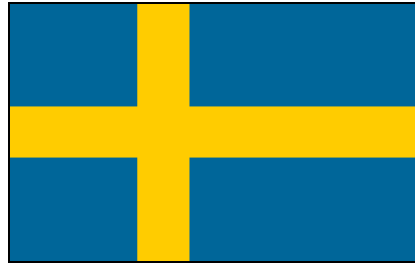


CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



SWEDEN
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

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A Overview of the legal situation in Sweden

1 Summary of main findings

Table A – Direct Territorialisation Requirements

Member State	Names of Funding Schemes	Available Budget	National (Nat) / Regional (Reg) Funding Scheme	Direct territorialization requirement quantified in the law			Direct territorialization requirement not quantified in the law			
				X% in terms of film budget	X% in terms of State aid granted	X% of the amount of the total available budget that is subject to territorialization	List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	
										Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N

Sweden	Swedish Film Institute Foundation” (“SFIF”)	44,119,761	Nat	N/A	N/A	N/A	N However the distribution of a budget portion to three regional centres arguably implies indirect territorialisation as these centres provide territorialisation requirements (2.3)	N/A	N/A	N
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Table B – Indirect territorialisation Requirements

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”			Indirect territorialization requirements located under selective aid criteria and procedures			Indirect territorialization based on any other provisions in the law that forces the producer to make local spending		
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
Sweden	Swedish Film Institute Foundation” (“SFIF”)	N	N/A	N/A	N	N/A	N/A	N	N/A	N/A

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ¹	Degree of the territorialisation ²		
				Funding Scheme Level ³	Funding body level	Member State Level ⁴
Sweden	Swedish Film Institute Foundation” (“SFIF”)	44,119,761	no requirement	= 0	No territorialisation	0 %

¹ Assessment based on replies from local lawyers (see synthesis sheet)

² 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

³ 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

⁴ “total amount subject to territorialisation”/“total budget available”

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

Table D – Co-Production Agreements

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Sweden	European Convention on Cinematographic Co-Production	1992	N
	Canada	1994	
	Sweden is still party to old bilateral agreements on co-production with <i>inter alia</i> 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.	?	

Sweden is currently a party to the European Convention on Cinematographic Co-production (see reply A.3 for Sweden). Sweden has also concluded co-production agreements with Canada.

In Sweden there is one national funding scheme administered by the Swedish Film Institute Foundation (see reply A.2 for Sweden; see below Section B1).

2 Synopsis of conventions on co-production agreements

Sweden is a party to the European Convention on Cinematographic Co-Production, which came into force in 1992. The Swedish authority in charge of its administration and its supervision is the Swedish Film Institute Foundation (SFIF). For contact details see reply A.3⁵ for Sweden.

Sweden is also a party to a co-production agreement with Canada, which came into force in 1994. The Swedish authority in charge of its administration and its supervision is the Swedish Film Institute Foundation (SFIF).

There are also old bilateral agreements on co-production with, *inter alias*, Germany and France. According to the SFIF these agreements no longer have any practical effect since the respective parties have ratified the European Convention on Cinematographic Co-Production (see reply A.3 for Sweden).

3 Synopsis of formal nationality certification procedures

In Sweden there is a nationality certification procedure contained in the 2006 Film Agreement (see reply A.4 for Sweden). This national certification procedure is identical to the previous one provided by the 2000 Film Agreement

The division for Production Grants of the Swedish Film Institute Foundation (FIF) decides on the Swedish nationality of the film on the basis of the criteria set forth in the 2006 Film Agreement, an agreement reached between the Swedish State and the representatives of the film industry.

Under the 2006 Film Agreement a film is qualified as 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% of its production cost is financed by Swedish capital and the participation of Swedish actors and other Swedish artists is of substantial importance. Other aspects, e.g. that the production is carried out in the region etc., are taken into account.

However there is a very low degree of territorialisation with respect to the definition of Swedish producer: by Swedish producer is meant a “natural person residing in Sweden, or a company, a branch of a foreign company or another legal person registered in Sweden”. Especially with respect to the requirement that a

⁵ This indication refers to the attached replies and follow-up replies from the local lawyer to the legal questionnaire.

company must be registered in Sweden, there arguably is a very low degree of territorialisation, as any EC producer could set up a company in Sweden in order to qualify as Swedish (see reply B.5 for Sweden for State Aid N.591/2005 Funding Scheme; see above Part A point 3).

5 Synopsis of expected legal developments

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

In Sweden there were no new funding schemes containing territorialisation requirements expected or that had already come into force as of 1 January 2006 (see reply A.6 for Sweden).

B The Swedish funding schemes

1 Overview

In Sweden there is a national funding scheme named State Aid N. 591/2005 administered by the Swedish Film Institute Foundation (SFIF).

Furthermore there are three regional production centres: the *Film i Väst*, *Filmpool Nord* and the *Film i Skåne*. These production centres apply each year for operation grants from the Swedish Film Institute Foundation, as stipulated in the 2006 Film Agreement. The production centres are almost exclusively financed through contributions from the regional or local authorities. None of the film centres received State aid exceeding one million euros during the reference period (see reply B.10 for Sweden for state Aid N.591/2005 Funding Scheme).

2 Analysis of the State Aid N. 592/2005 Funding Scheme

2.1 Description of the funding scheme

The State Aid N. 591/2005 is based on the *2006 Filmavtal* (2006 Film Agreement, the Agreement) and on the *Bestämmelser för produktionsstöd. Fastställda av Svenska Filminstitutets styrelse den 29 januari 2006* - Directions on production support, which were established by the board of the Swedish Film Institute Foundation on 29 January 2006. The previous Agreement had been in force from 2000 to 2006.

There were no significant regulatory changes between 2001 and 2005 affecting the legal questions addressed by this study. However the 2006 Film agreement made significant changes, including:

- a clear gender perspective and a target for support for Swedish film production to be divided evenly between men and women (see Para. 4 of the Agreement)
- objective support for measures against piracy irrespective of screening formats (see Para. 38 of the Agreement)

Furthermore this Agreement states that 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), previously included in the scope of the 2000 Film Agreement, is outside its scope, following the Commission's Decision on State aid N. 591/2005. 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.

The funding scheme is administered by the Swedish Film Institute Foundation (SFIF). For contact information see reply B.14 for Sweden for STATE AID N.591/2005 funding schemes.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

No objective territorialisation requirements apply to the State Aid N.591/2005 funding scheme (see reply B.5 for Sweden for the State Aid N.591/2005 funding scheme).

2.2.2 Practice

There is no relevant judicial and administrative practice reported (see reply B.5 for Sweden for State Aid N.591/2005 funding scheme)

2.2.3 Discussion

N/A

2.2.4 Conclusions

There are no objective territorialisation requirements which take the form of conditions on expenditure.

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial practice reported (see reply B.10 for Sweden for State Aid N.591/2005 funding scheme).

However it must be noticed that according to the 2006 Film Agreement, a portion of the budget is distributed to the three regional production centres: the *Film i Väst*, *Filmpool Nord* and the *Film i Skåne*. These production centres, almost exclusively financed through contributions from the regional or local authority, apply each year for operation grants from the Swedish Film Institute Foundation, in line with the 2006 Film Agreement. Since the production centres are mainly financed by regional or local authorities, there are territorial conditions contained in those regional funding schemes, e.g. priority is given to productions that spend

most of their production budgets in the region or to productions whose main producer has an office in the region.

2.3.2 Discussion

It should be noted that the distribution of a budget portion to three regional centres arguably implies indirect territorialisation. As a matter of fact this mechanism qualifies as indirect territorialisation, since a part of the budgets of the regional production centres constitutes State aid and the regional production centres apply territorial conditions.

In this way, even if the national funding scheme State Aid N. 591/2005 does not contain any objective territorial condition quantified by the law, this mechanism implies a *de facto* territorialisation: the regional production centres' territorial conditions may be considered as indirect territorial conditions within the national scheme (see reply B.10 for Sweden for State Aid N.591/2005 funding scheme).

2.3.3 Conclusions

There is no reported judicial practice on indirect territorialisation requirements.

However the administrative practice of distributing funding to regional centres arguably can be considered as indirect territorialisation.

2.4. Synopsis of State aid selective granting criteria and procedures

The conditions for selective aid refer to the quality of the film evaluated by the SFIF: e.g. advance support is decided by the Board of the Institute following the recommendations of a consultant and is only payable to producers who can present an ambitious plan for the film's distribution in a range of screening formats (see Para. 29 of the 2006 Film Agreement; see reply B.12 for Sweden for State Aid N.591/2005 Funding Scheme).

The lack of objective qualitative criteria for selective aid is explained by the difficulty in defining quality according to the SFIF. Therefore the qualitative criteria are supposed to be guaranteed through the work of the consultants at the SFIF. Nevertheless, SFIF arguably has a great discretion in granting the aid. However no indirect territorialisation requirements are located under selective granting criteria and procedure.

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

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.

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

The 2006 Film Agreement does not contain any legal provisions expressing cultural policy goals. The 2006 Film Agreement has a 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.

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

References:

SFI Nyhetsbrev "Vidvinkel" June 2004

(http://www.sfi.se/sfi/IMAGES/_SFI_PDF/VIDVINKELEUROPA/VIDVINKEL_EUROPA0402.PDF#search=%22Territoriella%20krav%22%20%20film%22)

SFI Nyhetsbrev "Vidvinkel" December 2005

(http://www.sfi.se/sfi/IMAGES/_SFI_PDF/VIDVINKELEUROPA/VIDVINKEL_DEC_05.PDF#search=%22konvention%20samproduktion%22)

Attachments:

- Replies to the legal questionnaire by Mathias Berggren, , attorney at law, Advokatfirma Lindhs DLA Nordic, Sweden
- Regulations for Sweden