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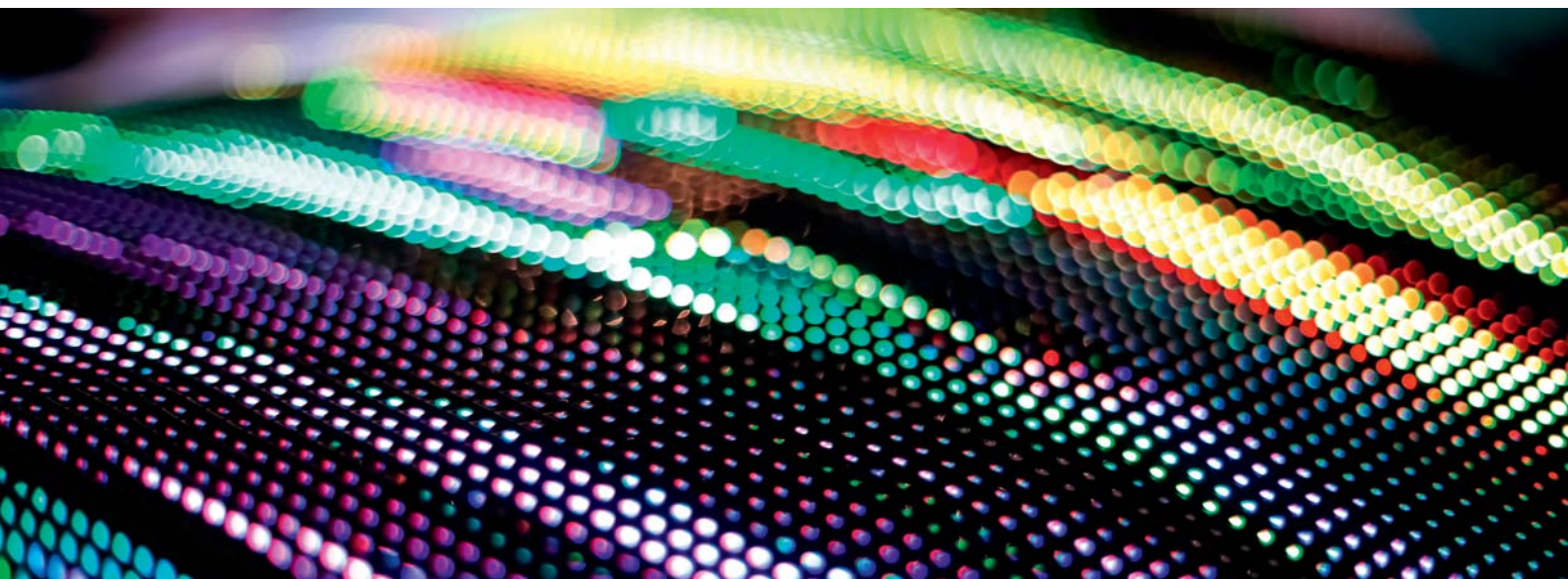
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# German Motion Picture Fund – An Overview

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# German Motion Picture Fund – An Overview

With effect from January 2016, the Federal Ministry for Economic Affairs and Energy established the German Motion Picture Fund (“GMPF”), a new incentive scheme to strengthen the German film industry.

The new federal funding is administered by the German Federal Film Board (Filmförderungsanstalt, “FFA”) in accordance with the GMPF guidelines (“Guidelines”) and its annual budget is €10 million.

The scheme is aimed to attract television series and internationally co-produced films with high production budgets.

The funding is structured in a similar way to the German Federal Film Fund (“DFFF”) and consists of non-repayable grants that are calculated on the basis of the production expenditure spent in Germany.

In principle, funding is granted to applicants fulfilling the award criteria on an automatic basis without discretionary jury decisions. The award criteria relate, inter alia, to the project and its budget, a minimum spend of production costs in Germany and the exploitation of the project in Germany. In addition, a project has to pass a cultural test.

The funding can be combined with other public subsidies (for example with the DFFF or with other federal or regional funding), but due to EU law public funding generally cannot be used to finance more than 50% (or in certain cases 60%) of the budget of a project.



## A. Main Award Criteria

### 1. Qualifying Projects

#### 1.1 Films

Funding can be awarded for films ("Films").

In order to qualify, a Film has to meet certain criteria:

- The Film must have a running time of at least 79 minutes, or 59 minutes for children's films.
- The Film must have a minimum production budget of €25 million.
- The Film must be an internationally co-produced film.
  - Both the applying and the international co-production partner have to contribute at least 20% of the Film's total production costs.
  - If the Film's total production costs exceed €35 million, a contribution of €7 million by the applying co-producer is sufficient regardless of the percentage in the total production costs.

#### 1.2 Television Series / Single Episodes

Funding can also be awarded for:

- a whole season of a television series ("Television Series"), or
- a single episode of a Television Series ("Single Episode").

However, the following criteria have to be fulfilled:

- The Television Series must have at least six consecutive episodes.
- Each episode of the Television Series must have a running time of at least 40 minutes.
- Each episode of the Television Series must have a minimum production budget of €1.2 million.

### 2. Minimum German Production Costs

Funding under the GMPF is granted in order to encourage and support film production in Germany. Consequently, a grant is only awarded if a minimum of production costs is spent in Germany.

#### 2.1 German Production Costs

"German Production Costs" are production costs relating to:

- services provided by persons who are subject to taxation in Germany (regardless of possible exemptions under double taxation treaties), or
- services provided by companies in Germany with a place of business/business establishment in Germany, with at least one permanent employee

working in Germany and these services have been completely provided in Germany or the material used to provide the service has all been procured in Germany and the technical equipment required to deliver the service is actually deployed in Germany.

In determining whether or not the minimum German spend requirement is met, all costs described above are generally taken into account. However, certain German Production Costs do not qualify when calculating the amount of the GMPF grant (for more details please see below under B.1.3).

#### 2.2 Minimum requirement

For Films, the lesser of 40% of the total production costs or €13 million must be German Production Costs.

For Television Series, the lesser of 40% of the total production costs or €10 million must be German Production Costs.

### 3. The Applicant

As a Film must be an internationally co-produced film to benefit from the GMPF fund, the application can only be made by a co-producer of a Film. As regards Television Series/Single Episodes, the application can be made by a producer or co-producer.

In a co-production, if more than one producer meets the grant requirements, the application may only be submitted by one producer.

In order to qualify for the GMPF grant, the applicant must meet the following requirements:

- The applying producer must be responsible for and actively involved in the actual production of the Film, the Television Series or Single Episode. A purely financial involvement is not sufficient.
- The applying producer must have a track record in Europe, i.e.,
  1. if the producer applies for funding for a Film, the producer must have produced at least one feature-length film in the European Economic Area ("EEA") in the previous five years which has had a theatrical release in Germany.
  2. if the producer applies for funding for a Television Series or Single Episode, the producer must have produced in the EEA, within the previous five years, at least
    - one film which meets the requirements under 1 above, or
    - a feature-length television series that has been accepted by a broadcaster or a video-on-demand platform.



- If a single purpose vehicle is incorporated for the production of the Film, Television Series or Single Episode, it is sufficient if an affiliated group company of the single purpose vehicle has such track record.
- The applying producer must generally have its domicile or a registered office in Germany. However, a producer which is resident or has its registered office in another EEA member state can apply for the GMPF grant if the producer has a place of business or establishment in Germany.
- Broadcasters are not entitled to apply for the funding.

#### 4. The Cultural Test

To qualify for funding, the project must generally pass a Cultural Test based on a point system.

- There is a Cultural Test for non-animated Films and Television Series / Single Episodes (Annex 1) and a separate Cultural Test for animated Films and Television Series / Single Episodes (Annex 2) each of which set out the conditions which must be met before the relevant project can be funded. A Film or Television Series / Single Episode which is not animated needs to obtain 40 out of the possible 96 points available under the applicable test while an animated Film or Television Series / Single Episode has to obtain 28 out of 68 points under the applicable test.
- Both tests provide three categories of criteria covering:
  - "Creative content" (for example, the majority of scenes are played out in Germany or in German-speaking areas, a principal character of the underlying material is/was German or from another EEA state),
  - "Creative talents from the EEA" (the use of actors/ personnel providing creative input) and
  - "Production" (the use of German facilities).
- A Film or Television Series / Single Episode which is not animated and therefore subject to the Cultural Test in Annex 1 has to obtain at least seven points from each of the three categories.
- Animated projects that are subject to the Cultural Test in Annex 2 must meet at least two criteria from the first category and at least four criteria in each of the second and third category.

- In addition, there is a third Cultural Test for animated Films which are produced under the European Convention on Cinematographic Co-Production (Annex 3). The Film needs to obtain at least 14 out of the possible 21 points available under the test.
- Non-animated Films produced pursuant to such Convention do not need to pass a Cultural Test. It is sufficient that they qualify as an official co-production under the Convention.

#### 5. Combination with other funding and financing of the project

The grant can generally be combined with other federal, regional or European public subsidies (e.g. public grants, tax incentives). However, for reasons of EU law, public funding cannot be used to finance more than 50% of the total production costs (60 % of total production costs, if producers from more than one member state of the European Union are involved and if the project receives public funding in more than one state member). A German broadcaster or a company affiliated with such broadcaster may only contribute up to 60% of the financing of a Television Series (70% if the Television Series is not shot in the German language).

#### 6. Exploitation

##### 6.1 Film

A Film must have a theatrical release in Germany. The exploitation of the Film has to comply with the holdback restrictions set out in the Federal Film Subsidy Act.

##### 6.2 Television Series/Single Episodes

A Television Series or Single Episode must be broadcast on German television or be available via a video-on-demand-platform that is accessible from Germany.

#### 7. Additional obligations

A condition of the funding is that a German language version of the Film or Television Series must be produced. However, a dubbed or subtitled German version is sufficient.

In addition, the FFA must generally be provided with a barrier-free version (end version with German audio description and with German captions for the deaf and hard-of-hearing) of the Film or Television Series.

## B. The Grant

### 1. Calculating the grant

#### 1.1 Films

The amount of the funding is generally 10% of the Qualifying German Production Costs (please see below under 1.3).

However, the FFA may award up to 20% of the Qualifying German Production Costs if €1 million or more of the total "Digital Production Costs" (as further described below) are spent in Germany. The decision is at the discretion of the FFA and shall be taken in coordination with the competent German ministry.

"Digital Production Costs" are costs that relate to digital filmmaking. For example costs for

- storyboard and digital pre-visualising,
- colour grading,
- animation works,
- lightning and rendering, or
- production sound editing.

The funding is capped at €2.5 million per Film.

#### 1.2 Television Series / Single Episodes

The amount of the funding for Television Series/Single Episodes is 20% of the Qualifying German Production Costs.

The funding is generally capped at €2.5 million for each season of a Television Series, irrespective of whether Single Episodes or the entire season is funded. However, the FFA may award up to €4 million, if

- the German Production Costs are at least €20 million, and
- if €1 million or more of the total Digital Production Costs are spent in Germany.

#### 1.3 Qualifying German Production Costs

There are certain German Production Costs that are not taken into account or only partially taken into account as "Qualifying German Production Costs" when calculating the grant.

Costs that are not taken into account as Qualifying German Production Costs at all include legal fees, insurance costs, financing costs and actors' travelling costs. Costs that are only partially taken into account as Qualifying German Production Costs include screenplay costs and actors' fees spent in Germany.

### 2. Payment and audit

Generally, the grant will be disbursed upon completion of the production after audit of the final cost report.

In exceptional cases, the amount may also be paid out in three instalments (40% upon commencement of principal photography and financing, 40% upon completion of the rough cut (for a Television Series it is enough to have completed 50% of the rough cut), and the remainder after audit of final costs). However, if the grant exceeds €2 million, a completion bond or a bank guarantee will be required for disbursement in instalments. In addition, each instalment has to be used within six weeks at the latest.

The FFA will conduct the final audit to verify the project conforms with the information provided in the application.

Once the FFA has formally awarded the grant, the corresponding entitlement can be assigned or pledged to obtain bridge financing, but only to banks and financial institutions.

## C. Applications

Applications have to be filed with the FFA in Berlin. It is advisable to liaise with the FFA before the final submission.

- There are no specific application deadlines, but as the GMPF operates on a first come, first served basis until the exhaustion of its annual budget, an application early in the year is advisable.
- Applications need to be filed at least six weeks prior to commencement of principal photography/animation work and principal photography/animation work may only commence after the approval of the grant, unless the FFA has granted a specific exception.
- 75% of the financing has to be in place.
- The entire financing has to be fully closed within three months after the approval of the grant. This period can only be extended once by one month.
- After the approval of the grant by the FFA, shooting/animation work has to start within four months and the project has to be finished within the deadline set out in the application. These periods can only be extended once.
- A binding agreement with a distributor/broadcaster/VOD platform (as applicable) must be in place and submitted to the FFA at the time of submitting the application.

## Contact details

Filmförderungsanstalt (FFA) / German Federal Film Board  
Große Präsidentenstraße 9  
10178 Berlin, Germany  
Tel.: +49 30 27 577 0

An English copy of the GMPF Guidelines of 1 December 2015 is available at:

<http://www.bmwi.de/BMWi/Redaktion/PDF/G/german-motion-picture-fund-fundig-guidelines,property=pdf,reich=bmwi2012,sprache=de,rwb=true.pdf>





# Annex 1: Cultural Test – Non-Animated Films and Television Series/Single Episodes

Creative Content	Maximum points
The majority of scenes (fictional content/material) are played out in Germany or in German-speaking areas	4
The majority of scenes (fictional content/material) are played out in a different EU or EEA state	3
The project makes reference to subjects of current social or political relevance	3
The project makes reference to the subject of German/European history/politics	3
The project uses German locations	3
The project uses other European locations (if there are no German locations)	3
A principal character in the underlying material is/was German or from another EU or EEA state	3
German or European filming locations are used	2
The storyline/underlying material is based on a book, a computer game, a play, an opera, a comic	3
The final version is in German/has German subtitles	3
The plot/underlying material is German or from another EU or EEA state	2
Overall	32

Creative Talents from Germany or EEA	Maximum points
Leading actor: One leading actor (2 points), or at least two leading actors (4 points)	4
Leading actor: One leading actor (2 points), or at least two leading actors (4 points)	2
Director	2
Scriptwriter	2
Producer/co-producer (natural person)	2
Cameraman	1
Digital Image Technician (DIT)	1
Composer	1
Costume designer	1
Lead animation artist	1
Make-up artist	1
Lead FX artist	1
VFX supervisor/producer	2
Post production supervisor	2

# Annex 1: Cultural Test – Non-Animated Films and Television Series/Single Episodes

Creative Talents from Germany or EEA	Maximum points
Film editor/cutter	1
Colour correction/grading	1
Sound editing/sound designer	1
Executive producer/line producer	1
Set designer (analogue and digital)	1
Art director/lead shading artist/texturing artist	1
Dubbing artists (one point each for the first three main roles)	3
Overall	32

Production	Maximum points
Development and/or use of innovative technologies which have not been/hardly been used before in the film industry	5
Studio recording in Germany	3
Location filming in Germany	3
VFX costs spent in Germany	4
SFX costs spent in Germany	3
Music recorded in Germany	2
Sound editing in Germany	3
Picture editing (without VFX) in Germany	2
Post-production services in Germany	3
Final editing in Germany	2
Film processing work through to the answer print in Germany	2
Overall	32



# Annex 2: Cultural Test – Animated Films and Television Series/Single Episodes

Creative Content	Maximum points
In terms of content, the project is intended and suitable for children/young people	4
The project makes reference to subjects of current social or political relevance	3
The project makes reference to the subject of German/European history/politics	3
The project uses German or European locations	2
A principal character in the underlying material is/was German or from another EU or EEA state	2
The storyline/underlying material is based on a book, a computer game, a play, an opera, a comic	3
The final version is in German	2
The plot/underlying material is German or from another EU or EEA state	2
Overall	21

Creative Talents from Germany or EEA	Maximum points
Director	2
Scriptwriter	2
Producer/co-producer (natural person)	2
Lead storyboard artist	2
Art director	2
VFX supervisor	2
Animation supervisor	2
Character designer	1
Equipment/concept artist	1
Set design/set designer	1
Composer	1
Musical performance/artist/band	1
Film editor/cutter	1
Sound editing/sound designer	1
Executive producer/line producer	1
Dubbing artists (one point each for the first four main roles)	4
Overall	26

## Annex 2: Cultural Test – Animated Films and Television Series/Single Episodes

Production	Maximum points
Development and/or use of innovative technologies which have not been/hardly been used before in the film industry	4
Storyboard from Germany	2
Modelling and texturing in Germany	2
Production design/rigging in Germany	2
Lighting/light rigging in Germany	1
Animation including motion capture in Germany	2
Calculation/rendering in Germany	2
Editing in Germany (one point each for image and sound)	1
Music recorded in Germany	1
Music recorded in Germany	2
Post-production in Germany	2
Overall	21

# Annex 3: Cultural Test – Animated Films produced pursuant to the European Convention on Cinematographic Co-production

Creative Talents from Germany or EEA	Maximum points
Person responsible for the concept	1
Screenplay	2
Character designer	2
Composer	1
Director	2
Person responsible for the storyboard	2
Production designer	1
Background supervisor	1
Layout artist	2
Overall	14

Production in Germany or the EEA	Maximum points
50% of costs for animation work	2
50% colouring	2
100% compositing	1
100% editing	1
100% sound	1
Overall	7



## Contact

Please contact us for further information on the GMPF and/or the various other federal and regional film subsidy schemes available in Germany as well as in other territories.

Jacqueline is a London-based partner in CMS' Media, Communications & Technology group.

She specialises in contractual issues (rights acquisition agreements, international co-productions, output deals, sales and distribution agreements, merchandising agreements, security agreements, etc) as well as in the financing, production and distribution of films and television programmes with particular experience in film financing in connection with the structuring of co-productions with any combination of government subsidies, tax-based finance, distribution pre-sales and banking finance.

Having acted for financiers and producers both in the UK and Europe, Jacqueline has knowledge of the legal and practical requirements of both.



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