

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

<b>Member State:</b>	<b>SWEDEN</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>31 January 2007</b>

(...)

There are no cultural policy goals in the 2000 Film Agreement. There are neither any cultural policy goals in any other rules of Swedish law that apply to the Swedish State aid scheme. In the government bill preceding the 2000 Film Agreement it was however stated that the future aims for film should *inter alia* be to improve the conditions of women film-makers and to preserve films and other material of film- and culture historical value.

In the 2006 Film Agreement the aims of the agreement has been incorporated into the agreement. One of the aims is to work for Swedish film to reflect the whole of the country.

(...)

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

(...)

Thank you for your replies of 20 and 27 November 2006 to our final round of follow-up questions below.

To our question "4) Please indicate all relevant cultural clauses contained in the regulations applying during the reference period from 2001 to 2005, including relevant constitutional and legal provisions (question B.12)." you replied that "The 2000 Film Agreement does not express any cultural policy goals." Please inform us whether there are any other rules of law (constitutional or legal provisions) in your jurisdiction that articulate cultural policy goals and that apply to State aid to the independent film and television sector (e.g. the Swiss cinema law of 2002 mention that this legislation shall promote cultural diversity).

(...)

<b>Member State:</b>	<b>SWEDEN</b>
<b>Re:</b>	<b>Follow Up Reply</b>
<b>Date:</b>	<b>20 November 2006</b>

(...)

Please find answers attached.

(...)

<b>Attachments to e-mail of 20 November 2006</b>
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- 2000 Film Agreement Swe.pdf
- 2000 Film AGREEMENT.pdf
- 00142859.doc
- Bestämmelser för produktionsstödet för film.pdf

1) Reply to question A.4: The nationality certification procedure refers to 2006. Please cover the period prior to 2006, i.e. 2001 to 2005 (only 2005, if no substantial changes during the reference period).

The national certification procedure under the 2000 Film Agreement is identical with the procedure under the 2006 Film Agreement.

2) Please confirm for all other replies in which you refer to the 2006 regulations that the same legal regime applied during the reference period from 2001 to 2006 - our legal questionnaire covers the period from 2001 to 2005 that provides the reference also for the economic analysis performed by our partners.

The principal changes between the 2000 Film Agreement and the 2006 Film Agreement are the following.

- A clear gender perspective and a target for support for Swedish film production to be divided evenly between men and women have been introduced.
- The support for measures against piracy irrespective of screening formats, is expressed explicitly in the new agreement
- The support for film-related cultural activities (such as film archives, regional film and video resource centres, school cinema, film clubs, action in favour of disabled persons and film, and the preservation and documentation of films), included in the scope of the 2000 Film Agreement, will be outside the scope of the 2006 Film Agreement.

In the decision on State aid No N591/2005 the Commission noted that the changes between the 2000 Film Agreement and the 2006 Film Agreement noted above did not alter the conditions on which the original scheme was approved by the Commission, namely that *inter alia* the definition of Swedish eligible film does not contain any territory-related criteria linked to the realisation in Sweden of a particular proportion of the production work and that there are no bonuses for particular film-making activities.

3) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.

The 2000 Film Agreement does not include any territorialisation requirements. However international agreements that are incorporated into Swedish law prevail over national or internal law. If there are inconsistencies between the international agreement and national law the national law shall be interpreted in the light of the international agreement.

4) Please indicate all relevant cultural clauses contained in the regulations applying during the reference period from 2001 to 2005, including relevant constitutional and legal provisions (question B.12).

The 2000 Film Agreement does not express any cultural policy goals.

<b>Member State:</b>	<b>SWEDEN</b>
<b>Re:</b>	<b>Follow Up Question</b>
<b>Date:</b>	<b>10 November 2006</b>

(...)

We have the follow-up questions and requests for clarifications as follows:

- 1) Reply to question A.4: The nationality certification procedure refers to 2006. Please cover the period prior to 2006, i.e. 2001 to 2005 (only 2005, if no substantial changes during the reference period).
- 2) Please confirm for all other replies in which you refer to the 2006 regulations that the same legal regime applied during the reference period from 2001 to 2006 - our legal questionnaire covers the period from 2001 to 2005 that provides the reference also for the economic analysis performed by our partners.
- 3) With respect to your reply to question B.8 we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction.
- 4) Please indicate all relevant cultural clauses contained in the regulations applying during the reference period from 2001 to 2005, including relevant constitutional and legal provisions (question B.12)

(...)

<b>Member State:</b>	<b>SWEDEN</b>
<b>Re:</b>	<b>Reply</b>
<b>Date:</b>	<b>02 October 2006</b>

(...)

Please find attached our responses.

(...)

<b>Attachments to e-mail of 02 October 2006</b>
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- 2006 Filmavtal.pdf
- 00138985.doc
- 00139049.doc
- Bestämmelser för Produktionsstöd.pdf

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

**PRELIMINARY REMARK**

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

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

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: [http://korda.obs.coe.int/web/recherche\\_fonds.php](http://korda.obs.coe.int/web/recherche_fonds.php) and the information on co-production agreements by IRIS Merlin at: <http://merlin.obs.coe.int/search.php> )

- the links to regulating, control and funding bodies in the audiovisual sector (cinema and broadcasting) at:

[http://ec.europa.eu/comm/avpolicy/info\\_centre/links/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/info_centre/links/index_en.htm)

- the information on co-production agreements on the Council of Europe website and, e.g. for France and the United Kingdom, on the websites of the Centre National de la Cinématographie and the UK Film Council:

[http://www.coe.int/T/E/Cultural\\_Co-operation/Eurimages/](http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/)

<http://www.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

[http://www.ukfilmcouncil.org.uk/usr/ukfcdnloads/42/Co\\_production.pdf](http://www.ukfilmcouncil.org.uk/usr/ukfcdnloads/42/Co_production.pdf)

**However, please consider that this information may not be exhaustive, fully accurate or up-to-date, and may therefore require to be completed for the purposes of this study.**

**When filling in this questionnaire, please specify in brackets your sources of information at the end of each of your answers.**

**Please deliver your replies in word format (font type: times new roman; font size: 12).**

**PART A**  
**GENERAL QUESTIONS**

*Please use only one form per Member State.*

**OVERVIEW**

- A.1 Country / region: [Sweden](#)
- A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works<sup>1</sup> of at least €1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):
- [State aid – N591/2005 – Sweden \(The Swedish Film Institute Foundation\)/ National](#)

**COPRODUCTION AGREEMENTS**

- A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision:

[The European Convention on Cinematographic Co-Production, entered into force 1992, the competent Swedish authority is The Swedish Film Institute Foundation, P.O. Box 271 26, SE-102 52 Stockholm, SWEDEN.](#)

[Agreement on film and video between Sweden and Canada, entered into force 1994, the competent Swedish authority is The Swedish Film Institute Foundation, Box 271 26, SE-102 52 Stockholm, SWEDEN.](#)

[Sweden are still parties to old bilateral agreements on co-production with \*inter alia\* Germany and France. According to the Swedish Film Institute Foundation these agreements no longer have any practical effect since the respective parties have ratified the European Convention on Cinematographic Co-Production. The person responsible for the international agreements on co-production is Katarina Flygare at the Swedish Film Institute Foundation.](#)

**NATIONALITY CERTIFICATION PROCEDURES**

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



- A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:<sup>2</sup>

The division for Production Grants at the Swedish Film Institute Foundation will decide whether or not a film is Swedish or not based on the objective criteria set forth in the 2006 Film Agreement entered into by the Swedish State together with representatives of the film industry.

Under the 2006 Film Agreement a film is deemed to be Swedish if its producer is Swedish and if the participation of Swedish actors and other Swedish artists is of substantial importance. A “Swedish producer” is defined as a natural person residing in Sweden, or a company, a branch of a foreign company or another legal person registered in Sweden. A film that does not have a Swedish producer may still be regarded as Swedish provided that at least 20 per cent of its production cost is financed by Swedish capital and the participation of Swedish actors and other Swedish artists is of substantial importance.

The Regional funding bodies are not bound by that the film is Swedish as defined by the 2006 Film Agreement, however other aspects such as that the production is carried out in the region etc. are taken into account.

#### **EXPECTED DEVELOPMENTS**

- A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision.

None [Peter Hald at the Swedish Film Institute Foundation]

- A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,<sup>3</sup> and indicate the name and address of the administration of these funding schemes:<sup>4</sup>

No [Peter Hald at the Swedish Film Institute Foundation]

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

<sup>3</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

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

## **REFERENCES TO LOCAL STUDIES**

- A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

SFI Nyhetsbrev “Vidvinkel” June 2004

([http://www.sfi.se/sfi/IMAGES/\\_SFI\\_PDF/VIDVINKELEUROPA/VIDVINKELEUROPA0402.PDF#search=%22Territoriella%20krav%22%20%20film%22](http://www.sfi.se/sfi/IMAGES/_SFI_PDF/VIDVINKELEUROPA/VIDVINKELEUROPA0402.PDF#search=%22Territoriella%20krav%22%20%20film%22))

SFI Nyhetsbrev “Vidvinkel” December 2005

([http://www.sfi.se/sfi/IMAGES/\\_SFI\\_PDF/VIDVINKELEUROPA/VIDVINKEL\\_DE C\\_05.PDF#search=%22konvention%20samproduktion%22](http://www.sfi.se/sfi/IMAGES/_SFI_PDF/VIDVINKELEUROPA/VIDVINKEL_DE C_05.PDF#search=%22konvention%20samproduktion%22))

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

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: [http://korda.obs.coe.int/web/recherche\\_fonds.php](http://korda.obs.coe.int/web/recherche_fonds.php) and the information on co-production agreements by IRIS Merlin at: <http://merlin.obs.coe.int/search.php> )

- the links to regulating, control and funding bodies in the audiovisual sector (cinema and broadcasting) at:

[http://ec.europa.eu/comm/avpolicy/info\\_centre/links/index\\_en.htm](http://ec.europa.eu/comm/avpolicy/info_centre/links/index_en.htm)

- the information on co-production agreements on the Council of Europe website and, e.g. for France and the United Kingdom, on the websites of the Centre National de la Cinématographie and the UK Film Council:

[http://www.coe.int/T/E/Cultural\\_Co-operation/Eurimages/](http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/)

<http://www.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

[http://www.ukfilmcouncil.org.uk/usr/ukfcdownloads/42/Co\\_production.pdf](http://www.ukfilmcouncil.org.uk/usr/ukfcdownloads/42/Co_production.pdf)

**However, please consider that this information may not be exhaustive, fully accurate or up-to-date, and may therefore require to be completed for the purposes of this study.**

**When filling in this questionnaire, please specify in brackets your sources of information at the end of each of your answers.**

**Please deliver your replies in word format (font type: times new roman; font size: 12).**

## PART B

### FUND SPECIFIC QUESTIONS

*Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)<sup>5</sup> or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.<sup>6</sup>*

*Please use for each funding scheme a separate form.*

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

- B.1 Country/region: [Sweden](#)
- B. Name of the funding scheme: [State aid No N591/2005 . Sweden](#)
- B.3 Name and address of the funding scheme's administration and supervisory authority:  
[The Swedish Film Institute Foundation, Box 271 26, SE-102 52 Stockholm, SWEDEN.](#)
- B.4 List the titles of the laws and regulations that govern this funding scheme as of 31 December 2005 (in the original language and in an English working translation), and indicate

[The 2006 Film Agreement \(Sw. 2006 Filmavtal\)](#)

[Direction on production support. Established by the board of The Swedish Film Institute Foundation on the 29 January 2006. \(Sw. Bestämmelser för produktionsstöd. Fastställda av Svenska Filminstitutets styrelse den 29 januari 2006.\)](#)

- the dates when these laws and regulations entered into force,  
[The 2006 Film Agreement entered into force on 1 January 2006](#)

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<sup>5</sup> Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see [http://korda.obs.coe.int/web/display\\_fonds.php?fonds\\_id=28](http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28) ).

<sup>6</sup> "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

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

The 2006 Film Agreement replaced the previous 2000 Film Agreement. The significant changes between the two schemes are the following

- A clear gender perspective and a target for support for Swedish film production to be divided evenly between men and women has been introduced. (§ 4 of the agreement)
- The support for measures against piracy irrespective of screening formats, is expressed explicitly in the new agreement (§ 38 of the agreement)
- The support for film-related cultural activities (such as film archives, regional film and video resource centres, school cinema, film clubs, action in favour of disabled persons and film, and the preservation and documentation of films), at present included in the scope of the 2000 Film Agreement, will be outside the scope of the 2006 Film Agreement. [The Commissions Decision on State aid No N591/2005]

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

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

### **Explicit territorial conditions**

B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

~~Yes~~ No

Under the 2006 Film Agreement a film is deemed to be Swedish if its producer is Swedish and if the participation of Swedish actors and other Swedish artists is of substantial importance. A “Swedish producer” is defined as a natural person residing in Sweden, or a company, a branch of a foreign company or another legal person registered in Sweden. A film that does not have a Swedish producer may still be regarded as Swedish provided that at least 20 per cent of its production cost is financed by Swedish capital and the participation of Swedish actors and other Swedish artists is of substantial importance. [2006 Film Agreement]

If yes,

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<sup>7</sup> Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

- B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):
- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).
- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):
- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

### **Implicit or *de facto* territorial conditions**

- B.10 Does the scheme provide any scope for territorial conditions to be applied implicitly or *de facto*? - For example, do the selection criteria imply that proposals are more likely to be selected for funding if they would create employment in the region/Member State, use local professionals, or generally promote interest in the region/Member State (*please cover the situation prevailing as of 31 December 2005 and, only in case of significant changes, the situation that prevailed before this date during the period from 2001 to 2005*)?

~~Yes~~/No

As described above under B.5 no territorial conditions are set forth pursuant to the 2006 Film Agreement. However, a portion of the budget of the 2006 Film Agreement is distributed to the three regional production centres Film i Väst, Film pool Nord and Film i Skåne. These production centres apply, on a yearly basis, for operation grants from the Swedish Film Institute Foundation. The operative grant is stipulated in the 2006 Film Agreement. None of the film centres have received state aid exceeding 1 million € during the reference period. Film i Väst had a budget of 7 032 609 € for 2005 of which state aid amounted to 340 761 €. The production centres are almost exclusively financed through contributions from the regional or local authority. The local production centres support film productions through investments in co-production.

Since the production centres are mainly financed by regional or local authority there are territorial conditions set forth in the regional funding schemes. Besides the likelihood that the film will do well commercially, priority is given to productions that *inter alia* spend most of its production means in the relevant region or which main producer maintains an office in the region.

Since a part of the budgets of the regional production centres constitutes state aid the regional production centres' territorial conditions might be considered as implicit territorial conditions.

- B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

### **CULTURAL CLAUSES**

- B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

The 2006 Film Agreement does not stipulate any legal provisions expressing cultural policy goals. However, the 2006 Film Agreement have clear gender perspective and the parties have agreed to work to increase gender equality in the area of film. The target is for support for Swedish film production to be divided evenly between men and women. [2006 Film Agreement]

### **SELECTIVE SCHEMES**

- B.13 If this scheme distributes aid selectively,<sup>8</sup> please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The State Aid constitutes of several funding programmes concerning *inter alia* production and distribution. The production support programmes includes support for feature films, films for children, short and documentary films and development support. The lack of objective qualitative criteria is explained by the difficulty in defining what is quality film according to the Swedish Film Institute Foundation. The quality criteria is supposed to be guaranteed through the work of the consultants at the Swedish Film Institute Foundation. For example advance support is decided by the Board of the Institute after suggestions of a consultant and shall only be payable to

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<sup>8</sup> Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

producers who can present an ambitious plan for the film's distribution in a range of screening formats, 2006 Film Agreement § 29.

### **CONTACT DETAILS**

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

Peter Hald, the Swedish Film Institute Foundation, Box 271 26, SE-102 52  
Stockholm, Sweden. +46 8 665 12 55

Regarding international co-production contact Katarina Flygare, the Swedish Film  
Institute Foundation, Box 271 26, SE-102 52 Stockholm, Sweden. +46 8 665 11 89

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

Mathias Berggren, Advokatfirma Lindhs DLA Nordic

Date of the data collection and processing: 21 September 2006