



A programme of the European Union



MEDIA Programme (2007-2013) *

SUPPORT FOR THE TRANSNATIONAL DISTRIBUTION OF EUROPEAN FILMS – INTERNATIONAL SALES AGENTS OF EUROPEAN CINEMATOGRAPHIC FILMS

PERMANENT GUIDELINES 2012-2013

*** Decision N° 1718/2006/EC
of the European Parliament and the Council**

DISCLAIMER

Please note that the standard grant agreements/decisions of the Agency are currently under revision due to the entry into force of the new Financial Regulation and its Rules of Application as from 01 January 2013. For this reason they are not annexed yet to the call. However, please note that the other documents available to you are already in line with the new provisions and provide you with all the necessary information to prepare your application.

Version history

| Version | Date | Comments |
|---------|---|---|
| 1.0 | April 2012 | First version for public release |
| 2.0 | January 2013 <i>The changes below take into account the entry into force of the new Financial Regulation and its Rules of Application as from 1/01/2013.</i> | <p>6. Exclusion Criteria</p> <p>Text Updated.</p> <p>If the grant does not exceed EUR 60 000, applicants do not have to sign any declaration on honour for the exclusion criteria.</p> <p>7. Selection Criteria</p> <p>If the grant does not exceed EUR 60 000, applicants do not have to prove their operational and financial capacity.</p> <p>9. Funding conditions</p> <p>Profit is defined as a surplus of receipts over eligible costs.</p> <p><u>9.1 Contractual provisions and payment procedure</u></p> <p>Payment deadlines have been modified and interests on pre-financing for grants are no longer compulsory.</p> <p><u>9.2 Guarantee</u></p> <p>Guarantees may only be requested where the grant exceeds EUR 60 000.</p> <p><u>9.4 – Funding method:</u></p> <p>Non deductible VAT will be eligible except for activities of public authorities in Member States.</p> <p>New procedure of certification</p> <p>12. Data Protection</p> <p>Text Updated.</p> <p>13. Procedure for the submission of proposals</p> <p>Reference is made to recent legislation and to the new Financial Regulation.</p> |

Contents :

- 1. Introduction**
- 2. Objectives and priorities**
 - 2.1. Global objectives of the Programme**
 - 2.2. Specific objectives of the Automatic Sales Agents Scheme**
 - 2.3. Priorities**
- 3. Timetable**
 - 3.1. « Generation » Stage**
 - 3.2. « Reinvestment » Stage**
- 4. Budget available**
- 5. Eligibility Criteria**
 - 5.1. Formal criteria**
 - 5.2. Eligible countries**
 - 5.3. Eligible applicants**
 - 5.4. Eligible activities**
- 6. Exclusion Criteria**
- 7. Selection Criteria**
 - 7.1. Operational capacity**
 - 7.2. Financial capacity**
 - 7.3. Audit**
- 8. Award Criteria**
 - 8.1. « Generation » Stage**
 - 8.2. « Reinvestment » Stage**
- 9. Funding Conditions**
 - 9.1. Contractual provisions and payment procedure**
 - 9.2. Guarantee**
 - 9.3. Double financing**
 - 9.4. Funding method**
- 10. Sub-contracting and award of procurement contract.**
- 11. Publicity**
- 12. Data Protection**
- 13. Procedure for the submission of Proposals**
 - 13.1. Publication**
 - 13.2. Application forms**
 - 13.3. Submission of the grant application**
 - 13.4. Rules applicable**
 - 13.5. Contacts**

1. INTRODUCTION

These guidelines explain how to submit a proposal in response to an "Automatic Sales Agents Scheme" Call for Proposals.

The Calls for Proposals to which these guidelines are referring will be published annually. In accordance with each Annual Work Programme of the MEDIA Programme, the Calls for Proposals will indicate the budget earmarked for the action, the timetable for the submission of project and the period of eligibility of costs.

The Call for Proposals to be published in 2013 will be subject to the renewal of the MEDIA programme as from 2014 and the inclusion in same of the Sales Agents scheme.

These guidelines are based on Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007)¹ and featured in the MEDIA Work Programme for 2011.

The total budget for the MEDIA Programme 2007-2013 amounts to EUR 754,95 million.

The European Commission is responsible for the implementation of the MEDIA Programme and for the decision to grant individual European Union funds. The Education, Audiovisual and Culture Executive Agency hereafter "the Agency" manages the MEDIA Programme on behalf and under the control of the European Commission.

The MEDIA Programme unit of the Education, Audiovisual and Culture Executive Agency is responsible for the implementation of the Calls for Proposals for the Automatic Sales Agents scheme.

These guidelines are aimed at European organisations whose activities contribute to the achievement of the objectives of the MEDIA Programme as described in the Council Decision 1718/2006/EC.

The measures covered by the Decision include support for the transnational distribution of European films.

These guidelines explain how to submit a proposal in view of obtaining a Union financial contribution.

¹ published in the Official Journal of the European Union on the 24th of November 2006 (OJ L327, pp 12-29).

2. OBJECTIVES - PRIORITIES

2.1. Global objectives of the Programme

The global objectives of the programme are the following:

- a. to preserve and enhance European cultural and linguistic diversity and its cinematographic and audiovisual heritage, guarantee its accessibility to the public and promote intercultural dialogue;
- b. to increase the circulation and viewership of European audiovisual works inside and outside the European Union, including through greater cooperation between players; and
- c. to strengthen the competitiveness of the European audiovisual sector in the framework of an open and competitive European market favourable to employment, including by promoting links between audiovisual professionals.

2.2. Specific objectives of the "Automatic Sales Agents Scheme"

The aim of the Automatic Sales Agents scheme is to encourage and support the wider transnational distribution of recent European films by providing funds to sales agents, based upon their performance on the market, for further reinvestment in new non-national European films.

The scheme also aims to encourage the development of links between the production and distribution sectors thus improving the competitive position of non-national European films and the competitiveness of European companies.

2.3. Priorities

These guidelines are aimed at European companies whose activities contribute to the realisation of the above objectives, and in particular at sales agents companies. They explain how to submit a proposal with a view to the generation of a potential fund in response to Calls for Proposals for the Automatic Sales Agents scheme.

The "Sales Agents" support scheme works in two phases :

1. The generation of a potential fund, which will be calculated according to the performance of the company on the European market over a given period.
2. Reinvestment : the potential fund thus generated by each company must be reinvested in :
 - minimum guarantees or advances paid for the international sales rights on new European non-national films;
 - the promotion, marketing and advertising on the market of new non-national European films.

3. TIMETABLE

Please read carefully Section 13 of these guidelines concerning the procedure for submitting an application.

It is foreseen to publish a Call for Proposals in the first quarter of 2012 and 2013.

3.1. Timetable for "Generation" Stage

The Call for Proposals to be published annually will indicate the deadline for the submission of applications for the "Generation" of a potential fund.

It is foreseen that the deadline for the "Generation" will be during the 2nd quarter of the year of publication of the Call for Proposals.

The reference years for the eligible admissions will be the 5 years preceding the publication of the Call for Proposals.

i.e: the reference years for the call published in 2012 will be 2007-2011
 the reference years for the call published in 2013 will be 2008-2012

Applicants will be informed normally within 7 months of the submission deadline whether or not they have generated a potential fund for further reinvestment. However, as the completion of the process requires the prior completion of the Automatic Generation for the period, an additional delay may occur if this process is held up.

This decision will be final.

Should an application be unsuccessful, the Agency will inform the applicant as soon as possible and in writing of the reasons for its decision with regards to the criteria established in these guidelines.

3.2. Timetable for "Reinvestment" Stage

The deadlines for the reinvestment actions of the potential fund will need to respect the deadlines set out in each annual call:

- **Earliest start date of the action:**
The international sales contract/agreement with the producer can be signed at the earliest on the date of the generation deadline
- **Deadline for presentation of the reinvestment action:**
The reinvestment applications must be submitted to the Agency within 6 months of the signature of the international sales contract/agreement with the producer and no later than the deadline for reinvestments indicated in the Call for Proposals.
The potential fund which is not reinvested by the beneficiary by this deadline will be lost.

The intention is to inform applicants of the outcome of the selection procedure no later than 16 weeks after the relevant submission date. However for submissions sent prior to the completion of the Generation, an additional delay may occur.

The period of eligibility of costs starts on the date of the signature of the international sales contract and ends 18 months after this date. Only those costs incurred by the beneficiary during the period of eligibility of costs will be eligible.

Reinvestment actions agreed by the Agency will be the subject of an agreement between the beneficiary and the Agency setting out the terms and conditions of the financial contribution granted.

However, if after the signing of the agreement and the start of the action it becomes impossible for the beneficiary, for fully justified reasons beyond his control, to complete the action within the scheduled period, an extension to the eligibility period may be granted. A maximum extension of 6 additional months may be granted, if requested 1 month before the end of the eligibility period following the conditions and modalities specified in the agreement.

4. BUDGET AVAILABLE

The total budget earmarked for the co-financing of actions under this scheme will be indicated in each Call for Proposals.

The amount of the financial contribution to be awarded will be determined within the limits of the available budgetary resources and with regards to the selection and award criteria. Under no circumstances may the amount of the financial contribution awarded by the Agency exceed 50% of the total eligible costs of the action. The recipient company must guarantee the remaining finance.

“Generation”: The total annual amount of potential funding available to each sales agent shall be determined on the basis of the recent European films sold by the sales agent.

In the case of “Reinvestment”, the amount of the financial contribution awarded to each company is determined with respect to the cost and nature of each proposed reinvestment action. Support will be in the form of a subsidy.

The Agency reserves the right not to distribute all the funds available.

5. ELIGIBILITY CRITERIA

Applications which comply with the following criteria will be the subject of an in depth evaluation.

5.1 Formal criteria

Only proposals using the official application form, completed in full, signed (original signatures or equivalent required) and received by the specified deadline, will be considered.

The application form must be accompanied by an official letter from the applicant organisation, a balanced budget and all the other documents referred to in the application form.

The Agency reserves the right to request additional information from the applicant.

5.2 Eligible countries

Countries participating in the MEDIA programme are the following:

- Member states of the European Union
- EEA and EFTA countries: Iceland, Liechtenstein, Norway, Switzerland
- Croatia and Bosnia & Herzegovina²

Countries with a low production capacity:

For the purpose of these guidelines the following countries will be considered as countries with a low production capacity: Austria, Belgium, Bosnia & Herzegovina², Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Eire - Ireland, Iceland, Liechtenstein, Latvia, Lithuania, Luxembourg, Malta, Norway, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and Switzerland.

5.3 Eligible applicants

European sales agents:

Any European company acting as an intermediary agent for the producer, who specialises in the commercial exploitation of a film by marketing and licensing a film to distributors or other purchasers for foreign territories.

The Sales Agent must be appointed by the producer of the film by way of a written contract or agreement. A contract / agreement signed between a sales agent and a producer will be considered as an international sales contract / agreement only if it provides for the right of the sales agent to sell the film in **at least 10 countries** participating in the MEDIA Programme.

To qualify as a European company, the applicant company must be owned, whether directly or by majority participation, by nationals of Member States of the European Union and of the European Economic Area (or nationals of the other European countries participating in the MEDIA Programme) and registered in one of these countries.

Legal Entity:

In order to demonstrate its existence as a legal entity, the applicant must have completed the Company Form once per year. Together with the form, they must provide the following documents:

- **"Legal Entity Form"** duly completed and signed by the legal representative of the applicant
- **"Financial Identification"** ("Bank Identification Sheet") duly completed, stamped and signed by both the legal representative of the applicant and by a representative of the bank

These documents must mention the name of the applicant organisation (full legal title), the registration number, the official registered address of the organisation, the date and place of registration.

² Under the condition of the finalisation of the negotiation process and the formalisation of the participation of this country to the MEDIA Programme

- A copy of the **VAT registration**, including the VAT number (EVEN for those countries where the Registration & VAT numbers are identical). If the applicant does not have a VAT number, "Not applicable" shall be written down in the appropriate place on the application form.
- A copy of the **applicant's registration certificate** from the relevant authority, (e.g Companies register, Official Journal, etc.) and the **statutes** of the applicant organisation (including copies of all recent amendments either to the registration documents or to the elected shareholders, directors, board members or other legal representatives).

If the name of the legal representative of the organisation is not stated in the official registration document, a copy of his/her nomination is also required (for instance: signed minutes of the Board).

Where the person authorised to sign any agreement with the Agency is not an individual specified in the documents mentioned in the previous paragraph, a letter or proxy (signed by one of the aforementioned individuals) giving them the authority to sign agreements with the Agency on the organisation's behalf must be provided.

As the legal structure of a company may vary from country to country, the relevant Legal Entity Form is only enclosed with these guidelines in sample form. Applicants must access the appropriate form at http://ec.europa.eu/budget/info_contract/legal_entities_en.htm and complete the form in their national language.

Note: Individuals who are registered for VAT will be treated as Private Companies.

5.4 Eligible activities

1. The generation of a potential fund, which will be calculated according to the international sales performance of the company on the European market over a given period.

2. Reinvestment : the potential fund thus generated by each company in :

- minimum guarantees or advances paid for the international sales rights on new European non-national films (module 1);
- the promotion, marketing and advertising on the market of new non-national European films for its cinema / theatrical distribution (module 2).

International sales :

Any commercial activity designed to promote and sell the exploitation rights to a cinematographic film on the marketplace, in particular to cinema distributors. This activity includes, inter alia :

- the negotiation and execution of contracts licensing the rights to exploit or exhibit the film;
- the promotion and advertising of the film in markets or festivals (screenings, advertising, promotional events)
- the design and dissemination towards potential buyers of promotional material for the film (EPK, stills, slides, "making-of", ...)

- the design and dissemination towards the press (trade press or other) and the potential audience of the film of promotional material and information (web site, ...).

Cinema / Theatrical distribution:

Any commercial activity designed to bring to the attention of a wide audience a film for the purpose of exploitation in cinema theatres. Such activity may include aspects of the technical publishing of an audio-visual work (dubbing and subtitling, striking of prints, circulation of prints, etc.) as well as marketing and promotional activities (production of trailers and publicity material, the purchase of advertising space, the organisation of promotional events etc.).

European film:

Any recent work of fiction (including animated films) or documentary, with a minimum duration of 60 minutes, complying with the following conditions:

- the work has been majority produced by a producer or producers established in the countries participating in the MEDIA Programme. To be considered as the actual producers the production companies must be credited as such. Other elements such as creative control, ownership of exploitation rights and share of profits may also be taken into account to determine who the actual producer is;

and

- the work must be produced with the significant participation of professionals who are nationals/residents of countries participating in the MEDIA Programme. 'Significant participation' is defined as having more than 50% of the points on the basis of the table below, (e.g. having 10 or more points in the case of a work of fiction or the biggest share of points if the total is less than 19 as is normally the case for documentaries or animation films where all of the categories are not usually included in the credits):

| + | Points |
|-------------------------------------|-----------|
| Director | 3 |
| Scriptwriter | 3 |
| Composer | 1 |
| Actor 1 | 2 |
| Actor 2 | 2 |
| Actor 3 | 2 |
| Artistic Director/Production Design | 1 |
| Director of Photography | 1 |
| Editor | 1 |
| Sound | 1 |
| Shooting location | 1 |
| Laboratory | 1 |
| Total | 19 |

Recent films are those whose first copyright has been established during the 5 years preceding the year of publication of the Call for Proposals.

Films consisting of advertising, pornographic or racist material or advocating violence are not eligible for support.

National / Non-national European film

European films will be considered as national in that member state or territory participating in the MEDIA Programme whose citizens / residents have participated in the highest proportion in the making of the film, on the basis of the points table shown above. They will be considered as non-national in all the other territories.

6. EXCLUSION CRITERIA

Applicants must state that they are not in any of the situations described in Articles 106(1), 107 and 109 of the Financial Regulation applicable to the general budget of the Union³

Applicants will be excluded from participating in the call for proposals procedure if they are in any of the following situations:

- a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) they or persons having powers of representation, decision making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
- c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;
- d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the responsible Authorising Officer or those of the country where the grant agreement is to be performed;
- e) they or persons having powers of representation, decision making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
- f) they are currently subject to an administrative penalty referred to in Article 109(1) of the Financial Regulation.

Applicants will not be granted financial assistance if, in the course of the grant award procedure, they:

- (a) are subject to a conflict of interests;
- (b) are guilty of misrepresentation in supplying the information required by the Agency as a condition of participation in the grant award procedure, or fail to supply this information.

³ This provision does not apply for grants which are lower than or equal to EUR 60 000. Article 131 (4)(a)

- (c) find themselves in one of the situations of exclusion, referred to in Article 106 (1) of the Financial Regulation, for this grant award procedure;
- (d) they are subject to the penalty consisting in the exclusion from contracts and grants financed by the budget for a maximum period of ten years.

In accordance with Article 109 of the Financial Regulation, administrative and financial penalties may be imposed on beneficiaries, or affiliated entities where applicable, who are guilty of misrepresentation or are found to have seriously failed to meet their contractual obligations under a previous contract award procedure.

To comply with these provisions, applicants for a grant exceeding EUR 60.000 must sign a declaration on their honour certifying that they are not in any of the situations referred to in Articles 106(1) and 107 to 109 of the Financial Regulation.

7. SELECTION CRITERIA

Applicants must have stable and sufficient sources of funding to maintain their activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. They must have the professional competencies and qualifications required to complete the proposed action or work programme.

Applicants must submit a declaration on their honour, completed and signed, attesting to their status as a legal person and to their financial and operational capacity to complete the proposed activities.

Applicants who fail to provide the requested documents or who, on the basis of the documents submitted, are judged not to meet the selection criteria, will be excluded.

7.1. Operational Capacity

In order to allow an assessment of their operational capacity, organisations applying for a grant exceeding EUR 60.000 must submit, together with their applications:

- the curriculum vitae of the legal representative of the company and
- the curriculum vitae of the Head of International Sales (if they are not the same person);

7.2. Financial Capacity

In order to allow an assessment of their financial capacity, organisations applying for a grant exceeding EUR 60.000 must submit, together with their applications:

- the audited annual accounts of the 2 most recent completed fiscal years for profit companies and of the last year for non profit companies (i.e. balance sheet, profit and loss accounts and the annexes) must be included within the application form. These accounts should be certified by an approved auditor external to the company;
- the Financial Capacity form (see point IV of Company Application Form) carefully and fully completed must be signed by the legal representative of the company. The information (in

figures) should be given in national currency and must be based on the certified accounts. The applicant guarantees that these figures are correct and verifiable. This information is required to evaluate the financial strength and co-financing capacity of the applicant.

The analysis of the Financial Capacity will take into account the legislative framework of the different countries participating in the Programme.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships nor to public bodies, or to international organisations under public law.

If, on the basis of the documents provided, the Agency considers that the financial capacity has not been proven or is not satisfactory, it may:

- reject the application
- ask for further information
- require a bank guarantee (see 9.2)
- offer a grant agreement without pre-financing.

7.3. Audit

For applicants requesting a contribution of more than EUR 500.000,00, grant applications must be accompanied by an external audit report produced by an approved external auditor.

This report shall certify the accounts for the last fiscal year available.

8. AWARD CRITERIA

8.1 Generation Stage

A potential fund will be attributed to eligible European sales agents on the basis of their performance on the European markets (i.e. countries participating in the MEDIA Programme).

Shall the sum of generated funds exceed 1.5M€ under each call, each potential fund will be reduced proportionally.

The support will take the form of a potential fund (the “fund”) available to sales agents for further investments in recent non-national European films.

Within the limit of the budgetary resources available, the amount of potential fund available to each Sales Agent will be calculated on the following basis:

A) Step 1. The applicant sales agent shall provide evidence of its activity as a sales agent for European cinematographic films. To this end, the sales agent shall prove that:

- it was, over the 5 calendar years preceding the year of publication of the call, the appointed sales agent of **at least 8 recent European films⁴** (of which at least **1 non-**

⁴ i.e. European films whose first copyright has been established during the 5 years preceding the year of publication of the call.

national film), for which the agreement with the producer provided the right to sell the film in at least 10 countries participating to the MEDIA Programme; the mandate must be signed and take effect within the reference period,

- **and** that, **during the same period**, for **at least 4 of these films in at least 3 countries** participating in the MEDIA Programme, outside the country of origin of the films there was a theatrical release as evidenced by distributor declarations to the MEDIA Programme.

In exceptional circumstances where the national theatrical release has not been reported to the Automatic scheme, the declaration of the applicant Sales Agent may be accepted in the event that it is accompanied by independent proof which can reasonably be verified by EACEA.

If this first step is successfully completed, the sales agent shall be entitled to a potential support of **EUR 20.000,00**.

- B) Step 2. If (and only if) the applicant sales agent has completed successfully the conditions set out for the first step, an additional potential fund may be available. This fund will be calculated according to the following principle:

a) as **a percentage of the total potential fund generated under the latest call of the Cinema Automatic scheme for theatrical distribution** by the non-national films:

- 10 % for films from countries with a high production capacity (DE, ES, FR, IT, UK);
- 15 % for films coming from countries "with a low production capacity" other than those listed below;
- 20 % for films coming from new Member States of the European Union (Bulgaria, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Romania, Slovakia, Slovenia), Croatia and Bosnia and Herzegovina.

b) besides the 4 films released to pass step 1, the sales agent will generate an additional potential fund of EUR **1500** per extra film declared in at least 3 countries participating in the MEDIA Programme, outside the country of origin of the films (as evidenced by distributor declarations to the MEDIA Programme Cinema Automatic scheme).

The amounts indicated above are provisional and may be subject to modification depending upon the budgetary resources available.

Following the calculation of the potential fund generated, the Agency will inform each beneficiary of the amount of potential Fund available for reinvestment.

The generation stage is a method to calculate a maximum potential fund to be reinvested in new projects depending upon the budget available. The notification to the sales agent of the potential Fund generated does not constitute a claim on the European Commission/Agency.

8.2 Reinvestment Stage

Sales agents can present reinvestment actions starting from the deadline of the Call for Proposals.

These actions will be processed by the Agency following the assessment of the “generation” phase of the fund, and will be treated on the basis and within the limits of the potential Fund generated by the sales agent as calculated and notified by the Agency.

The potential Fund can be reinvested :

- ☐ Module 1: Minimum Sales Guarantees for new European **non-national** films.
- ☐ Module 2: Marketing costs for new European **non-national** films.

The potential Fund can be reinvested in one or several films. Reinvestments in Module 1 and in Module 2 for the same film are allowed.

Beneficiaries wishing to reinvest (part of) their potential Fund should send to the Agency a project of reinvestment.

Reinvestment actions must be approved by the Agency.

Reinvestment of the potential Fund into completed actions is impossible.

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|---------------------------------------|
| <h2>9. FUNDING CONDITIONS</h2> |
|---------------------------------------|

An EU grant is an incentive to carry out activities that would not be possible without the support of the Union. It is based on the principle of co-financing. The EU grant supplements the applicant organisation's own financial involvement and/or any national, regional or private support it may have obtained.

Acceptance of an application by the Executive Agency does not constitute an undertaking to award a grant equal to the amount requested by the beneficiary. Furthermore, under no circumstances may the amount awarded exceed the amount requested.

The awarding of a grant does not establish an entitlement for subsequent years.

9.1 Contractual provisions and payment procedures

In the event of definitive approval by the Agency, a grant agreement, drawn up in euro and detailing the conditions and the level of funding will be sent to the beneficiary. The 2 copies of the original agreement must be signed by the beneficiary and returned to the Agency immediately. The Agency will sign them last.

As a general rule payments will be made as follows:

- A pre-financing payment of 50% will be transferred to the beneficiary within 30 days of the date when the last of the two parties signs the agreement and all the possible guarantees are received. Pre-financing is intended to provide the beneficiary with a float.

- Payment of the balance is made after the end of the action on the basis of the implementation of the action and the approval by the Agency of final reports. In order for the Agency to agree to a payment, additional information may be requested from applicants when the final reports are submitted. The amount of this final contribution depends on actual eligible costs incurred by the beneficiary within the period of eligibility of costs and the levels of co-financing ultimately obtained. If applicable, the beneficiary will be required to reimburse any surplus already paid as part of initial pre-financing. The final payment will be made within 60 days after the Agency receives a request for payment accompanied by a final report on the action's implementation, provided the Agency approves the report.

The Agency will establish the amount of the final payment to be made to the beneficiary on the basis of the financial statements certified by an independent and approved external auditor.

The account or sub-account indicated by the beneficiary must make it possible to identify the funds transferred by the Agency.

Any MEDIA grant shall remain the exclusive property of the beneficiary. Union Law and the general conditions of any eventual contract offered to a distributor clearly lay down the fact that the Union Contribution (grant) "shall be used by the Beneficiary solely, exclusively and directly in discharging eligible expenses incurred".

9.2 Guarantee

The Agency may require any organisation which has been awarded a grant exceeding EUR 60.000 to provide a guarantee in order to limit the financial risks linked to the pre-financing payment.

The purpose of this guarantee is to make a bank, a financial institution or a third party stand as irrevocable collateral security for, or first-call guarantor of, the grant beneficiary's obligations.

This financial guarantee, in euro, shall be provided by an approved bank or financial institution established in one of the Member States of the European Union. When the beneficiary is established in a third country, the Agency may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

The guarantee may be replaced by a joint and several guarantees by a third party or by a joint guarantee of the beneficiaries of an action who are parties to the same grant agreement.

The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of balances to the beneficiary, in accordance with the conditions laid down in the grant agreement.

9.3 Double financing

Subsidised actions may not benefit from any other Union or Eurimages funding for the same activity. (Eurimages. i.e. European cinema support from the Council of Europe).

To ensure this, they must give details in their application form of any other grant requests other than those submitted to the MEDIA Programme which they have submitted or intend to submit to the European Institutions during the same operating year, stating in each case the budget heading, the European Union programme and the amount requested.

9.4 Funding method

The system of financing under these guidelines is exclusively budget-based.

Budget-based grants are calculated on the basis of a detailed estimated budget. The budget attached to the application form must be complete and in balance, i.e. total estimated expenditure must equal total revenue, including the Executive Agency grant application. The budget must indicate clearly the costs that are eligible for EU funding. The EU grant is limited to a maximum co-financing rate of 50% of eligible costs.

The budget must be drawn up in euro. Applicants not based in the euro zone must use the exchange rate published in the Official Journal of the European Union and applicable on the month before the application. This exchange rate is available from the MEDIA Desks and Antennae and from the web site of the Commission at <http://ec.europa.eu/budget/inforeuro/>).

Part of the total estimated eligible expenses must be financed from sources other than the Union grant. Applicants must indicate the sources and amounts of any other funding received or applied for in the same financial year for the implementation of the project or work programme concerned.

The beneficiary shall supply evidence of the co-financing provided, if requested to do so.

The allocated amount may not exceed the amount requested.

9.4.1 Eligible costs

Eligible costs of the action are costs actually incurred by the beneficiary, which meet the following criteria:

- they are incurred during the duration of the action as specified in the grant agreement, with the exception of costs relating to final reports and certificates on the action/action's financial statements and underlying accounts;
The period of eligibility of costs is indicated in the Call for Proposals.
- they are connected with the subject of the agreement and they are indicated in the estimated overall budget of the action;
- they are necessary for the implementation of the action which is the subject of the grant;
- they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost-accounting practices of the beneficiary;
- they comply with the requirements of applicable tax and social legislation;
- they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.

The beneficiary's internal accounting and auditing procedures must permit direct reconciliation of the costs and revenue declared in respect of the action with the corresponding accounting statements and supporting documents.

Eligible direct costs

The eligible direct costs for the action are those costs which, with due regard for the conditions of eligibility set out above, are identifiable as specific costs directly linked to the performance of the action or the work programme and which can therefore be booked to it directly. In particular, the following direct costs are eligible, provided that they satisfy the criteria set out in the previous paragraph:

Eligible costs for reinvestment in Module 1 (MG)

Only the costs of the Minimum Guarantee or Advance set out in the international sales contract/agreement signed between the sales agent and the producer of the film will be eligible.

A contract/agreement signed between a sales agent and a producer will be considered as an international sales contract/agreement only if it provides for the right of the sales agent to sell the film in at least 10 countries participating to the MEDIA Programme.

Eligible costs for reinvestment in Module 2 (Marketing costs)

A contract/agreement signed between a sales agent and a producer will be considered as an international sales contract/agreement only if it provides for the right of the sales agent to sell the film in at least 10 countries participating to the MEDIA Programme.

The categories of eligible costs are clearly identified in the form "Marketing Budget". We can, in short, distinguish the following categories:

Subheading 1.1: Advertising costs

- Publicity Material : Production of trailers/teaser; making of showreels/promoreels design, layout and printing of the posters; slides and stills, production of advertising spots for radio and TV, flyers, design and layout of press advertising, etc.
- Publicity Spaces: purchase of advertising spaces (posters in markets / festivals, professional press)

Subheading 1.2: Promotion costs

Promotion material such as press files, organisation of market / festival screenings organisation of press screenings, organisation of test-screenings or recruited audience screenings, production of an EPK (electronic press kit), travel and accommodation of the director / cast of the film for the promotion of the film, design and construction of a web site / homepage for the promotion of the film, etc.

Subheading 2.1 : - Optical Print Costs

These costs include the costs related to the optical manufacturing and circulation of the prints for the exploitation of the film in the cinemas: striking of an internegative and prints

of the film, dubbing and subtitling the prints of the film, insurance, transport and taxes, prints maintenance, costs for the national systems of certification of the film.

- Digital Print Costs

These costs include the costs related to the optical manufacturing and circulation of the digital copies for the exploitation of the film in the cinemas : mastering⁵ and duplication of the digital copies, dubbing and subtitling of the digital copies of the film, insurance, transport and taxes, prints maintenance, costs for the national systems of certification of the film.

DVD or Digital Beta for promotional purposes are to be included in heading 2 Promotion Costs.

If the digital costs are eligible according to the list above, the different digital services should be detailed relating to the following :

- master (Digital Source Master (DSM), Digital Cinema Distribution Master (DCDM), specific colour grading for digital release, etc.);
- digital copies : specify what kind of digital copy you use;
- dubbing and subtitling.

Heading 3: Other Costs

Audit Fees.

In the framework of the execution of an eventual financial support agreement, the Agency requires the beneficiary to produce a statement of the final costs. This document must be certified by an approved auditor external to the company on the basis of justifying documents and the accountancy records of the beneficiary. Therefore the costs of this certification are the only costs eligible beyond the eligibility period.

All other Costs.

A space is provided in the form for the disclosure of other costs, directly linked to the actions which are not expressly provided for in the form. These “other costs” must not fall under costs listed under Chapter 9.6 ‘ineligible costs’ and have to be clearly identified and detailed in the application form and/or in the financial report for them to be eligible. Moreover, those costs associated with the normal running of the company are not eligible under this heading.

Non deductible VAT is eligible unless it is related to activities of the public authorities in the Member States.

Eligible Indirect costs (administrative costs)

A flat-rate amount, not exceeding 7% of the eligible direct distribution costs of the action is eligible under indirect costs, representing the beneficiary’s general administrative costs which can be regarded as chargeable to the action (i.e. rent of company offices, insurance,

⁵ Colour grading required for theatrical release, compression of the data, encoding, encryption.

maintenance costs, telecommunications, postal charges, heating, lighting, water, electricity, office supplies, rental of stands on markets and festivals).

Indirect costs may not include costs entered under another budget heading.

Applicants's attention is drawn to the fact that in the case of organisations receiving an operating grant, indirect costs are no longer eligible under specific actions.

9.4.2 Ineligible costs

The following costs shall not be considered eligible:

- return on capital;
- debt and debt service charges;
- provisions for losses or potential future liabilities;
- interest owed;
- doubtful debts;
- exchange losses;
- costs declared by the beneficiary and covered by another action or work programme receiving a European Union grant;
- excessive or reckless expenditure
- contributions in kind
- direct personnel costs of the beneficiary.
- travel and subsistence of staff;
- purchase of equipment.

Non deductible VAT will be eligible except for activities of public authorities in Member States.

Costs which are directly re-invoiced by the Sales Agents to third parties, such as producers or distributors, shall not be considered as eligible costs.

9.4.3 Calculation of the final grant amount

The Executive Agency will establish the final amount of the grant on the basis of the following documents:

- a final report providing details of the implementation and results of the Work Programme ;
- the final financial statement of costs actually incurred, certified by an approved auditor with the certification form provided by the Agency in the grant agreement.

Only in case of Grants for an action of EUR 750.000 or more, when the cumulative amounts of request for payment is at least EUR 325.000, will require the beneficiary to submit, in support of the final payment, a "Report of Factual Findings on the Final Financial Report - Type II" produced by an approved auditor or in case of public bodies, by a competent and independent public officer. The certificate shall certify, in accordance with a methodology approved by the Agency, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.

The procedure and the format to be followed by an approved auditor or in case of public bodies, by a competent and independent public officer, are detailed in the following "Guidance Notes":
http://eacea.ec.europa.eu/about/documents/guidance_notes_audit_type_ii_01.08.2012_en.pdf
The use of the report format set by the "Guidance Notes" is compulsory.

The calculation of the final grant amount by the Agency is based on a detailed final financial statement of the beneficiary, accompanied by supporting documentation for the incurred expenditure. If the eligible costs actually incurred by the beneficiary are lower than anticipated, the Agency will apply the rate of co-financing stated in the grant agreement to the expenditure actually incurred. The Agency also reserves the right to reduce the amount of the grant if the organisation has not fully implemented the agreed project/work programme.

The Union grant may not have the purpose or effect of producing a profit for the beneficiary. Profit is defined as a surplus of receipts over costs. The amount of the grant will be reduced by the amount of any surplus.

Where applicable, the beneficiary will be required to reimburse any excess amounts paid by the Agency in the form of pre-financing.

10. SUB-CONTRACTING AND AWARD OF PROCUREMENT CONTRACT

Where implementation of the action requires sub-contracting or the awarding of a procurement contract, the beneficiary and, where applicable, its partners must obtain competitive tenders from potential contractors and award the contract to the bid offering best value for money, observing the principles of transparency and equal treatment of potential contractors and taking care to avoid conflicts of interests.

Subcontracting is intended for specific, time-bound, project-related tasks which cannot be performed by the beneficiaries themselves. In all cases, tasks to be subcontracted have to be identified in the proposal and the estimated amount entered in the budget. If this is not the case, prior written authorisation from the Agency must be obtained.

11. PUBLICITY

All grants awarded in the course of a financial year must be published on the Internet site of the European Union Institutions during the first half of the year following the closure of the budget year in respect of which they were awarded. The information may also be published in any other appropriate medium, including the Official Journal of the European Union.

The beneficiary authorises the Agency to publish the following information using any form and medium, including via the Internet:

- the beneficiary's name and the address,,
- the subject of the grant,
- the amount awarded and rate of funding.

Upon a reasoned and duly substantiated request by the beneficiary, the Agency may agree to forgo such publicity, if disclosure of the information indicated above would threaten the safety of the beneficiaries or harm their business interests.

Beneficiaries must clearly acknowledge the European Union's contribution in all publications or in conjunction with activities for which the grant is used. Furthermore, beneficiaries are required to give prominence to the name and logo of the programme as well as the mention "with the support of

the MEDIA Programme of the European Union” on all their publications, posters, programmes and other products realised under the co-financed action. If this requirement is not fully complied with, the beneficiary’s grant may be reduced.

12. DATA PROTECTION

All personal data (such as names, addresses, CVs, etc.) will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the European Union institutions and bodies and on the free movement of such data.⁶

Unless marked as optional, the applicant's replies to the questions in the application form are necessary to evaluate and further process the grant application in accordance with the specifications of the Call for Proposals. Personal data will be processed solely for that purpose by the department or Unit responsible for the Union grant programme concerned (entity acting as data controller).

Personal data may be transferred on a need to know basis to third parties involved in the evaluation of applications or in the grant management procedure, without prejudice of transfer to the bodies in charge of monitoring and inspection tasks in accordance with European Union law. The applicant has the right of access to, and to rectify, the data concerning him or her. For any question relating to these data, please contact the Controller. Applicants have the right of recourse to the European Data Protection Supervisor at any time. A detailed Privacy statement, including contact information, is available on EACEA's website:

http://eacea.ec.europa.eu/about/documents/calls_gen_conditions/eacea_grants_privacy_statement.pdf

Applicants and, if they are legal entities, persons who have powers of representation, decision-making or control over them, are informed that, should they be in one of the situations mentioned in:

- the Commission Decision of 16.12.2008 on the Early Warning System (EWS) for the use of authorising officers of the Commission and the executive agencies (OJ, L 344, 20.12.2008, p. 125), or
- the Commission Regulation of 17.12.2008 on the Central Exclusion Database – CED (OJ L 344, 20.12.2008, p. 12),

their personal details (name, given name if natural person, address, legal form and name and given name of the persons with powers of representation, decision-making or control, if legal person) may be registered in the EWS only or both in the EWS and CED, and communicated to the persons and entities listed in the above-mentioned Decision and Regulation, in relation to the award or the execution of a procurement contract or a grant agreement or decision.

13. PROCEDURE FOR THE SUBMISSION OF PROPOSALS

Following the adoption of the Annual Work Programmes, the Calls for Proposals will be published in the Official Journal of the European Union and will be accessible on the MEDIA programme website at the following address: <http://ec.europa.eu/culture/media>.

⁶ Official Journal L 8, 12.1.2001.

These permanent guidelines are valid for the years 2012 to 2013 and for all those reinvestment projects submitted using the funds generated under the Calls for Proposals published during those years.

The “Automatic” support system for Sales Agents works in two successive stages:

- The generation of the support
- The mobilisation or reinvestment of the potential support

These two stages can be summarised as follows:

| Deadline | Stage 1: GENERATION | Stage 2: REINVESTMENT |
|--|--|---|
| Sales Agent | Application from the sales agent for the generation of the support Deadline: as set out in the Calls for Proposals | Presentation of reinvestment actions : within 6 months of the signature of the international sales agreement with the producer and by the deadline set out in the Calls for Proposals |
| Agency | Calculation of the potential Fund generated Notification of approval (or rejection) of its available potential Fund and of the reinvestment rules | Acceptance/Rejection of the reinvestment project Signature of the agreement between the Agency and the beneficiary |
| Payment of a Union Financial Contribution | No | Yes |

13.1. Publication

The Calls for Proposals will be published in the Official Journal of the European Union and on the internet site of the MEDIA Programme at the following address:

http://ec.europa.eu/culture/media/fundings/distribution/support-to-sales-agents/index_en.htm

13.2. Application forms

Grant applications must be drawn up in one of the official EU languages, (preferably in English or French) using the form specifically designed for this purpose.

The forms can be obtained on the Internet at the following address :

http://ec.europa.eu/culture/media/fundings/distribution/support-to-sales-agents/index_en.htm

Please note that only typed applications will be considered.

13.3. Submission of the grant application

Only applications submitted on the correct forms, duly completed, dated, showing a balanced budget (revenue/expenditure) and signed by the person authorised to enter into legally binding commitments on behalf of the applicant organisation will be accepted.

Generation Stage:

European companies applying for the type of support described above must present their proposal in view of the generation of a potential Fund by using the attached application forms and providing the required annexes.

The proposals in view of the generation of a potential Fund must include the following documents:

- a) **Application form « COMPANY » must be filled in by the sales agent only once a year and in case of changes**
- b) **Application form « Films » for European films sold by the sales agent during the 5 years preceding the publication of the Call for Proposals.**

as well as the annexes defined in the application forms.

Proposals for the “generation” of a potential Fund must be sent (postmark date) by the deadline set out in each Calls for Proposals.

Reinvestment Stage:

Two types of reinvestments are possible:

Module 1 - Minimum Guarantee for the international sales of new **non-national** European films.

Module 2 - Marketing and promotion costs for new **non-national** European films.

Reinvestment application forms are attached to the Call for Proposals, they need to be sent together with the requested documents.

The reinvestment applications must be submitted to the Agency within the deadlines set out in the Calls for Proposals, within **6 months** of the signature of the international sales contract/agreement with the producer and **no later than the deadline set out in the Calls for Proposals** (postmark will be taken as proof of timely sending).

All proposals must be sent to the following address **by the relevant deadlines:**

Education, Audiovisual and Culture Executive Agency (EACEA)
MEDIA Programme – P8
BOUR 3/66
Avenue du Bourget, 1
B-1140 Brussels
Belgium

- (a) by registered post or, date as postmark;
- (b) in person at the above address, **before 15h00 on the relevant deadline date** : signed and dated receipt will constitute evidence of timely delivery
- (c) by courier service, date of receipt by the courier service.

Envelopes should be clearly marked :

“MEDIA - DISTRIBUTION EACEA – CINEMA SALES AGENTS CALL N° xx/xx”

No changes to the application file can be made after the application has been submitted. However, if there is a need to clarify certain aspects, the Agency may contact the applicant for this purpose.

Only applications that fulfil all of the eligibility criteria will be considered for a grant. If an application is deemed ineligible, a letter indicating the reasons will be sent to the applicant.

All unsuccessful applicants will be informed in writing.

The applicant has to submit all International sales contracts/agreements relevant to the application including agreements already submitted when applying for support under any previous call of the MEDIA programme. Incomplete applications will be considered non-eligible.

Selected applications will be subject to a financial analysis, in connection with which the Agency may ask the persons responsible for the proposed actions to provide additional information and, if appropriate, guarantees.

The information submitted by the sales agent will be treated as confidential.

No file or document submitted will be returned to applicants at the end of the evaluation and award procedure.

13.4. Applicable Rules

- Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union (therein referred to as the "Financial Regulation").
- Commission Delegated Regulation (EU) No 1268/2012 of 29.10.2012 on the rules of application of Regulation (EU) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union.
- Decision n° 1718/2006/EC of the European Parliament and the Council of 15th November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007).

13.5 Contacts

The Commission service responsible for administrating the MEDIA Programme is the EAC Executive Agency (EACEA).

Any requests for clarification should be addressed to:

Fund Generation: Nanou Dumont - Anne.Dumont-Vandeputte@ec.europa.eu

Fund Reinvestments: Jean-Charles Freyer - Jean-Charles.Freyer@ec.europa.eu

National contacts

Additional information is available at MEDIA Desks and Antennae as per the list included on the following website: http://ec.europa.eu/culture/media/contacts_en.htm