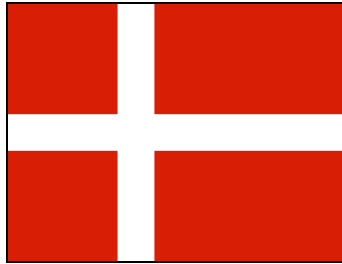


CINEMA STUDY ON TERRITORIALISATION REQUIREMENTS
(Annex to Part A)

MEMBER STATE LEGAL REVIEW



DENMARK
SYNTHESIS SHEET

July 2007

MEMBER STATE LEGAL REVIEW

DENMARK

SYNTHESIS SHEET

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

Part A of the EU Film Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of state aid schemes for films and audio-visual productions was written by Dr. Christophe Germann with important contributions for the Member States Synthesis Sheets, Output Tables and Charts from:

Dr. Delia Ferri
(main legal Consultant for the Synthesis
Sheets)

Johanna Jaeger
(main Consultant for the Output Tables and
Charts)

Dr. Marwa Daoudy
(Consultant)

Gritt Knirie Sogaard
(Consultant)

Brigitte Vézina
(Consultant)

Andrzej Jakubowski
(Consultant)

John Morijn
(Consultant)

Ljuba Kostadinova
(Consultant)

Dr. Cristina Poncibò
(Consultant)

The authors would like to thank the national lawyers from the 25 Member States who advised us, and everyone else who helped us in the production of this report, in particular Robert Gujski for the database.

A Overview of the legal situation in Denmark

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			Expected New Funding Schemes containing “Objective Explicit” Territorialisation Requirements (A.6): Y/N
				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	
Denmark	Danish Film Institute’ Consultant Scheme	11,812,081	Nat	N/A	N/A	N/A	N	N/A	N/A	Y New regional funding scheme “The
	Danish Film Institute’ 60/40 Scheme	5,557,047	Nat	N/A	N/A	N/A	N	N/A	N/A	

	Danish Film Institute' Shorts and documentaries: Consultant scheme	1,342,282	Nat	N/A	100% in case of documentaries	N/A	N	N/A	N/A	Copenhagen Film Fund'' (A 4)
	Danish Film Institute' New Danish Screen	13,417,367	Nat	N/A	N/A	N/A	N	N/A	N/A	
	Danish Film Institute' New Doc	268,456	Nat	N/A	N/A	N/A	N	N/A	N/A	
	Nordic Film-&TV Fund	8,561,481	¹	N/A	N/A	N/A	N	N/A	N/A	

¹ It is a funding scheme on a supranational basis (it is defined as regional in the sense that it apply to the Nordic Region).

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

Denmark	Danish Film Institute' Consultant Scheme	N	N/A	N/A	N	N/A	N/A	Y The aim to sustain the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A
	Danish Film Institute' 60/40 Scheme	N	N/A	N/A	N	N/A	N/A	Y The aim to sustain the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A
	Danish Film Institute' Shorts and documentaries: Consultant scheme	N	N/A	N/A	N	N/A	N/A	Y The aim to sustain the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A

	Danish Film Institute' New Danish Screen	N	N/A	N/A	N	N/A	N/A	Y The aim to sustain the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A
	Danish Film Institute' New Doc	N	N/A	N/A	N	N/A	N/A	Y The aim to sustain the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable (2.6)	N/A	N/A
	Nordic Film-&TV Fund (regional funding scheme)	N	N/A	N/A	N	N/A	N/A	Y The purpose of promoting film productions in the Nordic area as the explicit support to Nordic language versions cannot arguably exclude indirect territorialisation. (3.6)	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 ²	Degree of the territorialisation ³		
				Funding Scheme Level ⁴	Funding body level	Member State Level ⁵
Denmark	Danish Film Institute' Consultant Scheme	11,812,081	No requirement	= 0	No territorialisation	3 %
	Danish Film Institute' 60/40 Scheme	5,557,047	No requirement	= 0		
	Danish Film Institute' Shorts and documentaries: Consultant scheme	1,342,282	100% (in case of documentaries)	= 0/ =1 (in case of documentaries)		
	Danish Film Institute' New Danish Screen	13,417,367	No requirement	= 0		
	Danish Film Institute' New Doc	268,456	No requirement	= 0		
	Nordic Film-&TV Fund (regional funding scheme)	8,561,481	No requirement	= 0		

² Assessment based on replies from local lawyers (see synthesis sheet)

³ 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

⁴ 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

⁵ “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
Denmark	European Convention on Cinematographic Co-Production	1 April 1994	N
	Société Général des Industries Culturelles / Quebec and the Danish Film Institute	undated	
	Canada	15 December 1997	
	France	27 June 1975	

Denmark is currently a party to the European Convention on Cinematographic Co-production (see reply A.3 for Denmark). Furthermore there is also an undated Co-production Agreement between *Société Générale des Industries Culturelles/ Quebec* and the Danish Film Institute, a Co-production Agreement of 15th December 1997 between the Government of Canada and the Government of the Kingdom of Denmark and a Co-production Agreement of 27 June 1975 between the Government of France and the Government of the Kingdom of Denmark

In Denmark there are five national funding schemes administered by the Danish Film Institute and one regional funding scheme (see reply A.2 for Denmark; see below Section B.1).

2 Synopsis of conventions on co-production agreements

Denmark is a party to the European Convention on Cinematographic Co-production, which came into force on 1 April 1994. The authority in charge of its administration and supervision is the Danish Film Institute.

There is an undated Co-production Agreement between the *Société Générale des Industries Culturelles/ Quebec* and the Danish Film Institute; a Co-production Agreement between the Government of Canada and the Government of the Kingdom of Denmark which came into force on 15th December 1997 and a Co-production Agreement between the Government of France and the Government of the Kingdom of Denmark which came into force on 27 June 1975.

3 Synopsis of formal nationality certification procedures

In Denmark there is a nationality certification procedure provided by the Danish Film Act no. 186 of March 12, 1997 (“DFA”).

The authority in charge of this procedure is the Danish Film Institute (“DFI”).

The certification is granted on the basis of conditions laid down by the DFA, Chapter 4, Article 17 (see reply A.4 for Denmark).

Art. 17 Para. 1 states that "Danish Film" is a film of which the producer is Danish. Furthermore, the soundtrack of the film shall be in the Danish language, or the film shall have special artistic or technical features which contribute to the promotion of film art and film culture in Denmark.

However this provision states, in Subsection (4), that “the requirements regarding residence, citizenship, registered office, etc., in Denmark according to subsection (2) shall lapse if required under international agreements, including the Treaty on the European Union, the agreement establishing the European Economic Area and the Agreement on a Joint Nordic Labour Market”.

Chapter 7, Article 22 of the DFA provides that “complaints against any decisions made by the Danish Film Institute in accordance with DFA or according to rules issued pursuant to the Act may only be brought before the Minister for Culture if the complaints concern legal issues”.

No indirect territorialisation requirements are located under the rule of formal nationality certification procedure.

4. Synopsis of expected legal developments

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

The application for establishing a new regional funding scheme containing territorialisation requirements has just been filed. The scheme is to be named “The Copenhagen Film Fund”. The aim of this funding scheme is to attract international co-productions to the region, aiding Danish talent, creatively, economically and technically (see reply A.6 for Denmark).

B The Danish funding schemes

1 Overview

In Denmark there are five national funding schemes administered by the “Danish Film Institute” (“DFI”) under the control of the Ministry of Culture.

There is one regional funding scheme (“Nordic Film & TV Fund”), whose partners are the Nordic Council of Ministers, the “Finnish Film Foundation”, the “Finnish Broadcasting Company” (“YLE”), the “Swedish Film Institute”, the “Swedish Broadcasting Corporation”, TV 4, the “Norwegian Film Institute”, the “Norwegian Broadcasting Corporation” (“NRK”), TV 2 Norway, the “Danish Film Institute”, the “Danish Broadcasting Corporation” (“DR”), TV 2 Denmark, the “Iceland's Film Fund”, the “National Broadcasting Service Television” (“RUV”), the “Icelandic Broadcasting Corporation” (“Stød 2”).

There are also two regional funds with an annual budget below €1m (one million), namely “*Filmfond Fyn*” and “*Den Vest Danske Filmpulje*” (see reply A.2 for Denmark). It must be recalled that “*Filmfond Fyn*” was established as an experiment in 2003 and expired in July 2006. In 2005 the annual budget was more than €1m (approximately DKK 9,000,000). *Den Vest Danske Filmpulje* has an annual budget of less than €1m (in 2004 and 2005 DKK 5,500,000). See follow up replies of 27 November 2006.

2 *Analysis of the Danish Film Institute Funding Schemes*

2.1 *Description of the funding scheme*

The “Danish Film Institute” (“DFI”) is based on the Danish Film Act which came into force on 12 March 1997 (DFA).

It has the following five schemes:

- the “Consultant Scheme”
- the “60/40 Scheme”
- the “Shorts and documentaries Consultant scheme”
- the “New Danish Screen”
- the “New Doc” schemes

There were no regulatory changes during the reference period from 2001 to 2005.

For contact information see reply B.14 for Denmark for DFI funding schemes. For additional information on these schemes see DFI website www.dfi.dk.

The “Consultant Scheme” and the “60/40 Scheme” are based on the *Vilkår for støtte til spillefilm – Konsulentordningen og 60/40 – ordningen af 13 maj 2003* - “Terms for Subsidies for Feature Films – Consultant and 60/40 Schemes of 13 May 2003” (“Consultant and 60/40 Regulations 2003”). The previous law had been in force from 9 June 1999 to 12 May 2003. However, there were no significant regulatory changes during the period from 2001 to 2005 affecting the legal questions addressed by this study. As indicated in Art.1 Para.1, of the “Consultant and 60/40 Regulations 2003” the subsidies are granted for preparation of film scripts, development and production of Danish feature films and the participation by Danish producers in international feature film co-productions.

The “Short and documentaries: Consultant scheme” is based on the *Vilkår for støtte til kort- og dokumentarfilm af 9 juni 1999* - Terms for subsidies for Shorts and Documentaries of 9 June 1999 (“Short and Documentaries Regulation”). There were no significant regulatory changes during the period from 2001 to 2005 affecting the legal questions addressed by this study. This funding scheme is analogous to the above-mentioned “Consultant Scheme”.

The “New Danish Screen” is regulated by the *Talentudviklingen af 21 december 2004* - New Danish Screen – Development of Talent of 21 December 2004 (“New Danish Screen Regulation”). There were no significant regulatory changes during the period from 2001 to 2005 affecting the legal questions addressed by this study.

The “New Doc” funding scheme is based on the *Talent Dok af 22 november 2004* - Talent Doc of 22 November 2004 (“Talent Doc Regulation”). There were no significant regulatory changes during period from 2001 to 2005 affecting the legal questions addressed by this study.

For further details see reply B.4 for Denmark for DFI funding schemes.

2.2 Synopsis of explicit territorialisation requirements

2.2.1 Rules

No provisions containing objective explicit territorialisation requirements apply to the DFI “Consultant Scheme” and the “60/40 Scheme”. However, to be eligible to apply for State aid under this funding scheme, the film project must be certified as a Danish production (see reply B.5 for Denmark for the DFI funding schemes).

No provisions containing objective explicit territorialisation requirements apply to the DFI “New Danish Screen” and “New Doc” funding scheme.

The following provisions containing objective explicit territorialisation requirements apply to the “Short and documentaries: Consultant scheme”. The *Vilkår for støtte til kort- og dokumentarfilm af 9 juni 1999* - Terms for subsidies for Shorts and Documentaries of 9 June 1999 (“Short and Documentaries Regulation”) arguably provides an explicit territorialisation requirement for documentaries (see below Section 2.2.3).

2.2.2 Practice

There is no relevant judicial or administrative practice reported (see reply B.5 for Denmark for DFI funding schemes)

2.2.3 Discussion

Only the DFI “Short and documentaries: Consultant scheme” provides objective explicit territorialisation requirements. The *Vilkår for støtte til kort- og dokumentarfilm af 9 juni 1999* - Terms for subsidies for Shorts and Documentaries of 9 June 1999 (“Short and Documentaries Regulation”) arguably provides an explicit territorialisation requirement for documentaries (see below 2.2.3). The condition for receiving a production subsidy is, in the case of documentaries, that the film's expenditures in the form of payments to Danish film professionals or other spending in Denmark must, at a minimum, match the Danish Film Institute’s subsidy (see reply B.13 for Denmark for DFI funding schemes).

2.2.4 Conclusions

No objective territorialisation requirements are provided under DFI funding schemes except for the DFI “Short and documentaries: Consultant scheme”.

The objective explicit territorialisation requirements that apply to the DFI “Short and documentaries: Consultant scheme” can be summarized as follows: in case of documentaries the recipient of state aid must spend in Denmark a sum amounting to 100% of the amount awarded by the funding scheme

2.3 Synopsis of indirect territorialisation requirements

2.3.1 Practice

There is no relevant judicial or administrative practice reported. (see reply B.10 for Denmark for DFI funding schemes).

2.3.2 Discussion

N/A

2.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements. However there arguably are indirect territorialisation requirements in the purpose and cultural clauses (see below Section 2.6).

2.4. *Synopsis of State aid selective granting criteria and procedures*

The DFI funding schemes grant State aid in a selective way based on DFA Act and on the specific regulations of the Funding schemes. Generally the criteria are based on an evaluation of the quality of the project and its economic feasibility.

Among the selective criteria it should be noted that, on the recommendation of a consultant, the DFI may subsidise the production of feature films in order to promote the production of Danish films and the participation of Danish producers in co-productions (for co-production agreements, see reply B.13 for Denmark for DFI funding schemes, see below Point 2.5).

Furthermore the “Consultant and 60/40 Regulations 2003” state that, on the recommendation of a consultant, DFI may grant a development subsidy to a film project if it is assessed that development would be of considerable significance in strengthening the project artistically, financially, or technically, or in relation to its target group or audience potential.

Under the “60/40” scheme a dramaturgical assessment will also be prepared. Subsidies may be granted for all kinds of development costs, including the acquisition of services from third parties. The objective of development subsidies is to ensure that the project is developed in the best possible way.

In prioritising what films will be awarded subsidies, use of Danish film professionals in creative functions and potential future collaboration between the producers will carry more weight than expenditures for technical facilities and general spending.

As a further requirement for receiving production subsidies, the film shall have secured Danish distribution – either theatrically or on DR (Danish Broadcasting Corporation) or TV 2”

No indirect territorialisation requirements are located under the selective State aid granting criteria and procedures.

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

Chapter 4, Art. 17, Subsection 3 of the DFA states that any film made in cooperation with one or more foreign producers and at least one Danish producer (a co-production) may be regarded as Danish, provided that the Danish and foreign financial contributions and influence on the production, as well as the artistic or technical contributions by each party, are in reasonable proportion to each other.

Co-productions are divided into two basic categories: Danish majority productions which have a Danish executive producer and can be in Danish or in a foreign language, and Danish minority production, which have a foreign executive producer and are not in the Danish language. A limit of 30 foreign-language feature films for the period between 2003 and 2006 was established by the “Film Policy Accord 2003-2006”.

Moreover even if subsidies for co-production are based on an artistic evaluation, an evaluation of the Danish involvement in the film project is carried out (see reply B.13 for Denmark for DFI funding schemes). In particular the “Consultant and 60/40 Regulations 2003” provides that “if the Danish producer is not the principal producer of a co-production, DFI subsidy is contingent on Danish artistic and/or technical involvement. If the balance between the Danish and non-Danish contributions to the film production changes following the issue of DFI’s notice of subsidy allocation, the subsidy entitlement may be forfeited” (Para. 4.5.5 of the “Consultant and 60/40 Regulations 2003”).

In case of conflict or inconsistency between a requirement and an agreement, the rules contained in the international convention on co-production agreements will prevail over national law

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

The general objective of Danish Film Institute funding schemes is to ensure the continuous production of different types of film so that, in terms of variety, volume, artistic quality, and audience appeal, the overall range of Danish feature films maintains and develops the art and culture of Danish film domestically and abroad. Furthermore the purpose of sustaining the diversity of Danish cinema is mentioned in the “New Danish Screen Regulation”.

The “Consultant Scheme” the “60/40 Scheme” and the “Short and documentaries: Consultant scheme” are entitled to grant subsidies for preparation of film scripts, the development and production of Danish feature films and the participation by Danish producers in international feature film co-productions. The objective of such subsidies is to ensure the continuous production of different types of film,

and to improve the variety, volume and artistic quality of Danish films. The DFI may also subsidise the production of feature films in order to promote the production of Danish films and the participation of Danish producers in co-productions.

The “New Danish Screen” aims in particular at granting subsidies to script development, project development and production of fiction film projects.

Even if there is no direct reference to the local film economy, the aim of sustaining the variety and the volume of Danish film arguably qualifies as indirect territorialisation that is not quantifiable.

3 Analysis of “Nordic Film- & TV Fund”

3.1 Description of the funding scheme

The “Nordic Film- & TV Fund” (“NFTV”) is a regional fund based on the “Guidelines for the Nordic Film & TV Fund” (“NFTV Guidelines”). There were no significant 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 for Denmark for “Nordic Film- & TV Fund” and for additional information on this funding scheme see its website www.nftv.net.

3.2 Synopsis of explicit territorialisation requirements

3.2.1 Rules

The “NFTV” does not contain any explicit territorialisation requirements (see reply B.5 for Denmark for the “NFTV” funding scheme).

3.2.2 Practice

There is no relevant judicial or administrative practice reported.

3.2.3 Discussion

N/A

3.2.4. Conclusions

No objective explicit territorialisation requirements apply to this funding scheme.

3.3 Synopsis of indirect territorialisation requirements

3.3.1. Practice

There is no relevant judicial or administrative practice reported (see reply B.10 for Denmark for “NFTV” funding scheme).

3.3.2 Discussion

N/A

3.3.3 Conclusions

There is no reported practice on indirect territorialisation requirements (see reply B.10 for Denmark for “NFTV” funding scheme).

3.4 *Synopsis of State aid selective granting criteria and procedures*

According to the “NFTV Guidelines” in order to obtain support from the Fund, the film has to be suitable for theatrical release, television broadcasting or other forms of distribution. The project has to have a satisfactory marketing/audience potential within the Nordic countries. In certain cases, the Fund may participate in financing productions that might have a limited profitability, but which lie within the Fund's jurisdiction and which otherwise fulfil the Fund's other criteria. Nordic production companies are eligible for support.

In order to obtain production support for feature films, the production company has to document that theatrical distribution agreements have entered into force in a minimum of two specified Nordic countries. Furthermore, the production company must document that a broadcast agreement was concluded with at least one of the Fund's TV partners.

For TV fiction and series the production company must present broadcast agreements for TV with at least two of the Fund's TV partners (only one additional partner is required if the application originates from a TV-company). For short films the production company must present broadcast agreements for TV with at least two of the Funds TV partners. For documentaries the production company must present either broadcast agreements for TV with at least two of the Fund's TV partners, or theatrical distribution agreements in at least two specified Nordic countries, and a broadcast agreement for TV with at least one of the Fund's TV partners (see reply B.13 for Denmark for NFTV).

Projects are evaluated in their entirety, on the basis of content and artistic, production and market criteria. In addition, there is an evaluation of the project's feasibility.

Even if there are no pan-Nordic thematic requirements, national quotas, or requirements in regards to the composition of the cast and crew, there is a rule providing that Nordic companies are eligible to receive the aid (see the "NFTV Guidelines").

Selective criteria based on artistic evaluation and project feasibility imply discretion of the "NFTV" in giving the subsidy. However, no indirect territorialisation requirements are located under the criteria and procedures for granting selective State aid.

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

N/A

3.6 Synopsis of purpose and cultural clauses applying to the funding scheme

The purpose of the "NFTV" funding scheme is to promote the production of audiovisual projects in the Nordic area, by participating in the top-up financing of feature films, TV-fiction, TV-series, short films and creative documentaries.

Moreover, this Fund supports special film cultural initiatives of Nordic interest. Financial support may be applied for special workshops, forums, festival programs or seminars, which can strengthen the competence of the Nordic film & TV environment.

Therefore the Fund supports Nordic language versions and in particular sustains the creation of a version of a Nordic film in another Nordic language, primarily in the form of dubbing (see "NFTV Guidelines").

The purpose of promoting film productions in the Nordic area as the explicit support to Nordic language versions cannot arguably exclude the possibility that this goal might be used as a justification for indirect territorialisation.

References

www.dfi.dk

www.kulturministeriet.dk

Both the Danish Film Institute and the Ministry of Culture have recently issued new studies of the Film Industry in Denmark to be found on the above listed websites. However, both studies are available only in the Danish language.

Attachments:

- Replies to the legal questionnaire by Katrine Schlüter Schierbeck, attorney at law, Johan Schlüter law firm, Denmark
- Regulations for Denmark