

Your ref

Our ref
15/4102-

Date
03.11.2015

Public Consultation – Draft – New regulations on financial incentives for the production of international films and series in Norway

The Norwegian Ministry of Culture hereby present a proposal for new regulations on financial incentives for the production of international films and series in Norway, and welcomes the consultative bodies' opinions on the draft. The Ministry kindly asks the consultative bodies to assess whether the consultation documents should be forwarded to other organizations or companies than those mentioned in the address list. Potential stakeholders who have not received the consultation documents directly from the Ministry are also welcome to participate in the public consultation.

The consultation documents are also published on the Ministry of Culture's website, cf. www.regjeringen.no/2459835.

We request the consulted bodies to send any comments to the Ministry of Culture by December 14th 2015. An electronic copy of submissions should be sent before the closing date to: postmottak@kud.dep.no.

Yours sincerely,

Ellen S. Tauland
Deputy Director General

Liv Tone Olsen Robertsen
Adviser

This document is authorised electronically by the Ministry of Culture and requires no handwritten signature.

PROPOSAL – REGULATIONS ON FINANCIAL INCENTIVES FOR THE PRODUCTION OF INTERNATIONAL FILMS AND SERIES IN NORWAY

Section 1 Purpose

The purpose of the incentive scheme is to increase the number of international films and series shot in Norway to promote Norwegian culture, history and nature. The scheme is also designed to improve the experience and skills of the Norwegian film industry, stimulate growth, promote a sustainable Norwegian film industry and support international cooperation.

Section 2 Scope

The incentive scheme gives grants in support of the production of films, drama series and documentary series produced entirely or partly in Norway and intended for broad public distribution.

Production of content as advertising, news reporting, reality and entertainment programmes and sporting events, as well as material intended solely for broadcast via closed proprietary distribution systems, fall outside the scope of these regulations.

Grants given under the incentive scheme may not be combined with production grants from the Norwegian Film Institute.

Section 3 Who may apply

The main production company, or any person authorised by it, may apply for a grant pursuant to these regulations.

The main producer must have produced at least one film, drama series or documentary series in the previous five years. This production must have been screened publicly through at least one of the following channels: cinema distribution, wide television broadcast or correspondingly wide distribution via other platforms.

Section 4 Who may receive grants

The grant recipient must be an audiovisual production company registered in the Norwegian Register of Business Enterprises as a limited liability company, or a company from within the European Economic Area (EEA) with a branch registered in the Norwegian Register of Business Enterprises.

The company must be established specifically for the production to which the grant application relates. The company will bear financial responsibility for the production in Norway. The costs on the basis of which a grant is sought must be recorded in the accounts of this company.

The company cannot be organized in a manner where one or more participants have an unlimited responsibility for the debt of the business.

Section 5 Application requirements

Grant applications must be submitted to the Norwegian Film Institute before the start of the production in Norway.

The application must contain basic information about the production and all information required to process the application. The application shall as a minimum requirement contain the following information:

- a) name of applicant responsible for the production,
- b) documentation of the applicant's film rights,
- c) description of plot, content and genre for the production for which a refund is sought
- d) total production budget,
- e) budget for shootings in Norway,
- f) financing plan specifying all the production's private and public funding,
- g) production plan for shootings in Norway and a termination date,
- h) list of all artistic and technical staff connected to the production in Norway, and
- i) self-assessment of the qualification test according to the requirements in section 6.

The Norwegian Film Institute will issue separate guidelines on application requirements.

Section 6 Grant conditions

To qualify for a grant under the incentive scheme, a production must meet the following conditions:

- a) The production will be produced entirely or partly in Norway.
- b) The production will have a total production budget of at least NOK 25 million for feature films, NOK 10 million for documentary films, NOK 10 million per episode in the case of drama series or NOK 5 million per episode in the case of documentary series.
- c) The production must have a budget showing a minimum consumption of approved costs in Norway of NOK 2 million.
- d) The production must have a financing plan that includes at least 30 % international financing.
- e) The production must be able to verify that it has concluded an international distribution agreement. The Norwegian Film Institute may also accept a letter of intent regarding international distribution following individual consideration.

To qualify for a grant under the incentive scheme, the production must achieve the minimum required score in the qualification test, cf. appendix 1.

In the evaluation of and assignment of priority among applications which have passed the qualification test, the Norwegian Film Institute must give emphasis to the purpose of the incentive scheme.

Section 7 Grant amount

The grant may total up to 25 % of the approved production costs relating to the production in Norway.

If more than 80 % of the total approved production costs for the production will arise in Norway, the grant amount will be calculated based on the total production costs in the EEA. The grant will under such circumstances be calculated based on the total approved production costs in Norway and the EEA.

Grants pursuant to these regulations will be calculated based on the production accounts, i.e. the final size of the grant will be determined based on the actual accounts verifying production costs spent in Norway.

The Norwegian Film Institute will accept approved additional production costs arising after filming begins in Norway, subject to a 20 % cap on any overrun relative to the approved budget.

Section 8 Approved costs

The calculation of the grant will be based on costs arising in Norway and paid to taxpayers in Norway.

If more than 80 % of the total approved production costs for the production will arise in Norway, the grant amount will be calculated based on the total production costs in the EEA; see section 7, second paragraph.

Such costs may not exceed market prices.

Costs which arise before the Norwegian Film Institute confirms receipt of the application will not be qualify as approved costs.

The final accounts must be confirmed and approved by a *statsautorisert revisor* (certified auditor). The auditor must also confirm that the accounts comply with the provisions of these regulations.

In the event of any doubt as to whether costs meet the requirements of these regulations, the grant recipient will be responsible for documenting that the conditions are met.

Section 9 Administration

The incentive scheme is administered by the Norwegian Film Institute. Grant decisions pursuant to these regulations are made by the Norwegian Film Institute.

Decisions made pursuant to these regulation may be appealed to the relevant ministry in accordance with chapter VI of the Act of 10 February 1967 relating to procedure in cases concerning the public administration (the Public Administration Act).

Section 10 Validity period of grant decisions

Grant decisions are valid for two years. An extension may be applied for before the end of the two-year period if the applicant can document that production can realistically be expected to begin during the following year. An extension may only be granted for one year, making the maximum total grant decision validity period three years.

Section 11 Grant letter

A decision to make a grant must be confirmed by means of a grant letter from the Norwegian Film Institute; see chapter 6.3.3 of the Provisions on Financial Management in Central Government.¹

Section 12 Disbursement

The applicant must send a written disbursement request to the Norwegian Film Institute. The disbursement request must be submitted within six months of the end of production in Norway. A request made after this date will normally be refused.

Disbursement is conditional upon production in Norway having been completed and the production having no unpaid direct or indirect tax liabilities to the Norwegian authorities.

Section 13 Application deadlines

The Norwegian Film Institute may set application deadlines where necessary for the purpose of assigning priority among grants.

Section 14 Disclosure duty

The applicant has a duty to provide the Norwegian Film Institute with all information it requires to process the application and evaluate the basis for the grant.

Once a decision to give a grant has been made, the grant recipient must on its own initiative notify any changes to the terms on which the grant is based. The grant recipient may not make material changes to the production or measure in question without submitting these to the Norwegian Film Institute in writing and obtaining its written approval.

Section 15 Crediting of the Norwegian Film Institute

If a production which has received a grant pursuant to these regulations results in a completed film, drama series or documentary series, the Norwegian Film Institute must be

¹

https://www.regjeringen.no/globalassets/upload/FIN/Vedlegg/okstyring/Regulations_on_financial_management_in_Central_Government_Norway.pdf

credited in the end credits and other materials on the same basis as other investors and providers of production grants.

Section 16 Reporting and checks

The Norwegian Film Institute will arrange necessary checks of the use of grant funds.

The Ministry and the Office of the Auditor General of Norway may conduct checks to ensure that funds are used as envisaged; see section 15 of the Regulation on Financial Management in Central Government and section 12, third paragraph, of the Act relating to the Auditor General of Norway. In relevant cases, control measures may be implemented; see section 10, second paragraph, of the Norwegian Public State Finance Regulations.²

The main producer has a duty to store its accounts for five years, and during this period must be able to present the accounts upon request by the Norwegian Film Institute, the Ministry or the Office of the Auditor General of Norway.

Section 17 Sanctions

The Norwegian Film Institute may withdraw a grant decision in full or in part, withhold grant sums or require the repayment of disbursed grant sums if:

- a) the grant recipient breaches the disclosure duty;
- b) the grant is not used as specified in the conditions set out in the grant letter; or
- c) the grant recipient otherwise materially breaches the provisions of these regulations or provisions/conditions adopted by the Norwegian Film Institute pursuant to these regulations.

If a repayment claim is made, interest may also be claimed on the amount to be repaid under the Act of 17 December 1976 No. 100 relating to Interest on Overdue Payments, etc.

If withdrawn funds are not repaid, the main production company may be excluded from the incentive scheme and from all other grant schemes administered by the Norwegian Film Institute for up to three years. This also applies in the case of repeated breaches of the rules or conditions as mentioned in the first paragraph above.

Adopted sanctions must be reasonable and proportionate to the breach of the rules or other prerequisites.

² https://www.regjeringen.no/en/historical-archive/Stoltenbergs-2nd-Government/Ministry-of-Foreign-Affairs/tema-og-redaksjonelt-innhold/redaksjonelle-artikler/2008/osce_countries/id542779/

Consultation Document

Your ref

Our ref

Date

15/4102-

03.11.2015

Consultation – New regulations on financial incentives for the production of international films and series in Norway

1 INTRODUCTION

The Norwegian Ministry of Culture hereby presents a proposal for new regulations on financial incentives for the production of international films and series in Norway.

The government plans to introduce an incentive scheme for film and series productions from 2016; see the White Paper on a future-oriented film-policy (Meld. St. 30 (2014–2015)), and the Government's budget proposal for the Ministry of Culture for 2016 (Prop. 1 S (2015–2016)).

The incentive scheme's purpose is to boost the number of productions in Norway, promote a sustainable Norwegian film industry and exploit Norway's competitive advantages as a filming location. The incentive scheme shall be administered by the Norwegian Film Institute.

The proposed incentive scheme is conditional upon the Norwegian Parliament's approval of the mentioned White Paper and the budget proposal for 2016.

2 BACKGROUND

In the Government's budget proposal for the Ministry of Culture for 2016 (Prop. 1 S (2015–2016)), the proposed incentive scheme is presented as follows:

In the White Paper on a future-oriented film-policy (Meld. St. 30 (2014–2015)), the government proposes to implement an incentive scheme from 2016. The Ministry proposes to allocate NOK 45 million for a rebate incentive scheme for national and international productions. Furthermore it proposes that the grant is made transferable from one budget year to another because the administration of the incentive scheme will

require such flexibility in cases where a grant decision is made within one budget year and the actual production is made within the following budget year. In addition, the Ministry expects the number of productions applying for a grant, as well as the size of the productions eligible for a grant, to vary from one year to another.

Furthermore the Ministry proposes that grants given under the incentive scheme may not be combined with production grants from the Norwegian Film Institute (NFI), but may be combined with pre-production grants and distribution grants from the NFI and grants from regional film funds. The administration of the incentive scheme shall be located in Bergen, as a branch of the NFI. A proposal for regulations will be subject to a public consultation during the autumn 2015. The proposal will be conditional upon the Norwegian Parliament's approval.

The Ministry of Culture considers that grant schemes in the area of film should be as complementary as possible, meeting different objectives and covering different areas. The incentive scheme has been designed to complement the Norwegian Film Institute's other production grant schemes by focusing specifically on international productions.

Since the incentive scheme will be a rebate incentive scheme with a limited budget, the Norwegian Film Institute will have to evaluate and assign priority among qualified applications if the total application amount exceeds the budget. In the evaluation of and assignment of priority among applications which have passed the qualification test, the Norwegian Film Institute must give emphasis to the purpose of the incentive scheme. Relevant considerations in this context may e.g. be the applicant's score on the qualification test and a priority of productions which have come far along in the financing and planning of the production, and thus are likely to conduct the production within a short time-span. The Norwegian Film Institute, the reference group for the incentive scheme and *Insentivalliansen*³ have commented to the Ministry that grant foreseeability is an important precondition for the scheme to function as intended. The Ministry is therefore of the opinion that the framing of the regulations should give clear guidance as to what types of productions will qualify under the scheme.

The incentive scheme has been designed to comply with the conditions of the General Block Exemption Regulation Article 54⁴. In order for audiovisual productions to qualify for grants, they must be capable of definition as a cultural product. Accordingly, grants must be based on a cultural test.

The Ministry therefore encloses a draft qualification test (see c.f. Appendix 1 to the regulations), and would request the feedback of the consultation bodies on its design.

³ An alliance of some of the Norwegian stakeholders involved in this question.

⁴ http://ec.europa.eu/competition/state_aid/legislation/block.html

3 COMMENTS ON THE INDIVIDUAL PROVISIONS

Section 1. Purpose

The purpose provision indicates that the incentive scheme is focused on large international productions. In the regulations, “international productions” means Norwegian and foreign films and series productions with international financing⁵ and market potential (distribution).

In the Ministry’s view, such productions will generate the most new work for film crews, suppliers, the film industry and other sectors in Norway. These productions will also make the greatest contribution to internationalisation, professionalization and skills-building in the Norwegian film industry. This in turn will help most to improve the quality of Norwegian films.

Major film and series productions generally achieve broad international distribution, and therefore provide the best platform for showcasing Norwegian culture, history and nature in Norway and abroad.

International financing with territorial spending obligations, co-production and foreign incentive schemes all influence decisions to locate filming and post-production for Norwegian productions abroad. The Ministry would emphasise that international cooperation through co-production and cross-border filming arrangements is an important means of strengthening the expertise, professionalism and sustainability of the Norwegian film industry. The level of grants made by the Norwegian Film Institute to finance feature film co-productions (including post-production and launch grants), has remained relatively stable in recent years, at around NOK 12–18 million annually. During this period, Norwegian films have secured NOK 30–50 million a year in grants from foreign public institutions and incentive schemes, in addition to private capital. These funds have helped to maintain a greater production volume and higher production quality in the Norwegian film industry. Co-productions with other countries give Norwegian film improved access to international markets. Moreover, Norwegian productions sometimes need to film at specific foreign locations or facilities (e.g. particular studios), unavailable in Norway.

However, the continued development of a sustainable film industry in Norway requires a certain balance between imports and exports of film productions. Together with the Norwegian Film Institute’s co-production scheme, the incentive scheme is intended to improve the balance between imports and exports of film productions in Norway, primarily by attracting international film activity to Norway. These schemes will also be open to major Norwegian film and series productions with international financing and distribution.

The incentive scheme will also promote growth and continuity in regional film industries.

Section 2. Scope

The first paragraph describes the productions covered by the regulations, namely feature films, drama series and documentary series produced entirely or partly in Norway and intended for broad public distribution. The Ministry wishes to support film and series productions of artistic and cultural value.

⁵ International financing is further defined under section 7 *Grant Amount*.

This is further underlined by the exclusion of advertising, news reporting, reality and entertainment programmes and sports coverage, as well as the production of material intended solely for broadcast via closed proprietary distribution systems. The definition of scope in the first paragraph is also linked to the provision regarding which genres fall under the EU block exemption.

In the third paragraph, the Ministry proposes that the incentive scheme may not be combined with production grants from the Norwegian Film Institute, although combination with grants from regional film funds will be permitted. This will help to strengthen regional film-making by improving experience and knowledge in line with the incentive scheme's purpose. The Norwegian Film Institute is responsible for ensuring that the aid intensity does not exceed the limits outlined in the general block exemption.

Section 3. Who may apply

The first paragraph states that the main producer, or any person authorised by it, may apply for a grant pursuant to these regulations. Applicants are therefore not required to establish a company in Norway in order to *apply* for grant through the incentive scheme. To *receive* a grant the applicant is, however, required to establish an audiovisual production company (single purpose vehicle) in Norway which will be responsible for the conduct of the production for which a grant is sought, cf. section 4.

The requirement in the second paragraph is designed to promote early quality assurance of applications to the incentive scheme. Applicants lacking this type of film and series production experience will be unable to apply. The distribution requirement in the second sentence of the second paragraph is a further quality assurance measure. Applicants unable to demonstrate previous success in marketing films will be unable to apply.

Section 4. Who may receive grants

A requirement is proposed that a grant recipient must work primarily on audiovisual productions.

In the second paragraph, the Ministry proposes that the applicant company must be a limited liability company in Norway established for the specific production to which the grant application relates (single purpose vehicle). The second paragraph also requires that the eligible costs upon which the size of the grant is calculated must be recorded in the accounts of this company. The Ministry considers that these requirements will ensure equal treatment and robust grant controls. Companies established in the European Economic Area (EEA) with a Norwegian branch registered in the Norwegian Register of Business Enterprises are considered to fulfill the requirements.

The third paragraph states that the company cannot be organized in a manner where one or more participants have an unlimited responsibility for the debt of the business. This will prevent that natural persons are left with extensive debts and costs if a production does not proceed according to the production budget.

Section 5. Application requirements

The first paragraph provides that the application must be submitted before the start of the production, as required under the EU block exemption.

The Public Administration Act requires a matter to be illuminated before a decision is made. An applicant for a benefit has an independent duty to provide sufficient information in support of the application to enable the grant administrator to make a decision. The Ministry otherwise refers to the comments on section 14 on the applicant's disclosure duty.

The second paragraph outlines the minimum requirements for which information the application shall contain. This is not an exhaustive list.

The third paragraph shows that the Norwegian Film Institute will issue separate guidelines on application requirements.

Section 6. Grant conditions

The first paragraph and its sub-paragraphs define thresholds, or minimum requirements, applicable to grants. The requirements listed in sub-paragraphs a) to e) reflect the scheme's purpose of attracting major international productions and influencing productions which would otherwise not be filmed in Norway to assign all or parts of production to Norway.

In the Ministry's view, the incentive scheme will be particularly attractive to Norwegian television companies wishing to use the scheme to finance series productions which would be produced regardless of the incentive scheme. The Ministry does not wish the incentive scheme's funding to subsidise the ordinary activities of television channels.

Sub-paragraph a) states that filming must occur entirely or partly in Norway.

Sub-paragraph b) defines the minimum requirements relating to overall budget size for productions covered by the incentive scheme. The minimum requirements have been set following a thorough evaluation by the Ministry and the Norwegian Film Institute based on experience of budget levels and financing plans for productions of potential relevance to the scheme; see section 1 Purpose and section 2 Scope. Nevertheless, the Ministry would request an assessment of and feedback on these requirements.

Sub-paragraph c) defines the requirement regarding minimum consumption in Norway. In the opinion of the Ministry, bearing in mind the purpose and administration of the scheme, it is not sensible for productions spending less than NOK 2 million in Norway to be able to qualify. It is important that pure post-production projects may also qualify. The Ministry anticipates that the minimum consumption of such productions may also total NOK 2 million if they receive a grant under the incentive scheme.

Sub-paragraphs d) and e) define the international financing and distribution requirements. In this context, "international financing" means non-Norwegian financing. Since productions will often apply to the incentive scheme before all distribution agreements are finalised, the Norwegian Film Institute may accept letters of intent regarding international distribution. This

will be specified in greater detail in guidelines. These requirements will promote more effective achievement of the scheme's purpose and motivate Norwegian producers and television channels to increase their international financing.

The second paragraph requires productions to pass a qualification test. Although the qualification test has been pre-tested for range of possible productions, it is difficult to predict its effect in practice. The Ministry therefore considers that the Norwegian Film Institute must be given leeway to evaluate and request the Ministry to adjust the qualification test if and when necessary. Proposals to amend the qualification test will be subject to a public consultation.

In the third paragraph, the Ministry has underlined that emphasis must be given to the purpose of the scheme in the evaluation of and assignment of priority among applications which pass the qualification test. Relevant considerations in this context may e.g. be the applicant's score on the qualification test and a priority of productions which have come far along in the financing and planning of the production, and thus are likely to conduct the production within a short time-span.

Section 7. Grant amount

The Ministry proposes that the reimbursement rate under the incentive scheme should be set at 25 % of approved production costs in Norway. Most other European countries with film incentive schemes focused apply a reimbursement rate of between 20 % and 30 %.

The provision in the second paragraph is an exception to the general rule that the grant must equal 25 % of the total approved production costs arising in Norway. The EU block exemption does not permit territorial consumption requirements greater than 80 % of the total production budget. The proposed provision neutralises this problem. The Ministry is of the view that this provision will also encourage productions to retain Norwegian supervisors and film crews to work at other production locations outside Norway. This will support internationalisation and skills-building in the Norwegian film industry.

The third paragraph specifies that grants under the incentive scheme will be calculated based on the production accounts, i.e. that the final size of the grant will be determined based on the actual accounts showing approved production costs in Norway.

The fourth paragraph permits the Norwegian Film Institute, on request, to approve production expenses arising after filming starts in Norway, subject to a 20 % cap on any overrun relative to the approved budget. Experience from international film productions in Norway shows that filming costs generally exceed the budget due to unforeseen circumstances, i.a. weather conditions etc. The Ministry considers that the disadvantages of tying up funds in this way is outweighed by the fact that the scheme is made more attractive to applicants. The Ministry is unsure whether this is the solution that will provide the best framework for the industry overall, and the Ministry therefore specifically ask for the consultative bodies' input on this issue. One alternative is to not reimburse cost overruns. The Ministry also request input on this option.

Section 8. Approved costs

The first paragraph makes it clear that approved costs forming the basis for the disbursement of a grant must relate to goods and services bought and consumed in Norway. In the Ministry's opinion, this will make it easier for the grant administrator to check such costs. Costs arising in Norway may not include costs which are re-invoiced by a sub-contractor or a subsidiary in another country. In addition, such costs must be paid to taxpayers in Norway. The latter requirement will also complicate the use of salary credits, i.e. salary which has not been paid, as a basis for the disbursement of state aid. The use of internal invoicing and salary credits will not promote the development of a robust, sustainable industry.

The second paragraph clarifies the exception in section 7, second paragraph, which provides that production costs exceeding 80 % consumption in Norway may qualify as the basis for grant disbursement. Such costs must have arisen in the European Economic Area. The eligible costs upon which the size of the grant is calculated must be recorded in the accounts of this company, cf. section 4.

The third paragraph states that costs must relate to production and be on a par with relevant market prices. This requirement is meant to avoid the conclusion of agreements with artificially high prices with the objective to obtain a larger grant. The purpose is to avoid that the grant distorts competition. It is thus crucial that the costs on the basis of which a grant is sought portray the actual production costs.

The Ministry assumes that private parties do not give advantages to other parties without expecting a reasonable service in exchange. Furthermore the Ministry underlines that this requirement implies an equilibrium in the contract conditions when it comes to the performance and conditions of the parties involved. This entails that a concrete overall assessment of the total contract conditions between the parties must be made.

The market price condition should not, however, entail a diligence norm so rigid that it removes all possibilities for entering good – or bad – contracts, and an intervention in every case a sum seems to exceed relevant market prices.

Furthermore, the parties involved must be allowed a certain professional discretion. A too narrow interpretation of the regulations could inhibit the predictability for the players in the film industry and thereby undermine the purpose of the regulations. This entails that a demonstration of qualified deviations from how an independent and responsible commercial player would act must take place before this is considered a breach of the regulations. The definition of qualified deviations will be subject to concrete and discretionary evaluation.

The fourth paragraph emphasises that costs forming part of the basis for grant disbursement must arise after the application has been received and acknowledged by the Norwegian Film Institute. This is consistent with the EU block exemption.

The fifth paragraph requires the final payment to be confirmed and approved by a *statsautorisert revisor* (certified auditor), who must also confirm that the costs included in the calculation comply with the provisions of the regulations. The Norwegian Film Institute will also assess whether the costs relate to production and are consistent with market prices.

The sixth paragraph emphasises that, in the event of any doubt, the grant recipient is responsible for documenting that the costs satisfy the requirements set out in the regulations.

Section 9. Administration

The first paragraph states that the incentive scheme will be administered by the Norwegian Film Institute, which also makes grant decisions.

The second paragraph reflects the Public Administration Act, and states that decisions made under the regulations may be appealed to the Ministry of Culture. The Norwegian Film Institute possesses the necessary film industry-specific expertise required to conduct the specific, discretionary overall assessment and the assignment of priority among applicants to the incentive scheme. The Ministry will as a general rule show restraint when it comes to questioning the Film Institute's discretionary powers.

Section 10. Validity period of grant decisions

The Norwegian Film Institute makes grant decisions pursuant to the incentive scheme. The Norwegian Film Institute grant decision has a validity of two years. The date of the decision provides the starting point for the calculation of the deadline. If an extension application is made, the applicant must substantiate that production is likely to begin within the next year. The Norwegian Film Institute will make a decision based on an assessment of the documentation provided by the applicant. The validity period may thus total up to three years.

Section 11. Grant letter

The Provisions on Financial Management in Central Government provide that all grant decisions must be confirmed by means of a grant letter. Grant recipients will receive a grant letter from the Norwegian Film Institute.

Section 12. Disbursement

The grant recipient must send a written disbursement request to the Norwegian Film Institute upon the finalizing of the shooting in Norway.

The Ministry proposes that the applicant should be required to document that it has no unpaid direct or indirect tax liabilities to the Norwegian authorities prior to disbursement.

The Ministry considers it important that funds allocated to a production are not tied up for longer than necessary. The Ministry therefore proposes that a request for grant disbursement must be made within six months of the end of production in Norway. In the Ministry's view, requests made after this deadline may be granted if the applicant can demonstrate that special reasons apply. The threshold for approval of such requests should be very high, and only apply under typical force majeure conditions. The time aspect will be a factor in the assessment of whether to grant such a request.

In the second paragraph the Ministry proposes that disbursement should be conditional upon production in Norway having been completed and the production having no unpaid direct or indirect tax liabilities to the Norwegian authorities.

Section 13. Application deadlines

The Ministry is of the opinion that application deadlines may be beneficial in terms of effectivising application processing and ensuring foreseeability for applicants. However, the need for such deadlines will depend on the volume of applications received, and the Ministry will therefore leave the Norwegian Film Institute to consider on an ongoing basis whether to process applications as they arrive or adopt application deadlines. The Norwegian Film Institute will give notice in due time if application deadlines are to be implemented. Until further notice, applications will be processed as they arrive.

Section 14. Disclosure duty

The first paragraph provides that the applicant has a duty to provide the Norwegian Film Institute with all information it requires in connection with the processing of the application. The necessity criterion implies that the disclosure duty is limited and that only relevant information required to process the application in accordance with the regulations may be demanded. Such information will include the following items of basic information:

- j) the name of the applicant
- k) documentation evidencing the applicant's film rights
- l) a description of the plot, content and genre of the production for which financing is sought
- m) the total production budget
- n) the budget for filming in Norway
- o) a financing plan specifying all private and public sources of financing
- p) a production plan for filming in Norway, including the wrap date
- q) a list of all artistic and technical staff working on the production in Norway
- r) a completed qualification test in accordance with the requirement in section 6.

This list is not exhaustive.

It may also be necessary to request documentation to facilitate effective verification that the grant is disbursed in accordance with the regulations. Finally, the Ministry would emphasise that, in its capacity as grant administrator, the Norwegian Film Institute is responsible for checking that state funds are used in accordance with the purpose of the scheme. The Norwegian Film Institute may therefore request, for example, documentation verifying the production's actual agreements concluded with respect to planned production activities in Norway.

The second paragraph obliges the grant recipient to inform the Norwegian Film Institute of any changes to the terms on which the grant is based. Under public administrative law, the situation at the time of the decision is decisive for the approval of a grant. The purpose of the rule is to ensure that state grant funds are channelled into productions that fulfil the purpose of

the scheme. Often, grants are made following competition between qualified applications and an expert assessment covering both film-related and discretionary factors. The Ministry therefore considers it important to emphasise in the regulations that the grant recipient has a disclosure duty to the Norwegian Film Institute. Any breach of this duty will entitle the Norwegian Film Institute to withdraw a grant in full or in part. This is expanded on in section 17.

Section 15. Crediting of the Norwegian Film Institute

Films/series that receive grants from the incentive scheme shall credit the Norwegian Film Institute with its name and logo in the end credits of the films/series and in all other information and marketing materials on the same basis as other investors and providers of production grants.

Section 16. Reporting and checks

The first paragraph notes that, in its capacity as grant administrator, the Norwegian Film Institute has a duty to check the grants it makes; see the Regulations on Financial Management in Central Government. This implies that the Norwegian Film Institute must require grant recipients to submit reports and to accept checks of how grant funds are used. The legal authority which allows the Norwegian Film Institute to adopt such a requirement is found in the non-statutory condition principle of administrative law and the Regulations on Financial Management in Central Government. When distributing benefits to which private parties are not legally entitled, the public administration has some discretion to set conditions imposing duties in connection with an otherwise favourable decision. There must be an objective connection between the condition and the rest of the decision, and the condition must not be too invasive. The Ministry takes the view that a reporting and control requirement is objective and not too invasive.

The second paragraph states that the Ministry and the Office of the Auditor General of Norway may conduct checks to ensure that funds are used as envisaged.

The third paragraph establishes that the main producer has a duty to store its accounts for five years. This is also required by the Accounting Act.

Section 17. Sanctions where the grant recipient fails to comply with grant conditions

In the first paragraph, the Ministry has proposed that the Norwegian Film Institute should have power to withdraw grants in full or in part if the grant recipient breaches the conditions for the grant. The legal basis for this power can be deduced from section 35, final paragraph, of the Public Administration Act relating to the reversal of decisions in the absence of an appeal. As regards the application of the rule in section 17, the Ministry considers it logical to refer to administrative practice relating to the corresponding rule in the Norwegian Regulations on Support for Audiovisual Productions. The Ministry would also note, on a general basis, that repayment claims may not be made in respect of disbursements dating back more than three years, calculated from 1 January of the calendar year the claim is presented in writing.

The second paragraph provides that penalty interest may be calculated on a repayment claim.

It follows from the third paragraph that the Norwegian Film Institute may exclude the main producer from the incentive scheme and from all other grant schemes administered by the Norwegian Film Institute for up to three years if withdrawn funds are not repaid.

The final paragraph requires the grant administrator to ensure that any imposed sanctions are reasonable by reference to the breach. The Ministry is of the view that the proposal is consistent with the non-statutory principle of administrative law requiring a sanction to be proportionate to the breach.

4 ADMINISTRATIVE AND ECONOMIC CONSEQUENCES

The Ministry proposes that international film and series productions can get a reimbursement of 25 per cent of production costs arising in Norway and paid to taxpayers in Norway. The Government proposes to allocate NOK 45 million to the incentive scheme in 2016. With a reimbursement rate of 25 per cent, the proposed budget for the incentive scheme can stimulate to an estimated NOK 180 million consumption of goods and services in Norway.

The Ministry provides examples of potential costs and benefits from implementing an incentive scheme in Norway in the White Paper on a future-oriented film-policy (Meld. St. 30 (2014-2015)). The evaluation of potential costs and benefits should however be done based on the proposed alignment of the incentive scheme and the proposed budget frame for 2016.

The Ministry concludes in the White Paper on film that an incentive scheme may contribute to increased employment, value creation and improved skills in the film industry in Norway. It is however impossible to target the incentive scheme entirely towards production activities that would not have occurred without the incentive scheme. But by aligning the incentive scheme towards large international film and series productions, it is likely that the scheme will have an actual "incentive effect", which means that the scheme is primarily directed towards production activities that would not occur in Norway in the absence of an incentive scheme. The proposed requirements to the production regarding international financing and distribution, and the requirements regarding minimum level of spending in Norway and total production budget, aligns the scheme towards new film production activities in Norway.

Provided there is sufficient capacity in the Norwegian film industry to handle an increased demand for goods and services, the film industry in Norway and the general society in Norway will benefit from the incentive scheme. If the capacity in the film industry is limited, the incentive scheme may lead to increased prices in the market in the short term. The prices will however be stabilized in the long run as the capacity in the industry will increase in order to meet the increased demand.

The incentive scheme will also stimulate to increased demands of goods and services from industries not directly related to the film industry, especially industries offering accommodation, food and transportation. The increased demand for goods and services from

other industries will benefit the society if there is sufficient capacity in these industries to handle it, and the increased demands from film productions do not replace demand from other industries.

In the Ministry's consultation of the Oslo Economics report regarding incentive schemes for film and series productions⁶ in 2014, the consultation bodies were encouraged to comment on the capacity in the film industry and other affected industries in particular. The majority of the consultation bodies responded that there was sufficient capacity in the film industry and other affected industries to handle an increased demand for goods and services due to the implementation of an incentive scheme.

Given the responses in the consultation of the Oslo Economics report, and the limited budget allocated to the incentive scheme in 2016, the Ministry considers it to be unlikely that introducing an incentive scheme will have significant impact on the price levels in the film industry and other affected industries.

The Ministry proposes that the Norwegian Film Institute should administer the incentive scheme. In the white paper on film, the Ministry also proposes that the incentive scheme should be administered from Bergen, as a part of the Norwegian Film Institute. This will have administrative consequences for the Norwegian Film Institute, which has to administrate the incentive scheme and establish a new branch in Bergen within their current operational budget.

⁶ Oslo Economics (2014) *Utredning av insentivordninger for film- og TV-produksjon*.

QUALIFICATION TEST- APPENDIX TO REGULATIONS ON FINANCIAL INCENTIVES FOR THE PRODUCTION OF INTERNATIONAL FILMS AND SERIES IN NORWAY (THE INCENTIVE SCHEME)

The production must score a minimum of 4 points from Part 1- Cultural criteria, and receive a minimum of 20 points overall (for Part 1- Cultural criteria and Part 2 - Production criteria).

The maximum score is 51 points.

The points for categories 10-14 shall be awarded on a pro-rata basis based on to what extent the production fulfils each criterion. The Norwegian Film Institute evaluates to what extent the shooting/ service provision/post-production takes place in Norway and adds to the permanent pool of skills and experience in the Norwegian film industry.

	Part I – Cultural criteria	Possible points
1	Storyline, screenplay, central theme of the film is based on events that are a part of Norwegian or European culture or history	0-2
2	The film/series production is based on a character or a personality from Norwegian or European culture, history or society	0-2
3	Storyline of the film/series production is connected with a Norwegian or European setting, place, location, architectural or cultural setting	0-2
4	Storyline, script, or central theme of the film/series production is based on literary work or adapted from another artistic discipline (fine arts, music, etc.)	0-2
5	Storyline, script, central theme of the film/series production focuses on current cultural, sociological or political themes or events.	0-2
6	The film/series production focuses on Norwegian or European culture, identity, customs or traditions	0-2
7	Director, script writer or author of literary work is Norwegian or European	0-2
8	The film/series production is in Norwegian or another European language	0-2
	Possible points Cultural criteria (a minimum is 4 points)	16

	Part II Production Criteria	
9	The film/series production is a cinematographic work that contributes to the development of its genre	0-3
10	The film/series production is suited to increase the capacity of the film makers involved to undertake ambitious and demanding productions of high quality and of cultural value	0-4
11	The film makers are Norwegian citizens or citizens of EEA member states (one point is awarded for each point below, a maximum of eight points)	0-8
	i. Director	1
	ii. Producer/co-producer	1
	iii. DOP	1
	iv. Assistant DOP	1
	v. Script writer	1
	vi. Lead actor/actress	1
	vii. Supporting actor/actress	1
	viii. Composer	1
	ix. Head of sound/sound designer	1
	x. Production designer	1
	xi. Costume designer	1
	xii. Editor	1
	xiii. Makeup artist	1
	xiv. Executive producer/Line producer /Post producer/vfx-producer	1
	xv. Animation Director/Lead Animator	1
	xvi. Colourist	1
	xvii. Concept Artist	1
	xviii. Lead vfx-artist (compositor, modelling, rigging, lighthing, texturing, matte-painter, fx Technical director)	1
	xix. Postproduction or VFX supervisor	1
12	At least 51% of the crew (excluding those mentioned in section 11) are Norwegian citizens or citizens of EEA member states.	0-4
13	Shooting takes place on locations or in studios in Norway	0-4
14	The production uses service providers from Norway or another EEA country	0-4
15	All or part of post production (including sound and visual post-production, editing, soundtrack recording, etc.) takes place in Norway or the EEA	0-6
16	The production has a strategy for sustainable and green recording	0-2
	Possible points Production criteria	35
	Possible points Cultural and Production criteria (a minimum is 20 points)	51