

Subsidy Guidelines

D. Television Productions



in accordance with the December 23, 2009 resolution of the VIENNA FILM FUND's oversight committee

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1. APPLICABILITY OF THESE GUIDELINES

These Guidelines apply to non-repayable subsidies for full-format fictional and documentary television productions.

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

The goals of subsidizing television productions are:

- strengthening the film-production infrastructure in Vienna;
- creating stable, long-term employment for members of Vienna's film industry;
- supporting the production of contemporary high-quality television content which is relevant to the culture of the Vienna Region as part of Europe.

Subsidization of television productions satisfies these tasks in accordance with the budget available in the specific year.

2. ELIGIBILITY TO APPLY

Applications are accepted from natural or legal persons with sufficient qualifications and experience in artistic matters and the film industry, regardless of their place of residence or that of their company to the extent that it is located within the European Economic Community. Applications will not be accepted from legal persons with a majority interest located outside the European Economic Community.

Applications will be accepted from the producer of the film in question, assuming he or she satisfies the relevant criteria and has produced a comparable film in Austria 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.

Applications will not be accepted from persons subject to the considerable control of a television broadcaster. Such control exists when 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 Vienna 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.

A legal claim to a Vienna 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, a consultation meeting with the individual responsible for subsidization of television films 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 before submission of the application.

3. SUBSIDY CRITERIA

In the case of fictional programs, Vienna being recognizable as a setting is absolutely necessary for evaluation of a cultural effect.

The decisive criterion in evaluating the cultural value for Vienna is the extent to which an audiovisual project has the potential to produce original creative content that makes 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.

The following criteria will be employed in evaluating a project's worthiness for a subsidy:

- depiction of linguistic, cultural and social diversity in Europe and particularly Vienna;
- creation of cultural assets with long-term value and of characteristic Viennese origin;
- creation of content dealing with Vienna;
- themes that deal with regional life in Vienna;
- public-relations potential (exploitation potential, reportage);
- employment of innovative formats, technologies and/or forms of distribution in new media;
- potential for international exploitation according to the existing marketing concept;
- adequate regional economic effect, particularly on Vienna's film sector in the form of employment for members of the film industry.

Priority projects:

- projects with international financing that will be spent in Vienna .

In the case of documentary programs, the business interests of Vienna's film sector will be decisive. Projects with content relating to Vienna in some way will receive priority.

The decisive criterion for evaluating significance for Vienna's film industry is the project's effect on Vienna's film sector. This is calculated on the basis of all planned expenditures that will go to Vienna's film industry 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:

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

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 Vienna Film Fund's subsidy. The Vienna Film Fund will determine the economic effect on the film sector on the basis of the actual expenditures when a statement of accounts is submitted.

3.1. Profile

An important criterion is the public-relations effect 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 the amount of previous experience with comparable projects.

To enable the city of Vienna to make the best possible use of a television production's profile for the purpose of strengthening itself as a filming location, the funding recipient hereby obligates him or herself to the city of Vienna, as represented by the Vienna Film Fund, to permit the production's use for non-commercial purposes:

- all advertising materials relating to the subsidized production shall 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 Vienna 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

The following types of projects will receive priority:

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

4. DEADLINES AND THE DECISION-MAKING PROCESS

4.1. Applications that are submitted will be evaluated by the individual responsible for subsidization of television films.

4.2. The subsidy recipient is obligated to inform the Vienna 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 30.

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 Vienna Film Fund without being asked and continuously.

4.4. In the event that one of the obligations specified in the subsidy agreement is violated, no decisions will be made concerning new or existing subsidy applications until further notice and no additional subsidy agreements will be concluded on the basis of on the basis of approvals already extended.

5. PARTICULARS CONCERNING THE SUBSIDIZED PROJECT

5.1. Amount of Subsidy

Productions of individual fictional works can receive a maximum of EUR 450,000.00. This maximum applies to seasons in the case of series, and 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 225,000.00. This maximum also applies to documentary series.

5.2. Special Subsidy Criteria

5.2.1. Production of the project must be of outstanding quality.

5.2.2. At least one television broadcaster or a company linked to a television broadcaster must be involved in financing the production costs, and its/their share of financing must total at least 20 percent of the total production costs.

5.2.3. The period of the license is seven years at the most for television movies and documentaries, and ten years for TV series. Appropriate shares of the license must be specified in the agreement with the television broadcaster.

5.2.4. This condition need not be satisfied by television broadcasters in non-German-speaking territories involved in financing the 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).

5.2.5. The deadline period will begin at broadcast by the television broadcaster or 12 months at the latest after final acceptance of the production (final acceptance of a season in the case of series).

5.2.6. It must be guaranteed that all rights granted by means of a license must revert to the funding recipient after expiration of the license period.

5.2.7. If the television broadcaster grants an option for the purchase of rights that exceed those specified above, this option will not be exercised before final acceptance. The remuneration agreed upon in return must be customary in the market. Remuneration for the granting of rights may not be a component of the project's financing.

5.2.8. No rights transferred to the television broadcaster involved in financing 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 for legally associated broadcasters. The fairness of the license shares must be ensured overall.

5.2.9. The funding recipient may dispose freely of other rights of use, in particular those 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 of 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 excerpt rights that are unlimited in terms of time period or territory 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.

5.2.10. 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, it must be ensured that:

- 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 Vienna Film Fund, so that recouping the Vienna 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 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 contributed by the television broadcaster; in the case of documentaries, the license share can be lower in justified exceptions; the subsidy application 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 share of production costs (total amount that will be contributed minus license share) compared with the recognized production costs; the television broadcaster should begin receiving its share of the proceeds only after 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 a project's 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 prescribed by law. Other expenditures incurred by the applicant before submission of the first written application that are not directly related to project development will not be recognized as eligible for subsidization.

The preliminary costs include the costs of developing the screenplay, location scouting, casting, screen tests and preliminary negotiations.

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 applicant's aliquot share of maintenance costs for 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.

5.5.7. Costs accruing from production of a version for people with impaired senses (subtitles, audio description, etc.) will be recognized.

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. The production partners' artistic and technical contributions should correspond to their financial contribution.

The proceeds from all types of exploitation will be divided 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 the size of the market must be considered. The production partners shall arrange matters relating to world sales by mutual agreement.

6.1.1. Application Materials

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

The applicant must inform the Vienna 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 Vienna Film Fund, who will examine them for contradictions to the Guidelines and, if necessary, provide written acknowledgement.

6.1.2. Private Investment

The applicant must provide an appropriate private investment that is not financed by the Vienna Film Fund, a source of 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 (licences).

6.1.3. 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 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.

6.1.4. Record of Usage

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

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.