

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

Member State:	GERMANY
Re:	Follow Up Reply
Date:	03 January 2007

(...)

Enclosed you will find the final versions of our reports. We have reviewed the format and layout for convenience. There are no changes as regards the content.

Please find your questions answered as follows:

- As to your first question ("1) In your follow-up reply of 17 November, point 9, you mentioned that "State schemes do not require a German nationality for films. Thus international co-productions will qualify particularly if they meet the co-production treaties requirements. Regional spend requirements, however, will also apply." – Could you please clarify the relevant legal implication of the application of "local spend requirements"?"):

"Local spend requirements" in this context simply means the required regional effect as described in the respective Regulations.

- As to your second question ("2) Please send us this additional information from Mediaboard Berlin/Brandenburg as soon as you have obtained them (point 5 of your follow-up reply of 17 November)": (concerning significant changes during the reference period from 2001 to 2005).

Mediaboard promised in early December to get back to us within the next two weeks in case they would find any relevant facts we should enclose in the report. We have not had an answer up to now, so we can assume, that no significant changes have to be reported in the reference period from 2001 to 2005.

(...)

Attachments to Email of 03 January 2007
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- 02971-06 00026 DOK0 B11 MSH Final Revised 171106 sr1.doc
- 02971-06 00025 DOK0 B9 Nordmedia Final Revised 171106 sr111.doc
- 02971-06 00018 DOK0 B4 Hamburg Revised Final 261020061.doc
- 02971-06 00023 DOK0 B 10 Hessen Revised Final 0811061.doc
- 02971-06 00022 DOK0 B8 NRW Revised Final 0211061.doc
- 02971-06 00016 DOK0 B6 BW MFG Final Revised 2610061.doc
- 02971-06 00014 DOK0 B5 Berlin Brandenburg Final Revised 2610061.doc
- 02971-06 00012 DOK0 B3 Bayern Final Revised 2610061.doc
- 02971-06 00020 DOK0 Final Part A and B-1 261006.doc
- 02971-06 00011 BBET Part B-2 Final Bund BKM2.doc
- 02971-06 00024 DOK0 B7 Final MDM Revised 141106 sr.doc

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS**

Germany

PART A

GENERAL QUESTIONS

OVERVIEW

A.1 Country / region:

Germany

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 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):

FFA Filmförderungsanstalt
German Federal Film Board
Große Präsidentenstraße 9
10170 Berlin
www.ffa.de

Der Beauftragte der Bundesregierung für Kultur und Medien (BKM)
Graurheindorferstraße 198
53117 Bonn
www.filmfoerderung-bkm.de

MFG Medien- und Filmgesellschaft Baden-Württemberg mbH
Breitscheidstraße 4
70174 Stuttgart
www.film.mfg.de

FilmFernsehFonds Bayern GmbH
Sonnenstraße 21
80331 München
www.fff-bayern.de

Medienboard Berlin-Brandenburg GmbH
Postfach 90 04 02
Potsdam/Babelsberg
www.medienboard.de

Filmförderung Hamburg GmbH
Friedensallee 14 – 16
22765 Hamburg
www.ffhh.de

Filmstiftung NRW GmbH
Kaistraße 14
40221 Düsseldorf
www.filmstiftung.de

MDM Mitteldeutsche Medienförderung GmbH
Hainstraße 19
04109 Leipzig
www.mdm-online.de

NORD MEDIA Fonds GmbH
Expo Plaza 1
30539 Hannover
www.nord-media.de

Hessische Filmförderung
Am Steinernen Stock 1
60320 Frankfurt/Main
www.hessische-filmfoerderung.de

MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH
Schildstraße 12
23552 Lübeck
www.m-s-h.org

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:

European Co-Production Agreement, entered into force March 24 1995 (BGBl. October 29 1994, Teil II Nr. 53, BGBl. June 2 1995, Teil II Nr. 16)

European Fund to Co-Productions (EURIMAGES) entered into force on October 26, 1988

German-Australian Co-Production Agreement, entered into force on September 12, 2001 (BGBl 2002 Teil II Nr. 2, S. 63)

German-Belgian Co-Production Agreement, entered into force on July 7, 1964 (Runderlaß Außenwirtschaft Nr. 56/67 as of November 15, 1967 published in BAnz. Nr. 236)

German-Brasilian Co-Production Agreement, signed February 17, 2005, not yet ratified.

German-French Co-Production Agreement, entered into force on February 4, 2002 (BGBl. 2002, Teil II S. 998)

German-French Co-Production Agreement, entered into force on November 23, 2001 (BGBl. 2002 Teil II, S. 1004)

German-British Co-Production Agreement, entered into force on January 30, 1975 (BGBl. 1975, Teil II, S. 1037)

German-Israelian Co-Production Agreement, executed May 27, 1971

German-Italian Co-Production Agreement, entered into force on November 5, 2002 (BGBl 2003 Teil II Nr. 4, S. 88)

German-Canadian Agreement on audiovisual relations, entered into force on June 22, 2004 (BGBl. 2004 Teil II, S. 1366)

German-Luxembourg Co-Production Agreement, entered into force on September 22, 2003 (BGBl 2003 Teil II Nr. 32, S. 1629)

Germany-New Zealand Co-Production Agreement, signed February 9, 2005 (BGBl. 2005 Teil II, S. 1195)

German-Austrian Co-Production Agreement, entered into force on May 16, 1990 (BGBl. 1990 Teil II, S. 1544)

German-Portuguese Co-Production Agreement, entered into force on April 29, 1988 (BGBl. 1989 Teil II, S. 1053)

German-Swedish Co-Production Agreement, entered into force on June 14, 1977 (BGBl. 1977 Teil II, S. 745)

German-Swiss Co-Production Agreement, entered into force June 6 1984 (BGBl. 1986 Teil II, S. 536)

German-Spanish Co-Production Agreement, entered into force on December 13, 2000 (BGBl 2001 Teil II Nr. 17, S. 601)

German-South African Co-Production Agreement, entered into force on January 7, 2005 (BGBl 2005 Teil II Nr. 9, S. 358)

The Co-Production Agreement with the former Yugoslavia is followed by separate Agreements with

Croatia, Revalidation Note on the former Agreement, entered into force on October 26, 1992 (BGBl. 1992, Teil II, S. 1146)

Macedonia, Revalidation Note on the former Agreement, entered into force on January 26, 1994 (BGBl. 1994, Teil II, S. 326)

Bosnia/Herzegovina, Revalidation Note on the former Agreement, entered into force on November 16, 1992 (BGBl. 1992, Teil II, S. 1196)

(Co-Production Agreement with
Argentina
Hungary
Ireland
Korea
Poland
Russia
and Serbia, Montenegro
are currently under negotiation)

NATIONALITY CERTIFICATION PROCEDURES

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

1. No formal procedure exists to assess and certify the nationality of an independent television production.

As to film productions the requirements are set out in Art. 15, 16 and 16a FFG (German Film Promotion Act).

1.1 A production qualifies as a German production according to Art. 15 FFG if:

- the producer is domiciled in Germany or, if the producer is domiciled in the EU or the EEA, maintains a permanent establishment in Germany and is responsible for carrying out the film project
- at least one of the final versions of the film is in the German language
- studios, production services and post production services are used from providers having their domicile in Germany or any other member state of the EU or another state of the EEA. If outdoor shooting has to take place in another country, no more than 30% (based on shooting time) of the studio shoot may take place in that same country. However, in case a large part of the film is shot in another country at original locations more than 30% of the studio shoot may take place in that country if this makes economic sense. [Please note that these restrictions only relate to shooting outside of the EU or the EEA]
- the director is German or has the nationality of another member state of the EU or another state within the EEA; in case the director is not German and he/she does not come from a member state of the EU or another state of the EEA the film may still be approved as having German nationality if except for the script writer and of up to two

main actors all other crew members are German or come from another member state of the EU or another state of the EEA.

- the film has its premiere within Germany or is entered into one of the major international festivals as a German entry.
- The Board of the FFA (Federal Film Promotion Authority) can accept film projects even if they do not meet the above referenced criteria if this seems appropriate after taking into account the economic consequences in Germany and abroad.

2. International co-productions qualify under § 16 FFG if the following criteria are being met:

- one of the producers is domiciled in Germany or, if the producer is domiciled in the EU or the EEA, maintains a permanent establishment in Germany and is responsible for carrying out the film project
- at least one of the final versions of the film is in the German language
- the criteria of a Co-Production Agreement entered into between the Federal Republic of Germany and one or more other states are being met. This means that either the criteria of the European Co-Production Convention or any of the Co-Production Agreements entered into by Germany have to be fulfilled
- alternatively, it will also be sufficient, if the producer having a German domicile or a German permanent establishment (see above) has a substantial financial share in the production and there is a corresponding artistic and technical involvement of at least 30% of cast and crew members which have German nationality or a nationality of another member state of the EU or another state of the EEA.

In cases in which the producer having a German domicile or German permanent establishment (see above) has a majority involvement in the film, the film needs to have its premiere in the German language in Germany or has to be entered in one of the major festivals as the German entry.

As regards the artistic and technical involvement at least the following persons should have German nationality or a nationality of one of the member states of the EU or another member state of the EEA:

- one main role and one secondary role or, if this is not possible, two important roles
- the assistant to the director or another artistic or technical crew member and
- either the script writer or the dialogue writer

3. According to Art. 16a FFG film aid will also be available for producers having a German domicile or, if the producer is domiciled in the EU or the EEA, a German permanent establishment (see above) if they only participate in a co-production with a financial contribution if this is permitted under an international Co-Production Agreement or the European Co-Production Convention.

4. The certificate confirming that a film corresponds to the requirements set out by Art. 15, 16 or 16a FFG is issued by the Bundesamt für Wirtschaft und Ausfuhrkontrolle (BAWA), see Art. 17 FFG. The application for this certificate should be made not later than two months before the start of principal photography. If the granting of this certificate is denied an appeal can be lodged. Before the appeal decision is handed down the FFA has to approve the appeal decision. If the approval is denied by the FFA the final decision will have to be rendered by the Bundesbeauftragte für Kultur und Medien (BKM).

The producer can request that a preliminary certificate is issued provided that based on the information contained in the application it can be anticipated that the requirements will be met.

5. According to Art. 17a FFG production aid will only be granted for international productions with co-producers having their domicile outside of Europe if the producer with a German domicile or German permanent establishment (see above) has produced or was the majority producer of a film in the last five years. The financial contribution of the German producer or the producer having a German permanent establishment (see above) to international co-productions has to amount to 20% (if it falls under an international Co-Production Agreement) or otherwise 30%. Financial co-productions will only have access to the film aid under the Federal Film Promotion Act if the country from which the co-producer is coming from provides reciprocity.
6. The certificate according to Art. 17 FFG will be required for production aid under the terms of the Federal Film Promotion Act. It is not a requirement for the film promotion schemes of the German federal states. There is also no television quota requirement that is based on this certificate.

The text of Art. 15 to 17 FFG can be downloaded from www.ffa.de.

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

A number of Co-Production Agreements are presently being negotiated or revised. There is no definite date known by which these new co-production agreements or revisions thereof will actually come into force.

- 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, and indicate the name and address of the administration of these funding schemes:

The Bundesbeauftragte für Kultur und Medien has announced that for the years 2007 to 2009 an amount of Euro 60 Mio. p.a. will be available as a refund for production expenditure in Germany for films which meet (a) the criteria required for the certificate according to Art. 17 FFG (see above) and (b) a German cultural test. The refund will be 20% for productions up to a certain budget amount and 15% for larger productions. The definition of what will be seen as a German expenditure as well as the criteria for the German cultural test are still being discussed. As of today the final meeting of the working group will take place on October 6, 2006. We anticipate that the regulations will then be published within short.

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):

Legal commentaries:

- von Have/Schwarz in v.Hartlieb/Schwarz, Handbuch des Film-, Video- und Fernsehrechts, 2004
- von Have, Filmförderungsgesetz, 2005

PART B-1

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Germany; Federal State

B. Name of the funding scheme:

Filmförderungsgesetz

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

FFA Filmförderungsanstalt
German Federal Film Board
Große Präsidentenstraße 9
10170 Berlin
www.ffa.de

supervisory authority:

Bundesbeauftragte für Kultur und Medien (BKM)
Graurheindorferstraße 198
53117 Bonn
www.filmfoerderung-bkm.de

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

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

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

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

Filmförderungsgesetz (Federal Film Promotion Act), entered into force January 1, 2004; the law has a fixed end term (December 2008). It can be downloaded from the website of the FFA (www.ffa.de).

There is a set of regulations issued by the FFA detailing the regulations regarding the procedure and the formalities to be followed. These regulations can be downloaded from the website of the FFA (www.ffa.de).

The present FFG provides for a number of relevant changes as compared to the prior version which expired on December 31, 2003. The changes, however, relate more to the funding of the scheme itself and the division of the funds between the selective subsidy and the automatic subsidy as well as the calculation of the automatic subsidy. The stipulations regarding the territorialisation requirement were not modified in any greater way.

TERRITORIAL CONDITIONS

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*)?

No. As to the expenditure in and creative elements from member states of the EU or other states of the EEA see Part A. The film must obtain the certificate according to Art. 17 FFG (see discussion in Part A).

Implicit or *de facto* territorial conditions

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

No. As to the requirements for the certificate according to Art. 17 FFG see discussion in Part A. As to the selective aid see discussion below.

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:

According to Art. 1 FFG the Filmförderungsanstalt as a Federal Film Promotion Agency is promoting the structure of the German film industry and the creative and artistic quality of the German film as a precondition for its success in Germany and abroad.

According to Art. 2 Nr. 4 FFG one of the aims of the FFA is to support co-productions between German and foreign producers. Representatives from the associations of the creative contributors to the production of films play an important role within the bodies of the FFA (see Art. 6, 7, 8, 8a FFG). The artistic success of films at festivals has become an important factor in establishing the amount to be received by a film as automatic subsidy (see Art. 22, 23 FFG).

Automatic aid is generated for all films qualifying for the certificate under Art. 17 FFG (see above Part A). It is therefore also available for co-productions produced under existing Co-Production Agreement or the European Co-Production Convention.

Automatic aid is calculated on the basis of the number of tickets sold in Germany and the success achieved by the film at national and international festivals. Each visitor accounts for one point. The participation in one of the internationally acknowledged festivals, a nomination for the European Film Prize, or the winning of national or international film prizes will bring between 50.000 and 300.000 additional points. There is a minimum threshold of points a film has to obtain in order to receive automatic aid. This minimum number is between 25.000 (for documentary films) and 50.000 (for films that are being nominated or have been nominated for a festival or have won a film prize) or (standard) 100.000. The maximum amount of the automatic aid is Euro 2.000.000,00. As regards international co-productions the automatic aid will not be higher than the contribution to the cost of the film by the producer having its domicile or its permanent establishment in Germany (see above Part A).

The German text of the FFG can be downloaded from www.ffa.de.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹ 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:

¹ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

Selective aid is granted according to Art. 32 FFG if the film project on the basis of the script and the cast and crew list gives reason to believe that a film will be produced which will be in a position to improve the quality and the economic situation of film in Germany. It is expressly stipulated that also projects of talented newcomers should receive selective aid in an appropriate proportion. In principal selective aid for international co-productions should only be granted to co-productions in which the share of the German domiciled or resident producer (see above Part A) is higher than 50%. This restriction, however, does not apply to co-productions which are being produced according to an international Co-Production Agreement.

CONTACT DETAILS

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

As we were asked to keep this inquiry confidential we have not made contact with the FFA to obtain assistance in filling out this questionnaire. If we were to require more information we would contact the chairman of the Board (Vorstand) Mr. Peter Dinges.

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

Prof. Dr. Mathias Schwarz
Schwarz Kelwing Wicke Westpfahl
Wittelsbacherplatz 1
80333 München
mathias.schwarz@skwlaw.de
www.skwlaw.de

Date of the data collection and processing:

September 23 – October 02, 2006

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS**

PART B-2

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Germany (Federal)

B.2 Name of the funding scheme:

Filmförderungsrichtlinien der/des BKM (Beauftragte der Bundesregierung für Kultur und Medien)

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

Die/Der Beauftragte der Bundesregierung für Kultur und Medien (BKM)
Graurheindorferstraße 198
53117 Bonn
Internet: www.filmfoerderung-bkm.de

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

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

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

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

Filmförderungsrichtlinien des/der BKM vom 13. Juli 2005 (Film Aid Guidelines of the Commissioner of the Government of the Federal Republic of Germany for Culture and the Media, dated July 13, 2005)

The text can be downloaded from www.filmfoerderung-bkm.de.

TERRITORIAL CONDITIONS²

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*)?

No, for further information see B 13

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 Goals of the promotion provided by the BKM are defined in Art. 1 of the Filmförderungsrichtlinien der/des BKM as follows:

“1. Förderungsziele

Die Förderung des Filmschaffens in Deutschland durch die Beauftragte der Bundesregierung für Kultur und Medien im Rahmen der für Einzelmaßnahmen des Deutschen Films verfügbaren Haushaltsmittel dient dem Ziel,

- den künstlerischen Rang des Deutschen Films zu steigern,
- zur Verbreitung deutscher Filme mit künstlerischem Rang beizutragen und
- die Entwicklung der Filmtheater als Kulturstätten zu fördern.“

1. Goals of the funding scheme

The promotion of the creation of films in Germany by the Commissioner of the Federal Government for Culture and Media in the framework of the budget funds available for individual measures regarding German film production is intended to,

² 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.

- increase the cultural level of German films,
- to contribute to the distribution of German films with a high cultural quality and
- to promote the development of theaters as places of culture.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,³ 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 support to film production is granted by the BKM in a number of different forms. The most relevant ones as regards film production are the providing of the prize moneys available to the winners of the German Film Prize (Deutscher Filmpreis) and the grant of production aids for feature films and for films which are produced for young audiences.

The winners of the German Film Prize are selected by the members of the German Film Academy. All films which qualify for a certificate according to Art. 17 FGG (see questionnaire Part A) and which have a cultural connection to Germany are eligible for the participation in the selection procedure for the German Film Prize.

Section 7.1 Filmförderungsrichtlinien der/des BKM

(...)

„Der Hersteller hat für den Film eine Bescheinigung des Bundesamts für Wirtschaft und Ausfuhrkontrolle nach § 17 des Filmförderungsgesetzes vorzulegen. (...)“

[Section 7.1 of the Film Aid Guidelines of the BKM

(...)

The producer has to provide for a certificate of the Bundesamt für Wirtschaft und Ausfuhrkontrolle according to Art. 17 of the Film Promotion Act (...)]

The detailed procedures of the selection process are being passed by the German Film Academy itself (see: “Richtlinien über das Auswahlverfahren für die Nominierungen zum Deutschen Filmpreis und die Zuerkennung des Deutschen Filmpreises which can be downloaded from the website of the Deutsche Filmakademie at www.deutsche-filmakademie.de.)

The prize money received by the winners of the German film prize can be invested in international co-productions. The financial share of the winner of the German Film Prize intending to invest the prize money in a new production has to exceed 50% of production cost of the new production or has to be larger than the share of any other co-producer (see Sections 9.3, 18.2 Subjection 6 of the Filmförderungsrichtlinien der BKM).

³ 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.

Production aid is granted by the BKM particularly for productions with a budget of up to Euro 2.500.000,00. Additional funds are available for promoting the production of quality films for the young audience. The producer applying for this film aid has to have its domicile in Germany or if it has its domicile in another member state of the EU or in another state of the EEA has to have a branch office in Germany. Applicants for the aid available for films destined for young audiences and films of new talent have to have their domicile in Germany or have to permanently stay in Germany or have to have their center of activity in Germany (see Art. 1.6.2.5 of the Förderrichtlinien des Kuratoriums Junger Deutscher Film).

The German Film Prize is selected by the vote of all members of the German Film Academy. There are no selective criteria for their decision.

Production funding is available by the BKM based on the decision of a jury. The only criteria stipulated in the Guidelines is the quality of the film project. The Guidelines for the promotion of films destined for young audiences and films by young talent state the following:

“1. Allgemeine Grundsätze

1.1. Förderungsziele

- 1.1.1 Die Förderung durch das Kuratorium junger deutscher Film erfolgt im Rahmen der Satzung und der Richtlinien des Kuratoriums. Sie soll zur Vielfalt der Filmkultur und zur Steigerung der Leistungsfähigkeit der deutschen Filmwirtschaft beitragen. Sie soll dabei einerseits jungen Autoren, Regisseuren und Produzenten die Möglichkeit eröffnen, erste Kinofilmvorhaben zu realisieren. Andererseits soll sie den Kinder-Kinofilm stärken und dazu beitragen, die Strukturen seiner Herstellung und Verbreitung zu verbessern. Darüber hinaus soll die Förderung einen Beitrag zur Stärkung des europäischen Films leisten.
- 1.1.2 In der Regel stellt die Kuratoriumsförderung eine Initialfinanzierung dar. Neben der finanziellen Zuwendung kann eine professionelle, geldwerte Projektbetreuung ein wichtiger Förderbestandteil des Kuratoriums sein.

1.2. Gegenstand der Förderung

- 1.2.1 Die Förderung dient in erster Linie der Unterstützung des Kinder- und Jugendfilms und des Talentfilms.
- 1.2.4 Gegenstand der Förderung sind alle Genres und Macharten, d.h. Spielfilm, Dokumentarfilm, Animations- und Realfilm. Gefördert werden Lang- sowie Kurzfilme. Grundsätzlich nicht gefördert werden Übungs- und Abschlussfilme von Filmhochschulen und vergleichbaren Ausbildungseinrichtungen.

1.4 Allgemeine Bedingungen für die Förderung

- 1.4.1 Die Förderung durch das Kuratorium setzt voraus, dass das Filmvorhaben eine Auswertung im Kino erwarten lässt.
- 1.4.2 Filmvorhaben, die nach diesen Richtlinien gefördert werden, müssen einen Film von besonderer künstlerischer Qualität erwarten lassen. Nicht gefördert werden Filmvorhaben, die gegen die Verfassung oder geltende Gesetze verstoßen, die sittlichen oder religiösen Gefühle

verletzen oder sexuelle Vorgänge oder Gewalt in aufdringlicher, spekulativer oder vergrößernder Form darstellen.
....“

The full text of the “Förderungrichtlinien des Kuratoriums Junger Deutscher Film” can be downloaded from the website www.kuratorium-junger-film.de.

CONTACT DETAILS

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

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

Schwarz Kelwing Wicke Westpfahl
Prof. Dr. Mathias Schwarz, Rechtsanwalt
Postfach 20 17 42
80017 München

Date of the data collection and processing: October 04, 2006

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS**

PART B - 3

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region:

Germany/Bavaria

B.2 Name of the funding scheme:

Bayerische Film- und Fernsehförderung FilmFernsehFonds Bayern GmbH (Film and Television Fund Bavaria)

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

FilmFernsehFonds Bayern GmbH

Dr. Klaus Schaefer

Tel.: 089 / 544 602 50

Sonnenstraße 21

Fax: 089 / 544 602 60

80331 München

Internet: ➔ <http://www.fff-bayern.de>

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

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

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

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

Richtlinien für die bayerische Film- und Fernsehförderung v. 30.5.2001 (Guidelines for the Bavarian Film and TV Funding)

The Guidelines can be downloaded in the German and the English version from the website www.fff-bayern.de.

TERRITORIAL CONDITIONS

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 (as discussed, we had suggested to qualify this a de facto territorial condition; you have informed us that according to your analysis, these should be qualified as explicit territorial conditions).

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*):

Sec. 3.7

„Mindestens das 1,5-fache des gewährten Darlehensbetrages soll in Bayern Verwendung finden (Bayern-Effekt). Wird im Förderantrag ein höherer Bayern-Effekt angegeben, muss dieser auch tatsächlich erbracht werden. Auf den Bayern-Effekt kann im Einzelfall ganz oder teilweise verzichtet werden, wenn sichergestellt ist, dass im Gegenzug eine andere Länderförderung bei einem anderen Projekt zugunsten Bayerns in gleicher Höhe auf ihren Landeseffekt verzichtet.

Unbeschadet der Vorschrift des Absatz 1 können wenigstens 20% der Herstellungskosten in einem anderen Land der Europäischen Gemeinschaft ausgegeben werden.“

[3.7

No less than 1.5 times the loan amount granted should be spent in Bavaria (Bavaria-related effect). A higher "Bavaria effect" must actually be carried out if it is indicated in the funding application. In individual cases, the Bavaria-related effect may be waived in part or in its entirety, if it is ensured that in return another federal state subsidy program waives its regional effect requirement in the same amount to the benefit of Bavaria on another project.

Notwithstanding the stipulation of paragraph 1, at least 20% of all production costs can be spent in another member state of the European Union.]

Sec. 3.11.

(...) „Das Erfolgsliehen soll in vollem Umfang in Bayern Verwendung finden. (...)“

[3.11.

(...) The success loan should be used in Bavaria in its entirety. (...)]

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*).

At least one and a half times the amount awarded for a project should be spent in Bavaria, Sec. 3.7 of the Guidelines. Success loans should be spent in Bavaria, Sec. 3.11. of the Guidelines. Regardless hereof, at least 20 per cent of the total production costs may be spent in other parts of the country or other EU countries.

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*):

International co-productions qualify for grants under the Guidelines, European co-productions may be especially funded, Sec. 3.7 of the Guidelines. The application for film production aid is to be made by the producer.

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*):

There is no reported judicial precedent on territorial issues. We have inquired with FFF and have been informed that subject to B.6 and B.7 there is no practice that productions with a greater regional effect will be treated preferentially.

Implicit or *de facto* territorial conditions

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

No.

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:

1.1 Förderungsziele

„Die Förderung soll zur Steigerung der Qualität der Film- und Fernsehproduktion und der Leistungsfähigkeit der bayerischen Produktionswirtschaft beitragen und eine vielfältige Kulturlandschaft gewährleisten. Darüber hinaus soll die Förderung auch einen Beitrag zur Stärkung des audiovisuellen Sektors in Europa leisten.“

[1.1 Purpose of Funding

Funding is intended to increase the quality of film and television production and enhance the efficiency of the Bavarian film industry and to ensure a cultural diversity. Furthermore, funding is also intended to contribute to the strengthening of the audiovisual sector in Europe.]

1.3.5

„Filmvorhaben, die nach diesen Richtlinien gefördert werden, müssen einen nach den Kriterien von Qualität und Wirtschaftlichkeit förderungswürdigen Film erwarten lassen. (...) Nicht gefördert werden außerdem Industrie-, Werbe- oder Imagefilme.“

[1.3.5

Loans will be granted on condition that the film project promises a film worthy of being funded based on the criteria of quality and economic potential. (...)Moreover, no funds are made available to industrial, advertising or image films.]

1.3.9

(...) „Bei großen kommerziellen Spielfilmen ohne besondere kulturelle Zielsetzung soll die kumulierte Förderung nicht über 50% liegen.“

[1.3.9

For larger commercial motion pictures without any particular cultural objectives, accumulated funding should not exceed 50%.]

3.14

„Zur besonderen Nachwuchsförderung sind folgende Maßnahmen möglich: „

[3.14

In order to provide new filmmaking talent with special support, the following measures may additionally be taken:]

3.14.1

„Abschlussfilme von Studenten der Hochschule für Fernsehen und Film in München und der staatlich anerkannten Athanor Akademie in Burghausen können insgesamt mit einem Gesamtbetrag von bis zu 450.000 EUR pro Jahr bezuschusst werden.

Abschlussfilme müssen nicht programmfüllend sein. Dem Antrag ist eine Stellungnahme der Hochschule bzw. der Akademie beizufügen.“

[3.14.1

Graduation films by students of the Munich Academy for Television & Film and the officially approved Athanor Academy in Burghausen may receive a grant in the total amount of up to EUR 450,000 annually. Graduation films need not be of feature length. The grant application must include a written statement by the Munich or Burghausen Academy, respectively.]

3.14.2

„Erstlingsfilme von Absolventen der Hochschule für Fernsehen und Film in München und der staatlich anerkannten Athanor Akademie in Burghausen können insgesamt bis zu einem Gesamtbetrag 600.000 EUR pro Jahr bezuschusst werden. Der Antrag zur Förderung des Erstlingsfilms kann nur innerhalb von fünf Jahren nach dem Studienabschluss gestellt werden. Der Erstlingsfilm muss nicht programmfüllend sein. Dem Antrag ist das Abschlusszeugnis der Hochschule bzw. der Akademie beizufügen.“

[3.14.2

First films by graduates of the Munich Academy for Television & Film or the officially approved Athanor Academy in Burghausen may also be eligible for grants of up to EUR 600,000. All grant applications must be submitted within five years of graduation. A copy of the final report card from either Academy must be submitted with the grant application. The first film must not be of feature length.]

3.14.3

„Im Übrigen können bei besonders förderungswürdigen Vorhaben, auch für nicht programmfüllende Filme, Nachwuchskräften Zuschüsse bis zu insgesamt 150.000 EUR pro Jahr gewährt werden. Eine Antragstellung von Studenten der Hochschule für Fernsehen und Film in München, der staatlich anerkannten Athanor Akademie in Burghausen oder sonstiger fachbezogener Ausbildungseinrichtungen ist ausgeschlossen.“

[3.14.3

Moreover, an annual allowance of a total of € 150,000 may be granted to new talent for projects that are particularly worthy of being funded, even if these are not of feature-length. Graduates of the Academy for Television & Film in Munich, the officially approved Athanor Academy in Burghausen or other specialized film institutes are not eligible for this grant.]

3.8

„Bei der Herstellung des Films soll der Antragsteller in angemessenem Umfang die filmberufliche Aus- und Weiterbildung gewährleisten.“

[3.8

During the film's production, the applicant shall guarantee, to an appropriate degree, initial and further training for the professionals working in the film industry.]

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁴ 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:

Sec. 1.1 (Aims, as cited above)

Sec. 1.3.5, 1.3.9 (General Funding Condition, as cited above)

Sec. 3.14. (Special Support for New Film Making Talents, as cited above)

Sec. 3.2

„Die Herstellung von Kinofilmen kann bis zu 30% der angemessenen Herstellungskosten, höchstens aber mit 1,6 Millionen EUR gefördert werden, wenn der Produzent seinen Sitz oder eine Niederlassung in Deutschland hat und für den Produzenten die Refinanzierung des Förderanteiles auf dem nationalen und internationalen Markt möglich erscheint. Der Kinofilm muss programmfüllend sein. Als programmfüllend gilt eine Vorführdauer von mindestens 79 Minuten, bei Dokumentar-, Kinder- oder Jugendfilmen von mindestens 59 Minuten.“

[3.2

The production of feature films (motion pictures) may receive funding of up to 30% of reasonable production costs, but not more than EUR 1,6 million, if the producer is a resident of, or has a branch office located in Germany, and the refinancing of the funded portion on the national and international market seems possible. The motion picture must be of feature length. A film shall be considered to be of feature length if screening time is no less than 79 minutes; no less than 59 minutes for documentaries or children and youth-oriented films.]

3.3

„Die Herstellung von Fernsehfilmen kann bis zu 30% der angemessenen Herstellungskosten gefördert werden, wenn der Produzent seinen Sitz oder eine Niederlassung in Deutschland hat und für den Produzenten die Refinanzierung des Förderanteils auf dem nationalen und internationalen Fernsehmarkt möglich erscheint oder wenn die Förderung eine langfristige Produktion von Serien, Reihen o.ä. in Bayern erwarten lässt. Die Förderung beträgt bei Einzelvorhaben höchstens 530.000 EUR. Die Kostenbeteiligung des oder der Sender(s) muss in der Regel 60% betragen.“

[3.3

The production of television films may be funded up to 30% of reasonable production costs if the producer is a resident of Germany or has a branch office located here, and the refinancing of the funded portion on the national and international television market seems possible or if the funding promises, in the long run, further production of a series, specials, etc. in Bavaria. Funding for each individual project shall not exceed EUR 530,000. As a rule, the television network must provide funding generally amounting to no less than 60% of production costs.]

⁴ 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.

12. Ausnahmen

„Der Vergabeausschuss kann in besonderen Fällen Ausnahmen von den Bestimmungen dieser Richtlinien zulassen.“

[12. Exceptions

In special cases, the allocation committee may grant exemptions from the regulations of these guidelines.]

CONTACT DETAILS

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

see general comment to B.14 in B-1; see also comment to B 9.

FilmFernsehFonds Bayern GmbH

Dr. Klaus Schaefer

Tel.: 089 / 544 602 50

Sonnenstraße 21

Fax: 089 / 544 602 60

80331 München

Internet: → <http://www.fff-bayern.de>

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

Schwarz Kelwing Wicke Westpfahl,
Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: October 26th, 2006

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

PART B – 4

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Hamburg

B.2 Name of the funding scheme:

Filmförderung Hamburg (Film Funding Scheme Hamburg)

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

FilmFörderung Hamburg GmbH

Eva Hubert
Friedensallee 14-16
22765 Hamburg

Tel.: 040 / 398 37 - 0
Fax: 040 / 398 37 - 10
Internet: ➤ <http://www.ffhh.de>

Anträge & Richtlinien:

Produktionsförderung: Sybille
Consten

Tel.: 040 / 398 37-26-28
Fax: 040 / 398 37 - 10

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

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

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

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

Richtlinie zur Filmförderung vom 1.1.2002 (Guidelines for film funding of Filmförderung Hamburg as of January 1st 2002, no amendments)

The Guidelines can be downloaded in the German and English version from www.ffhh.de.

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

Sec. 1.1 Förderungsziele/Goals of Funding

Zur Stärkung der audiovisuellen Medien in Hamburg ist anzustreben, dass das 1,5-fache der Gesamtförderungssumme des laufenden Jahres in Hamburg ausgegeben wird. Ziel der Förderung ist es auch, Beschäftigung in Hamburg zu sichern und zu schaffen.

[In order to strengthen the audio-visual media in Hamburg, it is intended that at least one-and-a half times the amount of the funding awarded for the current year be spent in Hamburg. A further aim of the support scheme is to safeguard and create employment in Hamburg.]

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*).

At least 150% of the amount of the funding awarded per year (not per project) should be spent in Hamburg.

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*):

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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*):

There is no judicial precedent reported on territorialisation issues.

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.

If yes,

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*):

Sec. 2.2. Projektentwicklung

2.2.1 „Für die Entwicklung eines Kino- oder Fernsehfilms kann eine Förderung gewährt werden. Antragsberechtigt sind Produzentinnen/Produzenten. Die Realisierung des geplanten Projekts soll überwiegend in Hamburg vorgesehen sein.“

[2.2 Project development support

2.2.1 A conditionally repayable (non-recourse) loan may be granted for the development of a cinema or television film project. Producers are eligible to apply. The greater part of the proposed project should be planned to be produced in Hamburg.]

Grants are given to international co-productions as well, Sec. 1.3 of the Guidelines. The application for film production aid is to be made by the producer.

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:

1.1 Förderungsziele

Ziel der Förderung ist die Entwicklung, Pflege und Stärkung der Filmkultur und Filmwirtschaft in Hamburg. Insbesondere sollen gefördert werden:

- wirtschaftliche erfolversprechende Filmproduktionen
- Filme verschiedener Genres, die einen wichtigen Beitrag zur Filmkultur leisten
- Fernsehspiele und Serien von hohem Qualitätsstandard, die nach Inhalt, Form und Besetzung auf eine internationale Auswertung ausgerichtet sind.
- kulturell bedeutende Fernseh- und Videoproduktionen

Dazu gehören auch Maßnahmen im Vorfeld der Produktion und Maßnahmen zur Stärkung des Verleih-, Vertriebs- und Abspielbereichs.

[1.1 Objectives

The aim of the film support scheme is to develop, maintain and strengthen film culture and film business in Hamburg. Support should be directed in particular toward:

- film productions that show economic promise
- films of different genres that make an important contribution to film culture
- television films and series of high quality whose content, form and cast make them suitable for international sales
- television and video productions of cultural importance

These include projects in the area of pre-production and measures to strengthen the areas of distribution and sales as well as theatrical release and presentation.

In order to strengthen the audio-visual media in Hamburg, it is intended that at least one-and-a-half times the amount of the funding awarded for the current year be spent in Hamburg. A further aim of the support scheme is to safeguard and create employment in Hamburg.]

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁵ 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:

Sec. 1.1 (Aims, as cited above)

Sec. 3.2

3.2.1 Die Förderung eines programmfüllenden Kinofilms ist nur möglich, wenn der Film einen wirtschaftlichen Erfolg in Filmtheatern oder eine besondere kulturelle Bedeutung für Hamburg erwarten lässt. Den Antragsunterlagen ist ein detailliertes Auswertungskonzept beizufügen.

[3.2 Films for cinema with production budgets exceeding €800,000

3.2.1 A feature film can only be supported if the production shows promise of being a commercial success in the cinema or having special cultural significance for Hamburg. A detailed concept for the film's exploitation must be enclosed with the application.]

3.2.4 Die deutsche Premiere soll in Hamburg stattfinden.

[3.2.4 The German theatrical premiere of a supported film should take place in Hamburg.]

3.4.1 Die Herstellung von Fernsehfilmen und -serien von herausragender Programmqualität kann dann gefördert werden, wenn die Refinanzierung auf dem nationalen und internationalen Fernsehmarkt aussichtsreich erscheint.

[3.4.1 The production of TV movies and series of excellent quality may be financially supported if there seems to be a good chance of refinancing via the national and international markets.

6. Besondere Regelung

6.2 Projekte und Maßnahmen, die im besonderen filmkulturellen und /oder filmwirtschaftlichen Interesse Hamburgs liegen, können mit von diesen Richtlinien abweichenden Festlegungen gefördert werden. Hierfür ist ein einstimmiger Beschluss des jeweiligen Auswahlgremiums erforderlich, der auf Vorschlag der Geschäftsführung ergeht und der Zustimmung der / des Aufsichtsratsvorsitzenden bedarf.

⁵ 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.

[6. Special Regulation

6.2 Projects that benefit the film culture or the film business in Hamburg may receive support under stipulations that diverge from these Guidelines. This requires a unanimous decision on the part of the relevant funding committee, which may only be made at the management's proposal and requires the subsequent approval of the chairman of the supervisory board.]

CONTACT DETAILS

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

See general comment to B. 14 of B-1

FilmFörderung Hamburg GmbH

Eva Hubert

Friedensallee 14-16

22765 Hamburg

Anträge & Richtlinien:

Produktionsförderung: Sybille Consten

Tel.: 040 / 398 37 - 0

Fax: 040 / 398 37 - 10

Internet: ➤ <http://www.ffhh.de>

Tel.: 040 / 398 37-26-28

Fax: 040 / 398 37 - 10

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

Schwarz Kelwing Wicke Westpfahl,

Sabine Richly, Rechtsanwältin

Postfach 201742

80017 München

Date of the data collection and processing: October 26th, 2006

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

PART B - 5

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Berlin-Brandenburg

B.2 Name of the funding scheme:

medienboard. (Filmförderung/film subsidy scheme)

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

Medienboard Berlin-Brandenburg GmbH

Petra Maria Müller | Kirsten Niehuus Tel.: 0331 / 743 87-0

Postfach 90 04 02 Fax: 0331 /743 87- 99

14440 Potsdam-Babelsberg Internet: ➔ <http://www.medienboard.de>

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

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

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

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

Vergaberichtlinien für die Filmförderung der Medienboard Berlin-Brandenburg GmbH

(State Aid Regulations for Film Funding)

as of January 1st, 2005, no amendments.

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

Sec. 1.3.9 of the Regulations

“Die Kosten des Projekts sollen [!] soweit wie möglich in Berlin-Brandenburg verwendet werden. Sie müssen grundsätzlich mindestens in Höhe der bewilligten Mittel in Berlin-Brandenburg verwendet werden (Regionaleffekt).

Auf den Regionaleffekt kann ganz oder teilweise verzichtet werden, wenn Filmförderer untereinander sicherstellen, dass im Gegenzug eine andere Länderförderung bei einem anderen Projekt zugunsten Berlin-Brandenburgs in gleicher Höhe auf ihren (Landes-) Regionaleffekt verzichtet.

Unbeschadet hiervon können wenigstens 20% der Herstellungskosten in einem anderen Land der europäischen Gemeinschaft ausgegeben werden.“

[Project costs should [!] as far as possible be spent within Berlin-Brandenburg. In principal, they must be spent in Berlin-Brandenburg at least up to the level of the aid granted (regional impact).

The regional impact rule may be waived fully or in part if film aid providers agree amongst each other, that other regional aid for another project also waives their regional impact rule at the same level as a quid pro quo.

Irrespective hereof, at least 20 % of production costs may be spent in another country of the European Community.]

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*).

At least 100 per cent of the grant must be spent in the region. Regardless hereof, at least 20 per cent of the total production costs may be spent in other countries of the European Community.

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*):

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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*):

There is no judicial precedent reported on territorialisation issues.

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.

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*):

Sec. 2.2.2 Projektentwicklung

„Mittel für die Stoffentwicklung werden in der Regel Produzenten gewährt, die in Berlin-Brandenburg bzw. Deutschland ansässig sind. Die Herstellung des geplanten Projekts soll überwiegend in Berlin-Brandenburg stattfinden.“

[Project-development:

Funds for project development are as a rule granted to producers resident in Berlin-Brandenburg or Germany. The planned project should be produced mainly in Berlin-Brandenburg.]

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:

Sec. 1 Vergaberichtlinien:

„Ziel ist,

- die qualitative und quantitative Weiterentwicklung der Berlin-Brandenburger Filmkultur und -wirtschaft zu unterstützen,
- die wirtschaftliche Leistungsfähigkeit der Filmunternehmen, insbesondere die Stärkung der unabhängigen Produzenten, mit der dazu notwendigen Infrastruktur in der Region zu stärken,
- ein vielfältiges und qualitativ profiliertes Film- und Fernsehschaffen in Berlin-Brandenburg zu ermöglichen,
- die Region im In- und Ausland zu präsentieren und zu repräsentieren.

Die Förderung soll darüber hinaus einen Beitrag zur Stärkung des audiovisuellen Sektors in Deutschland und Europa leisten.“

[It is aim [of the state aid]

- to help promote the development of the Berlin-Brandenburg film culture and film industry in qualitative and quantitative respects.
- to strengthen the economic capabilities of film undertakings, specially of the independent producers, by providing the essential infrastructure in the region
- to enable the creation of diverse and high quality film and television-productions in Berlin-Brandenburg,
- to present and represent the region at home and abroad

The state aid aims to contribute to strengthen the audiovisual sector in Germany and Europe.]

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁶ 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:

Sec. 1.1 (Funding goals, as cited above)

Sec. 2.4 (Production:

„Gefördert wird die Herstellung von Kinofilmen. Das Filmvorhaben muss wirtschaftlich verwertbar sein. Daraus folgt, dass das Vorhaben in der Regel programmfüllend sein soll; ausgenommen hiervon sind Kurzfilme.

Voraussetzung einer Kinofilmförderung durch die Medienboard GmbH ist grundsätzlich ein Verleihvertrag durch den die wirtschaftliche Auswertung des Films in den Filmtheatern in Deutschland sichergestellt wird. Bei Dokumentarfilmen ist in der Regel ein internationaler Verwertungsvertrag erforderlich.

(...)

Die Anforderungen für die Kinofilmförderung gelten entsprechend auch für die Förderung von TV-Filmen. Diese können nur gefördert werden, wenn sich das Projekt durch besondere Programmqualität auszeichnet, ein Vertriebsvertrag vorliegt und

- das Projekt im besonderen Interesse Berlin-Brandenburgs liegt oder
 - das Projekt gemeinsam mit internationalen Co-Partnern produziert wird
- oder
- nachweislich für die Auswertung auf dem internationalen Markt bestimmt ist.“

[Funding is offered here for the production of cinema films. The project must be capable of commercial exploitation. This means as a rule that except for short films it must be a full length feature film.

The basic prerequisite for cinema film funding by the Medienboard GmbH is a distribution contract guaranteeing the commercial exploitation of the film in German cinemas. An international distribution contract is usually necessary for documentaries.

(...)

The requirements for cinema film funding apply correspondingly to TV films.

These can only be funded if the project shows special programme quality, has a distribution contract and

- is in the particular interest of Berlin-Brandenburg, or
- is co-produced with international partners, or
- the project is destined for exploitation on the international market.]

⁶ 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.

Sec.1.2.5 Verleih, Vertrieb

„Gefördert werden in der Regel nur Verleih- und Vertriebsvorkosten für europäische Kinofilme,

- deren Produktion von der Medienboard GmbH gefördert wurde oder
- die von in Berlin-Brandenburg oder Deutschland ansässigen Produzenten hergestellt bzw. von diesen als Gemeinschaftsproduktion hergestellt wurden oder
- die von in Deutschland ansässigen Verleih- oder Weltvertriebsfirmen an deutsche Kinos verliehen bzw. auf den internationalen Märkten vertrieben werden oder
- deren Förderung im besonderen filmkulturellen oder filmwirtschaftlichen Interesse Berlin-Brandenburgs liegt.“

[Sec. 1.25 Distribution

Funding is usually offered only for the distribution costs of European cinema films

- whose production was funded by the Medienboard GmbH, or
- which were realised by producers resident in Berlin-Brandenburg or Germany, or are made by them as co-productions, or
- which will be distributed in German cinemas or at international markets by distributors or world sales companies based in Germany, or whose funding lies in the particular film cultural or economic interest of Berlin-Brandenburg.]

Sec. 1.3.1 Allgemeine Bedingungen für die Förderung

„Gefördert werden nur Maßnahmen, die dem Förderziel entsprechen.“

[General Funding Conditions:

Funding is only granted to projects which are in line with the funding goals.]

There is also a possibility for automatic aid based on the repayment of a prior loan:

Sec. 2.3.10 Produktionsförderung

„Der Antragsteller kann innerhalb einer Frist von drei Jahren ab Rückzahlungsbeginn ein Erfolgsliehen beantragen. Das Erfolgsliehen wird gewährt, wenn das neue Vorhaben den Qualitätskriterien und dem Förderziel der Medienboard GmbH entspricht.“

[The applicant may apply for a success-related loan within a time limit of three years from the start of the repayment period. These loans are usually granted if the new project corresponds to the quality criteria and funding goals of the Medienboard GmbH.]

CONTACT DETAILS

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

See comment to B 14 of questionnaire B - 1

Medienboard Berlin-Brandenburg GmbH

Petra Maria Müller | Kirsten Niehuus Tel.: 0331 / 743 87-0

Postfach 90 04 02 Fax: 0331 /743 87- 99

14440 Potsdam-Babelsberg Internet: ➤ <http://www.medienboard.de>

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

Schwarz Kelwing Wicke Westpfahl,
Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: October 26th, 2006

QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS

PART B - 6

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region:

Germany, Baden-Württemberg

B.2 Name of the funding scheme:

M F G Medien- und Filmgesellschaft Baden-Württemberg mbH (M F G Media and Film Company Baden-Württemberg)

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

MFG Medien- und Filmgesellschaft Baden-Württemberg mbH

Gabriele Röthemeyer
Breitscheidstraße 4
70174 Stuttgart

Tel.: 0711 / 90 715-400
Fax: 0711 / 90 715-450
E-Mail: → filmfoerderung@mfg.de
Internet: → <http://www.film.mfg.de>

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

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

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

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

Vergabeordnung zur Filmförderung (Regulations on the Grant of Aid to the Film Industry)

The regulations can be downloaded in the German and English version from www.film.mfg.de

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

Sec. 1.1. Ziel der Förderung:

(...)

Zur Stärkung des filmwirtschaftlichen Standortes Baden-Württemberg soll mindestens das 1,2-fache der Gesamtfördersumme des laufenden Jahres in Baden-Württemberg ausgegeben werden.

Die MFG soll bei ihren Förderentscheidungen zugunsten mit Fernsehveranstaltern mehrheitlich verbundener Unternehmen darauf Wert legen, dass auch andere Unternehmen aus Baden-Württemberg an der Realisierung der von der MFG geförderten Filmprojekte beteiligt werden.

(sec. 1.1: Goals of the Funding)

In order to strengthen the film industry in the region of Baden-Württemberg at least 120% of the total amount of the aid of each year shall [!] be spent in Baden-Württemberg.

When awarding support to companies in which television broadcasters are majority associates or have a majority interest, the MFG will attach importance to other companies based in Baden-Württemberg also being involved in the production of film projects funded by the MFG.

2.1 Voraussetzungen der Förderung sind

- die Qualität des Projekts und ein kultureller oder sonstiger Bezug zu Baden-Württemberg oder
- die Qualität des Projekts und ein wirtschaftliches Interesse in Baden-Württemberg an dem Projekt

Ein wirtschaftliches Interesse ist dann gegeben, wenn der ausgewiesene Baden-Württemberg-Effekt mindestens 120 % der Fördermittel beträgt. Als Baden-Württemberg Effekt gelten die in Baden-Württemberg ausgegebenen Projektkosten.

Ein kultureller oder sonstiger Bezug zu Baden-Württemberg ist dann gegeben, wenn

- das Projekt inhaltlich eng mit Baden-Württemberg verknüpft ist **oder**
- der Produzent bzw. Projektträger in Baden-Württemberg ansässig ist **oder**
- das Projekt bereits von einer anderen deutschen Fördereinrichtung unterstützt wird
- **und** zusätzlich der SWR oder ZDF/ARTE oder ARTE Inhaber von Fernsehrechten sind.

2. General conditions of support

2.1 The general conditions of support are:

- the quality of the project and a cultural or other connection to Baden-Württemberg

or

- the quality of the project and its being of economic interest to Baden-Württemberg.

An economic interest exists if at least 120% of the financial support awarded in Baden-Württemberg in the form of documented project costs.

A cultural or other connection to Baden-Württemberg exists if:

- the content of the project is closely tied to Baden-Württemberg, or
- the producer/applicant is resident in Baden-Württemberg, or
- the project has already received support from another German film fund
- and SWR or ZDF/ARTE or ARTE also holds the television rights.

2.4. „Dem Förderempfänger steht es vorbehaltlich der Erfüllung der sonstigen Förderungsvoraussetzungen frei, 20% oder mehr des jeweiligen Gesamt-Budgets in anderen Ländern auszugeben. Bei großen kommerziellen Spielfilmen ohne besondere kulturelle Zielsetzung soll die kommunizierte Förderung nicht über 50% liegen.“

2.4 Subject to fulfilling the other funding requirements, the beneficiary is at liberty to spend 20% or more of the respective total budget in other countries. For high-budget commercial feature films without a particular cultural objective, the cumulated support should not exceed 50%.

4.1.5 Die Antragstellerin/der Antragsteller muss bei ihrer/seiner Einreichung den Baden-Württemberg-Effekt detailliert (spezifiziert nach Kalkulationspositionen) darlegen.

4.1.5 In the application, the regional spend in Baden-Württemberg must be particularised (itemising the relevant positions in the budget).

4.1.7 Bei der Herstellung des Filmes soll die Antragstellerin/der Antragsteller in angemessenem Umfang Maßnahmen zur filmberuflichen Aus- und Weiterbildung in Baden-Württemberg gewährleisten.

4.1.7 The applicant shall provide adequate film training opportunities in Baden-Württemberg during production.

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*).

At least 120 percent of the total funding awarded in one year should be spent in Baden-Württemberg.

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):

Grants are also available to international co-productions. European co-productions may be especially funded. The application for film production aid is to be made by the producer. International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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):*

There is no judicial precedent reported on territorialisation issues.

Implicit or *de facto* territorial conditions

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

No.

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:

1.1 Ziel der Förderung

Die MFG fördert in ihrem Geschäftsbereich Filmförderung die Vorbereitung, Herstellung und Verbreitung von Film-, Fernseh- oder Videoproduktionen, die geeignet erscheinen zur Vorführung bzw. Ausstrahlung in Filmtheatern, im Fernsehen, im Vertrieb, bei Festivals oder sonstigen Veranstaltungen. Überdies werden interaktive Produkte mit einem audiovisuellen Anteil gemeinsam mit dem Geschäftsbereich Medienentwicklung gefördert.

Wichtigstes Ziel der Förderung ist die Entwicklung, Pflege und Stärkung der Filmkultur sowie die hierfür erforderliche Entwicklung und Stärkung der

Filmwirtschaft in Baden-Württemberg, sowie der Präsentation des Filmstandortes Baden-Württemberg im In- und Ausland.

Insbesondere sollen gefördert werden:

- Filme unterschiedlicher Genres, die einen wichtigen Beitrag zur Filmkultur leisten
- Filmproduktionen, die einen wichtigen Beitrag zur Stärkung der filmwirtschaftlichen Branche in Baden-Württemberg leisten
- Kulturell bedeutsame Fernseh- und Videoproduktionen.

1.1 Funding objectives

The MFG film fund programme supports the development, production and distribution of film, television and video productions with circulation or broadcasting potential in film theatres, on television, for sales distribution, at festivals or other events.

In addition, interactive products with audio-visual elements are supported in co-operation with the Media Funding programme.

Its main objectives are to develop, sustain and promote film culture, to accordingly develop and advance the film industry in Baden-Württemberg, and to present the film production services and opportunities in Baden-Württemberg both nationally and internationally.

The following will have funding priority:

- culturally significant films of diverse genres
- film productions that significantly contribute to advancing the film industry in Baden-Württemberg
- culturally significant television and video productions.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁷ 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:

If this scheme distributes aid selectively, 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:

Sec. 1.1 (Aims, as cited above)

Sec. 2.1. (cited above)

Sec. 4.2 Kinofilme mit Herstellungskosten über 500.000 Euro

4.2.1 Die Förderung eines programmfüllenden Kinofilms ist nur möglich, wenn es sich um ein anspruchsvolles Projekt handelt, das sowohl in Filmtheatern als auch im Fernsehen zu einer erfolgreichen qualitätsvollen Programmgestaltung beiträgt.

⁷ 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.

[4.2.1 Feature films with production cost exceeding 500.000,00 Euro

A Feature film will only be considered for support if it is an ambitious project that will contribute to successful, high quality programming both theatrically as well as on television.]

4.3 Kinofilme mit Herstellungskosten bis zu 500.000 Euro (von 4.2 abweichende Regelung)

4.3.1 Antragsberechtigt sind Produzentinnen/Produzenten und Filmemacherinnen/ Filmemacher, insbesondere Nachwuchskräfte. Bevorzugt gefördert werden Produktionen junger Autoren, und/oder Absolventen baden-

württembergischer Studieneinrichtungen im Film- und Medienbereich.

4.3.3 Die Fördersumme wird gemessen an dem Format des eingereichten Vorhabens gewährt (z.B. Kurz- bzw. programmfüllende Kinofilme).

4.3.4 Bevorzugt gefördert werden Vorhaben im Trickfilm- und Kinderfilmsektor, wenn sie den oben genannten Bedingungen der Richtlinien entsprechen.

[4.3 Feature Films with budgets up to 500.000,00 Euros

4.3.1 Producers and filmmakers, especially young film professionals, are eligible to apply. Preference is given to productions by young others and/or graduates in film and media studies from an educational institution located in Baden-Württemberg.

4.3.3 The amount awarded will be determined according to the format of the submitted project (for e.g. shorts or full-length feature films).

4.3.4 Preference will be accorded to animation and children's film projects, if they meet the above regulations.]

4.4 Fernsehproduktionen

(von 4.2 abweichende Regelungen)

4.4.1 Die Herstellung von Fernsehfilmen von herausragender Programmqualität und herausragender kultureller Bedeutung für das Land Baden-Württemberg kann gefördert werden, wenn die Verwertungsrechte in hohem Maße bei der Produzentin/dem Produzenten verbleiben. Das Darlehen soll in der Regel nicht mehr als 30 % der anteiligen kalkulierten Herstellungskosten betragen (ansonsten gelten die Regelungen zu 4.2).

4.4.2 Die Förderung von reinen Fernsehproduktionen sind ausnahmsweise da möglich, wo sich die Nachwuchsförderung in besonderem Maß realisieren lässt. Hier können die Regelungen der Filmförderung zu 4.3 auf die Fernsehförderung übertragen werden.

[4.4 Television productions

(regulations differing from 4.2)

4.4.1 Television film productions of outstanding quality and outstanding cultural significance for Baden-Württemberg are eligible for support, if the exploitation rights are held by the producer to a large extent. As a rule, the loan should not exceed 30% of the applicant's share of the budget (otherwise the regulations in 4.2 apply).

4.4.2 In exceptional cases, productions made solely for television are eligible for support, if they particularly serve to assist young film professionals. Here the regulations in 4.3 concerning feature film support can be applied.]

4.5 Videoproduktionen

4.5.1 Gefördert werden kann die Herstellung von herausragenden, kulturell wichtigen Video- und anderen AVProduktionen.

[4.5.1 The production of outstanding culturally significant video and other audio-visual productions is eligible for support.]

CONTACT DETAILS

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

see general comment to B 14 in B-1

MFG Medien- und Filmgesellschaft Baden-Württemberg mbH

Gabriele Röthemeyer

Tel.: 0711 / 90 715-400

Breitscheidstraße 4

Fax: 0711 / 90 715-450

70174 Stuttgart

E-Mail: ➤ filmfoerderung@mfg.de

Internet: ➤ <http://www.film.mfg.de>

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

Schwarz Kelwing Wicke Westpfahl,

Sabine Richly, Rechtsanwältin

Postfach 201742

80017 München

Date of the data collection and processing: October 26th, 2006

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS**

PART B-7

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region:

Mitteldeutschland (Saxonia, Saxony-Anhalt, Thuringia)

B.2 Name of the funding scheme:

MDM Mitteldeutsche Medienförderung GmbH

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

MDM Mitteldeutsche Medienförderung GmbH

GF: Manfred Schmidt

Tel.: 0341 / 269 87-0

Hainstraße 19

Fax: 0341 / 269 87-65

04109 Leipzig

Internet: <http://www.mdm-online.de>

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

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

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

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

Richtlinie zur Filmförderung (Guidelines for film funding of MDM)

The Guidelines can be downloaded from the website www.mdm-online.de.

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

1.3 Regionale Effekte

„Gefördert werden können Projektträger, wenn aus der Fördermaßnahme ein kultureller und wirtschaftlicher Effekt in den Ländern Sachsen, Sachsen-Anhalt oder Thüringen zu erwarten ist. Bei der Realisierung der Projekte sollen mindestens die bewilligten Mittel in den Ländern Sachsen, Sachsen-Anhalt und Thüringen film-, fernseh- und medienspezifisch ausgegeben werden. Im Einzelfall kann darauf verzichtet werden, wenn sichergestellt ist, dass im Gegenzug eine andere Länderförderung zugunsten der MDM in gleicher Höhe auf ihren Landeseffekt verzichtet. Mindestens 20 Prozent der Herstellungskosten können in einem anderen Land des Europäischen Wirtschaftsraumes ausgegeben werden.

Unternehmen, die gesellschaftsrechtlich mit dem Mitteldeutschen Rundfunk verbunden sind, sollen andere Unternehmen aus der mitteldeutschen Region an der Realisierung der von der MDM geförderten Projekte beteiligen.“

[1.3 Regional focus Funding

may apply to projects that are expected to have cultural or economic effect in Saxony, Saxony-Anhalt or Thuringia. The funding granted should be the minimum that is spent on film, television and media specifically in Saxony, Saxony-Anhalt and Thuringia in the realisation of the project. Exceptions can be made individually if another regional fund renounces the same amount of its regional focus in favour of the MDM. At least 20 percent may be spent in another country of the European Union.

Companies which are legally associated with the MDR (Mitteldeutscher Rundfunk) shall co-operate with other regional companies in the realisation of MDM funded projects.]

3.3.3 Paketförderung

„Der Förderbetrag sollte so weit wie möglich in Mitteldeutschland ausgegeben werden. Der Förderempfänger verpflichtet sich, die geförderten Vorhaben so weit wie möglich in der mitteldeutschen Region zu realisieren.“

[Sec. 3.3. Package Funding

The funding should be spent in Central Germany, as far as it is possible. The recipient of the funding is obliged to produce the funded projects in Central Germany, as far as it is possible.]

Sec. 4.1.3 Produktionsfinanzierung

„Es ist aufgeschlüsselt darzulegen, welcher Anteil der Herstellungskosten in Thüringen, Sachsen-Anhalt und Sachsen ausgegeben wird.“

[Sec. 4.1.3 Production Funding

It must be stated in detail, what share of the production costs will be spent in Thuringia, Saxony-Anhalt or Saxony.]

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*).

At least the amount of the funding awarded should be spent in Saxony, Saxony-Anhalt and Thuringia, Sec. 1.3 of the Guidelines. At least 20 per cent may be spent in other EU countries. In principle, funding should be spent in Central Germany (sec. 3.1.4):

Sec. 3.1.4 Der Förderempfänger verpflichtet sich, den Film, dem das Drehbuch zugrunde liegt, soweit wie möglich in Mitteldeutschland herzustellen. Ist der Förderempfänger kein Produzent, verpflichtet er sich, das geförderte Vorhaben spätestens innerhalb von sechs Monaten nach Auszahlung der letzten Rate Herstellern, vorrangig aus Mitteldeutschland, zur Produktion anzubieten. (...)

[Sec. 3.1.4 The recipient of the funding is obliged to produce the film that is based on the respective script in Central Germany, as far as it is possible. If the recipient of the funding is not a producer, he/she is obliged to offer the

funded project for production within six months after the payment of the last instalment, preferably to producers of the Central German region. (...)]

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*):

Grants are available to international co-productions, European co-production may be especially funded. The application for film production aid to be made by the producer.

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*):

There is no judicial precedent reported on territorialisation issues.

Implicit or *de facto* territorial conditions

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

No.

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:

Sec. 1.1 Ziel der Förderung

„Ziel der Förderung ist die Entwicklung, Pflege und Stärkung der Filmkultur-, Fernsehkultur- und Medienkulturwirtschaft in Sachsen, Sachsen-Anhalt und Thüringen. Die Förderung will einen Beitrag zur Stärkung des audiovisuellen

Sektors in Deutschland und Europa leisten. Sie dient damit der Verbesserung und Sicherung der Wirtschaftskraft in Sachsen, Sachsen-Anhalt und Thüringen.

Sie zielt insbesondere darauf:

- die Film- und Medienkultur zu stärken, die Medienkompetenz zu erhöhen und damit der Ausprägung kultureller Identität in der mitteldeutschen Region zu dienen,
- die Leistungsfähigkeit von Unternehmen der Filmkultur-, Fernsehkultur- und Medienkulturwirtschaft zu stärken und die Branchenansiedlung zu intensivieren,
- die Qualität und Wettbewerbsfähigkeit von Film-, Fernseh- und Medienproduktionen zu erhöhen und weiterzuentwickeln,
- die Wirtschaftskraft der drei Länder im Medienbereich zu verbessern und damit auch Ausbildung und Beschäftigung zu sichern,
- die Entwicklung medienpädagogisch wertvoller sowie kinder- und jugendbezogener Medienprodukte zu unterstützen. „

[1.1 Aim of the funding

The aim of the funding is the development, maintenance and strengthening of the film, television as well as media culture and economy in Saxony, Saxony-Anhalt and Thuringia. The funding intends to contribute to the strengthening of the audio-visual sector in Germany and Europe. It will hereby improve and ensure the economic power in the region of the three states of Saxony, Saxony-Anhalt and Thuringia.

A special focus is put upon:

- Strengthening of film and media culture, improvement of media competence and with that helping to form cultural identity within the Central German region.
- Strengthening the performance of the companies of the film, television, as well as media culture economy, intensifying the settlement of businesses.
- Improvement and further development of the quality and competitiveness of film, television and media productions.
- Improvement of the economic power of these three German states in the media sector to ensure employment and training.
- Supporting the development of educational as well as childrens and young peoples oriented media products.]

Sec. 4.1.1 Allgemeine Bestimmungen

„Die Herstellung von Fernsehprojekten kann insbesondere dann gefördert werden, wenn sich das Projekt durch eine besondere Programmqualität auszeichnet und für eine Auswertung auf dem internationalen Markt geeignet erscheint, bzw. mit europäischen Co-Partnern produziert wird.“

[Sec. 4.1.1

The production of television projects especially may be funded if the project is distinguished by a particular programme quality and it is suitable for the international market or is produced with European co-partners respectively.]

4.1.2

Projekte aus folgenden Bereichen können besonders gefördert werden:

- Nachwuchs (schwierige und low-budget-Produktionen)
- Kinder und Jugend
- Multimedia

[Sec. 4.1.2

Projects of the following areas may be funded particularly:

- Up-and-coming talent (difficult and low-budget productions)
- Children and young people
- Multimedia]

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁸ 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:

Sec. 1.1 (Aims, as cited above)

Sec. 4.1.1. and 4.1.2 (as cited above)

Sec. 9.2 (Besondere Regelungen)

„Der Geschäftsführer kann auf Empfehlung des Vergabeausschusses im Einvernehmen mit dem Aufsichtsrat in besonderen Fällen im Sinn der genannten Förderziele auch von diesen Richtlinien abweichen oder nicht benannte Förderentscheidungen treffen. Voraussetzung ist, dass es sich um Projekte handelt, die nachweislich im besonderen kulturellen und

⁸ 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.

kulturwirtschaftlichen Interesse der Länder Sachsen, Sachsen-Anhalt und Thüringen im Bereich Film und Medien liegen.“

[Sec. 9.2 (Special Regulations)

The director may come - on recommendation of the allocation committee and in agreement with the supervisory board, in special cases and for the purposes of the aims of the funding - to funding decisions which are divergent from these guidelines or not mentioned. The requirement is that they are projects that are proved to be in the special cultural interest and the interest of the culture industry of the states of Saxony, Saxony-Anhalt and Thuringia in the fields of film and media.]

CONTACT DETAILS

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

See general comment to B.14 in B-1.

MDM Mitteldeutsche Medienförderung GmbH

GF: Manfred Schmidt

Tel.: 0341 / 269 87-0

Hainstraße 19

Fax: 0341 / 269 87-65

04109 Leipzig

Internet: <http://www.mdm-online.de>

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

Schwarz Kelwing Wicke Westpfahl,
Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: November 14th, 2006.

**QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS**

PART B - 8

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/Region:

North-Rhine Westfalia

B.2 Name of the funding scheme:

Filmförderung

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

Filmstiftung NRW GmbH

Michael Schmid-Ospach

Tel.: 0211 / 930 500

Kaistraße 14

Fax: 0211 / 930 505

40221 Düsseldorf

Internet: ➔ <http://www.filmstiftung.de>

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

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

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

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

Richtlinien der Filmstiftung Nordrhein-Westfalen vom 27.8.1996, zuletzt geändert am 1.5.2004 (Guidelines of the Filmstiftung (film funding scheme) as of August 27th 1996, last amended as of May, 1st 2004).

Grundsätze für die Filmförderung durch das Filmbüro Nordrhein-Westfalen e.V. v. 5.10.1998 (Guidelines for film funding of „Filmbüro Nordrhein Westfalen“ as of October 10th, 1998.)

The Guidelines can be downloaded in the German and the English version from the website www.filmstiftung.de.

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

3.2.5

„Mindestens das 1,5-fache des gewährten Förderbetrages soll in Nordrhein-Westfalen verwendet werden. Unbeschadet der Vorschrift des Satzes 1 können wenigstens 20% der Gesamtherstellungskosten außerhalb Nordrhein-Westfalens bzw. in einem anderen Land der Europäischen Gemeinschaft ausgegeben werden.“

[3.2.5

A sum corresponding to at least 150% of the aid amount granted should be spent in North Rhine-Westphalia. Regardless hereof, at least 20% of the total production expenditure may be made outside of North Rhine-Westphalia, or in a different country of the European Union.]

3.2.6

„Der Produzent soll bei der Herstellung des Films in angemessenem Umfang die filmberufliche Aus- und Weiterbildung von Personen gewährleisten, die ihre Hauptwohnung in Nordrhein-Westfalen haben.“

[3.2.6

During production, the producer should undertake to in an appropriate amount contribute to the training at entry and advanced levels of people working in the film industry primary residence in North Rhine-Westphalia.]

3.2.8

(...)

„Dem Antrag [auf Auszahlung eines zurückbezahlten Darlehens] kann entsprochen werden, wenn das Vorhaben

- a) mit diesen Richtlinien übereinstimmt
- b) die Herstellungskosten zum überwiegenden Teil, mindestens aber in Höhe des beantragten Darlehensbetrags in Nordrhein-Westfalen ausgegeben werden.“

[3.2.8

The producer can apply for a new loan to the amount of the repaid loan within a period following repayment of the first loan instalment that will be stipulated by the Filmstiftung NRW. This loan must be used for the preparation or the production of a new film. This application can be approved when the project:

a) complies with these guidelines

b) and its production costs are mainly spent in the State of North Rhine-Westphalia, but at least in the amount for which the application has been made. The Film Funding Committee will determine whether the film conforms to the Guidelines as required by 3.2.8 a).]

3.2.9.

„Für Projekte mit Gesamtherstellungskosten bis zu 750.000,00 Euro gelten die Ziff. 3.2.2 bis 3.2.8 mit der Maßgabe entsprechend, dass mindestens der Förderbetrag in Nordrhein-Westfalen verwendet werden muss.“

[3.2.9.

For projects with a total budget of up to EUR 750.000,00 Sec. 3.2.2 to 3.2.8 shall apply, provided that at least the funding granted has to be spent in North-Rhine-Westphalia.]

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*).

At least one and a half times of the amount awarded should be spent in North-Rhine Westphalia, Sec. 3.2.5 of the Guidelines. Repaid loans can again be granted to the producer as a quasi automatic aid upon condition that at least the amount awarded is spent in the region, Sec. 3.2.8 lit. b) of the Guidelines. Regardless of this, at least 20 per cent of the total production costs may be spent in other parts of the country or other EU member states.

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*):

Grants are available to international co-productions, European co-productions may be especially funded, Sec. 3.2.1, 3rd bullet point. The application for film production aid is to be made by the producer, regardless of the origin or residence of this person.

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*):

There is no judicial precedent reported on territorialisation issues.

Implicit or *de facto* territorial conditions

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

No.

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:

1. Förderungsziele

„Ziel der Förderung ist es:

die nordrhein-westfälische Filmkultur zu stärken, indem die quantitative und qualitative Weiterentwicklung der nordrhein-westfälischen Filmkulturwirtschaft unterstützt wird

- die wirtschaftliche Leistungsfähigkeit nordrhein-westfälischer Filmunternehmen zu stärken
- in Produktionen, Verleih und Abspiel ein kulturell vielfältiges und qualitativ profiliertes Filmschaffen in Nordrhein-Westfalen zu ermöglichen
- einen Beitrag zur Stärkung des audiovisuellen Sektors in Europa zu leisten.“

[1.1 Objectives

The aims of the North Rhine-Westphalia Film Foundation are: to improve the film culture of North Rhine-Westphalia (NRW) by supporting film production in NRW in both qualitative and quantitative terms

- to strengthen the economic viability of NRW film companies
- to facilitate a culturally wide-ranging, high standard of film production, distribution and exhibition in North Rhine-Westphalia
- to contribute to the strengthening of the audiovisual sector in Europe.]

3. Förderung der Herstellung von Kinofilmen und Fernsehprojekten

Allgemeines

3.1.1

„Die Förderung setzt voraus, daß das Filmvorhaben geeignet erscheint, die kulturelle Qualität und die Wirtschaftlichkeit des deutschen Filmes zu verbessern.“

[3. Support of the Production of Feature Films and TV Projects

3.1 General Conditions

3.1.1

The funding requires the film project to show promise of contributing to the cultural quality and commercial viability of German cinema.]

3.2 Kinofilme und/oder Fernsehprojekte

3.2.1

„Die Förderung eines programmfüllenden Kinofilms ist nur möglich, wenn der Film einen wirtschaftlichen Erfolg in Filmtheatern erwarten läßt und der Stärkung der Filmkultur dient. Die Herstellung von Fernsehprojekten kann insbesondere dann gefördert werden, wenn

- sich das Projekt durch besondere Programmqualität auszeichnet oder
- das Projekt gemeinsam mit internationalen, insbesondere europäischen Co-Partnern produziert wird oder nachweislich für die Auswertung auf dem internationalen, insbesondere dem europäischen Markt bestimmt ist oder
- das Projekt im besonderen Interesse Nordrhein-Westfalens steht.“

[3.2. Feature films and/or TV Projects

3.2.1

Feature films can only be supported if there is reason to believe that the film will be a commercial success in the cinema and will strengthen cinematic culture. The production of TV projects can be supported under the following conditions:

- when the project is of a particularly high programme quality, or
- when the project is being co-produced with international, in particular

European partners or is expressly intended for distribution on the international, in particular the European market, or

- when the project is of special interest to the State of North Rhine-Westphalia.]

7. Besondere Regelungen

„Projekte, die im besonderen filmkulturellen und/oder filmkulturwirtschaftlichen Interesse Nordrhein-Westfalens liegen, können im Hinblick auf die Höhe der Eigenmittel, die Höhe der in Nordrhein-Westfalen zu verwendenden Mittel, die Höchstgrenzen der Förderungsbeträge und die Rückzahlungsverpflichtungen abweichend von den in den Nrn. 2 bis 5 getroffenen Festlegungen gefördert werden, wobei jedoch die Ziff. 2.1.6. Satz 3 und 3.2.5 Satz 2 unberührt bleiben und in jedem Falle Anwendung finden. Für Förderentscheidungen über die in Satz 1 genannten Projekte ist ein einstimmiger Beschluß des Filmförderungsausschusses, der auf Vorschlag der Geschäftsführung ergeht, erforderlich.“

[7. Special Regulations

7.1

In case a project is especially beneficial to the film culture or the cultural economy of film in North Rhine-Westphalia, exceptions can be made regarding the amount of own investment; the sum to be spent in North Rhine-Westphalia; the maximum funding amount, and, regarding the repayment obligation, can depart from the provisions laid out in nos. 2 to 5 above, without prejudice, however, to Section 2.1.6, para 3 and Section 3.2.5 para 2 which therefore are applicable in any case. Such exceptions, as mentioned above (7.1), must be proposed by the Executive Director of the Filmstiftung NRW and require the unanimous decision of the Film Funding Committee.]

There are furthermore Guidelines for the granting of film aid by the Film Agency North-Rhine-Westfalia e.V. (“Filmbüro”) according to which support is available for high quality audiovisual projects and innovative young film creators. The Filmbüro Funding has been legally incorporated in the Film foundation funding scheme in 2003. Also, the amount awarded under this scheme is included in the overall funding records for North-Rhine Westfalia. The scheme will not be discussed specifically for this reason:

7.2

Zur Sicherstellung eines reibungslosen Übergangs bei der Übernahme der Förder-aktivitäten des Filmbüros NW e.V. zum 01.01.2003 können bis auf Weiteres auf Vorschlag des Geschäftsführers die "Grundsätze für die Filmförderung durch das Filmbüro Nordrhein-Westfalen e.V." in der Fassung vom 05. Oktober 1998" bzw. in einer ggf. durch die Filmstiftung aktualisierten Fassung (im folgenden "Grundsätze" genannt) auf Projekte angewendet werden, deren Entstehung nicht oder nicht vorrangig auf kommerzielle Verwertungsinteressen zurückzuführen sind bzw. deren Schwerpunkt aus sonstigen Gründen (z. Bsp. Nachwuchs- oder Filmkunstförderung) auf den in den

Grundsätze genannten Förderungszielen und -aspekten liegen. Über die Anwendbarkeit entscheidet der Geschäftsführer.

[7.2

To ensure a trouble-free transition phase after our take-over of the promotional activities of the Filmbüro NW e.V. on 1st January 2003, the following has been agreed: In accordance with a suggestion made by the Chief Executive Officer, the "General Principles for Film Support by the Filmbüro Nordrhein-Westfalen e.V." dating from 5th October 1998 (referred to below as the "General Principles") or – where relevant – a version amended by the Filmstiftung, may be applied until further notice to projects whose production is not, or not primarily motivated by commercial interests, or to projects which focus - for other reasons – on the aims and aspects of film promotion cited in the General Principles (e.g. support of new talent or of cinematic art). (...)]

Funding under this scheme allows giving special support to low-budget productions, including the funding of graduates' film projects:

1.1. Förderungsziele (Filmbüro Richtlinien)

Ziel der Förderung ist es:

- die Entwicklung, die Produktion, den Vertrieb und das Abspiel von hochwertigen audiovisuellen Projekten zu unterstützen, deren Entstehung nicht oder nicht vorrangig auf kommerzielle Verwertungsinteressen zurückzuführen ist,
- innovationsfreudige und insbesondere junge Filmschaffende in Nordrhein-Westfalen in ihrer Entwicklung zu unterstützen,
- günstige Voraussetzungen und Strukturen für die qualitative Weiterentwicklung der audiovisuellen Produktion in Nordrhein-Westfalen zu schaffen und zu erhalten.

[1.1 Aims (Filmbüro Guidelines)

The funding aims to

- support development, production, distribution and the performance of high-quality audiovisual projects that do not or not primarily derive from commercial interests,
- support innovative and especially the young film artists in North-Rhine Westfalia in their development,
- to create and to maintain attractive structures and conditions for the further development in quality of audiovisual production in North-Rhine Westfalia.]

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,⁹ 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:

⁹ 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.

Sec. 1. (Aims, as cited above)

Sec. 3.1.1, 3.2.2 (Production funding of cinema and tv-films, as cited above)

CONTACT DETAILS

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

See general comment to B.14 in B-1.

Filmstiftung NRW GmbH

Michael Schmid-Ospach

Tel.: 0211 / 930 500

Kaistraße 14

Fax: 0211 / 930 505

40221 Düsseldorf

Internet: ➤ <http://www.filmstiftung.de>

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

Schwarz Kelwing Wicke Westpfahl,

Sabine Richly, Rechtsanwältin

Postfach 201742

80017 München

Date of the data collection and processing: November 2nd, 2006.

QUESTIONNAIRE ON STATE AID TO CINEMA AND TERRITORIALISATION
REQUIREMENTS

PART B - 9

FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Lower Saxony and Bremen

B.2 Name of the funding scheme:

Film- and Media Funding in Lower Saxony and Bremen: Nordmedia Fonds funding scheme

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

Nord Media

Die Mediengesellschaft Niedersachsen / Bremen mbH

EXPO-Plaza 1
30539 Hannover

Tel.: 0511 / 123 456-0

Fax: 0511 / 123 456-29

Internet: ➤ <http://www.nord-media.de>

E-Mail: ➤ info@nord-media.de

GF: Thomas Schäffer

Tel.: 0511 / 123 456-10

Fax: 0511 / 123 456-29

E-Mail: ➤ t.schaeffer@nord-media.de

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

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

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

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

Richtlinie zur kulturwirtschaftlichen Film- und Medienförderung der nordmedia Fonds GmbH (nordmedia Fonds) vom 7.11.2001 geändert durch die Beschlüsse vom 20.11.2001 und 24.11.2004

[Guidelines for cultural film and media funding of nordmedia Fonds GmbH (nordmedia Fonds) as of November 7th 2001, amended by the resolutions as of November 20th 2001, and November 24th 2001].

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

Sec. 1.3 Kulturwirtschaftliche Effekte

“Gefördert werden können Maßnahmen, wenn durch diese ein kulturwirtschaftlicher Effekt in den Ländern Niedersachsen und / oder Bremen zu erwarten ist. Bei der Realisierung geförderter Maßnahmen – einschließlich schwierig zu verwertender oder kleiner Produktionen gem. Ziffer 4 – ist zu gewährleisten, dass mindestens die gewährten Fördermittel in den Ländern Niedersachsen und / oder Bremen ausgegeben werden (kulturwirtschaftlicher Effekt). Bei den übrigen Produktionen gem. Ziffer 4 soll das 1,25-fache der gewährten Fördermittel als kulturwirtschaftlicher Effekt in den Ländern Niedersachsen und / oder Bremen ausgegeben werden.

Im Einzelfall kann auf Antrag ein niedrigerer kulturwirtschaftlicher Effekt anerkannt werden, soweit dies für die Maßnahme stofflich und technisch unabdingbar oder zur Vermeidung unverhältnismäßig hohen Aufwands erforderlich ist. Ferner kann auf

Antrag auf einen Teil der kulturwirtschaftlichen Effekte in Niedersachsen und / oder Bremen verzichtet werden, wenn durch die beteiligten Förderinstitutionen sichergestellt ist, dass im Gegenzug eine andere Fördereinrichtung zugunsten der nordmedia Fonds in gleicher Höhe auf ihren kulturwirtschaftlichen Effekt verzichtet. Wird im Förderantrag ein höherer kulturwirtschaftlicher Effekt angegeben, so wird dieser in den Fördervertrag übernommen und muss auch tatsächlich erbracht werden. In allen Fällen muss jedoch gewährleistet bleiben, dass mindestens 20% der Herstellungskosten in einem anderen Land des Europäischen Wirtschaftsraumes ausgegeben werden können, d. h. diese dürfen auch bei kumulierten Förderungen oder hoher Förderintensität nicht durch kulturwirtschaftliche Effekte gebunden werden.

Bei der Präsentation sowie in allen Publikationen muss auf angemessene Weise bzw. nach den Vorgaben der nordmedia Fonds auf die gewährte Förderung hingewiesen werden. Die Premiere von Projekten bei denen der Förderanteil der nordmedia Fonds höher ist, als der einer anderen Fördereinrichtung, soll in Niedersachsen und / oder Bremen stattfinden, davon sind Aufführungen bei Festivals ausgenommen.“

[1.3 Culture Industry Effects/Regional spend

Projects are eligible for support if they can be expected to produce a significant effect for the culture industry in the federal states of Lower Saxony and/or Bremen. At least 100 % of the grant provided for the production of funded projects – which include small productions or productions which are difficult to exploit – must be spent in the federal states of Lower Saxony and/or Bremen (culture industry effect). In the case of the remaining productions in accordance with Pt. 4, 125 % of the grant must be spent in the federal states of Lower Saxony and Bremen to produce a culture industry effect.

In individual cases, applications with a lower culture industry effect will be considered, insofar as content and technical considerations or the avoidance of disproportionately high costs require it. Moreover, a part of the culture industry effect can be waived if the participating support institutions are assured that nordmedia Fonds is being compensated through benefiting from another funding body waiving its culture industry effect to the same degree. If a higher figure for the culture industry effect is stated in the funding application, this figure will be transferred to the funding contract and there will be an obligation then to attain it. In all cases, however, assurance must be given that at least 20 % of production costs can be spent in another state within the European economic zone, i.e. these funds – also in cases of accumulated or high intensity funding – are not to be committed to culture industry effects.

A suitable reference to the funding granted which complies with guidelines given by nordmedia Fonds must be made in presentations and all publications. If a project has received more funding support from nordmedia Fonds than from any other funding body, the premiere is to take place in Lower Saxony and/or Bremen. Festival screening are exempt from this rule.]

Sec. 4.1.1 (...) Die Herstellung von audiovisuellen Medienproduktionen kann gefördert werden, wenn das Projekt sich durch eine besondere inhaltliche künstlerische und gestalterische und / oder programmliche Qualität auszeichnet. Insbesondere sind Produktionen förderungswürdig, die für eine Auswertung auf dem internationalen

Markt geeignet erscheinen, bzw. mit europäischen Partnern koproduziert werden.

Die Förderung kann bis zu 50% der kalkulierten Gesamtherstellungskosten betragen. Bei schwierig zu verwertenden oder kleinen Produktionen kann die Förderung bis zu 80% der kalkulierten Gesamtherstellungskosten betragen.

[4.1.1

Funding can be granted for the production of film, television or multimedia projects. Producers who can guarantee quality in their production work are eligible to apply. The creation of audiovisual media productions can receive funding if the project is distinguished by particularly high creative, artistic and/or programming quality. Production particularly eligible for funding are those that seem suitable for exploitation on the international market and/or those co-produced by a European partner. The applicant for international co-productions should be the German partner/producer.

The grant can be up to 50 % of estimated total project costs. For small productions or productions which are difficult to exploit, the grant can be up to 80 % of estimated total project costs.]

Sec. 4.1.2 Produktionsförderung:

„Es ist aufgeschlüsselt darzulegen, welcher Anteil der Herstellungskosten in Niedersachsen und/ oder Bremen ausgegeben wird. Die eingereichte Kalkulation hat außerdem die Effekte detailliert auszuweisen, die bei anderen Fördereinrichtungen gemäß deren Richtlinien zu erbringen sind.“

[A breakdown must be submitted indicating which portions of the production costs will be spent in Lower Saxony and/or Bremen. The estimates submitted must also identify the “effects” expected by other funding institutions in accordance with their guidelines.]

Sec. 4.1.3

„Die Antragstellerin / Der Antragsteller soll darlegen, in welchem Umfang sie / er bei der Herstellung der audiovisuellen Produktion die medienberufliche Aus- und Weiterbildung von Personen z. B. durch Praktika unterstützt, die ihren Hauptwohnsitz in Niedersachsen oder Bremen haben.“

[4.1.3

Applicants are requested to elaborate on how the further education and media branch career training of residents of Lower Saxony or Bremen will be supported , e.g. through traineeships, in carrying out the audiovisual production.]

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*).

At least the amount granted has to be spent in the region, 125 per cent of the amount granted should be spent there. There may be exceptions to this in special circumstances, sec. 1.3.2 of the Guidelines.

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*):

Grants are particularly available for co-productions with European partners (Sec. 4.1.1 Guidelines), productions that seem suitable for exploitation on the international market and other international productions. Application for film production aid for co-productions is to be made by producer domiciled in Germany. International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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*):

There is no judicial precedent reported on territorialisation issues.

Implicit or *de facto* territorial conditions

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

No.

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:

1.1 Ziele der Förderung

Ziele der Förderung sind die quantitative und qualitative Stärkung und Weiterentwicklung der multimedial geprägten Kulturwirtschaft in Niedersachsen und Bremen. Die Förderung will einen Beitrag zur Stärkung des audiovisuellen Sektors in Deutschland und Europa leisten. Sie dient damit indirekt der Verbesserung und Sicherung der Medienstandorte Niedersachsen und Bremen. Die Förderung zielt insbesondere auf: die Erhöhung und Weiterentwicklung der Qualität, Innovationskraft und Wettbewerbsfähigkeit von Film-, Fernseh- und Multimedia-Produktionen sowie deren Verbreitung und die nachhaltige Entwicklung des audiovisuellen Medienbereichs in Niedersachsen und Bremen auch im Hinblick auf Weiterbildung, Qualifizierung und Beschäftigung.

[1.1 Support Scheme Objectives

The support scheme aims to quantitatively and qualitatively strengthen and develop the multimedia culture industry in Lower Saxony and Bremen. The funding is intended as a contribution towards strengthening the audiovisual sectors in Germany and Europe, and as such indirectly serves to improve and consolidate media locations in Lower Saxony and Bremen.

Support is particularly directed towards

- improving and promoting the quality, innovation and market competitiveness of film, television and multimedia productions, and distributing these productions
- the sustainable development of the audiovisual media sector in Lower Saxony and Bremen.]

Sec. 1.3, as cited above (B 11).

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹⁰ 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:

Sec. 1.1 (Aims, as cited above)

Sec. 2.3. Vergabe

“Die Beschlüsse über die Fördermittel der nordmedia Fonds werden von einem Vergabeausschuss unter der Leitung der Geschäftsführung der nordmedia Fonds gefasst. Darüber hinaus kann die Geschäftsführung der nordmedia Fonds in einzelnen Bereichen nach Maßgabe eines von der Gesellschafterversammlung festzulegenden Förderrahmens und im Einvernehmen mit den jeweiligen Fördermittelgebern Entscheidungen über Förderanträge treffen. Grundsätzlich werden von der Geschäftsführung dem Vergabeausschuss nur die Anträge vorgelegt, die die Fördervoraussetzungen erfüllen. Ausnahmen bedürfen einer Begründung.

¹⁰ 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.

Nach Maßgabe der in dieser Richtlinie vorgesehenen Beschlussfassung des Vergabeausschusses sowie auf Grundlage von Beschlüssen der Geschäftsführung der nordmedia Fonds wickelt die PwC Deutsche Revision AG im Auftrag der nordmedia Fonds die Mittelvergabe ab. Dazu schließt sie mit den Zuwendungsempfängern entsprechende Verträge.

Die Mittelvergabe kann nur im Rahmen des Förderaufkommens der nordmedia Fonds erfolgen, das sich aus den jeweiligen Fördermittelkontingenten, die der nordmedia Fonds von ihren Gesellschaftern und Partnern zur Verfügung gestellt werden, zusammensetzt. Gefördert werden nur Maßnahmen, die den Zielen der Förderung gem. Ziffer 1.1 entsprechen.“

[2.3 Allocation of Funds

Decisions concerning the funding awarded by nordmedia Fonds are made by a committee for fund allocation headed by nordmedia Fonds management. Providing the respective sponsors agree, nordmedia Fonds management can also make decisions on certain aspects of funding applications in accordance with a funding framework which is to be determined at the shareholders' meeting.

Management presents only those applications to the fund allocation committee that have fulfilled the prerequisites for funding.

PricewaterhouseCoopersAG WPG handles the allocation of funds on behalf of nordmedia Fonds, based on decisions made by nordmedia Fonds management and in accordance with the decisions made by the committee for fund allocation, as provided for in these guidelines. To this end, Pricewaterhouse Coopers AG WPG enters into the appropriate contracts with the beneficiaries.

The allocation of resources can only take place within the scope of the nordmedia Fonds' funding revenues, which consist of the respective funding contingents made available to nordmedia Fonds by its shareholders and partners. Only activities that conform to the funding objectives in accordance with point 1.1 can receive funding.

Sec. 4.1.1. Produktionsförderung

“Für die Produktion von Film- / Fernseh- / Multimediaprojekten kann eine Förderung gewährt werden. Antragsberechtigt sind Produzentinnen / Produzenten, die eine qualitative Durchführung der Produktion gewährleisten. Die Herstellung von audiovisuellen Medienproduktionen kann gefördert werden, wenn das Projekt sich durch eine besondere inhaltliche künstlerische und gestalterische und / oder programmliche Qualität auszeichnet. Insbesondere sind Produktionen förderungswürdig, die für eine Auswertung auf dem internationalen Markt geeignet erscheinen, bzw. mit europäischen Partnern koproduziert werden.“

[4.1.1

Funding can be granted for the production of film, television or multimedia projects. Producers who can guarantee quality in their production work are eligible to apply. The creation of audiovisual media productions can receive funding if the project is distinguished by particularly high creative, artistic and/or programming quality. Productions particularly eligible for funding are those that seem suitable for

exploitation on the international market and/or those co-produced by a European partner. The applicant for international co-productions should be the German partner/producer.]

Sec. 4.1.2.

(...)

„Es werden nur Anträge zur Entscheidung vorgelegt, bei denen ein grundsätzliches inhaltliches Interesse eines der zum Förderaufkommen der nordmedia Fonds beitragenden Gesellschafter oder Partner nachweislich (belegt z.B. durch eine vereinbarte zusätzliche Senderbeteiligung oder einen Letter of Intent) vorhanden ist. Soweit ein solches Interesse den Antragsunterlagen nicht zu entnehmen ist, kann sich die Geschäftsführung der nordmedia Fonds in besonderen Fällen mit den zum Förderaufkommen der nordmedia Fonds beitragenden Gesellschaftern und Partnern ins Benehmen setzen, um ein mögliches Interesse zu ermitteln.“

[Only those applications are considered which can demonstrably show (with e.g. an additional broadcaster's contribution agreement or a letter of intent) that one of the partners contributing to nordmedia Fonds funding resources has shown a basic interest in the content. Insofar as such interest cannot be determined from the application documents, nordmedia Fonds management can, in special cases, confer with the members and partners contributing to nordmedia's funding resources in order to establish a possible interest.]

CONTACT DETAILS

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

See general comment to B.14 of questionnaire B - 1

Nord Media

Die Mediengesellschaft Niedersachsen / Bremen mbH

EXPO-Plaza 1
30539 Hannover

Tel.: 0511 / 123 456-0

Fax: 0511 / 123 456-29

Internet: ➤ <http://www.nord-media.de>

E-Mail: ➤ info@nord-media.de

GF: Thomas Schäffer

Tel.: 0511 / 123 456-10

Fax: 0511 / 123 456-29

E-Mail: ➤ t.schaeffer@nord-media.de

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

Schwarz Kelwing Wicke Westpfahl,
Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: November 17th, 2006.

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

PART B - 10
FUND SPECIFIC QUESTIONS

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Hessen

B.2 Name of the funding scheme:

Hessische Filmförderung (Film Funding Scheme)

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

Hessische Filmförderung

Am Steinernen Stock 1

60320 Frankfurt/M

Tel.: 069 / 155 45 16

Fax: 069 / 155 45 14

E-Mail: ✉ postmaster@hessische-filmfoerderung.de

Internet: ✉ <http://www.hessische-filmfoerderung.de>

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

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

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

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

Richtlinien der Hessischen Filmförderung HFF (Guidelines for film funding of Hessen (Land) as of January 1st 2003, no amendments)

Richtlinien der Hessischen Rundfunk Filmförderung (Guidelines for film funding of the Hessen Broadcasting corporation (December 1st 2003, no amendments).

The Guidelines can be downloaded in the German version from <http://www.hessische-filmfoerderung.de/downloads.html>
An English version will be published shortly.

TERRITORIAL CONDITIONS

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 (see general comment to B-3 B.5)

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*):

1. Förderungsziel

Die Hessische Landesregierung fördert die hessische Film- und Kinokultur mit dem Ziel, Vielfalt und Qualität zu steigern und zum Aufbau eines Medienstandortes Hessen beizutragen. Sie strebt dabei eine möglichst enge Kooperation mit der Filmförderung des Hessischen Rundfunks an.

[1. Purpose of funding

The Hessen Federal State Government provides funding for the regional film and cinema culture, aiming to enhance quality and variety thereof and to contribute building a media base in Hessen. A close co-operation with the film funding of the Hessen Broadcasting corporation (hr)]

2. Hessenbezug

Projekte, die keinen Bezug zum Land Hessen haben, können nur ausnahmsweise (z.B. Länderförderverbund) gefördert werden. Hessenbezug liegt insbesondere vor,

- a) wenn der Antragsteller den Mittelpunkt seines künstlerischen Schaffens in Hessen hat
- b) wenn die Fördermittel überwiegend in Hessen ausgegeben werden
- c) wenn die Thematik des Projekts das Land Hessen betrifft

[2. Project connection to Hessen

Projects without connection to Hessen will only be funded in exceptional circumstances (e.g. Regional Funding Co-operation). In particular, this relationship is expressed by

- a) the applicant being centred in Hessen with his/her artistic work
- b) the amount granted to be spent in Hessen to a predominant part
- c) the subject of the project covering Hessen aspects]

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*).

There is no specific amount that has to be spent in the region necessarily. The project should, however have a connection to the area, examples of this are listed under sec. 2. a) – c) of the Regulation. The regulation allows funding without any connection of the project to Hessen in exceptional circumstances.

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*):

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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*):

There is no judicial precedent reported on territorialisation issues.

Implicit or *de facto* territorial conditions

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

No.

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:

Please see sec. 1, 2 (as cited above)

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹¹ 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:

4. Preise

A. Zur Auszeichnung von hervorragenden Spiel-, Dokumentar-, Kurz- oder Experimentalfilmen mit Hessenbezug wird der **Hessische Filmpreis**,

B. Zur Auszeichnung des besten Studienabschlussfilms an hessischen Ausbildungsstätten wird der **Hessische Hochschul-Filmpreis**, (...) verliehen.

[4. Presentation of prizes

A Outstanding feature films, documentaries, short films or experimental films with a relation to Hessen may receive the Filmprize of Hessen

B The best graduate's film from a Hessen training institution may win the Hessen-Graduate Filmprize.

¹¹ 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.

CONTACT DETAILS

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

See general comment to B. 14 of B-1

Hessische Filmförderung
Herr Götz
069-155 43 73
Am Steinernen Stock 1
60320 Frankfurt/Main

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

Schwarz Kelwing Wicke Westpfahl,
Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: November 8th , 2006

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

**PART B - 11
FUND SPECIFIC QUESTIONS**

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region:

Schleswig-Holstein

B.2 Name of the funding scheme:

msh (Film Funding Scheme)

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

MSH Gesellschaft zur Förderung audiovisueller Werke in Schleswig-Holstein mbH

GF: Christine Berg

Tel.: 0451 / 71977

Schildstraße 12

Fax: 0451 / 71978

23552 Lübeck

E-Mail: ➤ info@m-s-h.org

Internet: ➤ <http://www.m-s-h.org>

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

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

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

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

Richtlinien der msh für Fernseh- und Filmförderungsmaßnahmen (Guidelines for film funding Schleswig-Holstein as of June 26th 2003, no amendments)

The Guidelines can be downloaded in the German version from

<http://www.m-s-h.org/formulare/FoerderungsrichtlinieFilm.pdf>

An English version will be published shortly.

TERRITORIAL CONDITIONS

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.

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*):

4.10 Voraussetzung der Förderung ist, dass mindestens die bereitgestellten Mittel in Schleswig-Holstein verwendet werden.

[4.10 At least the amount of funds granted has to be spent within Schleswig-Holstein.]

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*).

One hundred per cent of the funds granted have to be spent in the region. European Projects are promoted especially, sec. 2.7 of the guidelines.

2.7 (...) Bei Bewilligung einer Förderung werden auch europarechtliche Zielsetzungen berücksichtigt.

[2.7 (...) European funding goals will be assessed when analysing a projects funding criteria.]

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*):

International co-productions will be treated as national co-productions regarding the question of eligibility for grants. The regional guidelines will be interpreted in consistence with any international co-production agreement.

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*):

There is no judicial precedent reported on territorialisation issues.

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, for funding training or teaching projects.

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*):

2. Allgemeine Förderungsbedingungen

2.9 Einrichtungen oder Projekte der Aus- und Fortbildung sind förderungsfähig, wenn in ihrem Rahmen oder durch sie in Schleswig-Holstein Veranstaltungen durchgeführt werden oder stattfinden oder die durch sie vermittelten Kenntnisse und Erfahrungen auch in Schleswig-Holstein nutzbar gemacht werden.

[2. General Funding Rules

2.9 Funds shall be granted for institutions or projects of education, if they promote events organized in Schleswig-Holstein, or if abilities and experiences brought about by them bear fruits in Schleswig-Holstein.

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:

1.1 Förderungsziele

Ziel dieser Förderung ist es, im Film- und Fernsbereich des Landes Schleswig-Holstein

- ein vielfältiges und profiliertes Schaffen zu unterstützen,
- die kulturwirtschaftliche Leistungsfähigkeit von Produktionsunternehmen zu stärken,
- die Aus- und Fortbildung zu verbessern und
- die schleswig-holsteinische Film- und Fernsehkultur qualitativ, quantitativ und marktorientiert weiter zu entwickeln.

[1.1. Purpose of funding

Funding shall – in the television and film industry of Schleswig-Holstein serve to

- promote artistic creation of quality and diversity
- strengthen the economic powers of production companies,
- improve education and
- develop the television and film industry in Schleswig Holstein in qualitative, quantitative and economic aspects.

SELECTIVE SCHEMES

B.13 If this scheme distributes aid selectively,¹² 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:

2.2 Antragsberechtigt sind Produktionsunternehmen, Produzentinnen oder Produzenten sowie Aus- und Fortbildungseinrichtungen. Drehbuchautorinnen oder Drehbuchautoren beantragen Förderung durch ihre Produzentin oder ihren Produzenten.

[2.2 Applications can be made by production companies, producers and educative institutions. Script writers apply for funding through their producers.]

see also sec. 2.9 (as cited above)

¹² 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.

CONTACT DETAILS

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

See general comment to B. 14 of B-1

**MSH Gesellschaft zur Förderung audiovisueller
Werke in Schleswig-Holstein mbH**

Christine Berg
Tel.: 0451-71977
info@m-s-h.org
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Sabine Richly, Rechtsanwältin
Postfach 201742
80017 München

Date of the data collection and processing: November 17th, 2006

Member State:	GERMANY
Re:	Follow Up Question
Date:	26 November 2006

(...)

Thank you for your replies of 3 and 17 November 2006.

We have a final round of follow-up requests for clarification as follows:

1) In your follow-up reply of 17 November, point 9, you mentioned that "State schemes do not require a German nationality for films. Thus international co-productions will qualify particularly if they meet the co-production treaties requirements. Regional spend requirements, however, will also apply." – Could you please clarify the relevant legal implication of the application of "local spend requirements"?

2) Please send us this additional information from Mediaboard Berlin/Brandenburg as soon as you have obtained them (point 5 of your follow-up reply of 17 November).

(...)

Member State:	GERMANY
Re:	Follow Up Reply
Date:	17 November 2006

(...)

finalizing our report for German production funding schemes we would like to answer your follow-up questions of November 10, 2006 as follows:

- 1) On the constitutional level, the Federal State places the authority for legislation in the cultural sector mainly on the Laender. The Federal State only bears about 12 % of the overall costs for cultural issues and coordinates important legislation in the field. Special cultural clauses concerning territorialisation do not exist on constitutional level. Both the Federal and the Laender constitutions only regulate the general authority for cultural issues.
- 2) No. Decisions for film funding are given by the boards named in the funding regulations. Decisions by such boards can only be reviewed to a very limited extent (formal mistakes/misuse of discretion). It can not be excluded that for individual members of boards deciding on allocation of the funds, a specific regional effect may have an influence on the individual decision. However, we have not seen any reasonings for decisions by a respective board which has given a specific weight to the regional effect way beyond the regulations.
- 3) The reason why we have not included the Bavarian Bank fund in our summaries is that because of the specific configuration, the funding can not be regarded as state subsidy. The Bavarian Bank fund is composed of Bayerische Landesbank, LfA Förderbank Bank Bayern) and two private banks, Hypo Vereinsbank and Reuschel & Co. First of all, the fund does not provide continual sums. According to the Bavarian Bank fund's rules, productions can only profit, when they promise to be economically successful. This criterion is applied in a way that funding would have to be given in the same way under usual economic conditions on the market. Furthermore, the funding is not backed by the State.
- 4) The section you refer to is now placed under B.6 in the Revised Version of October 26, 2006, not under B.11. The requirement is supposed to ensure that not only companies in close relation to the tv broadcasters profit from the funding, but also other private companies in the region.
- 5) We are still awaiting an answer from Mediaboard Berlin/Brandenburg and will report as soon as possible.
- 6)
 - The date of the Guidelines of MDM is December 21, 2004.
 - "Package Funding" could also be described as "Slate Funding", having the same notion as the Slate Funding concept of the MEDIA Commission.
 - Please find attached a new version of the MDM summary (including a reference to 3.1.4. of the Guidelines).

- 7) - The only selection criterion is a content orientated interest. The Guidelines give no further details for such expression of interest.
- The mechanism provides a Regional Spend of 100 % for smaller productions and productions with difficult commercial exploitation, 125 % for the remaining cases (Figure 4).
- 8) Please find attached a new version of the Schleswig Holstein Summary containing a reply for B.9.
- 9) State schemes do not require a German nationality for films. Thus international co-productions will qualify particularly if they meet the co-production treaties requirements. Regional spend requirements, however, will also apply.
- (...)

Attachments to e-mail of 17 November 2006
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- 02971-06 00024 DOK0 B7 Revised 141106 sr.doc
- 02971-06 00025 DOK0 B9 Revised 171106 sr.doc
- 02971-06 00026 DOK0 B11 Revised 171106 sr.doc

[... attachments replaced by attachments to email of 03 January 2007 ...]

Member State:	GERMANY
Re:	Follow Up Question
Date:	10 November 2006

(...)

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

- 1) Please cover cultural clauses also on the constitutional levels of the Federal State and the Laender that are applicable to State aid for film and are relevant as justification for territorialisation requirements for all schemes you covered (B.12).
- 2) Is there no judicial or administrative practice at all concerning territorialisation requirements in Germany?
- 3) At the Bavaria Funding Scheme: There are 2 fund, the FFF and Bavarian Bank fund. The latter is not covered by your replies (you mention: "In cooperation with the FFF, the Bavarian Bank Fund (BBF) is an additional tool in the process of financing projects which promise economic success."). If this second fund is relevant for our study (i.e. annual budget of State aid of at least Euro one million), please cover it.
- 4) At Baden-Wurttemberg Funding Scheme, under B.11 you mention "when awarding support to companies in which television broadcasters are majority associates or have a majority interest, the MFG will attach importance to other companies based in Baden-Wurttemberg also being involved in the production of film projects funded by the MFG." This requirement is not clear to us. Could you provide us a description that explains it us and clarifies its implementation?
- 5) At Berlin Brandenburg funding scheme: where there any significant changes during the reference period from 2001 to 2005?
- 6) At the MDM funding scheme:
 - What is the date of Guidelines for film funding of the MDM (B.4)?
 - What is "Package Funding?" - You quoted: „3.3.3 Paketförderung
Der Förderbetrag sollte so weit wie möglich in Mitteldeutschland ausgegeben werden. Der Förderempfänger verpflichtet sich, die geförderten Vorhaben so weit wie möglich in der mitteldeutschen Region zu realisieren.
[Sec. 3.3. Package Funding
The funding should be spent in Central Germany, as far as it is possible. The recipient of the funding is obliged to produce the funded projects in Central Germany, as far as it is possible.]"
 - Where is the reference to 3.1.4 you made in your reply to B.7?
- 7) At Nordmedia Funding Scheme, reply B.13:

- What are selection criteria of partners funding Nordmedia? - You quoted: "(...)
„Es werden nur Anträge zur Entscheidung vorgelegt, bei denen ein grundsätzliches inhaltliches Interesse eines der zum Förderaufkommen der nordmedia Fonds beitragenden Gesellschafter oder Partner nachweislich (belegt z.B. durch eine vereinbarte zusätzliche Senderbeteiligung oder einen Letter of Intent) vorhanden ist. Soweit ein solches Interesse den Antragsunterlagen nicht zu entnehmen ist, kann sich die Geschäftsführung der nordmedia Fonds in besonderen Fällen mit den zum Förderaufkommen der nordmedia Fonds beitragenden Gesellschaftern und Partnern ins Benehmen setzen, um ein mögliches Interesse zu ermitteln.“

- You quoted art. 1.3 on Culture Industry Effect / Regional Spend for Lower Saxony and/or Bremen: It is unclear from this quote when 100 % and when 125% apply – please provide a description of the mechanism at stake and its implementation.

8) At the Schleswig Holstein Funding Scheme: You did not provide an reply for B.9 on practice.

9) With respect to your replies to question B.8 for all Funding Schemes of Germany, we assume that, in case of a conflict or an inconsistency between the rules on territorialization contained in your national or internal legislation on State aid to cinema and the rules contained in conventions on co-production agreements to which your country is a party, the latter rules prevail over the former, i.e. international agreements prevail over national or internal law. Should this principle exceptionally not apply in your jurisdiction to the concrete case of territorialization requirements, please let us know via email, and please provide us with a short description of the legal mechanism addressing such conflicts or inconsistencies as applied in your jurisdiction. In this context and if relevant for your jurisdiction, let us know whether the regime you describe is applicable as such for all types of co-production agreements, in particular for all types of minority and majority co-production agreements?

(...)

Member State:	GERMANY
Re:	Follow Up Reply
Date:	08 November 2006

(...)

as to your further question concerning the Hessen Regulations, we have amended the relevant parts for reasons of consistency in the project as a whole. Still, it could possibly be argued, that the Hessen Regulation can be seen in a different light, as it does neither necessarily require the funding sum being spent in the area nor any person applying for such funding has to be resident in the area. The cases listed are meant as examples and not as essential requirements. However, this point is arguable, you will find a revised version enclosed.

(...)

Member State:	GERMANY
Re:	Follow Up Question
Date:	05 November 2006

(...)

You mention in your replies addressing the Hessen Funding Scheme explicit territorialisation requirements under points B.10 and B.11 instead of points B.6 to B.9. The "Hessen Connection" of art. 2 of the Regulations clearly qualifies as explicit territorialisation requirements. Please amend and complete these replies according to our instructions of 21 October (see my email below). Furthermore, we do not know whether you refer to provisions of the Hessen Film Guidelines or the Hessen Television Guidelines. Please clarify these reference throughout your replies for the Hessen Funding Scheme.

We shall come back to you with respect to further follow-up questions regarding the other funding schemes that you covered via a separate email.

(...)

Member State:	GERMANY
Re:	Follow Up Reply
Date:	03 November 2006

(...)

as to your further enquiry about the funding scheme in North-Rhine Westfalia (B-8), we now provide some more detailed information unter B.12.

The reason for not discussing more than the additional cultural clauses of this scheme is that the Filmbüro Funding was incorporated legally and financially in the Filmstiftung scheme (described in detail under B-8) in 2003.

However, we now quote the relevant parts of both the Filmbüro and the Filmstiftung guidelines and provide explanatory information on this special situation of North-Rhine Westfalia in the questionnaire.

(...)

Attachment to Email of 03 November 2006
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- 02971-06 00022 DOK0 B8 Revised Filmbuero Guidelines included
021106.doc

[... attachments replaced by attachements to email of 03 January 2007 ...]

Member State:	GERMANY
Re:	Follow Up Question
Date:	31 October 2006

(...)

In your revised report on the NRW funding scheme, you mention (your reply B.12 in fine):

There are furthermore Guidelines for the granting of film aid by the Film Agency North-Rhine-Westfalia e.V. according to which support is available for high quality audiovisual projects and innovative young film creators. The German version of these Guidelines can be downloaded from www.filmstiftung.de. We do not know the exact amount of aid available under this scheme. Please let us know in case we should investigate this further.

Please note that it falls under your assignment to cover all relevant funding schemes in your jurisdiction (State aid for independent film and television programmes with an annual budget of more than Euro one million) according to our instructions (see cover of the legal questionnaire). Please check whether this scheme falls under the scope of this study, and, if so, provide us the corresponding report. The same applies to the schemes of the other Laender.

(...)

Member State:	GERMANY
Re:	Follow Up Reply
Date:	27 October 2006

(...)

as to your further enquiry concerning the topic of territorialisation:

we have amended the single parts of the questionnaire where necessary. Please see also our general comment on the issue of explicit/de facto territorialisation clauses, contained in B-3 B.5.

We also added B-10 and B-11 (for the regions of Hessen and Schleswig-Holstein).

Please find enclosed all parts of the questionnaire having been subject to revision.

(...)

Attachments to Email of 27 October 2006
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- 0 2971-06 00012 DOK0 B3 Revised 261006.doc
- 02971-06 00013 DOK0 B8 Revised 261006.doc
- 02971-06 00014 DOK0 B5 Revised 261006.doc
- 02971-06 00015 DOK0 B7 Revised 261006.doc
- 02971-06 00016 DOK0 B6 Revised 261006.doc
- 02971-06 00017 DOK0 B9 Revised 26102006.doc
- 02971-06 00018 DOK0 B4 Revised 26102006.doc
- 02971-06 00019 DOK0 B 10 26102006.doc
- 02971-06 00020 DOK0 Part A Hessen MSH ergaenzt 261006.doc
- 02971-06 00021 DOK0 B 11 261006.doc

[... attachments replaced by attachements to email of 03 January 2007 ...]

Member State:	GERMANY
Re:	Follow Up Question
Date:	21 October 2006

(...)

it seems that you did not cover all the relevant funding schemes in your replies to our questionnaire (see my instructions in the emails I sent to you earlier and at the top of the questionnaire regarding the scope of the assignment).

Furthermore, I noticed that in your replies we have processed so far, in particular concerning the Bavaria and Baden-Württemberg schemes, you addressed territorialisation clauses contained in the applicable rules and guidelines as "implicit" territorialisation requirements under questions B.10 and B.11. In my understanding, however, if a territorialisation condition is expressly mentioned in a legal text (laws, regulations, scheme guidelines etc.), it obviously qualifies as an "explicit" territorialisation requirement and, accordingly, it should be addressed under questions B.5 to B.9. Therefore, we are missing in some cases such as for Bavaria and Baden-Württemberg schemes replies from you to the questions B.5 to B.9, in particular with respect to judicial and administrative practice (question B.9), the relationship between territorialisation requirements and co-production agreements (question B.8), and the way these territorialisation clauses are implemented (question B.7).

I would be very happy if you could send us as soon as possible your replies on the remaining relevant funding schemes, and your answers under questions B.5 to B.9 where the funding schemes present explicit territorialisation conditions.

Eventually, please note that the confidentiality requirement does not hinder you to obtain relevant information directly from the funding schemes' administrations.

(...)

Member State:	GERMANY
Re:	Follow Up Question
Date:	13 October 2006

(...)

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

(...)

Member State:	GERMANY
Re:	Reply
Date:	02 October 2006

(...)

This is questionnaire B - 5 and B - 9.

(...)

Attachments to e-mail of 10 October 2006

[... attachments replaced by attachements to email of 03 January 2007 ...]