

# medienboard Berlin Brandenburg

## Funding Guidelines

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# Funding Guidelines of Medienboard Berlin-Brandenburg GmbH

– effective January 1st, 2015 –

## 1. Goals and Subject of Funding

Medienboard Berlin-Brandenburg GmbH (hereinafter, “Medienboard”) has been commissioned by the federal states of Berlin and Brandenburg to promote the development of the audiovisual sector in the states’ joint media region, and thus to strengthen this sector in Germany and in Europe.

The **funding goals** are

- to support the qualitative and quantitative development of the Berlin-Brandenburg media industry and culture;
- to facilitate varied and high-quality film, television and media production in Berlin-Brandenburg;
- to fund emerging filmmakers;
- to strengthen the economic competitiveness of the region’s media companies, especially independent production companies and technical service providers, along with the necessary infrastructure
- to present and represent the region at home and abroad.

**Funding can be provided** for audiovisual film and media productions in all stages of development, as well as for exploitation purposes including film exhibition. Funding will also be provided for innovative audio-visual content and other projects to strengthen the media industry. The Medienboard provides funding for projects in the following categories:

- Development funding,
- Production funding for theatrical films
- Funding for the distribution of theatrical films
- Funding for theatres
- Funding for television films and serial formats
- Funding for innovative audiovisual content
- Funding for other types of productions

For all funding categories, the procedural provisions listed under Section 3 must be observed.

## 2. Funding Categories

### 2.1 Development Funding

The Medienboard can award loan-based funds for pre-production activities in the form of story-development, project-development or package funding.

**Story-development funding** is offered for the preparation of film-ready screenplays for theatrical or television films, as well as for other serial formats.

**Project development funding** is offered for the development of the full concept for a film, consisting of the creative production elements, financing, marketing, distribution, and exploitation. The prerequisite is a screenplay which is ready to go into production.

Companies may be granted story and/or project development funding for up to five projects as **slate funding**. These projects can be at different stages of development.

- 2.1.1 **Producers** are eligible to apply for development funding.
- 2.1.2 The **loan must be repaid**. Repayment should typically **take place in full by the beginning of shooting** or when the rights associated with the funded project are **otherwise exploited**. The producer's own financial contributions are not to be given priority in this regard. In the event of package funding, repayment should take place on a pro rata basis for each exploited project.
- 2.1.3 The **repayment commitment** usually expires five years after the final report is submitted to the agent.

## 2.2 Production Funding for theatrical films

Medienboard may fund the production of full-length films (films with a running time of at least 79 minutes, or 59 minutes for children's films) and short films (films with a maximum running time of 15 minutes). Projects should be expected to produce a film which is worthy of funding based on the criteria of quality and cost effectiveness. Films may be allowed to fall short of the minimum running time in exceptional cases.

- 2.2.1 Producers are eligible to apply for this funding.
- 2.2.2 The prerequisite for theatrical-film production funding is typically a distribution contract that guarantees the commercial exploitation of the film in German cinemas. In the case of documentaries, the exploitation can also take place through a global distribution agreement. Exceptions can be made with regard to the funding of short films.
- 2.2.3 Unless otherwise specified, the reimbursement of production costs and producer's fees will be evaluated pursuant to the provisions of the Film Funding Law (FFG) and the associated Federal Film Board (FFA) guidelines. Special arrangements can be made in the case of international co-productions.
- 2.2.4 As a rule, the applicant should furnish 50% of the total German financing as a **producer's contribution**. Exceptions can be made particularly for projects with a content or style that exposes their economic exploitation to a high degree of risk. This producer's contribution may be furnished through private resources and outside funds, guarantees, licences, success-related "reference" funds, film prize monies and own or third-party contributions.
- 2.2.5 The **loan is to be repaid** from the proceeds of the funded film's domestic and overseas exploitation. Distribution fees are usually considered in accordance with the FFG.

Typically, after the producer-contribution positions recognized by the Medienboard in the loan contract as having priority have been covered, 50% of the revenues due to the applicants are to be used for the repayment of the loan.

If other funding bodies are involved in co-financing the film, a prorated repayment proportional to the amounts of the various loans is typically agreed.

If a lower producer-contribution recoupment priority and/or repayment corridor has been agreed with another funding institution for the same project, this will also apply for the repayment of the Medienboard loan.

- 2.2.6 For theatrical films, the **repayment obligation** typically expires five years after the film's theatrical release. For projects that promise to yield a longer period of revenue generation, a corresponding repayment period can be agreed. If a longer repayment period is agreed with another funding body, this can also apply for the Medienboard loan.
- 2.2.7 If the funds are repaid, they can typically be used by the repaying production company within three years of the repayment to finance a new project through a so-called **success-related loan**.
- 2.2.8 The **premiere** of funded theatrical films should take place in Berlin or Brandenburg.
- 2.2.9 Unless otherwise stipulated, the holdback windows (Sperrfrist) regulated in the FFG apply to the exploitation of funded theatrical films. The Medienboard may approve exceptions at the request of the producer. Usually Medienboard will follow any decision by the FFA to grant an application to shorten the holdbacks.
- 2.2.10 Should an exploitation contract with a public-broadcasting network or private television network be signed, the applicant is required to furnish proof that a **reversion of television-use rights** to the applicant in accordance with FFG regulations and the guidelines enacted on the basis of the FFG has been agreed.

Insofar as the applicant grants his or her television-broadcast distribution rights for the German-speaking licensing area in return for an appropriate royalty guarantee, these TV rights must revert to the applicant in accordance with FFG regulations and the guidelines issued on the basis of the FFG.

- 2.2.11 For archival purposes, the applicant is obliged to provide the Stiftung Deutsche Kinemathek with a technically faultless and **archive-ready copy** of the funded production in the original screening format, free of charge. If, due to the receipt of other public funding, a copy of the film is provided to the Federal Archives, a DVD copy can be provided to the Stiftung Deutsche Kinemathek. Digital productions must be provided to the Stiftung Deutsche Kinemathek in a format suitable for archiving. In addition, the applicant must provide the Medienboard with two DVD copies of both the original-language and – if applicable – a dubbed version.
- 2.2.12 The Medienboard provides funding to **emerging filmmakers**.

Emerging-filmmaker projects typically include the **graduation films** produced by students at the film academies located in the Berlin-Brandenburg region, including the dffb and Film University Babelsberg.

**Graduation films** can be funded through grants. Funding can be provided only if the project meets the Medienboard's quality criteria, and if a recommendation by

the school's administration is provided. Either fictional or non-fictional graduation films can be funded, with no length or format restrictions. Both the producers themselves and the film academies are eligible to apply.

In addition, a producer's first and second films can be funded as **emerging-filmmaker projects** through conditionally repayable loans. Any emerging producer is eligible to apply.

In exceptional cases, an emerging-filmmaker project can also be supported with a grant of up to € 100,000.00, if the entire cost of production does not exceed € 500,000.00.

## 2.3 Distribution Funding for theatrical film projects

Medienboard may fund distribution and marketing activities in Germany, as well as national and international presentations of cinema films, if this funding is in the particular film cultural or economic interest of Berlin-Brandenburg.

- 2.3.1 All distribution and world sales companies resident in Germany are entitled to apply.
- 2.3.2 As a rule, funding is provided for **distribution advance costs** for cinema films corresponding to the preliminary costs defined by Article 53 a Paragraph 1 FFG and pursuant regulations of the Federal Film Board.
- 2.3.3 The amount of subsidy is, as a rule, up to 50% of the documented distribution advance costs. The **producers' contribution** furnished by the applicant should usually cover at least 50% of the advance distribution-related costs. Exceptions can be made particularly for projects with a content or style that exposes their economic exploitation to a high degree of risk.
- 2.3.4 The obligation to **repay the loan** arises after the recognized advance distribution-related costs have been covered, and ends following the complete repayment of the funded amount. Repayment is made from the film-exploitation revenues due to the applicant. The **repayment obligation** also typically concludes five years after the film's first theatrical release.
- 2.3.5 If the funds are repaid, they can typically be used by the repaying production company within three years of the repayment to finance a new project through a so-called **success-related loan**.
- 2.3.6 Unless otherwise stipulated, the holdback windows (Sperrfrist) regulated in the FFG apply to the exploitation of funded theatrical films. The Medienboard may approve exceptions at the request of the producer. Usually Medienboard will follow any decision by the FFA to grant an application to shorten the holdbacks.

## 2.4 Funding of Television Films

Medienboard may fund television films.

- 2.4.1 The provisions for the production funding of theatrical films (Section 2.2) , insofar as they are factually applicable and do not contradict any of the terms stipulated below, also apply to the funding of television films

- 2.4.2 Principally independent producers are eligible to apply. Fully funded contract productions cannot be funded.
- 2.4.3 Total public funding for television film productions shall not exceed 30% of the total German share of production costs.
- 2.4.4 A television film can be funded if the production's cost and quality are higher than the average (e.g., "TV events"), and if the funding can be expected to contribute to strengthening Berlin-Brandenburg as a production location over the long term. The repayment obligation typically ends ten years after the funded work is made publicly accessible for the first time.
- 2.4.5 The FFG's exploitation window shall not apply to the funding of television films.
- 2.4.6 The contractual allocation of rights between the producer and the exploiting party (such as a TV broadcaster) must reflect their respective contributions to the project. Support in the form of public funds is in this sense to be regarded as a contribution by the producer. As a rule, projects in which the allocation of rights takes place under a framework agreement between the producer and co-producer or an association representing this latter party, to the detriment of the producer, are not eligible for funding.

## 2.5 Funding of serial formats

The Medienboard can provide funding for the production of serial formats of all genres, regardless of whether they are intended for linear or non-linear reception. Moreover, the Medienboard can fund the production of series pilots.

- 2.5.1 The provisions of Paragraphs 2.4.2 and 2.4.3 also apply to the funding of serial formats.
- 2.5.2 Serial formats can be funded if the project is distinguished within its genre by exceptional programming quality, if its exploitation can be expected to be economically successful for the producer, and/or if the funding serves a particular interest of Berlin-Brandenburg as a production location.
- 2.5.3 The producer must show relevant external interest in exploitation of the work. Exploiters of serial formats may include television broadcasters, the operators of Internet-based commercial video-on-demand (VOD) platforms, or subscription video-on-demand (SVOD) platforms.
- 2.4.6 The contractual division of rights between the producer and the exploiter/co-producer must reflect their respective contributions to the project. The support derived through public funding is in this sense to be regarded as a contribution by the producer. As a rule, projects in which the allocation of rights takes place under a framework agreement between the producer and co-producer or an association representing this latter party, to the detriment of the producer, are not eligible for funding.
- 2.5.5 The repayment of the loan is to be made from the proceeds derived from the producer's exploitation of the rights to the serial production. The **repayment obligation** typically ends ten years after the funded work is made publicly accessible for the first time.

- 2.5.6 The applicant must provide the Medienboard with copies of the funded work on two physical data-storage media (e.g., DVD copies) in the original language, and if applicable, also in the dubbed version.
- 2.5.7 If the funds are repaid, they can typically be used by the repaying producers within three years of the repayment to finance a new project through a so-called **success-related loan**.

## 2.6 Funding of Innovative Audio-Visual Content

The Medienboard can fund audiovisual content for generally non-linear distribution channels (Internet, mobile, etc.) as well as innovative and interactive audiovisual content. The prerequisite is that the projects must be expected to create a work worthy of funding based on the criteria of quality and cost effectiveness.

Funding of **innovative audio-visual content** is provided in the form of development and production funding.

- 2.6.1 Developers and producers may apply.
- 2.6.2 The applicant for production funding should typically furnish a **producers' contribution** of 50% of the German financing share. Exceptions can be made particularly for projects with a content or style that exposes their economic exploitation to a high degree of risk.
- 2.6.3 As a rule, funding is provided in the form of conditionally repayable loans. **Loans are repaid** using revenues from the exploitation of rights to innovative audio-visual content. In this regard, in the contracts between the applicants and the exploiter, it should be ensured that a fair division of rights is in place, and that the rights remaining to the applicant are clearly indicated and recoverable. Details are regulated by the funding contract.
- 2.6.4 If the funds are repaid, they can typically be used by the repaying producer within three years of the repayment to finance a new project through a so-called **success-related loan**.

## 2.7 Theater Funding

- 2.7.1 Medienboard funds cinemas by annually awarding **film programme prizes** to movie theaters resident in Berlin-Brandenburg which have shown an outstanding film programme in the past year. Applications for funding may be submitted by operators of cinemas in Berlin and Brandenburg which are in constant operation and which have been operating for at least two years.
- 2.7.2 Medienboard may provide funding in the form of non-repayable grants for **extraordinary and/or innovative marketing measures** by individual theaters, or based on contractual co-operations between cinemas.
- 2.7.3 Applications may be submitted by individual cinema operators, by several cinema operators together in the event of co-operative ventures, or by third parties acting as authorised agents of the cinema operators.



- 2.7.4 In addition, funding in the form of grants can be provided for **measures** which in overall assessment appear to **strengthen the competitiveness of Berlin-Brandenburg cinemas as a whole**. In addition to the parties specified in Paragraph 2.7.3, third parties that bear economic responsibility for the implementation of such measures are also eligible to apply.
- 2.7.5 In most cases, the applicant must furnish a contribution amounting to at least 50% of the measure's cost. Exceptions can be made particularly for projects with a content or style that exposes their economic exploitation to a high degree of risk.

## 2.8 Funding of Other Projects

The Medienboard may fund measures aimed at strengthening the film and audiovisual media industry in Berlin-Brandenburg. This may include projects intended to improve the film and media culture or the film and media economy, and may particularly involve educational, professional-development and marketing measures, including those spotlighting the region as a film and media location.

## 3. General Conditions for Funding

### 3.1 General Prerequisites

- 3.1.1 Funding is granted only to high-quality projects which correspond to Medienboard's funding goals. Projects will not be funded which contravene the Constitution or the laws, offend personal rights or moral or religious feelings, or whose content is pornographic, extols violence or is likely to corrupt the young according to §§ 131, 184 of the Criminal Code.
- 3.1.2 The allocation of public funds by Medienboard is limited by the budget made available to the funding programme by the States of Berlin and Brandenburg. There is no statutory right to funding by Medienboard.

In addition to the Funding Guidelines, the pamphlets created by the Medienboard and made available at [www.medienboard.de](http://www.medienboard.de) provide important information, offering details on the general and specific requirements of the funding process and the individual funding categories.

- 3.1.3 Medienboard funding can be combined with funding from other funding institutions. Insofar as upper limits apply to the accumulation of state aid resources under German or European law, these limits also apply to any funding issued under the terms of these guidelines.

Fundamentally, public funding issued in accordance with European guidelines should not exceed 50% of total production costs. Exceptions can be made for cross-border projects within the EU, or in the case of difficult audiovisual works with a content or style that exposes their economic exploitation to a high degree of risk.

- 3.1.4 The amount of support is assessed on the basis of the German financing share. For the calculation of funding and the costs eligible for funding, the amounts before

tax and other charges will be used. The costs must be verified by written documents.

- 3.1.5 Public and private broadcasters, private exhibitors, and platform operators are not eligible to apply.
- 3.1.6 Funding is typically awarded in the form of conditionally repayable interest-free loans.
- 3.1.7 Due regard should be given to matters of professional training and education in subsidised projects.

## 3.2 Application

- 3.2.1 Funding can be granted to businesses that at the time of the funding disbursement have an office, a branch office, or at least an operational presence in Berlin-Brandenburg. At variance from the above, a project may also be funded if funding would be in the particular media cultural or economic interest of Berlin-Brandenburg.
- 3.2.2 Project funding by Medienboard requires a written application to be submitted within the time limits set by Medienboard.
- 3.2.3 Applications must be prepared and submitted using the forms available from Medienboard. The enclosures required with the applications follow from the application forms. Incomplete applications become void if the applicant fails to supply the missing information in a timely manner even after receiving a request with a grace period.
- 3.2.4 Work on the project **may not have commenced at the time of the application**. In individual cases, exceptions can be made if necessary conditions are in place.
- 3.2.5. Project costs must be calculated according to industry norms and the principle of economical financial management.
- 3.2.6 A project may be funded only if the applicant participates in the project financing in the form of a producer contribution.

## 3.3 Regional effect

The amount specified in the grant application to be spent within Berlin-Brandenburg (regional effect) must be expended as described. Any subsequent reduction of the regional effect requires the consent of the Medienboard. At least the funding provided by Medienboard must be used in Berlin-Brandenburg (**regional effect**). If a higher regional effect is indicated in the funding application, it must be provided. The regional effect may be partly or wholly ignored if the region has a particular interest in the project. Regardless of this fact, at least 20% of the production costs may be spent in another EU country.

## 3.4 Allocation of funds

- 3.4.1 After examining the application documents, the Medienboard typically decides on the allocation of funds in accordance with fixed deadlines.

- 3.4.2 If the decision is positive, Medienboard will provide a written commitment.
- 3.4.3 The commitment lapses if documentation of the project's entire financing is not provided within six months of the date the commitment is issued, at the most. This time limit may be extended upon request.

### 3.5 Disbursement

- 3.5.1 The disbursement of funds typically takes place in several instalments, and requires proof that the project has been fully financed as well as the conclusion of a funding contract.
- 3.5.2 Details are governed by the funding contract.
- 3.5.3 **Proof of deployment** for the funds provided must be supplied to the agent of Medienboard. In the case of multiple subsidies, Medienboard can arrange a joint audit with the other funding bodies.

### 3.6 Credits and assignment of rights

- 3.6.1 The front and end credits of subsidised film works, as well as all advertising, must contain an appropriate reference to the funding which has been formulated in consultation with Medienboard. All other subsidised projects must contain reference to Medienboard's funding at the appropriate spot.
- 3.6.2 The loan recipient grants the Medienboard temporally and geographically unrestricted non-exclusive **usage rights** for the non-commercial use of the project – including photos, stills, posters, material on the project's creation (making-of or behind-the-scenes materials), and trailers – for self-marketing purposes, free of charge. Details are governed by the funding contract.

### 3.7 Miscellaneous

- 3.7.1 In addition, the specific rules associated with individual funding categories as specified in Section 2 must be observed. Insofar as these guidelines do not contain specific rules, the currently valid edition of the FFG and the FFA guidelines produced on the basis of the FFG will apply, to the degree that they are relevant.
- 3.7.2 The Medienboard awards **state aid** (subsidies). Subsidy fraud is subject to punishment under § 264 of the Criminal Code.
- 3.7.3 These funding guidelines fall under the **General Block Exemption Regulation (GBER)** of the European Union.<sup>1</sup> Under the terms of the GBER, regulations governing aid programs such as these guidelines and their associated individual funding measures must be published on a national government website. Articles 53 and 54 in conjunction with Article 3 of the GBER in particular apply to the provision of funding under these funding guidelines.

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<sup>1</sup> EU Commission Regulation (EU) No. 651/2014, issued 17 June 2014, declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty Text with EEA relevance (ABl. EU L 187/1 from 26.6.2014).

3.7.4 Under the terms of Art. 1 No. 4(a) of the GBER, funding cannot be granted under these funding guidelines to companies that have not complied with an outstanding recovery order based on a previous EU Commission decision establishing the inadmissibility of a financial-assistance measure and its incompatibility with the internal market.

#### **4. Entry into Force**

These funding regulations come into effect on 01 January 2015.