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## National Film Production Aid: Legislative Characteristics and Trends

This edition of **IRIS plus** offers a synopsis of various legislative provisions concerning direct national support for film production. This overview of existing legal structures draws mainly on the examination criteria applied by the European Commission to aid the promotion of culture. It also touches on some pre-production phases such as support for script writing, and post-production activities such as distribution. Finally, television rights and decision-making powers are also discussed.

Current examples of national film production aid are provided by Germany, France, Italy, Spain and Great Britain.

The description supplements our on-line publication "Making and Distributing Films in Europe: the Problem of Nationality" that you can find free of charge on our web site at

[http://www.obs.coe.int/online\\_publication/reports/natfilm.html.en](http://www.obs.coe.int/online_publication/reports/natfilm.html.en)

As always, I wish you happy reading

*Strasbourg, April 2001*

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# National Film Production Aid: Legislative Characteristics and Trends

## Introduction

In recent years, the European Commission ("Commission") has examined the compatibility of national film support schemes in Ireland,<sup>1</sup> Denmark,<sup>2</sup> France,<sup>3</sup> the Netherlands,<sup>4</sup> Germany<sup>5</sup> and Sweden<sup>6</sup> with the rules on competition contained in the EC Treaty. Furthermore, the EFTA Surveillance Authority has recently examined and approved the compatibility of the Act on temporary reimbursements in respect of film-making in Iceland (Act No.43/1999) with the provisions of the EEA Agreement,<sup>7</sup> which run in parallel with EC law. In these decisions, the Commission and the EFTA Surveillance Authority pointed out that, in order for State funding to be legal, each grant must guarantee the cultural content of the film concerned, while the producer should be allowed to spend 20% of the film budget in other Member States. Grants, which must not exceed 50% of the production cost, should also be neutral in respect of the subsidised activities.<sup>8</sup> If this is the case, film support may be approved as an aid to promote culture in accordance with Article 87.3 (d) of the EC Treaty and Article 61.3 (d) of the EEA Agreement.

On 12 February 2001, the Council of the European Union ("Council") expressly confirmed in a Resolution that "the Member States are entitled to conduct national policies to support the creation of film and audiovisual products" and that "national aid to the film and audiovisual industries may contribute to the emergence of a European audiovisual market".<sup>9</sup> At the same time, the Council raised the question of legal certainty for national support schemes, which is relevant not only in respect of EC competition law, but also in relation to future WTO negotiations. The demand for legal certainty was also stressed by the EU Commissioner responsible for this sector, Ms Viviane Reding, who referred, *inter alia*, to a corresponding need among Member States.<sup>10</sup>

In its Resolution, the Council invited the Commission, by the end of 2001, to submit its thoughts on means of increasing legal certainty for support mechanisms that serve to preserve and promote cultural diversity in the film and audiovisual industries.

In order to support efforts to increase legal certainty and clarity, this edition of IRIS plus offers a synopsis of various legislative provisions relating to direct national support for film production. This overview of existing legal structures draws mainly on the examination criteria applied by the Commission. It also touches on some pre-production phases, such as support for script writing, and post-production activities such as distribution. Finally, television rights and decision-making powers are also discussed. Current examples of national film production aid are provided by Germany, France, Italy, Spain and Great Britain. These countries have all updated their legislation in recent years, with the exception of Spain, which is about to do so. Two of these schemes have already been found to conform to EC competition law; others may soon follow.

Whether a film benefits from direct national film production aid usually depends on its "nationality" or similar criteria. The legal definition of a film's "nationality" in the aforementioned countries is discussed in some depth in our on-line publication "Making and Distributing Films in Europe: the Problem of Nationality"<sup>11</sup> and, for that reason, is not discussed here. For the same reason, we have not paid much attention to support for co-productions. Neither is it possible in this IRIS plus series to mention every single funding programme in each of the selected countries. However, further information on film support programmes can be found in our publication "Public Aid Mechanisms for the Film and the Audio-Visual Industry in Europe".<sup>12</sup>

The various laws on film production aid differ greatly in terms of their level of detail. They also refer to different types of funding. Whereas the German example referred to in this report distinguishes clearly between reference, "project" and short film aid, the other countries only mention two categories: support for full-length films and for short films. However, reference film aid is hidden in one form

or another behind these two categories. Finally, France and Spain make a further distinction between automatic and selective aid, which, although not explicitly, also forms the basis of the German model. In order to consolidate these categories and ensure a certain degree of comparability between the examples described, IRIS plus attempts, as far as possible, to differentiate between reference, full-length and short film aid. Reference film aid is granted to a new full-length or short film because either the producer or a previous production by the producer achieved commercial success or excellence in some other way. Full-length film support is the equivalent of "project" film aid as far as German law is concerned, although generally the definition of a full-length or "project" film varies significantly from one country to the next.<sup>13</sup> Moreover, the concept of project (film) funding sometimes refers to the development stages of a film rather than its actual production. There are also different ways of defining "short films", although this term is used in all the countries considered here. Mention is also made, where appropriate, of whether funding is automatic or selective. This distinction revolves around whether a film receives support simply on the basis of certain objective (definable) criteria (automatic funding) or whether aid is only granted in individual cases at the discretion of the responsible authority (or person) (selective funding).

## GERMANY<sup>14</sup>

On 1 January 1999, the amended *Filmförderungsgesetz* (Film Support Act - *FFG*),<sup>15</sup> a Federal Act, entered into force. Although an earlier version of the Act was examined by the Commission, the amended version forms the basis of this report. Funding is also available under the *Filmförderungsrichtlinien* (Film Support Guidelines), published by the Federal Government Department of Culture and Media (*BKM*) on 1 February 2000, which also govern German film awards.<sup>16</sup>

The *FFG* makes provision for three types of support for film production: *Referenzfilmförderung* (reference film aid, Sections 22 *et seq.*), *Projektfilmförderung* (project film aid, Sections 32 *et seq.*, hereinafter referred to as full-length film aid) and *Kurzfilmförderung* (short film aid, Sections 41 *et seq.*). Full-length films are only eligible for State support if they have some kind of link with Germany, *i.e.*, they must either fulfil criteria relating to the use of the German language, the country of origin of the producers and production companies or the film location, or they must be Community productions.<sup>17</sup>

### Reference Film Aid

Reference film aid is the most heavily market-oriented form of support and is granted automatically. It is available to producers of full-length films who have previously produced a film (the "reference film") that has achieved 100,000 cinema admissions within one year of its first release in Germany (Section 22.1). The required number of admissions can be reduced or the time period extended for prize-winning films. In any case, in order to qualify, the reference film must have been released before 31 December 2002 (Section 75.2). There is also a kind of hidden reference film aid for short films (see below).

### Full-Length Film Aid<sup>18</sup>

Selective funding is granted for German full-length films on the basis of their quality rather than the likelihood of their commercial success. According to Section 32.1, support is only given if the screenplay suggests that both quality and profitability will be improved as a result. The production company must also provide a reasonable proportion of the overall budget (at least 15%), depen-

ding on its production capacity, capital investment and previous production activity (Section 34.1). Its contribution must not come from other public sources, although it may consist in the provision of services or the acquisition of exploitation or other rights (Section 34.3). This category of funding will be available until the 2003 financial year (Section 75.2).

### Short Film Aid

Short film aid is awarded to producers of short films, which because of their quality, are certified as "particularly valuable" by the Wiesbaden Voluntary Film Assessment Board or a similar body (Section 41). The money must be used within two years for the production of new short films, less than full-length children's or youth films or full-length films (Section 45). In this respect, short film aid is a type of reference film aid, since it is granted automatically for the production of a new film. Certificates entitling producers to short film aid will be awarded until 31 December 2002 (Section 75.2).

### Funds Available and Repayment

The amount of funding allocated to a film is determined according to whether the total funds available are divided equally among eligible films, whether a maximum sum is applied or whether both elements are combined. For example, reference film aid is limited to a maximum of DEM 4 million and the total funds available are split between the eligible films. The number of cinema admissions achieved by a film in comparison to the other eligible films determines how much each individual film receives (Section 22.4 and 22.5). Full-length film grants range from DEM 500,000 to DEM 2 million, provided such a sum is justified by the overall merits of the film production plan and the anticipated production costs (Section 32.2). Finally, short film aid is granted in proportion to available funds, which are distributed equally among all eligible films (Section 41.3).

All three types of funding are granted with the proviso that the money is used for the right purposes. Subsidies must be repaid if incorrect information is given or if the producer fails to meet certain conditions or general criteria. The recipient of reference film aid must also pay back any amount in excess of half the production costs of the new film (Section 29.1). Otherwise, reference film aid does not have to be repaid (Section 22.1). In contrast, however, full-length film aid takes the form of a loan. In principle, it should be repaid when and if the producer's income from exploitation of the film exceeds 20% of the projected overall cost (Section 39.1). The obligation to repay the loan expires five years (before the amendment it was ten years) after the film is first released. Generally speaking, short film aid does not need to be repaid.

### TV Broadcast Restrictions

Under the *FFG*, films that benefit from reference or full-length film aid may not be distributed on video or television for a certain period. Reference films and the films funded as a result of their success may not be released in recorded form either in Germany or abroad in the German language version until six months after they are first shown in (German) cinemas (Section 30.1). The producer's exclusive television rights may only be transferred on condition that the film is not broadcast in Germany within two years (or within 18 months in encrypted form) of its first release (Section 30.2). This period was one year longer before the amendment came into force. The same restrictions apply to full-length films (Section 40). Where television rights are sold, they generally revert back to the producer automatically after seven years at the most (Section 25.4.5).

### Screenplay Funding

As well as for film production, grants are available for the development of screenplays for full-length films. The proposed film must appear likely to improve the quality and profitability of the German film industry in general. Under the amended Act, subsidies may amount to a total of DEM 50,000 or, in exceptional cases, DEM 100,000. Additional grants of up to DEM 30,000 are available for fur-

ther development of the screenplay (Section 47.1 to 47.3). Screenplay subsidies will be available until the 2003 financial year (Section 75.2).

### Other Types of Support

Funding is available under the *FFG* for the distribution and sale of full-length films (Sections 53 *et seq.*). The maximum amount available (Section 53) was increased by the amended Act to DEM 300,000 or DEM 600,000 in exceptional cases.

Aid may also be granted for the renovation and construction of cinemas and video stores (Sections 56 and 56a), vocational training (Section 59), research, rationalisation and innovation (Section 60).

### Decision-Making Powers

All *FFG* aid programmes are run by the *Filmförderungsanstalt* (Film Support Institute - *FFA*). The *FFA* Chairman deals with automatic funding (Section 4),<sup>19</sup> *i.e.* reference film aid and short film aid (Sections 22-31 and 41-46), automatic sales support (Section 53) and, under the amendment, full-length film aid of up to DEM 10,000. The *FFA* Awards Committee is responsible for funding granted in accordance with an evaluation procedure (Sections 9 and 64.1). The Committee has nine members, appointed for a five-year term, with specialist knowledge of the film industry. At least one member should also be an expert in financial matters. Apart from one representative chosen by the *Bundestag* (Parliament), the Committee members come from the film, television and video sectors (mostly from lobby groups). The Awards Committee allocates funding for full-length films (Sections 32-40), screenplays (Sections 47-52), film sales (Sections 53a-55) and film screenings (Sections 56-58), as well as taking various other measures (Sections 59-60).

## FRANCE

Promotion of the French film industry is mainly regulated by *Décret no 99-130* (Decree No. 99-130) of 24 February 1999.<sup>20</sup> This Decree replaced the 1959 text,<sup>21</sup> which had been amended many times, although it did not make any major changes. It contains a new definition of the *producteur délégué* (delegated production company), which is the only body permitted to apply for funding. This body bears the financial, technical and artistic responsibility for the production of the film and guarantees its completion (Article 6.5). The Decree also contains a new table, which is used to calculate the amount of funding that may be granted.<sup>22</sup> Finally, it amends the approval procedure (see below).

Funding is available in France for both full-length and short films.<sup>23</sup> In both cases, production companies can apply for automatic aid on the basis of their previous work. Selective support may also be granted for both types of film.

### Reference Film Aid/Funds Available

#### Full-Length Films

Automatic reference film aid (Articles 12-52) is granted for full-length films on the basis of the commercial success of the reference film. The sum is calculated on the basis of box office, television and video revenue and is credited to an account administered by the *Centre national de la cinématographie* (National Film Centre - *CNC*). The money granted then belongs to the production company. Funds in the account must be invested in the production of new full-length films within five years.<sup>24</sup> They are automatically increased by 25% if the films concerned are entirely or mainly in French or in a regional language spoken in France<sup>25</sup> and if they fulfil certain production criteria (Article 19).<sup>26</sup>

For each day of filming in a studio in France, the amount of credit is increased by a further 1%. However, this additional funding may not exceed either 50% of the total cost of filming in France or FRF 2 million per film (Article 145).

Article 11 stipulates the maximum levels of support available for full-length films under Decree No. 99-130. The total sum awarded may not exceed 50% of the final overall production costs. For co-productions, it must not exceed 50% of the French contribution. Furthermore, the total amount of public funding (including any additional sums granted by other bodies such as other ministries or regional programmes) must not exceed 50% of the final production costs or, in the case of co-productions, 50% of the French contribution. The Director General of the *CNC* can allow certain deviations from these limits in the light of a film's artistic merit and financial arrangements.

In order to use the funding allocated to it, the production company must obtain two certificates of approval: the *Agrément des investissements* (investment approval, Articles 30-39) and the *Agrément de production* (production approval, Articles 40-49). Once it has been granted investment approval, the production company can use the funds for production. However, whether it ultimately keeps the money depends on its obtaining production approval, which is granted after production is finished and represents the definitive decision on the film's eligibility for funding.

Applications for investment approval may be made any time before the *visa d'exploitation* (distribution number)<sup>27</sup> is allocated. The production company must obtain a *visa d'exploitation* within two years of being granted investment approval. However, the application for investment approval must be made before filming begins, if it covers types of funding other than and in addition to reference film aid.<sup>28</sup>

Production approval is only granted when the film is complete. It determines whether investment grants and subsidies are actually valid and must be sought by the delegated production company within four months of the distribution number being allocated.<sup>29</sup>

If no application for production approval is made or if such an application is rejected, investment grants and any other subsidies must be repaid. If an examination of the application for production approval shows that the conditions for granting of production aid have only partly been met, production approval may still be granted for a reduced sum credited to the *CNC* account. Any additional funding that has already been received must also then be repaid.

### Short Films

Automatic reference film aid for short films (Articles 78-98) is granted in virtually the same way as that allocated for full-length films. The following differences should nevertheless be noted.

All short films must obtain an *autorisation de production* (authorisation to film) in order to receive funding. In many cases, this can form part of investment approval. The conditions under which subsidies may be supplemented are also somewhat different. While again an extra 25% can be added to the value of the credited sum for investment if the film is entirely or mainly in French or in a regional language spoken in France,<sup>30</sup> at least 80% of the total cost must be spent in France where short films are concerned.

In order to invest the automatic funding with which it is credited, the production company requires investment approval, which also constitutes general authorisation to film (production approval is not required, however). The production company must also obtain a *visa d'exploitation* (distribution number) within two years of receiving investment approval.

### Full-Length Film Aid

Funding may be granted selectively in the form of advances for the production of films (Articles 61-67) chosen on account of their themes, quality and practical conditions of production. These films must fulfil the conditions set out in Article 10<sup>31</sup> and be in French or in a regional language spoken in France.<sup>32</sup> Production companies may also obtain advances for films in other languages (Articles 68-71) if they are of high artistic quality.<sup>33</sup> Support may be granted before or after the film is produced.

If "advances" are not paid until after the film has been produced, the production company should already be in possession of a distribution contract. The Minister for Culture sets an upper limit for these advances by means of an application order.

### Short Film Aid

Unlike full-length films, all short films must obtain an *autorisation de production* (authorisation to film) in order to receive funding. In many cases, this can form part of investment approval. Short film production aid consists only in a *contribution financier* (financial contribution) made by the *CNC*. In contrast to the selective support of full-length films, Decree No. 99-130 does not contain detailed regulations concerning short films (see, however, other types of support, below).

### Repayment

As a rule, automatic production aid does not have to be repaid. However, this is not the case with advances awarded selectively for full-length film production.

If advances are paid for a film before the production phase, the Director General of the *CNC* can ask the *Commission du soutien financier sélectif à la production* (Committee for selective production aid, also known as the *Commission d'avance sur recette*) to check the film when it is complete. If the Committee submits a negative report, the Director General can demand the immediate repayment of the advances.

In all other cases, the production company can choose whether to repay the advances from the film revenue or as part of the automatic production aid scheme. If it chooses the former option, it must repay at least 10% of the advances. Otherwise, it has to pay 25% of the automatic production aid allocated minus an allowance of FRF 250,000 (EUR 38,112.25), subject to an upper limit of 80% of the advances received. The production company must opt for one of these repayment methods on the day when the advances are calculated.

### TV Broadcast Restrictions

Waiting periods for television broadcasts are not stipulated by law in France.

### Screenplay Funding

In France, financial support is also available for screenplay writing and adaptation (Articles 59, 60 and 86). At the discretion of the Director General of the *CNC*, the cost of screenplay writing may also be partly covered by automatic aid granted for the development of full-length films (Articles 50-52).<sup>34</sup>

Under the aid scheme for experimental films, production companies may be entitled to advances for the development of new projects (Articles 53-56) and for the writing and adaptation of screenplays. Such payments need not be reimbursed until the start of the production phase.

On 4 April 2001, the Minister for Culture, Ms Catherine Tasca, announced new measures to improve support for screenplays. These are designed to replace existing arrangements and offer a greater degree of help than was previously available.<sup>35</sup>

### Other Types of Support

Advances can also be sought under the automatic aid scheme to cover other pre-production costs for full-length films. These may include monies paid to authors for the exercise of option rights or copyright, staff costs during preparatory work or the cost of securing film locations.<sup>36</sup>

Subsidies are also available for the use of new image and sound recording techniques in the production of full-length (Articles 72-74) and short films (Articles 93-95) and for the composition of original music for full-length (Articles 75-77) and short films (Articles 96-98).

The *CNC* also awards an annual quality prize (Articles 90-92) for short films that have obtained a *visa d'exploitation* during the previous twelve months.

Finally, the French system also includes support for distribution (Articles 99-118), for the marketing of films abroad (Articles 119-122), for the screening of films (Articles 123-132), for the renovation and construction of cinemas (Articles 133-134) and for the equipping and modernisation of technical branches of the film industry (Articles 135-138).

### Decision-Making Powers

The *CNC* is responsible for granting the various types of funding. It is a financially-independent public administrative body with legal personality, controlled by the *Ministre de la culture et de la communication* (Minister for Culture and Communication).

Where automatic aid is concerned, the *Commission d'agrément* (Approval Committee) (Articles 26-29) is responsible for granting investment approval, while its opinions must also be taken into account before production approval is given.

With regard to selective support for French-language films (Articles 57-67), the *Commission du soutien financier sélectif à la production* (Committee for selective production aid) must be consulted before subsidies and advances are awarded. Both committees are composed of financial, technical and artistic experts.

The Director General of the *CNC* is responsible for allocating selective financial support for the production of short films, the adaptation of screenplays and the drafting of preparatory documents. He also grants subsidies for the implementation of cartoon projects and for the remuneration of technical advisers helping with directors' first films. Before doing so, however, he must consult the *Commission des contributions financières* (Financial Contributions Committee).

## ITALY

Support for the Italian film industry is mainly regulated by the *Legge 4 novembre 1965, n. 1213, Nuovo ordinamento dei provvedimenti a favore della cinematografia* (Act No.1213 of 4 November 1965 on the new structure of film production aid), amended and supplemented by the *Legge 1 marzo 1994, n. 153, recante: "interventi urgenti in favore del cinema"* (Act No.153 of 1 March 1994 on urgent measures in support of cinema).

Production aid consists mainly of loans advanced from various funds. A number of other subsidies are also available. In principle, aid is granted on a selective, project-specific basis.

### Reference Film Aid

Reference film aid only exists insofar as a subsidy granted for full-length film production in recognition of commercial success must be invested in new productions after any advances received for the film concerned have been repaid (see below).

### Full-Length Film Aid

Italian full-length films, which meet certain technical, cultural, artistic or entertainment-related criteria, are entitled to public funding.<sup>37</sup> In order to obtain this form of selective funding, they must be certified as either a *Film di produzione nazionale*<sup>38</sup> (film of national production) or as a *Film di interesse culturale nazionale*<sup>39</sup> (film of national cultural interest). Both categories of film are eligible for aid from the *Fondo di Intervento*<sup>40</sup> (Investment Fund). Finally, a director's first or second work may be subsidised by the special fund mentioned in Article 28, provided it pursues a relevant artistic and cultural aim.

Full-length films may benefit from a kind of automatic aid in the form of *Contributi sugli incassi* (subsidies awarded in recognition of commercial success, Article 7).

### Short Film Aid

Short films of national cultural interest are also supported. They must have a narrative content and pursue a relevant artistic and cultural aim. They should be between eight and twenty minutes in length and contain dialogue.

### Funds Available and Repayment

The Investment Fund provides advances for full-length films of national production, covering up to 70% of the estimated cost of the film.<sup>41</sup> These sums must be repaid in full.

Advances covering up to 90% of the estimated cost of a film may be claimed from the Investment Fund for full-length films of national cultural interest and from the special fund set up under Article 28 for certain first and second works.<sup>42</sup> These must be repaid using revenue acquired from the film. If insufficient revenue is generated, up to 70% (Investment Fund) or 90% (special fund) of the advances paid may be covered by the *Fondo di Garanzia* (Guarantee Fund, Article 16 of Act 153/1994).

Aid granted to producers of full-length films on the basis of their commercial success, which is tantamount to automatic funding, is calculated on a sliding scale, depending on the gross revenue generated by the film in cinemas during the first two years. Gross revenue of between ITL 100 million and ITL 5 billion entitles the producer to a subsidy equal to 25% of that sum. The percentage falls to 20% for revenue of between ITL 5 billion and ITL 10 billion and to 10% for sums between ITL 10 billion and ITL 40 billion. If gross income exceeds ITL 40 billion, no subsidies are payable. This aid must first be used to repay any advances obtained from the Investment Fund and the remainder should be invested in new productions. This is therefore a form of reference film aid.

The director, the author of the work on which the screenplay is based and the writer of the screenplay also receive sums equivalent to 1% of the gross revenue generated in the first two years of cinema showings.

Advances for short films are available from the special fund set up under Article 28, covering up to 90% of the estimated cost of the film, with a ceiling of ITL 100 million (EUR 51,645.69).<sup>43</sup> As with full-length films, the Guarantee Fund will pay back up to 90% of these advances if revenue from the film is insufficient. Advances are paid for only ten films per six-month period.

### TV Broadcast Restrictions

Article 55 of Act No.1213/1965, which regulated TV restrictions on subsidised films, was repealed by Act No.122 of 30 April 1998.

### Screenplay Funding

Support for screenplays, which took the form of annual prizes until 1999, was abolished under the terms of Act No.513 of 21 December 1999.

### Other Types of Support

Full-length films of particularly high artistic and cultural quality may be awarded *Premi di qualità* (quality prizes, Articles 8-9). The producer must apply for an *attestato di qualità* (certificate of quality). However, these certificates are awarded to only ten films per six-month period.

Quality prizes may also be awarded for short films (Article 11) which attain a high technical, cultural and artistic level. Finally, support is available for news films shown in cinemas (Article 14).

Aid is also available for *Film per ragazzi* (children's films, Article 16).

As well as for film production, funding is available for the distribution and screening of films (Articles 31-41).

### Decision-Making Powers

The *Dipartimento dello Spettacolo* (Department of Entertainment) of the *Ministero per i Beni e le Attività Culturali* (Ministry for Culture) is responsible for aiding the film industry. Its decisions are based, however, on the views of various commissions.<sup>44</sup>

Any grant from the Investment Fund is dependent on the opinion of the *Commissione per il Credito Cinematografico* (Film Credit Commission). Meanwhile, whether advances are granted for films of national cultural interest depends largely on the views of the *Commissione Consultiva per il Cinema* (Cinema Advisory Commission). Each Commission has nine members. The Head of the Department of

Entertainment is also the President. Six members are selected by the Ministry of Culture and one each by the *Conferenza permanente per i rapporti tra lo Stato, le regioni e le province autonome di Trento e Bolzano* (Standing Conference for Relations between the State, Regions and Autonomous Provinces of Trento and Bolzano) and the *conferenza Stato-città* (State-City Congress). All members should be experts in the cinema.

*Contributi sugli incassi* are granted on the basis of the opinion of the *Commissione di esperti* (Committee of Experts, Article 46). The views of the *Commissione per gli attestati ed i premi di qualità ai lungometraggi* (Commission for certificates of quality and prizes for full-length films, Article 48) are decisive where the award of prizes for quality is concerned.

## SPAIN

In Spain, a new Act on support for the film and audiovisual industries<sup>45</sup> is currently being prepared. It aims to standardise and complete national policy on aid in this sector. However, the current draft does not alter existing arrangements for production aid.

Up to now, support for the film industry in Spain has been regulated by Decree 1039/1997 of 27 June 1997.<sup>46</sup> This Decree serves to enforce Act 17/1994 of 8 June 1995, which has since been updated by Act 55/1999 of 29 December 1999.<sup>47</sup> According to Article 7.1, support is only available to producers of Spanish films.<sup>48</sup> Aid is withheld from films that contain mainly advertising or political propaganda, those which are news-based, films which glorify pornography or violence, which constitute a criminal offence (as decided by a Court) or which are entirely financed by public administrative bodies (Article 7.2).

The production aid provided by the Decree can be divided into two categories: selective and automatic aid. It does not have to be repaid as long as it is used for the right purpose. There is no reference film aid.

### Full-Length Film Aid/Funds Available

The *Instituto de la Cinematografía y de las Artes Audiovisuales* (Institute for Film and Audiovisual Arts - ICAA)<sup>49</sup> offers selective support for full-length films by new directors and experimental films (Article 11). In this way, directors' first and second works, together with films of special artistic and cultural interest, benefit from production aid. Whether a film is awarded funding depends not only on its artistic merits, but also on its quality, budget and funding plan and on the solvency of the production company. The amount of help available depends on how much the production company invests, since that investment may not be exceeded by more than ESP 50 million (EUR 300,506.05) per film. The amount available and the conditions under which applications may be made are stipulated in the public announcement made prior to each distribution of funds.

Automatic aid can also be granted for the post-production phase in the form of an amortisation subsidy (Article 10). If this is paid in addition to full-length film aid, it amounts to 15% of the gross revenue generated by the film in Spanish cinemas in the first two years after its release, up to a maximum of ESP 100 million (EUR 601,012.10). If the film in question does not benefit from full-length film aid, the production company can choose either a subsidy of 25% of the gross revenue generated by the film in Spanish cinemas in the first two years after its release, or aid equivalent to 33% of its own investment. In the latter case, the gross income generated by the film in Spanish cinemas in the first two years after its release should exceed ESP 50 million (EUR 300,506.05) and the aid granted must be no more than ESP 100 million (EUR 601,012.10). For films by new directors (ie directors who have made no more than two films) and films with budgets of less than ESP 200 million (EUR 1,202,024.21), the gross revenue threshold falls to ESP 30 million (EUR 180,303.63) at the most. For films in an official Spanish regional language, the figure is ESP 15 million (EUR 90,151.82), provided at least ESP 5 million (EUR 30,050.61) is made from the original version.

The production company must apply for subsidies before filming is complete. It should also be noted that the total amount of general and additional aid must exceed neither 75% of the production company's investment nor 50% of the overall cost of the film. It should not exceed a maximum of ESP 100 million (EUR 601,012.10).

In 1999, an amendment was made to the subsidy regulations for full-length films (i) whose content is identical to a television series, (ii) which constitute a compilation or the first episode of such a series, or (iii) which are TV documentaries. Such films are also entitled to a subsidy equivalent to 15% of the gross revenue generated by the film in Spanish cinemas in the first two years after its release. The total sum obtained should exceed neither 75% of the production company's investment in post-production activities, reproduction and advertising, nor 50% of the overall cost of these items. It should not exceed a maximum of ESP 50 million (EUR 300,506.05).

### Short Film Aid/Funds Available

Selective aid is granted to short films on the basis of their characteristics and aims, the quality and artistic merits of their screenplay, their budget or overall cost and their funding plan. In accordance with Article 12, the upper limit of support available is determined annually. Production companies may also apply for subsidies of up to 75% of their investment in the production of completed short films. In both cases, the amount available is limited by overall production costs or a ceiling of ESP 10 million (EUR 60,101.21).

### TV Broadcast Restrictions

Subsidised films may not be shown on television until one year after their first cinema release or, if the film is not shown in cinemas, one year after being assigned a distribution number. The corresponding period for video sales and rental is six months. However, agreements between the parties take precedence over these rules insofar as they apply to the broadcasting of films on television or to their sale or rental via new technologies (other than video).

### Screenplay Funding and Other Types of Support

The ICAA also provides other kinds of support, such as funding for the development of screenplays (Article 13), film distribution (Article 14), film promotion at festivals (Article 15), the organisation of festivals (Article 16) and film archiving (Article 17).

### Decision-Making Powers

The ICAA is responsible for allocating funding (Article 7). In some cases, it must seek the opinion of the *Comité de Expertos* (Committee of Experts) before granting financial support (Article 24). The Committee of Experts provides (non-binding) reports on applications for production aid for full-length and short films. It comprises the ICAA Director General (Chair), one ICAA director (Vice-Chair) and between 9 and 12 members. These members are appointed by the Minister for Culture on the recommendation of the ICAA Director General and after consultation with the relevant professional associations. They should be representative of the whole cinema industry. The ICAA may also, at any time, submit other questions concerning funding to the Committee of Experts or consult other specialists.

## UNITED KINGDOM

In the United Kingdom, one source of support for films is the National Lottery. The National Lottery Act was originally published in 1993<sup>50</sup> and amended in 1998.<sup>51</sup> Finally, by Order No.2090 of 1999,<sup>52</sup> it became the basis for the current system of film aid provided by the Film Council.<sup>53</sup> When distributing funds, the Film Council must respect not only the provisions of the National Lottery Act, but also the guidelines laid down by the Secretary of State for Culture, Media and Sport in the Policy Directions of April 2000, the Financial Directions (including Annex D) and the Film Council's own

Strategic Plan for policies to be pursued through the distribution of lottery money.<sup>54</sup> Since the Film Council was created on 1 April 2000, the film aid available from the National Lottery has for the first time been coordinated by a single body. The Film Council is responsible for promoting both cultural and commercial activities.

The only projects eligible for support are those which fulfil wholly or partly the criteria for British films (set out in the Film Act 1985 (as amended)) or films that are assimilated to British films.<sup>55</sup>

Film production is supported by various kinds of funding which, although these specific terms are not used explicitly, can be defined as reference film aid, full-length film aid and short film aid. However, the funding which is equivalent to reference film aid is granted neither through an independent support programme nor automatically.

### Reference Film Aid

Reference film aid is provided for by both programmes (as well as the screenplay support programme), under which certain repayments of previous grants are used as credit for the development of new projects. If, for example, a production is based on a subsidised screenplay, the repayment of the screenplay grant must be credited as aid for the new project to produce the film (this is known as development buy-out). This system is based on the notion that the various aid programmes can only be accessed as alternative sources of funding. This "hidden" form of reference film aid is not automatic, however, since it is only granted subject to certain qualitative criteria being met.

### Full-Length Film Aid

The Premiere Fund supports the production of feature length theatrical films for commercial exploitation.<sup>56</sup> Full-length film aid is available for films with suitably creative content and commercial potential. The film must be able to obtain at least an "18" certificate from the BBFC<sup>57</sup> or an "R" classification<sup>58</sup> in the USA for distribution in cinemas or on video. The best film projects are supposed to be selected. The Film Council can even approach exceptionally talented individuals in the film sector specifically in order to put their names forward for the funding programme ("soliciting strategy"). Every project must include an economically viable distribution strategy as an integral part of the funding plan. Applications can only be made if all financial arrangements are in place<sup>59</sup> and if the funds are sufficient to cover the acquisition of all global rights to the film. Finally, completion of the film must be guaranteed. The Premiere Fund is a three-year programme.

One particular type of full-length film aid granted from Lottery funds is known as film production franchising.<sup>60</sup> Under this scheme, in 1997 the Arts Council of England, following an open competition, allocated Lottery funding to three private companies for the production of a slate of films over a six-year period. The terms under which the funding is made available are set out in the individual franchise agreements and further explanation is not appropriate here.

### Short Film Aid

The New Cinema Fund (NCF) is designed to make money available for the production of short films.<sup>61</sup> However, details of the programme will not be published until spring 2001. Applications cannot be made until then. The Film Council has nonetheless already laid down certain key features of the funding programme. For example, support will depend on the film's creative merits and suitability to achieve certain goals, as well as its potential in terms of cinema screenings and TV broadcasts. The goals referred to include promotion of innovative and creative approaches, new talent and trends, and regional and minority productions. The programme will also be combined with support for training and will cover all forms of distribution (not only cinema and television). The production company must own all rights to the production and exploitation of the film. The funding plan must be well organised and should guarantee the acquisition of all global rights to the film. Completion of the film must also be guaranteed.

The Film Council seems to be targeting two types of film through the NCF programme: firstly, digital short films produced by the regions and nations, with a particular focus on new digital technology, and, secondly, short films with special strategic goals. These goals include dealing with multicultural themes or producing specialist short films such as horror films, thrillers and comedies. The Film Council has also stated that support for short films will only be granted in co-operation with experienced partners in the sector and that the search for suitable partners will therefore be an essential initial step in the implementation of the programme. Regarding support for digital short films, the Film Council is clearly hoping to form partnerships with organisations from the various regions and nations,<sup>62</sup> whereas it is searching for commercial partners where short films with strategic goals are concerned. The programme is set to run for two years.

### Funds Available and Repayment

Loans from the Premiere Fund and the NCF will be granted on the basis of standard negotiable agreements that can be adapted to the specific nature of the grant. The Premiere Fund has a ceiling of GBP 1 million per film and the NCF is expected to offer maximum grants of GBP 10,000. Only half of the aid granted through the NCF will be paid by the Film Council, with the remaining half being provided by the "matching fund", i.e. the relevant partner. About eight short films will be supported by each fund.

Only companies may apply for aid from the Premiere Fund. The level of support is determined on a project-by-project basis, whereby particular consideration is given to potential investment by private sponsors. The amount of funding is based on industry norms and current market conditions.

Funds from both programmes must be repaid if the agreement is broken or terminated prematurely.<sup>63</sup> The Film Council monitors projects using various control mechanisms and approval requirements. Repayment conditions relating to the Premiere Fund conform to the usual financial regulations for the private sector. The parties must agree to share profits. Aid from the NCF should be granted *pro rata pari passu* (in conjunction with the project partner) until 50% of the Film Council's investment is reached. Net income should then be shared between the parties as follows: 25% each for the Film Council and the applicant (partner) and 50% for the individual film producers. Profits from the exploitation of all rights acquired by the producers must also be shared.

### TV Broadcast Restrictions

No time restrictions are provided for by law. Support from the Premiere Fund and other Lottery funding programmes is aimed at cinema films and the Film Council normally reserves not only all copyright but also all other rights, such as TV rights. Short film aid is different, however, since broadcasters and webcasters in particular are considered as key partners in the financing of short films. Where such partnerships are formed and the partners, as expected, claim broadcasting rights, the Film Council, which also reserves all copyright for short films, will insist on protecting its own position by levying licence fees.<sup>64</sup>

### Screenplay funding

The Lottery system also makes provision for screenplay funding.<sup>65</sup> The Development Fund is designed to improve the quality of British film production, help promote British talent and make commercial feature-length films made in the United Kingdom more attractive around the world. It targets projects with particularly creative content. Funding is available for all stages of development up to pre-production. While the Film Council will, in principle, consider funding the entire development of certain projects, it will normally expect the producer to contribute towards the cost of the development either directly or by arranging co-funding via third parties. Screenplay funding of less than GBP 10,000 may be made to individuals but funding in excess of GBP 10,000 is only available to companies. Grants are repayable in full on the first day of principal photography

with a 50% premium. The Film Council is also entitled to a share in net profits and revenue from the sale of rights (in accordance with the General Contract Parameters).

### Other Types of Support/Hidden Reference Film Aid

As mentioned at the beginning, the Premiere Fund, NCF and Development Fund will retain part of the income generated by the film or 50% of the development premium recovered from the production as a credit towards the cost of the producer's next approved development project. However, applications to use this credit must be made within a certain time period and there are certain rules governing projects that may be funded using this kind of "reference film aid".

Further grants are available for vocational training (Film Training Fund),<sup>66</sup> sales strategies<sup>67</sup> and export promotion.<sup>68</sup> For the time

being, these projects are partly seen as means of developing the Strategic Plan in the future. Finally, plans to offer specific support for "first movies", aimed particularly at children and young persons, are in the pipeline.

### Decision-Making Powers

All support programmes are administered by the Film Council, which at present is set up as a private company limited by guarantee but will in the future take on a different form. Individual decisions are taken by the Head of the fund concerned. Decisions on NCF grants will be taken by the Head of the Fund in conjunction with his two deputies, one with specific responsibility for nations and regions, and the other for cultural diversity. After consultation with the industry, it was decided that this decision-making structure was preferable to a committee delegation.

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 European Audiovisual Observatory

- 1) OJ 1998/C 11/08 and SG (99) D/6877, available at: [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aides/industrie/nn049-97.pdf](http://europa.eu.int/comm/secretariat_general/sgb/state_aides/industrie/nn049-97.pdf).
- 2) OJ 1998/C 253/11.
- 3) OJ 1998/C 279/04, IP 98/515, 9 June 1998.
- 4) OJ 1999/C 120/02, IP/98/1028, 25 November 1998.
- 5) OJ 1999/C 272/04, IP/99/246, 21 April 1999.
- 6) OJ 2000/C 134/03, available at: [http://europa.eu.int/comm/secretariat\\_general/sgb/state\\_aides/industrie.htm](http://europa.eu.int/comm/secretariat_general/sgb/state_aides/industrie.htm)
- 7) OJ L 89/37, 29 March 2001.
- 8) The general requirements of State aid, such as necessity, transparency and proportionality must also be met. See above decisions, IRIS 1998-7: 14 and IRIS 1999-5: 4.
- 9) Council Resolution of 12 February 2001 on national aid to the film and audiovisual industries (2001/C 73/02), OJ of 6 March 2001, para. 11. See IRIS 2001-2: 3.
- 10) See Press Release 11563/00 on the 2287th meeting of the Council (Culture/Audiovisual Affairs), held in Brussels on 26 September 2000. FERA's proposal for a Cinema Directive also aims to increase legal certainty, although from the point of view of harmonising existing film support schemes. As well as advocating support for film production, the FERA proposal highlights other aspects such as the harmonisation of support for the distribution and circulation of European films, archiving and broadcasters' contributions to film production.
- 11) Reviewed as of January 2000, available at [http://www.obs.coe.int/online\\_publication/reports/natfilm.html.en](http://www.obs.coe.int/online_publication/reports/natfilm.html.en)
- 12) Vol.I: Comparative Analysis of National Aid Mechanisms (1998) and Vol.II: National Monographs (1999).
- 13) As a synonym to "project film" the German law also uses the term *programmfüllender Film* (programme filling film), by which it understands a film with a length of at least 79 minutes. See Section 15 *Filmförderungsgesetz*.
- 14) Quotations from laws given without reference are all taken from the primary source of law relating to the relevant national film support scheme.
- 15) See the revised version of the FFG of 25 January 1993 as published in the Act on measures to promote German film of 6 August 1998 (Federal Gazette I p.2046; in the version of 6 August 1998, published in the Federal Gazette I pp.2053-2070).
- 16) The support programmes of the individual Länder are also not discussed here.
- 17) See Sections 15 and 16 FFG and Gyory, *op.cit.*, DE-Germany, 1.-2..
- 18) Referred to as *Projektfilmförderung* (experimental film aid) in the FFG.
- 19) The Chairman should have no financial involvement in the film industry.
- 20) *Décret n° 99-130 du 24 février 1999 relatif au soutien financier de l'industrie cinématographique* (Decree No.99-130 of 24 February 1999 on financial support for the cinematographic industry), Official Gazette, 25 February 1999.
- 21) See IRIS 1999-4: 9.
- 22) For the calculation criteria, see Gyory, *op.cit.*, FR-France, 1.2.2..
- 23) Pornographic films and films which incite violence are ineligible.
- 24) Where co-productions are concerned, the sum is credited as follows: at least 25% to the delegated production company (or 12.5% to each one if two such companies are involved); no more than 50% to production companies owned by the TV operators obliged to produce films (*TF1, France 2, France 3, M6*) and by *Canal Plus*.
- 25) This requirement does not apply to opera films, documentaries and cartoons.
- 26) These criteria are found in the *Arrêté pris pour l'application des dispositions du chapitre II du titre III du décret n° 99-130 du 24 février 1999 relatif au soutien financier de l'industrie cinématographique et concernant le soutien financier automatique à la production et à la préparation des oeuvres cinématographiques de longue durée* (Order on the Application of Decree No.99-130 of 24 February 1999 on financial support for the cinematographic industry) of 22 March 1999, Official Gazette of 2 April 1999, section 1, sub-section 2.
- 27) A *visa d'exploitation* (distribution number) is needed before a film can be shown in cinemas, see Article 19 of the *Code de l'industrie cinématographique* (Film Industry Code).
- 28) This is the case when a film is partly financed by production companies owned by the TV operators that are obliged to produce films (*TF1, France 2, France 3, M6*), companies set up specifically to fund cinema and audiovisual productions (*SOFICAS*) or production advances (see below).
- 29) Production approval also triggers the calculation of the "reference value" of the film just produced, for the purposes of future automatic production aid.
- 30) This requirement does not apply to opera films, documentaries and cartoons.
- 31) For a detailed description of these conditions, see Gyory, *op.cit.*, 1.1.3., 1.1.5.2., 1.2.1.-1.2.2..
- 32) This requirement does not apply to opera films, documentaries and cartoons.
- 33) In such cases, conditions II, III and IV of Article 10 need not be met.
- 34) In such cases, the production company must apply for investment approval within two

- years. However, even if such approval is denied, the production company need not repay screenplay subsidies, although funding granted for other pre-production costs must be reimbursed.
- 35) See *Neuf mesures en faveur de la distribution des films et de l'écriture des scénarios*, available at: <http://www.culture.fr/culture/actualites/politique/mesures-cinema.htm> or [http://www.cnc.fr/index\\_dyn.htm?b\\_actual/15/ssrub4/mesure/index.htm](http://www.cnc.fr/index_dyn.htm?b_actual/15/ssrub4/mesure/index.htm)
- 36) See *Arrêté pris pour l'application des dispositions du chapitre II du titre III du décret no 99-130 du 24 février 1999 relatif au soutien financier automatique à la production et à la préparation des oeuvres cinématographiques de longue durée*, Article 30.
- 37) Films that endeavour to generate commercial advantage by using obscene sexual content are not eligible (Article 5).
- 38) For a definition of a film of national production, see Gyory, *op.cit.*, IT-Italy, 1.2..
- 39) For a definition of a film of national cultural interest, see Gyory, *op.cit.*, IT-Italy, 1.3..
- 40) Set up through *legge 819/1971, interventi a favore del credito cinematografico*.
- 41) *Decreto del presidente del Consiglio dei ministri 29 marzo 1994, determinazione delle aliquote di intervento e dei costi ammissibili per i film di produzione nazionale e di interesse culturale nazionale* (Decree of 29 March 1994).
- 42) Decree of 29 March 1994.
- 43) *Decreto 18 Marzo 1999, n. 126, Regolamento recante norme per l'ammissione dei cortometraggi ai mutui di cui all'articolo 28, comma 8, della legge 4 novembre 1965, n. 1213*.
- 44) *La Banca Nazionale del Lavoro* also plays a role in the distribution of money from the various funds. It is responsible under Act 819/1971 for administering and distributing aid as instructed by the Ministry (taking into account the views of the various commissions).
- 45) *Proyecto de Ley 121/000027 de fomento y promoción de la cinematografía y el sector audiovisual* (Bill No.121/000027 on support for the film and audiovisual industries). *Boletín Oficial de las Cortes Generales, Serie A 27-1* of 3 January 2001.
- 46) *Real Decreto 1039/1997, de 27 de junio, por el que se refunde y armoniza la normativa de promoción y estímulos a la cinematografía y se dictan normas para la aplicación de lo previsto en la disposición adicional segunda de la Ley 17/1994, de 8 de junio (BOE de 14 de Abril de 1997), modificado por el Real Decreto 196/2000, de 11 de febrero (BOE de 22 de Febrero de 2000)*.
- 47) *Ley 17/1994, de 8 de junio, de protección y fomento de la cinematografía (BOE n.138 de 10 de Junio de 1994), modificada por la Ley 55/1999, de 29 de diciembre, de medidas fiscales, administrativas y del orden social*.
- 48) See Gyory, *op.cit.*, ES-Spain 1.1.3 for a definition of Spanish films and films assimilated to Spanish films.
- 49) The ICAA is an administrative body operating under the auspices of the *Secretaría de Estado de Cultura* (State Department of Culture) of the *Ministerio de Educación y Cultura* (Ministry of Education and Culture).
- 50) National Lottery etc. Act 1993 (Chapter 39).
- 51) National Lottery Act 1998 (Chapter 22).
- 52) National Lottery etc. Act 1993 (Amendment of Section 23) (No. 2) Order 1999.
- 53) Section 23 (1), which governs the distribution of Lottery funding, had previously been amended by the National Lottery etc. Act 1993 Order 1994 (S.I. 1994/1342) and Order 1995 (S.I. 1995/2088).
- 54) Section 13 of the National Lottery Act 1998 supplements the National Lottery Act 1993 by adding Section 25 C, which stipulates that such a plan must be drawn up.
- 55) For further information, see Gyory, *op.cit.*, GB-United Kingdom 1.3..
- 56) See 1.26-1.27 of the Strategic Plan (Part 1).
- 57) This means that the film is only suitable for adults. See the BBFC Classification Guidelines.
- 58) This means that under-17s must be accompanied by a parent or guardian. See *Voluntary Movie Rating System*: <http://www.mpa.org/movieratings/content.htm>
- 59) These include sales contracts and the main contractual elements of the funding plan.
- 60) See 1.37-1.39 of the Strategic Plan (Part 1).
- 61) See 1.28-1.29 of the Strategic Plan (Part 1).
- 62) While preparing the programme, the Film Council co-operated with its sister organisations in Scotland (Scottish Screen), Wales (Sgrin) and Northern Ireland (Northern Ireland Film Commission). According to section 1.14 of the Strategic Plan (Part 1), the Film Council will also explore the possibilities for closer co-operation with the Arts Council of Wales and the Arts Council of Northern Ireland, both of which support film-making.
- 63) See iv - vi Annex D (Standard Conditions of Grant).
- 64) In individual cases, this may mean that it requires demonstrably equitable licence fees or a fair and reasonable fee for TV rights.
- 65) See 1.21-1.25 of the Strategic Plan (Part 1).
- 66) See 1.32-1.36 of the Strategic Plan (Part 1).
- 67) See 1.40 of the Strategic Plan (Part 1).
- 68) See 1.19 of the Strategic Plan (Part 1).