

PART A OF THE CINEMA STUDY
REPLIES TO THE LEGAL QUESTIONNAIRE FOR THE SLOVAK REPUBLIC

Member State:	SLOVAK REPUBLIC
Re:	Follow Up Reply
Date:	04 January 2007

(...)

Please find below the clarification of your follow-up questions regarding the Legal questionnaire on territorialisation requirements in Audiovision:

1) B.11

As far as the audiovisual production in the Slovak Republic is concerned, the minority projects still predominate in our country. Therefore, the state support of minority projects is very important. When funding the minority projects, the Ministry of Culture of the Slovak Republic by means of its grant system tries to support the minority projects with the amount of money necessary for the Slovak participation.

2) B.13

“There is no legal title for granting the state aid” - The program Audiovision is a part of the state grant system. The funding in the program Audiovision is granted in accordance with the conditions stated in the Order of the Ministry of Culture of the Slovak Republic. As we have mentioned before, the program Audiovision is divided into eight subprograms. Each project is firstly classified under one of the subprograms and then evaluated according to seven specific criteria stated for this subprogram. The project shall be awarded points, from 0 to maximum of 12 points for each criterion. Projects are considered by the committee, which is an advisory body of the Ministry. Anyway, the statement of the committee is not binding for the Ministry. The final decision on granting the state aid, or not, is made upon the discretion of the Ministry. Even if the applicant (project) meets all the conditions, it does not have the legal title for funding, ie. the funding is granted exclusively upon the discretion of the Ministry.

The other sentences you have requested to clarify represent some of the criteria stated for evaluation of the projects in the program Audiovision:

- a) ***“Execution of the application (integrity, authenticity, quality)”*** – this criterion concerns the quality of the application. Applicants seeking for the state aid in the program Audiovision have to file an Application together with all required annexes. The following aspects of the application are considered: if the information is truthful and comprehensive, if the application has all required annexes etc.;
- b) ***“Assumes of realisation of the project (producer, artistic team, crew)”*** – means the volume of Slovak participation in the project;
- c) ***“Bonus for exceptionality in any of mentioned criteria”*** – this criterion follows the other stated criteria and means, that if the project is evaluated as extraordinary according to one or several stated criteria, it gets bonus points.

Member State:	SLOVAK REPUBLIC
Re:	Follow Up Question
Date:	03 December 2006

(...)

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

1) At B.11: Please clarify the meaning of your sentence:

“Ministry supports those minority projects, in which the grant/state aid shall be in full amount invested to the Slovak participation: royalties of Slovak creators, producers and performers; shooting in our locations; etc.”

2) B.13: Please clarify the meaning of the sentences as follows:

- “There is no legal title for granting the state aid.”
- “Assumes of realisation of the project (producer, artistic team, crew)”
- “Execution of the application (integrity, authenticity, quality)”
- “Bonus for exceptionality in any of mentioned criteria”

For your information, please find attached the replies from Austria to our legal questionnaire, and our draft country report for this country. These documents provide a good example of the information we shall deliver in the first part of December to the European Commission together with a preliminary general report on the legal situation of territorialisation requirements in the 25 Member States between 2001 and 2005.

The economic aspects of the territorialisation requirements at stake shall be investigated and analysed over the next six months by our fellow advisors and consultants on this matter. These economic findings shall contribute to further inform the legal part of our study.

We believe that this cinema study will have a considerable visibility in Europe, and that it will be very critically discussed among the stakeholders in each jurisdiction. The attached article from the Le Figaro of 23 October 2006, that presents this study in a rather misleading way, provides a flavour of the upcoming debate. It is therefore essential that the legal information we received from you is exhaustive and fully accurate since this information will be subject to high scrutiny from the Commission and the stakeholders.

As mentioned earlier, your replies to our legal questionnaire will be attached to our legal report without any form or content related modification from our part. They will be presumably published on-line in the second half of 2007 on the Commission's website. If you feel that you want to amend your replies in view of this publication, please send us your revised version by 1 Mars 2007. In this case, if you modify your current version with respect to its substance, please highlight such modifications, and we shall insert them into our country report on your jurisdiction. Furthermore, please feel free to compile all your follow-up replies in the final version of your document in order to render it more reader friendly.

The findings of the overall study in its final version shall be presented during a conference to take place in Brussels in June 2007. We shall indicate you the exact date of this event early next year to enable you to attend it if you wish so.

(...)

Member State:	SLOVAK REPUBLIC
Re:	Follow Up Reply
Date:	19 October 2006

(...)

Referring to your e-mail I would like to inform you on the following:

The European Convention on Cinematographic Co-Production entered into force in the Slovak Republic in may 1995.

According to the article 154c of the Constitution of the Slovak Republic international treaties ratified and promulgated by the Slovak Republic before July 1st, 2001 do not prevail over national laws. International treaty on human rights and fundamental freedoms represents the only exception from this rule. However, they prevail over Slovak laws only if they provide a greater scope of constitutional rights and freedoms.

The status of international treaties ratified and promulgated after July 1st, 2001 is significantly different. According to the article 7 of the Constitution all international treaties on human rights and fundamental freedoms, international treaties for whose exercises a law is not necessary and international treaties which directly confer rights or impose duties on natural or legal persons shall prevail over Slovak laws.

(...)

Member State:	SLOVAK REPUBLIC
Re:	Follow Up Question
Date:	19 October 2006

(...)

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

(...)

Member State:	SLOVAK REPUBLIC
Re:	Reply
Date:	04 October 2006

(...)

with regards to our mandate in the project of the European Commission in the sphere of audiovision, please find attached

the Legal questionnaire on territorialisation requirements in the Slovak Republic.

(...)

Attachments to e-mail of 04 October 2006

- CG Legal Questionnaire.doc
- legislation.zip

Attachment to Follow Up Reply of 04 October 2006:
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CG Legal Questionnaire.doc

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

PRELIMINARY REMARK

This questionnaire is divided in two parts. Part A concerns general questions and part B specific questions related to State aid for independent film and television production, including State aid based on co-production agreements, in the context of territorialisation requirements.

Some information that could be relevant for this questionnaire is available on-line, e.g.:

- the data from Korda and IRIS Merlin at:

<http://www.obs.coe.int/db/index.html> (in particular the information by Korda on funding schemes at: http://korda.obs.coe.int/web/recherche_fonds.php and the information on co-production agreements by IRIS Merlin at: <http://merlin.obs.coe.int/search.php>)

- the links to regulating, control and funding bodies in the audiovisual sector (cinema and broadcasting) at:

http://ec.europa.eu/comm/avpolicy/info_centre/links/index_en.htm

- the information on co-production agreements on the Council of Europe website and, e.g. for France and the United Kingdom, on the websites of the Centre National de la Cinématographie and the UK Film Council:

http://www.coe.int/T/E/Cultural_Co-operation/Eurimages/

<http://www.cnc.fr/Site/Template/A2.aspx?SELECTID=35&id=36>

http://www.ukfilmcouncil.org.uk/usr/ukfcddownloads/42/Co_production.pdf

However, please consider that this information may not be exhaustive, fully accurate or up-to-date, and may therefore require to be completed for the purposes of this study.

When filling in this questionnaire, please specify in brackets your sources of information at the end of each of your answers.

Please deliver your replies in word format (font type: times new roman; font size: 12).

PART A

GENERAL QUESTIONS

Please use only one form per Member State.

OVERVIEW

- A.1 Country / region: **the Slovak Republic**
- A.2 Names of funding schemes with an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works¹ of at least € 1 million in 2005 (this includes any kind of support, e.g. direct subsidies, fiscal advantages, etc., to pre-production, production, post-production, marketing, distribution and promotion):

State funding program AudioVision

COPRODUCTION AGREEMENTS

- A.3 List the conventions on co-production agreements to which your country is currently a party, indicate the date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision:

EUROPEAN CONVENTION ON CINEMATOGRAPHIC CO-PRODUCTION
(Európsky dohovor o filmovej koprodukcii)

ratification on: **23/1/1995**, entered into force: **1/5/1995**

the authority in charge: **The Ministry of Culture of the Slovak Republic**
Nám. SNP č. 33
813 31 Bratislava
Slovak Republic

www.culture.gov.sk

NATIONALITY CERTIFICATION PROCEDURES

- A.4 Describe the formal procedure, if any, to assess and certify the nationality of an independent film or television production in your country by indicating the authority

¹ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

in charge of this procedure, the criteria of eligibility, and the scope of this certification procedure in relation to public funding schemes in your jurisdiction:²

According to the Act No. 1/1996 Coll., on Audiovision, it is understood that the Slovak audiovisual work is such an audiovisual work, the producer of which has or had at the time of its first public presentation permanent residence or domicile on the territory of the Slovak Republic. A Slovak audiovisual work is also considered an audiovisual work in the creation of which the producer has shared at least 20 % of the entire budget for the work.

However, in case of multilateral co-productions, the basic legislative norm applied in Slovakia when assessing the nationality of the audiovisual work is the European convention on cinematographic coproduction.

The authority competent to consider the projects and to qualify the projects as „national“ is the Ministry of Culture of the Slovak Republic (hereafter only “the Ministry”). The Ministry may support the financing of creation or distribution of the Slovak Audiovisual Works by means of the state grant system.

EXPECTED DEVELOPMENTS

- A.5 Indicate whether new co-production agreements are to be expected in your jurisdiction as of 1 January 2007, indicate the contemplated date of the entry into force of each convention, and indicate the name and address of the authority in charge of their administration and supervision.

No

- A.6 Indicate whether new funding schemes containing territorialisation requirements entered into force or are to be expected to enter into force in your jurisdiction as of 1 January 2006,³ and indicate the name and address of the administration of these funding schemes:⁴

No

² E.g. the French “Procédure d’agrément”.

³ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

⁴ E.g. in Germany, there will be a new funding scheme on the federal level containing a territorialisation clause as from 2007.

REFERENCES TO LOCAL STUDIES

- A.7 Provide the references of studies, reports or other relevant materials on territorialisation requirements, on co-production agreements and on legal aspects of the promotion of film related cultural identities and cultural diversity in your jurisdiction (author, title, place, date of publication, and, if available, internet link):

MEDIA Desk Slovakia: Report on the Slovak audiovisual situation in 2005,
<http://www.mediadesk.sk/mediadesk/common/news/2006-05AVSK/Sprava-o-stave-SK-AV-2005.pdf>

Draft of the Bill on Audiovision, which should replace the current Act on Audiovision. The Bill strictly defines the Slovak audiovisual work, Slovak cinematographic work, Slovak phonogram and Slovak multimedial work. The Bill on Audiovision was submitted by the Legislative board of the government to the National Council of the Slovak Republic for discussion, however, it has not been adopted and will have to be submitted to the legislative procedure again.
<http://www.culture.gov.sk/index/>

PART B

FUND SPECIFIC QUESTIONS

Please only cover funding schemes, including tax incentive schemes, that were operated at the national, regional (excluding EU schemes, e.g. the Media programme)⁵ or local level in your country during the reference period from 1 January 2001 to 31 December 2005, and that disposed of an annual budget of State aid dedicated to pre-production, production, post-production, marketing, distribution and promotion of independent cinematographic and audiovisual works of at least € 1 million per year.⁶

Please use for each funding scheme a separate form.

IDENTIFICATION OF THE FUNDING SCHEME

B.1 Country/region: **Slovak Republic**

B. Name of the funding scheme: **state funding program AudioVision**

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

The Ministry of Culture of the Slovak Republic
Section of Media and Audiovision (Sekcia médií a audiovizíe)
Nám. SNP č. 33, 813 31 Bratislava, Slovak Republic

tel. no: + **421-2-5939 1111**

liaison person: **Zuzana Mistríková (General Director)**

www.culture.gov.sk

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

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

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

⁵ Regional schemes mean both, schemes operated within your country and schemes to which your country is a party among other countries, e.g. the Nordic Film- and TV Fund (see http://korda.obs.coe.int/web/display_fonds.php?fonds_id=28).

⁶ "Independent" means that the cinematographic and audiovisual works are produced and distributed by entities that are legally independent from broadcasters.

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

Laws and regulations: Slovak version	Laws and regulations: English version	the date when laws or regulation entered into force	no. of amendments during the period from 2001 to 2005	Annex no.:
Zákon č. 472/2000 o štátnom rozpočte na rok 2001	Act No. 472/2000 Coll. on the State Budget for 2001	1.1. 2001	2	1
Zákon č. 586/2001 Z. z. o štátnom rozpočte na rok 2002	Act No. 586/2001 Coll. on the State Budget for 2002	1.1. 2002	1	2
Zákon č. 750/2002 o štátnom rozpočte Z. z. na rok 2003	Act No. 750/2002 Coll. on the State Budget for 2003	1.1. 2003	1	3
Zákon č. 598/2003 Z. z. o štátnom rozpočte na rok 2004	Act No. 598/2003 Coll. on the State Budget for 2004	1.1. 2004	0	4
Zákon č. 740/2004 Z. z. o štátnom rozpočte na rok 2005	Act No. 740/2004 Coll. on the State Budget for 2005	1.1. 2005	0	5
Zákon č. 502/2001 Z. z. o finančnej kontrole a o vnútornom audite a o zmene a doplnení niektorých zákonov	Act No. 502/2001 Coll. on the Financial Inspection and on Internal Audit and on amending and supplementing certain laws	1.1. 2002	1	6
Zákon č. 291/2002 Z. z. o Štátnej pokladnici a o zmene a doplnení niektorých zákonov v znení neskorších predpisov	Act No. 291/2002 Coll., on the Treasury and on amending and supplementing certain laws	1.7. 2002	11	7
Zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy a o zmene a doplnení niektorých zákonov	Act No. 523/2004 Coll. of Acts on budget rules of the public administration and on amendments and supplements to	30.9. 2004	8	8

v znení neskorších predpisov	certain laws.			
Zákon č. 25/2006 Z.z. o verejnom obstarávaní	Act No. 25/2006 Coll., on Public Procurement	1.2. 2006	2	9
Výnos Ministerstva kultúry Slovenskej republiky zo 16. novembra 2005 č. MK-12947/05-110/30493 o poskytovaní dotácií v pôsobnosti Ministerstva kultúry Slovenskej republiky	Order of Ministry of Culture No. MK-12947/05-110/30493 on funding in the jurisdiction of the Ministry of Culture of Slovak Republic	1.12. 2005	1	10
Smernica Ministerstva kultúry Slovenskej republiky č. MK- 136/06-110/2422 o poskytovaní dotácií	Direction of Ministry of Culture No. MK-136/06-110/2422 on funding	1.2. 2006	1	11
Zákon č. 1/1996 Z.z. o audiovizii	Act No. 1/1996 Coll., on Audiovision	5.1. 1996	3	12

TERRITORIAL CONDITIONS⁷

Explicit territorial conditions

- B.5 Does the scheme impose any explicit obligation on independent film and audiovisual project proposals that they must spend a minimum proportion of the production budget in the Member State/Region to qualify for State aid or to receive the maximum amount of State aid available (*consider the situation as of 31 December 2005 and, only in case of significant changes, the situation before this date during the period from 2001 to 2005*)?

No

If yes,

- B.6 Quote (in the national language and in an English working translation) the provisions requiring territorialisation that are contained in the rules (legislation and internal regulations) listed under Answer B.4 (*provide quotes of the current version of the rules as of 31 December 2005 and, only in case of significant changes, of former versions of territorialisation clauses that were in force before this date during the period from 2001 to 2005*):
- B.7 Describe how these territorialisation requirements are implemented, including the minimum proportion required and the maximum (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*).
- B.8 Describe how territorialisation requirements that apply to this scheme are interpreted and implemented in the context of the co-production agreements listed under answer A.3 (*provide a description with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):
- B.9 Quote and summarize judicial and administrative practice (case law and guidelines) and legal commentaries addressing the implementation of territorialisation requirements that you quoted and described under answers B.6 to B.8 (*provide a quote and summary with respect to the current version of the territorialisation requirements as of 31 December 2005 and, only in case of significant changes, with respect to former versions of territorialisation requirements that were in force before this date during the period from 2001 to 2005*):

⁷ Any requirement/incentive that some of the development, production or post-production activities must take place in the country or region offering the State aid, either for the audiovisual work to be eligible for State aid or affecting the amount of State aid available to the audiovisual work.

Implicit or *de facto* territorial conditions

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

Yes

If yes,

- B.11 Please describe the implicit or *de facto* territorialisation requirements that are practised by this funding scheme (*as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005*):

The program Audiovision is divided into eight subprograms as follows:

- 1) Development of Audiovisual Works**
- 2) Production of Audiovisual Works**
- 3) Production of Full-length Films for Cinema**
- 4) Postproduction and/or Distribution of Audiovisual Works**
- 5) Minority Co-production of Full-length films for Cinema**
- 6) Distribution of Foreign Audiovisual Works**
- 7) Events, Educational Activities and/or Presentation of Audiovisual Works**
- 8) Publishing Activities in Audiovisual Industry**

Each subprogram has seven specific criteria for evaluation of the applications. In the subprogram Minority Co-production, one of the criteria is „the volume of the Slovak participation in the project: participation in the artistic team (creativity), production crew and place of shooting“. This criterion may be considered as territorialisation requirement stated by the funding scheme. The Slovak minority projects have to satisfy the limits stated by the European convention on cinematographic co-production on the minimum contribution, in the case of multilateral co-production at least 10% and of a bilateral co-production at least 20% of the total production cost of the cinematographic work. In fact, the Ministry supports those minority projects, in which the grant/state aid shall be in full amount invested to the Slovak participation: royalties of Slovak creators, producers and performers; shooting in our locations; etc.

The procedure of funding in the program AudioVision is regulated by the Direction of Ministry No. MK- 136/06-110/2422 on funding and the Methodical instruction of the Ministry. These are not generally binding legal acts, but internal rules of the Ministry.

CULTURAL CLAUSES

- B.12 Quote the legal provisions of your jurisdiction (in the national language and in an English working translation) expressing cultural policy goals (e.g. promotion of cultural identity and cultural diversity) that could legitimate the explicit or implicit territorialisation requirements mentioned under answers B.6, B.7 and B.11 and that are currently in force:

national language:

V zmysle § 1 Výnosu Ministerstva kultúry Slovenskej republiky zo 16. novembra 2005 č. MK-12947/05-110/30493 o poskytovaní dotácií v pôsobnosti Ministerstva kultúry Slovenskej republiky, dotáciu z rozpočtovej kapitoly ministerstva možno poskytnúť na účely:

- a) tvorby a šírenia kultúrnych hodnôt,**
- b) ochrany a rozvoja kultúrneho dedičstva,**
- c) zahraničných kultúrnych aktivít a medzinárodných kultúrnych aktivít celoslovenského významu,**
- d) kultúrnej tvorivosti a voľnočasových kultúrnych aktivít,**
- e) vzdelávacích programov v kultúre,**
- f) rozvoja kultúry národnostných menšín,**
- g) kultúrnych aktivít zdravotne postihnutých alebo inak znevýhodnených skupín obyvateľstva.**

English version:

In compliance with the provision § 1 of the Order of the Ministry of Culture dated November, 16 2005 No. MK-12947/05-110/30493 on funding in the jurisdiction of the Ministry of Culture, the funding may be granted for purposes of:

- a) development and spread of cultural values,**
- b) protection and development of cultural heritage,**
- c) foreign and international cultural activities of nationwide importance,**
- d) creativeness and free time activities in culture,**
- e) training program in culture,**
- f) cultural development of national minority,**
- g) cultural activities of the handicapped.**

SELECTIVE SCHEMES

- B.13 If this scheme distributes aid selectively,⁸ please list the qualitative criteria that were applied as of 31 December 2005 and, only in case of significant changes, before this date during the period from 2001 to 2005:

The program Audiovision is exclusively a selective funding scheme. There is no legal title for granting the state aid.

⁸ Selective funding schemes grant State aid based on an evaluation of each project and following qualitative criteria. In contrast, automatic schemes grant State aid if certain quantitative criteria such as box office results of previous works are met.

The project seeking for the state aid shall be registered within one of the subprograms of the funding scheme. Each subprogram has seven qualitative criteria, according to which the projects are evaluated. Projects are considered by the Committee, which consist of 9 experts. The Committee is an advisory body of the Ministry. The final decision on granting the state aid is made by the Minister on the base of the project evaluation.

Projects are evaluated pursuant to qualitative criteria which are mainly as follows:

- Quality and originality of the script
- Execution of the application (integrity, authenticity, quality)
- Quality of the project strategy (time schedule of the activities set for realisation of the project, accuracy of the budget for production)
- Quality of the financing strategy
- Assumes of realisation of the project (producer, artistic team, crew)
- Potencial of european and international exploitation and attractiveness for distribution
- Bonus for exceptionality in any of mentioned criteria

CONTACT DETAILS

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

liaison person:	Mrs. Silvia Dydnanská, secretary
postal address:	Ministry of Culture of the Slovak Republic Section of Media and Audiovision Program AudioVision 2006 / AudioVízia 2006
	Nám. SNP č. 33 813 31 Bratislava Slovak Republic
phone no.:	+421-2-5939 1231
contact mail address:	silvia_dydnanska@culture.gov.sk
general contact mail address:	granty@culture.gov.sk

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

elaborated by:	JUDr. Viliam Karas, attorney at law Mgr. Rovená Suchánková, junior lawyer
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