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LU-Luxembourg: New Act on the film fund for audiovisual production

On 22 September 2014, the Act on the national fund for the support of audiovisual production (Loi relative au Fonds national de soutien à la production audiovisuelle - FNAV Act) was adopted. It was published in the Luxembourg official journal (Mémorial) on 10 October 2014. The FNAV Act substantially modifies the Luxembourgish support scheme for audiovisual works, which had existed for more than two decades.

Until the entry into force of the FNAV Act, the promotion of the Luxembourg film sector took two forms, both of which were administered under the umbrella of the Luxembourg film fund: In 1988, a fiscal regime of so-called “certificates of audiovisual investment” (“certificats d’investissement audio-visuel”) was introduced, which allowed companies investing in audiovisual productions to reduce their overall tax burden by a maximum of 30 percent. In addition, a film fund was established in 1990 to support the production and distribution of selected audiovisual works and promote co-productions. The details of each scheme were outlined in two separate legal acts accompanied by several Grand-Ducal regulations (see IRIS 2007-6/101 and IRIS 1999-2/15).

Due to the economic crisis and because the attractiveness of the certificates of investment has substantially lessened, the FNAV Act entirely abolishes the fiscal incentive scheme. More precisely, Article 29 (2) of the FNAV Act specifies that this scheme is discontinued as of the end of 2013 instead of 2015, as stipulated in the original law of 1988. At the same time, the law of 1990 on the creation of a Film Fund is abrogated pursuant to Article 30 FNAV Act. However, the FNAV Law constructs a Luxembourg film fund, which now constitutes the remaining support mechanism and which is equipped with more resources.

In more detail, Article 1 of the FNAV Law grants legal personality to the film fund, which is a public institution. According to Article 17 of the FNAV Act, the film fund is financed by the state budget and, to a lesser extent, by remuneration charged for its services, as well as external funding from potential donations. Its mission is set forth in Article 2 of the FNAV Act, which refers to, among other things, the promotion of cinematographic and audiovisual works, the dissemination and circulation of Luxembourg films in Luxembourg and abroad and the allocation of subsidies in the form of financial aids, grants and reimbursements. Pursuant to Article 9 of the FNAV Act, financial aids are granted to support the creation (e.g. script-writing or project development) and production (or co-production) of cinematographic and audiovisual works. Beneficiaries of the scheme are companies established and fully taxable in Luxembourg. In addition, companies are only eligible if their principal objective is the production of audiovisual works and they effectively produce such films. By virtue of Article 13 of the FNAV Act, the amount of the contribution varies and depends on the overall expenses incurred by the company.

In order to de-politicise the composition of the internal bodies of the film fund, the FNAV Act provides for a management board (“Conseil d’administration”) composed of three members nominated respectively by the Minister responsible for audiovisual policy, the Minister of Finance and the Minister of Culture. This body sets the agenda, determines the budget and generally manages the fund. In addition to regular staff, a selection committee (“Comité de sélection”) is introduced, which consists of a minimum of five and a maximum of seven independent members tasked with making the decisions about the selection of companies requesting aid. The criteria for selection are stipulated in Article 12 and include, among others, artistic and cultural criteria, criteria on the impact of the development of the audiovisual sector and more general considerations on the prospects of distribution, circulation and commercialisation of the production. These criteria are further specified in a Grand-Ducal regulation (see this issue of IRIS).

• *Loi du 22 septembre 2014 relative au Fonds national de soutien à la production audiovisuelle et modifiant 1) la loi modifiée du 22 juin 1963 fixant le régime des traitements des fonctionnaires de l’Etat 2) la loi modifiée du 13 décembre 1988 instaurant un régime fiscal temporaire spécial pour les certificats d’investissement audiovisuel (Mém. A - 191 du 10 octobre 2014, p. 3760; doc. parl. 6535)* (Act of 22 September 2014 on the National fund for the support of audiovisual production and modifying 1) the law modified on 22 June 1963 establishing the system of remuneration for civil servants 2) the law modified on 13 December 1988 establishing a special fiscal regime for audiovisual investment certificates)

<http://merlin.obs.coe.int/redirect.php?id=17493>

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