



“SUPPLEMENTARY REGULATION FOR FILM INVESTMENTS IN THE NETHERLANDS”
SUBSIDY SCHEME OF THE NETHERLANDS FILM FUND
[STICHTING NEDERLANDS FONDS VOOR DE FILM]

Having regard to the Cultural Policy Act [*Wet op het specifiek cultuurbeleid*],

01/10

1. **Objective**
2. **Definitions**
3. **Amount of the subsidy**
4. **Criteria**
5. **Application procedure**
6. **Granting of the subsidy**
7. **Obligations of the recipient of the subsidy**
8. **Fixing the subsidy**
9. **Withdrawal and amendment of the subsidy**
10. **Payment and recovery**
11. **Objections**
12. **Term and interim amendment**
13. **Final provisions**

§ 1 Objective

Article 1

1. The objective of this subsidy scheme is to support the production of feature films that are of cultural value because they contribute towards the diversity of cultural expressions in the Netherlands and, due to their accessibility, are able to reach broader audiences. To this end, this subsidy scheme uses the investments promised by the market parties in these feature films as a measure of accessibility, in so far as these investments, in view of the linguistic region at which these feature films are aimed, are insufficient to cover upfront the costs of the production and the cinema release.
2. A feature film is of cultural value if it meets at least three of the following seven criteria:
 - the screenplay, on which the feature film is based, is mainly set in the Netherlands, or in another Member State of the European Union, or in a State that is party to the

- Agreement establishing the European Economic Area, or in Switzerland;
- at least one of the principal characters is connected with the Dutch culture or Dutch language area;
 - the screenplay, on which the feature film is based, is mainly written in the Dutch language;
 - the screenplay, on which the feature film is based, is an adaptation of a literary work originally written in Dutch;
 - the main theme of the feature film concerns art and/or an artist / artists;
 - the main theme of the feature film concerns historical figures or events;
 - the main theme of the feature film addresses topical, cultural, social or political issues relevant to the Dutch population.

§ 2 Definitions

Article 2

The following terms and definitions shall apply to this regulation and the accompanying appendices:

- **applicant:** a legal entity managing a company, the main objective of which is the production and exploitation of feature films and which, at the time the application for the subsidy is made, has been based for more than three calendar years in a Member State of the European Union, or in a State that is party to the Agreement establishing the European Economic Area, or in Switzerland;
- **Board:** the Board of the Netherlands Film Fund;
- **feature film:** any audiovisual work that is primarily intended for screening in cinemas with a screening time of at least sixty minutes;
- **completion guarantor:** the insurer who guarantees that the feature film will be completed and delivered, in accordance with the (budgetary) terms and conditions as stated in the insurance policy, prior to or on the agreed final delivery date, or who guarantees that the film costs incurred so far will be reimbursed in the event that production is abandoned;
- **film costs:** production costs (the costs involved in the production of a feature film), plus the costs for the release copies and for marketing the film in cinemas in the Netherlands;
- **film plan:** the plan of the applicant for carrying out a series of related activities involving the financing, production and exploitation of a feature film;
- **Fund:** the Netherlands Film Fund;
- **guarantee income:** an advance on revenues from exploitation that is not refundable, but recoupable against any revenues that a feature film may generate through screening in cinemas and further exploitation in the broadest sense of the word;
- **investment:** a financial contribution from a market party, which is demonstrably invested in the production of the feature film to the Board's satisfaction and which does not

consist of a deferment or, in the Board's opinion, an equivalent contribution or a sponsorship contribution in kind;

- **deferment:** a decision not to bill for costs on the condition that these costs are repaid out of any proceeds from the feature film;
- **market parties:** parties whose normal professional activities involve distributing and exploiting feature films, in the broadest sense of the word, or making risk-bearing investments;
- **Implementation regulation for feature films:** the subsidy scheme of the Fund, as published in the Government Gazette [*Staatscourant*] on the same date as this regulation;

§3 Amount of the subsidy and subsidy ceiling

Article 3

1. Under this scheme, a subsidy may be granted to the applicant for the production of a feature film which:

- a). shall amount to a maximum of 140 per cent of the sum invested by the market parties in the film costs of a feature film; and which
- b). shall amount to a maximum of 35 per cent of the film costs; and which
- c). shall not exceed € 1,500,000.00.

2. In the case of a feature film for which one or more Dutch administrative bodies and/or the Fund has/have granted a financial contribution in accordance with a scheme other than the present one, the amount of any subsidy granted in accordance with this scheme must not be such that the total sum of financial contributions granted by the Dutch administrative bodies and/or the Fund amounts to more than 50 per cent of the production costs.

3. In the event that the application for a subsidy concerns a feature film that meets the national criteria for difficult films or low-budget films, as stipulated by the Fund in article 5, paragraph 3, of the Implementation Regulation for Feature Films, the previous paragraph shall apply *mutatis mutandis*, on the understanding that the aforementioned percentage shall not exceed 55 per cent of the production costs.

4. If, after the application and finance plan have been submitted, but before the subsidy has been granted, new financial contributions are received, then the Fund will deduct these contributions from the subsidy requested.

Article 4

The ceiling for the granting of subsidies in accordance with this scheme shall be € 12,000,000 per calendar year.

§ 4 Criteria

Article 5

1. On the basis of a request made by the applicant to this effect, the Board of the Fund may

decide to grant a subsidy to cover the estimated film costs of a feature film if, in the opinion of the Board, this feature film meets the following criteria:

a). at least 65 per cent of the estimated film costs, as stated in the film plan, have already been covered by contributions from third parties, either promised in writing as guarantee income or promised in writing as a subsidy, loan or investment to cover the estimated film costs. The number of contributions regarded as deferments must not exceed the producer's fee and overheads included in the estimate and approved by the Fund; and

b). the investments of market parties amount to at least 25 per cent of the estimated film costs, as stated in the film plan, including a sum that is equal to at least 10 per cent of the estimated film costs that has been promised on market terms as an investment by a film distributor as guarantee income or as a contribution to the costs of the intended cinema release in the Netherlands. A maximum of 30% of the investment as guarantee income (the Minimum Guarantee) from the distributor may be arranged by the applicant or by a market party appointed by the applicant.

2. For the application of paragraph 1, under b, the upper limit of the estimated film costs that serve as a basis for determining the extent of the investment promised by the film distributor has been fixed at €5,000,000.

Article 6

1. The Board of the Fund shall always reject an application for a subsidy in accordance with this scheme if, in the opinion of the Board:

a). the granting of the subsidy does not fall within the objective of this scheme; or

b). the feature film for which the subsidy is being requested is not of cultural value, as referred to in article 1, paragraph 2, or is an advertising film or information film; or

c). it is unlikely that the applicant will be able to obtain all the financial resources required, according to the film plan, for the production of the feature film; or

d). it is unlikely that the feature film can be produced in accordance with the estimated film costs stated in the film plan; or

e). it is unlikely that the granting of the subsidy is necessary for the production of the feature film; or

f). it is unlikely that the feature film will be released in cinemas in the Netherlands; or

g). there is insufficient confidence that the film plan will be executed properly; or

h). the application does not comply with the conditions referred to in articles 3 and 5 of this regulation or does not comply with this regulation in some other way.

2. The Board of the Fund shall reject an application for a subsidy under this scheme in the event that, during the seven calendar years prior to the subsidy application, the applicant, or the natural person or persons responsible within the applicant's organisation for the policy, has not had primary responsibility for the production of at least one feature film which, after the premiere, was screened for at least three weeks in three or more cinemas in the Netherlands at the same time and was seen by at least 50,000 people during this period. If the applicant submits another

application for a feature film in the same calendar year, such application shall be rejected if a feature film produced by the applicant in the aforementioned period of seven calendar years has not been seen by at least 100,000 cinema-goers.

3. The Board of the Fund shall reject an application for a subsidy under this scheme in the event that, in the opinion of the Board, the granting of the requested subsidy would result in a situation whereby the applicant has, under this scheme, been granted a total of more than €2,500,000 in subsidies in one calendar year for the production of several feature films by the same applicant.

4. The Board of the Fund shall reject an application for a subsidy under this scheme in the event that, in the opinion of the Board, the applicant must be regarded as a broadcasting corporation or as another institution that has acquired broadcasting time within the meaning of the Media Act [*Mediawet*] or otherwise provides television broadcasts aimed at the Netherlands.

5. For the application of paragraphs 3 and 4, bodies associated with the applicant shall also be considered as applicants. The following shall be regarded as a body associated with the applicant:

- a). a body in which the applicant, directly or indirectly, holds at least a one-third interest; or
- b). a body that, directly or indirectly, holds at least a one-third interest in the applicant; or
- c). a body in which a third party, directly or indirectly, holds at least a one-third interest, while this third party, directly or indirectly, also has at least a one-third interest in the applicant.

§ 5 Application procedure

Article 7

1. An application for a subsidy under this scheme shall be submitted using a form drawn up by the Board.

2. The application form shall include, amongst other things, the film plan, consisting of:

a). the screenplay, including a synopsis of the feature film, in regard to which it is demonstrated that the applicant holds the exclusive filming rights, or in any case a right of option in this regard; and

b). an itemised estimate of the film costs; and

c). a finance plan specifying the following:

(i) the percentage of the estimated film costs of the feature film, as stated in the film plan, that has already been covered by contributions from third parties, which have been either promised in writing as guarantee income or promised in writing as a subsidy, loan or investment to cover the estimated film costs. The number of contributions regarded as deferments must not exceed the producer's fee and overheads included in the estimate and approved by the Fund; and

(ii) a description of the (corporate) background, group relationships, solvency and financial position of the parties that are also contributing to the financing of the feature film for which a subsidy is being requested; and

d). an itemised sales and exploitation plan, showing amongst other things:

(i) an estimate of the income from market parties; and

(ii) the percentage of the estimated film costs that has already been covered by contributions,

promised in writing, from market parties; and

(iii) the percentage of the estimated film costs that has already been covered by an investment by a film distributor, with a view to the intended cinema release in the Netherlands; and

e). an itemised marketing and promotion plan.

3. The form referred to in paragraph 1 must be completed correctly and in full, and must be submitted to the Fund in writing, accompanied by the requested enclosures.

4. Applications for subsidies shall be processed in order of receipt. If the applicant has failed to comply with the terms and conditions of this scheme for the processing of the request, the applicant shall be given the opportunity to supplement this request in accordance with article 4:5 of the General Administrative Law Act [*Algemene wet bestuursrecht*] within 5 working days.

Completion within that period does not affect the date of receipt.

5. If the applicant fails to supplement the application within the period referred to in paragraph 4, a maximum term of 10 working days shall be set during which the application can still be completed. Completion within this maximum term shall mean that the date on which the request complies with the terms and conditions of this scheme with regard to the processing of the request shall be regarded as the date of receipt.

6. If the finance plan submitted does not satisfy the requirements referred to in articles 3 and 5, the applicant shall be given an opportunity to amend the finance plan within five working days.

Article 8

1. Applications for subsidies under this scheme shall not be processed in the event that:

a). an application has already been made previously or is still being processed in respect of the same feature film; or

b). the application has been submitted by fax or e-mail; or

c). the applicant, or an equivalent body as laid down in article 6, paragraph 5, has submitted a subsidy application for another feature film, under this scheme, which is still being processed; or

d). the applicant, or an equivalent body as laid down in article 6, paragraph 5, or the natural person of persons responsible within the applicant's organisation for the policy, has culpably failed to fulfil one or more obligations associated with a subsidy previously granted under this scheme during the five calendar years prior to the application being made.

2. Applications for the granting of a subsidy that comply with the terms and conditions of this scheme for the processing of the request and for the granting of a subsidy shall be adjourned in the event that the granting of the subsidy would involve exceeding the ceiling for the granting of subsidies, as referred to in article 4, until such moment that the Fund again has disposal over the financial means sufficient for the granting of the subsidy in full without exceeding the ceiling for the granting of subsidies, as referred to in article 4.

3. The Fund shall notify the applicant, whose application has been adjourned on the basis of the previous paragraph, as soon as possible after the Fund again has disposal over the financial means sufficient for the granting of the subsidy within the time frames mentioned in article 9.

4. In the notification to the applicant, as referred to in the previous paragraph, the Fund shall give

the applicant the opportunity to supplement the application in writing within 10 working days with information that has altered since the date of the initial application. In the event that the applicant supplies this information within said term of 10 working days and the thus supplemented application complies with the terms and conditions for processing the application, the supplement shall not be regarded as a supplement within the meaning of article 7, paragraph 5, and the date of the original application shall be considered the date of receipt.

5. If an application, submitted prior to 1 January 2010, is adjourned on the basis of paragraph 2, the applicant shall, in the notification as referred to in paragraph 4, be given an opportunity to include a co-producer in the film plan who can demonstrably meet the requirements mentioned in article 6 paragraph 2 to the satisfaction of the Board. The applicant shall be given a term of 10 working days for this purpose. The co-producer shall then be regarded as an applicant for the subsidy requested.

§ 6 Granting of the subsidy

Article 9

1. A decision shall be made with regard to an application for a subsidy under this scheme within eight weeks of receipt of the application.

2. In the event that the Board believes that it will be unable to make a decision on an application for a subsidy within the period referred to in paragraph 1, the Fund shall inform the applicant of this within eight weeks and shall specify a reasonable period within which the decision can be made.

3. The period for making a decision shall be suspended with effect from the date on which the Fund invites the applicant to supplement the application, until the date on which the application has been supplemented or the stipulated period in which to do so has expired.

4. Subsidies shall be granted under this scheme on condition that the applicant co-operates with the establishment of an agreement implementing the decision to grant a subsidy, in accordance with a standard model used by the Fund. Supplementary to the model, the Board may include provisions that serve to realise the objective of the subsidy and impose conditions for the granting of the subsidy relating to the provision of securities by the applicant or the parties that have promised to make contributions to the financing of the feature film.

§ 7 Obligations of the recipient of the subsidy

Article 10

1. In the event that a subsidy is granted under this scheme, the applicant shall be obliged, within a period of no more than three months after the subsidy has been granted, to:

a). submit a written statement from each of the parties involved in the financing of the feature film for which the subsidy has been granted, in which they declare that they are not affiliated with one another and that they are each making their financial contribution at their own risk and account;

and

b). submit the final, written agreements entered into with all the parties involved in the financing

of the feature film that relate to the financing and exploitation of the feature film for which the subsidy has been granted, proving conclusively that each of these parties is committed to the provision of finance for the production of the feature film in accordance with the details submitted in the subsidy application and under terms consistent with those that are attached to the granting of the subsidy under this scheme and which arise from the model implementation agreement used by the Fund; and

c). submit a written statement from a completion guarantor, proving conclusively that the estimated film production costs of the feature film for which the subsidy has been granted, as stated in the budget estimate for the project, are sufficient and that the production and completion of the feature film for which the subsidy has been granted are covered by this completion guarantor from the moment shooting of the film commences. This obligation applies to feature films with a production budget (production costs) upwards of two million euros.

2. Within a period of eight weeks of receipt of all documents, as referred to in paragraph 1, the Fund shall notify the applicant in writing as to whether the obligations referred to in paragraph 1 have, in its opinion, been met.

3. The applicant shall be obliged to ensure that shooting of the feature film for which the subsidy has been granted commences within twelve months after the granting of the subsidy, at the very latest.

4. Deviation from the periods stated in paragraphs 1 and 3 shall not be permitted. In the event that the applicant exceeds these periods, the Fund shall withdraw the decision to grant the subsidy. The withdrawal shall be retroactive up to and including the moment the subsidy was granted.

Article 11

1. The applicant shall be obliged to ensure that shooting of the feature film for which the subsidy has been granted does not commence before the Fund has given notification that the applicant has fulfilled the obligations referred to in article 10, paragraph 1, and – if applicable – the completion guarantor has provided definitive cover for the production and completion of the feature film for which the subsidy has been granted.

2. The applicant shall be obliged to inform the Fund in advance of the moment when shooting of the feature film for which the subsidy has been granted will commence.

3. The applicant shall be obliged to spend an amount equal to the granted subsidy amount in the Netherlands or on (legal) entities based in the Netherlands. In the event that other financial contributions or subsidies have been granted subject to an obligation in relation to (partial) spending in the Netherlands or on legal entities based in the Netherlands, the applicant is at all times entitled to spend at least 20% of the estimated film costs in another Member State of the European Union, or in a State that is party to the Agreement establishing the European Economic Area, or in Switzerland. The territorial expenditure obligation, as laid down in this paragraph, explicitly does not apply to the costs of the release copies and the marketing costs of releasing the film in cinemas in the Netherlands.

4. The applicant shall be obliged to use the subsidy to implement the film plan.
5. The applicant shall be obliged to keep the Fund adequately informed of progress during the production of the feature film for which the subsidy has been granted, and, following the production and release of the film, to provide the information necessary to fix the granted subsidy.
6. The applicant shall be obliged to keep the Fund adequately informed in writing of the costs and revenues as a result of the exploitation of the feature film for which the subsidy has been granted and, as security for the fulfilment of these reporting obligations, to pledge to the Fund the claims that it has against third parties with regard to revenues from the exploitation of the feature film for which the subsidy has been granted.

Article 12

1. The obligations attached to the subsidy which, in the opinion of the Board, are necessary in order to realise the objective of the subsidy shall be laid down in the implementation agreement to be concluded between the applicant and the Fund after the granting of the subsidy. The following, amongst other things, shall be laid down in this agreement:
 - a). what securities the applicant shall provide, in so far as there is, in the opinion of the Board, good reason to do so, in relation to the fulfilment of the obligations of other parties that have promised to make contributions to the financing of the feature film for which the subsidy has been granted; and
 - b). the frequency with which, the time frames within which and the form in which the applicant shall fulfil the reporting obligations referred to in article 11, paragraph 6; and
 - c). the way in which the revenues generated as a result of the exploitation of the feature film shall be allocated to the parties entitled to such revenues and the moment such revenues shall be used to refund the subsidy granted on the basis of this scheme.

Article 13

1. In the event that the applicant fails imputably in the performance of the obligations, or does not fulfil the obligations, which are attached to the granting of the subsidy, the Fund shall be authorised to withdraw or amend the subsidy to the detriment of the applicant. The withdrawal or amendment shall be retroactive up to and including the moment the subsidy was granted, unless otherwise specified at the time of withdrawal or amendment.
2. The Board is also authorised to amend the granting of the subsidy to the detriment of the applicant if the applicant has received new financial contributions as referred to in article 5, paragraph 1 after the subsidy was granted but before the subsidy was fixed, and to lower the subsidy by an amount equal to these financial contributions. The amount by which the subsidy is lowered shall firstly be offset against any advances yet to be paid. Should this not be sufficient, any advances already paid may be reclaimed.

§ 8. Fixing the subsidy

Article 14

1. The granted subsidy shall be fixed on the basis of an application made by the applicant to this effect.
2. The application for the fixing of the subsidy shall be submitted together with the necessary documents within no more than 24 months after the cinema release of the film for which the subsidy has been granted. In the event that no cinema release has taken place or that this term is exceeded, the Fund shall be authorised to fix the granted subsidy on its own initiative.

Article 15

The granted subsidy shall be fixed at a lower level in the event that:

- a). it is evident from the information provided in the application for fixing the subsidy that the actual investments made by the market parties in the film costs of the feature film for which the subsidy has been granted were lower than indicated in the information submitted by the applicant to the Fund in accordance with article 10; or
- b). it is evident from the information provided in the application for fixing the subsidy that the actual film costs of the feature film for which the subsidy has been granted were more than 2.5 per cent, and more than € 50,000, lower than the film costs estimated in the subsidy application; or
- c). the feature film for which the subsidy has been granted, when ready for exploitation, is, in the opinion of the film distributor concerned, such that the investment in the release costs promised by the film distributor cannot reasonably be maintained and, in so far as the investment promised as guarantee income by the film distributor at the time of the subsidy application was less than 10 per cent of the estimated film costs, it is still counted as guarantee income for that portion; or
- d). it is evident from the information provided in the application for fixing the subsidy that the total for the granted subsidy and the financial contributions from another Dutch administrative body and/or the Fund under a scheme other than the present one amounts to more than 50 per cent of the actual costs incurred for the production of the film; or
- e). it is evident from the information provided in the application for fixing the subsidy that the total for the granted subsidy and the financial contributions from another Dutch administrative body and/or the Fund under a scheme other than the present one amounts to more than 55 per cent of the actual production costs incurred. This exception applies to a feature film that satisfies the criteria referred to in article 5, paragraph 3, of the Implementation Regulation for Feature Films; or
- f). it is evident from the information provided in the application for fixing the subsidy that the applicant has received supplementary financial contributions as referred to in article 5, paragraph 1, aside from the amounts referred to in the finance plan submitted.

Article 16

The level at which the subsidy is fixed must not be higher than the amount granted.

§ 9 Withdrawal and amendment

Article 17

Even in cases not explicitly provided for in this regulation, the Fund shall, in accordance with section 4.2.6 of the General Administrative Law Act, be authorised to amend or withdraw the subsidy and the fixing of the subsidy.

§ 10 Payment and recovery

Article 18

The subsidy amount shall be paid within 4 weeks of the fixing of the subsidy and in accordance with the fixing of the subsidy, subject to the offsetting of any advances paid.

Article 19

1. Advances may be granted on the basis of an application made by the applicant to this effect containing the information that must be submitted to the Fund for this purpose in accordance with the implementation agreement, such as a current cash flow forecast of the income and expenditure involved in the production of the feature film for which the subsidy has been granted.
2. An application for the granting of an advance shall be rejected in the event that:
 - a). no implementation agreement has been entered into with the applicant in relation to the granted subsidy; or
 - b). definitive insurance cover for the production and completion of the feature film of which the production costs amount to at least two million euros and for which the subsidy has been granted has not yet been given by the completion guarantor; or
 - c). the head office of the applicant is not based in the Netherlands and the applicant fails to prove that it has a branch in the Netherlands where at least one permanent employee is working.
3. With regard to the granting of advances, the Fund may, in the event that there is good reason to do so, impose further conditions relating to the provision of securities by the applicant or the parties that have promised to make contributions to the financing of the feature film for which the subsidy has been granted.
4. Advances shall be paid within four weeks of being granted, unless otherwise specified when granting the advance.

Article 20

1. The Fund may recover subsidy amounts and advances that have been unduly paid within a period of five calendar years, starting from either the date on which the subsidy was fixed or the date on which the granted or fixed subsidy was withdrawn or amended to the detriment of the applicant.

2. After a period of five calendar years, starting from either the date on which the subsidy was fixed or the date on which the granted or fixed subsidy was amended, the obligation on the part of the applicant, as laid down in the implementation agreement, to use proceeds from the exploitation of the feature film partially or in full to repay the subsidy granted and fixed by the Fund shall expire. This paragraph is not applicable to repayment obligations associated with subsidies that the Fund has withdrawn on the basis of article 13.

§ 11 Objections

Article 21

1. Objections may be raised with the Board of the Fund by a concerned party against Board resolutions within a term of six weeks after the resolution has been announced.
2. The objecting party shall be given an opportunity to be heard before the Board rules on the objection. The Board may decide not to hear the objecting party if, in the opinion of the Board:
 - a). the objection is manifestly inadmissible; or
 - b). the objection is manifestly unfounded; or
 - c). the objecting party has declared that it does not wish to exercise its right to be heard; or
 - d). the objection is fully met and, as a result, the interests of other parties cannot be prejudiced.

§ 12 Term and interim amendment

Article 22

1. This regulation shall enter into force on the second day after publication of the Board's decision to this effect in the Government Gazette.
2. The term of this regulation is indefinite. This regulation shall be amended in the interim, if necessary, as a result of amendments to the assessment framework for state support in the film sector, as used by the European Commission.

Article 23

1. On an annual basis, though before 1 November at the latest, the Board, having heard representatives from the film sector, may put forward a proposal to amend the percentages, as referred to in article 3, paragraph 1, under a and b, and in article 5, paragraph 1, under a and b, on the understanding that the percentage referred to in article 3, paragraph 1, under b, must be no higher than 40 per cent and the percentage referred to in article 5, paragraph 1, under a, must be no lower than 60 per cent.
2. On an annual basis, though before 1 November at the latest, the Board, having heard representatives from the film sector, may put forward a proposal to amend the amounts, as referred to in article 2, paragraph 1, under c, and in article 6, paragraph 3.

§ 13 Final provisions

Article 24

1. In all cases not provided for in this regulation the Board shall come to a decision.

2. In exceptional cases, the Board may deviate from this regulation should there be compelling reasons to do so, in so far as such deviations are compatible with the assessment framework for state support in the film sector, as used by the European Commission.

3. The Contributions Regulation [*Bijdragenreglement*] of the Fund does not apply to this regulation.

Article 25

This regulation shall be referred to as the Supplementary Regulation for Film Investments in the Netherlands.

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