

# FILM FUNDING ACT

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## The Austrian Film Institute

§ 1. The Austrian Film Institute (*Österreichisches Filminstitut*) is a national film funding agency which supports cinema productions as a cultural product as well as the Austrian film business and thus contributes to strengthening the Austrian film industry and the creative and artistic qualities of Austrian film to ensure its domestic and international success. It is a legal entity under public law and its registered office is located in Vienna. The financial year of the Austrian Film Institute is the calendar year.

### Aims, Areas of Funding

§ 2. (1) Film funding aims at

- a) contributing to the preservation of the common cultural heritage of Europe and the further development of European culture with its national and regional diversity in special consideration of the Austrian identity,
- b) supporting the production, dissemination and marketing of Austrian films which are suitable to enhance the quality, autonomy and cultural identity of the Austrian film sector,
- c) supporting the cultural, economic and international interests of the Austrian film industry, especially by measures aimed at developing new talent and through the publication of an annual film industry report,
- d) improving the international orientation of Austrian film and thus improving the basis for the dissemination and market-oriented exploitation of Austrian films in Austria as well as its cultural impact and its exploitation abroad, particularly by supporting the presentation of Austrian film domestically and abroad,
- e) supporting Austrian-foreign co-productions,
- f) supporting co-operation between the film industry and television providers to strengthen Austrian cinema films,
- g) working towards a harmonisation and coordination of film funding between the Federal and *Länder* levels (regional funding).

(2) The Film Institute has the task of taking appropriate measures to realize the aims listed in para. 1, particularly through granting funding in line with available funds based on a selection process or by providing technical or organisational assistance within the context of its activities as a centre of competence. For this purpose, the Film Institute supports in particular the production of films on basis of projects (selective funding) or on basis of performance ('reference film funding'). In addition, the Film Institute can contribute to supporting measures taken by third parties, provided this does not involve Film Institute funds. This also applies to measures in the area of film arising from Austria's membership of international and supranational organisations. Furthermore, the Film Institute has the task of advising the Federal Government and other public bodies on central issues relating to Austrian film, particularly with a view to attending to the cultural and economic interests of the film industry and harmonising measures in the area of film within and outside of the European Union.

(3) For the support of film production on project basis ('selective funding'), undertakings with cultural content shall be selected which promise artistic and/or economic success or which comply with the objectives of new talent development. New talent development measures are designed to facilitate entry into the professional cinematic art.

(4) To receive production support on performance basis ('automatic funding'), the producer of a film with cultural content with a minimum length must have produced

- a 'reference film' that has achieved artistic or economic success.
- a) A film is considered artistically successful if it has been selected for participation in or awarded a prize by an internationally significant film festival (list of festivals) as stated in the Funding Guidelines (§ 14).
  - b) A film is considered economically successful if it has achieved the admissions in Austrian cinemas as laid down by the Funding Guidelines (§ 14).
  - c) Less demanding funding requirements, particularly lower admission requirements, apply to children's films, documentaries and new talent films as laid down by the Funding Guidelines (§ 14). New talent films are the first two films in which a director assumes directing responsibility for a cinema film.
  - d) For documentaries and children's films the determination of audience response can be based on admissions determined over an extended period after first screening in a domestic cinema in case of a reasoned request by the producer. The duration of this extended observation period shall be determined by the Funding Guidelines (§ 14).
  - e) For documentaries and children's films admissions at non-professional exhibition sites shall be taken into consideration in accordance with the provisions of the Funding Guidelines (§ 14).
  - f) In the preparation of the list of internationally significant film festivals, festival practice with regard to documentaries and children's films shall be sufficiently taken into consideration.
- (5) Areas of funding are:
- a) Script development;
  - b) Project development;
  - c) Production of Austrian films produced by Austrian producers under their own responsibility and international co-productions with Austrian participation;
  - d) Exploitation of Austrian films and films equated to Austrian films;
  - e) Continuous vocational training of professionals working in the area of film in creative, technical or commercial positions.
- (6) The Film Institute shall fulfil its tasks in compliance with the principles of efficiency, effectiveness and economy.
- (7) There is no legal entitlement to receive funding. The Film Institute shall only grant funding if special requirements and professional pre-conditions are fulfilled.

### **Funds of the Film Institute, Annual Estimate**

- § 3 (1) For the realization of its tasks the Film Institute disposes of the following funds:
- a) funds allocated by the Federal Government as provided by the annual Federal Finance Act (*Bundesfinanzgesetz*);
  - b) funds arising from repayments of loans and conditionally repayable contributions;
  - c) other repayments, contributions or revenues.
- (2) In the annual estimate, adequate funding shall be provided for the support of new talent films.

### **Bodies of the Film Institute**

- § 4. The bodies of the Film Institute are the Supervisory Board (§ 5), the Project Commission (§ 6) and the Director (§ 7).

## Supervisory Board

- § 5. (1) The Supervisory Board shall consist of
- a) one chairperson nominated by the Federal Chancellor, another representative of the Federal Chancellery and one representative each of the Federal Ministry of Science, Research and Economy, the Federal Ministry of Finance and the *Finanzprokurator* (Federal Law Office),
  - b) one representative each of the *Gewerkschaft der Gemeindebediensteten - Kunst, Medien, Sport, freie Berufe* (Union of Municipal Employees - Arts, Media, Sports and the Professions) and the Austrian Economic Chamber, the *Fachverband der Film- und Musikwirtschaft* (Film and Music Austria)
  - c) five expert representatives from the Austrian film industry with significant practice and experience, representing the areas of production, direction, scriptwriting, and marketing.
- (2) The members listed in para.1 lit. a shall be assigned by the Federal Chancellor or the competent Federal Ministers. The representatives listed in para.1 lit. b and c shall be appointed by the Federal Minister for Education, Arts and Culture; viz. the representatives listed in para.1 lit. b upon proposal of the bodies mentioned in these provisions. Prior to the appointment of the representatives pursuant to para. 1 lit. c, the generally recognized interest bodies of the film industry shall nominate three expert representatives each, umbrella organisations represent their individual member associations. The Federal Chancellor shall in due time before expiry of a term of office or immediately after the retirement of a member pursuant to para. 4 request the respective bodies to exercise their right of assignment, proposal or nomination. If within two months of the request of the Federal Chancellor the right of assignment or proposal has not been exercised or no expert representatives have been nominated, the number of members of the Supervisory Board shall be diminished, for the duration of the non-exercise of the entitlement, by the number of expert members not assigned, proposed or nominated.
- (2a) Nomination and assignment of the members of the Supervisory Board shall be based on a balanced gender ratio.
- (3) In the event of the chairperson's inability to be present, the second member assigned by the Federal Chancellor shall be first deputy chairperson, the member assigned by the Federal Minister of Finance second deputy chairperson, the member assigned by the Federal Minister of Science, Research and Economy shall be third deputy chair. The chair or his/her deputy shall particularly exercise the rights and duties of the Film Institute as employer vis-à-vis the Director.
- (4) The members of the Supervisory Board shall be appointed for a term of three years each; reappointment is permissible. In the event of the retirement of a member of the Supervisory Board pursuant to para. 2, the new member shall be appointed for the remainder of the term of office. A member of the Supervisory Board shall be divested of office prematurely if
- a) a member so requests pursuant to para. 1 lit. b and c,
  - b) the member is unable to exercise his/her function due to a serious, enduring disease,
  - c) the member is guilty of gross neglect of duties or
  - d) the body upon whose proposal the member was appointed moves to divest the member of office.

Dismissal of members pursuant to para. 1 lit. a shall be performed by the Federal Chancellor or the competent Federal Minister pursuant to para. 2. The other members may only be dismissed by the Federal Chancellor, under the condition that the proposing or nominating body has been heard before the dismissal of members pursuant to

para. 1 lit. b and c.

- (5) Supervisory Board meetings shall be convened by the Chairman in writing including notification of the agenda by means of telecopy or by other technical means with proof of receipt at least every six months, and additionally following a motion by the Director or a member listed in para.1 lit. a or following a motion by five members listed in para. 1 lit. b and c. At least two weeks shall elapse between the convening of the meeting and the date of the meeting, except in cases of imminent danger. In justified exceptional cases, decisions may be made by circulation. Details shall be laid down in the bylaws.
- (6) The Supervisory Board shall be quorate if all members have been duly convened and more than half of the members – among them the Chair or one of the deputies – are present. The Supervisory Board takes its decisions by simple majority, the vote shall be exercised personally and abstentions shall be inadmissible. In case of a tie the person having the chair shall have the casting vote. Decisions in accordance with para. 8 lit. a, b, c, f and g as well as in accordance with § 6 para. 7 shall be inadmissible against the majority of members listed in para.1 lit. a.
- (7) The function of a Supervisory Board member shall be temporarily suspended in deliberations and decisions on agenda items which involve matters of personal interest of the Board member or matters of people or companies closely connected to him on personal or professional grounds.
- (8) The Supervisory Board shall be entrusted with the following tasks:
  - a) determination of the bylaws for the bodies of the Film Institute,
  - b) determination of Funding Guidelines,
  - c) approval of the annual budget estimate, especially the share in the budget of the individual funding areas, including the plan of established posts and the financial statement,
  - d) approval of funding where the amount granted exceeds a certain percentage of the funds allocated in the respective annual budget: in the case of funding based on the project principle 10 per cent, in the case of aggregate funding based on the performance principle and the project principle 15 per cent,
  - e) approval of the revocation of funding already granted,
  - f) approval of the conclusion of legal transactions resulting in a financial burden on the Film Institute which is permanent or extending over several years, as well as approval of an unlimited power of attorney to act on behalf of the Film Institute,
  - g) approval of a waiver of claims,
  - h) approval of legal transactions pertaining to matters of the Film Institute staff, to the extent that the Supervisory Board has reserved such transactions to itself,
  - i) making proposals for appointments to the post of Director,
  - j) ongoing supervision and monitoring of the activities of the Director and the Project Commission,
  - k) approval of the annual activity report to be submitted by the Director pursuant to § 7 para. 4 lit. h, and
  - l) annual evaluation of the funding objectives on basis of the report pursuant to § 7 Abs.4 lit. i with a view to the artistic and economic success of the funded films,
  - m) approval if the Director intends to call on the assistance of expert third parties for the preparation and execution of his/her tasks.
- (9) In cases pursuant to § 5 para.8 lit. d and e the Supervisory Board shall provide the applicant with justification in writing for the award or revocation of grant, and this justification shall be included in the activity report.

- (10) Minutes shall be drafted on the deliberations and decisions of the Supervisory Board which shall be signed by the Chair and a minute secretary to be appointed by the Chair.
- (11) The Director shall attend the meetings of the Supervisory Board in an advisory function. The Chair decides on the additional attendance of people not belonging to the Film Institute (experts, people to provide information, etc.).
- (12) Members of the Supervisory Board pursuant to para. 1 lit. a, if they do not belong to the institutions stated therein, Members of the Supervisory Board pursuant to para. 1 lit. b and c as well as the permanent specialists without voting rights coming from the field of film-making or film-production are entitled to receive a fee for meeting attendance. The amount of the fee shall be determined by the Supervisory Board in the bylaws and requires approval by the Chancellor.
- (13) For the fulfilment of its obligations the Supervisory Board may resort to a maximum of five permanent external experts of the film industry without voting rights. In special cases additional external experts may be consulted. For the approval of the financial statement and the evaluation pursuant to para.8 lit. I, the Supervisory Board shall consult external experts.

### **Project Commission, Selection of Projects**

- § 6. (1) The Project Commission consists of the Director and four expert members. The expert members shall dispose of significant and up-to-date experience. At least four substitutes shall be appointed for the expert members in case of absence or bias. Both the expert members and their substitutes shall represent the areas of production, direction, script and marketing. The expert members (substitutes) shall be appointed by the Chancellor upon a nomination by the Director for a maximum term of three years. Appropriate representation of women shall be ensured. After expiry of the term, the expert members (substitutes) shall remain in office until the appointment of a new member, but no longer than three months. After expiry of his/her term of office, an expert member may immediately be appointed as substitute but not reappointed as expert member. They are not bound by directives. The Director shall chair the Commission and is entitled to vote.
- (2) The members (substitutes) of the Project Commission shall not at the same time be members of the Supervisory Board or of another institution of a territorial entity concerned with matters of film funding. § 5 para. 7 shall be applicable to the members of the Project Commission, with the proviso that a substitute member shall replace a member whose function is suspended. If one of the reasons pursuant to § 5 para. 4 lit. a to d applies, the expert member (substitute) shall be prematurely dismissed by the Federal Minister for Education, Arts and Culture. Upon retirement of a member (substitute) of the Project Commission, a new member (substitute) shall be appointed for the remainder of the term of office pursuant to para. 1.
  - (3) From the applications submitted which comply with this Federal Act and the Funding Guidelines (§ 14), the Project Commission shall select the applications which are eligible for funding according to the project principle. To arrive at its decisions the Project Commission shall discuss the applications and, where this is necessary for the discussion of their applications, interview the applicants. The Project Commission shall justify its decisions in writing.
  - (4) The meetings of the Project Commission shall be convened by the Director. § 5 para. 5 shall apply correspondingly.

- (5) The Project Commission shall be quorate if three members, including the Director, are present. The Project Commission takes its decisions by simple majority, the vote shall be exercised personally. Abstentions shall be inadmissible. In case of a tie the Director shall have the casting vote. In justified exceptional cases, decisions may be made by circulation. Details shall be laid down in the bylaws.
- (6) The Project Commission shall decide on applications for funding within three months after the application has been duly submitted to the Film Institute by the applicant. The applicant shall be informed in writing by the Director about the decision and the reasoning of the Project Commission immediately, but at the longest four weeks after the decision has been taken.
- (7) The expert members (substitutes) of the Project Commission are entitled to receive a fee for attendance of meetings. The amount of the fee shall be determined by the Supervisory Board in the bylaws in accordance with the effort invested .

### Director

- § 7. (1) The Director shall be appointed by the Chancellor upon consultation of the Supervisory Board for a maximum term of five years. Appointment can be revoked in case of significant reasons. Such reasons shall particularly include gross negligence of duties and inability to perform management duties appropriately. Reappointment is permissible and shall be exercised no later than six months before the end of the term of office. In any event, a public call for applications shall be made prior to the appointment of a new Director.
- (2) For the office of Director only Austrian nationals are eligible who have a film-industry background that has invested them with the pertinent expert knowledge required for an appropriate performance of the duties pursuant to para. 4.
  - (3) The Director shall be employed on basis of a service contract.
  - (4) The Director shall be responsible for all matters pertaining to the Film Institute, unless otherwise provided for by the Film Funding Act. The provisions of § 5 para. 3 second sentence notwithstanding, he/she represents the Film Institute in all judicial and extrajudicial matters. His/her tasks include in particular:
    - a) Scrutiny and preparation of applications for examination by the Project Commission and submission of all applications to be funded according to the project principle to the Project Commission;
    - b) Administration of 'reference film funding';
    - c) Conclusion of funding agreements with the applicants;
    - d) Preparation of the meetings of the Supervisory Board;
    - e) Submission of applications to the Supervisory Board in matters pertaining to § 5 para. 8 lit. a to h;
    - f) Implementation of the decisions of the Supervisory Board and the Project Commission;
    - g) Ongoing supervision and monitoring of the use of grants for the intended purpose;
    - h) Submission of a progress report on the funding decisions of the past business year no later than by 31 March of the following year to the Supervisory Board;
    - i) Submission of an annual report to the Supervisory Board on the artistic and economic success of the films funded, particularly on basis of admissions, relevant festival achievements and marketing results, for the purpose of the annual evaluation of funding objectives;
    - j) Submission of motions to the Supervisory Board in all matters pertaining to the Funding Guidelines;



k) Performance of the international relations in the area of film.  
The Director shall submit to the Project Commission applications duly submitted and falling within the competence of the Commission at an early enough date and convene a Commission meeting so that the decision can be taken within the deadlines provided in § 6 para. 6. In the fulfilment of tasks pursuant to para. 4 lit. c the Director shall be bound by the selection of the Project Commission of applications to be funded on basis of the project principle. It shall, however, be the Director's responsibility to decide on the amount of funds to be allocated to the applications selected and to provide written justification with regard to the amount.

(5) The Director shall manage the affairs of the Film Institute as his/her main occupation, exercising the due diligence of a prudent entrepreneur.

When concluding the service contract, the Chancellor shall stipulate that the Director

- a) shall not at the same time pursue a trade in the film industry and may only pursue another trade with the prior approval of the Supervisory Board,
- b) shall not transact business in the film industry on his/her own or a third party's behalf,
- c) shall not be a shareholder in any company working in the area of film,
- d) shall not pursue any other activity liable to raise doubts about his/her impartiality in the fulfilment of his/her duties,
- e) shall not engage in related honorary activities without the prior approval of the Supervisory Board.

(6) If the Director is prevented from fulfilling his/her duties for an extended period, the Supervisory Board shall temporarily entrust one of the members listed in § 5 para. 1 lit. a with the management responsibility. In this case, the member's function as a Supervisory Board member shall be suspended.

### **Confidentiality**

§ 8. The members of the Supervisory Board and the Project Commission, the Director and the staff of the Film Institute are obliged to keep confidential the facts made known to them in the exercise of their activities, except in cases of official reporting or the notification of acts liable to prosecution; they shall refrain from exploiting the business and trade secrets made known to them. These obligations continue to apply even after their retirement from a function or the termination of employment.

### **Supervision**

§ 9. The Chancellor acts as supervisory authority for the activities and the management of the Film Institute. Supervision comprises ensuring the legitimacy of business transactions and the maintenance of appropriate administration as well as supervision of the management of finance. The supervisory authority shall rescind the decisions of the bodies of the Film Institute if they contravene existing legal regulations. In such cases the bodies of the Film Institute shall be obliged to establish without delay the legal situation complying with the supervisory authority's understanding of the law with all means legally at its disposal. A report of the Film Institute on the funding activities for the respective calendar year shall be annexed to the Federal Art Report (§ 10 of the Federal Art Grants Act, FLG No.146/1988).

## Funding

- § 10. (1) The Film Institute can grant funding in the form of low-interest loans, conditionally repayable or non-repayable contributions.
- (2) The Film Institute shall stipulate that applicants will only use the services of companies which can ensure by their technical equipment and staff that film projects of indisputable quality can be produced.
  - (3) Only films with cultural content may be funded. The cultural content will be assessed on basis of the criteria laid down in the funding guidelines. This assessment will be executed by the Project Commission in all cases involving production support based on the project principle, it is executed by the Director in all cases involving production support based on 'reference film funding'.
  - (4) Funding shall always be linked to proof that funds are used for the intended purpose and in accordance with the principles of economy and efficiency. The Film Institute shall monitor the use of grants on an ongoing basis. The Film Institute shall stipulate in this context that required information and documents are made available to the Film Institute.
  - (5) Within the frame of funding on basis of performance ('reference film funding') non-repayable contributions (reference funds) will be allocated. In the case of production funding, funds repayable by the payee to the Film Institute can be converted into automatic funding.
  - (6) The total of funded production costs (accumulated support intensity) must not exceed 50 %. In the case of co-productions the accumulated support intensity may reach 60 % of the production costs.
  - (7) In the case of commercially difficult films or films produced with scarce resources the accumulated support intensity must not exceed 80 % of the total production costs. A film is considered commercially difficult or produced with scarce resources if it is expected to only reach a limited acceptance on the market and if its chance for commercial exploitation are considered limited due to its experimental character or because it bears high risks due to its content, its style, its artistic and/or technical composition or its cultural aspiration. In exceptional cases the accumulated support intensity may exceed 80 % of the overall production costs if there is a particular cultural interest in the production and if the production cannot be executed without this financial support, and provided that the applicant makes an adequate contribution and the financial support is guaranteed to be limited to the absolutely necessary contribution.

## Funding Prerequisites

- § 11. (1) Funding may only be granted under the following conditions:
- a) The applicant shall be an Austrian national, a legal entity or partnership under business law registered in the commercial register with a permanent establishment or branch in Austria and a seat in a contracting party of the Treaty on the Functioning of the European Union (TFEU) or of the Agreement on the European Economic Area (EEA) and shall bear the responsibility for the execution of the film project. If the applicant or co-producer is a legal entity or partnership under business law registered in the commercial register, the Film Institute shall ensure by contractual provision that its managing officials assume personal liability for all obligations of the applicant.
  - b) The undertaking shall be impossible to realize or only insufficiently realizable

- without the grant.
- c) In the event of a production grant pursuant to § 2 para. 5 lit. c the applicant shall assume his/her own investment in the production cost approved by the Film Institute. This share shall not be financed by any grant awarded by the Film Institute or any Austrian territorial authority or any other Austrian public body. The applicant's own investment shall be commensurate with the scope of the undertaking and the means of the applicant. This share can be provided through the applicant's private resources, through loans granted to the applicant and any revenues from presales and guarantees of rights and declared licence shares of co-financing television providers, to the extent that the funds thus generated are available for the realization of the undertaking and the assignment ensures adequate marketing. In the assessment of the applicant's own investment personal contributions which the producer contributes towards the production of the film as a creative producer, production manager, director, actor in a leading role or cinematographer have to be taken into consideration. Additional approved personal contributions as well as assessment principles shall be as determined in the Funding Guidelines (§ 14). In the case of international co-productions, the applicant's own investment shall be calculated from the share of the production cost to be financed by the Austrian film producer.
  - d) The undertaking to be funded shall be an Austrian film or an Austrian-foreign co-production.
  - e) The applicant shall engage to comply with the Equal Treatment Act (*Gleichbehandlungsgesetz*) and with the directions of the Equal Treatment Commission (*Gleichbehandlungskommission*).
  - f) The Applicant shall be required to inform the Film Institute on all matters relevant for the assessment of compliance with the funding objective under this law and for reporting pursuant to § 7 para.4 lit. h and to submit records, particularly concerning the admissions, the costs and revenues of the films funded under this law.
- (2) A film shall be considered an Austrian film as defined by this Federal Act, provided that
- a) the film is produced by an applicant pursuant to para.1 lit. a in his/her own name and on his/her own account and this applicant bears the responsibility for the realization of the undertaking,
  - b) the decision-makers in creative and managerial terms are Austrian nationals and the crew is mainly Austrian,
  - c) a final version of the film is made in German except for the dialogues and songs for which the script convincingly asks for a language other than German and
  - d) the film is shot in Austria except for scenes requiring foreign locations.
- (3) An Austrian-foreign international co-production is considered an Austrian film as defined by this Federal Act, provided that
- a) one of the partners of the international co-production fulfils the requirements pursuant to para. 1 lit. a and the undertaking complies with the provisions of a pertinent intergovernmental film agreement. Where no such agreement exists, Austrian participation in the financial, creative and technical aspects of the film shall amount to no less than 30 per cent. In justified exceptional cases the Film Institute may accept a lower rate of participation.
  - b) the prerequisites pursuant to para. 2 lit. c are fulfilled and
  - c) the intergovernmental film agreements are complied with in respect of the requirements of para. 2 lit. b and d or, where no such agreement exists, the prerequisites relating to the percentage shares of Austrian and non-Austrian financial participation are fulfilled.

- (4) A foreign film for which the Austrian contribution is limited to financial participation is regarded as an Austrian film as defined by this Act provided that
  - a) the film is thereby strengthened in its cultural identity and its technical and artistic quality is guaranteed,
  - b) the Austrian share is a minority participation (no less than 10 per cent of total production cost),
  - c) the film fulfils the requirements for obtaining a certificate of origin in accordance with the laws of the state in which the majority producer has its registered office,
  - d) the contract between the co-producers contains provisions relating to the distribution of sales revenue and
  - e) reciprocity between Austria and the countries where the other producers have their registered offices is assured with regard to grants.
- (5) In the case of an international co-production (para. 3 and 4) the Film Institute may, upon scrutiny of the entire project, award funding only to the Austrian financial share.
- (6) Funding may not be granted if the undertaking contravenes the constitution or the law.
- (7) Commissioned films are not eligible for funding.
- (8) In artistically or socially justified cases the Supervisory Board may show leniency with regard to the requirements of para. 2 lit. b, if the applicants are foreign nationals with a nationality other than those stated in § 18 para. 2 with a permanent residence in Austria, or stateless persons or refugees under the Convention on the Rights of Refugees, FLG No.55/1955.

### **Image Carrier and Television Broadcasting Rights**

- § 11a. (1) Whoever receives funding is not permitted to exploit or allow others to exploit the funded film prior to the expiry of the holdback periods which are to be defined in the Funding Guidelines (§ 14) and which need to be graded taking into consideration the current developments and the best possible exploitation of the film with regard to the method of exploitation. In any case, the Funding Guidelines need to stipulate a minimum holdback period of six months following the national commercial release in theatres (regular first commercial showing). The Guidelines may determine a shorter minimum holdback period in accordance with the conditions laid down in clause one, provided that no film-industry related concerns to the contrary exist.
- (2) If the holdback periods are violated the grant is to be revoked. Funds already disbursed shall be reclaimed.
  - (3) In exceptional cases the Supervisory Board may, upon a reasoned request by the beneficiary of the grant, entirely or partly abandon the measures laid down in para. 2, if this seems justified considering the protective aim of the holdback period with regard to the means and time of exploitation as well as the measures taken to ensure the compliance with the holdback periods.
  - (4) Insignificant use of extracts for the purpose of advertising and promoting the funded film shall not be considered a violation of holdback periods.

### Special Provisions for Individual Funding Areas

- § 12. (1) Funding for script and project development may only be granted for scripts or shooting outlines (documentaries) for films with a running length of at least 70 minutes (full-length feature films) or of at least 59 minutes (children's films) or 45 minutes (new talent films), if the film promises to improve the quality and economic viability of Austrian film. As a matter of principle, funding will only be granted upon a joint reasoned request from the author and the producer. Exceptions shall be laid down in the Funding Guidelines (§ 14). A description of the undertaking (short summary with one exemplary finished dialogue scene) shall be attached to the reasoned request. The Film Institute may grant additional funding to the producer for the further development of the script. The script to be revised shall be attached to the reasoned request by the producer. Funding shall take the form of non-repayable contributions.
- (2) Funding for the production of a film shall only be awarded if
- a) the undertaking, considering the script, the crew and cast, promises to improve the quality and the cultural identity of Austrian films as well as the technical and economic situation of the Austrian film industry and if the director is an Austrian national. If the director is not a national pursuant to § 18 para. 2 funding may be granted if the crew, with the exception of the script writer or a maximum of two persons in a leading role, are Austrian nationals. The Film Institute may approve exceptions from these requirements if this is justified by the overall assessment of the film, particularly with a view to its cultural and economic impact in Austria and abroad.
  - b) an auditable calculation of anticipated total costs of the film project is submitted,
  - c) auditable financing and time schedules for the film project are submitted, which also – where this is required by and appropriate to current market conditions – provide proof of distribution commitments commensurate with the scope of the project,
  - d) production technology services, studios and technical service companies for post-production are used that have their registered office in Austria or in another contracting party of the Agreement on the European Economic Area,
  - e) the requirements for obtaining an Austrian certificate of origin are fulfilled,
  - f) the applicant commits irrevocably to delivering free of charge and no later than one year after completion of the film to the Federal Authorities a new and/or technically unexceptionable release print (archival print) as well as one voucher copy of the script and the film-related advertising material for documentation purposes concerning Austrian film. Such prints will be archived by 'Filmarchiv Austria', to preserve the film-related heritage. In addition, the applicant shall supply a VHS tape or DVD or copy produced by a comparable technical process free of charge to the Austrian Film Institute after completion of the film and before cinema release.
  - g) the producer furnishes proof that the agreement with a co-financing television provider provides for television transmission rights to completely revert to the producer after a maximum of seven years. In individual cases a maximum period of ten years for complete restitution of television rights may be agreed upon, particularly if the producer has received an above-average financial participation from the television provider.
- (3) Professional requirements (§ 2 para. 7) shall be assessed with a view to the scope and type of the undertaking to be funded.
- (4) Funding may be granted for the distribution of an Austrian film, particularly to cover advance distribution and sales cost, to test and develop new forms of distribution, for foreign-language dubbing or subtitling as well as for participation in international

film festivals and markets (exploitation funding).

### **Special Provisions for Continuous Vocational Training Grants**

- § 13. (1) The prerequisites for continuous vocational training grants for professionals working in the creative, technical or commercial fields of the film industry are permanent residence of the applicant in Austria and the completion of relevant professional training or proof of relevant professional experience.
- (2) Continuous vocational training grants shall account in particular for the possibility of the applicant's gaining international experience for later use in Austria.

### **Funding Guidelines**

- § 14. (1) Unless provided for by this Federal Act, the prerequisites for the granting of funding shall be regulated by the Funding Guidelines to be agreed on by the Supervisory Board which are to be published in an appropriate form.
- (2) The Funding Guidelines shall in particular stipulate criteria for the assessment of the cultural content, application requirements, the duties of the recipient of funding, repayment conditions for granted support, waiver of funding, reference-film funding and exploitation funding, principles for establishing proper use of grants and possibilities to audit the facts thus established as well as the determination of the exploitation rights and holdback periods.
- (3) Grants shall be used exclusively for the established funding purpose. Claims to the granting or payment of grants may neither be assigned nor seized.

### **Revocation of a Grant**

- § 15. (1) The Film Institute shall stipulate that the disbursement of approved grants shall be rescinded if
- a) proper financing of the undertaking is not ensured,
  - b) the principles of economy and efficiency have been violated in the financing or execution of the undertaking,
  - c) the amount of funding exceeds the production cost of the undertaking minus the applicant's own investment (§ 11 para. 1 lit. c) or
  - d) the Film Institute has been informed in an incorrect or incomplete manner regarding relevant facts.
- (2) When awarding a grant, the Film Institute shall stipulate that an unrepaid loan or a conditionally repayable contribution shall become due prematurely, or an otherwise non-repayable contribution shall be repaid if
- a) the Film Institute has been deceived or incompletely informed about material circumstances,
  - b) the undertaking has not or not completely been implemented or not been implemented in a timely manner through the applicant's own fault,
  - c) a portion or all of the grant has not been used for the intended purpose, required reports have not been submitted, proof has not been established, examination of proof has been prevented or conditions have not been met through the applicant's own fault, or
  - d) if and to the extent that the amount of funding exceeds the production cost of the undertaking minus the applicant's own investment (§ 11 para. 1 lit. c).

- (3) The Film Institute shall stipulate that an annual interest rate of 3 per cent above the base rate shall be applied to loans or contributions repayable on the grounds of para. 2 lit. a to c as from the day of disbursement. The base rate valid on the last day of the calendar year of a half year shall be applicable for the following half year.

### **Consultation of and Representation by the Federal Law Office**

- § 16. The rights and duties of the bodies of the Film Institute notwithstanding, the Institute shall be entitled, against payment, to consult and be represented by the Federal Law Office pursuant to the Financial Federal Law Office Act (Finanzprokuratorgesetz), FLG. I No. 110/2008).

### **Provisions Relating to Revenue Law**

- § 17. (1) The activities of the Film Institute shall be considered non-profit activities in the sense of §§ 34 ff. of the Federal Fiscal Code (*Bundesabgabenordnung*), FLG. No.194/1961. The documents and official activities arising immediately from this Federal Act shall be exempt from stamp duties and administrative charges.
- (2) Contributions of the Film Institute for the support of script development and continuous vocational training pursuant to § 2 para. 5 lit. a and e of this Federal Act shall be exempt from income tax.

### **Final Provisions**

- § 18. (1) This Federal Act shall enter into force on 1 January 1981.
- (2) Nationals of contracting parties of the Treaty on the Functioning of the European Union and the Agreement on the European Economic Area are equated to Austrian nationals.
- (3) Where this Federal Act refers to provisions of other Federal Acts, these shall be applicable in their respective valid version.
- (4) The provisions in §§ 1, 2, 2a, 4, 5, 6, 7, 8, 10, 11, 11a, 12, 14, 17, 18 and 19 including titles in the version of the Federal Act FLG. I No. 170/2004 shall come into force on 1 January 2005.
- (5) The Supervisory Board and the Project Commission shall be newly constituted within three months of the entry into force of the Federal Act, FLG. I No. 170/2004. Until the reconstitution of the two bodies, the members of the former Supervisory Board (*Kuratorium*) and the former members of the Selection Commission shall act as members of the Project Commission. For this transitional period the Project Commission shall apply, in making its decisions, § 6 para. 5 in the version of the Federal Act, FLG. I No. 170/2004.
- (6) § 5 para.1 lit. b in the version of FLG. I No. 81/2014 regarding the change of the name "Fachverband der Audiovisions- und Filmindustrie" to "Fachverband der Film- und Musikwirtschaft" shall enter into force on 1 January 2015.

## Enforcement

§ 19. Regarding § 5 para. 1 lit. a, para. 2, para. 2a and para. 4, the respective Federal Minister responsible for the assignment shall have power to execute this Federal Act, the Federal Minister of Finance with regard to §§ 16 and 17, and the Chancellor with regard to all other matters.