

# Subsidy Guidelines

## A. General Section (applies to all subsidy applications)



in accordance with the December 16, 2008 resolution of the FILM FUND's oversight committee  
(on the basis of the June 24, 2008 Guidelines)

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## 1. APPLICABILITY OF THESE GUIDELINES AND GENERAL STIPULATIONS

The Vienna Film Fund (FILM FUND) is a non-profit fund with an independent legal personality based on the relevant law (Wiener Fondsgesetz). Its activities are regulated by the statutes last officially approved by the March 19, 2002, decision of the state government's office based on the Vienna state government's resolution of October 17, 2007.

In the interests of preserving cultural diversity in Europe, the primary objective of the FILM FUND is to strengthen and expand upon Vienna's role in the production of film and other media, including as a center in the field of international film production, and the related subsidization of culture, trade and industry, and labor within a European context.

This objective is satisfied in part by the promotion of competitive full-length films in the phases of project development, production and exploitation, assuming the latter will take place in movie theaters, on television or in other audiovisual media and assuming they are able to increase the market share of European films..

The General Section A of the Subsidy Guidelines applies to all areas of subsidization.

Exceptions to the stipulations of these Subsidy Guidelines can be made for productions of outstanding artistic or economic quality. Such decisions will be made by the oversight committee after a suggestion is made by the jury.

## 2. GENERAL STIPULATIONS

### 2.1. Eligibility for Subsidization and Subsidy Amounts

Financing a production in its entirety must be impossible without money from the FILM FUND. The subsidy must always be used for the production and its budget as a whole, particularly for international co-productions.

Subsidies are limited to 50 percent of the total production costs or 50 percent of the Austrian share of production costs in the case of international co-productions.

If higher limits for the cumulation of state subsidies are permitted by European law, they shall apply to subsidies awarded according to these Guidelines.

### 2.2. Private Investment

The applicant must contribute an appropriate private investment to the production costs, and this sum cannot be financed by the FILM FUND, another institution which provides subsidies or any other legal person under public law.

The private investment must be appropriate for the production's size and the applicant's resources. The private investment can be in the form of private resources, appraised private contributions, distribution or sales guarantees, or revenues from the sale of rights and/or ancillary rights (licenses).

The private resources should amount to at least 5 percent of the net production costs.

External funds will be treated in the same way as private resources if they are made available to the applicant in the form of a loan (e.g. bank loans or loans in kind) to the extent that public funds are not involved.

### 2.3. Publication

In the event a subsidy is awarded, applicants consent to publication of data that is relevant to the project (subsidy recipient, project's title, the type, purpose and amount of the subsidy) by the FILM FUND.

Applicants also consent to the provision of this information to third parties in the course of the functions and activities of the FILM FUND.

### 2.4. Mention of the Vienna Film Fund and Use of Its Logo

After conclusion of a subsidy agreement, applicants agree to point out the fact that their production is being subsidized by the FILM FUND in all publications relating to and mentions of the production, regardless of the medium, in either the opening credits or end titles of the completed film and in all advertising materials whenever this is suitable and reasonable. The FILM FUND's logo will be used wherever suitable and reasonable.

### 2.5. Reasons for Exclusion

The following projects are not eligible for a subsidy:

- projects that violate the applicable law of the European Union or applicable laws or regulations of the Republic of Austria or the State of Vienna;
- films produced for hire for third parties;
- subsidies intended exclusively for parts of a project (e.g. postproduction);
- projects that do not conform to the applicable collective agreements applying to the Austrian film sector.

## 2.6. Effectiveness of these Guidelines

These guidelines became effective after being approved by the European Commission and can be applied retroactively to all projects for which a subsidy application was submitted in the period of time between the date these Guidelines were published and the date they came into effect, as well as all projects that had received approval of a subsidy but not a subsidy agreement, assuming that both contractual parties agree.

### 3. SUBSIDY CRITERIA

The decisive criteria for obtaining funding from the FILM FUND are the production's significance for cultural advancement, value for Vienna's film sector and economic potential.

The cultural effect expected for the city of Vienna will be decided by an independent jury of experts in light of the quality of the documents submitted, in particular the treatment, screenplay and lists of cast and crew, and also the production's economic and technical quality and the expected success of exploitation on the basis of the exploitation concept.

The expected economic effect will be evaluated by the FILM FUND's management board on the basis of the proven effect the production will have on Vienna's film sector. The jury will employ this evaluation as one of the bases for its decision.

#### 3.1. Cultural Effect

The decisive criterion for the production's cultural value for Vienna is the extent to which an audiovisual project has the potential to produce original creative content with a regionally specific contribution to cultural diversity in Europe and beyond, and also make this content accessible to its target group(s) through appropriate exploitation. Projects that are produced in Vienna will receive priority.

Possible criteria for making this evaluation:

- link with the cultural heritage of Vienna, especially with regard to film;
- treatment and representation of specifically European, in particular Viennese cultural and linguistic diversity;
- treatment of regional lifestyles and history, especially in the Centrope Region;
- creation of original content dealing with Vienna;
- contribution to contemporary and internationally oriented cinematic culture in Vienna;
- development and employment of new technologies and media;
- improvement of the access to creative content dealing with cultural and social matters;
- international networking with other areas of art production in Vienna and the rest of the world;
- the employment of new formats, technologies and/or forms of distribution (e.g. Internet TV, mobile TV, etc.).

#### 3.2. Effect on Vienna's Film Sector (Regional Effect)

The decisive criterion for evaluating significance for Vienna's economy is the project's effect on Vienna's film sector. This is generated by all planned expenditures that will go to Vienna's film sector and the Vienna Region in the course of the film's production. The Vienna Region includes areas that border on Vienna.

This effect comprises expenditures of the following types in particular:

- employment of workers in this sector for artistic, technical and administrative functions, and
- use of the infrastructure for film production.

The habitual residence (center of vital interests) is decisive for evaluation of this effect resulting from fees and other personnel expenditures. For all other expenditures, the company domicile (address on the invoice) is decisive.

Costs that do not involve actual payments of money can also be considered in calculating this effect if they are relevant to the production.

The effect of subsidized productions on Vienna's film sector must amount to at least 100 percent of the FILM FUND subsidy, and 80 percent of the total production costs at the most. The producer will be permitted to spend at least 20 percent of the total production costs in another EU member state. The FILM FUND will calculate the economic effect on the film sector on the basis of the actual expenditures if a statement of accounts is submitted.

## 4. APPLICATION

### 4.1. Eligibility to Apply

Applications are accepted from natural or legal persons with sufficient qualifications for and experience with the artistic and/or economic aspects of filmmaking, regardless of their place of residence or the location of their company's domicile, though it must be within the European Economic Community. Applications are not accepted from legal persons with a majority interest located outside the European Economic Community.

Applications are not accepted from legal persons subject to the considerable control of a television broadcaster. Such control exists when over a share larger than 25 percent is owned by a single television broadcaster or when two or more television broadcasters own a share larger than 50 percent

If the applicant is a legal person, the FILM FUND must ensure by means of a legal agreement that the members of his or her managing bodies are personally jointly liable for proper performance.

The specific stipulations concerning eligibility to apply shall be taken into consideration for the individual subsidy areas.

A legal claim to a FILM FUND subsidy or a subsidy of a certain type or amount will not exist before approval for a subsidy is given or a subsidy agreement is concluded.

In the case of first-time applications or applications being made from abroad, a consultation meeting with the management board must take place 14 days at the latest before submission of the application; for second applications, such a meeting is recommended 14 days at the latest after submission of the application.

### 4.2. Application Materials

The subsidy application must make use of the current version of the application form for the specific type as provided by the FILM FUND at the Web site [www.FILM FUND-wien.at](http://www.FILM FUND-wien.at). Send applications to:

**Vienna FILM FUND, Stiftgasse 6, A-1070 Vienna, Austria**

The required enclosures and number of copies is specified on the application form. Please follow the Instruction Sheet for application forms (see Downloads at the Web site [www.FILM FUND-wien.at](http://www.FILM FUND-wien.at)).

If the application is incomplete, the missing documents or materials must be submitted within a reasonable period of time specified by the FILM FUND in writing. If the missing materials are not submitted within this period of time, the application will not be accepted. Acceptance is possible beginning on the day the application materials are complete, and the decision-making process will also begin on this day. The deadline for the jury's decision as defined under Item 5.1. will remain unaffected.

If the applicant applies to other institutions in Austria or abroad for subsidies for the same production, identical materials must be submitted to the FILM FUND. Furthermore, the FILM FUND must be notified concerning such applications immediately.

All materials that are submitted will be the property of the FILM FUND unless explicit arrangements to the contrary are made.

The applicant is responsible for the correctness and completeness of all information, in particular with regard to the calculated costs.

### 4.3. Disclosure of Data

The applicant acknowledges and consents to the fact that, at submission of the application, the FILM FUND will have the right to exchange personal data and data which describes the applicant's project with all groups and institutions involved with the financing of and subsidies for the project in question for the purpose of confirming the correctness of the submitted materials.

Furthermore, the applicant acknowledges and consents to the fact that, at submission of the application, the FILM FUND will have the right to disclose personal data and data which describes the applicant's project to the necessary extent to persons not officially connected with the FILM FUND but who are subject to a legal or professional duty to observe secrecy and who are not in direct competition with the applicant. This will be done for the purpose of evaluating individual points relating to this information.

## 5. DEADLINES, THE DECISION-MAKING PROCESS, THE AGREEMENT

**5.1.** To the extent that there is no obstacle as specified in Items 6.6., 7.1.2. or 7.2.4., the management board will pass all forms that have been submitted in accordance with all the stipulations of Item 4.2. to the jury for their decision six weeks at the latest after the deadline specified on the Web site following actual submission of the application. This will be the case in the event that there are no other relevant stipulations for the specific subsidy area. The jury's decision will be made known to the applicant in oral form, upon request, and in writing within eight working days.

**5.2.** Each approval of a subsidy is subject to proof that financing of the project has been secured in its entirety. Additional requirements may be specified in the notification of approval.

**5.3.** If all conditions are not satisfied within the specified period of time or if important requirements which led to the granting of conditional approval are no longer valid, approval will terminate. The applicant will be informed of this fact in writing by the FILM FUND, which will be solely declaratory in nature.

**5.4.** Approvals of subsidies will normally be valid for a period of nine months from the date of proven written notification of the applicant; this period can also be six months for television productions and exploitation subsidies. The nine-month period can be extended to a maximum of 18 months after submission of a request by the applicant which includes a justification.

**5.5.** When all conditions specified in a conditional approval are satisfied, the FILM FUND will conclude a written subsidy agreement with the applicant. All stipulations of the current statutes and subsidy guidelines which are in force at the time the application was submitted will constitute integral components of each subsidy agreement.

**5.6.** Before conclusion of a subsidy agreement, approval of an application by the FILM FUND will not constitute an obligation of any kind on the part of the FILM FUND beyond the existence of this approval for the specified period of time. A claim to receipt of these funds will arise only at conclusion of a subsidy agreement. If production begins before conclusion of such an agreement, this will be at the full risk of the applicant, and the FILM FUND will not be under obligation in any way. Any costs that accrue in this period can however be payable with subsidy funds if they do not exceed the costs specified in the subsidy application.

**5.7.** If a subsidy agreement is not concluded, the applicant will not have a right to recompense of damages or loss incurred through reliance on a declaration and/or other damages as a result of breach of duty prior to contract despite the granting of approval.

**5.8.** Claims and obligations of any kind that arise on the basis of a subsidy agreement will be transferable only with prior written approval of the FILM FUND. Excepted are assignments of security for productions approved for a FILM FUND subsidy that must be disclosed.

**5.9.** The payment of subsidy funds requires that the FILM FUND is notified immediately and in writing concerning all circumstances that delay or represent an insurmountable obstacle to the project, and aspects upon which the subsidy agreement was based, and any and all changes with regard to the agreed purpose of the subsidy, the conditions or terms, and none of the stipulations specified in Item 7.2. apply.

**5.10.** Subsidy installments will be paid within seven banking days after submission of a written request, assuming that all the necessary requirements are satisfied. Payment of subsidy funds will take place according to the cash-flow plan submitted by the applicant. If such a plan was not submitted, payment will be made according to the installment schedule specified in the agreement.

## 6. USE OF FUNDING AND RECORDS

**6.1.** The funding recipient must use the subsidy as intended, i.e. exclusively for expenditures incurred in the course of production, and he or she must administer such funds with all the diligence of a prudent businessman. He or she must keep records of all relevant receipts and expenditures, and revenues from insurance benefits or refunds of premiums; from the sale of objects (props, etc.) and rights (music, etc.); from advertising, funds from sponsors, etc. that reduce costs must be reported separately.

**6.2.** The FILM FUND must be notified immediately, in writing and without being asked concerning any and all circumstances that result in a change with regard to the agreed purpose of the subsidy, delay or represent an insurmountable obstacle to production, or reduce the expected effect on Vienna's film sector.

**6.3.** Before receipt of the last installment, the funding recipient must inform the FILM FUND concerning how the funding it provided has been used by presenting a final statement of accounts in written form. Any and all discounts and reductions must be deducted from the relevant cost items in the final statement of costs (final cost report, actual financing).

**6.4.** The funding recipient must permit officials of the FILM FUND or individuals acting on their behalf who are subject to an obligation to observe secrecy to examine the relevant documents, agreements, account books and receipts, and also inspect the production company's offices for the purpose of ascertaining the proper use of funding; the funding recipient will provide all required information. This will be done within a reasonable period of time not exceeding two weeks, and the required information will be provided on that occasion.

**6.5.** At the FILM FUND's express request, the funding recipient must produce a financial statement for the production which has been certified by a certified public account. This request requires a justified resolution by the FILM FUND's oversight committee.

**6.6.** Should the applicant fail to fulfill the obligations specified in Items 6.1. to 6.5. within a reasonable period of time, even after receiving a specific written demand, neither the subsidy applications already submitted nor new submissions will be evaluated by either the jury or the management board, and no other subsidy agreements will be concluded on the basis of approvals already extended until such obligations have been fulfilled.

## 7. EXPLOITATION AND REPAYMENTS

### 7.1. Regular Repayments of Subsidies that Must Be Repaid after Success

The funding recipient will be obligated to ensure appropriate exploitation of the subsidized production and inform the FILM FUND in writing, regularly, without being asked and annually by April 30<sup>th</sup> at least, beginning at the production's initial release, with regard to all proceeds accruing from exploitation of the subsidized production. All relevant documents must be provided upon request.

Separate stipulations apply to subsidy area B, Project Development.

**7.1.1.** Funds provided by the FILM FUND must be repaid according to the returns from the exploitation proceeds obtained by May 31<sup>st</sup> of the year after such proceeds were earned, and for a period of **36** months from the initial release.

The obligation to make repayments will arise as soon as the funding recipient's earnings from exploitation of the production in question exceed the private investment recognized by the FILM FUND in the subsidy agreement.

Proceeds from presales of rights and/or ancillary rights before completion of the subsidized production used for the purpose of financing said production will increase the funding recipient's private investment with regard to repayment.

The FILM FUND will recognize all license shares for distributors of up to 40 percent of the net distribution proceeds and any distribution commissions for European and non-European countries of up to 30 percent of the actual and final license proceeds for the subsidized film. Distribution and sales costs will be recognized as preliminary costs that can be deducted to the extent that they are customary to the market and sector.

The producer's share of the distribution earnings (net proceeds) remaining after payment of the preliminary costs and repayment of the private investment will be used for pro rata repayment of the subsidy to the FILM FUND according to the percentage of its interest in the recognized actual production costs.

**7.1.2.** In the event that the funding recipient neglects to fulfill his or her obligation to make repayments, such obligation will continue to exist and any claim to a non-repayable subsidy awarded after success according to Section E of the Subsidy Guidelines will terminate.

In the event that the obligation to make repayments and the obligation to make reports are violated, current or newly submitted subsidy applications will not be passed to the jury or the management board until further notice and no other subsidy agreements will be concluded on the basis of approvals already extended until such obligations have been fulfilled (see Item 6.6.). See Item 7.2.1. concerning the obligation to make early repayment.

**7.1.3.** The obligation to make reports without being asked will expire at

- repayment of the subsidy in full, or
- acknowledgment of the reports provided over the entire period of **36** months.

The obligation to provide information in response to a request by the FILM FUND will remain unaffected.

## 7.2. Early Repayment of Subsidies that Must Be Repaid after Success and Demand for Repayment of Otherwise Non-repayable Subsidies

7.2.1. A subsidy which must be repaid in the event of success is due earlier than scheduled and an otherwise non-repayable subsidy must be repaid in the event that the funding recipient:

- has violated, intentionally or through gross negligence, the diligence of a prudent businessperson with regard to financing or the production;
- provided the FILM FUND with incorrect or incomplete information concerning important matters, i.e. matters that were essential to conclusion of the subsidy agreement;
- failed to complete the production as planned in spite of a reasonable extension; in the event that the funding recipient is a minority partner, the FILM FUND's claims must be taken into consideration regarding his or her compensation of any damages caused by the majority partner; the funding recipient must also be able to provide evidence that he or she has made an effort to repay the subsidy;
- misused funding in part or in whole;
- failed to make reports as planned or requested despite a reasonable extension, failed to provide documentation of some kind or obstructed the examination of documentation;
- failed to provide the FILM FUND with proceeds from exploitation for the purpose of repaying funding within the prescribed periods of time;
- failed to observe contractually agreed holdback periods or copyright terms;
- violated other important obligations stemming from the subsidy agreement, especially those relating to monitoring, thereby endangering the satisfaction of his or her obligations regarding repayment to the FILM FUND;
- violated any of these guidelines after conclusion of the subsidy agreement.

7.2.2. If it is shown that the subsidy funds provided exceed the actual costs of the subsidized production after being offset by the private investment proportionate to the FILM FUND's co-financing share, the difference must be refunded to the FILM FUND.

To the extent that funding exceeding this reduced amount has already been provided, the funding recipient must repay the difference to the FILM FUND immediately and without being asked, regardless of the amount of proceeds received from exploitation of the film plus interest as specified in these Guidelines.

7.2.3. Funding which must be repaid for one or more of the reasons specified above will accumulate interest of 3 percent above the European Central Bank's key refinancing rate, at the least according to the reference interest rate published by the European Commission's State Aid Control at the time the subsidy agreement was concluded per annum from the day of disbursement to the funding recipient.

7.2.4. The stipulations of Item 6.6. apply until the repayments declared due by the FILM FUND are paid in full..