

Broadcasters' Obligations to Invest in Cinematographic Production

Published by the European Audiovisual Observatory

Cinematographic films are an important cultural asset. But they cost money, sometimes a great deal of money. Television programmes are less expensive to make, particularly large TV companies' own productions. Cinema and television productions inevitably compete for the attention of viewers. Television takes up a considerable proportion of our leisure time – time which we therefore do not spend in cinemas. Does this mean that television is the enemy of cinema? If it is, then it is also cinema's friend, since cinematographic films are also shown on television and therefore bring in more money. Above all, however, broadcasters do not only show cinematographic films, they also support their production through financial investments and other payments in kind.

This IRIS Special describes the various ways in which the television industry supports cinematographic film – whether enshrined in law or on a voluntary basis, whether direct or indirect. It considers broadcasters' investment obligations in different European countries and investigates whether they are laid down in law, agreed in contracts or entered into voluntarily by broadcasters. It also explains the rules of procedure, discusses what broadcasters might receive in return and mentions some important economic factors. Where necessary or useful, this publication also contains information about national film funding mechanisms.

Several dozen people have contributed to this publication. In the preparatory phase, we received valuable support from the Institute of European Media Law (EMR) in Saarbrücken, which not only provided the German report, but also managed our co-operation with seven other countries. The Institute for Information Law (IViR) of the University of Amsterdam reported on behalf of the Netherlands and arranged contacts with national experts. However, the fact that around 40 experts participated in the project by offering their knowledge free of charge was crucial in making this publication possible. Their names are mentioned alongside their respective reports. I would also like to thank Sebnem Bilget, Frank Büchel, Christophoros Christophoru, Áslaug Dóra Eyjólfsdóttir, Tone Frelih, Jurgis Giedrys, Hamdi Jupe, Oliver Mallia, Andrei Richter and Pinar Ülkülü, who provided information about the lack of relevant obligations in their respective countries. Anyone who has carried out similar country-by-country projects knows that this kind of information is often the most elusive.

As always, the translators and proof-readers have done a splendid job. Their names are mentioned on the inside cover. Our colleagues Michelle Ganter and Francisco Cabrera have also contributed in many different ways to the success of the project.

Strasbourg, February 2006

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Project Description

What obligations has the state imposed on broadcasters in relation to support for cinematographic film and what undertakings have broadcasters made voluntarily? What exactly do the main legislative provisions cover?

This publication provides answers to these questions from almost all European countries. We put them to experts from the 36 member states of the European Audiovisual Observatory. Replies from 34 countries are included in this study.

Our investigation was deliberately limited in five respects:

1. Our aim was only to seek information on investment obligations concerning **cinematographic films**. Television programmes were therefore excluded. However, some answers cover both, particularly in countries where obligations concern European films or audiovisual works in a very general way.
2. Attention was given to measures supporting the **production** of cinematographic films. However, where they were closely linked, investments in production-related activities, such as presales, were also included.
3. From the outset, to mention all investment obligations of all broadcasters appeared an impossible task. We therefore asked our experts to concentrate on the **public service broadcasters** and the **major private broadcasters** in their respective countries.
4. The experts were only asked about **broadcasters' obligations**. Of course, from a producer's point of view, there are other support mechanisms that are equally if not more important which could be covered in a general way. However, these were described in a previous publication, i.e. the report on public support for film and audiovisual works in Europe.¹ Moreover, additional, constantly updated information is freely available in the KORDA database.² Although the perspective we adopted meant that information on national funding bodies was not required, many responses contained such data. Where this information is closely linked to our theme and therefore appears conducive to a general understanding of the situation, it has been included.
5. We also asked for **relevant market information**, but only if it was readily available to our legal experts without the need for detailed research. In some cases, such data was incorporated in the text, while in other reports references to the corresponding information are mentioned at the end.

1) See Dr André Lange and Tim Westcott, *Public Support for Film and Audiovisual Works in Europe – A Comparative Approach*, published by the European Audiovisual Observatory in co-operation with the European Investment Bank, Strasbourg 2004, available from the Observatory (contact: Markus.Booms@obs.coe.int), for further information, visit http://www.obs.coe.int/oea_publ/funding/index.html.en

2) <http://korda.obs.coe.int>

Using these parameters, we prepared a questionnaire, to be completed for each country by a chosen expert. All the experts were asked what legal and voluntary obligations exist for public service and private broadcasters to invest in cinematographic film productions. They were asked to name the legal or contractual basis of these obligations and to describe them in as much detail as possible. Where applicable, a distinction was to be made between direct and indirect measures. In addition, the experts were asked what, if anything, the broadcasters receive in return. Finally, we enquired about rules of procedure and asked for additional information on the subject, particularly of a financial nature. Where necessary, key notions such as "film" or "producer" were to be used and explained as defined within the relevant national legislation.

Of course, such information can rarely be provided in full. Often, a particular detail of the law is omitted. Sometimes, a law or agreement does not provide in-depth information, or information is not available. In some cases, the development of relevant law is still in its initial stages. It is simply impossible to come up with a single framework applicable to all countries and all phases of the development of different funding systems in a field that is highly complex and regulated in such diverse ways. Where the authors and editor were forced to digress from the questionnaire, it was always for the sake of clarity.

Most of the replies were originally written in English. A small number were submitted in French or German. The Observatory takes sole responsibility for the editorial processing and translation of the information supplied.

We have printed two contributions - those of Bulgaria and the Flemish Community of Belgium - even though none of the obligations we are investigating exist in those countries. Others, such as Ireland and the United Kingdom, provided a large amount of additional information on the funding system, but little in response to the actual questions. In all of these cases, however, we found that the information completed the overall picture, since it covered matters related to broadcasters' obligations and was representative of the situation in many other countries.

Analysis

Susanne Nikoltchev

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The different types of investment obligations described in the various responses cannot be summarised easily. It appears more sensible to group them together or comment on them according to different aspects. This is achieved below, under the following headings: 1. Typical Legal Sources and Instruments, 2. Obligations, 3. Film Funding Institutes, 4. Economic Significance, 5. Overview of Results, 6. Influence of European Regulations. Some conclusions are drawn under heading 7.

1. Typical Legal Sources and Instruments

Obligations for broadcasters to invest in cinematographic films are based on a range of different instruments. For example, they may be laid down in laws and decrees. They can result from administrative decisions, particularly as part of the licensing process, or from agreements or voluntary measures. In many cases, investment obligations are derived from a combination of these different legal sources.

1.1 Laws/Decrees

As the study shows, most countries regulate broadcasters' obligations directly by laws or decrees. The actual form of these obligations varies considerably from country to country.

As one would expect, the relevant legal provisions tend to be found in television and film law, including rules on film funds. Rules establishing public service broadcasting as an institution also play a role, often serving as the basis for agreements that set out practical investment obligations. However, since they do not impose any direct legal obligations, they are referred to below in connection with the relevant agreements.

Countries which impose investment obligations by laws or decrees include Belgium (French-speaking Community), the Former Yugoslav Republic of Macedonia (draft), France, Greece, Italy, the Netherlands, Poland, Portugal, Spain, Romania and Hungary. Apart from the Netherlands, where only public service broadcasters are obliged to invest part of their advertising revenue, investment obligations in all these countries apply to both public service and private broadcasters.

In Belgium, Spain and Greece, no distinction is made between public service and private television broadcasters in the definition of obligations. In Spain, this situation is currently being challenged in the courts. Private broadcasters in Greece are also arguing that they should be treated differently to their public service counterparts and are actually refusing to fulfil their investment obligations.

In all other countries, the investment obligations for private broadcasters are different from those of public service broadcasters. In Romania and Hungary, broadcasters can choose between various ways of fulfilling their obligations.

1.2 Licences

Both public service and private TV broadcasting licence-holders may be obliged to support cinematographic film. The licensing procedure usually provides the opportunity to lay down tailor-made funding obligations for each broadcaster. The Norwegian private broadcaster TV2 is an example. In Switzerland also, licences are granted to private TV broadcasters on condition that certain investment obligations are met. This system is expressly established in the *Bundesgesetz über Radio und Fernsehen* (Federal Radio and Television Act).

1.3 Agreements

Investment obligations are often laid down in special film funding agreements. These may be voluntary or they may be a legal requirement.

Voluntary agreements include those signed without any significant state influence, such as agreements concluded between broadcasters. In the Netherlands, the public service broadcasters recently adopted a coordinated film strategy, under which they intend to co-produce a certain number of films and set aside a corresponding amount of funding.

Generally, however, agreements are signed between broadcasters and state bodies, particularly film funding institutions. There is therefore an immediate implication that they are not entirely voluntary. An example is the *Film/Fernseh-Abkommen* (Film/Television Agreement) between the Austrian Film Fund and public service broadcaster ORF, establishing co-operation between film and television, particularly in relation to Austrian film production.

Such agreements are often accompanied by legal provisions. In such cases, the distinction between legal and voluntary obligations is unclear (see the table below).

The following examples from Denmark, Germany, Latvia, Switzerland and Sweden show how closely related voluntary and legal obligations are, since those that are entered into voluntarily are all established in law. Legal provisions or licences - or both - are crucial to the conclusion of agreements.

In Denmark, Germany and Latvia (draft bill), there is a general legal obligation for public service broadcasters to invest in cinematographic film in order to fulfil their public service remit. This obligation should be met by means of an agreement between the broadcaster on one side and either the government or a state film funding institute on the other. The law expressly stipulates that the exact nature of the film support obligation should be set out in an agreement between the parties. Although it remains to be seen whether the draft Latvian Film Bill is adopted and how it will then be implemented, the corresponding laws in Denmark and Germany have resulted in contracts which are renewed at regular intervals. In Denmark, public service broadcasters have, in accordance with the Broadcasting Act, signed an agreement with the Minister for Culture, while those in Germany have concluded a film funding agreement with the Film Funding Institute in accordance with the *Filmförderungsgesetz* (Film Funding Act).

In principle, the combination of a general legal obligation and a separate agreement by which it is implemented can also apply to private broadcasters. However, this seems to be a less obvious solution, since private companies do not necessarily need to promote public interests and there is therefore no corresponding state remit. Nevertheless, private broadcasters in Germany are also required, under the *Filmförderungsgesetz*, to sign a film funding agreement. This was achieved by the *VPRT-Abkommen* (VPRT Agreement).

This combination of a general legal obligation and a separate agreement by which it is implemented is also used in Switzerland. However, in this case, the state itself did not sign a film funding agreement with the broadcaster, but ordered the public service broadcaster to sign such an agreement with partners from the Swiss film industry during the licensing process. This voluntary agreement is designed to fulfil a well established legal obligation. According to the *Bundesgesetz über Radio und Fernsehen*, the *Schweizerische Radio- und Fernsehgesellschaft* (Swiss radio and television corporation - SRG SSR) is obliged to support Swiss film production. Under the terms of its licence, SRG SSR must stimulate and promote cultural creativity, particularly Swiss film production. It is meant to achieve this by co-operating closely with the Swiss film industry and commissioning films from the audiovisual sector. SRG SSR has fulfilled this obligation by signing a production agreement - fully financed by itself - with partners from the Swiss film industry for the co-production of both cinematographic and TV films.

Broadcasting licences also play a part in the film funding agreements of Swedish broadcasters. Swedish broadcasting licences contain a general funding obligation which has been fulfilled by means of a film agreement between the TV companies and the State, film distributors and film producers. Under this agreement, broadcasters must pay monthly contributions. Unlike in Switzerland, this applies to both public service and private broadcasters.

The situation in Finland is rather unusual and therefore difficult to categorise. Television and operators' licence fees finance the State Television and Radio Fund, from which the Finnish Film Foundation receives annual film production aid. This payment is triggered by a declaration of intent by the government. The declaration was made public as part of the confirmation of a private broadcaster's operating licence. On the one hand, it creates a strong connection between licences and film funding. However, in practice, the Finnish Film Foundation receives the payments directly from the public service broadcaster YLE on the basis of a separate agreement. However, YLE is in turn financed through the State Television and Radio Fund.

1.4 (Unilateral) voluntary obligations

Voluntary obligations mainly concern public service broadcasters. The reason for this becomes clear in the light of their public service remit. This includes the general obligation to promote public interests, which undoubtedly include cultural objectives, and is always enshrined in law. By entering into voluntary obligations to support film, public service broadcasters show that and how they intend to fulfil the public service remit.

The voluntary obligations of public service broadcasters in Estonia, Ireland and the United Kingdom illustrate the close links between the public service remit and film funding. In all three countries, broadcasting law contains a general obligation which can include film funding.

In the United Kingdom, for example, Art. 264 para. 6 (b) of the Communications Act 2003 contains the general obligation for public service television to fulfil the public service remit, which includes a duty to broadcast feature films. However, this provision does not specify what form support measures should take. With these rules in mind, the broadcasters concerned have made public undertakings to support film production.

The Croatian public service broadcaster HRT is also obliged by law to support, develop, promote and produce all kinds of national audiovisual works that contribute to the development and production of Croatian art and culture. In view of this mandate, HRT intends to take voluntary measures on a contractual basis.

Although voluntary obligations primarily concern public service broadcasters, private broadcasters are certainly not excluded. If, like the Dutch private broadcaster RTL Nederland, they wish to pursue their economic objectives by promoting cultural values, there is no reason why voluntary investment should not form part of their business strategy.

2. Obligations

The practical details of broadcasters' obligations to support cinematographic film are even more diverse than the legal foundations on which they are based. Although there is usually a distinction between direct and indirect support, in some cases both forms clearly overlap. For example, a fund that is co-sponsored by a particular broadcaster may co-produce a film with the broadcaster concerned on the basis of a film funding agreement. In one such case, a co-production involving a Dutch public service broadcaster was also financed by STIFO, a private organisation funded by advertising revenue from public service broadcasting.

Forms of direct support for cinematographic film include:

- Own production,
- Co-production,
- Direct funding.

Indirect forms of support include:

- Payments to film funds (or similar bodies),
- Payments to film distribution funds,

- Active participation in film funding institutes,
- Taxes (used by the state to support film),
- Broadcasting fees (indirectly used to support film),
- Media services (provision of advertising time, active publicity for cinematographic films, etc),
- Provision of technical equipment or personnel,
- Special access to picture archives,
- Purchase of rights to cinematographic films (including presales).

There are different ways of calculating how much a broadcaster should contribute. For example:

- A proportion of advertising (and sponsorship) income or of the transmission time allocated for advertising,
- A proportion of other income (e.g., subscription fees, state subsidies, income from sale of rights or media services, etc),
- A sum calculated in accordance with the overall programming budget,
- A proportion of the overall annual budget,
- A proportion of gross income,
- A proportion of the broadcasting fee,
- A proportion of the licence fee.

The sums due are often adjusted annually in line with the consumer price index.

3. Film Funding Institutes

Film funding bodies such as film funds (foundations) and film institutes³ play a particularly crucial role in the relationship between TV broadcasters and film producers. In at least 15 of the countries covered by our investigation, broadcasters' film aid contributions are paid wholly or partly to a film fund or institute. This represents 60% of the countries where funding obligations exist.

In some countries, broadcasters pay their financial contributions directly to the film funding bodies, either voluntarily or under legal obligation. Elsewhere, the money comes from the state, which collects it from the television industry in the form of taxes or other payments.

Furthermore, film funding bodies often function as co-financiers of co-productions that are funded directly by broadcasters either as part of their legal obligations or voluntarily. These bodies are therefore important partners, even in countries where they are not funded directly by broadcasters.

Finally, some film funding bodies were founded by broadcasting organisations themselves. This is the case, for example, with the *Coproductiefonds Binnenlands Omroep* (CoBO) of the Dutch public service broadcaster.

4. Economic Significance

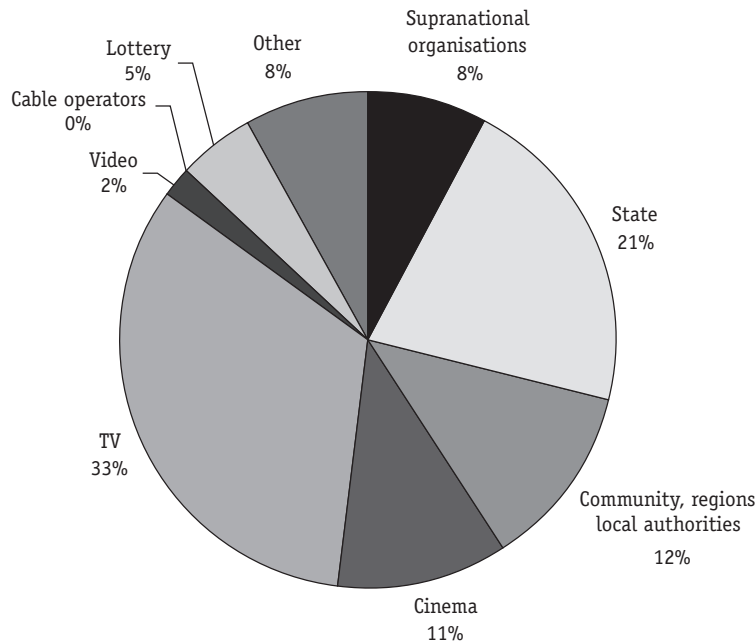
The economic significance of broadcasters' direct and indirect film aid contributions is considerable.⁴ For example, indirect payments from the TV sector to public film funding bodies account for almost one-third of all public film aid in Europe. This is illustrated by the following graph:

3) For an overview of funding bodies for the film and television industry, see European Audiovisual Observatory, Public funding for film and audiovisual works in Europe – A comparative approach, Strasbourg 2004, pp. 35 ff (see footnote 1).

4) Market information was provided by the European Audiovisual Observatory's Department for Information on Markets and Financing. However, the author bears sole responsibility for any errors in the contextualisation of the data.

4.1 Origin of the Budgets of Public Funding Bodies in Europe

Contributions (rounded up or down to the nearest %) to the budgets of funding bodies in 31 states (2002)⁵

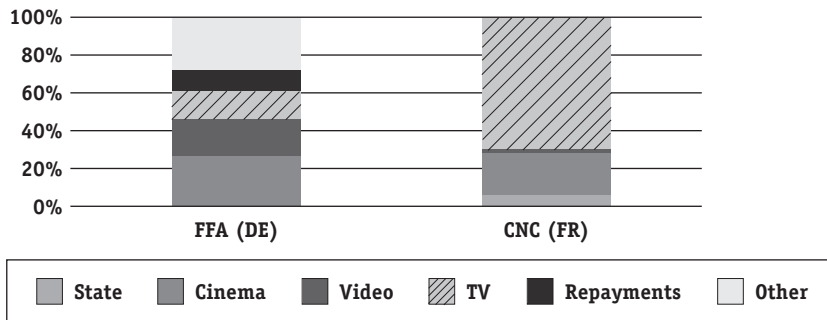


Source: European Audiovisual Observatory

As mentioned above, film institutes in many countries receive considerable support through direct payments from broadcasters. In Germany and France, this is made up as follows:

4.2 Funding Sources of Major National Film Institutes

Proportion of overall budget (2002)



Source: European Audiovisual Observatory

The importance of the TV industry's contributions is confirmed by a survey of all sources of finance for publicly funded feature film productions⁶ (the most common form of funding for feature films).

Firstly, it should be remembered that, in countries where broadcasters make payments to film funding institutes – as shown in the above graph for Germany and France – these payments help to fund feature film productions via public aid mechanisms.

In addition, the film industry contributes additional funds to feature film production. The following tables show funding sources in France, Germany and Spain, for example.

5) The graph gives an overview of all funding sources found in all countries put together. Of course, the proportions vary from country to country.
 6) Including feature-length documentaries.

4.3 Evolution of Financing Sources for French Feature Films Supported by the CNC (in %)

Year	Own investment	Automatic public support (CNC)	Selective support	Regional support	TV co-productions	TV licence fee	MG distribution	Sofica	Foreign investments
1996	21.9	11.5	5.2	–	8.9	34.3	5.5	4.8	7.8
1997	33.1	7.2	5.2	–	7.2	29.4	3.5	4.5	9.8
1998	27.7	8.1	4.4	–	7.0	31.5	6.8	4.3	10.3
1999	28.0	6.7	4.4	–	6.0	34.2	8.8	4.4	7.5
2000	31.2	7.4	3.6	–	9.0	31.2	5.5	5.7	6.5
2001	36.7	7.0	3.2	–	3.7	32.0	6.0	3.3	8.2
2002	28.9	7.6	3.4	1.0	4.6	29.8	9.0	4.6	11.0
2003	31.2	6.6	3.5	1.1	3.8	26.3	8.0	4.5	14.9
2004	34.1	6.0	3.6	1.2	4.3	28.2	7.8	3.1	11.6

Source: CNC

4.4. Evolution of Sources of Finance for Feature Films Involving German Producers and Supported by the FFA* (in %)

Year	Automatic public support (FFA)	Selective public support (FFA)	Public support from Länder	Public support from BKM	Other public support	TV-investment	Own & other investment (estimation)
1996	7.03	9.83	37.45	3.80	3.76	9.21	28.91
1997	10.38	6.78	27.31	3.76	0.94	10.45	40.37
1998	8.40	8.70	25.72	2.99	2.01	16.22	35.96
1999	7.12	8.50	32.16	3.03	3.49	11.55	34.15
2000	6.88	8.08	35.19	4.27	1.58	7.24	36.76
2001	4.03	4.68	21.32	1.66	1.19	5.78	61.35
2002	8.83	6.60	27.26	2.62	1.15	7.02	46.53
2003**	10.71	12.72	49.68	4.82	2.76	19.32	not available

Source: FFA

* Includes documentary features and feature animation. In the case of international co-productions, includes only the financing of the German share.

** For 2003 only, percentages are calculated on the basis of the total amount of public support and TV investment, excluding own and other investments.

With regard to the following table on the situation in Spain, it should be added that the national film funding institute (ICAA) receives no direct contributions from broadcasters.

4.5 Evolution of Financing Sources for Spanish Feature Films Supported by the ICAA (in %)

Year	Own investment	Public support (ICAA)	Other support	Pay-TV	Public TV	Private TV	MG distribution	Foreign sales	Other financial institutions	Video rights
1996	28.76	30.07	0.91	6.41	8.18	9.75	7.19	5.19	0.69	2.85
1997	25.49	32.36	0.36	4.93	6.71	12.53	7.49	7.10	0.82	2.24
1998	30.88	28.16	2.65	7.32	8.96	6.77	7.62	4.86	0.71	2.07
1999	23.20	28.16	2.41	11.35	7.64	6.45	9.29	6.14	2.04	1.63
2000	24.58	27.17	1.68	14.28	9.99	8.24	8.63	3.76	0.35	1.32
2001	23.75	22.77	2.24	17.77	9.19	8.62	7.42	6.53	0.07	1.64
2002	23.68	22.98	2.02	15.56	14.89	6.35	7.53	1.91	2.42	2.66
2003	26.88	23.95	2.11	11.91	16.16	4.45	5.62	6.05	0.78	2.09

Source: ICAA

5. Overview of Results

The economic data shows the importance of the television industry's support for the film industry. However, broadcasters in many countries are not obliged to invest in this way. Countries where this is the case include, in particular, Albania, the Flemish and German-speaking Communities of Belgium, Bulgaria, Iceland, Lithuania, Liechtenstein, Malta, Slovenia and Cyprus, countries where the film industry is small or relatively unimportant. However, Russia and Turkey, which have larger film industries, also have no investment obligations.

The situation in Luxemburg and Slovakia is unclear, since we were unable to obtain any information from these countries, in spite of our best efforts. However, Luxembourg has no significant film industry and is therefore unlikely to have any corresponding obligations in place.

In 25 of the countries covered by this study, however, broadcasters are obliged to invest in cinematographic film:

Country (ISO-Code)	Obligations of public service broadcasters			Obligations of private broadcasters		
	<i>legal</i>	<i>combination</i>	<i>voluntary</i>	<i>legal</i>	<i>combination</i>	<i>voluntary</i>
AT			X			
BE (Fr. Comm.)	X					
CH ¹⁾		X		X		
CZ ¹⁾	general					
DE	X (for WDR)	X			X	
DK	X					
EE			X			
ES	X			X		
FI	²⁾		X	²⁾		
FR	X			X		
GB	general		X			
GR	X			X ³⁾		
HR			X ⁴⁾			
HU	X			X		
IE			X			
IT	X			X		
IT	X			X		
LV ⁵⁾	general	X				
MK ⁵⁾	X					
NL	X		X			Planned
NO						X
PL ⁶⁾	X		<i>de facto</i>	X		<i>de facto</i>
PT	X		X	X		
RO ⁶⁾	X			X		
SE	general	X		general	X	

1) Legislative amendment under discussion. - 2) Payment to fund based on government's declaration of intent. - 3) Obligations not being met. - 4) To be signed at the end of 2005. - 5) Legal basis only in draft form. Unclear whether obligation is voluntary or legal. - 6) Legal basis established in 2005.

It is easy to see from the table that legal obligations are targeted much more at public service broadcasters. Voluntary obligations for private broadcasters are the least common.

Thanks to the rather approximate categorisation, the above table is meant to give a clear picture of current duties and obligations. However, in practice there are numerous nuances and variations which – if it were possible to summarise them – would produce a much more complex picture. It is particularly relevant to see how specific or general the wording of an obligation is, whether it is established in law or purely voluntary. The reader should therefore pay close attention to the individual national reports.

6. Influence of European Regulations?

Obligations to support cinematographic film production are based on national law. However, does that mean that European legislation is irrelevant?

It should be noted that both regulatory instruments that deal directly with broadcasters' activities, i.e., the European Convention on Transfrontier Television and the "Television without Frontiers" Directive, are concerned with transfrontier television programmes rather than cinematographic films (Art. 1 of the Convention and Preamble and Art. 1 (a) of the Directive). Of course, they do not overlook the fact that cinematographic films are also broadcast on television.

However, it is clear that both the Convention and the Directive remind broadcasters of their duty to promote European film production. The preambles (rec. 11 of the Convention and rec. 21 and 22 of the Directive) of both instruments expressly refer to this.

In addition, Art. 4 of the Directive obliges the Member States to ensure "that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time". Art. 10 of the Convention contains a similar rule, while Art. 10a adds the obligation for Member States to avoid programme services that endanger media pluralism.

The results of this study show that, in many countries, broadcasters, particularly public service broadcasters, are subject to a general obligation to support film production. On the one hand, this corresponds with rec. 45 of Directive 97/36,⁷ which states that "the objective of supporting audiovisual production in Europe can be pursued within the Member States in the framework of the organisation of their broadcasting services, inter alia, through the definition of a public interest mission for certain broadcasting organisations, including the obligation to contribute substantially to investment in European production." On the other hand, such an obligation also at least transposes into domestic law Art. 4 of the "Television without Frontiers" Directive and Articles 10 and 10a of the Convention. Many countries make this expressly clear.

However, the European provisions do *not* state that broadcasters must support cinematographic film. But neither do they exclude cinematographic film from the definition of European works that should be supported. Maybe this is why this whole area is often very vague, even when the European rules are transposed into domestic law. The question of which films are meant is relevant to rules that impose a general funding obligation as well as to those that put the flesh on the bones of this general obligation.

7) Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

7. Conclusions

Cinematographic film funding remains a highly complex and topical theme. The lack of common European standards in this area means that the legal framework is extremely diverse, since it is composed of different national laws. Although most of the countries studied in this report have rules on cinematographic film funding, it is a subject which will continue to occupy European legislators. Our study shows that both simple and complex support mechanisms are made up of numerous different components. However, it also addresses the economic aspects of film aid, which not only highlight the importance of funding mechanisms, but also impose certain limits on both states and broadcasters. When money is short, cinematographic film funding suffers.

Whether, how and how much broadcasters should contribute to cinematographic film funding is a crucial aspect of these funding mechanisms. The remit of public service broadcasters suggests that their support for culture should include film production aid. In future, the remit of public service television will therefore undoubtedly continue to play a key role in the establishment of legal obligations as well as the adoption of voluntary obligations. However, private broadcasters are also reminded of their duty to promote culture.

A state-imposed obligation may not be absolutely necessary to ensure that the television industry supports cinematographic film. Cinematographic film aid can be a central part of a broadcaster's business strategy. Such a conclusion can certainly be drawn from the voluntary obligations that some broadcasters, including private broadcasters, have either entered into already or plan to in the future. On the other hand, the examples of Spain and Greece show that it is not enough simply to impose an obligation if economic interests are an obstacle to film aid.

The practical legal structure of broadcasters' investment obligations must be adapted to the support mechanism used in the country concerned. Many countries base their systems on film funding institutes, which are often co-financed by broadcasters. The relationship between film funding institutes and the television industry is not just limited to financial support, but also often involves partnerships for the co-financing of film productions.

One slightly surprising finding from our analysis of the following reports concerns the two European regulatory instruments that govern broadcasting, i.e. the European Convention on Transfrontier Television and the "Television without Frontiers" Directive. Although they are both concerned with television programmes, they seem to suggest that domestic law should promote cinematographic film funding. This "long-distance impact" of the Convention and the Directive forms part of the general aim inherent in each instrument, i.e., the promotion of European audiovisual productions.

Firstly, many legislators take these objectives on board when transposing European provisions, but do not limit them to television programmes. Regardless of whether this is a deliberate ploy or not, the result is that the rules also apply to cinematographic films. Secondly, the quotas that are introduced to achieve these objectives form an additional incentive for European cinematographic films to be shown on television. With this in mind, legislators may consider it sensible to impose corresponding support obligations.

The proposal made within the context of the revision of the "Television without Frontiers" Directive, that non-linear audiovisual media services should also be obliged to promote European works, has recently caused quite a stir. Such a rule could perhaps have a similar effect to that which is clearly triggered by the current Directive's broad definition of what exactly should be promoted. In this connection, it is worth pointing out that, in some countries (see the reports on France and the Netherlands), cable and satellite operators are already obliged to fund film production.



Gerhard Schedl
Austrian Film Institute

1. Overview

At the time of the initial enactment of the *Filmförderungsgesetz* (Film Aid Act - FFG) (25 November 1980), the *Österreichischer Rundfunk* (Austrian Broadcasting Corporation - ORF) was the only television company in Austria. In the run-up to enactment, calls were made on several occasions for the ORF to be legally obliged to contribute capital to the Film Support Fund. However, the legislator thought it much more constructive to aim, via contractual agreements between the Film Aid Fund (the legal successor of which since 1993 is the Austrian Film Institute) and the ORF, at the possibility of co-funding initiated by the ORF. The result is what is referred to as the *Film/Fernseh-Abkommen* (Film/Television Agreement of 12 October 1981).

In the *Bundesgesetz über den Österreichischen Rundfunk*¹ (Federal Law on Austrian Broadcasting - ORF-G), section 4.1.6, it is established that the "Austrian Broadcasting Corporation shall, in regard to the programmes transmitted in accordance with section 3, ensure: [...] 6. that appropriate consideration and support are given to Austrian cultural and creative production".

2. Obligations of Public Service Broadcasters

2.1. Voluntary Obligations

In October 1981 the aforementioned Film/Television Agreement² was concluded between the Austrian Film Aid Fund (ÖFI) and the ORF, and was extended and amended in 1989, 1994 and 2002. The objective of the co-operation between the contracting parties to this agreement is to contribute to promoting exchange between film and television, in particular the production of Austrian films that fulfil the requirements of the Film Aid and Broadcasting Acts. At the same time, films that appear specific and typical for broadcasting on television but that are not appropriate for exploitation in cinemas do not qualify for co-funding under the Film/Television Agreement.

The agreement exclusively concerns Austrian films independently produced by Austrian film producers or joint Austrian-foreign productions, feature films and documentaries primarily intended for the cinema. Where film industry agreements ("film agreements") exist between Austria and the co-production country, these are to be respected to the letter.

1) See <http://publikumsrat.orf.at/orfgkons2002.pdf> (German version) or http://www.ris.bka.gv.at/erv/erv_1984_379.pdf (English version).

2) See http://www.filminstitut.at/downloads/11132290Film_TV_Abkommen_2002_2005.pdf

The film producer must be of Austrian nationality and be resident in Austria. If the film producer is a legal entity or a partnership under commercial law, its head office must be located in Austria or, if its head office is based in another member of the European Economic Area, it must have a branch or permanent establishment in Austria, and be responsible for the realisation of the film. Nationals of Member States of the European Economic Area are on an equal footing with Austrian citizens.

In order to achieve the objective of the agreement, the ORF provides capital on a yearly basis as part of its budget, subject to the approval of its Board of Trustees, as well as any possible funds made available by third party sources; at the present time (2005) this amounts to EUR 5,960,370 per year.³

2.2. The Return

The ORF is exclusively entitled to make use of films, co-financed by the Film/Television Agreement, as often as it desires on television throughout Austria, including South Tyrol, after its cinema showing has come to an end within the seven year licence period. Furthermore, the ORF enjoys, although not exclusively, the right to use excerpts from these films for promotional purposes in all current and future types of exploitation.

The Film Support Act, amended in 2004, requires that the producer should prove that in contracts with television broadcasters providing funding it has been agreed that the television rights fully revert to him after seven years at the latest. In individual cases the parties may agree that the exploitation contract provides for a full return of the television rights after a period of up to ten years, particularly where the producer has benefited from unusually large funding from the television broadcaster.

The producer and the ORF are entitled to the exploitation proceeds of films financed under the agreement, after production costs incurred by the producer have been paid (and a standard industry share of the profits has been paid) pro rata to their respective contributions to the production costs, with the broadcasting of such films by the ORF in Austria and South Tyrol being given due consideration in the agreement on the distribution of proceeds. The proceeds to which the ORF may be entitled from television and cinema exploitation are used to build up the yearly amount

At the end of each calendar year the Film Institute receives a listing of the share of the proceeds going to ORF for the exploitation of films financed under the agreement, as well as a schedule for their showing on television.

2.3. Procedural Rules

The decision concerning the allocation of funds is taken by a joint commission made up of six members, three of whom are from the Film Institute and three from the ORF. The commission makes decisions on the basis of a simple majority of the votes cast. Voting by proxy is admissible; abstentions are not. A tie means rejection.

Joint funding of a film project as defined by the Film/Television Agreement requires that the funds requested for the production of the film be jointly provided by the contractual partners, the Film Institute and the ORF, that the producer invest an amount, determined by the FFG, in the production costs of the project and that it be guaranteed that for films co-financed from capital of the Agreement, there exists "a period of at least 24 months between the cinema première in Austria and its showing on cable or satellite television or its commercial exploitation as a video, DVD or in any other form" (cinema run time). A reduction of this period to at least six months may be granted by the Film Institute for important reasons.

The producer of the film to be financed is entitled to apply for backing. The application for production funding must in particular include: the assent of the Film Institute for aid, the screenplay, a list of the staff and cast, a calculation of the probable total costs of the film, a budget and production schedule, and in the case of an Austrian-foreign production, the co-production contract or at least a draft thereof as well as an exploitation plan. Documentary proof should also be included in the application documents that the conditions for obtaining an Austrian certificate of origin have been met.

3) For comparisons see <http://www.filminstitut.at/engine.php?actP=204&article=805&sub=true>

Financial backing granted goes in its entirety to the producer; the capital is subject to administration by the ORF.

Since 1989 up to 10% of the annual funding from the Agreement has been devoted to the specific promotion of films by up-and-coming directors, innovative films, short films and documentaries. The joint committee also decides upon co-financing.

Co-financing of such a film requires that the financial means required for production be jointly provided by the ORF and the Film Institute or another film-supporting institution. All other financial conditions, such as ORF exploitation rights and share of proceeds, remain the same.

3. Obligations of Private Broadcasters

There has not, as yet, been any legal obligation for private television companies to support Austrian films financially. No voluntary agreements have so far been concluded.

4. Useful Documentation

In 1980 the ORF was the only television company in Austria. Consequently, the issue of rights reversion only arose in 2001 after the entry into force of the Private Television Act. With the amendment introducing the FFG⁴ the deadlines for the reversion of rights for television exploitation were determined on the basis of European practices. A demand from film producers was accordingly met, as they wished to strengthen their position with respect to television broadcasters and make use of further exploitation possibilities at the earliest opportunity. With the approval of the Film Institute, in special circumstances longer licence periods may be agreed upon contractually.

The production value of the Austrian film industry comes on an annual basis to around EUR 220 million (2004). Commissioned films, in particular those made for television, are still the most important field of activity. Independently produced films (as a rule made as "cinema films") account for around 15% of annual domestic production.⁵

The Austrian film industry boasts a large number of creative employees and qualified producers. Every year the ORF commissions around 80 producers to produce films. In 2004 the value of films commissioned in financial terms came to just under EUR 100 million. In the last few years a hybrid form of commissioned and independent productions has emerged. Film producers receive only partial financing from television companies ("production cost contribution" and rights compensation for their own needs), and if they want to implement a project, they must finance the remainder themselves. While with fully-commissioned films all exploitation rights are to be relinquished to the commissioner when production comes to an end, with "hybrid productions" all exploitation rights remain with the producer with the exception of those which were relinquished during the course of funding.⁶

To take an example: in 2001 the Austrian film industry, with 1,900 companies, achieved a gross production value of EUR 790 million and accordingly amassed a gross worth value of EUR 415 million. 6,250 jobs were thereby created in Full Time Equivalents (FTEs).

A few production houses are therefore in a position, on account of their size, to produce feature films, television films or documentaries suitable for exploitation in cinemas or on television. The same is true of commissioned productions for television. 2 % of companies make two-thirds of their turnover with independent productions and 8% of companies achieve 80% of their turnover with commissioned TV films.

In 2001 a total of 16 supported films were produced (including 6 co-productions); in 2002 there were 11 (including 4 co-productions) and in 2003 there were 15 (2 co-productions).

4) *Filmförderungsgesetz* (Film Aid Act) of 25 November 1980, BGBl. Nr. 557/1980 extended and amended by the re-enactments of 1 October 1987, BGBl. Nr. 517/1987, of 16 March 1993, BGBl. Nr. 187/1993 of 19 August 1994, BGBl. Nr. 646/994, of 30 January 1998, BGBl. Nr. 34/1998 of 30 December 2004, BGBl. I Nr. 170/2004. Available at: <http://www.filminstitut.at/downloads/11055270FFG2005.pdf>

5) Production statistics for the years 1992-2003, available at: http://www.faf0.at/download/Statistik/Statistik_92-03.pdf (German version) or <http://www.faf0.at/download/Statistik/StatistikEnglisch92-03.pdf> (English version).

6) See the business report of the ORF 2004, available at: http://kundendienst.orf.at/publikationen/gb_2004.pdf

Independent production of feature films in Austria, as in almost all European countries, is inconceivable without subsidy. Assistance (for production) from the public authorities (the federal government, regions and municipalities) and co-financing through the ORF (Film/Television-Agreement) increased from around EUR 23 million in 2001 to more than EUR 27 million in 2003. With the setting up of the Film Support Fund in 2004, the amount of money available rose by a further EUR 7.5 million to around EUR 35 million. Independent productions account for around a sixth of the gross production value of the film industry; television-commissioned productions and other commissioned productions represent around a third respectively.

The Austrian broadcasting market is shaped and influenced by radio and television programmes of the public service broadcaster ORF as well as by a range of private broadcasters. Alongside these channels transmitted over terrestrial broadcasting networks, the reception of foreign television programmes via satellite or through cable networks is to be considered as part of the broadcasting market. Finally, many TV channels are being supplied on larger and smaller cable networks (most with limited news coverage). Professional surveys based on market research methods (viewer and audience figures) are decisive in assessing the significance of a radio or TV channel in terms of its position on the political spectrum or in terms of advertising.⁷

7) See information on the Austrian broadcasting market, available at:
http://www.rtr.at/web.nsf/deutsch/Rundfunk_Markt_Markinfos



BELGIUM
FLEMISH COMMUNITY

Koen Desmaretz

Ministry of Flanders - Media and Film Division

In the Flemish Community of Belgium there are no legal as well as voluntary obligations of private as well as public service broadcasters to invest in cinematographic film.

Nevertheless the management contract for the period 2002 – 2006 signed by the Flemish government and the public broadcaster *Vlaamse Radio- en Televisieomroep* (Flemish Radio and Television Company - VRT) devotes attention to Flemish independent audiovisual productions. By this management contract the VRT commits itself to a continuing participation in Flemish independent audiovisual productions (e.g. screen-play, television drama and documentaries). In this manner the VRT will contribute to the development of the audiovisual sector in Flanders and for that it will set up a procedure to guarantee an efficient and objective selection of the projects, to manage the co-productions and to optimize the role of the public broadcaster in that field. However, the envisaged co-productions are not always cinematographic films but television productions.

The *Vlaams Audiovisueel Fonds* (Flemish Audiovisual Fund - VAF) also pays attention to television broadcasters in its management contract with the Flemish government. The VAF is the agency for public funding for film and audiovisual production in the Flemish Community of Belgium. The management contract provides each year EUR 2,500,000 for selected co-productions between a television broadcaster (private or public service) and an independent production company. Although screening in movie theatres remains possible, the envisaged productions are television productions in the first place.

This funding mechanism for film and audiovisual works does not include any obligations of broadcasters to invest in cinematographic film and the applicant for the support is the independent production company and not the broadcaster.

BE BELGIUM

FRENCH-SPEAKING COMMUNITY

Sylvie di Meo
Ministry of the French-speaking Community

1. Introduction

Almost twenty years ago the French-speaking Community of Belgium instigated and has since developed a policy aimed at getting the television channels involved in the development of independent audiovisual creation and production.

The purpose of this policy is to revitalise and foster the close link between audiovisual and cinematographic creation and the television companies – television needs new programmes, and production needs partners and broadcasting time. The recent Broadcasting Decree takes up this process, taking into account the overall evolution of the audiovisual scene.

2. Obligations of Public Service and Private Broadcasters

2.1. The Source

The Broadcasting Decree of 27 February 2003¹ introduced obligations concerning the contribution that television broadcasting services editors must make to the production of audiovisual works in the French-speaking Community. It also lays down obligations concerning the contribution that television broadcasting service distributors must make to the production of audiovisual works in the French-speaking Community.

2.2. The Obligation

2.2.1. Editors of Television Broadcasting Services

Every services editor² must devote a percentage of its turnover to the production of audiovisual works. This must be done in one of three ways:

- co-production with at least one independent producer from the French-speaking Community who acts as executive producer for the co-production;
- pre-purchase of broadcasting rights in respect of audiovisual works not yet in existence, to be co-produced by at least one independent producer from the French-speaking Community who acts as executive producer for the co-production;
- payment to the Cinema and Audiovisual Centre of the French-speaking Community of Belgium. The Government decides on how this contribution is to be paid.

1) *Décret de la Communauté française sur la radiodiffusion du 27 février 2003* (Broadcasting Decree in respect of the French-speaking Community of 27 February 2003), available at: http://www.juridat.be/cgi_loi/loi_F.pl?cn=2003022760

2) The Decree defines the term "services editor" as "the legal entity that assumes editorial responsibility for one or more broadcasting services with a view to broadcasting them or having them broadcast".

The methods to be adopted for productions and pre-purchases are set out in agreements between the services editor, the Government and the professional associations representing independent producers in the French-speaking Community. The contribution to the co-production of audiovisual works is calculated pro rata on the basis of the services editor's share in the total cost of the co-production.

The amount of the contribution paid by the services editor must represent at least:

- 1.4% of its turnover if this is between EUR 0 and 5 million;
- 1.6% of its turnover if this is between EUR 5 and 10 million;
- 1.8% of its turnover if this is between EUR 10 and 15 million;
- 2% of its turnover if this is between EUR 15 and 20 million;
- 2.2% of its turnover if this is greater than EUR 20 million.

These amounts are adjusted annually on the basis of the ordinary consumer price index as defined by law.

Turnover includes the amount of gross income, without deducting commission or super-commission payments, invoiced by the management of the services editor or else by the actual services editor for the inclusion of national and regional advertisements and for sponsorship in the editor's services, and all other income generated by the editor making the service available against payment. Exceptionally, the turnover of tele-purchasing services editors is deemed to be the entire sales turnover achieved by the tele-purchasing service, excluding taxes and returns, as indicated in the annual accounts approved at the company's AGM. Where the services editor itself acts as distributor (see below), the figure for turnover includes the revenue generated by that activity.

The services editor must send conclusive documents allowing determination of the figure for its gross turnover to the general secretariat of the Ministry for the French-speaking Community and to the Authorisation and Supervision Board each year.

In addition, services editors with a must-carry obligation attached to a service must, in addition to the proportion already mentioned, devote at least 24% of their turnover to production for their own use, the partial or total order or purchase of programmes, outside services, pre-purchasing and co-production. In calculating the 24% minimum, the percentage of turnover devoted to co-production or pre-purchases counts at eight times its nominal value.

The agreement with the services editor who has a must-carry obligation lays down the methods for performing the obligations incurred. The agreement may also provide for obligations in addition to those already mentioned, depending on the format and nature of the service for which the editor claims a must-carry obligation.

2.2.2. Distributors of Television Broadcasting Services

The distributors of television broadcasting services³ also have to contribute to the production of audiovisual works. This may be done in the same ways as those open to services editors, ie:

- co-production with at least one independent producer from the French-speaking Community who acts as executive producer for the co-production;
- pre-purchase of broadcasting rights in respect of audiovisual works not yet in existence, to be co-produced by at least one independent producer from the French-speaking Community who acts as executive producer for the co-production;
- payment to the Cinema and Audiovisual Centre of the French-speaking Community of Belgium. The Government decides on how this contribution is to be paid.

The methods for making this contribution in the form of a co-production or pre-purchase are defined in an agreement between the services distributor, the Government and the professional organisations representing independent producers in the French-speaking Community. The services

3) The Decree defines the term "services distributor" as "any legal entity making available to the public one or more broadcasting services in any way whatsoever, and more particularly by terrestrial broadcasting, by satellite or through a tele-distribution network. The offer of services may include services edited by the entity itself and services edited by third parties with which it has established a contractual relationship", and "any legal entity constituting an offer of services by establishing a contractual relationship with other distributors".

distributor pays its contribution to the Cinema and Audiovisual Centre in two six-monthly instalments each year, at the end of January and July. At the time of payment, the services distributor sends a return to the Cinema and Audiovisual Centre and to the CSA in which it indicates the number of its subscribers on 30 September of the previous year.

The contribution of the services distributor is fixed at EUR 2 per year per subscriber.⁴ The contribution to the co-production of audiovisual works is calculated pro rata on the basis of the services editor's share in the total cost of the co-production.

Dispensation from payment of the contribution is allowed to:

1. services editors acting as distributors in order to offer the services authorised under the Decree, the exemption only applying to the services concerned;
2. services distributors offering additional services although they already contribute to the production of audiovisual works on the basis of the number of subscribers to their basic offer;⁵
3. services distributors who, in association with a distributor editor as referred to in 1., propose an offer of services although they already contribute to the production of audiovisual works on the basis of the number of subscribers to their basic offer.

3. Market Information

The overall contribution to production made by services editors amounted to some EUR 12,160,000 in 2004; more than a third of this amount was devoted to cinematographic production.

4) This amount is adjusted every two years (since 1 January 2005) on the basis of the health index (*indice-santé*) the figure for the previous September is taken into consideration.

5) The Decree defines the term "basic offer" as "those broadcasting services offered to the subscriber as a package in return for payment of a single subscription amount".

BG BULGARIA

Antoaneta S. Arsova
Association of Bulgarian Broadcasters

1. Overview

In Bulgaria film funding is mainly in the hands of the Bulgarian National Film Centre (NFC). The Bulgarian National Film Centre (NFC), a State institution that operated under the auspices of the Ministry of Culture, distributed and managed state subsidies for film production. With the adoption of the new Film Industry Act¹ in November 2003 it was transformed into the Executive Agency NFC.

Concerning broadcasters, there is only one provision (see below) regulating the activity of broadcasters in respect of direct funding concerning films made for television.

In general the State support to local cinematographic production in Bulgaria is regulated by the Law on Film Industry.

2. Obligations of Public Service Broadcasters

According to an explicit provision in the Radio and Television Act² (Art. 71) the Bulgarian National Television supports the production and broadcasting of Bulgarian audio and audiovisual production. It has to reserve for new productions of Bulgarian feature television works amounting to no less than 10 per cent of the subsidy from the state budget and the Radio and Television Fund (Art. 71. para. 2).

The subsidies for the national public service broadcaster are approved by the Parliament as part of the Law on the State Budget on an annual basis. The procedure under the Public Procurement Act includes the organization of a public tender for audiovisual projects. In this procedure is chosen which project will be supported based on own criteria that are developed in-house based on priorities and specific criteria that might largely differ from one year to another.

In addition, the broadcasting license of the BNT directly refers to the abovementioned Article 71 of the Radio and Television Act, reemphasizing the obligation of the licensed broadcaster to encourage the national production of films made for television by investing the dedicated amount exclusively in local audiovisual production.

Usually the broadcasters receive the exclusive right to broadcast the audiovisual product that they have funded.

1) Act of 19 November 2003 concerning the Film Industry, D.V. no. 105 dated 2 December 2003, page 2.

2) Act of 24 November 1998 (State Gazette No. 138/1998); last amended by SG 115/2004 (in force since 1 January 2005).

CH SWITZERLAND

Patrice Aubry
Télévision Suisse Romande

1. Overview

The activities of television broadcasters in Switzerland are governed by the Federal Radio and Television Act of 21 June 1991 ("LRTV")¹ and its implementing order of 6 October 1997 ("ORTV").² This legislation requires both the Société Suisse de Radiodiffusion et Télévision (SRG SSR idée suisse³ – "SRG SSR") and private television companies to support Swiss cinematographic production.⁴ These obligations are also set out in the concessions granted by the Federal Council to television broadcasters.

SRG SSR supports the production of cinematographic films through the "Audiovisual Pact". Under this agreement, SRG SSR directly finances the production of fiction films, documentaries, short films and animated films. Private broadcasters may be required to provide direct support in favour of cinematographic production or pay a compensatory tax used to promote the Swiss cinema industry.

2. Obligations of Public Service Broadcasters

2.1. The Source

In compliance with Article 26(3) of the LRTV, SRG SSR is required to support Swiss cinematographic production. In addition, Article 3(2)b of the concession of 18 November 1992⁵ provides that SRG SSR must encourage artistic creativity, and more particularly the Swiss cinema industry. Article 3(3) of the concession states that SRG SSR is to provide its services more particularly by means of close collaboration with the cinematographic sector and instructions given to the audiovisual industry.

Specifically, SRG SSR carries out its obligations to the Swiss cinema industry through the Audiovisual Pact. This was first concluded in 1996 and was renewed on 8 August 2005 for a further three years (2006 to 2008). It is an agreement between SRG SSR and six Swiss cinematographic and audiovisual associations. The Pact's annual budget, financed entirely by SRG SSR, has been increased regularly, rising from CHF 11.5 million in 1996 to CHF 19.3 million in 2006.

One of the main aims of the Audiovisual Pact is to support diverse, independent audiovisual production, on the basis of solid, professional structures. The Pact is also intended to improve the

1) <http://www.admin.ch/ch/f/rs/7/784.40.fr.pdf>

2) <http://www.admin.ch/ch/f/rs/7/784.401.fr.pdf>

3) SRG SSR is a public-service undertaking broadcasting radio and television programmes in the four national languages (German, French, Italian and Romansch). The TV programmes are broadcast by three undertakings – Schweizer Fernsehen (SF-DRS), Télévision Suisse Romande (TSR), and Radiotelevisione Svizzera di Lingua Italiana (TSI).

4) See more particularly Article 3(1)e of the LRTV.

5) http://www.srg.ch/fr/legal_guidelines/fr_konzession_srg.html

possibilities of self-financing open to independent producers and to enable them to gain access to Swiss and European support funds more easily.

The relations between SRG SSR and the independent producers are governed by co-production contracts covering cinema or television films. The term "independent producer" covers any company which has its registered office in Switzerland, is not owned by a broadcaster, and whose object is the production of audiovisual works. Natural persons may also be recognised as producers.

The Audiovisual Pact also provides for a mechanism for promoting the broadcasting on SRG SSR's channels of audiovisual productions co-produced under the agreement ("*Succès passage antenne*" – successful broadcast). The independent producers must reinvest the bonuses they receive from SRG SSR in the production or development of new cinematographic or television works. Thus the "successful broadcast" bonus contributes to the promotion of production activities.

2.2. The Contribution Made by SRG SSR

Under the Audiovisual Pact for 2006 to 2008, SRG SSR undertakes to invest an annual sum of CHF 7.8 million in favour of Swiss cinematographic production. A further sum of CHF 3.3 million is earmarked for granting "successful broadcast" bonuses (this amount could be increased to CHF 3.8 million from 2007 onwards). The remainder of the Pact's annual budget is devoted to the production of television films (CHF 7.9 million) and animated films (CHF 300,000). The explanations given below only refer to the rules governing cinema films; nevertheless, most of these provisions also apply to television films.

SRG SSR's contribution is divided between a contribution to co-productions (co-production share) and the pre-purchase of broadcasting rights (broadcasting share). The co-production contribution theoretically represents 60% of the total production budget, while pre-purchasing represents 40%. For a full-length film, the amount paid for the pre-purchase of rights may not in theory exceed CHF 80,000. In general, SRG SSR's investment takes the form of a cash payment, but it may also involve a contribution in kind (in which case SRG SSR provides the use of technical equipment or artistic or technical staff for the production of the film).

The bonuses paid to producers under the "successful broadcast" scheme are calculated according to a system of points that takes into account the length of the work, the genre of the production, the time of broadcasting, and the channel concerned. The bonuses are also determined on the basis of a coefficient that varies according to whether the director is of Swiss or other nationality and the nature of the production (Swiss production, co-production with a Swiss majority or a Swiss executive producer, or co-production with a Swiss minority or financing). Theoretically, the bonuses amount to at least CHF 5,000 and are paid within three years of the end of the year in which the work was distributed. The amounts not taken up within this period are credited to the producer's bonus account.

2.3. SRG SSR's Rights and the Obligations Incumbent on Producers

The responsibility for actually making a film co-produced under the Audiovisual Pact lies with the independent producer, who is therefore responsible for ensuring that the work is completed.

SRG SSR acquires the rights for broadcasting the film on television in Switzerland, generally for an unlimited number of showings over a period of fifteen years. These rights also include putting the film on the Internet for video on demand. At the end of the fifteen-year period, SRG SSR is entitled to an option allowing it to extend its benefit of these rights under market conditions. Television rights are made over by the producer and are exclusive until the work is broadcast on one of SRG SSR's channels, although this period may not exceed one year after the end of the period during which broadcasting is not permitted.⁶ During the exclusive period, no other television channel in Switzerland or in another country broadcasting or re-broadcasting in Switzerland in one of the Swiss national languages or in English is allowed to show the film in question.

As a rule, exploitation of the work is in the hands of the producer, who may therefore sell the film to other television channels or market it on DVD worldwide. SRG SSR nevertheless has the benefit of a right of first refusal if the producer wishes to make use of the work in Switzerland or entrust its

6) In order to abide by the system of "exploitation windows" (or serial exploitation), the period during which a film may not be shown on television is theoretically twelve months from the date of its first showing in cinema theatres.

exploitation in other countries to a sales agent. If SRG SSR takes up this option, a separate contract is drawn up between SRG SSR and the producer in order to lay down the conditions for exploiting the work.

SRG SSR receives a share of the net revenue from any kind of exploitation of the work anywhere in the world. This is calculated on the basis of its contribution to the budget for the film's production. Profits generated by exploitation of the work are nevertheless earmarked as a priority for covering the funds invested by the actual producer; SRG SSR therefore does not receive a share of revenue until the producer has recovered his contribution to the co-production. If the producer exploits the work directly, he may deduct a 30% sales commission from the figure for gross revenue; no other expenses may be deducted.

SRG SSR remains a co-producer of the work and a co-owner of the negative or master for an unlimited period of time. Furthermore, if the producer stops working (in the event of bankruptcy or the undertaking being sold, for example) or intends to make the film over to a third party, SRG SSR has a pre-emptive right in respect of the work.

Lastly, SRG SSR must be cited in the film's credits, on promotional and advertising material, and at press conferences and showings.

2.4. Rules of Procedure

The Audiovisual Pact requires the producer to submit the screenplay, the shooting plan, the schedule, proof of insurance cover, a list of the main actors and a breakdown of the production team to SRG SSR for approval before the film is shot. SRG SSR also has to approve the production budget and financing schedule. Furthermore, the producer is required to take out insurance to cover the negative of the film, civil liability and, in theory, loss of earnings. SRG SSR may also demand bank guarantees.

SRG SSR checks the artistic and technical quality of the work and makes sure that its content complies with statutory provisions. SRG SSR may refuse the film if it is not of satisfactory quality, if the distribution medium delivered does not correspond to the technical specifications, or if the work is substantially different from the contractual provisions. In theory, the film is accepted in two stages – before the final sound mix, and after delivery of the finished product.

The producer is required to send SRG SSR an annual statement of the profits generated by exploitation of the work. SRG SSR may also demand a detailed check of the statements and of the production's accounts and supporting documents.

Public relations activities (press conferences, showings, advertising campaigns, etc) are carried out by mutual agreement between the producer and SRG SSR. The producer decides about presenting the film in competitions and festivals. SRG SSR may do the same for television festivals and competitions. Prizes and awards won by the work belong to the producer.

Lastly, the "successful broadcast" bonus is paid to the producer after signature of a contract for a new audiovisual production for the cinema or television. The producer must propose that SRG SSR co-produce the film in question. Statements of bonuses are drawn up annually.

3. Obligations of Private Broadcasters

3.1. The Source

The obligations incumbent on private broadcasters in respect of support for Swiss cinematographic production are the result of Article 31(2) of the LRTV. These rules were supplemented by the entry into force on 1 August 2002 of the new Cinema Act (LCin)⁷. According to Article 31(2)e of the LRTV, the concession may require private broadcasters to pay a tax aimed at promoting the cinema industry. This may, however, only be required of those broadcasters operating nationally or covering an entire language region, which means that television companies with an exclusively local audience are not

⁷ *Loi fédérale du 14 décembre 2001 sur la culture et la production cinématographiques* (Federal Act of 14 December 2001 on cinematographic culture and production), available at: <http://www.admin.ch/ch/f/rs/4/443.1.fr.pdf>

included. The tax is in fact an alternative; it is only demanded in place of obligations that may be imposed by the concessions on private broadcasters as regards quotas for both broadcasting (Article 31(2)c of the LRTV) and outsourcing production (Article 31(2)d of the LRTV).

Some private-sector broadcasters are not liable for any specific obligation in respect of support for cinematographic production. These are mainly broadcasters not primarily involved in screening films.

3.2. The Obligation

As a general rule, the instructions given to private broadcasters include an obligation to promote the Swiss cinema industry. Certain concessions⁸ allow the broadcaster to choose between a direct investment in favour of cinematographic production and payment of a compensatory tax to the Federal Office for Culture (OFC).⁹ In practice, the minimum amount that the television company has to devote to independent production varies between 2%¹⁰ and 4%¹¹ of the broadcaster's gross revenue.

If a broadcaster chooses to make a direct investment in the production of Swiss films, this may take the form of an order, a co-production or the acquisition of broadcasting rights for films or other audiovisual works. If the investments in favour of independent production are lower than the amount required by the concession, the broadcaster must pay the difference to the OFC in compensation.

3.3. Procedural Rules

According to Article 20(b) of the ORTV, the tax intended for the promotion of the cinema industry must be paid to the OFC. The amount raised by the tax is allocated to encouragement for the cinema industry (Article 15(2) of the LCin). To achieve this, each year the OFC shares out the available financial resources among the various areas for encouragement provided for in the Cinema Act (cinematographic creation and culture, diversity and quality of the cinematographic works on offer, and training). For each of these areas the OFC determines the maximum amounts that may be allocated to the projects supported (Article 15(3) of the LCin).

Some concessions require the broadcaster to conclude a framework agreement with the Swiss cinematographic industry in order to determine the method for their collaboration.¹² These agreements, which must be approved by the appropriate authority, are in practice concluded with CinéSuisse, the umbrella organisation for the cinema and audiovisual sector.

Lastly, the broadcasters are required to send the Federal Office for Communications (OFCOM)¹³ an annual report on their collaboration with the Swiss cinematographic industry.

4. Revision of the Federal Radio and Television Act

The Federal Radio and Television Act is currently being revised. The new legislation should come into force in 2007.

Article 7(3) of the draft of the new legislation repeats the substance of the solution adopted in the present Article 31(2)e of the LRTV. The proposed provision sets the figure of 4% as the proportion of gross revenue that private broadcasters of programmes with national or language-region coverage must invest in the acquisition, order or co-production of Swiss films. If the amount invested is less than the minimum laid down, a compensatory tax must be paid to the OFC. Unlike the present arrangements, the new Article 7(3) requires private broadcasters to support the Swiss cinema industry regardless of the other obligations that may be imposed on them in terms of quotas for both broadcasting and outsourcing production.

8) See the concessions for U1 of 1 November 2003, available at: <http://www.admin.ch/ch/f/ff/2004/213.pdf>, Teleclub of 5 April 1995, available on the Federal Administration's Internet site, at www.admin.ch and Cablecom Digital Cinema of 26 June 2002, available at: <http://www.admin.ch/ch/f/ff/2003/139.pdf>

9) OFC is the competent authority for promotion of the cinema industry.

10) Concessions for Sat.1 Schweiz of 22 June 1998, available on the Federal Administration's Internet site, at www.admin.ch, and U1.

11) Teleclub and Cablecom Digital Cinema concessions.

12) See the Star TV concessions of 22 June 1998, available on the Federal Administration's Internet site, at www.admin.ch, Sat.1 Schweiz and Teleclub.

13) OFCOM is the authority responsible for regulating the radio, television and telecom sectors.

As regards SRG SSR, Article 26(3)b of the draft of the new legislation requires it to contribute to the promotion of the Swiss cinema industry. The ways in which this support is to be provided will be laid down in the concession (Article 27(3)c of the draft of the new legislation). This provision sanctions the principle of subsidiarity, according to which the Federal Council only intervenes if SRG SSR and the cinematographic sector are unable to agree on how their collaboration is to function. Thus if no satisfactory solution is reached in the context of this self-regulation, the Federal Council may lay down general conditions and, as appropriate, impose quotas.¹⁴

14) See draft revision of the LRTV available at: <http://www.bakom.ch/dokumentation/gesetzgebung/00512/01031/index.html?lang=en>; message from the Federal Council on 18 December 2002 on the revision of the LRTV, at: <http://www.admin.ch/ch/f/ff/2003/1425.pdf> (p.1518 et seq.).

CZECH REPUBLIC

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1. Overview of State Support

In the Czech Republic, the State Fund for the Support and Development of Czech Cinematography (Fund), is the only instrument for systematic public support of filmmaking.

The total income of the Fund in 2004 fell to less than CZK 62 million. The main income sources were as usual the revenues from the commercial use of older Czech films, produced between 1965 and 1990. These revenues together with the income from the National Film Archives and collecting societies, plus shares in the revenues of previously supported works, amounted to more than CZK 39 million. The Fund's income from the cinema ticket surcharge of CZK 1 rose to CZK 13.1 million, repaid loans brought in CZK 3 million, interest earned, financial penalties, application fees, returned financial support and other income totalled approximately CZK 7 million. The Fund's total expenditure was at CZK 71.6 million, of which nearly CZK 66 million was spent on non-investment financial support, CZK 2.2 million on investment subsidies and CZK 3.4 million on direct costs connected with the operation of the Board, various services and fees.

In 2004, the Board considered 166 projects and decided to support 97 of them to a total of CZK 68.5 million. It also issued eighteen certificates to applicants who were not granted any support. Applicants receiving certificates are exempt from the application fees for the following year. A total sum of CZK 68,2 million was spent on the support of projects in the field of cinematography. CZK 500,000 was earmarked to support feature film screenplays.

As Czech Television is forced to cut spending and reduce its participation in the making of domestic feature, documentary and animated films due the fact that the licence fees had not been increased for 8 years, and as the funding provided by the Fund does not increase, the situation of filmmakers is beginning to be unsustainable. This is true especially if we look at other European countries with comparable audiovisual markets. The filmmakers therefore demand more and more emphatically that the State pay more attention to their needs and provide more substantial support.

A debate over amending the Cinematography Fund Act¹ in order to improve the situation – and substantially increase the income of the Fund – has been started. The amendment currently being debated by the Chamber of Deputies of the Czech Parliament would enhance the Fund's income by a 3 % levy on the advertising income of TV companies and on the income from the hire and sale of videocassettes and DVDs. It would also increase to 3 % the surcharge included in the price of every cinema ticket. Such measures could secure the Fund perhaps to even perhaps five times the present income. This debate may be expected to be a lengthy one, and the outcome uncertain, especially because distributors and cinema operators joined the public service and commercial television in opposing the draft amendment.

1) Act No. 241/1992 Coll. on the Cinematography Fund.

The development of feature films, and in particular documentaries and animated films, should be stimulated by the raising of the TV licence fee, proposed in an amendment to Act No. 252/1994 Coll., which would enable Czech Television to invest more money in domestic film (audiovisual) production.

Compared to other European countries the system of indirect film funding, such as the automatic support for the distribution of tax benefits, does not exist in the Czech Republic.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

2.1.1. The Source

Currently there is only one legal obligation for the Public Service Broadcaster Czech TV. Act No. 483/1991 Coll. on Czech Television² states that Czech Television has an obligation to support Czech film production.

A new amended version of the Act will be available soon. This Act states the general obligation of Czech Television to support Czech film production.

Moreover, Article 43 of the Broadcasting Act,³ which transposes into National law the Directive "Television Without Frontiers", states that "(1) The television broadcaster shall, where practicable, reserve at least 10% of the total broadcasting time of each channel to European works produced by independent producers. Paragraph 2 of the same article further adds that the said obligation "shall be deemed to be met if the television broadcaster incurs at least 10% of its programming budget in the production or purchase of European works created by independent producers".

It must be noted, however, that Article 43 does not specifically refer to cinematographic works but to European works in general.

Article 44 adds another obligation: "(1) Where practicable, the television broadcaster shall ensure that the broadcasting of the works first made public less than 5 years ago represents at least 10% of the broadcasting time reserved for the broadcasting of European works produced by independent producers. (2) The television broadcaster which meets the obligations in respect of support for European independent production in accordance with the provisions of Article 43(2) by expending at least 10% of its programming budget in the production and purchase of European works created by independent producers shall spend at least 10% of such an amount on works which were first made public 5 years ago or later".

Again, the law leaves it open whether the support is used for the production of cinematographic works or television programmes.

The obligations referred to in Article 43 and 44 shall not apply to the broadcasters of:

- a local channel not involved in a nationwide television network,
- programmes broadcast exclusively in a language other than Czech or in a language other than any of the languages of the Member States of the European Communities; however, if only a substantial part of the programme is broadcast in a language other than Czech or in a language other than any of the languages of the Member States of the European Communities, then the non-applicability of the duties of the television broadcaster laid down in Articles 43 to 44 shall only relate to such a substantial part.

These obligations do not apply either to television broadcasting intended exclusively for reception outside the Czech Republic and outside the territory of the Member States of the European Communities, which television broadcasting is not directly or indirectly received by the public in the Czech Republic or in any of the Member States of the European Communities.

2) *Zákon č. 483-1991 Sb., o České televizi, ve znění pozdějších předpisů* (Act No. 483/1991 Coll. on Czech Television), available at: <http://portal.gov.cz/zakon/483/1991>

3) *Zákon č. 231/2001 Sb., o provozování rozhlasového a televizního vysílání* (Broadcasting Act 231/2001), 17 May 2001, available in English at: http://www.rrtv.cz/zakony_en/broadcasting_act2001.html

The Broadcasting Council shall supervise the discharge of the duties as referred to in Articles 43 to 44 hereof. For each period of such supervision, the television broadcaster shall submit to the Council detailed information on the fulfilment of its obligations.

2.1.2. *The Return*

In case of co-production broadcasters will have the following return for their support:

- Right of transmission for 10, 7 years (it depends on the actual co-production contract: in the past the broadcaster kept the right of transmission for an unlimited period);
- Right to share of the profits of the production.

3. Obligations of Private Broadcasters

There is no legal or voluntary obligation for private broadcasters to invest in cinematographic works. The obligations included in Arts. 43-44 of the Broadcasting Act (see *supra*) apply also to private broadcasters (however, these obligations refer to European works as such and not specifically to cinematographic works).

4. Related Market Information

Although the support of Czech film production as one of the key components of national culture is a priority for the government, the fact cannot be ignored that, in terms of financial turnover, Czech film production represents only a minority (hardly 5 %) share of the domestic film industry. The majority share includes services for foreign film and television producers and the production of commercials. Even this prosperous branch, however, has recently had to face competition from countries with lower production costs, and requires tax reductions and other aid from the government.

Compared to 2003, State financial support for cinematography remained almost unchanged, both as regards amount and structure. The largest share, CZK 62,800,000 granted by means of amendments to the State budget, again went to film festivals.

From the reserve funds of the Ministry of Culture programme Cultural Activities the Ministry granted support to eight more projects, totalling CZK 2,953,000.

The State also contributes to the budget of the National Film Archives, which has increased, though not substantially, to CZK 25.6 million. It is a question whether the revenues from commercial use of older Czech films should also be considered as State support, these revenues being still the main source of income of the Cinematography Fund (approximately CZK 38 million). The films in question had been produced in the framework of a nationalized, State-owned cinematography, i.e. using government money. Even without this sum, the State support for the audiovisual sector in 2004 amounted to more than CZK 123.5 million; with it the figure was CZK 161.5 million.

DE GERMANY

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1. Overview

Various models of film support are to be found in Germany. The obligations of broadcasters relate, however, only to direct aid via co-productions and indirect aid through payments into funds.

Only public service broadcasters have committed to direct film aid in the shape of co-productions. Indirect aid via payments into funds or the provision of media services is available from both public service and private broadcasters.

Broadcaster support has considerable significance in German film production, often contributing up to 30% of production costs. Most of it goes into regional film aid (film funds set up by the regions that are partly managed by private agencies). But even Federal film aid from the Film Support Institute (FFA) is not insignificant.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

2.1.1. Federal Film Aid

The public service broadcasters are not in principle legally bound to invest in Federal film aid. While Section 67.1 of the Film Support Act (hereinafter 'FFG')¹ states that contributions and grants are to be agreed between the public service operators and the FFA, no real legal obligation is thereby established. The only requirement is that there should be some agreement, the content of which is not further specified. As a result of this legal requirement, the broadcasters have entered into agreements with the FFA (see below).

The reason for this cautious formulation in the FFG is that the individual regions are responsible for broadcasting matters and have their own legislation in this regard. The FFG is nevertheless a Federal law, so it is doubtful whether as such it should contain any obligations affecting broadcasters at all.

1) *Filmförderungsgesetz* (Law on measures for the aid of the German film industry - FFG) dated 22 December 2003 (BGBl. IS 2771) as promulgated on 24 August 2004 (BGBl. I S 2277-2297), available at: <http://www.ffa.de/downloads/ffg.pdf>

2.1.2. Regional Film Aid

In principle there is no requirement on the public service broadcasters to invest in regional film aid, i.e. in the Funds² established in the individual regions.

There is an exception in the case of the Westdeutsche Rundfunk (WDR) which belongs to the ARD and broadcasts in North Rhine Westfalia. The WDR Act³ Section 47 assigns a separate amount of its licence fee revenue to the WDR to be used as film and radio broadcasting aid for the North Rhine Westfalia Film Foundation. The regional legislative thus made use of its power under Art. 40.2 on the financing of the inter-state broadcasting treaty to assign to the regional media institute, which supervises private broadcasters, only a part of the fee revenues intended for it under the inter-state broadcasting treaty. 45% of its share of fee revenues goes to the WDR for the purposes of film aid.

2.2. Voluntary Obligations

The two public service channels, ZDF and ARD, have entered into a voluntary arrangement as part of a film aid agreement with the FFA. Furthermore, they both support a number of film funds in the individual regions on a voluntary basis.⁴

2.2.1 The Source

The public service broadcasters and the FFA, as provided in Section 67.1 of the FFG, entered into an agreement on film aid.⁵ The agreement comes up for renewal every four years.

Support for the regional film funds is based on contracts between the broadcasters and the funds. There is no legal requirement as such.

2.2.2. The Obligation

The public service broadcasters, the ARD and the ZDF, undertake in their *Filmförderungsabkommen* (Film Aid Agreement - *FF-Abkommen*) with the FFA to support film production through co-productions and contributions in cash and in kind.

The agreement distinguishes between two types of aid: co-productions and project film aid measures.

2.2.2.1. Co-productions

To carry out co-productions, the ARD and the ZDF make available the sum of EUR 4.6 million⁶ on a half-and-half basis in accordance with Section 2.1 of the *FF-Abkommen*. As to the use to which the money is put, however, they may decide for themselves. They accordingly choose the film they wish to co-produce. The money is assigned directly to the production without needing to transit via the FFA. All the FFA does in such case is organise and supervise the broadcasters' participation in co-productions.

In Section 3.1 of the FF Agreement a definition of the concept of a 'co-production' is given, under which a film is deemed to be co-produced if:

- it is a film within the meaning of Section 1 of the *FF-Abkommen*;
- the financial, artistic and/or technical resources are jointly provided by the parties to the agreement (this the case when the financial film producer provides at least 15% of production costs or, in the case of an international co-production, 15% of the German share of production costs);

2) MFG Medien-und Filmgesellschaft Baden-Württemberg, FFF Filmfernsehfonds Bayern, Medienboard Berlin-Brandenburg, Filmbüro Bremen, Filmförderung Hamburg, Hessische Filmförderung, Landesfilmzentrum Mecklenburg-Vorpommern, Mitteldeutsche Medienförderung, Nordmedia, Filmstiftung Nordrhein-Westfalen, Stiftung Rheinland-Pfalz für Kultur, Saarland Medien, Kulturelle Filmförderung Sachsen, Kulturelle Filmförderung Sachsen, Kulturelle Filmförderung Schleswig-Holstein. Further relevant information is to be found in the KORDA database, downloadable under <http://korda.obs.coe.int>

3) *Gesetz über den Westdeutschen Rundfunk Köln* (Law on the Westdeutschen Rundfunk Cologne – WDR-Gesetz) of 25 April 1998, as modified up to 30 November 2004.

4) See footnote 1.

5) The complete FFG set of rules with contents is available at: http://www.ffa.de/downloads/ffg_regelsammlung.zip

6) This sum is to be provided annually for 2004-2008 as part of their allowed budget.

- a period of 24 months is allowed for advance showings in cinemas (waivers are only possible with the consent of the FFA);
- video exploitation through sale or hire for non-public performance occurs only 6 months after the beginning of cinema exploitation.

The distribution of the profits from the exploitation of co-productions is dealt with in Section 5 of the *FF-Abkommen*. After the production costs are covered, the exploitation profits are divided up among the partners pro rata, with the opportunities for the broadcasters to exploit the film on television being appropriately taken into account.

The broadcasters must transfer their share of the accrued profits within 3 years of the film being taken to the FFA, which returns the money, in accordance with the reference film principle for new productions, to the broadcaster concerned to be used again for the production of a new cinematographic film. Alternatively, the broadcaster can pay the profits directly to the financial partner from whose co-production the money was acquired. An agreement with the successful producer must be reached within 12 months of the receipt of the funds, however. Otherwise it accrues again to the FFA, which makes these sums available for project film aid. Since there is no corresponding regulation in the agreement, such shares of profits are not credited against the broadcaster's liabilities under Section 2 of the *FF-Abkommen*.

In principle, any co-productions between broadcasters and producers that are dependent on them or over which they have a decisive influence (Section 3.2 of the *FF-Abkommen*) are to be avoided.

2.2.2.2. Project Film Aid

The money made available by the public service broadcasters for project film aid is used by the FFA appropriately for the production of new programme-filling films in which a public service broadcaster acquires or has acquired exploitation rights (Section 7.2 *FF-Abkommen*). This regulation signifies at the same time a commitment of funds. A further possibility for the use of the money is opened up by Section 7.4 *FF-Abkommen*. This provision indicates that 25% of the funds for project film aid may be used for well-qualified film projects suitable for television, be they documentaries or children's or youth films, if the project suggests a film that seems qualified to improve the quality and attractiveness of German television programming. The funds may be used for project aid or screenplay or development support.

There are no further limitations to any particular genre of film or otherwise. However, there is the requirement that it should be a film within the meaning of the definitions in Sections 15, 16 FFG.

The financial liability for the broadcasters with respect to project film aid amounts, according to Section 7.1 b) *FF-Abkommen*, to EUR 11 million per year. The ARD makes available EUR 3.85 million and the ZDF EUR 3.3 million in cash on a given date. In addition, the broadcasters provide services in kind (e.g. advertising time).

2.2.3. The Return

As described above, the exploitation profits from co-productions (subject to contractual agreement) are distributed in accordance with Section 5 *FF-Abkommen*. As the public service broadcasters have to pass the profits on further (as described above), there remains no financial gain for them. The broadcasters invariably receive the television exploitation rights from co-productions. This is not explicitly stated in the *FF-Abkommen* but it becomes clear, e.g. from Section 3 of the *FF-Abkommen*, which presupposes that for the advance showing of the film a period of 24 months is earmarked, on the assumption that the broadcaster holds the television exploitation rights.

2.2.4. Procedural Rules

Under Section 3.4 *FF-Abkommen* it is for the public service broadcasters to supervise Section 3.1-4 (to check that the conditions for a co-production are met and whether there is cooperation with any producers dependent on the broadcasters or whether the film is one that does outstanding service to television interests). At the conclusion of every co-production contract the broadcaster concerned has to report compliance with FFA requirements. This must include details of the project and its funding and a copy of the co-production contract is to be attached.

From this documentation the FFA assesses the project, which requires FFA recognition in respect of compliance with regulations. The FFA informs the broadcaster within three weeks of receipt of

notification of any grounds standing in the way of recognition. Otherwise recognition is taken as granted. If a project is not recognised as a co-production, there is no appeal.

In the area of aid through co-productions, the public service broadcasters are required to submit to the FFA an annual overview of the funds employed in compliance with regulations and a list of the share of profits accruing to them from co-productions (FF Agreement Section 6.2-3).

Compliance with the commitment of funds under *FF-Abkommen* Section 7.2 is reviewed by the parties twice a year.

3. Obligations of Private Broadcasters

3.1. Legal Obligations and their Transposition

Private broadcasters have no legal obligations in respect of film aid.

3.2. Voluntary Obligations

3.2.1. The Source

The voluntary obligations of private broadcasters are framed in the same way as for the public service broadcasters. Section 67.1 FFG also provides that private broadcasters are supposed to reach some agreement with the FFA on film aid. As a result the major private broadcasters have arrived at what is known as the *VPRT-Abkommen* (VPRT Agreement) with the FFA.⁷ There are further voluntary obligations concerning the private broadcasters vis-à-vis the regional film funds.

3.2.2. The Obligation

The parties to the *VPRT-Abkommen* alongside the FFA are the major German private Free TV channels (RTL, VOX, Super RTL, RTL 2, ProSiebenSat. 1) and the pay TV channel Premiere (described in the contract as "private broadcasting enterprises").

The *VPRT-Abkommen* provides for an indirect form of film aid. The broadcasters apply the FFA contributions in the form of cash payments and media services but they have no influence over the practical use of the funds.

There is no regulation concerning possible co-productions.

The private broadcasters undertake to pay altogether around EUR 12 million per year, broken down into around EUR 5 million in cash and EUR 7 million in media services. Aid contributions from individual broadcasters are self-determined in the *VPRT-Abkommen*. The undertakings are subject to the proviso that the financial bases of the contract partners are not substantially altered.

Under Section 3.2 *VPRT-Abkommen*, all cinema films qualifying for aid may also request the use of media services.

3.2.3. The Return

Section 1.1 *VPRT-Abkommen* explicitly states that the broadcasters receive no return from the FFA in connection with the *VPRT-Abkommen*.

There is no explicit regulation on exploitation rights or possible profit-sharing for broadcasters. These must be negotiated contractually with the film producers on a case by case basis.

7) The complete set of FFG rules with contents is available at: http://www.ffa.de/downloads/ffg_regelsammlung.zip

8) Under Section 3.3 of the *VPRT-Abkommen* this is a sub-committee of the allocation committee known as the marketing committee.

3.2.4. Procedural Rules

Control over or involvement in the allocation of media rights is handled by a broadcaster representative being sent to the FFA decision-making body⁸ which decides on the allocation of media rights on a case by case basis.

After aid is granted the FFA sends written notification to all the private broadcasting enterprises participating in the *VPRT-Abkommen* in which media services may be requested. The distributor or producer of the supported films is required by the FFA to report to the private broadcaster in good time the release date and advertising campaign duration for which media services are to be made available.

The broadcasters address a half-yearly report on the use made of the agreed media services to the FFA.

DK DENMARK

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1. Overview

As part of their public service obligations under the Danish Broadcasting Act the two Danish public service broadcasters, DR and TV2,¹ shall contribute financially to strengthen the production of Danish films (the so called "film money"). The notion "Danish films" covers production of all kinds of fiction and documentary programmes carried out by independent producers, including cinematographic films.

The conditions for the two public service broadcasters' film involvement are basically identical. The contribution may include both actual investments on ordinary market conditions and purchase of pre-emptive broadcasting rights. Thus, the investments can be both direct and indirect. The film money cannot cover purchases of rights for films already produced.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

Pursuant to the Broadcasting Act² the public service broadcasters' public service obligations shall be specified in a contract with the Minister of Culture.³ The present public service contracts (covering the period 2003-2006) specify the public service obligations in general as well as in a number of specific aspects, including the obligation to strengthen Danish film production.

DR's public service obligations, including the obligations regarding films, shall be fulfilled via the public means distributed to the station annually (and generated from statutory licence fees on TV-set holders) in accordance with the Broadcasting Act. Thus, no extra means are provided for the film support.

As regards TV2, the end of 2004 basically terminated the annual public means to the station (as part of the Danish Governments efforts to privatise the partially commercial station).⁴

1) TV2 consists of the nationwide station TV2/Denmark and 8 regional TV2 stations (who are legally independent from TV2/Denmark). Only TV2/Denmark is subject to the public service obligations regarding investments in film production.

2) *Lov om radio- og fjernsynsvirksomhed* (Broadcasting Act), Consolidated Act no 506 of 10 June 2004, as amended by Act no 1437 of 22 December 2004, with appurtenant executive orders. Available at: <http://www.kum.dk/sw4550.asp>

3) Re § 12(2): DR's fulfilment of its public service obligations shall be specified in a contract between the Minister of Culture and DR. As regard TV2/Denmark, the obligation to enter into a public service contract is set forth in the station's individual broadcasting license, which is issued subject to § 38a of the Broadcasting Act.

4) The privatisation has not yet been completed. TV2's public service obligations, including the obligations in relation to the production of films, will continue to apply after a divestiture. For more information on the privatisation and the related dispute, see Søren Sandfeld Jakobsen, [DK] Privatisation of the Danish National Broadcaster TV2, in IRIS 2003-7: 8, available at: <http://merlin.obs.coe.int/iris/2003/7/article14.en.html> and Elisabeth Thuesen, Court of First Instance: Commission's Decision to Approve Recapitalisation of Danish Broadcaster TV2 Contested, in IRIS 2005-5:3, available at: <http://merlin.obs.coe.int/iris/2005/5/article1.en.html>

Consequently, TV2 does no longer automatically receive public means intended for investments in film production. Thus, the obligations regarding investments in film productions shall – as any other of the station's activities – be financed by the station's own means as part of the its commercial activities. TV2 can, however, apply for public funding for individual film projects.

The public service contracts' description of the obligations regarding film investments is very brief. However, more detailed conditions for the application of the "film money" are laid down in exhibits to the public service contracts.⁵ Pursuant hereto, DR and TV2's investments in Danish film production shall be no less than DKK 60 mill. annually (for each station). Of the DKK 60 mill. at least DKK 35 mill. shall be spend on feature films, DKK 7 mill. on short and documentary films and DKK 4 mill. on "talent development". There are, however, no specifications on how much of the EUR 35 mill. that must be spent on cinematographic films (as opposed to films produced for TV only).

As already mentioned, the film money can be used for both actual investments on ordinary market conditions and purchase of pre-emptive broadcasting rights. The film money cannot cover purchases of rights for films already produced. In relation to the minimum DKK 35 mill. spent on feature films, it is expected in the public service contracts that this amount will lead to involvement in an average of 8-10 feature films annually during the contract period 2003-2006.

The public service broadcasters' investment in a given feature film cannot exceed 50% of the total production costs. The contracts between the public service broadcasters and their co-operation partners shall be concluded on a standard contract compiled by the public service broadcasters together with the Danish Film Institute and the Association of Film Producers.

The public service broadcasters shall submit an annual report to the Minister of Culture describing the level of compliance with the public service contract. The report shall be sent to the Minister via the Radio and Television Board,⁶ which delivers an opinion of the reported level of compliance to the Minister.

According to DR and TV2's latest public available report (from 2003), they both complied with the obligations regarding investments in Danish film production. In 2003, DR concluded contracts regarding feature films amounting to a total value of DKK 33,7 mill. (of which DKK 22,3 mill. were purchase of broadcasting rights and DKK 11,3 mill. were investments). According to TV2, the station in 2003 participated in 22 feature film projects, many of which were cinematographic films. The amount spent on feature films in 2003 was approx. DKK 31 mill.

The Radio and TV Board has approved DR and TV2's report for 2003 on their compliance with their public service obligations, including their application of the "film money". The Board did, however, criticize that TV2 spent significantly less than the stipulated DKK 35 mill. on feature films. The Board has requested a detailed explanation thereof.

As mentioned, DR and TV2's investments in films can be made as both actual investments on ordinary market conditions and purchase of pre-emptive broadcasting rights. The right to invest on ordinary market conditions permits the public service broadcasters to receive a normal return on investments, as any other investor in the private sector would calculate.

2.2. Voluntary Obligations

Besides the statutory obligations pursuant to the Broadcasting Act, re 2.1 above, DR and TV2 have no voluntary obligations in relation to films, including cinematographic films.

3. Obligations of Private Broadcasters

There are no legal obligations for private broadcasters to invest or in other ways engage in films, including cinematographic films. On the other hand, private broadcasters may of course volunteer for such investments. There does not seem to be any public available statistics or reports concerning private broadcasters' voluntary investments in cinematographic films.

⁵) The contracts, including the exhibits, are not available in an English translation.

⁶) The Radio and Television Board is an independent public body that, inter alia, advises the Minister of Culture on broadcasting issues. The Board's opinion is only an opinion, not a decision. Thus, the minister is not bound by the opinion from the Board.

4. Useful Documentation

As it appears from the description above, the primary source of information on the public service broadcasters' obligations to invest in the production of Danish feature films is the Broadcasting Act and the public service contracts. Information on the Danish market on feature films in general can be found on the Danish Film Institute's website, at www.dfi.dk



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1. Overview

According to Estonian legislation, broadcasters do not have any direct obligations to invest in cinematographic films. However, broadcasting organisations are obliged to meet certain public service obligations in Estonia and these obligations come from the Estonian Broadcasting Act¹ and the broadcasting licence issued by the Ministry of Culture.

According to the Estonian Broadcasting Act, a broadcaster shall ensure that at least 10 per cent of the monthly transmission time of the programme service, excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services, is reserved for own production. A broadcaster shall transmit at least 50 per cent of the minimum amount of own production provided for in this subsection during the prime broadcasting time between the hours of 19.00 and 23.00 (§ 4¹ (2)).

For the purposes of the Broadcasting Act, "own production" means programmes and programme services relating to contemporary Estonia or Estonian cultural heritage, produced by a broadcaster itself or in co-operation with producers from the member states of the European Union or commissioned from an independent European producer (§ 4¹ (3)).

According to the broadcasting license, broadcasting organizations shall insure that the transmission time consists of different programmes directed to Estonian viewer: informational, cultural, entertainment, family, sports, youth and children's programmes and it reflects events in Estonia and elsewhere in the world.

Every month, in the length of one hour minimum, there should be transmitted audiovisual works which production have been supported from the state budget, Estonian Film Foundation² or Cultural Endowment of Estonia. Such works shall include works transmitted within five years of their production.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

According to Estonian legislation, broadcasters do not have any direct obligations to invest in cinematographic films.

1) Broadcasting Act, adopted on 19 May 1994 (RT¹ I 1994, 42, 680), entered into force on 15 June 1994, lastly amended on 14 September 1994 (entered into force 17 October 1994), available in English at:

<http://www.legaltext.ee/text/en/X30069K8.htm>

2) <http://www.efsa.ee/>

2.2. Voluntary Obligations

The public service broadcaster *Eesti Televisioon*³ has decided from 2005 on to invest in cinematographic films. This decision will be implemented in three different ways:

- through direct investment in production as co-producer (in 2005, *Eesti Televisioon* invested in five films with approximately USD 107 500);
- by purchasing in advance broadcasting rights for cinematographic films (approximately USD 8000 in case of an Estonian film);
- by purchasing broadcasting rights for cinematographic films (USD 4000 in case of an Estonian film, USD 1000 in case of a foreign film).

These voluntary implementations depend on the budget and the decisions of the board of *Eesti Televisioon*.

3) <http://www.etv.ee/>



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1. Overview

The implementation in Spanish law of the revised “Television without Frontiers” Directive in 1999 included a legal obligation for both public service and private commercial broadcasters under Spanish jurisdiction to invest 5 per cent of their operating income in financing European cinematographic works and television films. This obligation was introduced to especially promote the European audiovisual content industry, since the revised Directive did not include any express regulation on broadcasters’ investment in audiovisual production.

This legal obligation has created a controversy between producers and commercial private broadcasters. If the former are satisfied in general terms, the private broadcasters have expressed their opposition to both this measure and its implementation. The *Unión de Televisiones Comerciales Asociadas* (private commercial broadcasters’ association – UTECA) argues that broadcasters should not be forced by law to subsidise the unprofitable part of the cinematographic sector, which, according to UTECA, is so, mainly because it is not capable of attracting enough public. Besides, the association claims that the regulation introduced in 2004, which aimed at further clarifying the scope and practical application of the investment obligation, has a negative effect by reducing the flexibility that broadcasters previously enjoyed in fulfilling their investment obligation.¹ Another reason for the private broadcasters’ discontent lies in the fact that TV series (one of the most profitable television products in Spain) are excluded from the calculation. Accordingly, UTECA and Telecinco have asked the Supreme Court to declare the investment obligation as illegal. At the time of writing this article,² the case was still pending, and the Supreme Court has refused to suspend the legal obligation until the case is decided.³ Therefore, the legal obligation remains in force for the time being.

2. Legal Obligation and its Transposition

2.1. The Source

Act 22/1999, of 7 June, amending Act 25/1994, of 12 July, transposed into Spanish law the revised “Television without Frontiers” Directive.⁴ This Act introduced an obligation for broadcasters under Spanish jurisdiction to reserve 51% of their yearly transmission time for European audiovisual works.

1) See <http://www.elmundo.es/elmundo/2004/11/15/comunicacion/1100541502.html>

2) August 2005.

3) See <http://www.fapae.es/nuevo/verListadoComunicados.asp?id=376>

4) *Ley 22/1999, de 7 de junio, de Modificación de la Ley 25/1994, de 12 de julio, por la que se incorpora al Ordenamiento Jurídico Español la Directiva 89/552/CEE, sobre la coordinación de disposiciones legales, reglamentarias y administrativas de los Estados miembros, relativas al ejercicio de actividades de radiodifusión televisiva* (Act 22/1999, of 7 June, amending Act 25/1994, of 12 July, transposing into national law Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities). Available at: http://noticias.juridicas.com/base_datos/Admin/l22-1999.html

In order to fulfil this obligation, broadcasters would have to invest 5 per cent of their operating income in financing European cinematographic works and television films. Two years later, Act 15/2001 of 9 July⁵ further modified Act 25/1994, clarifying the scope of the obligation, as well as the concepts of what constitutes a European audiovisual work and a film made for television. In 2004 the Spanish government adopted Statutory Instrument 1652/2004 of 9 July.⁶ This Statutory Instrument aims at facilitating the application of existing rules and further clarifies certain aspects, notably the calculation of both the broadcaster's operating income and the 5% quota. It also regulates the government's monitoring of the effective fulfilment of the investment obligation.

2.2. The Obligation

Broadcasters that programme recent feature films (that is, films produced in the seven years before being broadcast) shall have an obligation to invest at least 5% of their previous accounting year's operating income in financing the production of European cinematographic works and television films. 60% of the investment must be reserved for works made in one of the official languages of Spain (Spanish, Catalan, Basque and Galician).

Broadcasters may finance any audiovisual work of fiction, documentary or animation within the following list:

- cinematographic works: both long and short feature films;
- television films: audiovisual works of similar characteristics to cinematographic feature films, i.e. single works longer than 60 minutes with an ending (excluding TV series), and whose commercial exploitation does not include theatrical exhibition.⁷ Television films may be shown in two parts as long as the total duration of the film is not longer than 150 minutes;
- audiovisual works (whatever medium) by new filmmakers, experimental films, documentaries, pilots of animation series, or works which show a strong cultural character.

2.3. Calculation of the Investment

The income to be taken into account for the calculation of the 5% includes any kind of net income obtained from the programming and exploitation of the TV channels subject to the investment obligation. This may include advertising income, subscription payments and public subsidies. Income from rights or royalties generated through the commercialization of merchandising products will only be taken into account if they amount to more than 10 per cent of the broadcaster's operating income. In such a case, only the amount exceeding 10 per cent will be taken into account. Income obtained from operating other channels not subject to the investment obligation will not be taken into account, nor will income from activities other than broadcasting, or income obtained from renting reception equipment or from the installation of antennas.

The investment made by the broadcaster may include all expenses incurred by in-house production, commissioned production, co-production and purchase of exploitation rights of audiovisual works that comply with the rules described *supra*. In-house production expenses may include all direct expenditure, duly justified, incurred in the realization of the film. The Ministry of Culture's regulations on production expenses for works which receive public aid are applicable.

Both direct financing and financing through subsidiary production companies will be included in the calculation. In the case of a broadcaster being a production company's subsidiary, the investment made by the latter will also be included in the calculation. If the production company controls different broadcasters, then the parent company's investment will be distributed among the broadcasters according to their business figures. In any event, the following will not be included in the calculation:

- public aid obtained by the broadcaster or the production company (be it a subsidiary or parent company of the broadcaster) corresponding to their participation in the production;

5) *Ley 15/2001, de 9 de julio, de fomento y promoción de la cinematografía y el sector audiovisual* (Act 15/2001 of 9 July, on the Promotion of the Film Industry and the Audiovisual Sector), available at: http://noticias.juridicas.com/base_datos/Admin/l15-2001.html

6) *Real Decreto 1652/2004, de 9 de julio, por el que se aprueba el Reglamento que regula la inversión obligatoria para la financiación anticipada de largometrajes y cortometrajes cinematográficos y películas para televisión, europeos y españoles* (Statutory Instrument 1652/2004 of 9 July 2004 regulating the mandatory investment by television programmers in the financing of European and Spanish cinematographic and television films). Available at: http://noticias.juridicas.com/base_datos/Admin/rd1652-2004.html

7) These films must obtain an age classification certificate and, given the case, the certificate of Spanish nationality.

- the amount received by the broadcaster or the production company (be it a subsidiary or parent company of the broadcaster) due to the granting of exploitation rights to the broadcaster when the latter includes these payments as part of the fulfilment of its investment obligations. This includes also amounts entered in the broadcaster's accounts as expenses due to the purchase of exploitation rights held by the same broadcaster (through an internal accounting process between two departments);
- double calculation of a single expense within the same group/holding will not be accepted in any case.

With respect to investment made by enterprises forming part of the same group/holding as the broadcaster, the calculation will be made according to the legal norms concerning consolidated accounts.

The investment shall be considered to have been made in the year in which the contractual obligation vis-à-vis third parties was born, no matter when the payment is actually made. In the case of in-house production, investment shall be considered to have been made in the year in which the production began. Alternatively, if the production took more than one year, the expenses entered in the accounts each year will be considered as investment made in that year. Double calculation is not allowed. However, a part of the investment made during one year can be taken into account as part of the investment for the previous or next year if its amount is less than 20% of the total investment of the year in which this amount is applied for calculation purposes. In such a case, the broadcaster's report to the SETSI (see *infra*) must include its intention to benefit from that exceptional rule. The SETSI will inform the broadcaster about the maximum amount to be considered as part of the investment for the previous or next year.

If the contracts include an escalating clause⁸ in favour of the producer, the actual amount of those extra royalties will be taken into account for the calculation in the year in which they were actually paid.

2.4. Exceptions

As a general rule, broadcasters are obliged to invest in the production of European audiovisual works. Producers of new works are the beneficiaries of this obligation. Accordingly, purchases of rights for old works as well as purchases of exploitation rights from third parties (i.e. parties other than the producer) are excluded from the calculation. However, there are some exceptions to this rule. With regard to purchases of exploitation rights made after the production of the work,⁹ they may be included in the calculation in exceptional cases where the work has not been financed by a broadcaster due to the investment obligation and in which the film has been finalized less than six months before the rights purchase. In such a case, purchases of exploitation rights from a third party will be acceptable if the vendor acts only as a mere agent of the production company.

Other cases of purchases of exploitation rights from third parties that may be included in the calculation are the following:

- the production has been made by one or more EC producers and none of them is established permanently in Spain. In such a case, the complete amount paid to the third party will be included in the calculation;
- the global rights have been acquired by a broadcaster which re-sells broadcasting rights to other broadcasters for different media windows. The net amount that each broadcaster pays for the broadcasting rights can be taken into account for its investment obligation, but must be discounted from the calculation of the broadcaster that sold those rights. Double calculation is not allowed;
- the rightsholder is a distribution company. The contract between the broadcaster and the distributor must include a guaranteed minimum amount to be paid to the production company. Only this amount can be taken into account for the calculation.

2.5. Procedural Rules

Broadcasters shall communicate to the *Secretaría de Estado de Telecomunicaciones y para la Sociedad de la Información* (State Secretary of Telecommunication and Information Society, belonging to the

8) Escalating clause (*cláusula de escalado*) is a clause by virtue of which the royalty percentage to be paid to the producer for the exploitation rights may be increased depending on the commercial success of the work.

9) The date of end of production will be considered the date of creation of the first standard copy.

Ministry of Industry, Tourism and Trade – SETSI) a report before the 1st of April of every calendar year, detailing the way in which the investment obligation was fulfilled.

The report will include detailed information about the broadcaster's operating income. Private broadcasting companies will have to present the annual accounts according to the law applicable to this company, as well as the relevant information for the calculation of the operating income. As regards broadcasters whose accounting year (*ejercicio social*) does not coincide with a calendar year according to their statutes, they will calculate the investment made in the period between the first and the last day of their current accounting year and will present as operating income the one corresponding to their preceding accounting year. Public broadcasters will present a certification of their operating income made by the General Director of Radio Televisión Española (Spanish public service broadcaster – RTVE). This certification will be as detailed as the report presented by private companies.

Broadcasters shall communicate to the SETSI a list of the works they have financed, indicating among others which productions are made originally in any official language of Spain and which films were financed after production. For each work this list will include the following data:

- title;
- rightsholder or production company;
- the dates of contract (except for in-house production) and, given the case, of finalization of production;
- financing amount for in-house production, co-production or commissioned production, as well as for purchasing exploitation rights (both for cinematographic and television films).

A *comisión interministerial de seguimiento* (interministerial monitoring commission) is responsible for controlling the fulfilment of the investment obligation. This monitoring commission belongs to the Ministry of Industry, Tourism and Trade. The Commission will be composed of a President (the State Secretary for Telecommunications and the Information Society) a Vice-president (State Secretary for Communication of the Ministry of Presidency) and seven members from the Ministry of Industry, Tourism and Trade, the Ministry of Culture and the Ministry of Presidency.

The Commission's tasks are the following:

- examine the reports presented by the broadcasters and request any further information needed for determining the effective fulfilment of the obligation by the broadcaster;
- verify, whenever required, all data provided by the broadcasters, thereby making use of the information available at the registers of the *Instituto de la Cinematografía y de las Artes Audiovisuales* (Institute of Cinematography and Audiovisual Arts) and of the SETSI;
- inform the Ministry of Industry, Tourism and Trade about the effective fulfilment of the production investment during last year. In the case of a broadcaster not fulfilling the obligation, the Commission may propose that sanctions be taken;
- draft an annual report on the fulfilment of the investment obligation. This report will measure the impact that the investment obligation is having on the cinema industry. It will also give recommendations on measures to improve its efficiency. This report will be made public;
- give advise to the SETSI regarding further regulation of the matter.

The Commission may ask for the intervention of professionals and experts and ask for information from industry associations.

The SETSI may ask for further information as well as request any original documents pertaining to the data presented in the report. Both the report as well as any other information given by the broadcaster shall be deemed confidential and not be used for any other purposes. In the following six months the *Dirección General para el Desarrollo de la Sociedad de la Información* (Directorate General for the Development of the Information Society) will inform to each broadcaster in writing whether or not it considers the obligation fulfilled after taking into account the reports produced by the interministerial monitoring commission.

3. Agreements between Broadcasters and Producers

Since the adoption of the Statutory Instrument 1652/2004, the *Federación de Asociaciones de Productores Audiovisuales Españoles* (Federation of Spanish Audiovisual Producers' Associations – FAPAE) has met among others the national public service broadcaster RTVE, the *Federación de*

Organismos de Radio y Televisión Autonómicos (Federation of public service regional broadcasters – FORTA) and the UTECA (despite the pending judicial procedure mentioned *supra*) in order to reach agreements with each of these organisations with regard to the practical application of the investment obligation.¹⁰ However, at the time of writing this article¹¹ none of these negotiations had come to a successful end.¹²

10) See FAPAE, *Memoria Annual 2004* (annual report 2004), available at: http://www.fapae.es/files/FAPAE_MEMORIA_2004.pdf

11) August 2005.

12) For more information on previous agreements between FAPAE and Spanish broadcasters see *Libro Blanco del Audiovisual – Cómo producir, distribuir y financiar una obra audiovisual*, Ecija & Asociados Abogados, 2000, pp. 217-220.



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1. Legal Obligations and their Transposition

1.1. Direct Support

There are no legal obligations for broadcasters in Finland, public service or private, relating to the investment in cinematographic films.

1.2. Indirect Support

In 1996 the Finnish government, together with the approval of the operating license for Channel Four, the second commercial television channel in Finland, stated that the Finnish Film Foundation was to receive each year an allocation for film production support from the State Television and Radio Fund¹ financed by the television and operating license fees. The amount of the allocation is to be determined annually.

In practice, this has been arranged through an agreement between the Finnish Film Foundation and YLE, the public service broadcaster whose operation is financed by the State Television and Radio Fund. YLE has paid annually an appropriation of c. EUR 1,5 million to be granted as production support for films for which YLE has pre-purchased broadcast rights. This amount represents some 10% of the total support budget of the Film Foundation.

YLE receives no compensation for this appropriation by way of rights or reductions but the pre-purchase agreements YLE makes for these films directly with the independent producers are on the same conditions as any other films.

2. Voluntary Obligations

YLE's involvement in film production is not limited to films supported by funds deriving from this appropriation but is, in fact, involved in the financing of the majority of films supported by the Film Foundation.

The Finnish Film Foundation has also signed with both the public service broadcaster YLE and the commercial channels, MTV3 and Channel Four, a general declaration of intent that only makes concrete reference to the aimed minimum amount of feature film projects each party is willing to be involved in yearly.

1) An unofficial English translation of the Act on the State Television and Radio Fund (745/1998; amendments up to 395/2003 included) is available at: http://www.mintc.fi/www/sivut/english/tele/massmedia/1998_745.htm
The allocation the Finnish Film Foundation is, however, not based on the Act itself but arises from the declaration of intent by the government.



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1. Overview

- Direct contribution: In the French support system, broadcasters¹ can conclude co-production contracts corresponding to producer shares through a compulsory production subsidiary.
- Indirect contribution: In addition to contracts for the purchase or pre-purchase of exclusive broadcasting rights concluded by broadcasters, there is a tax paid by the broadcasters into a special financial account managed by the *Centre National de la Cinématographie* (national film centre - CNC). When a television service subject to payment of professional tax broadcasts a film which has received production approval, financial support called "*soutien antenne*" (broadcast support) is generated.
- The French scheme also provides for the existence of payments into a fund that contributes to distribution in cinema theatres.

2. Obligations of Public Service and Private Broadcasters

2.1. The Source

Article 27(3) of the Act of 30 September 1986² provides that provisions in regulations should lay down the contribution from editors of public and private television services "to the development of the production, particularly independent production for their use, of cinematographic works (...) and that part of this contribution or the amount allocated to the acquisition of broadcasting rights for these works on the services they edit, by laying down, as appropriate, different rules (...) depending on the type of works broadcast and on the conditions for exclusive broadcasting. For films, this contribution may include a share intended for distribution". Further details of this provision are set out in the Decree of 9 July 2001³ for broadcasting in analog mode and in the Decree of 28 December 2001⁴ for broadcasting in digital mode. These arrangements are reiterated in the specifications applicable to public-sector broadcasters and the agreements between the private broadcasters and the *Conseil supérieur de l'audiovisuel* (national audiovisual regulatory body - CSA).

The Act of 1 August 2000, amending the Act of 30 September 1986, reinforced and harmonised the obligations incumbent on broadcasters as regards support for production, particularly of the

1) This notion will be used as being equivalent in meaning to the legal notion of the editor of a television service.

2) Act No. 86-1067 of 30 September 1986 on freedom of communication, Official Journal of 1 October 1986, amended by Act No. 2004-669 of 9 July 2004 (Official Journal of 10 July 2004).

3) Decree No. 2001-609 of 9 July 2001 for the purpose of application of Articles 27, 28 and 71 of Act No. 86-1067 of 30 September 1986 on the contribution of editors of television services broadcast unencrypted terrestrially in analog mode to the development of the production of cinematographic and audiovisual works (Official Journal of 11 July 2001 – issue no. 302, p.21304).

4) Decree No. 2001-1333 of 28 December 2001 adopted for the purpose of application of Articles 27, 70 and 71 of Act No. 86-1067 of 30 September 1986 and laying down the general principles for the broadcasting of services other than radiophonic services terrestrially in digital mode (Official Journal of 29 December 2001 – p.21315).

independent variety, by extending them to cable, satellite⁵ and terrestrial digital television (TDT) broadcasters, and at the same time relaxing them, more particularly by the possibility of increasing expenditure (Articles 27(3) and 33(6) of the 1986 Act). Thus whatever the broadcasting medium or mode (terrestrial, cable or satellite, digital or analog), public and private broadcasters whose main objective is not the broadcasting of cinematographic works and which broadcast at least 52 full-length cinematographic works per year must devote at least 3.2% of their net turnover for the previous year to the production of cinematographic works, with at least 2.5% being spent on works originally made in the French language. At least three-quarters of the expenditure related to the contribution to the development of cinematographic production must be devoted to independent production, according to criteria that take into account both the cinematographic work and the company that produced it.

2.2. The Obligations

2.2.1. Direct Contribution

The provisions set out in the regulations⁶ give a definition of the notion of a cinematographic work. The term covers firstly works that have obtained an exploitation licence (except for documentaries first shown on television in France) and secondly foreign cinematographic works that have not obtained such a licence but have been exploited commercially in their country of origin. It therefore includes full-length (ie lasting more than one hour) cinematographic works. The system for contributions from broadcasters is based on the distinction drawn between cinematographic works originally made in the French language ("EOF" works) and European cinematographic works. The former are works made completely or mainly in French as the original language, or in a regional language used in France.⁷ For the latter, the definition given in the text takes up the definition used in the "Television without Frontiers" Directive.

In application of Article 27(3) of the Act, the Decree of 9 July 2001 lays down the general principles defining the contribution to be made by editors of television services broadcast terrestrially unencrypted in analog mode. This Decree raises the level of contribution compared with the previous arrangements, but this is partly offset by taking a higher level of expenditure into account in calculating production obligations. These provisions apply to private service editors as well to those in the public sector that broadcast more than 52 full-length cinematographic works per year (this is the case of TF1, M6, France 2 and France 3). The editors of unencrypted services contribute 3.2% of their net annual turnover for the previous financial year (after deducting Value Added Tax, the tax paid by broadcasters into the support fund, and duly justified advertising costs) to the production of European cinematographic works; at least 2.5% must be devoted to the production of "EOF" works. Eligible expenditure includes the pre-purchase of exclusive broadcasting rights, producer shares taken up through a compulsory production subsidiary, and payments into a fund used to support the distribution of approved films in cinema theatres.

In 2004, TF1 devoted EUR 52.03 million to the production of cinematographic works, of which EUR 12.81 million in co-production shares and EUR 39.22 million for the pre-purchase of rights. In the same year, France 2 spent EUR 29.20 million – EUR 11.68 million in production shares and EUR 17.53 million for the pre-purchase of rights. For its part, France 3 spent EUR 16.13 million, of which EUR 6.94 million in production shares and EUR 9.20 million for the pre-purchase of rights. M6 contributed EUR 19.59 million, of which EUR 3.24 million in production shares and EUR 16.35 million for the pre-purchase of rights. In 2004, out of 203 approved films, unencrypted terrestrial broadcasters financed 105 films, of which 97 were French initiatives, for a total of EUR 124.42 million.⁸

The terrestrial pay channel Canal Plus is required to make more substantial investments because it is a cinema channel.⁹ Each year, Canal Plus devotes at least 12% of the year's total resources to the

5) Decree No. 2002-140 of 4 February 2002 adopted for the purpose of application of Articles 33, 33-1, 33-2 and 71 of Act No. 86-1067 of 30 September 1986 and laying down the scheme applicable to the various categories of sound and television broadcasting services distributed by cable or broadcast by satellite (Official Journal of 6 February 2002 – issue no. 31, p.2412), amended by Decree No. 2003-764 of 1 August 2003 (Official Journal of 6 August 2003 – issue no. 180, p.13609).

6) Decree No. 90-66 of 17 January 1990 adopted for the purpose of application of Act No. 86-1067 of 30 September 1986 and laying down the general principles for the broadcasting of cinematographic and audiovisual works by the editors of television services, amended by Decree No. 2004-1481 of 23 December 2004 (Official Journal of 30 December 2004).

7) Cinematographic works having received the investment approval referred to in Article 19-I of Decree No. 59-1512 of 30 December 1959 before the date of application of the Decree are also treated as cinematographic works originally made in the French language.

8) See CNC, *La production cinématographique en 2004* (cinematographic production in 2004), available at: http://www.cnc.fr/d_stat/dossiers/bilancine05/prodcine2004.pdf

9) Decree No. 2001-1332 of 28 December 2001 on the contribution by editors of television services broadcast terrestrially in analog mode whose financing involves remuneration from users for developing the production of cinematographic and audiovisual works (Official Journal of 29 December 2001 – p.21310), amended by Decree No. 2004-1482 of 23 December 2004 (Official Journal of 30 December 2004 – text no. 123 in issue no. 303).

pre-purchase of broadcasting rights for European cinematographic works and at least 9% to the pre-purchase of broadcasting rights for "EOF" works. These acquisitions of broadcasting rights may not be below a minimum guaranteed amount per subscriber, laid down in the channel's agreement with the CSA. The calculation of the channel's obligations does not include either its contribution in the form of co-productions or acquisitions of rights to broadcast Category V films (cinematographic works that may not be shown to anyone under 18 years of age). At least 80% of the amount of its obligations to pre-purchase broadcasting rights for "EOF" works apply to exclusive broadcasting rights acquired before shooting starts. Under a "diversity" clause in the agreement, Canal Plus must put part of its investment into low-budget films – at least 17% of the amount of its obligations in the production of "EOF" works involves films with a initial budget of less than EUR 4 million. In 2004, Canal Plus spent EUR 136.65 million on the pre-purchase of 124 approved films, which meant that Canal Plus' investments represented 17% of all French investment in approved films for that year.

A special scheme applies to the Franco-German channel Arte, and the arrangements outlined above do not include any obligation in respect of its contribution to cinematographic production. In fact, the channel does nevertheless comply with the investment obligations of the French system and even goes beyond them, investing as much as 5% of its turnover, through its subsidiary Arte France Cinéma. This support benefits about twenty films each year, for a budget of EUR 7 million.

The Decree of 28 December 2001 lays down the general principles for the contribution to be made by public and private television services broadcast terrestrially in digital mode. The digitalisation of terrestrial broadcasting does not affect the arrangements for support for production. For unencrypted broadcasters, the provisions are identical to those set out in the Decree of 9 July 2001 (3.2% and 2.5%). There is nevertheless provision for an increase in these figures, particularly on the basis of the anticipated speed of the development of terrestrial digital television (TDT). According to these provisions, eligible expenditure does not include payments into a fund used to support the distribution of approved works in cinema theatres, but as an interim measure the cost of broadcasting rights acquired after the approval or authorisation of a production is included.

Article 71 of the Act of 30 September 1986 lists the criteria according to which a cinematographic work may be counted as an independent production. The notion of independent production is fundamental to preserving the separation of the functions of producer and broadcaster and thereby the pluralism of sources of creation, which is all the more necessary in the face of the strong current trend towards vertical concentration. The real importance of the independence of cinematographic production lies more in the conditions for intervention by broadcasters in the financing of the works themselves than in the capital relationship that exists between companies. At least three-quarters of expenditure on contributions to the development of the production of cinematographic works must be devoted to the development of independent production. Article 6(I) of the Decree of 9 July 2001 states the conditions for a cinematographic work to be counted as a broadcaster's contribution to independent production. For a cinematographic work to be deemed to count as independent production, the broadcaster may not, under the initial contract taken into account for the calculation of the obligation incumbent on the broadcaster, acquire more than two exclusive showings over a period limited in each case to eighteen months; nor may the broadcaster hold more than one category of secondary rights or commercialisation instructions in the following list of types of exploitation: exploitation in a cinema theatre, exploitation on a television service other than the service the broadcaster edits, exploitation in video form, exploitation on an on-line communication service, exploitation in cinema theatres in another country, video, and television. However, if the broadcaster devotes more than 85% of its expenditure to the development of independent production, secondary rights or commercialisation instructions may be held for two types of exploitation, although exploitation on a television service and exploitation in another country may not be aggregated. The decision on qualification lies with the CSA, after obtaining the opinion of the CNC. Article 6(II) provides that the independence of production companies must also be appreciated on the basis of the capital connections that exist between the broadcasters, or their shareholders, and the producers. The criteria for independence involve the proportion of the broadcaster's share in the production company's capital, the absence of supervision by a shareholder or group of shareholders who also supervise(s) the television service, how long exclusive rights last, the number of showings acquired, and whether instructions and secondary rights necessary for exploitation of the work are held. This scheme maintains the principle of relative independence, ie assessed for a given work only in relation to the sponsor broadcaster and not in absolute terms, in relation to any television services editor.

The notions of cinematographic works and independent production are identical, whether it is a matter of the contribution to cinematographic production made by public or private broadcasters, whatever the medium used. The regulations also impose obligations of the same kind as those

applicable to terrestrial broadcasters using cable, satellite and terrestrial television in analog mode on broadcasters using the same formats in digital mode.

For broadcasters of cinema services using cable, satellite and TDT (Ciné Cinéma, TPS Cinéma, etc), it should be noted that the acquisition of broadcasting rights must represent 21% of their total resources for the current year for European works and 17% for "EOF" works. The broadcasters of prime exclusive films must devote at least 26% of their total resources for the current year to the purchase of broadcasting rights for European cinematographic works, with at least 22% for "EOF" works. The amounts for these latter works may not be less than the amounts per subscriber laid down in the agreements with the CSA. The agreements also contain a diversity clause that requires the broadcasters to earmark part of their investments for low-budget films. The agreements of pay-per-view broadcasters lay down the proportion of their resources that must be devoted to the purchase of broadcasting rights for European or "EOF" films and the proportion of this expenditure that must be devoted to independent production; the agreements also lay down the rate of remuneration to be paid to the beneficiaries of cinematographic works. In 2004, TPS Cinéma spent EUR 31.87 million on the pre-purchase of approved films, and Ciné Cinéma spent EUR 9.41 million.¹⁰

Broadcasters in both the public and private sectors, through their production subsidiaries, invest beyond the compulsory amount.

2.2.2. Indirect Contribution

A tax is paid by public and private broadcasters into a special financial account entitled "Account for the financial support of the cinematographic industry and the audiovisual industry", managed by the CNC (see above). Under Article 17 of the Decree of 24 February 1999,¹¹ the amount of this support is calculated by applying a rate to the amounts (excluding taxes) paid by the television services in performance of contracts for the transfer of broadcasting rights. For television services distributed by cable or satellite, broadcasting is only taken into account if at least 100,000 homes subscribe to the service. This condition is not required for pay-per-view services.¹²

The fund to support distribution in cinema theatres has not yet been set up.

2.2.3. The Return

There are two types of contract – firstly co-production contracts under which a share of ownership is transferred and entitlement to a share in the revenue generated by exploitation of the films is gained, and secondly pre-purchase contracts or contracts for the purchase of rights that merely constitute entitlement to broadcast the work. For each cinematographic work, the contribution made by broadcasters may not exceed half the total cost of the work, and must not be made up of more than half the sums invested in producer shares by the subsidiaries.

The contracts concluded by broadcasters with a view to the acquisition of rights to broadcast cinematographic works provide for a period at the end of which they may be broadcast generally. Co-production shares allow an optimisation of investments in pre-purchases by reducing to 24 months the usual 36month period following screening in a cinema theatre.

Because of its specific contribution to cinematographic production, Canal Plus has the benefit of special arrangements concerning the annual ceiling for the number of full-length films broadcast and the channel's broadcasting schedules.

2.2.4. Procedure

To calculate the amounts paid into the support account as a result of broadcasting approved cinematographic works, the production companies must declare their broadcasting of such works to the CNC. For contracts concluded with a view to acquiring broadcasting rights, perhaps accompanied by co-production shares, the broadcasters must set a figure to each right acquired, indicating each medium separately, with the number of showings, the duration of the rights acquired, and the territories covered.

10) See CNC, *op. cit.*

11) Decree No. 99-130 of 24 February 1999, as amended, on financial support for the cinematographic industry (Official Journal of 25 February 1999).

12) See http://www.cnc.fr/a_presen/r2/ssrub1/p2_1a_aideapf.htm

As the regulatory authority for the audiovisual sector, the CSA is responsible for ensuring that public and private broadcasters comply with their obligations, whether statutory, regulatory or contractual, and more particularly that they comply with their obligations concerning quotas for the production of cinematographic works. To achieve this, the legislator has given the CSA powers of information and sanction (suspension of editing the service or of part of a programme, curtailment of the duration of the authorisation or agreement or withdrawal, financial penalty, etc).

3. Documentation Used:

- Act No. 86-1067 of 30 September 1986 on freedom of communication, Official Journal of 1 October 1986, amended by Act No. 2004-669 of 9 July 2004 (Official Journal of 10 July 2004).
- Decree No. 2002-140 of 4 February 2002 adopted for the purpose of application of Articles 33, 33-1, 33-2 and 71 of Act No. 86-1067 of 30 September 1986 and laying down the scheme applicable to the various categories of sound and television broadcasting services distributed by cable or broadcast by satellite (Official Journal of 6 February 2002 – p.2412 of issue no. 31), amended by Decree No. 2003-764 of 1 August 2003 (Official Journal of 6 August 2003 – p.13609 of issue no. 180).
- Decree No. 2001-1332 of 28 December 2001 on the contribution by editors of television services broadcast terrestrially in analog mode whose financing involves remuneration from users for developing the production of cinematographic and audiovisual works (Official Journal of 29 December 2001 – p.21310), amended by Decree No. 2004-1482 of 23 December 2004 (Official Journal of 30 December 2004 – text no. 123 in issue no. 303).
- Decree No. 2001-1333 of 28 December 2001 adopted for the purpose of application of Articles 27, 70 and 71 of Act No. 86-1067 of 30 September 1986 and laying down the general principles for the broadcasting of services other than radiophonic services terrestrially in digital mode (Official Journal of 29 December 2001 – p.21315).
- Decree No. 2001-609 of 9 July 2001 adopted for the purpose of application of Articles 27, 28 and 71 of Act No. 86-1067 of 30 September 1986 on the contribution of editors of television services broadcast terrestrially unencrypted in analog mode to the development of the production of cinematographic and audiovisual works (Official Journal of 11 July 2001 – issue no. 159, p.11073), amended by Decree No. 2001-1329 of 28 December 2001 (Official Journal of 29 December 2001 – issue no. 302, p.21304).
- Decree No. 99130 of 24 February 1999, as amended, on financial support for the cinematographic industry (Official Journal of 25 February 1999).
- Decree No. 90-66 of 17 January 1990 adopted for the purpose of application of Act No. 86-1067 of 30 September 1986 and laying down the general principles for the broadcasting of cinematographic and audiovisual works by the editors of television services, amended by Decree No. 2004-1481 of 23 December 2004 (Official Journal of 30 December 2004).
- Internet sites: Legifrance (<http://www.legifrance.gouv.fr>), Centre National de la Cinématographie (CNC) (<http://www.cnc.fr>), Conseil Supérieur de l'Audiovisuel (CSA) (<http://www.csa.fr>), Directorate for Media Development (<http://www.ddm.gouv.fr>).

UNITED KINGDOM

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1. Introduction

The British Government seeks an “effective cooperation” between (public service) broadcasters and the British film industry.¹ Legally, however, this merely amounts to the broadcasters’ fulfilling an aspect of their PSB remit, namely, to support, reflect and stimulate cultural activity by the “inclusion in those [sic] services of feature films”.

OFCOM – the media regulator – has no power “to establish quotas or quantitative obligations for individual broadcasters to produce or broadcast feature films”, and none is envisaged.² How OFCOM is going to articulate and ensure that the two sectors could become “mutually supporting” is yet to be determined. The UK Film Council believes that in relation to the primary obligation, OFCOM must “identify a PSB objective for UK/European film that takes account of investment in UK/European films by broadcasters...” (i.e. a wider scope). This would only be to reflect the proposal in the 1998 UK Government’s Film Policy Review which advocated a “steady stream of investment from such important and powerful end-users [as broadcasters]”

There are many statements bemoaning the lack of broadcaster support for film production and proposing that broadcasters engage effectively with it. In 2003, the UK Parliament’s Select Committee on Culture Media and Sport stated that:

“We would like to see increased levels of support for film production and exhibition of British product from the public service broadcasters. We recommend that this be done in co-operation with the broadcasters in the first instance...” “We hope and expect that these hopes will not be disappointed and that Ofcom will be able to take meaningful action to improve the relationship between the British film industry and the public service broadcasters to the benefit of the British people’s enjoyment of, and access to, film. One avenue will be through the Statements of Programme Policy required from the broadcasters.”³

An example of this is Channel 4’s Statement of Programme Policy 2005, which states that:

“Channel 4’s historical support for the best contemporary cinema talent in the UK will continue to be at the heart of primarily working with British filmmakers. That will translate into backing for

1) For a resume of what counts as a “British film”, see IRIS 2006-1: 14, available at:
<http://merlin.obs.coe.int/iris/2006/1/article25.en.html>

2) Department for Culture, Media and Sport British Film Industry - Government Response to the Select Committee Report on the British Film Industry Session 2002.2003, available at:
<http://www.culture.gov.uk/NR/RDONLYRES/454EF51B-EC50-4180-911B-24E212B4FAC3/0/907134CM6022FILM.PDF>

3) See UK Parliament report, Sixth Report, 2002-03, HC 667 paragraph 114 and 117, available at:
<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcomeds/667/66709.htm#a21>

six to eight films. The Cinema Extreme short film scheme is being expanded to include a year-long training and development programme for up to 40 filmmakers, culminating in the production of 4 films. We are exploring ways of reinforcing the relationship between FilmFour and the film output on the core Channel".⁴

Again in 2004, the UK Parliament's Select Committee on Culture Media and Sport, reviewing the BBC, recommended that the BBC publish a strategy for promoting UK films, and should do so in concert with the UK Film Council:

"We further believe there is a strong case for a substantial increase in BBC funding for both feature films and short films and in the exhibition of modern UK films."⁵

2. Obligations of Public Service Broadcasters⁶

2.1. Legal Obligations and their Transposition

The only public service obligation is contained in the Communications Act 2003, Section 264 (6) (b).⁷ The obligation is: a "manner of fulfilling the purposes of public service television broadcasting in the United Kingdom". It is satisfied if it ensures "... (b) that cultural activity in the United Kingdom, and its diversity, are reflected, supported and stimulated by the representation in those services (taken together) of drama, comedy and music, *by the inclusion of feature films in those services* and by the treatment of other visual and performing arts". [emphasis added]

What do broadcasters receive in return? In effect, only the "ticking" of the relevant box in terms of whether they have fulfilled this PSB obligation. As to any Procedural Rules, OFCOM has yet to articulate a methodology for identifying a satisfactory implementation of this obligation.

2.2. Voluntary Obligations

In its review of the "Television without Frontiers" Directive,⁸ the UK Film Council noted under the heading, "Annual obligations of broadcasters":

"There are no annual obligations on any broadcasters. However the BBC and Channel 4 have public commitments: BBC is committed to spending GBP 10 million (EUR 15 million) on investment in and acquisition of British films (which included European films); this translates into approximately 12 titles per year; Channel 4's Statement of Programme Policy, which forms part of its licence, is committed to a significant investment in film; in 2002, with the closure of FilmFour Limited, this investment was reduced from around GBP 30 million to around GBP 10 million".

Channel 5 simply states in its 2005 Statement of Programme Policy that "British films will play an important role too".⁹

2.2.1. The BBC

"BBC Films is the feature film-making arm of the BBC. It is firmly established at the forefront of British independent film-making and co-produces approximately eight films a year."¹⁰

The BBC uses 0.7% of its entire programme budget towards feature film development and production (June 2004). In 2002, the BBC invested GBP 10 million in feature film development and production, of which about GBP 2 million went into development.¹¹

4) See http://www.channel4.com/about_c4/programme_policy_2005/c4spp_05.doc

5) See Paragraph 86 of the First Report: A public BBC, 16 December 2004, Session 2004-05, available at: <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmcomeds/82/8202.htm>

6) Public service broadcasters are the BBC, the Welsh Authority, the public teletext provider and the providers of licensed public service channels, namely the providers of Channel 3 services, Channel 4 or Channel 5, see: <http://www.opsi.gov.uk/acts/en2003/03en21-l.htm>

7) Communications Act 2003, Section 264 (6) (b), available at: <http://www.opsi.gov.uk/acts/acts2003/30021-i.htm#264>

8) See http://europa.eu.int/comm/avpolicy/regul/review-twff2003/wc_council.pdf

9) See <http://www.five.tv/media/pdf/11304052.pdf>

10) See <http://www.bbc.co.uk/bbcfilms/about/>

11) See <http://www.inside-pictures.com/pages/papers/paper.asp?ID=15>

The UK Film Council wishes to see the figure increased to GBP 40 million per annum.

The BBC co-produces digitally-made films with e.g., the Welsh Media Agency¹² and short films made by new talent with Film Network.¹³ Regarding its co-production financing activities, BBC Films states that:

"We secure third party financing for BBC Films theatrical films in the commercial market place and public sector by sourcing equity, rights presales to agents or production. We work together with the independent producer, to create and execute a finance strategy. We provide BBC Films with marketplace knowledge about talent values and information on sales and distribution results. The team seeks to maximise the BBC's return on investment and to achieve the maximum value-for-money for the licence payer".¹⁴

2.2.2. Channel 4

FilmFour, the film arm of Channel 4 was "scaled down" in 2002. Its spend is approximately the same as BBC Films: around GBP 9 - 10 million each year. It focuses more on "low-budgets" e.g., with the UK Film Council FilmFour is investing GBP 3 million over three years to launch the Low Budget Film Scheme, in a unique initiative to generate and sustain a low budget film industry in the UK for the first time¹⁵ C4 is also involved in Welsh Micros¹⁶ - an initiative launched jointly by ACW, S4C and FilmFour; a new scheme which will support the production of micro-budget feature films in Wales and the Channel Four Documentary Film Foundation.¹⁷

2.2.3. Channel 3 (ITV)

ITV has no voluntary obligations to invest in films. ITV's Granada Films closed down in Autumn 2002.¹⁸

3. Obligations of Private Broadcasters

Private broadcasters have neither legal nor voluntary obligations to invest in films. Sky Pictures was established in 1998 but was closed in 2001, after three years in existence. On closure, it contributed some money to Pathe, to assist Pathe's film production activity.

4. Information Resources

Market Information

- UK Film Council Statistical Yearbook 2004/2005, available at:
http://www.ukfilmcouncil.org.uk/statistics/yearbook/?pf=&low=&c=p_contents&s=
- *More audiences see more Brit films at the cinema whilst broadcasters still fail to meet demand for Brit films on TV*, Press Release of the UK Film Council of 12 August 2005, available at:
<http://www.ukfilmcouncil.org.uk/news/?p=D4A1577813d3523879YmL2E548AE&skip=+>

General Information

- Jeongmee Kim, *The Funding and Distribution Structure of the British Film Industry in the 1990s: Localization and Commercialization of British Cinema towards a Global Audience*, available at:
<http://mcs.sagepub.com/cgi/reprint/25/3/405>
- Hill, J, *UK Film Policy, Cultural Capital and Social Exclusion*
http://www.open.ac.uk/socialsciences/sociology/research/ccse/culturalsubset/culturalinfopops/j_hill.pdf

12) See <http://www.sgrin.co.uk/1111.html>

13) See <http://www.bbc.co.uk/dna/filmnetwork/>

14) See <http://www.bbc.co.uk/bbcfilms/rights/>

15) See <http://www.ukfilmcouncil.org.uk/news/?p=D4A1577813d352A399NIV2FCD833&skip=>

16) See <http://www.sgrin.co.uk/1426.html>

17) See <http://www.britdoc.org/c4.php>

18) See <http://www.inside-pictures.com/pages/papers/paper.asp?ID=15>



Alexandros Economou
National Council of Radio and Television

Greek legislation includes an obligation for public and private broadcasters to invest 1,5 per cent of their annual income in the production of cinematographic films. This obligation was introduced in 1989, the year private television started, in order to support the cinema industry (Article 7 para. 1, Law no. 1866/1989).¹

A specialized Committee (Committee of Control of the application of Article 7, Law no. 1866/1989), established for this purpose in the Ministry of Culture in 1993², began work in 1994, but it was only in 1997 that the amounts owed by the companies for the 1992–1996 period were determined.

In the end, the private television companies refused to accept that the calculation was correct and the procedure was blocked. The latest act of the Committee (which has ceased to exist since March 2004) was a petition addressed to the National Council of Radio and Television, the independent authority supervising the application of the Law, in which it reviewed the situation. There has been no result relating to the petition.

In contrast, the public broadcaster ERT S. A. (*Elliniki Radiofonia Tileorasi*) complies with its obligation through a special agreement signed between the President of ERT and the Minister of Culture. This agreement consists of the allocation of an amount of EUR 883.000 each year by ERT for the production of cinematographic films. ERT has collaborated also with the Greek Film Center (a corporation that is supervised by the Ministry of Culture and subsidized by the state) since 1999.³

One must also see the reason behind the non-enforcement of the obligation of private channels to invest 1,5 per cent of their annual income in the production of cinematographic films, which is grounded in the general legal situation of private television.

1) We have to remember that Art. 3 para. 24 of the Law 2328/1995 announces that the obligation in question is a condition for granting a license to a television station. Any infringement of this obligation, as well as the non-prompt notification of data to the Committee of Control could result in a sanction by the *Ethniko Symvoulío Radiotileorasis* (ESR – National Council of Radio and Television, the independent regulatory authority).

2) Presidential Decree 285/1993 concerning the procedure of production of cinematographic films by television stations. Art. 1 of this Presidential Decree provides for the creation of the "Committee of control of Article 7, Law 1866/1989". The Committee (working under the auspices of the Minister of Culture) is composed of six persons: the president of the Advisory Council on Cinematography of the Ministry of Culture, a distinguished film director, a film producer, a film critic, a representative of the General Secretariat of Communication and a representative of the television station whose case is being discussed. Its tasks are:

1. The establishment of the sum to be allocated by each company for the legal purpose.
2. The characterization of a film as a film produced in application of this Law.
3. The financial control of the production operation of a film characterized as a film of this legal category.
4. The notification of any infringement of this obligation to the regulatory authority (ESR) or other authorities.

3) See documentation at <http://www.gfc.gr/2/21/215/2151.html>

The principal characteristics of the Greek legal framework in audiovisual matters are instability and lack of applicability - ineffectiveness. Ten years after having been published, the basic Law no. 2328/1995 concerning private radio and television is still not applied in its entirety, and only a small number of the television stations (essentially those transmitting on national level) have obtained a licence issued under the status of the previous Law no. 1866/1989 the provisions of which have continuously been kept in force by way of transitional provisions. The Law is also enforced in respect of all those stations that "are considered as legal" provided that they had participated in the allocation procedure in 1997.

It is clear that the government would hardly insist on the application of the actual rigid system.



Nives Zvonaric
Council for Electronic Media

1. Overview

During the last ten years film production has stagnated on all fields, from production of movies, import and distribution and showing to the protection of film heritage. The crisis of Croatian film is probably not due to a lack of creative talent, but it is rather a result of the instability of the financing system.

The Public Service Broadcaster, Croatian Radio and Television (HRT), supports cinematographic films with direct film funding.

A kind of indirect film funding exists due to the engagement of the Ministry of Culture: from the moment when the Republic of Croatia became independent until 2000, Croatian Radio and Television was the only TV broadcaster in Croatia. Because it was itself in a very difficult financial situation, it was not able to encourage and finance film production to a satisfactory extent.

Therefore, the Ministry of Culture of the Republic of Croatia in its aspiration to permanently support the Croatian film production publishes regularly an official public announcement for co-financing of film productions only for Croatian producers and directors.¹ Every year funds are foreseen in the state budget intended for the programme of cultural development and the national film programme. Funds are made available for long feature films and documentary films, short feature films and documentary films, animated films, and alternative films.

The Decision about co-financing is achieved by the Minister of Culture in accordance with the expert advice of the cultural council for films and cinematography.²

This Official public announcement on co-financing is based on:

- the Law on funding of public needs in culture;³
- the Rulebook on criteria for establishing programs of public needs in the field of movies and their financing;⁴ and
- the Rulebook on elections and establishing programs of public needs in culture.⁵

It is stipulated that the Ministry of Culture determines the number of motion pictures after the program of cultural development and financial means from the state budget are passed. The Ministry of Culture passes the tender in the first quarter of each calendar year and publishes it in the daily

1) Web site – <http://www.min-kulture.hr>

2) Law of the Cultural Council – Official Gazette number 48/04 – <http://www.nn.hr/>

3) Official Gazette number 47/90 and 27/93.

4) Official Gazette number 62/03.

5) Official Gazette number 07/01.

newspapers. Film projects with an original version in the Croatian language intended for public use in cinemas have the right to participate in the tender. All citizens of the Republic of Croatia have the right to apply.

In 2004, the Ministry of Culture co-financed 5 feature films to the amount of HRK 10,680,000 (EUR 1,433,557), 13 short and documentary films to the amount of HRK 3,120,000 (EUR 418,792), 39 minutes of animated films to the amount of HRK 2,170,000 (EUR 291,275), and 13 alternative films to the amount of HRK 1,485,000 (EUR 199,328), which makes a total of HRK 17,455,000 (EUR 2,342,953).

In 2005 the Ministry of Culture will co-finance 7 feature films, 10 short and documentary films, 15 alternative films, and 7 animated films. In 2005 the Ministry of Culture intends to allocate a total amount of HRK 35,000,000 (EUR 4,729,729) for film industry projects, and by 15 July 2005 the amount of HRK 6,175,750 (EUR 834,560) was allocated for 34 programmes.

After the making of a film, producers using the funds allocated by the Ministry of Culture must, in the first year of the film showing, provide free of charge to the Croatian State Archives / Croatian Film Archives one correct and unused copy of the Film accompanied by the corresponding documentation (script, shooting script, dialogues, poster, and a selection of photographs), and one year after the making of the Film, the original materials of the made film (original sound and picture negatives) must be provided for permanent safekeeping. In addition, they must provide the Ministry of Culture with one copy of the film with subtitles in a foreign language for the purpose of non-commercial showing during the day and/or week of Croatian culture, or within the presentation and promotion of the Croatian film production abroad.

The Ministry of Culture aims at establishing a whole infrastructure, organisation and concept of film industry, and plans together with the City of Zagreb to establish a Film culture centre and create a foundation or institute for film for more effective funding of film production and in order to include international projects and associations.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

Croatian radio television has been making movies in co-production with Croatian authors for years. The Croatian radio television does not have strict legal obligations for production funding. According to Article 5 para. 3 of the Law on Croatian Radio Television,⁶ it has to generally foster, encourage, produce, develop and/or co-produce all kinds of national audiovisual works which contribute to the development of Croatian culture and arts and to the international presentation of Croatian cultural identity. It also has to ensure the necessary production prerequisites for high-level achievements in the area of audiovisual works, especially in the production of feature, documentary and animated audiovisual works.

2.2. Voluntary Obligations

2.2.1. The Source

The intention of the Ministry of Culture and the Croatian Radio and Television to improve the conditions of film production has resulted in the drafting of a contract which should be signed by the end of 2005. The contents of the contract have not been presented to the public yet.

Furthermore, producers or/and directors may on their own initiative start negotiations with Croatian radio television about co-production.

2.2.2. The Obligation

In most cases the contracts between producers/directors and the Croatian radio television are about co-production in feature films; animated and documentary films are also co-produced.

⁶) Law on Croatian radio television, Official Gazette 25/03.

The contract which is made with the director or the producer contains every detail from direct funding to costume, techniques, editing etc.

All rights and obligations of Croatian radio television and the producers are stipulated by this contract. For example "all income realized by the sale of acts, including income realized by cinema distribution of acts in the country and abroad, and income realized by the sale of picture and sound carriers, the contractual parties shall share pursuant to the proportion of their investment, and upon deduction of related expenses for the production. The contractual parties divide producers' awards pursuant to the rate of investment".

2.2.3. The Return

Croatian radio and television gets unlimited rights for showing films on television in Croatia.

2.2.4. Rules of Procedure

Professional departments within Croatian radio and television take care that clauses from the contract are faithfully and comprehensively implemented on both sides, Croatian radio and television and producers and/or authors.

3. Obligations of Private Broadcasters

There are no strict legal provisions which oblige private television distributors to fund film productions. The Law on electronic media⁷ merely stipulates in its Article 9 para. 1, points 4 and 6 that the activity of broadcasting is of interest to the Republic of Croatia when programme contents refer to the promotion of the creation of cultural works and to the development of education, science and arts. No special obligation on film funding exists.

As regards the Croatian television media market, since 2000 Nova TV has been broadcasting on a national level, and RTL Television since 2003, but neither of the two broadcasters has so far financed any film productions, or participated in a co-production of a Croatian film. The same goes for the 17 television programme broadcasters on a regional level.

7) Official Gazette 122/03.

HUNGARY

Balázs Zachar
Ministry for National Cultural Heritage

1. Overview

According to the Hungarian legal regulations in force, the law determines which broadcasters are obliged to contribute to the national film production industry either by direct or indirect film funding. The law leaves it to the discretion of the broadcasters to fulfil this obligation by choosing between direct and indirect film funding. The applicable provisions of the law do not differ on public service and private broadcasters. Therefore both types of broadcasters have to meet the same requirements concerning direct and indirect film funding.

Besides the specific provisions on investment in cinematographic film production the applicable law contains quotas on productions that are not necessarily cinematographic films, but which can also be television works (These quotas are transpositions of the respective provisions of the Television Without Frontiers Directive). Although when achieving these latter quotas television broadcasters might eventually produce or invest in the production of cinema works, since these might be exceptional cases, this report covers only the rules that specifically apply to funding of film production.

If a broadcaster chooses to fulfil the quota specified in the law by direct film funding, it has to spend a determined proportion of its advertising revenue directly on film production.

If a broadcaster chooses to fulfil the quota specified in the law by indirect film funding, it has to pay a determined proportion of its advertising revenue to a state fund which supports film production.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transportation

2.1.1. The Source

The source of the obligation is the Act I of 1996 on Radio and Television Broadcasting (hereinafter: the Act). The applicable part is Section 16, subsection (7) of the Act.¹

2.1.2. The Obligation

“National and regional television broadcasters, with the exception of broadcasters specializing in programmes other than cinematographic works, shall appropriate six percent of their advertising revenues for the creation of new Hungarian motion pictures. At least half of these shall be feature

¹) The text is available in English at: http://www.ortt.hu/index_angol.htm

films, documentaries, popular scientific films and animation films, and thirty percent shall be works that are made by others. This obligation may be satisfied by financial contributions made to public foundations or state funds subsidizing film production, without any restrictions other than the right of showing. For the application of this obligation double the amount paid shall be taken into account."

The Act specifies the possibility of choosing between the two models: direct and indirect film funding at the discretion of the broadcaster. The calculation of the appropriated amount of funding is based on the advertising revenues of the broadcaster. The period on which the calculation is based is not specified, although according to the general practice an annual calculation on the gross income is being applied.

If a broadcaster chooses direct film funding, it has to invest in the production of the following genres: cinematographic feature, documentary feature, popular scientific film or animation film. The provision does not define the national origin of the productions in question; consequently they can be (according to the classification of the Act II of 2004 on Motion Picture) Hungarian films, co-productions with Hungarian participation or other films with Hungarian participation. The Act specifies a quota (30 %) for "works made by others". This provision covers the works that were not made by the broadcaster itself (it is not the same as "works made by independent producers"), and the rights to the works do not belong to the broadcaster.

If a broadcaster chooses indirect film funding it can pay its contribution determined by the Act to a state fund. This state fund in the first place is the Motion Picture Public Foundation of Hungary, the biggest national public foundation dedicated to supporting film production. There is a debate whether the Broadcasting Fund is considered a "state fund subsidizing film production" as defined in the Act. The basic difference between the two models (direct and indirect funding) is the quota to be fulfilled. If a broadcaster chooses indirect support the paid amount will be counted twice, which in practice means that only 3 % of the advertising revenues shall be paid.

The Act does not specify any conditions on the return in case of direct funding. However in the case of indirect funding the broadcasters are limited to receiving only the right of exhibition. They are not entitled to reserve any other rights or to apply any other limitations on the return from the funding.

Procedural rules regarding the funding are not determined in the Act.

2.2. Voluntary Obligations

The Act or other legal sources do not contain provisions on voluntary obligations on direct or indirect film funding. The only discretionary right of the broadcasters is to choose between the two funding models. Any other support above the amount defined in the Act falls into their competence but not under legal rules.

3. Obligations of Private Broadcasters

The applicable provision of the Act makes no distinction between public and private broadcasters. Both types are under the same obligations. The provision only mentions the thematic broadcasters that are excluded from the regulation (except for thematic film channels).

Accordingly all the private broadcasters have to meet the same requirements as described under point 2, except for thematic television channels that do not specialized in films.

4. Information Resources

<http://www.ortt.hu>
<http://www.nemzetifilmiroda.hu>
<http://istar.nkom.hu/kiadvany/>



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Strictly speaking, Irish law does not oblige broadcasters to invest in cinematographic films even though the public service broadcaster RTÉ makes investments on a voluntary basis (see below 2.2). In contrast, Ireland provides for many different mechanisms in support of the film industry, some of which are at least co-financed by broadcasters. Given the prominence of these mechanisms, the Irish contribution reflects the complete picture of film support models.

1. Overview of State Support

1.1. Direct Film Funding

In 1980 legislation was passed to provide support for the film industry in Ireland. The Irish Film Board Act¹ of that year established the Irish Film Board to assist and encourage the development of a film industry in the State and to provide investments, grants, loans and guarantees of loans for the making of films in the State. The Board was established as a corporate body, with powers to do all of the above, to engage in temporary borrowing, acquire land, etc., and to establish a national film archive. It was given power to participate and promote participation in international collaborative film projects.

The Chairman and members of the Board are appointed by the Minister. The funding referred to in the Act to be used by the Board to assist the film industry is provided by the *Oireachtas* (Parliament). Sections 6, 7, 8 of the Act make provision for investments, grants, loans and guarantees of loans. The Board reports annually to the Minister (section 21).

On the same day, 17 December 1980, the National Film Studios of Ireland Limited Act² was passed. That Act authorized the Minister for Finance to take up shares in National Film Studios of Ireland Limited and to provide for the guaranteeing of borrowings by the company.

The Irish Film Board was reconstructed in 1993 by the Government under the original 1980 Act. It supports both high quality commercial and popular projects as well as smaller art-house films. The Board provides development, pre-production and production finance, completion, distribution and marketing funding. However, it only contributes a maximum of 25% of a film's budget, except in the case of low-budget films. The Film Board's overall budget for 2005 is EUR 14 million.³ It has a number of schemes including the Regional Film and Television Fund, which aims to encourage audiovisual production in the West of Ireland. It also works in collaboration with other bodies, including the Arts Council, to provide finance for film (see further below). In conjunction with the Northern Ireland Film

*) I would like to acknowledge the assistance of Andrea Martin, Media Consultant and formerly solicitor, RTÉ and TG4.

1) Available at www.irishstatutebook.ie

2) Available at www.irishstatutebook.ie

3) See www.filmboard.ie

and Television Commission, the Film Board sponsors the "Breakthrough Talent Award", established in 2004.⁴

There is further support for film available from the Arts Council. The Council, established by the State, funds particularly experimental film and community film/video. Its Film and Video Awards Scheme offers EUR 100,000 per annum to film and video projects. The Council favours short or feature films, documentary or animation. Under its new "Documenting the Arts" scheme, a production fund operated in collaboration with the Irish Film Board, the Council has recently given EUR 230,000 to seven film proposals. Further funding for the successful recipients will be triggered automatically by a commitment from a broadcaster. Key to the success of the scheme will be the Arts Council, Film Board and broadcasters working closely together with Irish documentary film-makers to ensure that these films find as large an audience as possible.⁵

Individual government departments give financial support to cultural projects in general, for example, or to educational or environmental projects. There are also some jointly funded Irish/EU initiatives, such as the EU Programme for Peace and Reconciliation. A small amount of funding may be available from time to time from local authorities, which now employ Arts Officers, from semi-state bodies such as *Údarás na Gaeltachta* (Authority for Irish-language speaking areas of Ireland) for film in the Irish-language.

In addition to direct State funding, there are various sources of private funding, for example the national banks which provide bursaries, and business organisations which operate schemes such as Cothú.

1.2. Indirect Film Funding

Indirect funding by the State to the film industry comes in the form of tax incentives. Since 1987 successive Finance Acts have made special provision for tax relief for investment in cinematographic films. The relief under section 481⁶ encourages investors to provide finance for the making of films. The continuation of the tax relief was in doubt in 2003 when the Finance Minister announced his intention to abolish it. However, following a strong lobbying campaign, he eventually renewed it in 2004 for a further five years and increased the upper limit on total investment to EUR 15 million per film. In essence the section 481 tax provision means a deduction of 80% is available to Irish investors who buy shares in Irish production companies, up to a maximum of EUR 31,750 per year. Section 481 certificates carry requirements regarding employment of Irish personnel and the preparation and furnishing of audited accounts. The scheme is now administered directly by the Revenue Commissioners rather than by government departments as in the past and is dealt with at registration stage rather than compliance stage, which caused difficulties in the past due to the often very long time-frame.⁷

It is also worth mentioning that the Irish Film Institute, originating from 1945, and now supported by Arts Council funding, has established an Irish Film Archive and film library, as well as a travelling cinema. It runs the Irish Film Centre in Dublin, promotes recognition of film and television studies and is a source of information and resources in relation to film. It has also established an annual screen-writing award.⁸

An organization called "Young Irish Film Makers" provides training for young people in film making. Finance for equipment has been provided by the Ireland Funds; the EU Youth Initiative, Petra, sponsored a film workshop and further equipment; and FÁS, the State employment training agency, provided staff.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

There are no legal obligations on public service broadcasters to support cinematographic film as such. There are, however, legal obligations to support independent television programmes.

4) See www.ifta.ie

5) See www.iftn.ie/news/index.cfm?fuseaction=newsArticle&file=3794

6) The section 481 provision is contained in the Taxes Consolidation Act 1997, as amended: www.irishstatutebook.ie

7) For details of this tax relief for the film industry, see Candelaria van Strien-Reney, "Tax Relief for Investment in Film Industry to Continue", available at <http://merlin.obs.coe.int/iris/2004/1/article29.en.html> and Marie McGonagle, "Supply and Connection of Cable Taxable as Separate Services", available at <http://merlin.obs.coe.int/iris/2004/4/article24.en.html>

8) See www.fii.ie/ifi/index.asp

The Broadcasting Act 1990 section 5 required the public service broadcaster, RTÉ, to ensure that a "reasonable" proportion of the programme material on its television service was devoted to original programme material produced in the State or in the EU by persons other than RTÉ. The Act was amended in 1993.

The Broadcasting Authority (Amendment) Act, 1993, section 4 requires RTÉ to set aside a set sum (precise amount now calculated by reference to section 33 of the Broadcasting Act, 2001) to be spent on (a) commissioning the making of independent television programmes, (b) procuring programme proposals for independent television programmes and (c) providing completion finance for non-RTÉ commissioned projects. The provision relates exclusively to "independent television programmes". While the term "programme" is not defined, the meaning of "independent television programme" is defined in section 5 of the 1993 Act. Section 5 adopts the criteria of control and independence from broadcasters, as set out in the EU interpretation guidelines for Article 5 of the "Television without Frontiers" Directive. There is a requirement set out in section 6 of the 1993 Act that the RTÉ Authority report annually to the Minister for Communications on its compliance with the above obligations to fund independent television programmes.⁹

There is no specific reference in the Broadcasting Authority (Amendment) Act 1993 to "cinematographic film" as such or any obligation on RTÉ to fund cinematographic film.

The Broadcasting Authority (Amendment) Act 1993 section 4 was amended by section 33 of the Broadcasting Act 2001. Section 33 sets the "appropriate amount" to be spent by RTÉ on independent productions at IEP 20 million (EUR 25 million), as increased by an amount equal to the appropriate percentage of the said sum (i.e. in accordance with the consumer price index).

The amount RTÉ is required to spend on independent productions at present is around EUR 27 million per year but in fact last year it spent in the region of EUR 50 million.¹⁰

Section 35 of the Broadcasting Act 2001 provides that the term "independent television programme" shall have the same meaning as that ascribed to it in the Broadcasting Authority (Amendment) Act 1993, discussed above.

TG4, the Irish-language television station, was established in 1996 under the legislation governing RTÉ. It, therefore, comes under the same statutory obligations to support independent programming as RTÉ. It commissions independent productions in the Irish language. It invests over EUR 15 million annually in original programming from the independent sector. The Broadcasting Act 2001 has made provision for TG4 (then called *Teilifís na Gaeilge*) to be detached from RTÉ and established on an independent basis as a free-to-air public service broadcaster. That has not actually happened yet but is in the process. When established on an independent footing, the authority governing TG4 will be empowered by the Act to commission the making of programme material, originate programme material and acquire programme material (section 45(4)). Three of the seven successful recipients of awards under the new "Documenting the Arts" scheme, outlined above, have gone to Irish language projects and will be broadcast on TG4.

In June 2004 a Public Service Broadcasting Charter for RTÉ¹¹ was published by the Minister for Communications. The Charter is a statement of principles that clarifies what is expected of RTÉ as the national public service broadcaster, including RTÉ's accountability to its audience. It results from a package of measures agreed in December 2002, following recommendations in the report of the Broadcasting Forum established by the Minister for Communications in March 2002 when he was considering RTÉ's application for an increase in the licence fee. Concern had been expressed about RTÉ's use of the licence fee and its commitment to public service programming, as mandated by the legislation establishing RTÉ and by section 28 of the Broadcasting Act 2001. An increase in the annual fee was subsequently granted to RTÉ, subject to it becoming more transparent and accountable in its use of the fee. Indeed, the Broadcasting Forum pinpointed transparency as a key requirement in various specified areas of RTÉ's operations, including commissions from independent producers.¹²

9) The Broadcasting Act 1990, The Broadcasting Authority (Amendment) Act 1993 and the Broadcasting Act 2001 are all available at: www.irishstatutebook.ie

10) Source: The Sunday Tribune 9 October 2005/

11) The Charter is available at www.dcmnr.ie

12) See Marie McGonagle, "Broadcasting Forum Report", available at: <http://merlin.obs.coe.int/iris/2002/10/article18.en.html>

The Charter sets out RTÉ's statutory mandate, including its statutory obligation to commission a prescribed value of programming from the independent production sector. In the section dealing with provision of services, RTÉ commits itself to "continue to honour its commitment to independent producers and to encourage the creativity of independent productions and maintain an appropriate balance between in-house and independent productions." RTÉ is to report annually, the Minister is to keep the Charter under review and a formal review will be carried out within five years.

In 2003 the Broadcasting (Funding) Act 2003¹³ was passed. The Act provides for the Broadcasting Commission of Ireland (BCI) to prepare a scheme or schemes for the funding of grants to support certain television and radio programmes and other projects out of an amount of 5% of net receipts from television licence fees (section 4). The subject matter that will be eligible for grant aid is set out in the Act, section 2, and includes programmes on Irish culture and heritage, history, Irish language. News and current affairs are expressly excluded (section 2 (2)(d)). Only programmes broadcast on a free television service, universally available, or on cable or MMD system are eligible. In other words, the scheme is open to both public service and commercial broadcasters. This means that private broadcasters are entitled to apply for funding from what is public money, namely money collected from the public as part of the licence fee, but only for public service programming.

The Act refers to support for certain television and radio "programmes". The term "programme" is not defined in the Act but programme material is defined as "audio-visual or audio material, including advertising and similar material, which was broadcast in whole or in part or was recorded for broadcast, and includes stills and photographs produced from such material or in the context of the recording of such material". There is no specific reference to cinematographic film as such. However, the scheme is to be reviewed after three years (section 5) and it is at least conceivable that it could be extended to expressly include cinematographic film.

A scheme in accordance with the Act, the Broadcasting (Funding) Scheme, has been put in place by the BCI. However, it is not yet operational, as approval was first required from the European Commission. As a form of State Aid it had to be referred to the Commission for approval. Approval was received on 10 October 2005 (see further below).

2.2. Voluntary Obligations

While there are no statutory obligations on RTÉ to provide financial support for cinematographic films as such, films funded by the Irish Film Board have had a substantial component of so-called "market money" as an essential element of production finance. This comes in the form of broadcaster investment/licence fee, distribution guarantee, pre-sale or sales advance. Filmmakers have succeeded in attracting considerable commercial or external investment, with the result that there has been a very impressive ratio of "external investment" to national film agency support.¹⁴

It is clear, therefore, that RTÉ does invest in cinematographic film. It has regularly participated in feature film production with investment ranging from EUR 32,000 to EUR 250,000. Normally they treat EUR 32,000 of the investment as the licence fee for Irish TV rights (two transmissions over five years of theatrical and video holdbacks), with the balance being treated as equity seeking a recoupment situation, often in line with the Irish Film Board.¹⁵

In addition, RTÉ has been involved in a joint enterprise, called "Frameworks", with the Arts Council and the Northern Ireland Film Council (now the Northern Ireland Film and Television Commission), to support animation. (RTÉ has recently given the green light to a further 52 episodes of a Dublin-made interactive animation series for pre-school children in which the software allows a different viewer to star in each show.) RTÉ is also involved in "Short Cuts", a production scheme set up in 1994 to support short film making. It continues to make annual short scripts awards. It has lent its support also to the new "Documenting the Arts" scheme, outlined above. RTÉ is the largest funder of arts documentary in Ireland.¹⁶

13) The Act is available at www.oireachtas.ie

14) See www.cmn.ie/cmnsitenew/directory/funding.htm under Irish Film Board

15) See www.iftn.ie/handbook/dsp_index_gen_fin.cfm

16) See www.iftn.ie/news/index.cfm?fuseaction=newsArticle&file=3794

3. Obligations of Private Broadcasters

3.1. Legal Obligations and their Transposition

There are no legal obligations on private broadcasters to support cinematographic film as such. There are, however, legal obligations to support independent television programmes.

At present TV3 is the only national private television broadcaster in Ireland, although Setanta Sports has recently begun broadcasting (under a satellite content contract pursuant to section 36 of the Broadcasting Act 2001) and some regional and local television stations are currently being licensed. TV3, which has operated since 1998, is a television broadcasting contractor licensed under the provisions of the Radio and Television Act 1988. That Act paved the way for the introduction of private commercial broadcasting, radio and television, in Ireland. It established the IRTC, now BCI, as licensor and regulator of the sector. Under section 18(4) of the 1988 Act, TV3 has an obligation to ensure that it includes as "a reasonable proportion" of its programme service, programmes which have been produced within the EU by persons other than TV3 or its subsidiaries. This provision was included in the Act in anticipation of Articles 4 and 5 of the "Television without Frontiers" Directive but is less onerous than the obligation imposed specifically on RTÉ by the 1993 Act, in relation to commissioning independent productions. However, the 1988 Act was an attempt to get a new commercial sector up and running and foresaw the difficulties the new stations would face in a situation in which RTÉ had had a monopoly for decades. Indeed, TV3 had initial difficulties and although granted a licence some years earlier was not able to meet the requirements of the licensor. It was not until 1998 that it was able to begin broadcasting.

The Broadcasting (Funding) Act 2003, as outlined above, provides for a scheme or schemes for the funding of grants to support certain television and radio programmes and other projects out of an amount of 5% of net receipts from television licence fees.¹⁷ The scheme, entitled "Sound and Vision", has been devised by and is due to be administered by the Broadcasting Commission of Ireland (BCI), pending the establishment of the Broadcasting Authority of Ireland (BAI), which is to become the overall regulator for the broadcasting sector, both public service and commercial. Approval from the European Commission for the scheme was announced on 10 October 2005.¹⁸ The scheme has been deemed compatible with EU state aid and competition rules and will, therefore, be up and running almost immediately. The scheme will have an annual fund in excess of EUR 8 million and currently stands at around EUR 23 million.

Apart from the above statutory obligations on private television broadcasters in relation to independent programmes, the regulator, BCI, has statutory obligations to ensure pluralism and diversity of content. It meets those obligations through its Ownership and Control Policy. In addition, it operates a number of schemes to encourage innovation in broadcasting. Among these schemes is its "New Adventures in Broadcasting" scheme, which aims to promote the development of new, innovative and sustainable programming within the independent sector, but so far confined to the radio sector.

17) Details of the funding schemes are available at www.bci.ie

18) The press release announcing EU Commission approval for the Sound and Vision scheme is available at the Department of Communications website www.dcmnr.ie



*Maja Cappello**

Autorità per le garanzie nelle comunicazioni

1. Overview

1.1. Direct Film Funding

The implementation of the provisions of the "Television Without Frontiers" Directive devoted to the promotion of distribution and production of television programmes into Italian law was made by Law no. 122/98, now included in the Broadcasting Code (Legislative Decree no. 177/2005¹), and completed by AGCOM regulation no. 9/99.

This is the only legislative framework providing for investment obligations on broadcasters, as the intense discussion that took place during the legislative process leading to the framework Cinema Act (Legislative Decree no. 28/2004²) did not lead to any specific provision on investment obligations for broadcasters.

Even though the Parliamentary Commissions specialising in cultural affairs, whose formal opinions were acquired for the approval of the Act, expressed their opposition to parts of the draft law because it did not contain any provision on broadcasters' (both terrestrial and satellite) obligations to invest in cinematographic works,³ the reform was approved without introducing any provision on this issue.

1.2. Indirect Film Funding

Italian broadcasters' participation may in a limited number of cases be considered as an indirect form of film funding.

The framework Cinema Act, at Art. 13, para. 2, as implemented by Ministry Act of 27 September 2004,⁴ makes access to privileged public loans for feature-length films of acknowledged cultural interest of up to 50% or, in certain cases, to 90% of the production costs conditional on the availability of funds for the coverage of the remaining part of the costs. For this purpose, it is permitted that the rights of exploitation to such feature-length film may be licensed or sold before its production is

*) I would like to thank Liliana Ciliberti for having supplied some of the information reflected in this contribution.

1) *Decreto legislativo n. 177/2005, "Testo unico della radiotelevisione"* (Legislative Decree no. 177/2005) available at <http://www.camera.it/parlam/leggi/deleghe/testi/05177dl.htm>

2) *Decreto Legislativo 22 gennaio 2004, n. 28 "Riforma della disciplina in materia di attività cinematografiche, a norma dell'articolo 10 della legge 6 luglio 2002, no. 137"* (Legislative Decree no. 28/2004), *Gazzetta Ufficiale* (Official Journal) no. 29 of 5 February 2004, available at: <http://www.camera.it/parlam/leggi/deleghe/testi/04028dl.htm>

3) The Opinion of the Chamber of Deputies is available at: http://www.camera.it/_dati/leg14/lavori/bollet/200401/0114/pdf/07.pdf; see page 88 for the negative opinion first discussed, and page 92 for the approved opinion, which was deemed favourable with conditions. The opinion expressed by the Senate is available at: <http://notes9.senato.it/W3/Lavori.NSF/All/A86D4439BA0B091EC1256E010048CCA3?OpenDocument>

4) *Decreto Ministero per i beni e le attività culturali 27 settembre 2004, Modalità tecniche per il sostegno alla produzione ed alla distribuzione cinematografica.*

started or before its final cut takes place (so-called pre-sale of the rights of exploitation), provided that such pre-sale shall not exceed the percentage share of the costs to be borne by the production company.

According to section 4 of Ministry Act of 27 September 2004 (entitled "Proceeding for Finance"), the pre-sale of rights for the Italian territory to feature-lengths films of cultural interest for which an application for public funding is made cannot exceed five years and five runs, in respect of free-TV rights, and eighteen months for pay-TV rights, including possible months of exploitation for pay-per-view rights.

Furthermore, any revenue deriving from the exploitation of the funded film by any means of distribution, with the exception of any pre-sale of the rights, shall be attributed primarily to the reimbursement of 20% of the privileged public loan. Any further revenues shall cover the costs of national and international distribution and the production costs of the movie. Any possible further revenue shall be split between the State (70%) and the production company (30%).

Art. 2, para. 9, of Law no. 122/98 provides that all satellite broadcasters under Italian jurisdiction are obliged to promote Italian and European works: to this effect the making available of advertising time can be considered as an indirect media service to the benefit of film producers.

2. Legal Obligations and their Transposition

2.1. The Source

Art. 2, para. 5, of Law no. 122/98⁵ implements the provisions of the "Television Without Frontiers" Directive concerning investment quotas, as later specified by Art. 4 of AGCOM Regulation no. 9/99.⁶

Exploitation rights of the broadcasters have been limited as regards time by AGCOM Regulation no. 185/03/CSP,⁷ defining the residual rights of the producers once the broadcasting exploitation right has expired.

2.2. The Obligation

Act no. 122/98 provides that all television broadcasters, public and private, subject to Italian jurisdiction, independently of their means of transmission, have to reserve a certain percentage of their net annual advertising revenues for the production and the purchase of audiovisual and children's programs and European works including those made by independent producers⁸

Independent producers are defined as producers of audiovisual rights who are not controlled by, or connected with, holders of a concession, license or authorization for TV broadcasting activity or who have not assigned at least 90% of their production to one single broadcaster in the past three years. Independent producers also benefit from a quota of residual rights deriving from the temporal limitation of the broadcasting exploitation rights bought by broadcasters. According to Article 2 para. 4 of Law no. 122/98, rights that have been sold to broadcasters revert to the independent producers after either 5 or 7 years (depending on the type of work).⁹ In contrast, the quota for residual rights is subject to negotiations between the parties.¹⁰

5) Legge 30 aprile 1998, n. 122 "Differimento di termini previsti dalla legge 31 luglio 1997, n. 249, relativi all'Autorità per le garanzie nelle comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive", (Law no. 122/98 of 30 April 1998), *Gazzetta Ufficiale* (Official Journal) no. 99 of 30 April 1998, available at: <http://www.camera.it/parlam/leggi/98122l.htm>

6) *Delibera n. 9/99 Approvazione del regolamento concernente la promozione della distribuzione e della produzione di opere europee* (AGCOM regulation no. 9/99), available at: http://www.agcom.it/provv/D9_99.htm

7) *Delibera n. 185/03/CSP Approvazione del regolamento concernente i criteri di attribuzione di quote di diritti residuali derivanti dalla limitazione temporale dei diritti di utilizzazione televisiva acquisiti dagli operatori radiotelevisivi* (AGCOM regulation no. 185/03/CSP) *Gazzetta Ufficiale* (Official Journal) no. 193 of 21 August 2003, available at: http://www.agcom.it/provv/d_185_03_CSP.htm

8) The provision does not specify how to split the percentage of revenues to be spent among the different types of works. Art. 2 para. 5 states: "Le emittenti televisive soggette alla giurisdizione italiana, indipendentemente dalle modalità di trasmissione, riservano una quota dei loro introiti netti annui derivanti da pubblicità alla produzione e all'acquisto di programmi audiovisivi, compresi i film in misura non inferiore al 40 per cento della quota suddetta, e di programmi specificamente rivolti ai minori, di produzioni europee, ivi comprese quelle realizzate da produttori indipendenti. Tale quota non può comunque essere inferiore al 10 per cento degli introiti stessi".

9) See Article 3 para.1 of *Delibera n. 185/03/CSP* and *infra* under point 2.4.

10) See Article 3 para. 12 of *Delibera n. 185/03/CSP*.

AGCOM Regulation no. 9/99 states more precisely that the quota for European works (in which works from independent producers have to be included) cannot be less than 10% of the advertising revenues of the broadcasters. 40% of this quota has to be reserved for films intended as cinematographic works, and TV dramas in one or more parts, up to a maximum duration of 200 minutes. In the case where two or more TV channels belong to the same broadcaster, the investment resulting from this quota has to be calculated on the total advertising revenue with reference to the aggregation of the channels involved, whereas the investments themselves can be made either by the broadcaster directly or by controlling or controlled companies directly or indirectly.

In addition, public service broadcasters have to reserve a percentage of the gross revenues deriving from the broadcasting fees (the percentage is to be established in the service contract that they conclude with the Italian government), for the production of European works, including those made by independent producers. This percentage can never be lower than 20%. Within this quota, the service contract must include a production or purchase quota of animation films dedicated to children.

According to Art. 11, para. 2, of the Contract actually in force¹¹ the quota is 20%, 40% of which is to be used for the production of films. More than half of this sub-quota (that is 51% of 40%) has to be invested in the production of cinematographic works and 8% of the sub-quota for animation films for children.

2.3. Exceptions

Art. 5 of AGCOM Regulation no. 9/99 envisages an exception for thematic channels, which may apply for a derogation from the investment obligations. The Regulation defines thematic channels as those that devote at least 70% of their programming to a specific theme.

The requests for derogations are examined by the Communications Authority (AGCOM¹²), in particular by the Monitoring Department. A significant body of case-law shows that applications for exemption from the investment obligation have to be thoroughly justified by the broadcasters in order to be accepted: for example it is not sufficient that the broadcaster has access to a specific library belonging to the same non-European editorial group or that it has chosen to broadcast films from a certain geographical area/zone or belonging to a certain period: in both cases there is no concrete justification not to invest in European cinematographic works.

2.4. The Return

The return for broadcasters investing in cinematographic works is up to the parties to decide, as the law sets no limitation.

In the case of agreements with independent producers, exploitation rights of broadcasters have been limited as regards time by AGCOM Regulation no. 185/03/CSP, so their maximum duration, if not restricted by contractual agreements, is as follows:

- 7 years for cinematographic works, audiovisual programs, shows, cultural programs (except documentaries), music and sports programs (except sports events and sports news) and entertainment programs (except games and talk shows), production of cultural, musical, sports or entertainment events, animation films;
- 5 years for documentaries of scientific, didactic or cultural nature.

In cases of co-production, the residual rights are transferred from broadcasters to independent producers after 5 years from the delivery of the product provided that there has not been any TV exploitation, unless the parties have established a shorter limit. For this purpose, co-production is defined as the production costs incurred during the development stage of which an independent producer has covered not less than 20% or alternatively 10% of the realization costs of the project.

11) The Contract between the Ministry of Communications and the RAI for the period 2003-2005 was signed on 23 January 2003 and is available at: http://www.comunicazioni.it/it/DocSupp/627/contratto%20rai%202003_bis.pdf

12) Relevant information is available at: http://www.agcom.it/operatori/operatori_deroga_programmaz.htm

3. Voluntary Obligations

There are no accessible framework contracts from which it is possible to assess the existence of voluntary obligations of broadcasters interested in investing in cinematographic works additional to what is envisaged by the law.

4. Useful Documentation

- The national association of film producers (ANICA) provides regular studies on the Italian cinematographic market: <http://www.anica.it/index.html>
- The Ministry for cultural affairs, in particular the Cinema department, gives regular updates of existing regulation: <http://www.cinema.beniculturali.it/cinema.html>



Dace Buceniece
National Film Centre

The draft of a Latvian Film Law includes a very general article concerning the public service broadcaster *Latvijas Televīzija* and more specifically its potential obligations to invest in (cinematographic) film.

Article 11 paragraph 7 of the Draft states that:

The National Film centre of Latvia will have the task to promote cooperation with the public service broadcaster *Latvijas Televīzija* (Latvian Television). Between the National Film Centre and the public service broadcaster *Latvijas Televīzija* an agreement shall be concluded that sets up the order determining how *Latvijas Televīzija* goes into co-production and pre-sales of national films. The agreement is subject to renewal every three years”.

The introduction of this clause would mark a significant achievement because in Latvia efforts to introduce the cooperation system between TV stations and film producers are still at a very early stage.

THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

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1. Overview

The writing of this country report on the obligations to support Macedonian film production coincides and overlaps with changes in the regulation of the area.¹ The adoption of two crucial acts, the Broadcasting Act and the Act on establishing a Film Fund, is pending. The Draft of the Broadcasting Act passed the first debate in *Sobranie*, the Parliament. Now it is in the phase of further conciliation with the remarks made during the session, and it is expected to be adopted by the Parliament in the second phase during the fourth quarter of 2005.² Information on the need for enacting the Act on establishing a Film Fund has had a positive reply from the Government and is now awaiting action by the Ministry of Culture which is expected to proceed with the Draft.³

The former Yugoslav Republic of Macedonia tends towards further positive development of the field of broadcasting and towards the harmonization of its provisions with the legislation of the European Union. Therefore, it has undertaken a commitment to transpose into its national legislation the legal instruments (directives, recommendations etc.) of the European Union and of the Council of Europe that pertain to the media (broadcasting as well as production). The former Yugoslav Republic of Macedonia is determined to implement different international agreements that it has ratified, among which feature:

- the European Convention on Transfrontier Television and the Protocol amending the European Convention on Transfrontier Television⁴ and
- the European Convention on Cinematographic Co-production,⁵ that covers various commitments (financial, creative, technical etc.)

The Macedonian commitment towards the European fund for co-production, distribution and exhibition – Eurimages, which is also in compliance with the Convention, should likewise be mentioned. The former Yugoslav Republic of Macedonia joined Eurimages on 1 July 2003.

Based on co-productions, the Ministry of Culture on behalf of the former Yugoslav Republic of Macedonia, which is a party to the European Convention on Cinematographic Co-production since 2003, has had several film productions. At the same time, following the accession of the former Yugoslav Republic of Macedonia to Eurimages, new possibilities and conditions have been created for achieving

1) The report reflects the situation as of 3 November 2005.

2) At the time of writing the Parliamentary session is still in progress.

3) The Parliamentary Commissions reviewed the Draft on 20 October 2005. The Draft was adopted by Parliament on 1 November 2005 with remarks concerning the independence of the Fund from the Ministry of Culture.

4) *Zakon za ratifikacija na Evropskata konvencija za prekugranicna televizija i Protokolot za izmena na Evropskata konvencija za prekugranicna televizija* (Act for the Ratification of European Convention on Transfrontier Television and the Protocol amending the European Convention on Transfrontier Television), Official Gazette of the Republic of Macedonia No. 18/2003.

5) *Zakon za ratifikacija na Evropskata konvencija za kinematografski koprodukcii* (Act on the Ratification of the European Convention on Cinematographic Co-production), Official Gazette of the Republic of Macedonia No. 18/03.

mutual interests and cooperation on common cinematographic projects with other European countries. So far, cooperation on co-productions has been established with Croatia, Slovenia, France, the Czech Republic, Germany, as well as Bosnia and Herzegovina. In addition, a bilateral agreement with Italy on cooperation on film co-productions was signed.⁶ The former Yugoslav Republic of Macedonia is also a member of the South East European Cinema Network (SEECN). For the Ministry the work on co-production projects is of great importance because it allows an increase in the number of films produced as well as their wider circulation; this fact has an influence on the priorities in the allocation of funds during the annual open competition held by the Ministry of Culture.

The actual model of film financing depends on the Budget of the former Yugoslav Republic of Macedonia, the relevant part being administered by the Ministry of Culture. According to the Act on Culture – Consolidated text,⁷ among the activities in different cultural areas and arts, there is also finance for activities related to film. According to the Annual Programme for Achieving National Cultural Interests, the former Yugoslav Republic of Macedonia's budget provides for the financing of the programmes of national institutions in these fields, as well as for independent programmes and projects, and investments in cinema equipment.

Based on Art. 65, Paragraph 1, in connection with Articles 8, 10, 62 and 63 of the Act on Culture, and in accordance with the National Programme for Culture for the Period 2004 -2008, an open competition has been announced for financing programmes and projects from many cultural and artistic areas, including film activity. Programmes and projects from the competition for film and archiving activity are reviewed by the Film Committee (an expert advisory body within the Ministry of Culture, comprised of film professionals – external associates), which chooses the proposals for annual financing. The proposals must be approved by the Culture Council and adopted by the Minister of Culture within the Annual Programme of the Ministry of Culture for achieving the national interest in culture.

Pursuant to Article 51 of the Act on Culture – Consolidated Text, a film-related activity is the production of a cinematographic, television and video film, other audio-visual works or other works of art expressed in the form of motion pictures, with or without sound, regardless of the medium on which it is carried. The other audio-visual services covered in Article 46 of the aforementioned Act – technical processing of films, distribution, and public exhibition of the mentioned works – are not considered as cultural activities, and as such they are carried out according to the general regulations on trade activities. Activities of the Cinematheque of Macedonia, as an institution of national interest, are regarded as cinematographic activities in the sense of the regulations in the field of culture, as an activity for the preservation and utilisation of movable cultural heritage, i.e. treasure.

The Ministry of Culture participates in film production with a 30-70% share in the total cost of the film. Eligible for support are feature films, short features, documentaries and animated films.

The available Budget has a tendency of diminishing. In 2005 it has dropped to nearly half of the Budget available for film production in 2001. The precise figure for the budget available for film activity in 2005 is MKD 70,000,000 (EUR 147,568),⁸ of which MKD 67,740,000 (EUR 1,110,519) is available only for film production. The Budget for film activity in 2001 was MKD 115,000,000 (EUR 1,885,273), of which MKD 93,012,961 (EUR 1,524,830) were available only for film production. Since then, the Budget has dropped to MKD 100,000,000 (EUR 1,639,371) (for film production only MKD 83,523,860 (EUR 1,369,271)) in 2002, MKD 93,000,000 (EUR 1,524,617), MKD 80,949,279 (EUR 1,327,064) in 2003 and MKD 85,000,000 (EUR 393,470) (MKD 69,554,494 (EUR 1,140,265)) in 2004.

The adoption of an Act on Establishing a Film Fund (Film Fund Act) is envisaged. It is expected to improve the financing of cinematographic activity, i.e. to introduce funds financing instead of budget financing. Several other sources for financing have been noted in the draft proposal of the Film Fund Act: own income from film distribution, interest from bank deposits, donations, gifts, 5% from the total value of the copies for film distribution in the Republic of Macedonia, 2% from the Cinema Box-Offices; 2% from film copies (DVD, VHS) rent; 1% from the broadcasting fee designated for the Public Broadcaster (MRT) and 2% from Commercial Television broadcasting licenses.

6) Act on the Ratification of the Agreement on Cinematographic Co-production between the Government of the Republic of Macedonia and the Government of the Republic of Italy, Official Gazette of the RM No. 13/03.

7) *Zakon za kultura* (Act on Culture), Official Gazette of the RM No. 66/03.

8) Exchange Rate EUR/MKD (Date: 6 September 2005) 1 Euro = 61,27 Macedonian denars.

In the preparation phase of the Draft, the Broadcasting Council officially showed its support for the establishment of a Film Fund, which, in its view, would give a sound basis for film financing. The Council also stated that the search for alternative financing models is a good step forward, but it should not end with the sources mentioned. For instance it was suggested that an alternative to funding film activity through the percentage collected from broadcasting licenses and the broadcasting fee would be to deduct a percentage from television advertising income and use it for funding purposes. This suggested model is considered to better take into account the broadcasters' interests in film investment.

According to the results of the research published by the independent agency last year,⁹ the television advertising sector in Macedonia was estimated to reach nearly EUR 53 million gross income with possible inaccuracies based on discounts and sponsoring prices.

2. Obligations of Public Service Broadcasters

In the past, the public broadcaster Macedonian Radio and Television (MRT)¹⁰ has permanently taken part in film production in Macedonia as producer or co-producer, supporting production both directly and indirectly. However, in the last few years, due to the financial crises in the functioning of the public broadcaster, MRT has no longer been able to participate in film production. For the time being, there is no record of agreement or investment from the commercial private broadcasters in feature film production.

Regarding the provisions of the actual Broadcasting Act¹¹ in force, the Macedonian commercial private broadcasters, instead of being subject to financing obligations concerning cinematography, are rather beneficiaries of financial support systems along with the independent producers and compete for the allocation of the Radio and Television Programmes Fund. This fund supports the creation and broadcasting of public interest programmes of commercial broadcasting companies and independent producers and it is financed by 10% of the broadcasting fee.¹² The Government of the former Yugoslav Republic of Macedonia takes the decision on the allocation of these funds, upon the proposal of the Broadcasting Council. The Council prepares the proposal on the basis of a previously completed public competition procedure. Although, the Fund allows a possibility for joint film and television production, this was rarely used by producers in the past.¹³

The public broadcaster, Macedonian Radio and Television (MRT) may not compete for financial support from the Fund, but it is granted the privilege of broadcasting without compensation the premiere of the projects funded by the Radio and Television Programmes Fund that are produced by independent producers. It is also granted a first repetition of projects supported by the Fund that are produced by commercial broadcasters. All commercial broadcasters may also broadcast the repetition of the funded projects, upon their request.

The Draft of the new Broadcasting Act does not envisage the allocation of funds from the broadcasting fee for this purpose. Instead the percentage that was available for production will revert to the public broadcaster (MRT). On the other hand MRT has an obligation, according to Art. 125 of the Draft Broadcasting Act, to reserve at least 10 percent of its annual transmission time for works from independent producers in Macedonia (this percentage does not include news, sports events, games, advertising and teletext). To this end, MRT is also obliged to reserve 10 percent of its annual budget for programme production. However, this provision has caused a dispute between commercial broadcasters, the public broadcaster and producers in Macedonia. Doubts have been raised as to the capacity of MRT to conduct an open competition on the funding of programme production in an independent way. Moreover, it is also feared that the funds will be used in fulfilling the financial debts of MRT. Should this provision enter into force despite these objections, it is expected that the new Statute Act of the Public Broadcaster (MRT) will clarify the situation by establishing the rules and procedures for an open competition concerning the funding of programme production.

9) Source: Analytica/ Media and Advertising, 2004, Skopje.

10) The Public Broadcaster is regulated by the Act on Establishing the Public Enterprise "Macedonian Radio and Television" (Official Gazette of the Republic of Macedonia Nos. 6/98, 98/00 and 78/04) that is expected to be repealed by the new Broadcasting Act.

11) *Zakon za radiodifuzna dejnost* (Act on the Broadcasting Activity), Official Gazette of the Republic of Macedonia No. 20/97. English translation available at: www.mlrc.org.mk/law/l021.htm

12) The legal basis for the fund is Art. 77, paragraph 1, line 5, of the Broadcasting Act.

13) For more information see: <http://www.srd.org.mk/en/default.asp?pBroj=100&pR=20> or http://korda.obs.coe.int/web/en/display_fonds.php?fonds_id=238

THE NETHERLANDS

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1. Overview

The public broadcasting organisations in the Netherlands play a fundamental part with respect to the production of cinematographic films produced by the Dutch film industry. These organisations are involved in the production of virtually all films of this kind. Participation in cinematographic production takes place on a voluntary basis and, as from 2005, the public broadcasters have announced the adoption of a streamlined film policy which will cover their coordinated investments in cinematographic feature films. The contribution of public broadcasters takes the form of direct investment in film productions. In addition, funding institutions (CoBO and STIFO) exist which are specifically aimed at supporting projects involving a public broadcasting organisation. Although commercial broadcasting organisations have hitherto played a negligible role in this respect, the main commercial broadcaster in the Netherlands, RTL Nederland, has also recently adopted a voluntary policy of investment in cinematographic films.

STIFO (*Stimuleringsfonds Nederlandse Culturele Omroepproducties*) is a publicly-funded private organization. Its main task is the financing of cultural broadcast programmes. STIFO is financed by the advertising revenues of the Dutch Radio and Television Advertising Foundation, STER (*Stichting Ether Reclame*). CoBO (*Coproductiefonds Binnenlandse Omroep*) is also a publicly-funded private organisation that is financed by the levies paid by German and Belgian cable operators for the transmission of Dutch public broadcast programmes to those countries. Its main task is the financing of co-productions.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

Section 170 of the Media Act

The only existing provision in Dutch law which is relevant to this subject is contained in Section 170 of the Media Act,¹ which concerns the Fund to promote Dutch cultural radio and television broadcasting productions (*Stimuleringsfonds Nederlandse Culturele Omroepproducties* - STIFO). This Fund was set up in 1988 to provide financial support to public broadcasters for the development and the production of works of a high artistic quality. It is only open to public service, and not to commercial, broadcasters. Funding is *inter alia* also available for feature films, providing they are cultural programmes. The STIFO will only decide on the allocation of funding once an affirmative response has been received from the Netherlands Film Fund (the national agency entrusted with supporting film production and cinema in the Netherlands).²

1) *Mediawet* (The Media Act), *Staatsblad* (Official Gazette) 1987, 249, available at: <http://www.cvdm.nl/pages/regelgeving.asp?m=w&>
English version available at: <http://www.cvdm.nl/pages/english.asp?m=a&>

2) For further information on the STIFO funding programme, see the KORDA databank at: http://korda.obs.coe.int/web/en/display_aide.php?aide_id=160

Section 170.5 of the Media Act states that each year at least 1/16 of STER's revenue (i.e. the advertising revenue of the public broadcasting organisations) for that year is to be allocated to STIFO.³ The total average amount of this contribution is EUR 16 million per year. It should be noted that the amount of 1/16th of STER's revenue is to be considered as a monetary unit; the Ministry of Culture provides directly an amount at least equal to 1/16th of STER's revenue. The Secretary of State has granted an amount of EUR 15,621,384 to be increased with a yearly 'accres' for the period 2004-2008 (Decision (*Beschikking*) d.d. 24 March 2005). Out of this amount, EUR 0.8 million is specifically earmarked for support by STIFO of public broadcasters' investments in artistic cinematographic feature films (this source of funding is integrated in the broadcasters' general film investment policy - see section 2.2 below). In addition, STIFO also supports documentaries and animation films, a few of which are released in cinemas.

The Fund has been set up by the Ministry of Culture (pursuant to Section 170 of the Media Act) but operates in an autonomous manner. It sets its own content policy, deciding internally which types of works and genres to support. The Ministry does not interfere with these choices, although the Fund is held accountable to it. STIFO's granting of support to feature films is therefore the result of an internal decision by the Fund and is not a legal obligation.

Section 13c of the Media Act

Section 13c, para. 1 (a) of the Media Act reads as follows:

"1. The tasks of public broadcasting shall be: (a) to provide a varied and high-quality range of programme services for general broadcasting purposes at national, regional and local level in the fields of information, culture, education and entertainment and to transmit them, or cause them to be transmitted, on open networks;"

The Ministry does not interpret Article 13c of the Media Act as being in any way relevant to broadcasters' investment in film, nor do the broadcasters themselves ever mention their investment in film as evidence of their fulfilment of their obligations under this article.

Article 5 "Television Without Frontiers" Directive

As regards the "Television Without Frontiers" Directive, the Netherlands in its implementation of Article 5 of the Directive (promotion of works by independent producers), has opted for an obligation on broadcasters to reserve a minimum percentage of their broadcasting time for such works rather than a minimum percentage of their broadcasting budget.⁴

2.2. Voluntary Obligations

Aside from the provisions in Section 170 Media Act, the financial participation of Dutch public service broadcasters in cinematographic production takes place on a voluntary basis. Support is granted through direct investment in a number of feature films each year, pursuant to a coordinated film policy which was recently defined collectively by all the public broadcasting organisations (see below for the content of this policy). Direct support is also granted to cinema documentaries, short films and animation films, although this is not part of a streamlined policy. Alongside cinematographic production, public broadcasters also financially participate each year in the production of a number of films made for television (through the so called *Telefilm* project), some of which are also distributed in cinemas. In addition, the public broadcasters' investments are supported by a funding institution (*Coproductiefonds Binnenlandse Omroep* – CoBO) specifically aimed at aiding co-productions involving public broadcasters.

CoBO

In 1986 the public service broadcasting organisations set up, upon their own initiative and within their own parameters, a Co-production Fund for National Broadcasters (*Coproductiefonds Binnenlandse Omroep* – CoBO).⁵ The aim of the Fund is to boost the investments made by public service organisations

3) See <http://www.stimuleringsfonds.nl/>

4) For further details, see Section 54 of the Dutch Media Act, available in English at: <http://www.cvdm.nl/documents/mediaact.pdf>

5) <http://sites.omroep.nl/cobofonds/index.html>

as co-producers in certain audiovisual and theatrical productions. *Inter alia*, CoBO supports co-productions involving a Dutch public broadcaster and an independent film producer.⁶ The recipients of this support are feature films, documentaries, short films and animation films made for cinematographic exploitation (the films have to be distributed in cinemas in the Netherlands before they can be broadcast on television).

CoBO's contribution to a project amounts to 20% of the total production costs (with a maximum of EUR 181,512). The public broadcaster applying for CoBO funding must contribute at least 50% of the money applied for. Pursuant to an Agreement concluded in 1996, higher contributions by CoBO are permitted in the case of productions involving also the Netherlands Film Fund.⁷ CoBO's financial participation is risk-money. In case of profits, CoBO's investment has to be reimbursed. For feature films, the recoupement schedule gives priority to private investments, after which CoBO receives a share. This is all carried out in accordance with the regulations of others involved (e.g. Eurimages).

CoBO's primary source of funding is the copyright payments due to Dutch public broadcasters for the cable retransmission of their programmes in Germany and Belgium. In addition to this, COBO receives the following funding from the Ministry of Culture:

- EUR 2.4 million is earmarked from the yearly broadcasting budget for co-productions between public broadcasters and film producers and is paid to CoBO. This funding is specifically aimed at high-budget cinematographic feature films and documentaries produced also with the support of the Netherlands Film Fund. The Ministry's decision to grant such funds is taken annually but is now standard.
- A further amount of EUR 3.2 million from the annual broadcasting budget is paid to CoBO for the financing of the *Telefilm* project (see below)⁸. This is also an annual decision but the Minister has now made a commitment to finance the project for 3 years.⁹

A Dutch public service broadcaster must always be involved in a project for it to benefit from funding from CoBO.¹⁰ The Fund is not open to commercial broadcasters.

The Public Broadcasters' Film Policy

As mentioned above, Dutch public service broadcasters invest a significant amount of money directly in cinematographic film production, with the support of CoBO and to a lesser extent of STIFO. In the period from 1999 to 2003 the public broadcasters and the two funds have invested an average of EUR 9 million per year in feature films.¹¹ The main difficulty in this respect has been that because of the high number of public broadcasting organisations it has proved complicated for producers to shop around for support. Many producers have voiced their preference for a system whereby they could address themselves to one single organisation (a single *guichet*) when seeking financial backing from public broadcasters for a project. The Ministry of Culture in 2004 therefore took the initiative of encouraging the public broadcasting organisations to streamline their film policies, in response to which the organisations adopted a unified film policy which is being implemented since 2005.¹²

As part of their new policy, the public broadcasters have announced their intention to participate as co-producers in 17 to 18 feature films each year, for an amount of approximately EUR 9 million, starting from the beginning of 2005 (this includes the 2 cinematographic films produced annually under the *Telescoop* project, but excludes the *Telefilms*— see below). The broadcasters will participate in:

6) The Fund also supports co-productions involving a Dutch public broadcaster and:

1) a theatrical institution organising productions first performed on stage in the Netherlands; 2) the Belgian public broadcaster VRT; 3) a German public broadcaster.

7) Agreement of 16 January 1996 between the *Stichting Nederlands Fonds voor de Film* (Netherlands Film Fund), CoBO and the *Nederlandse Omroep Stichting* (Dutch Broadcasting Foundation).

8) Within the EUR 3.2 million budget granted to CoBO by the Ministry for the *Telefilm* project a specific amount is earmarked for the production of two cinema feature films each year (the *Telescoop* films).

9) See TK 2004-2005, 29800 VIII (*vaststelling begroting Ministerie van Onderwijs, Cultuur en Wetenschap voor het jaar 2005*), p. 26.

10) While this setup has encountered some criticism from the Dutch film industry, it is considered normal by the public broadcasters as they consider the Fund as administering their own money.

11) Source: CoBO Fund

12) Letter of the *Raad van Bestuur* to the Minister of Culture of 14 February 2005. See also Letter of 19 September 2004 from the *Raad van Bestuur* to the Minister of Culture available at: <http://www.minocw.nl/brief2k/2004/doc/54630j.pdf>

- 11 to 12 films with a wide audience appeal that will be divided equally and transmitted over the three public channels (Net 1, Net 2 and Net 3) during public holidays and around public events (see below for window restrictions), and
- 6 artistic films that will be transmitted over Net 3 with a regular transmission slot.

It is specified that the public broadcasters will finance the stated amount of films only to the extent that the projects they are presented with by producers are sufficiently attractive to them (i.e. there is no obligation on them to fulfill the target number).

As regards funding, it is proposed that the plan be financed through a combination of sources (the total of which amounts to the proposed annual EUR 9 million): EUR 1.5 million from the public broadcasters themselves; EUR 0.8 million from STIFO (i.e. STIFO's contribution to artistic feature films as detailed in Section 2.1 of this Report); EUR 4 million from CoBO; and the respective contributions from the public broadcasters' umbrella organisation (EUR 0.9 million), by CoBO (EUR 1.1 million) and by the Ministry of Culture (EUR 0.6 million) for the *Telescoop* project (see below).

The public broadcasters point out that, given their own uncertain financial situation and that of CoBO, these proposed contributions are subject to the necessary funds actually being available and that they are therefore not in a position to make a firm commitment in this respect.

As regards procedure, the implementation and coordination of the policy has been placed in the hands of CoBO. As from 2005, CoBO will act as a single *guichet* for producers. It will receive the projects proposed by producers and will obtain the advice of the broadcasters' chief drama editors on each project. The channels' editorial staff will then make the final choice. Although this setup is already in force, more detailed procedural aspects are still in the process of being defined.

Concerning the return on their investment, the public broadcasters generally only receive transmission rights (to broadcast the film and to show it subsequently over the Internet) in return for their financial participation in a film. There is an industry practice whereby broadcasting of the film takes place 24 months from the date of first release of the film. Broadcasters are not concerned with other forms of exploitation (e.g. video and DVD sales and rentals). In certain cases, where broadcasters have invested higher sums than what is the norm in a project, they also have a right to receive a share of the profits of the film. As already mentioned, where a film makes a profit, any contribution received by CoBO has to be reimbursed (subject to the priorities noted above).

The Ministry is currently working towards the conclusion of a service agreement between the public broadcasters' umbrella organization (NOS) and the Government and hopes to include a commitment by broadcasters to invest in 17 to 18 feature films per year in the agreement.

In addition to feature films, which are covered by the new streamlined policy, public broadcasters also invest in cinema documentaries, short films and animation films, with the support of CoBO. Investments in these works are carried out on an individual basis and are not part of a coordinated policy.

The Telefilm/Telescoop Projects

The *Telefilm* project¹³ was initiated in 1998 to further promote cooperation between Dutch film producers and the public broadcasting organisations. It brings together funds from the Ministry of Culture, STIFO, CoBO and the public broadcasting organisations for the production of 6 television films per year, with a budget of approximately EUR 800,000 per film. A *Telefilm* is defined as a Dutch drama of approximately 90 minutes in length, intended for television screening. Some of these films (e.g. "*Cloaca*" and "*Schnitzelparadijs*") have also been distributed in cinemas. The implementation of the project has been entrusted to CoBO. Furthermore, since 2000 the *Telefilm* project has been complemented by another project financed by the public broadcasters, CoBO, the Ministry of Culture and the Netherlands Film Fund for the production of two Dutch feature films for a wide audience (the *Telescoop* project).¹⁴ These films must first be shown in cinemas and are also financed through private means.¹⁵

13) See <http://sites.omroep.nl/cobofonds/index.html> for details of the *Telefilm* project.

14) See <http://www.filmfund.nl/> for details of the *Telescoop* project. The *Telescoop* films are included in the 16-18 films to be financed under the public broadcasters streamlined film policy.

15) See Jaap Wils and Arnold Ziegelaar, *Sectoronderzoek film en televisie. Endrapport. Een onderzoek in opdracht van de federatie Filmbelangen*, Leiden 16 June 2005, p. 63.

3. Obligations of Private Broadcasters

There are no obligations in the Netherlands on commercial broadcasters to invest in film. The above mentioned funds (STIFO, CoBO) are not open to commercial broadcasters. In fact, up until now commercial broadcasters have invested only to a very limited extent in film production. The principal Dutch private broadcaster, RTL Nederland, has however recently announced its intention to become active as an investor in the production of Dutch feature films, through the creation of its new company RTL Entertainment.¹⁶

According to its announced plans, RTL Nederland intends to invest in the production of 3 to 5 Dutch feature films per year. It will finance films capable of attracting a wide audience and with sufficient commercial potential, which also fit the profile of its channels. It will also be active in the exploitation of the films through all distribution channels, including television, DVD and video sales and rentals, Internet, telephony and digital media, using its existing competencies for this purpose. The goal of this initiative is to generate a new source of revenue for the company, independent of the advertising market, through all possible forms of exploitation of the films. Indeed, it is expected that significant profits can be made, all the more so given that RTL Nederland already possesses the necessary structures and competencies to fully exploit the commercial potential of the films. The broadcaster has announced that it will cooperate with a number of partners in the various stages of the production and exploitation process, namely: M4All and Endemol (production), Universal and Independent (distribution), RTL Licensing (video and DVD distribution) and Filmfan (payTV).

A few projects involving RTL Nederland are already underway ("Wild Romance" co-produced with M4all which should be distributed in cinemas in 2006 and "Baantjer" co-produced with Endemol).¹⁷

4. Useful Documentation

Jaap Wils and Arnold Ziegelaar, *Sectoronderzoek film en televisie. Eindrapport. Een onderzoek in opdracht van de federatie Filmbelangen*, Leiden 16 June 2005.

16) See *Woordvoering RTL Entertainment*, RTL Nederland press release on RTL Entertainment.

17) See RTL Nederland press releases of 11 April 2005, of 26 May 2005 and of 5 September 2005.



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Norwegian Film Fund

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Norwegian Media Authority

1. Overview

In 1987, following film production sector lobbying, the Norwegian government set up *Produksjonsfondet for kino- og fjernsynsfilm* ("The Production Fund for Cinema and Television Film", hereafter "the Production Fund"). The Production Fund was intended to "strengthen the production of Norwegian films suitable for screening in cinemas and on television", with special emphasis on films for children and young people.¹ Financing was provided on a 50/50 basis from the government-owned broadcaster *Norsk Rikskringkasting* (NRK, the Norwegian Broadcasting Corporation) and the Ministry for Cultural Affairs. The budget of the Production Fund was initially set at NOK 10 million, rising eventually to about NOK 20 million annually. The Production Fund had a five-member Board which also acted as a selection committee, screening all applications for support from the Production Fund. The Fund had its secretariat functions dealt with first in the Ministry, then they were handled through a law firm.

When competition for the first private television licence was opened in 1991, it was originally envisaged that the successful bidder would also contribute to the Production Fund on a par with the NRK and the government. Coincidentally, however, the levy on broadcasting reception equipment came under scrutiny. The levy was originally earmarked for use by the NRK, which in turn had accepted responsibility for financing national and regional symphony orchestras, as well as the Radio and Interference Control Authority – and the Production Fund. In light of the new broadcasting environment, which by now comprised commercial radio and television stations, this type of funding arrangement for the NRK was no longer deemed appropriate, and the government changed the equipment tax into a general fiscal levy, while assuming responsibility for the attendant obligations. Consequently, the NRK would no longer contribute to the Production Fund when the income from the equipment levy terminated at the end of 1994. These considerations were further underpinned by concerns about "double dipping" on the part of the NRK when involved in feature film funding, in the sense that any equity production capital provided by the broadcaster would constitute public funds (from licence fees), and such funding would in turn generate further revenue from public sources through Norway's automatic Box Office Bonus support system, a system of automatic production aid, by which films approved for support receive a government "bonus" commensurate to its box-office income.²

In its 1992 White Paper on Media³ the Ministry for Culture proposed a new funding body, based on the same policy of "stimulating increased production quality throughout the Norwegian audiovisual sector ... not least through co-operative productions between cinema and television ... [which] have proved highly successful". In the meantime TV2 AS⁴ had started operations as Norway's first

1) Statutes of the Production Fund, Article 1; undated (September 1987).

2) For further details, see http://korda.obs.coe.int/web/en/display_aide.php?aide_id=544

3) *Stortingsmelding* nr. 32 (1992-1993), p. 74 *et seq.*

4) AS is an acronym for *Aksjeselskap* meaning "limited company".

commercially-financed TV station (September 1992), and had accepted a number of public service obligations as part of its licence contract. TV2 also pledged to contribute NOK 10 mill. annually, to be matched by an equal amount from the government, towards funding *Fond for audiovisuelle produksjoner* ("The Fund for audiovisual productions", later renamed "The Audiovisual Production Fund"; hereafter "the AV-Fund") The AV-Fund's financial resources were "in particular to be used for co-productions between the cinema and television production sectors, and in support of certain local broadcasting purposes".⁵ The latter provision referred mainly to training and development actions, and further funds for these purposes were also channelled into the AV-Fund when it was formally set up on 1 July 1994, with a small staff and a Board of seven Ministry-appointed Trustees, and a total budget rising to approx. NOK 50 mill annually by 1997. While funded in the same way as the Production Fund, i.e. through government appropriations and broadcaster contributions, the AV Fund departed from its predecessor by transferring authority for screening and recommendation for support to a Commissioning Executive (the so-called "Nordic model"), thereby drastically reducing the Board's direct involvement in the selection process.

The government reorganised the administrative structure of its film support programmes in 2001, and the AV-Fund formed the core of the new executive body *Norsk filmfond*⁶ ("The Norwegian Film Fund"; hereafter "the Film Fund"). When TV2's licence was renewed in 2001 (covering the period 2003-2009, inclusive) the broadcaster accepted the continuing role to provide funding for audiovisual production by paying an annual, CPI-adjusted contribution, of NOK 25 mill. to the budget of the Film Fund. A broadening of the palette of support schemes⁷ has made the earlier co-production strategy more or less redundant, and TV2's contribution currently carries no provision to be earmarked for co-productions between the cinema and television sectors.

2. Obligations of Public Service Broadcasters

There are no obligations for public service broadcasters to invest in cinematographic film.

3. Obligations of Private Broadcasters

The private broadcaster TV2, which is the largest national private broadcaster and which also has extensive public service obligations, is according to the licence requirements obliged to contribute NOK 25 mill annually (adjusted for changes in the Consumer Price Index) to Norsk Filmfond, through the license period 2003 - 2009. This obligation derives from TV2's broadcasting license of 15 October 2001, issued by the Ministry of Cultural Affairs, valid for the period from 1 January 2003 to 31 December 2009.⁸

There are no direct advantages for TV2 in return for this contribution.

Funding for audiovisual production is available to independent Norwegian audiovisual production companies in accordance with the current Regulations on Support for Audiovisual Production.⁹

4. Related Market Information

While TV2 outsources an estimated two-thirds of its original programming time, the NRK has maintained a considerable in-house production. In September 2003, however, the NRK established an External Productions Department to liaise with independent Norwegian producers in order to "evaluate and develop programme ideas and projects, in co-operation with producers and professional circles outside the NRK". The NRK estimates that it will outsource 10% of its production budget, or in excess of NOK 100 mill., in this fashion by 2006, while retaining a share of copyright and secondary exploitation rights in the resulting products. As the NRK outsourcing scheme is directly aimed at meeting the broadcasters' demand for programme material, it does not affect feature film output and is consequently not included in the tabulation above.

5) See *Stortingsproposisjon nr. 1 – Kulturdepartementet (1993-1994)*, p. 95, i.e. "1994 State Budget".

6) For its statutes see <http://www.filmfondet.no/icm.aspx?PageId=711>

7) See <http://www.filmfondet.no/icm.aspx?PageId=712>

8) Available at: <http://odin.dep.no/kkd/norsk/tema/medier/konsesjon/018041-990020/dok-bn.html> ; also on <http://pub.tv2.no/TV2/omtv2/tv2/article45636.ece> - both in Norwegian only.

9) The Regulations can be found at <http://www.lovdatab.no/for/sf/kk/kk-20050128-0071.html> (in Norwegian only; an unauthorised translation in English is available at <http://www.filmfondet.no/icm.aspx?PageId=713> ; see right-hand column for download).



Małgorzata Pęk
National Broadcasting Council

1. Overview

In Poland there exist several provisions referring to broadcasters' obligations to provide a certain amount of broadcasting time for different categories of audiovisual works (so-called screen quotas). Some of these rules follow directly from the implementation of the obligations contained in the Directive "Television without Frontiers", while others are focused on the promotion of audiovisual works produced originally in the Polish language. However, until recently there was no legal obligation relating to investment in cinematographic films.

The newly adopted Act on cinematography of 30 June 2005 changed this situation. This new Act came into force on 19 August 2005. However, the provisions on deductions being an important part of the cinematographic production support system (article 19) will come into force on 1 January 2006.

The new law establishes an indirect support system, aimed at strengthening the domestic cinematographic film market, but it also provides additional rules for public service broadcasters referring to direct support. A body established by this Act, *Polski Instytut Sztuki Filmowej* (Polish Institute of Film Art) will be responsible for dealing with many different tasks referring to Polish film art support. Co-financing for preparation of film projects, film productions, film distribution and dissemination, as well as promotion of Polish film creativity and popularisation of film culture are expressly mentioned among its tasks.

Applications for the Polish Institute of Film Art's support for the preparation of film projects, film production, film distribution and dissemination, undertakings promoting Polish film creativity and the popularisation of film culture may be made by any entity (natural or legal person) dealing with cinematographic activity, from Poland, any other European Union Member State or EFTA Member State – Parties of the European Economic Area Agreement.

Co-financing of projects by the Institute is based on such criteria as artistic, cognitive and ethical values, significance for national culture and strengthening Polish tradition and language, enrichment of European cultural diversity, envisaged results of the planned enterprise (project), economical and financial conditions of its realisation.

Co-financing by the Institute cannot exceed 50% of the film budget, with the exception of films whose content and form have ambitious artistic character and that have limited commercial value or are directors' débuts and low budget films. In any case co-financing cannot exceed 90% of the project's budget.

The Polish Institute of Film Art is a State legal person, supervised by the Minister of Culture. An important part of its revenues derive from deductions made by entrepreneurs whose business activity is connected with using films; i.e. broadcasters, digital platform operators, cable television operators, cinema owners, distributors selling or renting film copies in tangible form. Institute revenues include also *inter alia* State grants, revenues from the exploitation of films whose copyright economic rights belong to the Institute, as well as revenues from the Institute's property.

The newly created Institute will take over the tasks of three existing State film institutions i.e. *Agencja Scenariuszowa*, *Agencja Produkcji Filmowej*, *Film Polski – Agencja Promocji*. On 18 August 2005 the Minister of Culture issued an order to liquidate the aforementioned institutions. It was pointed out that liquidation should be finalized by the end of 2005. Their obligations will be taken over by the Polish Institute of Film Art.

It was argued that introducing legal obligations on audiovisual market players to contribute to the creation and production of cinematographic works was necessary for the development of Polish film art and for adapting the cinematography sector to market conditions. It was pointed out that it is necessary to support financially non-commercial, ambitious productions and to create conditions for the development of Polish film through adequate mechanisms similar to those existing in other European countries. It was stressed that creating a modern model of organizing and financing cinematography was necessary for sustaining and developing the National film culture as a part of Europe's cultural diversity.

However, broadcasters and others obliged to make financial contributions such as commercial entrepreneurs took a critical approach, voicing different arguments against the proposed solution. Some claimed that establishing a new administrative structure was not the best solution to supporting Polish cinematography. It was also pointed out that deductions constitute too heavy a burden for those companies, so e.g. cable operators declared that due to this additional obligation they would have to raise the subscription fees paid by viewers. The new bill was broadly and vehemently discussed. Some expressed the opinion that a direct support system would be more efficient and a more fair solution, and that such a system would be more likely to promote films that have a real potential to attract viewers.

The new Act provides that broadcasters, digital platform operators, cable television operators, cinema owners, distributors selling or renting film copies in tangible form, as well as enterprises controlled by a commercial body of the aforementioned entities receiving revenues from the activities described in article 19 sec. 1 - 5 of the Act on cinematography, have to make payments in the form of a given percentage of their revenues from certain types of commercial activities (amounting to 1,5%) to the Polish Institute of Film Art.

2. Direct Film Funding

2.1. Legal Obligations and their Transposition

2.1.1. Legal Obligations for Public Service Broadcasters

2.1.1.1. The Source

Article 19 of the Act on Cinematography of 30 June 2005.¹

2.1.1.2. The Obligation

The public service television broadcaster is obliged to invest in film (as defined below) production not less than 1,5% of its annual revenues obtained from license fees charged to viewers – according to the obligation included in the Broadcasting Act² - for the use of radio and television sets.

The Act on Cinematography provides a rather complex definition of film (art. 4 sec. 1): a work of any length, including cartoons and documentary films, consisting of a series of subsequent images, with or without sound, recorded by whatever means (in any tangible form), enabling its multiple reproduction, capable of conveying an impression of movement, creating an original form, that expresses its plot (content) in an individual form. Moreover, with the exception of cartoons and documentaries it is intended to be first shown in cinemas as a first exploitation field within the meaning of the Act on Copyright and Related Rights.

1) *Ustawa z dnia 30 czerwca 2005 r. o kinematografii*, Dz. U. Nr. 132, poz. 1111 (Act on Cinematography of 30 June 2005), Official Journal of 2005, No. 132, item 1111, available at: <http://www.mk.gov.pl/website/document/?docId=300>

2) *Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji*, Dz. U. z 2001 r. Nr 101, poz. 1114, z późn. zm. (Broadcasting Act of 29th December 1992, Official Journal of 2001, No. 101, item 1114, with further amendments), available at: <http://www.krrit.gov.pl/stronykrrit/aktyprawne/USTAWART.pdf>

2.1.1.3. The Return: What do broadcasters receive in return?

No specific provision in this respect has been provided. It seems that it should be the subject of contractual agreements between the public service broadcaster and film producers.

2.1.1.4. Procedural Rules:

Each year the public service broadcaster is obliged to provide - by the end of first quarter of the calendar year - a report referring to the fulfilment of the aforementioned obligation. This report should be delivered to the Director of Polish Institute of Film Art.

In the case of the abovementioned amount not being fully spent on film production, the public broadcaster shall give to the Institute the missing amount (i.e. difference between 1,5% of its annual license fee revenues and the amount actually spent in a given year by the public broadcaster for film production).

Those payments are subject to the application *mutatis mutandis* of provisions of part III ("Tax obligations") of the Act of 29 August 1997 - Tax Law,³ but in this case the competences of fiscal administration are entrusted to the Director of Polish Institute of Film Art, and the competences of an appellate body to the Minister of Culture.

2.1.2. Legal Obligations of Private Broadcasters

There are no legal obligations for direct film funding in relation to private broadcasters.

2.2. Voluntary Obligations

2.2.1. Common Remarks for Public and Private Broadcasters

At present, there are no voluntary agreements referring to direct support binding in any way on broadcasters to contribute to financing cinematographic film production.

However, for a long time both public and private broadcasters have invested in cinematographic film productions on a voluntary basis, irrespective of any obligation. It has been done according to internal broadcasters' policy decisions, on a case by case basis, depending on whether a broadcaster found a given project interesting.

3. Indirect Film Funding

3.1. Legal Obligations and their Transposition

3.1.1. Common Rules for Public and Private Service Broadcasters

3.1.1.1. The Source

Article 19 s. 3 of the Act on cinematography of 30 June 2005.

3.1.1.2. The Obligation

Television broadcasters are obliged to make payments (deductions) to the Polish Institute of Film Art, in the amount of 1,5% of the revenues obtained from broadcasting advertisements, teleshopping and sponsored programmes, or from revenues obtained from subscribers' fees paid for access to broadcast programme services if these last revenues are higher than the total of the other revenues in a given accounting year.

3.1.1.3. The Return

This system does not provide any return having financial value for broadcasters (like exploitation rights, broadcasting rights or a right to a share of profits of the production).

3) *Ustawa z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa, Dz. U. z 2005r., Nr 8, poz. 60, z późn. zm.* (Act of 29 August 1997 - Tax Law), Official Journal of 2005, No. 8, item 60, with further amendments), available at: http://www.mofnet.gov.pl/_files_/podatki/system_podatkowy/ordynacja_2005.pdf

3.1.1.4. Procedural Rules

These payments (deductions) are made in quarterly periods, within 30 days after the end of the quarter. Their collection is a subject of the application *mutatis mutandis* of part III of the Act of 29 August 1997 - Tax Law, but in this case the competences of fiscal administration are given to the Director of Polish Institute of Film Art, and the competences of an appellate body to the Minister of Culture. These deductions constitute the revenue of the Institute to cover its costs, within the meaning of the provisions on revenue tax. These fees are paid to the Polish Institute of Film Art (*compare with remarks made above - at "Overview" section*).

3.2. Voluntary Obligations

3.2.1. Common Remarks for Public and Private Broadcasters

There are no voluntary agreements referring to indirect support, binding in any way on broadcasters to contribute to financing cinematographic film production.

4. Useful Documentation

- Act of 30 June 2005 on cinematography, Official Journal of 2005, No. 132, item 1111 (*Ustawa z dnia 30 czerwca 2005 r. o kinematografii, Dz. U. Nr. 132, poz. 1111*), <http://www.sejm.gov.pl>
<http://mk.gov.pl>
- Broadcasting Act of 29 December 1992, Official Journal of 2001, No. 101, item 1114, with further amendments, (*Ustawa z dnia 29 grudnia 1992 r. o radiofonii i telewizji, Dz. U. z 2001 r. Nr 101, poz. 1114, z późn. zm.*), <http://www.sejm.gov.pl> <http://www.krrit.gov.pl>
- Act of 21 April 2005 on license fees, Official Journal of 2005, No. 85, item 728, (*Ustawa z dnia 21 kwietnia 2005 r. o opłatach abonamentowych, Dz. U. Nr 85, poz. 728*), <http://www.sejm.gov.pl>
- Act of 29 August 1997 – Tax Law, Official Journal of 2005, No. 8, item 60, with further amendments, (*Ustawa z dnia 29 sierpnia 1997 r. - Ordynacja podatkowa, Dz. U. z 2005r., Nr 8, poz. 60, z późn. zm.*), <http://www.sejm.gov.pl>
http://www.mofnet.gov.pl/_files_/podatki/system_podatkowy/ordynacja_2005.pdf
- Minister of Culture's Regulation of 18 August 2005 on application for post of Director of the Polish Institute of Film Art, Official Journal of 2005, No. 160, item 1352, (*rozporządzenie Ministra Kultury z dnia 18 sierpnia 2005 r. w sprawie konkursu na dyrektora Polskiego Instytutu Sztuki Filmowej, Dz. U. Nr 160, poz. 1352*), <http://mk.gov.pl>
- information on issuing by the Minister of Culture on 18 August 2005 of an order for liquidation of three State film institutions: *Agencja Scenariuszowa, Agencja Produkcji Filmowej oraz Film Polski - Agencji Promocji*, <http://www.mk.gov.pl/website/index.jsp?artId=904>
- information on appointing on 29 September 2005 eleven members of the Council of the Polish Institute of Film Art, as well as almost 150 experts who will give their opinions on the applications for the support of Polish Institute of Film Art, <http://www.mk.gov.pl/website/index.jsp?artId=940>
- information on appointing on 3 October 2005 the Director of the Polish Institute of Film Art <http://www.mk.gov.pl/website/index.jsp?artId=942>

PT PORTUGAL

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1. Overview

Portuguese law imposes no obligations on either public service or private broadcasters concerning direct investment in film. Neither the Television Broadcasting Act¹ nor the other legal texts in this field (the licences granted to the private free-to-air broadcasters and the Statutes and concession contract of the public service broadcaster) impose any specific obligations concerning investment in film, apart from very broad references to the duty of the public service broadcaster to support audiovisual production (not necessarily cinematographic production), eg. in article 47, paragraph 2, g): "support national production, as regards international commitments which bind the Portuguese State, and co-production with other countries, especially European and Portuguese-speaking countries".

Commissioning, co-production or co-financing of films by broadcasters takes place on a non-regular basis, even though some of the biggest box-office hits in the last few years have been financially fuelled by direct investment, especially by one major free-to-air private broadcaster.

As explained below (1.2), the public service broadcaster systematically fosters films through financial contributions to the national film agency (the *ICAM*, or *Instituto do Cinema, Audiovisual e Multimédia*, under the supervision of the Ministry of Culture), which supports these films.

Broadcasters play a major role in film financing in Portugal, but in indirect ways:

- The public service broadcaster finances films through an agreement signed with the *ICAM*.
- Broadcasters contribute to the public financing of films also in another way: the main source of revenue of the *ICAM* is a tax on advertising on TV (including cable/satellite platforms) and on cinema screens; the product of this tax accounts at present for almost 90% of the budget of the *ICAM*, the remaining coming from the State budget (Ministry of Culture).

The new Film Act, passed in 2004,² does not modify this, but it mentions, in Article 25, the "participation of television broadcasters in cinematographic and television production", which "is accomplished through multiannual contracts of financial participation in the *fundo de investimento de capital* (Investment Fund) for the development and fostering of film and audiovisual works" provided for in Article 26 of the Act. However, this participation is neither compulsory nor quantified.

1) *Lei n.º 32/2003, de 22 de Agosto - Lei da televisão* (Television Broadcasting Act, Law no. 32/2003 of 22 August 2003) available in Portuguese at: <http://www.ics.pt/verfs.php?fskod=619&lang=pt>

Available in English at: <http://www.ics.pt/index.php?op=cont&lang=en&Pid=79&area=361>

2) *Lei n.º 42/2004 de 18 de Agosto - Lei de Arte Cinematográfica e do Audiovisual* (Film Act, Act No. 42/2004, of 18 August 2004), available at: <http://www.icam.pt/lei/lei.pdf>

As regards pay-TV operators (conditional access broadcasters and packagers), the 2004 Film Act provides for a compulsory contribution, or, alternatively, multiannual contracts of investment (subject to acceptance by the Minister of Culture) in the new Investment Fund described in article 26. At the time of writing,³ the rules that will enable the implementation of the Film Law were being discussed and drafted.

2. Legal Obligations and their Transposition

2.1. The Source

Law No. 7/71 (first Film Act of 1971),⁴ provided for an "exhibition tax" on the "screening of advertising spots in cinemas and television". Two years later, the Statutory Instrument 184/73⁵ fixed the rate of this tax at 2% on the list price of advertising time (see articles 58-65 of the Statutory Instrument). The revenue from this tax, together with a tax on cinema tickets (also provided for in Law 7/71), was the main source of revenue of the Portuguese Film Institute, apart from State budget credits. Later on, Statutory Instrument no. 143/90⁶ abolished the tax on cinema tickets and raised the exhibition tax to 4% on the price of advertising time. Article 32 of the Statutory Instrument n. 165/97, of 28 June 1997 establishing the Portuguese Cinematheque/Film Museum,⁷ and Article 28 of Statutory Instrument n. 408/98 establishing the ICAM,⁸ provide for a breakdown of the revenue of the exhibition requirement as follows: ICAM 3,2%; Cinematheque/Film Museum 0,8%.

2.2. The Obligation

As explained above, television broadcasters (both public and private, as well as cable/satellite packagers and cinema advertising companies) are obliged to apply a tax of 4% on the list price of advertising time and to bill this amount to the advertisers. The broadcasters collect and pass the money to the State, which, as provided for in the Film Act, is an own financial resource of the ICAM and of the Cinematheque.

The "exhibition tax" is neither a tax on total turnover nor on specific revenues (real advertising revenue). It applies to the list prices of advertising time and is billed to the advertisers by the broadcasters, packagers and cinema advertising companies, who basically collect the money and pass it to the film institutions concerned. However, if broadcasters apply special, non-listed discounts or other special price conditions, they may have to cover the gap between the real prices they apply to their customers and the amount corresponding to 4% of the list prices, which is the amount the State is entitled to claim.

3. Voluntary Obligations

3.1. The Source

Agreement between ICAM and RTP 2005-2006 (Protocolo ICAM/RTP) signed on 11 May 2005.⁹ There are no voluntary obligations concerning private broadcasters.

3.2. The Obligation

Most recent in a series of agreements between the ICAM and the national public service broadcaster, the ICAM-RTP Agreement 2005-2006 was signed on 11 May 2005 and covers the years 2005 and 2006.

3) November 2005.

4) *Lei n.º 7/71* (Act n. 7/71), available at: <http://dre.pt/pdfgratis/1971/12/28600.PDF>

5) *Decreto-Lei no. 184/73 de 25 de abril*, (Statutory instrument N. 184/73 of 25 April 1973), available at: <http://dre.pt/pdfgratis/1973/04/09700.PDF#page=1>

6) *Decreto-Lei no. 143/90 de 5 de Maio* (Statutory Instrument no. 143/90 of 5 May 1990), available at: <http://dre.pt/pdfgratis/1990/05/10300.PDF>

7) *Decreto-Lei n.º 165/97, de 28 de Junho* (Statutory Instrument n. 165/97 of 28 June 1997), available at: <http://dre.pt/pdfgratis/1997/06/147A00.PDF>

8) *Decreto-Lei n.º 408/98 de 21 de Dezembro* (Statutory Instrument n. 408/98 of 21 December 1998 establishing the ICAM), available at: <http://dre.pt/pdfgratis/1998/12/293A00.PDF>

9) Agreement between ICAM and RTP 2005-2006, available at: <http://www.icam.pt/externas/ProtocoloICAM-RTP2005.pdf>

Financial support granted by RTP under this agreement is managed by the ICAM (see below). Even though RTP automatically acquires certain broadcasting rights over the supported works, RTP has no decision-making powers concerning each individual project. Therefore, these are not individual presales, but a sort of system of „blind“, block rights-acquisition.

According to this Agreement, RTP:

- financially supports the production of certain types of feature film projects supported by the ICAM;
- broadcasts national film works;
- promotes film works;
- offers special access conditions to its image archive for projects supported by the ICAM which include archive footing.

As regards financial support, it covers feature films supported by the ICAM on the basis of “selective” or “direct” open competitions¹⁰. It does not cover first feature films, minority co-productions or certain other specific projects. Likewise, it does not apply to feature films supported by other national free-to-air broadcasters.

The financial participation of RTP under the framework of the 2005-2006 Agreement is a total of EUR 3 million for this 2-year period. RTP pays the amount of EUR 3 million in 4 instalments of EUR 750,000. The ICAM is free to decide how to distribute that amount between the eligible projects.

In addition, RTP offers as media services a maximum of 5 20-second spots a day during 25 days.

3.3. The Return

In order to benefit from financial support under the ICAM-RTP Agreement, the producer has to grant to the RTP the exclusive right to broadcast the supported work for a period of a maximum of 3 years after the film release (including 2 broadcasts) on free-to-air channels (RTP 1, 2; RTP International and RTP Africa).

10) For more information see KORDA database: <http://korda.obs.coe.int/>

ROMANIA

Mariana Stoican
Radio Romania International

1. Overview

Legal provisions obliging broadcasters to give financial support to film production have only existed in Romania since summer 2005. Decree No. 39 on the film industry was adopted by the Government on 14 July 2005 and officially entered into force when it was published in the Official Gazette at the beginning of August 2005. The new provisions, which replace the earlier Film Act No. 630/2002,¹ are mainly designed to provide better funding opportunities for Romanian film production and greater support for co-productions. Also, from now on, the procedure for deciding which films should receive support will focus more on the quality of the film, thanks to new provisions governing the organisation of competitions.²

Under the new Decree, both public and private TV companies, as well as cable and satellite TV providers, must contribute a certain percentage of their advertising income to the new *Fondul cinematografic* (film fund) in order to promote Romanian film production. At the request of a film producer, up to 50% of the sum due to the *Centrul Național al Cinematografiei* (National Film Centre – CNC) may be invested in the production of a film, provided the CNC is notified.

Public service broadcasters are also obliged to provide media services. The advertisements they show in their programme schedules must include spots for the premieres of Romanian films produced under the conditions set out in Decree No. 39.

2. Obligations of Public Service and Private Broadcasters

2.1. Legal Obligations and their Transposition

2.1.1. The Source

The legal obligations of broadcasters are enshrined in Government Decree No. 39 of 14 July 2005 on the film industry.³

1) *Legea cinematografiei nr. 630/2002* (Film Act No. 630/2002), *Monitorul Oficial al României* (Official Gazette) No. 889 of 9 December 2002.

2) Decree No. 39/2005 defines the concept of “cinematography” as “a cultural industry of national importance, which generates added value through the use and dissemination of cultural diversity, which is aimed at the production, marketing and use of cinematographic films and includes all the activities and persons active in this field” (Art. 3a). It defines “cinematographic film” as any film that is the end result of an artistic and technical performance specific to this field, which is aimed at the production of a fictional, animated or documentary film of varying length and on different media and which can be projected in a cinema, open-air theatre or other suitable venue (Art. 3b). The term “Romanian film” is defined as a film “whose artistic and technical production staff is predominantly Romanian” (Art. 3c). A “co-produced film” is defined as a film “in which the Romanian share in the overall production costs is at least 20% for bilateral co-productions and 10% for multilateral co-productions” (Art. 3d).

3) *Ordonanța nr. 39 din 14 iulie 2005 privind cinematografia* (Government Decree No. 39 of 14 July 2005 on the film industry), *Monitorul Oficial al României* (Official Gazette) No. 704 of 4 August 2005, available at: http://www.cultura.ro/Files/GenericFiles/OG_39_cinematografia.doc

2.1.2. The Obligation

In Romania, Art. 13.1 (e) of the Government Decree states that all public service and private television companies must pay 3% of the equivalent value of the advertising slots they sell to the National Film Centre (CNC) for the promotion of Romanian film production. This sum is collected from the advertising agencies or brokers that buy the advertising slots and paid to the CNC. Where barter contracts are concerned (contracts governing the exchange of programme time for commercial time), 3% of the estimated income from the transmission time made available by the television company (depending on the price paid for the transmission time during the period concerned) must be paid to the CNC.

According to Article 13.1 (g), cable TV providers that have their own programming licence must pay to the CNC a 3% levy on the cost of the advertising time they sell during their own programmes.

Art. 16 of Decree No. 39/2005 allows companies that sell or rent video cassettes and DVDs (who must levy a 2% surcharge payable to the CNC), as well as commercial TV and cable companies, to decide for themselves whether to invest up to 50% of the sum directly in film production under the conditions set out in the Decree. This option must be requested by a film producer and the National Film Centre must be notified.

Art. 17.1 also provides that public service television in Romania must contribute 15% of its own annual advertising income to the promotion of national film production. The provision does not state whether this sum must be paid into the film fund. According to Art. 17.2, however, public service TV companies are also free to fund film production directly. The money invested directly must not exceed 50% of the 15% due. Direct funding is possible if a film producer requests it and if the National Film Centre is informed. Money that is not used must be paid into the CNC account by 31 March of the following year.

Under Art. 61, all TV companies whose programmes are aimed at the general public („*televiziunile generaliste*”) must offer at least 5% of their transmission time – excluding news, sport, game shows and advertising time – for the broadcast of Romanian film productions. At least one-fifth of this 5% must be during prime time.

According to Art. 78, the *Societatea Română de Radiodifuziune* (public service radio company) and the *Societatea Română de Televiziune* (public service television company) are obliged to include in their commercial time advertisements for the premieres of Romanian films produced on the basis of the rules in Government Decree No. 39/2005. This kind of advertising does not count as commercial advertising. The CNC and public service broadcasters were required to agree on the practical arrangements and amount of transmission time to be allocated to advertisements for Romanian films within 30 days of the entry into force of the Decree (Art. 78.1).

2.1.3. The Return

Romanian law does not require the film industry to offer any benefits in return to broadcasters.

In accordance with Resolution No. 183 of 1 September 2005, the copyright fees for the broadcast of cinematographic and audiovisual works are collected and managed by the *Societatea pentru Drepturi de Autor în Cinematografie și Audiovizual – Societatea Autorilor Români din Audiovizual* (copyright association for the cinematographic and audiovisual field – association of Romanian authors in the audiovisual field – *DACIN-SARA*).⁴

2.1.4. Procedural Rules

Purchasers of TV advertising time are obliged to send regular lists of concluded contracts to the National Film Centre; these must include details of the value of the contract and the sellers of the advertising time. The percentage of monthly income due to the CNC under Art. 13 must be paid by the 25th day of the following month.

⁴ *Decizia Nr. 183 a Oficiului Român privind Drepturile de Autor* (Resolution no. 183 of 1 September 2005), *Monitorul Oficial al României* (Amtsblatt), *Partea I*, No. 814 of 8 September 2005.

If money due to the CNC under the new Decree is paid late, interest and fines should be imposed in accordance with current legislation on state taxes. According to Art. 15, the CNC is also authorised to begin enforcing these measures in accordance with current Romanian legislation.

3. Useful Information

The electronic media market in Romania is extremely varied. The population of just over 22 million is served by several hundred national, regional and local broadcasters. Detailed information (as at October 2005) is available under the heading "Licences" on the home page of the *Consiliul Național al Audiovizualului* (Romanian audiovisual regulatory body – CNA).⁵

According to CNA figures (as at July 2005), since it was founded in 1992 the audiovisual regulator has granted a total of 5,706 radio, television and cable TV (including satellite) licences to 943 companies in 9,260 Romanian towns.

Today in Romania there are 570 valid radio licences, which are spread between 166 companies. In the television market, a total of 210 licences are held by 60 different companies. The most rapid growth has been in the cable TV market, where 20 different TV channels are distributed virtually throughout the country via cable.

The most active cable TV companies in Romania are *RCS & RDS* and *ASTRAL*. In addition to the two main public service TV channels and cultural channel *TVR Cultural*, commercial channels *Pro TV*, *Antena 1*, *Realitatea TV*, *Prima TV*, *B1 TV* and *National TV* achieve the best ratings.

5) <http://www.cna.ro>



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1. Overview

The obligation on broadcasters to invest in film is regulated by the Film Agreement – an agreement between the State, film distributors, film producers, TV-companies (public service and private companies) and exhibitors.¹ The latest film agreement, *2006 års filmavtal*, runs from 1 January 2006 to 31 December 2010. The Swedish Film Institute (SFI) administers the agreement.

1.1. Direct Film Funding

Broadcasters participating in the Film Agreement are obliged to spend a certain amount on co-production, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films.

1.2. Indirect Film Funding

Broadcasters participating in the Film Agreement give grants to the Swedish Film Institute for the purpose of financing production subsidies for Swedish films as well as the distribution and exhibition of films.

2. Obligations of Public Service Broadcasters

2.1. Legal Obligations and their Transposition

2.1.1. The Source

The legal obligations for public service broadcasters are regulated by their respective broadcasting licences, issued by the Swedish government.²

2.1.2. The Obligation

The current broadcasting licence for the Swedish public service broadcaster, Sveriges Television (SVT),³ stipulates that SVT shall “contribute to the development of Swedish film production”.

1) Staten, Sveriges Biografägareförbund, Sveriges Television AB, TV 4 AB (publ.), Riksföreningen Våra Gårdar, Folkets Hus och Parker, Föreningen Sveriges Filmproducenter, Sveriges Filmthyrareförening u.p.a, Svenska Filmdistributörers Förening u.p.a, Modern Times Group MTG AB, Kanal 5 AB, C More Entertainment AB.

2) *Sändningstillstånd för Sveriges Television AB*, available at:
http://svt.se/content/1/c6/07/20/51/011220-svt_tillst2002-2005.pdf

3) See the companies website at: www.svt.se. Some information on SVT is also available in English, see
http://svt.se/svt/jsp/Crosslink.jsp?d=37123&lid>About_SVT

2.2. Voluntary Obligations

2.2.1. The Source

The Film Agreement is a voluntary agreement, whose main task is to promote the production and distribution of Swedish quality films. It is administered by the Swedish Film Institute (SFI).

The present Film Agreement, *2000 års filmavtal*,⁴ came into force on 1 January 2000 and will end on 31 December 2005. The recently agreed upon *2006 års filmavtal* will take over from 1 January 2006.⁵

Funds accruing to the Film Institute shall, in the area of film production, be used for:

- 1) advance allocations (for feature films, films for children and young people, short and documentary films, and development funds) and
- 2) audience-related support.

2.2.2. The Obligation

According to *2006 års filmavtal*, Sveriges Television AB (SVT) shall make a monthly grant to the Film Institute amounting to not less than SEK 34 million per calendar year. In addition, the company guarantees to spend an amount of at least SEK 36 million on co-producing, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films. From this guaranteed amount, at least SEK 15 million shall be spent on films receiving grants under the Film Agreement.

Grants and guaranteed amounts from SVT are to be adjusted upwards by 2 per cent, on 1 January of each year, starting in 2007.

3. Obligations of Private Broadcasters

3.1. Legal Obligations and their Transposition

3.1.1. The Source

The legal obligations for Private Broadcasters are regulated by the broadcasting licence, issued by the Swedish government.

3.1.2. The Obligation

The broadcasting licence for e.g. TV 4 AB, regulating broadcasting for the period 2006-2010, stipulates "The Company shall contribute to the development of Swedish film production. The contribution shall increase during the period."

In December 2005, the Swedish government will decide upon future broadcasting licences and their stipulations.

3.2. Voluntary Obligations

3.2.1. The Source

Same as for the Public Service broadcaster, see above (2. 2. 1.)

3.2.2. The Obligation

According to *2006 års filmavtal*, TV 4 AB shall make a monthly grant to the Film Institute amounting to not less than SEK 8 million per calendar year. In addition, the company guarantees to spend an

4) *2000 års filmavtal* (2000 Film Agreement), available at:
http://www.sfi.se/sfi/IMAGES/_SFI_PDF/RAPPORTER%20OCH%20DOKUMENT/THE_2000_FILM_AGREEMENT.PDF

5) *2006 års filmavtal* (2006 Film Agreement), available at:
http://www.sfi.se/sfi/IMAGES/_SFI_PDF/RAPPORTER%20OCH%20DOKUMENT/2006%20%C5RS%20FILMAVTAL.PDF

amount of at least SEK 20 million on co-producing, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films. From this guaranteed amount, at least SEK 8 million shall be spent on films receiving grants under the Film Agreement.

Modern Times Group MTG AB shall make a monthly grant to the Film Institute amounting to not less than SEK 4 million per calendar year. In addition, the company guarantees to spend an amount of at least SEK 1 million on co-production, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films.

Kanal 5 AB shall make a monthly grant to the Film Institute amounting to not less than SEK 2 million per calendar year. In addition, the company guarantees to spend an amount of at least SEK 0.5 million on co-producing, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films.

C More Entertainment AB shall make a monthly grant to the Film Institute amounting to not less than SEK 2 million per calendar year. In addition, the company guarantees to spend an amount of at least SEK 0.5 million on co-producing, co-financing and the purchase of broadcasting rights for new Swedish feature films and new Swedish short- and documentary films.

Grants and guaranteed amounts from the companies listed above are to be adjusted upwards by two per cent, on 1 January of each year, starting in 2007.

