

## **Film Location Austria**

### **Guidance Notes for Support Schemes issued by the Federal Minister of Economy, Family and Youth in agreement with the Federal Minister of Finance**

pursuant to the ordinance of the Federal Minister of Finance on general framework guidelines for awarding federal support (*Allgemeine Rahmenrichtlinien für die Gewährung von Förderungen aus Bundesmitteln* – ARR), Federal Law Gazette II no. 51/2004, last amended by the ordinance promulgated in Federal Law Gazette II no. 317/2009.

In addition, these Guidance Notes for support schemes are based on the Communication from the Commission on State aid for films and other audiovisual works 2013/C 332/01 of 15 Nov 2013.

Support is provided by the Federal Government, represented by the Federal Minister of Economy, Family and Youth, who uses the services of *Austrian Business Agency - Österreichische Industrieansiedlungs- und WirtschaftswerbungsgmbH* (hereinafter called ‘ABA’) and *Austria Wirtschaftsservice Gesellschaft m.b. H.* (hereinafter called ‘aws’) to manage such support schemes.

Implementation of the relevant support scheme must comply with the below Guidance Notes to be issued in agreement with the Federal Ministry of Finance, as well as with the ARR framework guidelines.

Wherever the present text uses terms only in their male form, they refer to both women and men.

#### **Object and Purpose of Support**

§ 1. (1) The object of such support, in relation to film as a cultural property, is to improve the framework for the film industry, to maintain and promote the international competitiveness of film businesses and to provide sustained impetus to the location for producing films, to enhance international co-operation by international co-productions as well as to improve the exploitation of supported films.

(2) The purpose of such support is to reinforce the European film sector in the international market as well as to improve the attractiveness of this location for film making.

(3) The purpose of support is in particular to facilitate the funding of cinematographic films by awarding aid. This is intended to provide filmmakers with higher production budgets allowing them more artistic leeway as well as improving the quality, attractiveness and thus the dissemination of cinematographic films. Improving the funding of films for production companies is a precondition for ensuring a creative and successful European film culture in the long term.

#### **Personal Eligibility Conditions**

§ 2. (1) Eligible applicants are independent film production companies with sufficient technical, i.e. artistic and business, qualifications and experience having an operation or branch office in Austria, irrespective of the location of their principal business, provided it is located within the European Economic Area, or a company established for the sole purpose of making a film, and provided that applicants produce sustainable cultural properties of a specifically European character in the field of cinematographic films. Any company set up for the sole purpose of making a film must have been established by the time financial aid starts being paid. The technical preconditions to be met by the applicant shall be assessed with due regard to the scope and nature of the project to be supported.

(2) Film production companies pursuant to §2 (1) are responsible for making the film up to the delivery of the first screenable copy or, in the case of co-productions, they are co-responsible and actively involved in making the film. In the case of international productions as defined in §5 (1) the Austrian producer's responsibility is restricted to scenes to be shot in Austria.

(3) The applicant for funding must have made either as a company or as a person, within the past five years preceding the application for funding, at least one comparable reference film (full-length cinematographic film) in a Member State of the European Union or any other country party to the Agreement on the European Economic Area and must have released this film for adequate commercial exploitation.

#### **Material Eligibility Conditions**

§ 3. (1) In compliance with these Guidance Notes the project must be infeasible or insufficiently feasible without such aid.

(2) The following films are not eligible for support:

1. Films made by commission,

2. films for which a television broadcaster or its subsidiary applies for financial aid,
3. Films which infringe the Austrian Constitution or Austrian law,
4. Films which violate human dignity, offend religious or moral susceptibilities, or glorify violence.

#### **Film-Related Eligibility Conditions**

**§ 4.** (1) A film is deemed eligible for support if

1. The applicant for funding makes the film in his own name and for his own account and bears responsibility for implementing the film project,

2. the persons deciding about the artistic or organisational aspects during the making of the film are Austrian nationals or nationals from EEA countries and the remaining team is composed of primarily Austrian nationals or nationals from EEA countries.

(2) Support may also be provided if the film is an Austrian-foreign co-production and meets the requirements of an intergovernmental agreement on film co-production. If no such agreement has been concluded, the project must have adequate Austrian involvement in terms of license, financial, artistic and technical arrangements.

(3) Financial support is awarded to full-length cinematographic films. A film is deemed to be full-length if it has a running time of at least 79 minutes, in the case of children's films of 59 minutes.

(4) The production costs of the film must be €1m or more for standard (feature) films and €200,000 or more for documentaries. The principles of economy in financial management as set out in Annex 1 to these Guidance Notes apply.

(5) Financial support is awarded only for films where at least one final version of the film is made in the German language, save passages of dialogue or song where the use of another language is required by the script. For this language version of the film it suffices to provide a version with German subtitles suited for screening the film in cinemas.

(6) The maker of the supported film agrees to release the supported film within one year of completion for adequate commercial exploitation in cinemas.

#### **International Productions**

**§ 5.** (1) A film project may be submitted as an international production if it is shot, at least in part, in Austria but fails to meet the preconditions for approval as an Austrian-foreign co-production.

(2) International productions must provide evidence that five or more days of shooting are in Austria.

(3) International productions are exempted from the provisions of §4 paras (1), (2) and (4) to (6), §6 paras (1) to (3), §8 (1) and §12.

(4) A total of up to 20 per cent of the annually available funds may be used for supporting international productions.

#### **Calculation Formula for Eligibility Conditions**

**§ 6.** (1) Financial support based on these Guidance Notes will be awarded only if the applicant also contributes to the funding of the film project's production costs as approved by 'aws', which contribution must not be funded under these Guidance Notes nor by support provided by an Austrian territorial authority or any other Austrian entity governed by public law. This own contribution must be adequate in relation to the scope of the project and the options available to the applicant. It can be made through the applicant's own funds, through funds lent to the applicant, as well as through any revenue derived from pre-sale contracts and rights guarantees and through license shares held by co-financing television broadcasters, provided that the funds thus obtained are made available for implementing the project and assignment ensures adequate marketing. For an Austrian-foreign co-production this contribution must be calculated on the basis of the share in production costs to be financed by the Austrian filmmaker.

(2) The applicant's own contribution to funding the production costs must cover own funds (cash) totalling at least 5 per cent of the production costs.

(3) The Austrian share in the production costs must meet the requirements of an intergovernmental film agreement in respect thereof. If no such agreement has been concluded, Austrian involvement in terms of financial, artistic and technical arrangements shall not be less than 20 per cent in each case.

(4) Production costs eligible for support include

1. Personal services

Wages, salaries, fees and honoraria are approved as Austrian production costs if and when they are subject to unlimited or limited tax liability in Austria. Persons employed in the production of this film are to be included in a cast and crew list common to this sector indicating the residence or place of business which is of relevance for tax purposes. The level of fees and wages must be based on or exceed the level defined in collective agreements.

## 2. Business services

Services rendered by businesses are approved as production costs only if and when

- a) the business rendering the service has its place of business or branch office in Austria and a license to provide such services, and
- b) detailed accounting of the service is provided through the business or its branch office.

### **Cultural Test**

§ 7. (1) To ensure the cultural purpose of support, 'ABA' will conduct a Cultural Test. Support will be awarded only if the film scores the relevant minimum number of points under the Cultural Test for standard (feature) and documentary films or international productions as defined in §5 (1). The Cultural Test for standard and documentary films is set out in Annex 2 and the Cultural Test for international productions as defined in §5 (1) is set out in Annex 3.

(2) To ensure the cultural character, a standard film must meet at least four of the criteria listed in the Cultural Content Part (Part A). A documentary film or an international production as defined in §5 (1) must meet at least two of the criteria listed in the Cultural Content Part (Part A).

(3) To ensure adequate commercial exploitation, a standard or documentary film must meet at least one of the criteria listed in the Exploitation Part (Part D).

(4) To qualify for support, a standard film must score at least 43 points and a documentary at least 32 points out of a possible 86 points in all Parts of Annex 2.

(5) An international production as defined in §5 (1) must score at least 33 points out of a possible 66 points from both Parts of Annex 3.

(6) The Annexes are deemed to be part of the Guidance Notes.

### **Nature and Level of Support**

§ 8. (1) Support is provided in the form of funding a certain percentage of costs through a non-repayable grant. This signifies that funds of at least the level of such support are needed.

(2) Support for standard films totals up to 25 per cent of the production costs eligible for support, but for standard films with production costs of less than €1.5m it totals no more than €250,000. Support for documentaries totals up to 25 per cent of the production costs eligible for support, but for documentaries with production costs of less than €350,000 it totals no more than €50,000.

(3) In any case – and irrespective of (2) – support may not exceed a total equivalent to 15 per cent of the annually available funds.

### **Submission of Application**

§ 9. (1) Applications for funding shall be submitted electronically to 'aws'. Film projects for which main shooting is begun before submission of an application will not be eligible for support. In the case of an international production as defined in §5 (1) this relates to the beginning of shooting in Austria.

(2) If in the case of a co-production several filmmakers meet the eligibility criteria, the application for funding may be filed by only one of them. The filmmakers involved in the co-production must agree on the applicant and submit an appropriate joint statement to 'aws' with the application.

(3) In the case of Austrian-foreign co-productions any application for funding is subject to the co-production being provisionally approved by the Federal Ministry of Economy, Family and Youth.

(4) Pre-assessment in respect of eligibility for support (Cultural Test) may be performed at any time. Appropriate pre-assessment of project funding is mandatory. However, an application may be made only if the applicant provides evidence that funding of the film project is ensured.

(5) In the application applicants must provide evidence or satisfactory explanation that their project meets the eligibility conditions. In the latter case they will have to submit evidence ex post by the time of the first payout of support.

(6) Unless documents are available in the original German version, 'aws' may request the applicant to have the documents translated into German by a certified court translator or to submit a German sum-

mary of the details relevant for processing the application and to confirm that they are correct and complete.

(7) Applications will be processed from the day of operation of these Guidance Notes for Support Schemes in the order of receipt by 'aws'. Applications must be submitted by 31 Dec 2014 at the latest. The order in which decisions on awarding support are taken will depend on the day on which the complete application, including all the necessary documents, is submitted. Several complete applications submitted on any single day will be processed as having been simultaneously received.

(8) If applications are incomplete, or if applications fail to provide satisfactory explanation or evidence of meeting the eligibility conditions, or if other details or documents are missing, 'aws' may set a deadline for the applicant to complete the application. If the applicant fails to complete the application within the deadline set, or if the applicant fails to submit ex post the missing details or documents within the deadline set, the application will be deemed as non-submitted.

(9) Any documents submitted will pass into the ownership of the federal agency unless they are original documents.

(10) Financial support under these Guidance Notes will also be possible if the project in question is already supported by other funding streams at federal or Laender level (multiple funding) unless such additional support is excluded by these other funding guidelines.

(11) With reference to repayment requirements under §13 the applicant is obligated to provide with his application information on any intended, currently processed or accepted applications with other legal entities concerning the same project (or parts thereof) and to inform of any later changes in respect thereof.

#### **Decision on Awarding Support**

**§ 10.** (1) Decisions on funding applications are taken by the Federal Minister of Economy, Family and Youth based on the results of the Cultural Test conducted by 'ABA' and the review by 'aws' of whether all eligibility criteria are met. Applications must be processed within no more than seven weeks of receipt of the application.

(2) The applicant must be informed in writing by 'aws' of the decision on whether support is awarded.

(3) If support is awarded, 'aws' must communicate a fixed-term funding offer to the applicant. If the applicant accepts the funding offer, including any related terms and conditions, within the fixed period of time the funding agreement will come about.

(2) If the application is rejected, 'aws' will inform the applicant in writing of the major reasons for such rejection.

(5) The funding agreement will expire unless the applicant provides evidence of the project's total funding arrangement within three months of receipt of the funding offer. This deadline may be extended once by one month.

(6) The funding agreement will also expire if it is foreseeable that shooting of the film will not start within four months of communication of the funding offer. 'aws' may accept the funding recipient's justified request for postponement of the beginning of shooting the film or for extension of the project period.

(7) There is no legal entitlement to receive funding. Funding is awarded subject to the budget appropriations available.

(8) If budget appropriations no longer suffice to fulfil the funding requirements of an application or of several simultaneously received applications meeting the eligibility criteria a reduced percentage of funding of the eligible production costs may be approved.

#### **Payout**

**§ 11.** (1) Funds will be transferred once the terms and conditions related to the funding agreement are met, and with due regard to the project's progress and funding requirements. As a rule, they are transferred in three instalments: 40 per cent when shooting begins, 40 per cent when the rough cut is submitted and 20 per cent after review of the final cost situation. The funding recipient may request, based on a funding requirement schedule, a different percentage distribution of instalments.

(2) The funding recipient informs 'aws' on the date when the relevant instalments are due that he meets the requirements for payout and supports this claim by attaching the appropriate documentary evidence.

(3) Before the first payout of funds the following must be submitted:

1. The appropriately signed funding offer;
  2. evidence of total funding and project costs prepared and signed by the funded company, as well as evidence that the terms and conditions related to the funding agreement are met;
  3. Suitable evidence of the beginning of film shooting.
- (4) Before the second payout of funds the following must be submitted:
1. confirmation of partial completion of the project by providing evidence of project spending prepared and signed by the funded company (an overview of accounts supported by original invoices). Such evidence of project costs may only include the net amounts paid (i.e. minus purchase tax, any discounts, rebates, amounts credited, etc.);
  2. Suitable evidence of the rough cut.
- (5) The third payout is subject to evidence of the final cost situation prepared and signed by the funded company (an overview of accounts supported by original invoices). The German-language version as defined by §4 (5) must be submitted to 'aws' prior to payout of the last instalment.
- (6) Payout will be refused
1. if appropriate funding of the film project is no longer ensured;
  2. if the funding recipient infringes the principles of economy in financial management when financing or making a film supported under these Guidance Notes.
- (7) Review of the use of funds and of the final cost situation is performed by 'aws'.
- (8) In the case of an international production as defined by §5 (1) payout is made, unless other terms of payout are agreed, in two instalments: 30 per cent upon submission of the appropriately signed funding offer and 70 per cent upon submission of documentary evidence of the eligible expenses in Austria as defined by item 1b of Annex 1. Unless the expenses specified in the agreement for Austria are fully incurred, the grant will be reduced on a prorated basis.

#### **Archiving**

**§ 12.** (1) The recipient of support funding is obligated to make available free of charge a technically flawless copy of the film in an archivable format after completion of theatrical release in the commercial cinema or within twelve months of the first presentation to the general public in Austria, unless this obligation has been met under other contractual obligations.

(2) This copy is stored by Filmarchiv Austria for the purpose of preserving the country's cultural film heritage. In addition, after completion of the film the applicant for funding must give 'aws' a free courtesy copy of the film on a common data medium (e.g. DVD).

#### **Funding Revoked or Repaid**

**§ 13.** (1) Funding already awarded will not be paid out if

1. appropriate funding of the project is not ensured;
2. the terms and conditions included in the funding commitment and/or funding agreement are not met;
3. the principles of economy in financial management have been infringed when financing or implementing the project;
4. insolvency proceedings are commenced on the assets of the recipient of funding;
5. the company is sold and the applicant for funding fails to submit in due time, prior to such sale, all documents that would confirm that the project is continued;
6. the company is transferred by gift or inheritance and the preconditions for continuing the project are no longer met.

(2) The funding recipient must be obligated to repay in full or in part the paid-out funds within 14 days of a written request by 'aws', and steps must be taken to cease entitlements to funds that have been promised by agreement but have not been paid out as yet, if

1. federal bodies or agents have been incorrectly or incompletely informed of essential facts;
2. the amount of funding exceeds the level of production costs (minus own contribution) of the supported project; international productions as defined by §5 (1) are subject to §11 (8);
3. the project has not been carried out or has not been carried out completely or in due time unless an extension of the project's running time has been approved by 'aws';
4. the awarded funds have been used by the recipient in full or in part for other purposes;

5. the applicant for funding fails to make the requisite reports, fails to submit evidence, prevents review of evidence or fails to meet conditions, provided that in such cases a written reminder with appropriate deadline and express mention of the legal consequence of non-compliance has been unsuccessful, and the applicant for funding fails to submit other information set out in these Guidance Notes.
  6. any one of the requirements included in these Guidance Notes has not been met;
  7. the applicant for funding fails to report on his own initiative and without delay – in any case before any review or its announcement – any events which delay or frustrate the implementation of the supported project, or which would require changes to the application for funding or the agreed terms and conditions;
  8. the funding recipient obstructs or prevents the submission of requisite information and its review, or it is no longer possible to review entitlement to funding within the period required for record keeping;
  9. the funding recipient has not complied with the provisions of the Equal Treatment Act (GIBG) or the Federal Disability Equality Act (BGStG);
  10. bodies of the European Union request, through the Federal Ministry of Economy, Family and Youth (BMWFJ), that the money be claimed back and/or payout be suspended;
  11. the funding recipient fails to comply with the prohibition of assigning, transferring, pledging and otherwise disposing of the funds;
  12. the funding recipient fails to comply with other funding conditions, in particular those designed to ensure achievement of the purpose of funding;
  13. if the funding recipient, without cause and through his own fault, fails to release the film to theatres pursuant to §4 (6) of the Guidance Notes.
- (3) The decision on discontinuing the payout of funds and requesting the repayment of funds already paid out is taken by the competent federal agency on a case-by-case basis.
- (4) Grants to be repaid on the grounds mentioned in paragraph (2), items 1-13, shall carry an interest, from the day of payout to the recipient, of 3 per cent above the applicable main refinancing rate of the euro area.
- (5) If the project to be supported is begun before the funding agreement is concluded, this is done at the sole risk of the applicant, and no obligation arises for the federal agency from such a move.
- (6) Only in the case of Austrian-foreign co-productions supported in Austria solely under these Guidance Notes will the co-producers be jointly and severally liable for repayment of state aid. The co-production agreement must include appropriate provisions to this end.

#### **Information Requirements**

**§ 14.** (1) The Federal Ministry of Economy, Family and Youth (BMWFJ), the Federal Ministry of Finance (BMF), the Court of Audit and 'aws', as well as the bodies of the European Union, are entitled to review the supported project or have it reviewed by their bodies or agents.

(2) The applicant for funding must be obligated to submit upon request the annual accounts and provide all information related to the project, to permit inspection of books and vouchers as well as any other records required for reviewing the project (to be) supported, and to grant access for on-site inspections. Moreover, the funding recipient must be obligated to keep all records on the supported project in safe custody and in an orderly manner for ten years following the end of the calendar year to which they relate.

(3) The applicant for funding must be obligated to report to 'aws', on his own initiative and without delay, any events which delay or frustrate the implementation of the project, or which would require changes to the application for funding or the agreed terms and conditions, and to comply with these reporting requirements without undue delay.

(4) The funding agreement includes the express rule that 'aws' is entitled to disclose audience numbers and box-office results of the supported film. Where necessary for fulfilling this obligation, this rule shall be included in all distribution agreements for the supported film's release.

(5) Moreover, the funding recipient is obligated to provide to 'aws' any information necessary for assessing achievement of the funding objective as defined in these Guidance Notes and to submit records, in particular on audience numbers, expenses and revenue of the supported film. 'aws' may declare the submission of such information to be the precondition for conducting reviews in respect of funding decisions or payout of funds.

### **Advisory Board**

§ 15. (1) The Federal Ministry of Economy, Family and Youth establishes an Advisory Board which advises federal agencies and makes recommendations.

(2) Members of the Advisory Board include:

1. one representative of the Federal Minister of Economy, Family and Youth;
2. one representative of the Federal Minister of Finance;
3. one representative of the Austrian Film Institute;
4. one representative of the Austrian Tourist Office (*Österreich Werbung*);
5. one representative of the Austrian Economic Chamber (WKO);
6. up to five film-industry experts to be appointed by the Federal Minister of Economy, Family and Youth and the Federal Minister of Finance.

(3) A substitute is appointed for each member to represent this member if he is prevented from attending to his duties.

(4) The Advisory Board shall adopt its own rules of procedure to be approved by the Federal Minister of Economy, Family and Youth. The Board is chaired by the representative of the Federal Ministry of Economy, Family and Youth.

(5) A member of the Advisory Board shall not be involved in debates and decisions on any item of the agenda related to the funding of a project where the member himself, or a legal entity of which this member is an officer or employee, is the applicant for such funding, or where the economic interests of this member are affected.

(6) The Advisory Board meets every six months or at the request of 'ABA'/'aws' or a member of the Board. A meeting is deemed to be duly convened if the invitation to the meeting is received by the members of the Advisory Board no later than two months before the date of the meeting.

(7) On a reasoned request by the applicant the Advisory Board may recommend exemptions from the requirements of §2 (3), §4 (6) and §6 (3). Moreover, the Advisory Board may

1. issue, at the beginning of a funding year, recommendations applicable to this funding year in respect of the maximum level of aid commitment as defined in §8 paras (2) and (3);
2. issue, at the beginning of a funding year, recommendations on the use of a certain percentage of the available funds for purposes of public relations. At least one per cent of the annually available funds are earmarked for public relations purposes;
3. issue where required – and irrespective of the provisions of §5 (4) – recommendations on international productions as defined in §5 (1).

(8) Decisions in the Advisory Board are taken by a majority of votes. In the case of a tie, the Chairman has the casting vote. The Advisory Board has a quorum when at least half of the members are present. Decisions taken by circulation require a two-thirds majority of the votes cast.

(9) Members and substitute members work pro bono.

### **Evaluation of Funding Measures**

§ 16. (1) Funding measures under these Guidance Notes will be evaluated by 30 June 2015 at the latest by federal agencies in association with 'ABA' and 'aws'. Evaluation must focus on whether the object of these Guidance Notes has been achieved with such funding.

(2) 'aws' is obligated to collect the data necessary for monitoring and evaluating measures under these Guidance Notes with the help of performance indicators (output indicators).

(3) 'aws' is obligated to collect outcome/impact indicators for evaluation purposes.

### **Final Provisions**

§ 17. (1) These Guidance Notes enter into force on 01 Jan 2014 and remain in force until 31 Dec 2014.

(2) Nationals of countries which are party to the Agreement on the European Economic Area are deemed to be equivalent to Austrian nationals.

(3) Where these Guidance Notes refer to provisions of federal law, these provisions shall be applied as currently amended.

## Annex 1 to Guidance Notes ‘Film Location Austria’

### Economy in Financial Management – Principles

Funding applications shall meet the principles of economy in financial management in keeping with the following rules.

#### 1a Austrian Films and Austrian-Foreign Co-Productions

##### Calculation of Expected Total Production Costs

Production costs include the expenses approved in Austria under the cost sheet formula commonly used for film support purposes. Calculation of production costs shall not include purchase tax (deductible input VAT).

##### Expenditure on Pre-Production

Pre-production costs include expenses related to the project and incurred around the time of submitting the application, such as money spent on location search, casting, screen tests, preliminary negotiations, initial meetings, etc.

##### Rights of Use

Rights of use include rights of use in existing works/protected performances as well as the costs of acquiring the copyrights/neighbouring rights in existing works/protected performances (e.g. film rights to a novel, sync rights to works of music/audio recordings) necessary for producing and releasing the film.

##### Fees and Wages

The level of fees and wages must be based on or exceed by no more than 20 per cent the level defined in the related collective agreements. In special cases, and subject to appropriate qualification and experience, rates exceeding the minimum level by up to 30 per cent may be approved.

Scriptwriter’s and director’s fees shall be reviewed under the aspects of economic efficiency, appropriateness and cost effectiveness and approved on a case-by-case basis with these principles in mind. The director’s fee includes all the work done by the film’s director ranging from pre-production to post-production activities, promotional measures and completion of the film; calculation includes costs for natural or legal persons who/which are identical, or affiliated through economic interests, with the applicant for funding, with a co-producer, a shareholder or managing director of a production company acting as a legal person; these **cost items of internal service accounting** shall be specially highlighted. Any own services going beyond the applicant’s own contribution, provided these services are directly related to the making of the film, may be included in the calculation based on accepted market remuneration minus deductions of 20 per cent.

##### Travel Costs

Travel costs will be approved only if they comply with the rules set out in collective agreements or tax law.

##### Completion Costs

Completion costs must be reduced by any revenue achieved in the production phase (such as revenue from selling costumes, etc.).

##### Completion Overheads

Under the principles of economy in financial management, 7.5 per cent of the filmmaker’s completion overheads or of the Austrian proportion in the completion costs are approved for full-length cinematographic films.

This relates in particular to the following costs, which are deemed to be completion overheads and may therefore not be quoted as individual completion costs.

- Expenses on establishing and maintaining permanent office rooms and on buying general office supplies,
- general postal and telephone expenses,
- general staff costs (administration),
- general insurance policies,
- expenses on financial audits,



- interest and bank charges for general loans,
- general entertainment expenses,
- travel expenses and costs which are not verifiably used for the relevant project, such as those incurred in the context of meetings, negotiations and location visits, etc.

#### **Completion Bond**

Expenses on a completion bond customary in this sector are approved as project costs.

#### **Rebates, Discounts, Bonuses, Sale of Material**

Any rebates and discounts shall be deducted from the relevant cost items of the final account. Any discounts achieved by the filmmaker's additional own services outside the film project need not be deducted from the related cost positions.

Revenue from the sale of movable property (physical property and rights) included in the production costs, will reduce costs.

#### **Producer's Fee**

The producer's fee amounts to 2.5 per cent of the completion costs or of the Austrian proportion in the completion costs. The recipient of this fee is the natural person who is in charge of the creative aspects of making the film.

#### **Exploitation Costs**

Spending on materials for later exploitation of the film which are made during the production process may be approved as part of the production costs (e.g. trailer, dubbing, subtitling, making-of).

### **1b International Productions as defined in §5 (1) of the Guidance Notes**

Eligible expenses in Austria refer to the sum total of all expenses incurred in the production of a film project in Austria and subject to taxation in Austria. The biller must be a company or a person which or who is subject to tax liability in Austria and has its/his head office/residence or branch office in Austria.

#### **Eligible Expenses**

Any project expenditure in Austria, in particular

- fees / wages and salaries of film practitioners (gross amounts),
- producer's fee of up to 5 per cent and completion overheads of up to 7.5 per cent,
- any expenses directly related to the making of the film project, such as filming permits, location search, production design, costumes, technology, accommodation, per diems, travel, transport, video and audio material, post-production, insurance policies as well as other general expenses related to film shooting,
- in respect of film practitioners residing in Austria and subject to (limited) tax liability: bills of service providers and companies domiciled in Austria.

#### **Non-Eligible Expenses**

- Bills which are not made out in the name of the recipient of funding or of the project funded or bills showing payments not made by the recipient of funding,
- purchase tax,
- other public taxes and charges which are unrelated to the project funded,
- billing by the recipient of funding in respect of film practitioners who do not reside in Austria save individuals (e.g. performers) who are subject to limited tax liability in Austria,
- billing by the recipient of funding in respect of services provided by companies which are not domiciled in Austria.

Assessment and approval of eligible expenses in Austria are based on the submitted copies of bills plus proofs of payment.

## Annex 2 to Guidance Notes ‘Film Location Austria’

### Cultural Test for Standard (Feature) and Documentary Films

A standard film must meet at least four of the criteria and a documentary at least two of the criteria listed in Part A ‘Cultural Content’. At least one of the criteria listed in Part D ‘Exploitation’ must be met. Only full points are awarded. The reference ‘from Austria or the EEA’ refers to the nationality of the natural person or his place of residence<sup>1</sup> and centre of vital interest being in Austria or any other country party to the Agreement on the European Economic Area.

#### Part A: Cultural Content

Cultural Content	Points
1. Film is set (fictional content/material/ subject matter) primarily <sup>2</sup> in Austria or another EEA country	4
2. Film uses Austrian or European motives <sup>3</sup>	3
3. Film uses Austrian or European locations for shooting <sup>4</sup>	3
4. One main character (of the plot/underlying material) is/was Austrian or comes from another EEA country <sup>5</sup>	3
5. Plot/underlying material/subject matter is Austrian or European <sup>6</sup>	3
6. Plot/underlying material is based on literary material	2
7. Plot/underlying material depicts artist or artistic genre (e.g. composition, dance, performance, painting, architecture, pop art, comics)	1
8. A contemporary artist from a genre other than cinematography is greatly involved in the film	1
9. Plot/underlying material is about a character of the present or the past or of world history or a fictional character of cultural history or literature	2
10. Plot/underlying material is about a non-fictional event of world history or a comparable fictional event	2
11. Plot/underlying material is about issues of current social or cultural relevance or about questions of religious or philosophical belief	3
12. Film is about scientific topics or natural phenomena	3
<b>Total for 1-12</b>	<b>30</b>

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1 A person’s place of residence is where at least part of this person’s regular habitual mode of life is centred.

2 Primarily means more than half of the film’s story (according to the script or treatment), irrespective of where the film is shot and of where the shooting costs are spent.

3 Motives which can be associated with Austria or another EEA country, e.g. architecture or landscapes.

4 Austrian or European film locations mean that filming (both exterior and interior location shooting) actually takes place in Austria or another EEA country.

5 One main character is Austrian or European within the meaning of this Cultural Test if, according to the plot, this character reflects the Austrian or European identity in the story.

6 The plot/underlying material is Austrian or European if it has been written by an Austrian writer or by a writer permanently living in Austria or in another EEA country, or if it addresses special identity-forming issues which are of relevance to Austria or Europe.

**Part B: Film Practitioners**

<b>Film Practitioners</b>	<b>Points</b>
1. Creative film practitioners <sup>7</sup> from Austria or EEA countries: Producer, director, scriptwriter, cameraman, lead actor, supporting actor, composer, production designer, costume designer, cutter, production supervisor, VFX supervisor, musicians/performers	2 points for each person, 12 points max.
2. other film practitioners <sup>8</sup> from Austria or the EEA	1 point for each person, 12 points max.
<b>Total for 1-2</b>	<b>24</b>

**Part C: Making the Film**

<b>Making the Film</b>	<b>Points</b>
1. Days of shooting in Austria from 1% min. of filming (main shooting)	
1% to 9%	1
10% to 29%	3
30% to 49%	6
50% or more	12
2. Digital effects (VFX) in Austria	
25% to 49%	1
50% to 79%	2
80% or more	4
3. Audio post-production in Austria	
25% to 49%	1
50% to 79%	2
80% or more	4
4. Visual post-production in Austria	
25% to 49%	1
50% to 79%	2
80% or more	4
<b>Total for 1-4</b>	<b>24</b>

**Part D: Exploitation**

<b>Exploitation</b>	<b>Points</b>
1. Binding distribution commitment or distribution agreement	2
2. Minimum guarantee (level commensurate with the project)	2
3. World distribution agreement	2
4. Enlargement of the market through Austrian-foreign co-production	2
<b>Total for 1-4</b>	<b>8</b>

To qualify, standard films must score at least 43 points and documentaries at least 32 points out of a possible 86 points in Parts A, B, C and D.

<sup>7</sup> In the case of multiple activities no more than one position can be allocated to one person.

<sup>8</sup> Based on the table included in the collective agreement for film practitioners unless covered by item 1

### Annex 3 to Guidance Notes ‘Film Location Austria’

#### Cultural Test for International Productions as defined in §5 (1) of the Guidance Notes

International productions must meet at least two of the criteria listed in Part A ‘Cultural Content’. Only full points are awarded. The reference “from Austria or the EEA” refers to the nationality of the natural person or his place of residence<sup>9</sup> and centre of vital interest being in Austria or any other country party to the Agreement on the European Economic Area.

#### Part A: Cultural Content

Cultural Content	Points
1. Film is set (fictional content/material/subject matter) partially in Austria or in another EEA country	4
2. Film uses Austrian or European motives <sup>10</sup>	3
3. Film uses Austrian or European locations <sup>11</sup> for shooting	3
4. One main character (of the plot/underlying material) is/was Austrian or is from another EEA country <sup>12</sup>	3
5. Plot/underlying material/subject matter is Austrian or European <sup>13</sup>	3
6. Plot/underlying material is based on literary material	2
7. Plot/underlying material depicts artist or artistic genre (e.g. composition, dance, performance, painting, architecture, pop art, comics)	1
8. A contemporary artist from a genre other than cinematography is greatly involved in the film	1
9. Plot/underlying material is about a character of the present or the past or of world history or a fictional character of cultural history or literature	2
10. Plot/underlying material is about a non-fictional event of world history or a comparable fictional event	2
11. Plot/underlying material is about issues of current social or cultural relevance or about questions of religious or philosophical belief	3
12. Film is about scientific topics or natural phenomena	3
<b>Total for 1-12</b>	<b>30</b>

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9 A person’s place of residence is where at least part of this person’s regular habitual mode of life is centred.

10 Motives which can be associated with Austria or another EEA country, e.g. architecture or landscapes.

11 Austrian or European film locations mean that filming (both exterior and interior location shooting) actually takes place in Austria or another EEA country.

12 One main character is Austrian or European within the meaning of this Cultural Test if, according to the plot, this character reflects the Austrian or European identity in the story.

13 The plot/underlying material is Austrian or European if it has been written by an Austrian writer or by a writer permanently living in Austria or in another EEA country, or if it addresses special identity-forming issues which are of relevance to Austria or Europe.

### Part B: Film Business Criteria

Film Business Criteria	Points
1. Film practitioners <sup>14</sup> from Austria or the EEA during filming in Austria: Producer, director, scriptwriter, cameraman, lead actor, supporting actor, composer, production designer, costume designer, cutter, production supervisor, VFX supervisor, musicians/performers as well as other film practitioners based on the table included in the collective agreement for film practitioners	From two persons 2 points, every other person 2 points, 24 points max.
2. The final version of the film is made in one of the official languages of the EEA	4
3. Film shooting in Austria	From one week of shooting 2 points, two weeks of shooting 3 points, from three weeks of shooting 4 points
4. Use of Austria's specific film resources	4
<b>Total for 1-4</b>	<b>36</b>

To qualify, an international production must score at least 33 points out of a possible 66 points in Parts A and B.

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<sup>14</sup> In the case of multiple activities no more than one position can be allocated to one person.