

Subsidy Guidelines

D. Television Productions



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

Section D. of the Guidelines applies to non-repayable subsidies for competitive full-format fictional and documentary television productions.

A television production shall be considered full-format when it corresponds to the internationally standard length of existing television formats or it has been approved by a television broadcaster for broadcast.

2. ELIGIBILITY TO APPLY

Applications are accepted from the producer of the film in question assuming he or she satisfies the criteria specified under Item 4.1. of the General Section of the Subsidy Guidelines and has produced a comparable film within three years before submission of the application.

If the applicant fails to meet this criterion, he or she will still be eligible to submit an application for a joint production with a producer who satisfies this condition.

3. Subsidy Criteria

In the case of fictional programs, Vienna being recognizable as a setting is absolutely necessary for evaluation of a cultural effect as described in Item 3.1. of the General Section of the Subsidy Guidelines .

In the case of documentary programs, the interests of Vienna's film sector as described in Section A., Item 3.2. will be decisive. Projects whose contents relate to Vienna in some way will receive priority.

3.1. Profile

An important criterion is the profile the project is able to generate in the various phases of production (reportage) and exploitation (ratings and reach, reportage). The expected profile will be evaluated in light of the marketing concept which is submitted, the co-production and licensing agreements with television broadcasters and experience with comparable projects.

To enable the city of Vienna to make the best possible use of a television production's profile as described in Item 1. in strengthening itself as a filming location, the funding recipient hereby obligates him or herself to the city of Vienna, as represented by the FILM FUND, that the production may be used for non-commercial purposes:

- all advertising materials relating to the subsidized production will be made available at the earliest possible point in time without a request being required and free of charge;
- the usage of excerpts selected by mutual agreement will be permitted in a way which is unlimited in terms of time period or territory;
- the FILM FUND and all representatives of the city of Vienna it names will be invited to press and other kinds of events that involve the subsidized project to an extent which is customary in the industry and in due time.

The details of this obligation will be specified in the subsidy agreement in a manner appropriate for the project..

3.2. Priority Projects

- Projects with an effect on Vienna's film sector which is above average for a television production;
- international financing that will be spent in Vienna is available for the production;
- the FILM FUND's subsidy does not exceed 20 percent of the domestic production costs.

4. DEADLINES AND THE DECISION-MAKING PROCESS

4.1. As specified in Item 5.1. of the General Section of the Subsidy Guidelines, applications that are submitted in accordance with Item 4.2. of the General Section of the Subsidy Guidelines will be evaluated by the individual responsible for subsidization of television films together with an advisory board. The advisory board shall advise the individual responsible for the subsidization of television films regarding the project's worthiness for a subsidy.

4.2. The subsidy recipient is obligated to inform the FILM FUND in writing, without being asked and continuously concerning exploitation measures for, broadcasts of (to extent that he or she is aware of them) and revenues from exploitation of the subsidized project for a period of 36 months after the initial broadcast, and at least once a year by April 30th.

4.3. The subsidy recipient is also obligated to document media reporting on the subsidized project to the extent possible, and make this documentation available to the FILM FUND without being asked and continuously.

4.4. In the event that one or more of the obligations specified in Item 7 of the General Section of the Subsidy Guidelines is violated, no decisions will be made concerning new or existing subsidy applications until further notice and no additional subsidy agreements will be concluded.

5. PARTICULARS CONCERNING SUBSIDIZED PROJECT

5.1. Amount of Subsidy

Individual fictional works can receive a maximum of EUR 300,000.00, and this maximum applies to seasons in the case of series. The individual parts of multi-part television films can also receive subsidies up to the maximum amount.

Individual productions of documentary works can receive a maximum of EUR 150,000.00. This maximum also applies to series.

5.2. Special Subsidy Criteria

- Production of the project must be of outstanding quality;
- at least one television broadcaster or a company linked to a television broadcaster must be involved in financing the production costs;
- the period of the license is at least seven years for TV movies and documentaries and ten years for TV series; appropriate shares of the license must be specified in the agreement with the television broadcaster; this condition need not be satisfied by television broadcasters in non-German-speaking territories involved in financing the total production costs of international co-productions pursuant to an agreement with the funding recipient's co-production partner in the event that the non-German-speaking license territory involved is not relevant for the funding recipient on the basis of the co-production agreement (e.g. because of the exclusion of certain exploitation territories or areas);
- the deadline period will begin at broadcast by the television broadcaster or 24 months at the latest after final acceptance of the production (final acceptance of a season in the case of series);
- it must be guaranteed that all rights granted by means of a license must revert to the funding recipient after expiration of the period of the license;
- if the television broadcaster grants an option for the purchase of rights that go beyond those specified above, this option will not be exercised before the initial broadcast; the remuneration agreed upon in return must be usual in the market; the remuneration for the granting of rights may not be a component of the project's financing;
- no rights transferred to the television broadcaster may be transferred to third parties without the agreement of the funding recipient; the television broadcaster involved in financing may also purchase rights for the broadcaster responsible for programming, for ARTE or broadcasters who belong to the same corporation; the fairness of the license shares must be ensured overall;
- the funding recipient may dispose freely of other rights of use, in particular for pay TV, home video/DVD, video on demand, near video on demand, Internet TV (at least in the form of an on-demand service and live streaming in other language versions), screening rights for excerpts and theaters, without prejudice to any of the television broadcaster's claims to a share of proceeds.

This does not apply to typical annexed rights in the broadcast rights (e.g. rights to use excerpts for program announcements and the right to adapt). Limitations pertaining to the other rights of use for the purpose of preserving exclusivity for the television broadcaster in its license area are permissible, in particular for the purpose of protecting the initial broadcast, though they must be kept to a minimum. For example, a free-TV broadcaster who provides a portion of financing may hold and exploit pay TV rights for the territory of its intended broadcast area together with the applicant, though at the most for the period for which the rights are granted.

The purchase of non-exclusive and temporally and territorially unlimited excerpt rights for own productions and productions made by a television broadcaster involved in financing in the form customary in the trade is permissible. Above and beyond that, the transferal of non-exclusive and non-commercial screening rights, especially for festivals and trade fairs, is permissible. The producer must be informed of such use.

- A contingency will not be recognized.

5.3. Television Broadcasters Involved in Financing

To the extent that a television broadcaster is involved in the financing, the following must be ensured:

- the applicant possesses the nature and rights of a producer and—corresponding to his or her share of total financing—owns a reasonable share of the exploitation rights, at least in proportion to his or her private investment plus the funding provided by the FILM FUND, so that recouping the FILM FUND's share of subsidization on the television market or through the funding recipient's exploitation proceeds seems possible; projects for which the applicant owns a share of the exploitation rights which is greater than the percentage specified here will be given priority for funding;
- the television broadcaster's share includes a share of the license which is customary in the trade and usual in the market; the license share will be considered reasonable when it amounts to 50 percent of the total amount to be paid by the television broadcaster; in the case of documentaries, the license share can be lower in justified exceptions; the subsidy agreement must contain an explanation of why a license share which has been agreed upon is considered reasonable by the applicant;
- the television broadcaster's claims to a share of proceeds must reflect the ratio of the share of production costs (total amount to be paid minus license share) to the recognized production costs; the television broadcaster's share of the proceeds should begin when the applicant has repaid his or her private investment in full.

The arrangements with the television broadcasters described above will be evaluated in light of worthiness for subsidization.

5.4. Guarantees

The applicant agrees to guarantee completion in the subsidy agreement (completion bond).

5.5. Recognized Production Costs

5.5.1. Demonstrable project development costs will be recognized as preliminary costs when they are part of the production costs excluding the turnover tax required by law. Other expenditures incurred by the applicant before submission of the first written application that are not directly related to project development are not eligible for subsidization.

The preliminary costs include the costs of developing the screenplay, location scouting, casting, screen tests, preliminary negotiations and all other costs that are recognized for project development grants.

5.5.2. If this calculation includes cost estimates for natural or legal persons who are identical to or involved in a close business relationship with the applicant, a co-producer, a partner or the managing director of a (co-)producer in the form of a legal person, these estimates must be indicated clearly at the customary market prices, minus 20 percent, and can be added to the private investment.

5.5.3. Fees and salaries of Austrian film-sector workers employed for the project that are included in these calculations may not be below the applicable collective-agreement rates nor more than 30 percent above these rates. Other upper limits can be approved on the basis of an application which includes a justification.

5.5.4. Costs of materials relating to later exploitation of the film that accrue during the production process can be recognized as part of the calculation of production costs.

5.5.5. Production overhead expenses of up to 7.5 percent of the net production costs will be recognized. A producer's fee of up to 7.5 percent of the total production costs (total production costs = net production costs + production overhead expenses) will be recognized.

Included in the production overhead expenses are general expenditures, i.e. expenditures that are independent of the production in question:

- the aliquot share of the applicant for maintenance of the customary place of business;
- office supplies;
- postage and telephone expenses;
- personnel expenses (administration);
- insurance;
- audits for accounting periods;
- interest and banking expenses for general loans;
- public relations;
- travel expenses, meetings, negotiations, inspections, etc.

5.5.6. Financing costs relating to the project will be recognized in the actual amounts incurred.

6. JOINT PRODUCTIONS

6.1. Co-productions

Joint productions (co-productions) are productions with financial, technical and/or artistic contributions from various producers. One of the production partners must be eligible to apply for a subsidy as specified in Item 2. and Item 4.1. of the General Section of the Subsidy Guidelines. Production partners' artistic and technical contributions should correspond to their financial contribution. Subsidies can be granted for activities relating to distribution in proportion to the Austrian subsidy recipient's financial contribution and in relation to his or her expected shares of net proceeds (see Section F of the Subsidy Guidelines).

The proceeds from all types of exploitation will be divided up among the production partners in proportion to their financial contribution. In the event that certain types of exploitation or areas are excluded, the film's fair market value and size of the market must be considered. The production partners shall arrange matters relating to world sales by mutual agreement.

6.1.2. Application Materials

A list of the required enclosures can be found in the application form for television productions.

The applicant must inform the FILM FUND in full concerning circumstances that affect any or all co-production agreements. Any and all supplementary agreements or alterations must be submitted to the FILM FUND, who will examine them for contradictions to the Guidelines and if necessary, give written acknowledgement.

6.1.3. Private Investment

The applicant's private investment as defined under Item 2.2. of the General Section of the Subsidy Guidelines will be calculated on the basis of his or her share of the production costs.

6.1.4. Guarantees

When the subsidy agreement is drawn up, the funding recipient, in the event he or she is the majority co-producer, must produce a completion guarantee (see Item 5.4.) for which he or she will be responsible to the extent that a completion bond has not been obtained.

If the funding recipient is the minority co-producer, the co-production agreement must include a completion bond for which the majority co-producer is responsible.

6.1.5. Record of Usage

In accordance with and supplementary to Item 6.3. of the General Section of the Subsidy Guidelines, the applicant must provide a hard-copy preliminary final statement of accounts (final cost report, actual financing) which is signed by all co-producers with their companies' official signature before payment of the final installment. This statement of accounts must include the funding recipient's complete final statement of accounts.