

CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



CZECH REPUBLIC
SYNTHESIS SHEET

July 2007

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This Member State Synthesis Sheet should be read in conjunction with Chapter A of the Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions for the European Commission that is available on www.eufilmstudy.eu

Acknowledgements

Legal Report by Germann Avocats

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A Overview of the legal situation in the Czech Republic

1 Summary of main findings

Table A – Direct Territorialisation Requirements

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

Czech Republic	State Fund of the Czech Republic for the Support and Development of the Czech Cinematography	2,207,832	Nat	N/A	N/A	N/A	N/A	N/A	N/A	N (but there is a recommendation to introduce a 12.5% tax shelter system combined with a national certification system for eligible beneficiaries)
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Table B – Indirect territorialisation Requirements

Member State	Names of Funding Schemes	Indirect territorialization requirements located under “Formal Nationality Certification Procedures”			Indirect territorialization requirements located under selective aid criteria and procedures			Indirect territorialization based on any other provisions in the law that forces the producer to make local spending		
		List of requirements	Estimation of the X% of how much local expending this involves in terms of film budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available	List of requirements	Estimation of the X% of how much local expending this involves in terms of film-budget	Estimation of the X% of how much local expending this involves in relation to the total aid available
Czech Republic	State Fund of the Czech Republic for the Support and Development of the Czech Cinematography	N	N/A	N/A	N	N/A	N/A	N	N/A	N/A

Table C – Budget and Territorialisation Intensity

Member State	Names of Funding Schemes	Available Budget	Objective explicit territorialisation requirement quantified in the law ¹	Degree of the territorialisation ²		
				Funding Scheme Level ³	Funding body level	Member State Level ⁴
Czech Republic	State Fund of the Czech Republic for the Support and Development of the Czech Cinematography	2,207,832	No requirement	= 0	No territorialisation	0 %

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

² High territorialisation: ratio “total amount subject to territorialisation”/“total budget available” >1

Moderate territorialisation: ratio “total amount subject to territorialisation”/“total budget available” =1 or <1

No territorialisation: total amount subject to territorialisation = 0

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

³ Formula: Sum of the budget of the scheme x its degree of territorialisation and divided by the sum of the budget of all the schemes.

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

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

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

Table D – Co-Production Agreements

Member State	Titles of Co-Production Agreements	Dates of Entry into Force of Co-Production Agreements	Expected New Co-Production Agreements: Y/N
Czech Republic	European Convention of Film Co-production	1 June 1997	N
	France	19 July 1968 (CSSR); after the split 1 January 1993 (CR)	
	Canada	10 June 1988 (CSSR); 1 January 1993 (CR)	
	Italy	25 March 1968 (CSSR); 1 January 1993 (CR)	

The Czech Republic is currently a party to the European Convention of Film Co-Production. The authority in charge is the Czech Fund. Furthermore, there are three bilateral conventions: with France, Italy and Canada (see below Section 2).

The State Fund of the Czech Republic for the Support and Development of Czech Cinematography (The Czech Fund) is the only funding scheme for film operating at the national level in the Czech Republic. New funding schemes are now under discussion

2 Synopsis of conventions on co-production agreements

There are three bilateral conventions on co-production agreements signed by the former Czechoslovak Socialist Republic CSSR. The agreements with France and Italy came into force in 1968, the agreement with Canada in 1987. After the split of the CSSR into two independent states, these three agreements all came into force for the new Czech Republic on 1 January 1993. In all three cases, the authority in charge is the Ministry of Culture.

The Czech Republic has been a party to the European Convention of Film Co-Production since 1997. The authority in charge of its supervision is the Czech Fund which is administered by the Ministry of Culture.

No new co-production agreement are expected to be concluded by the Czech Republic in 2007, nor any new funding scheme containing territorialisation requirements.

3 Synopsis of formal nationality certification procedures

The nationality of an independent film production is assessed by the Czech Fund according to the criteria of eligibility laid down in Annex I and II of the European Convention of Film Co-production (see reply A.4 for the Czech Republic).

In relation to the described public funding scheme in the Czech Republic, there are no specific criteria of eligibility and specific criteria for the national certification other than stipulated in Article 10, Paragraph 1 of the Act of the Czech National Council No. 241/1992 Legal Coll., on the State Fund of the Czech Republic for the Support and Development of the Czech Cinematography ("Fund Act"), which limits the granting of support for the creation and production only to Czech cinematographic works. The notion of Czech cinematographic work is not defined by the Fund Act, but Article 10 of the Fund Act stipulates that (*only*) a legal person with its seat or physical person with its permanent residence in the territory of the Czech Republic may apply for financial support from the Fund. If the applicant is the legal person, in which a foreign person has an ownership interest, the means of the Fund may be provided only if the ownership interest of the foreign person (*in the legal person applying for support*) is lower than 50%.

Such a limitation of access to the financial support of the Fund by Czech legal persons in which the foreign legal person has an ownership interest higher than 50% may not be applicable to international co-productions conforming to the European Convention of Film Co-production, as, according to Article 20, Paragraph 1 of the European Convention of Film Co-production, only certain defined reservations of the contracting states limiting access to national film support are permissible.

The national certification procedure so far is mainly applied in the case of applications for financial support to the Eurimages Fund. The procedure is in line with the current rules of the Eurimages Fund (see reply A.4 for the Czech Republic).

4 *Synopsis of expected legal developments*

In 2007, no new funding schemes containing territorialisation requirements are expected to enter into force. However, the Czech Republic is currently discussing the establishment of new funding schemes (see reply A.6 for the Czech Republic).

In 2006, the Czech Film Chamber supported by the Czech Ministry of Culture, published an economic impact assessment of the Czech film industry. The study recommends establishing the Czech Film Commission as an umbrella organisation as is the case in Hungary and Poland. Another recommendation is to introduce a 12.5% tax shelter system combined with a national certification system for eligible beneficiaries, similar to the one in force in Hungary (see reply A.7 for the Czech Republic).

B Czech Republic funding schemes

1 Overview

In the Czech Republic there is one funding scheme, the “State Fund of the Czech Republic for the Support and Development of Czech Cinematography” (Czech Funding Scheme). It operates at the national level and is administered by the Ministry of Culture and supervised by the Czech Parliament and by the Ministry of Finance.

The Council of the Czech Fund gives priority to cinematographic projects, and makes awards in each quarter of a given year. The conditions, forms and kind of projects to be selected vary according to the funding criteria.

2 Analysis of the State Fund of the Czech Republic for the Support and Development of the Czech Cinematography

2.1 Description of the funding scheme

The Czech Funding Scheme is based on the Act of the Czech National Council No. 241/1992 of 14 April 1992, which came into force on 1 July 1992 (Czech Act), most recently amended in 1993, on the Decision of the Czech National Council No. 119, which came into force on 17 December 1992 (Czech Statute), and finally on the Czech Funding Scheme Rules of Procedure, which were set up by the Czech Fund on 8 April 1997 (Czech Rules of Procedures). For further details see reply B.3 for the Czech Republic. There were no regulatory changes during the reference period from 2001 to 2005 affecting the legal questions addressed by this study. For contact information see reply B.14 and for additional information on this scheme the website www.mkcr.cz.

2.2 Synopsis of objective territorialisation requirements

2.2.1 Rules

No objective territorialisation requirements apply to this funding scheme.

2.2.2. Practice

N/A

2.2.3. Discussion

N/A

2.2.4. Conclusion

No objective territorialisation requirements apply to this funding scheme (see reply B.5 for Czech Republic for the Czech funding Scheme).

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial and administrative practice reported.

2.3.2. Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements

2.4 Synopsis of State aid selective granting criteria and procedures

The scheme distributes the aid in a selective way based on Art. 10 and on qualitative criteria not expressly provided by the laws.

Only permanent residents on the territory of the Czech Republic may apply for State aid under the Czech Funding Scheme. Furthermore, ownership interests of a legal foreign person in the applicant must be lower than 50% (see Article 10, Paragraph 1 of the Czech Act and reply B.12 for the Czech Funding Scheme).

Direct funding may not exceed 50% of the planned costs (see Article 9, Paragraph 3 of the Czech Act and reply B.12 for the Czech Funding Scheme).

The Council of the Czech Fund periodically decides what kind of projects, i.e. film genres, will be supported on a priority basis (see Article 5 of the Statutes of the Council of The Czech Fund, reply B.13 for Czech Republic). The applicants have no legal claim to obtain the support if they meet the prescribed criteria. The individual applications for support that are in compliance with the application form prescribed by the Fund Council are considered by the Fund Council. The application form for support contains the following basic information. The Fund Council decides on individual applications by voting.

Under Article 5 of the Statutes of the Council of the Fund, the Fund Council is left with ample competences to decide, which project it will support. Under Article 5 Letter c) of the Statutes of the Fund which was approved by the Czech Parliament, the Fund Council should, in the draft budget for each subsequent fiscal year, establish criteria and conditions for granting support and forms of support which will be granted in a given fiscal year and in a respective quarter of the given year together with establishment of the kind (*i.e. for example by genres*) of projects, that will be supported by the Fund Council on a priority basis. The Fund Council has officially declared at its session held in 2000, that it gives priority to projects of cinematographic character.

The Fund Council has never published or adopted the specific criteria and conditions that will be applicable for granting support in each fiscal year. It may be observed that the Fund takes into account the artistic value of the script/project since the production of commercial projects that by their character clearly appeal to mass audiences has not been supported by the Fund Council.

The Fund does not take into account the amount of local production spend, employment of the local staff, national creative elements, filming on locations in the Czech Republic etc.

Criteria and procedures for selective State aid are not set forth in published rules of law. However no indirect territorialisation requirements are located under the criteria and procedures for granting selective aid.

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

The Czech Republic entered the European Convention on Cinematographic Co-Production. As this country did not make any reservation, relevant provisions of the two pre-existing European co-production agreements with France and Italy do not apply anymore.

Under the amendment of the Czech Constitution (Constitutional Act No. 359/2001 Legal Coll) Article 10 of the Czech Constitution has been changed to the effect that: "all international treaties, ratified with the approval by the Czech Parliament (and by which the Czech Republic is bound) are regarded as part of the Czech legislation, provided that if the international agreement states otherwise than the national law, the respective provision of the international agreement prevails over the provision of the national law".

This amendment is interpreted in a wide sense so that the constitutional principle of priority of international agreements over national law does extend also to all rights and obligations ensuing from the international law, by which the former Czechoslovak Republic was bound and which were accepted by the Czech Republic by virtue of Paragraph 5, Article 2 of the Constitutional Act No. 4/1993 Legal Coll. on the provisions connected with the cessation of the Czech and Slovak Federative Republic regardless of the dates of their ratification and publication. This relates to bi-lateral international co-production treaties made with France, Italy and Canada before the existence of the Czech Republic as an independent state. As regards the implementation of the European Co-Production Convention and its transposition into national law, the provisions on granting the status of a co-producer (and other provisions) are applied by virtue of such priority of international agreements over territorialisation requirements based on national law.

In 2005, the Czech Parliament refused to accept an amendment to the Act of the Czech National Council No. 241/1992 Legal Coll, on the State Fund of the Czech Republic for the Support and Development of Czech Cinematography, by which the provisions of the European Co-Production Convention would be transposed into this Act.

Consequently, the provisions of the European Convention apply by virtue of their priority over the national law.

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

General cultural policy goals are provided by Ch. 25 of the Czech Constitutional Law – the Charter of Fundamental Rights and Basic Freedoms - Constitutional Act No. 2/1992 as amended by the Constitutional Act No. 162/1998 of Collection of Laws.

The purpose of the Czech Fund is to support the development of Czech cinematography work on a national level (see reply B.12 for Czech Republic). It is laid down in Article 1 of the legal Act on the Czech Fund and refers to the creation, production, distribution, promotion and technical development of Czech cinematography, to the production and distribution of works of national and ethnic minorities living on State territory as well as to the production, distribution and promotion of cinematographic works in general.

Article 9 Para 1 of the Act of the Czech National Council No. 241/1992 Legal Coll. on the State Fund of the Czech Republic for the Support and Development of Czech Cinematography stipulates that the goal of the Czech Fund is to support the creation, production, distribution, promotion, technical development and modernisation of Czech cinematographic works and of cinematographic works in general (see reply B.12 for the Czech Republic).

It must be highlighted that there is no legal definition of Czech beyond the requirement that the applicant must have its legal seat or permanent residence in the Czech Republic. Provisions articulating cultural objectives and justifications are defined and revised on an annual basis.

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

References:

Olsberg/SPI, *ECONOMIC IMPACT ASSESSMENT OF THE CZECH FILM INDUSTRY* - a study on the Czech film production sector, 16 March 2006.

Attachments:

- Replies to the legal questionnaire by Vladimír Kroupa, attorney at law, Kroupa and Petrmichl, Czech Republic
- Regulations for Czech Republic