galician language. This requirements arguably qualifies as indirect territorialisation requirements.

11 Analysis of **Concesión de ayudas a la creación, desarrollo y producción audiovisual**. (“**Concesión de ayudas Euskal Funding Scheme**”)

11.1 Description of the funding scheme

The *Concesión de ayudas Euskal Funding Scheme* covering the Comunidad Autónoma de Euskadi (País Vasco) is based on the *Decreto 7/2001 de creación, supresión y modificación de los Departamentos de la Administración de la Comunidad Autónoma del País Vasco y de determinación de funciones y áreas de actuación de los mismos* (Decree Euskal Decree 7/2001 on creating, suppressing and modifying administrative departments in Euskadi and on determining the functions and areas of competence of the same) which came into force on 17 July 2001; *Decreto 34/2002 por el que se establece la estructura orgánica del Departamento de Cultura* (Decree 34/2002 establishing the organisational structure of the Culture Department) which came into force on 19 February 2002; *Orden de 29 de marzo de 2005, de la Consejera de Cultura, por la que se convoca la concesión de ayudas a la creación, desarrollo y producción audiovisual* (Order of 29 March 2005 of the Culture Ministry on aid for audiovisual creation, development and production).

There were no significant regulatory changes during the reference period from 2001 to 2005. For more information, see the copies of respective laws and provisions attached to the questionnaire for Spain for *Concesión de ayudas Euskal Funding Scheme*.

The *Concesión de ayudas Euskal Funding Scheme* supervisory authority is the Departamento de Cultura Dirección de Creación y Difusión cultural. For contact information see reply B.14 for Spain for *Concesión de ayudas Euskal Funding Scheme*; for additional information on this scheme:

<http://www.kultura.ejgv.euskadi.net>.

11.2 Synopsis of objective explicit territorialisation requirements

11.2.1 Rules

No provisions containing objective explicit territorialisation apply to this funding scheme.

11.2.2 Practice

There is no relevant judicial and administrative practice reported.

11.2.3 Discussion

N/A

11.2.4 Conclusions

No objective explicit territorialisation requirements apply.

11.3 Synopsis of indirect territorialisation requirements

11.3.1 Practice

There is no judicial and administrative practice reported.

Indirect territorialisation requirements are located under the selective granting procedure. See reply B.11 for Spain, for Concesión de ayudas Euskal Funding Scheme.

11.3.2 Discussion

N/A

11.3.3 Conclusions

There is no judicial and administrative practice reported.

Indirect territorialisation requirements are located under the selective granting procedure (see Section 11.4 below).

11.4 Synopsis of selective State aid granting criteria and procedures

The Concesión de ayudas Euskal Funding Scheme grants State aid on the basis of an evaluation of each project conducted according to qualitative and territorial criteria. The qualitative test is divided into two phases. During the evaluation procedure a proposal of an audiovisual production can obtain up to 100 points: maximum of 60 points in the first phase and 40 points in the second one.

In the first phase, the following selective criteria are applied: the robustness of the financing of the film company (max. 30 points); the domicile or place of residency of the crew and employees (max. 10 points); the solvency of the company (max. 10 points); the place of production (max. 10 points). Proposals that obtain at least 40 points are admitted to the second phase.

In the second phase the qualitative criteria of artistic excellence and cultural value are applied. The aid-granting authority evaluates the quality of the script (max. 20 points) and relation of the proposed project to the cultural heritage of Euskadi (max. 10 points). A further ten points might be awarded if the original version of the audiovisual production is in the Euskera (Basque) language.

Under the Concesión de ayudas Euskal Funding Scheme, State aid can be granted to the production proposals which received an average grade of at least 15 points in the second phase of the evaluation procedure.

Arguably, the conditions of promoting local film production through the location of production, of the domicile or place of residence of the crew and employees being in Euskadi (País Vasco) and of the use of the Euskera (Basque) language may be qualified as indirect territorialisation requirements.

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

N/A

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

General provisions expressing cultural goals are articulated in Art 148 of *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and Art. 10 of the *Ley orgánica de Estatuto de Autonomía del País Vasco o Euskadi* (Federal Law on Autonomous Administration and Organisation of País Vasco or Euskadi).

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

12. Analysis of Financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi (“Financiación para el fomento Euskal Funding Scheme”)

12.1 Description of the funding scheme

The Financiación para el fomento Euskal Funding Scheme covering the Comunidad Autónoma de Euskadi (País Vasco) is based on the *Decreto 7/2001 de creación, supresión y modificación de los Departamentos de la Administración de la Comunidad Autónoma del País Vasco y de determinación de funciones y áreas de actuación de los mismos* (Decree Euskal Decree 7/2001 on creating, suppressing and modifying administrative departments in Euskadi and on determining the functions and areas of competence of the same) which came into force on 17 July 2001; *Decreto 34/2002 por el que se establece la estructura orgánica del Departamento de Cultura* (Decree 34/2002 establishing the organisational structure of the Culture Department) which came into force on 19 February 2002; *Decreto 338/2003 por el que se regula la financiación para la promoción de la producción audiovisual en la Comunidad Autónoma de Euskadi* (Decree 338/2003 on funding programme for promotion of audiovisual productions in the Comunidad Autónoma del País Euskadi), which came into force on 31 December 2003; *Orden de 8 de junio de 2005, de la Consejera de Cultura por la que se efectúa la convocatoria para el ejercicio 2005, del régimen de financiación para el fomento de la producción audiovisual en la Comunidad Autónoma de Euskadi, dentro del marco establecido por el Decreto 338/2003, de 29*

de diciembre (Order of 8 June 2005 of the Ministry of Culture on the 2005 funding programme for promotion of audiovisual production in the Comunidad Autónoma de Euskadi within the bounds established by Decree 28/2003 of 29 December).

There were no significant regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For more information, see reply B.4 for Spain for Financiación para el fomento Euskal Funding Scheme.

The Financiación para el fomento Euskal Funding Scheme supervisory authority is the Departamento de Cultura Dirección de Creación y Difusión cultural. For contact information see reply B.14 for Spain for Financiación para el fomento Euskal Funding Scheme; for additional information on this scheme:

<http://www.kultura.ejgv.euskadi.net>.

The Financiación para el fomento Euskal Funding Scheme was created in 2003 and regulates a credit programme for audiovisual production companies. The scheme contains two kinds of credits:

- an interest-free credit line for audiovisual productions but excluding television series (regulated under Chapter 2 of the Decree 338/2002)
- a low-interest credit line exclusively for productions of television series (regulated under Chapter 3 of the Decree 338/2003)

For further information see reply B.11 for Spain for Financiación para el fomento Euskal Funding Scheme.

12.2 Synopsis of objective explicit territorialisation requirements

12.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to this funding scheme.

12.2.2 Practice

There is no relevant judicial and administrative practice reported.

12.2.3 Discussion

N/A

12.2.4 Conclusions

No objective explicit territorialisation requirements apply.

12.3 Synopsis of indirect territorialisation requirements

12.3.1 Practice

There is no judicial practice reported.

The administrative practice reported can be summarized as follows. The scheme contains two kinds of credit: an interest-free credit line for audiovisual productions but

excluding television series; and a low-interest credit line exclusively for productions of television series.

Indirect territorialisation requirements are located under the selective granting procedure. Under this scheme (Art. 5 of Decree 338/2003), State aid can be granted to production companies which have their domicile or permanent establishment for a minimum of two years in the Region of Euskadi. Moreover, they must also be registered as audiovisual companies in the funding scheme's register for audiovisual companies.

For more detailed information, see reply B.11 and B.13 for Spain, for Financiación para el fomento Euskal Funding Scheme).

12.3.2 Discussion

The scheme contains two kinds of credit: an interest-free credit line for audiovisual productions but excluding television series; and a low-interest credit line exclusively for productions of television series.

It is worth noting that under the first kind of credit line, an audiovisual production company can be granted State aid up to a maximum of 30% of the production budget. However, the aid can be increased to 60% of the budget if the production is shot in the Euskera (Basque) language. In addition, State aid under this scheme can also be granted to co-productions, but it is required that a production company domiciled or permanently established in Euskadi should have a 20% share in such a co-production. This condition is compulsory during the whole period of credit repayment.

12.3.3 Conclusions

There is no judicial practice reported.

The administrative practice is based on two kinds of credits provided by the scheme.

Indirect territorialisation requirements are located under the selective granting procedure.

12.4 Synopsis of selective State aid granting criteria and procedures

This funding scheme grants State aid in a selective way on the basis of an evaluation of each project using economic, linguistic and territorial criteria. The selection test is divided into four parts.

First, the funding-scheme authority examines basic information on the legal background of the applicant production company. At this stage, the authority also

applies the criterion that the company's domicile or permanent establishment should have been for a minimum of two years in Euskadi (País Vasco).

In the second part, the economic background of the applicant production company is evaluated.

In the third part, the authority examines the quality of the applicant's audiovisual production project (production and marketing plan, budgetary principles, experience of the crew etc.). During this phase, the language of the applicant's production is also taken into consideration.

Finally, in the fourth part, the authority evaluates the guaranties of credit repayment provided by the applicant.

For more details see replies B.11 and B.13 for Financiación para el fomento Euskal Funding Scheme.

The condition of domicile or permanent establishment of an applying company in the region of Euskadi favours local film productions and arguably, qualifies as an indirect territorialisation requirement.

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

Under the Financiación para el fomento Euskal Funding Scheme, State aid can be also granted to audiovisual co-productions. However, it is required that production company domiciled or permanently established in Euskadi has 20% of shares in such a co-production. This condition is compulsory during whole period of credit repayment. It seems that in the case of co-productions the Euskera (Basque) language criterion is also applied (see reply B.11 for Spain for Financiación para el fomento Euskal Funding Scheme).

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

General provisions expressing cultural goals are based on *La Constitución Española* (Spanish Constitution), which came into force on 6 December 1978 and on the *Ley orgánica de Estatuto de Autonomía del País Vasco o Euskadi* (Federal Law on Autonomous Administration and Organisation of País Vasco or Euskadi). These regulations do not contain any provisions on specific cultural purposes.

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

References:

Cultura > Cine y Audiovisuales > El cine y el vídeo en datos y cifras > Producción cinematográfica > Año 2005:

<http://gl.www.mcu.es/cine/MC/CDC/Anio2005.html>

Departament de Cultura de Catalunya:

<http://www20.gencat.cat/portal/site/CulturaDepartament/>

Attachments:

- Replies to the legal questionnaire by Julia Montes Heras, attorney at law, Ecija, Spain
- Regulations for Spain