

## **Guidelines for FERNSEHFONDS AUSTRIA Version as of 1 December 2018**

Pursuant to Art. 23 Par. 1 of the KommAustria Act (KOG; Federal Law Gazette I No. 32/2001 as last amended by Federal Law Gazette I No. 50/2016), the Austrian Regulatory Authority for Telecommunications and Broadcasting (Rundfunk und Telekom Regulierungs-GmbH, or RTR) has defined and published the following Guidelines for grants from FERNSEHFONDS AUSTRIA under Articles 26 to 28 KOG.

The section of these Guidelines relating to EU State aid rules takes into consideration Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (General Block Exemption Regulation), OJ L 187/1 of 26 June 2014.

The text of the Guidelines consistently refers to FERNSEHFONDS AUSTRIA or ‘the Fund’; where rights and obligations are concerned, these designations refer to RTR.

## Contents

<b>1</b>	<b>Object of grants</b> .....	<b>4</b>
1.1	Legal basis .....	4
1.2	Objectives.....	4
1.3	No legal claim.....	5
1.4	Cultural test.....	5
1.5	Productions not eligible for grants .....	5
<b>2</b>	<b>Eligible costs and own contribution</b> .....	<b>5</b>
2.1	Eligible costs.....	5
2.2	Own contribution.....	6
<b>3</b>	<b>Personal and material requirements</b> .....	<b>7</b>
3.1	Independence .....	7
3.2	Specialised qualifications.....	7
3.3	Quality and economy.....	7
3.4	Share of non-Austrian financing .....	8
3.5	Maximum number of submissions.....	8
3.6	Minimum length .....	8
<b>4</b>	<b>Agreements with television broadcasters</b> .....	<b>8</b>
4.1	Financing .....	8
4.2	Rights .....	9
4.3	Extended licence period .....	9
4.4	Free TV .....	9
4.5	Live streaming .....	9
4.6	Catch-up TV / Free video on demand .....	10
4.7	Pay TV .....	10
4.8	Pay video on demand .....	10
4.9	Other utilisation rights.....	10
4.10	Licence start .....	11
4.11	Licence region .....	11
4.12	Exclusivity .....	11
4.13	Licence share.....	12
4.14	Participation in revenues.....	12
4.15	Collecting societies .....	12
4.16	Festivals and fairs.....	12
4.17	Excerpt rights .....	12
4.18	Additional usage periods .....	13
4.19	Guideline priority .....	13
4.20	Additional agreements with television broadcasters .....	14
<b>5</b>	<b>Exploitation</b> .....	<b>14</b>
5.1	Distribution and commission .....	14
5.2	Broadcaster-affiliated distribution.....	14
<b>6</b>	<b>Agreement with co-producers</b> .....	<b>15</b>
6.1	Television broadcasters .....	15
6.2	Co-producers.....	15
<b>7</b>	<b>Extent and nature of grants</b> .....	<b>15</b>

7.1	Relative amount.....	15
7.2	Expenses incurred in Austria.....	16
<b>8</b>	<b>Exploitation grants.....</b>	<b>17</b>
8.1	Object of exploitation grants.....	17
8.2	Other funding institutions.....	17
<b>9</b>	<b>General provisions.....</b>	<b>18</b>
9.1	Absolute amount.....	18
9.2	Distribution of grant funds.....	18
<b>10</b>	<b>Procedures.....</b>	<b>18</b>
10.1	Application dates.....	18
10.2	Application documents.....	19
10.3	Calculation of total production costs.....	20
10.4	Expenses incurred in Austria.....	20
10.5	Submission of identical documents and exchange of information.....	21
10.6	Accumulation of grants.....	21
10.7	Grant decisions.....	22
10.8	Notification of grant decision.....	22
10.9	Carrying out a production prior to a valid grant agreement.....	22
10.10	Use of grant funds.....	22
10.11	Grant approvals for a limited period.....	22
<b>11</b>	<b>Method of disbursement.....</b>	<b>23</b>
11.1	Completion guarantee.....	23
11.2	Evidence of full financing.....	23
11.3	Disbursement of production grant in instalments.....	23
11.4	Instalments.....	23
11.5	Disbursement of exploitation grants.....	24
11.6	Absolute expiry date.....	24
11.7	Prohibition of pledges and assignment.....	24
11.8	Depletion of grant funds.....	24
<b>12</b>	<b>Reporting, settlement, final audit.....</b>	<b>24</b>
12.1	Acceptance confirmation and final cost statement.....	24
12.2	Access to books and accounts.....	25
12.3	Reporting and information obligations.....	25
<b>13</b>	<b>Discontinuation and reimbursement.....</b>	<b>26</b>
13.1	Forfeiture of grants.....	26
13.2	Interest.....	26
<b>14</b>	<b>Contractual arrangements.....</b>	<b>26</b>
14.1	Written form.....	26
14.2	KommAustria Act.....	27
14.3	Acknowledgement obligation.....	27
14.4	Information obligation.....	28
<b>15</b>	<b>Final provisions.....</b>	<b>28</b>
15.1	Entry into force.....	28

# 1 Object of grants

## 1.1 Legal basis

(1) Each year, FERNSEHFONDS AUSTRIA has EUR 13.5 million at its disposal for the purpose of supporting the creation and exploitation of cultural assets with Austrian character, in the form of television films (including television series, miniseries and documentaries), subject to the provisions of Articles 26 to 28 KOG as well as the Guidelines detailed in this document.

(2) The criteria specified in Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (GBER), and in particular in Article 54 of the Regulation, are mandatorily applicable.

(3) The general provisions of Chapters I and II of the GBER are also mandatorily applicable, specifically:

- Art. 1(4)(a) GBER, which excludes the payment of individual aid in favour of an undertaking which is subject to an outstanding recovery order following a previous Commission decision declaring an aid illegal and incompatible with the internal market;
- Art. 1(4)(c) GBER, which excludes the payment of aid to undertakings in difficulty;
- Art. 1(5)(a) GBER, which allows the grant of aid to be made subject to the obligation for the beneficiary to have a business premises or branch in the aid granting Member State at the moment of payment of the aid;
- Art. 6 GBER, which requires aid to have an incentive effect, i.e. the beneficiary has submitted an appropriate written application for the aid before work on the project or activity starts;
- Art. 8 GBER, which requires mandatory compliance with cumulation regulations. The sum of aid for the same eligible cost must not exceed the highest applicable thresholds specified in Articles 53 and 54 GBER.

## 1.2 Objectives

The purpose of the grants is to contribute towards improving the quality of television production and the continued performance of the Austrian film industry, and to ensure diversity within the cultural landscape. Another purpose of the grants is to contribute to strengthening the audiovisual sector in Europe.

### **1.3 No legal claim**

Grants will only be awarded within the scope of the funds made available by the Austrian federal government. No legal claims to grants from the FERNSEHFONDS AUSTRIA can be asserted.

### **1.4 Cultural test**

Production grants can only be awarded for productions which include cultural content according to verifiable national criteria.

At least three of the following criteria must be fulfilled in order for a cultural production to qualify for a grant:

- The production is based on an Austrian or European topic or subject matter
- The production is set in Austria or the EEA
- The production covers topics relevant to Austria or Europe
- The production reflects the diversity of Austrian or European culture or creativity
- The production supports the maintenance of the general cultural heritage
- The production uses Austrian or European motifs or locations
- The leading actors or creative filmmakers in positions of responsibility are from Austria or the EEA

### **1.5 Productions not eligible for grants**

The following are not eligible for grants:

- Productions expected to result in a breach of the Austrian federal constitution, other Austrian laws or provisions of European law
- Commissioned film productions
- Corporate, advertising or image films
- Show programmes and similar programmes
- Mere recordings of theatre, opera or concert events
- Productions for which shooting has already been completed as of the date of application

## **2 Eligible costs and own contribution**

### **2.1 Eligible costs**

(1) Eligible costs in terms of these Guidelines are total production costs excluding value-added tax (deductible input tax). Overall production costs comprise net production costs, calculated production overheads and the calculated producer's fee.

(2) Recognised costs include those which are in line with the provisions of wage and salary laws, social security laws and labour laws, especially collective bargaining agreements, and other agreements or guidelines commonly applied in the industry. Cost calculations must duly consider the principles of thrift, expedience and economy.

(3) Production overheads will be recognised up to a maximum of 7.5% of net production costs.

(4) A calculated producer's fee will be recognised up to a maximum of 7.5% of total production costs.

(5) No buffers for cost overruns will be accepted, except in cases where a completion bond is taken out. A reasonable level of financing costs will be recognised under the 'General costs' item.

(6) The amount calculated for own services performed will be assessed with due attention to the scope and nature of the project to be funded.

(7) The costs of obtaining an International Standard Audiovisual Number (ISAN) can be included in these calculations.

## **2.2 Own contribution**

(1) Grant awards presuppose that applicants will finance a reasonable share of the overall production costs themselves. The scope of the production and the means of the grant recipient are to be taken into account in this context.

(2) The applicant's own contribution may also include provisions arising from cost items in the calculation. This contribution can be financed from the applicant's own funds or with proceeds from the transfer of exploitation rights as long as the funds arising from this source (i.e. licence shares) are available for the production and the transfer ensures reasonable exploitation. Third-party funds granted to the applicant in the form of loans (e.g. bank loans) shall be considered equivalent to own funds where such funds are not grants from public institutions.

(3) The applicant's own services are considered equivalent to own funds contributed provided that such services are valued at market rate and are immediately related to the production of the film. Such own services are in any case valued at a rate of one hundred per cent.

(4) The costs allocated for physical persons or legal entities which are identical to or have a close business relationship with the grant applicant, a co-producer, a shareholder or the managing director of a legal entity in the role of co-producer are to be indicated separately as services settled internally at prices customary in the market; provision can be made for such costs in the applicant's own contribution.

## **3 Personal and material requirements**

### **3.1 Independence**

(1) Under these Guidelines, only independent producers of films are eligible to apply for grants.

(2) Independence will be assessed in particular based on shares of ownership in the production company, control over production, the volume of programmes supplied to one and the same television broadcaster, and ownership of exploitation rights. A producer will not be considered independent, and thus not eligible to apply for a grant, in particular where a television broadcaster participating in the funding of the production for which a grant is requested holds a majority share in the production company applying for the grant. A majority share always exists where a single television broadcaster (directly or indirectly) holds more than 25% of the production company's shares or voting rights, or where two or more television broadcasters jointly hold more than 50% of the shares or voting rights. Where one or more indirect participations exist and participation exceeds 25% or 50% at each level, such a case will be considered equivalent to a direct participation of more than 25% or 50%. The participation limits are to be reviewed at each level (continuing through all levels as required).

(3) Public and private broadcasters are not eligible to apply for grants under these Guidelines.

### **3.2 Specialised qualifications**

(1) Eligible applicants include physical persons or legal entities possessing the necessary specialised qualifications (i.e. sufficient artistic and film industry qualifications) and experience and can provide evidence of a branch or business premises in Austria, regardless of their place of establishment or residence, as long as it is located within the European Economic Area (EEA), no later than on the date when the grant is disbursed and as long as it is ensured that the applicant will consistently create cultural assets with Austrian character.

(2) Grant applicants will generally be considered qualified if they have created an artistically and financially comparable production with Austrian character in the past three years. Apart from this consideration, applicants' specialised qualifications will always be duly assessed according to the scope and nature of the production to be funded.

### **3.3 Quality and economy**

It must be anticipated that projects funded under these guidelines assure a production that is eligible for funding in terms of quality and economic criteria, and that such production could otherwise not be realised – or only insufficiently realised – without such funding.

### **3.4 Share of non-Austrian financing**

In light of the legal mandate to strengthen Austria as a media location, productions involving a large share of non-Austrian financing, which will contribute to covering expenses incurred in Austria, will be given special consideration, especially where the applicant has a major part in the production.

### **3.5 Maximum number of submissions**

A grant application for a given production may be submitted a maximum of three times. Productions that have already received funding are not eligible to apply for another production grant.

### **3.6 Minimum length**

(1) Grants will only be awarded for productions of at least 45 minutes in length.

(2) In the case of multi-part productions, the length of the individual episodes may be totalled.

## **4 Agreements with television broadcasters**

### **4.1 Financing**

(1) A production is only eligible for funding where one or more television broadcasters contribute at least 30% of overall production costs to the financing of the production.

(2) Where the participation mostly or exclusively consists of pre-sales (guaranteed purchase of licences), at least 50% of this financial contribution should be available when shooting begins.

(3) Where a television broadcaster participating in financing the production contributes their share in the form of archive material with an assessed value and/or the provision of other goods or services, such goods or services must not account for more than 50% of that party's participation. The television broadcaster's licence share must equal 50% and be paid in cash.

(4) Where a television broadcaster participating in financing contributes archive material to the production and grants rights to use and exploit that archive material only within that broadcaster's region, it is necessary to clarify the applicable conditions and licence fee required for the producer to acquire the rights needed for additional use or exploitation of the production.



(5) Productions in which one or more television broadcasters hold a large participation may be given preferential treatment.

## **4.2 Rights**

(1) Television broadcasters participating in financing overall production costs may only acquire rights which are limited:

- to a period of no more than five years and, with multi-part productions, no more than seven years;
- to the intended broadcasting region of the respective television broadcaster; and
- with respect to content or subject matter,
  - to free TV,
  - to live streaming (within the framework of integrated programme broadcasts over the internet) and
  - to catch-up TV offered in the form of video on demand for seven days after the broadcast.

(2) Where television broadcasters operating in the field of pay TV participate in financing total production costs, they may acquire the corresponding pay TV rights based on conditions customary in both the industry and the market.

## **4.3 Extended licence period**

(1) Where only one television broadcaster participates in the financing of overall production costs and contributes a share of at least 55%, that broadcaster is entitled to acquire the rights referred to in Section 4.2 (1) for a maximum of seven years and, with multi-part productions, for a maximum of ten years.

(2) Two or more television broadcasters can acquire a licence for the rights referred to in Section 4.2 (1) for an extended period of a maximum of seven years and, with multi-part productions, a maximum of ten years, provided that they jointly contribute at least 60% towards the financing of the overall production costs. Furthermore, each participating television broadcaster must contribute a share of at least 15% towards total financing in order to be eligible for the extended licence period.

## **4.4 Free TV**

Free TV rights may only include terrestrial broadcasting and broadcasting via cable and satellite.

## **4.5 Live streaming**

(1) The integrated broadcasting of the production via internet live streaming is permissible.

(2) To safeguard the exclusive nature of those exploitation rights remaining with the producer, the television broadcaster should apply geo-blocking mechanisms to restrict the use of the production when broadcasting via live stream.

#### **4.6 Catch-up TV / Free video on demand**

(1) It is permissible to make the production available to users via streaming on demand (free video on demand) only for a period of seven days following the free TV broadcast ('catch-up TV right').

(2) To safeguard the exclusive nature of those exploitation rights remaining with the producer, the television broadcaster should apply geo-blocking mechanisms to restrict the use of the production within the framework of catch-up TV.

#### **4.7 Pay TV**

(1) To safeguard the exclusive nature of their licence region, a free TV broadcaster participating in the financing and the applicant are entitled to jointly hold and exploit pay TV rights for the broadcaster's exclusive licence region for a period no longer than the first half of the licence period specified in Section 4.2 or Section 4.3.

(2) After that period, the applicant is entitled to freely use the pay TV rights and in any case to exploit the production within the television broadcaster's licence region even without the broadcaster's consent.

#### **4.8 Pay video on demand**

(1) Pay video on demand rights may be acquired only by parties participating in financing as referred to in Section 4.3. In such cases, a free TV broadcaster participating in the financing as referred to in Section 4.3 and the applicant are entitled to jointly hold and exploit video-on-demand rights for the broadcaster's exclusive licence region for a period no longer than the first half of the licence period specified in Section 4.3.

(2) After that period, the applicant is entitled to freely use the pay video on demand rights and in any case to exploit the production within the television broadcaster's licence region even without the broadcaster's consent. The provisions specified under Section 4.6 of these Guidelines remain unaffected.

#### **4.9 Other utilisation rights**

(1) No other restrictions to the applicant's use of these rights are permissible beyond the provisions specified in these guidelines.

(2) Any other usage rights, especially for pay TV, home video, DVD, Blu-ray, video on demand, near video on demand, internet TV (in any case in the form of an on-demand service and live streaming in other language versions), excerpt rights, cinema presentation rights, rights to usage types not yet known at the time of

concluding the contract etc., shall remain at the free disposal of the grant applicant. This does not prejudice any claims held by the television broadcaster to participate in revenues.

(3) The aforementioned does not apply to typical annex rights associated with broadcasting rights, such as rights to broadcast excerpts announcing the programme, archiving rights and editing rights, while giving due consideration to personal rights under copyright law.

(4) In the case of international co-productions, the requirements set out in Sections 4.2, to 4.18 need not be met where the co-producer contracts with a co-financing non-German-language television broadcaster and the non-German-language licence region is not relevant for the applicant, for example due to a limitation of utilisation regions or areas.

#### **4.10 Licence start**

(1) The licence period pursuant to Section 4.2 or Section 4.3 shall commence no later than twelve months after the final acceptance of the entire production.

(2) The beginning of this period also applies to the broadcasting rights of the television broadcasters indicated in Section 4.11 (2).

(3) In the event that a period for blocking utilisation is stipulated, the beginning of the licence period is to be postponed by the duration of that blocking period.

#### **4.11 Licence region**

(1) In the case of public television broadcasters, the broadcasting region must always be the same as the region defined in the broadcaster's legal coverage mandate. It is not permissible to limit the broadcasting region along language lines.

(2) Television broadcasters participating in financing a project may also acquire rights for broadcasters with which they cooperate. The foregoing does not imply any expansion of the exclusive licence region as specified in Section 4.11 (1).

(3) A television broadcaster may acquire broadcasting rights on behalf of another television broadcaster. The authorisation order must be included with the application documents.

#### **4.12 Exclusivity**

It is permissible to grant a television broadcaster a period of exclusive utilisation for the broadcaster's licence region. The period shall end with the premiere broadcast but no later than twelve months after final acceptance of the production.

#### **4.13 Licence share**

(7) The contract concluded with the television broadcaster participating in financing must reflect a license share of at least 50% of the entire amount due by the television broadcaster.

#### **4.14 Participation in revenues**

(1) Each and every claim entitling the television broadcaster to participate in revenues must be based on the ratio of the co-production share (i.e. the total amount contributed minus the license share) vis-à-vis the recognised total production costs.

(2) Any claim entitling the television broadcaster to participate in revenues must only become due once the applicant's own contribution (minus the licence share) has been completely recovered and any minimum guarantees/advance payments for distribution by broadcaster-affiliated parties (refer to Section 5.2 (3)) have been repaid.

#### **4.15 Collecting societies**

Where the funding applicant is a member of a collecting society, it is necessary to ensure that the collecting society can exercise the rights conferred upon it without restriction and that all resulting revenues (minus the collecting society's share) are paid to the applicant.

#### **4.16 Festivals and fairs**

The transfer of non-exclusive and non-commercial usage rights, specifically for use at festivals and exhibitions/fairs, is permissible.

#### **4.17 Excerpt rights**

(1) The excerpt rights for all language versions must be available to the applicant.

(2) The acquisition of non-exclusive excerpt rights to own productions or productions by a television broadcaster participating in financing must be limited to the authorisation to use excerpts from the relevant production with a maximum length of three minutes for the purpose of:

- announcing the contractual broadcast(s) (programme previews),
- other cases of programme promotion, cross-promotion or current events broadcasts (news, obituaries), and
- documentary films, in particular for portraits of actors, directors or producers.

(3) This includes the authorisation to advertise the contractual broadcast in other media in a manner which is common in the relevant industry, for example in programme guides, in print media and on web sites.

(4) Other additional uses of excerpt rights by the participating television broadcaster are payable at a flat rate of compensation per second used.

(5) The television broadcaster may also acquire an option to purchase non-exclusive excerpt rights for the agreed license period and region or for utilisation within the broadcasting family. This option may only be exercised after final acceptance, and a separate licence fee must be defined.

#### **4.18 Additional usage periods**

(1) Options to acquire rights may not be granted beyond the scope defined in Sections 4.1 to 4.17. This applies both to options granted by the television broadcaster to the applicant (put option) and to options granted by the applicant to the television broadcaster (call option) as well as any other type of options granted. This also includes options granted to or by affiliated undertakings.

(2) The acquisition of additional usage periods for free TV rights (including live streaming and catch-up TV) is only permissible after a period of 18 months following the premiere broadcast.

(3) The compensation agreed to be paid in return for the free TV rights (including live streaming and catch-up TV) for a second usage period must be in line with customary market practice. The agreed compensation shall be considered in line with customary market practice where the total equals 10% of the total amount originally paid by the television broadcaster. The agreed compensation for rights to additional usage periods must not be part of the basic financing of the production.

(4) Where the right to a second period for using free TV rights is acquired, that period must not exceed five years and, with multi-part productions, not exceed seven years. Payments made to the grant recipient for the purpose of securing rights for a second or subsequent usage period do not fall under the co-financing television broadcaster's share in revenues.

(5) In cases falling under Section 4.3, the applicant can stipulate with the television broadcaster the obligation to submit a first offer and/or a last refusal of the right to an additional usage period under appropriate business terms. If the television broadcaster does not accept the offer within an appropriate period, the applicant shall be free to further exploit those rights.

#### **4.19 Guideline priority**

(1) The following sentence must be included in the text of all agreements between the funding applicant and the television producer: "The producer intends to make use of funding from the FERNSEHFONDS AUSTRIA; the grant Guidelines of Guidelines for FERNSEHFONDS AUSTRIA 1 December 2018

FERNSEHFONDS AUSTRIA in the version applicable at the time of concluding this agreement (available at [www.rtr.at](http://www.rtr.at)) shall be considered an integral part of this agreement and shall have priority over any conflicting agreements.” Where other additional funding is accepted from other funding sources for the purpose of production, and the relevant other guidelines include provisions that conflict with those of FERNSEHFONDS AUSTRIA, all participating parties shall endeavour to reach an agreement that corresponds to the guidelines of all financing and funding partners.”

#### **4.20 Additional agreements with television broadcasters**

(1) Where a television broadcaster participating in financing wishes to acquire additional rights, the agreed compensation must be customary to the market and not be a component of the basic production financing.

(2) In addition to the items listed above, all other agreements with television broadcasters participating in financing a production will be evaluated with regard to the production’s eligibility for funding.

## **5 Exploitation**

### **5.1 Distribution and commission**

(1) Preference may be given to productions with the potential for further exploitation. These include productions that already present a plan for producing a version accessible for viewers with disabilities at the time of application, as referred to in Section 8.1.

(2) The commission stipulated in distribution agreements is not to exceed 25% and the term of the agreement is not to exceed ten years. Lump-sum distribution costs may not exceed 15% of distribution revenues. The foregoing also applies to distribution agreements with television broadcasters or their affiliates which participate in financing the project. Any additional participation of distributors in revenues is excluded.

### **5.2 Broadcaster-affiliated distribution**

(1) Distribution rights may be granted to undertakings affiliated with a television broadcaster participating in financing, where the conditions of the distribution agreements are in line with customary industry practice in the relevant market.

(2) The possibility of cancellation must be provided for. Any participation in revenues on the part of the television broadcaster participating in financing is permissible only once advance payments and the applicant’s own contribution (without licence share) have been repaid (refer to Section 4.14).

(3) In the case of programmes with fiction content, priority shall be given firstly to repaying the applicant's own share (without licence share) and secondly, in addition to reimbursing any advance payments, the applicant shall be granted a share ('corridor') in revenues equalling the ratio between the grant amount provided by FERNSEHFONDS AUSTRIA and the total production costs. Third priority shall be given to any distribution of revenues in proportion to financing contributions to the overall production costs.

## **6 Agreement with co-producers**

### **6.1 Television broadcasters**

Television broadcasters are not considered co-producers under these Guidelines.

### **6.2 Co-producers**

(1) The participation of co-producers should comprise financial, artistic and technical contributions. The artistic and technical contributions of each co-producer should correspond to that co-producer's financial contribution.

(2) Producers with minority share in the production who are at the same time grant applicants should contribute a minimum of 20% to the overall costs of the production.

(3) If only one television broadcaster is involved in the production, the relevant share of financing shall be considered vis-à-vis all co-production partners. Hereby a minimum share of 20% in relation to the total production costs are to be apportioned to the applicant.

(4) The applicant shall participate in revenues from all forms of exploitation at a rate at least commensurate with the applicant's share in financing. In cases where utilisation regions and areas are delineated, the market size and value must be taken into account.

(5) The selection and commissioning of worldwide distribution must be mutually agreed.

## **7 Extent and nature of grants**

### **7.1 Relative amount**

(1) With due consideration to Section 10.6 of these Guidelines, up to 20% of the reasonable overall production costs for television productions can be funded by FERNSEHFONDS AUSTRIA in the form of non-repayable subsidies.

(2) In deviation from the paragraph above, the amount of the grant may be increased to a maximum of 30% of the total production costs where the grant objectives are especially well met.

This is in particular the case where, for example:

- the added value generated by the production is expected to be well above average for Austria;
- the proposed production reflects Austrian cultural identity to an especially great extent;
- an outstanding, qualified employment effect is generated within the production's creative and technical staff;
- exploitation and distribution at national and international levels are ensured to a great extent, or
- the production is distinguished by innovative strategies in the area of production and/or marketing.

(3) Exceptional grants exceeding 20% will only be considered appropriate where the criteria listed above are met to an extent that clearly surpasses the average standards of other funded productions and in any case where more than one of the criteria are met. The grant applicant must provide evidence of meeting the conditions.

(4) The grant is subject to a 20% reduction if by the date of final settlement the applicant cannot provide evidence of meeting the criteria previously listed by the applicant or if the requirements based on which the increased grant was approved have changed to the extent that the criteria are not met.

(5) The grant by FERNSEHFONDS AUSTRIA cannot exceed the share of that television broadcaster contributing the greatest amount to total financing as compared with the other television broadcasters participating in the production.

The aforementioned can also be applied to the shares contributed by several television broadcasters in the case of difficult productions as defined in Section 10.6 (3) and also where for example several non-German-language television broadcasters participate in productions by contributing very small amounts.

## **7.2 Expenses incurred in Austria**

(1) The expenses incurred in Austria should equal at least 1.6 times the grant amount awarded and must not be lower. In any case, 20% of the total production costs can be incurred in other member states of the European Economic Area.

(2) In cases where the share of planned expenses in Austria is not reached, the amount of the grant will subsequently be reduced by the ratio of actual expenses incurred in Austria to the planned expenses in Austria. In exceptional cases FERNSEHFONDS AUSTRIA can refrain from reducing the grant amount where the shortfall in actual expenses incurred in Austria is below 10%.



(3) In grant award decisions, applications which involve an especially large share of expenses incurred in Austria will be given special consideration. In such cases it is also necessary to take into account the ratio of the total planned amount of Austrian financing in relation to the planned expenditure in Austria.

## **8 Exploitation grants**

### **8.1 Object of exploitation grants**

(1) In addition to the overall production costs as referred to in Section 7.1, the following measures may also be funded:

- Production of versions for people with hearing or visual impairments, where grants may cover 80% of the actual costs incurred and documented or a maximum of EUR 10,000
- Production of foreign-language versions, where grants may cover 50% of the actual costs incurred and documented or a maximum of EUR 30,000
- Screening of the production at film festivals, fairs and competitions, where grants may cover 50% of the actual costs incurred and documented or a maximum of EUR 30,000

(2) Applications for exploitation grants will only be allowed subject to the availability of funds and to valid approval for a production grant. Where a previously issued approval for a production grant becomes void at a later stage, the exploitation grant also becomes void.

(3) Where funding is requested for the production of a foreign-language version, the applicant must provide corresponding evidence of interest in purchasing that version.

(4) Applications for exploitation grants can be submitted repeatedly, until the maximum grant amount is fully exploited.

(5) Where a grant is requested for screening a previously funded project at film festivals, fairs and competitions, the relevant documentation must be provided. Grants are only awarded for participation in events appearing in the festival list of FERNSEHFONDS AUSTRIA.

### **8.2 Other funding institutions**

The total share of the exploitation activity funded by other funding institutions or territorial authorities may only exceed 50% where grants are for the production of a version for people with hearing or visual impairments.

## **9 General provisions**

### **9.1 Absolute amount**

(1) The maximum production grant amount:

- Productions with fiction content      EUR 1,000,000
- Documentary productions              EUR 200,000

(2) Where grounds exist in exceptional cases, other amounts may be awarded.

(3) In the case of multi-part production, the maximum amount specified under (1) above can be granted for each part, up to a maximum total of EUR 3 million for productions with fiction content and up to a maximum total of EUR 600,000 for documentary productions.

Multi-part productions may be funded with a consistently decreasing amount.

### **9.2 Distribution of grant funds**

(1) FERNSEHFONDS AUSTRIA may distribute grant funds according to percentages for fictional and documentary productions, in which case the distribution is to be published in a suitable form at the beginning of each grant year. Should circumstances during the grant year make it appear likely that funding in one of these areas will not be fully utilised, FERNSEHFONDS AUSTRIA may adjust the percentages for distributing funding.

(2) A share of 3% of the funds available to FERNSEHFONDS AUSTRIA each year may be reserved for exploitation grants under Section 8.1.

## **10 Procedures**

### **10.1 Application dates**

(1) Applications for production grants can only be submitted on the application dates announced by FERNSEHFONDS AUSTRIA.

(2) Applications for exploitation grants pursuant to Section 8.1 can be submitted at any time. Applications for exploitation grants must be received by FERNSEHFONDS AUSTRIA at the latest 24 months after the production's announced completion date.

(3) Applications for funding from FERNSEHFONDS AUSTRIA are to be submitted through the eRTR online portal, developed and made available by RTR at [www.rtr.at](http://www.rtr.at).

The conditions of online portal use are specified in the terms and conditions of use, which may be retrieved from the RTR website at [www.fernsehfonds.at](http://www.fernsehfonds.at) and printed out.

(4) The grant applicant is required to draw up the application using the forms provided via the online portal in line with the terms of use and complete all required information and submit all declarations. The fully completed application is to be signed by an individual authorised to sign for the applicant, by means of a qualified electronic signature as defined in Section 3 Par. 2 no. 3a of the Signature and Trust Services Act (SVG; as amended by Federal Law Gazette I No. 50/2016) in conjunction with Art. 3(12) of the eIDAS Regulation (Regulation (EU) No 910/2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC, OJ L 257 of 28 August 2014).

The grant applicant shall submit the application, signed as indicated above, via the online portal.

(5) At the same time digital copies of the documents required for the application are to be attached to the online form.

(6) In the event that, for whatever reason, the applicant is not granted any funding or originally granted funding is withdrawn, the application documents will remain at the disposal of RTR. RTR will retain the application documents for a period not exceeding the end of the contractual relationship with the grant applicant or until expiry of the legal retention periods applying to RTR or, beyond such periods, until termination of any legal disputes in which the data are required as evidence.

(7) Only applications with a qualified electronic signature that are submitted via the online portal no later than the application date (midnight) will be considered as having been submitted on time.

## **10.2 Application documents**

(1) The documents required in the application forms, especially descriptions of content, should preferably be submitted in German. The type and scope of application documents are to comply with the information sheet published by FERNSEHFONDS AUSTRIA. All application documents shall become the property of FERNSEHFONDS AUSTRIA.

(2) Application documents shall specifically include the following:

- Details of the applicant
- Information on any co-production partners, including a current excerpt from the Commercial Register and co-production contract; a preliminary contract or declaration of intent, stipulating in particular the artistic, technical and financial participation of each production partner as well as the distribution of exploitation as referred to in Section 6.2.
- Content description or screenplay
- Financing commitment(s) (at least conditional)
- Calculation of overall production costs (correlating with the calculation sheet) specifically indicating the share of expenses to be incurred in Austria

- The calculations presented to the television broadcasters
- Exploitation plan
- Financing plan showing the grant applicant's own contribution
- Crew and cast list (preliminary)
- General schedule and shooting schedule

Where exploitation grants as referred to in Section 8.1 are requested, applicants are also required to submit cost calculations as well as a financing plan for the planned activities.

(3) At the time of application, the applicant should be able to submit binding commitments evidencing the share of financing provided by third parties. The existence of such commitments may be taken into consideration when evaluating a production's eligibility for funding. The television broadcasters with a direct participation in the financing must describe the acquired and/or yet to be acquired scope of rights (in temporal, territorial and material terms) in the submitted financing commitments and reflect an appropriate licence share to be credited towards the grant applicant's own contribution. In this context, the scope of rights and licence shares of any other television broadcaster participating through the broadcaster are to be described in detail.

### **10.3 Calculation of total production costs**

(1) A maximum of 7.5% of total production costs is permitted to be calculated as imputed producer's fee. No additional producer's fee can be calculated under the 'Pay, wages and fees' cost item.

(2) Imputed general expenses and the imputed producer's fee are imputed cost items that cannot be automatically increased but remain at the level calculated if the net production costs are exceeded. If the costs fall below the calculated level, the general expenses and the producer's fee are to be recalculated at 7.5% of the net production costs.

(3) The production manager's fee may not exceed 2.5% of the net production costs.

(4) Services settled internally, own services and expenses settled with subsidiary firms are required to be separately itemised in the calculation and are part of the agreement. Upon final settlement, such costs can only be increased in substantiated exceptional cases.

(5) Pay and wages not regulated by collective bargaining agreements can be calculated based on customary industry rates.

### **10.4 Expenses incurred in Austria**

(1) Wages, salaries, pay and fees are recognised as expenses incurred in Austria where and only to the extent that they are subject to taxation in Austria. The persons

employed in the production are to be named in a crew and cast list, indicating each person's place of residence or establishment for tax purposes.

(2) Products or services provided by undertakings are only recognised as expenses in Austria in cases where:

- evidence is provided that the undertaking's place of establishment, branch office or business premises is located in Austria and recorded in the Austrian Commercial Register and that it has a business licence;
- and the product or service for which an invoice is issued was actually produced or provided in its entirety in Austria, or all of the materials used were actually procured in Austria. Mobile filmmaking equipment is to be procured / purchased / leased / rented from a source in Austria.

(3) Calculated general expenses and the calculated producer's fee are not considered costs incurred in Austria as defined for the purposes of this grant.

## **10.5 Submission of identical documents and exchange of information**

All persons, companies and grant institutions participating in financing are to be provided with the same production data and information. Upon submitting the application, the applicant must also provide a declaration permitting the exchange of project-related and personal data, particularly with grant institutions and television broadcasters with which FERNSEHFONDS AUSTRIA cooperates in Austria and abroad, for the purpose of verifying the application documents.

## **10.6 Accumulation of grants**

(1) Under these Guidelines, grants can be combined with grants from other institutions or territorial authorities. Grants under these guidelines cannot be awarded for productions which have already received support from other sources of Austrian federal funding (i.e. multiple federal grants are not permitted).

(2) The total share of total production costs financed with public funds must not exceed 50%, while difficult productions, as defined in Section 10.6 (3), made with small budgets may be funded up to 80%. Funds obtained directly from EU programmes such as the MEDIA programme are not to be considered when calculating the maximum permitted amount of grants.

(3) A production can be considered difficult for example where only a low level of market acceptance can be expected and its chances of economic exploitation must therefore be considered limited, especially due to the production's experimental character or because it is associated with high risks due to its content, its manner of production, its artistic and/or technical design or its high cultural standards.

## **10.7 Grant decisions**

(1) In general, FERNSEHFONDS AUSTRIA is required to issue decisions on completed applications for production grants within two months of each application date. The review board established for advisory purposes is responsible for providing a statement with regard to the eligibility of the applications submitted for funding.

(2) Decisions on exploitation grants will be made after receipt of all relevant documentation.

(3) The applicant must be informed of the grant decision in writing and without delay. In the event of rejection, which must be issued in writing with due indication of the main reasons for the decision, the applicant is to be informed in due time so that the production can be submitted for another application date, unless it generally breaches the relevant legal provisions or these Guidelines.

## **10.8 Notification of grant decision**

In the event of a positive grant decision, the grant recipient will be given information on the amount of the grant to be awarded as well as all accompanying requirements and conditions connected to the funding approval, including the obligations related to the award in the form of a grant agreement. The grant agreement is to be signed and returned by the applicant within six weeks. The application may be declared void if the signed agreement is not returned to FERNSEHFONDS AUSTRIA within this period.

## **10.9 Carrying out a production prior to a valid grant agreement**

Should the applicant begin carrying out the production proposed for funding before the grant agreement enters into effect, it shall be solely at the applicant's own risk. In such cases FERNSEHFONDS AUSTRIA shall not be subjected to obligations of any kind whatsoever.

## **10.10 Use of grant funds**

Grant funds may only be used to cover costs arising from the production submitted to FERNSEHFONDS AUSTRIA. The applicant is to ensure that the funds are used as specified and in an expedient and economical manner.

## **10.11 Grant approvals for a limited period**

On the basis of the application documents, FERNSEHFONDS AUSTRIA may issue a grant approval which is valid for a limited period of time. If evidence of fulfilment of the requirements and conditions of the grant approval is not provided within this period, which is generally six months, or if the prerequisites for the grant approval are not or no longer met, the grant approval shall be considered void.

## **11 Method of disbursement**

### **11.1 Completion guarantee**

(1) The grant applicant and any co-producers holding a majority share must provide a written declaration stating that the planned production will be completed by a specific date (completion guarantee).

(2) FERNSEHFONDS AUSTRIA reserves the right to stipulate the requirement of a completion bond or other guarantees (e.g. a bank guarantee) in the grant agreement.

### **11.2 Evidence of full financing**

Evidence that the production is fully financed is a condition for disbursement of the approved grant funds.

### **11.3 Disbursement of production grant in instalments**

Before the grant agreement takes effect, the applicant is required to provide FERNSEHFONDS AUSTRIA with the final detailed calculation, final calculation sheet, the agreements with financing partners and other documents specified in the grant agreement. Reasons must be provided for any deviations from the calculations underlying the grant decision (i.e. those originally submitted or submitted later) and such deviations require approval by FERNSEHFONDS AUSTRIA.

### **11.4 Instalments**

(1) Approved grants are generally disbursed in three instalments:

- 3/6 when the grant agreement takes effect
- 2/6 upon the start of shooting and after submission of the following:
  - Shooting schedule and general schedule
  - Final crew and cast list, including all places of residence and tax domiciles
  - the most recent version of the screenplay
  - Regular submission of daily call sheets and reports or the corresponding documents in the case of documentaries
- 1/6 within six months after completion of the production and after submission of the following:
  - Confirmation of final acceptance by the co-financing television broadcaster(s)
  - List of the actual financing partners
  - Dated final statement of total production costs, with a statement of expenses incurred in Austria, own services and services settled internally (where co-producers participate, including the authorised signatures of all co-producers)
  - Records of individual accounting entries, with expenses in Austria itemised accordingly
  - Lists of balances for production accounts

- Itemisation of own services under the cost items
- Evidence of fulfilment of acknowledgement obligations
- Detailed exploitation plan
- Information on prior broadcast dates and the corresponding viewership figures
- CD copy of digital press photographs, with the rights holder indicated
- Press information folders
- DVD copy of the completed production

(2) Deviating contractual arrangements may also be made with regard to the scheduling of individual instalments.

### **11.5 Disbursement of exploitation grants**

(1) Exploitation grants are disbursed only upon evidence of the costs incurred.

(2) The request for disbursement of the exploitation grant must be accompanied by invoices and receipts documenting the costs incurred. The incurred costs must not have already been included in the production costs. External costs as well as the applicant's documented own services can be submitted.

### **11.6 Absolute expiry date**

Notwithstanding the other provisions of these guidelines, payments owing to and claims held by the grant recipient shall expire if they are not requested (after meeting all disbursement conditions) within three years after the grant agreement takes legal effect; such claims cannot be asserted in courts of law, in out-of-court proceedings, or by way of offsetting charges.

### **11.7 Prohibition of pledges and assignment**

Grant recipients are not allowed to dispose of approved grant funds by means of assignment, cession, pledges or any other instrument.

### **11.8 Depletion of grant funds**

If the funds allocated for grants are depleted, no further grants can be awarded in the given calendar year. Applicants have the option of submitting another application for a grant in the following year.

## **12 Reporting, settlement, final audit**

### **12.1 Acceptance confirmation and final cost statement**

(1) Grant funds are to be managed with due care and according to the principles of prudent business practices. Grant recipients are to keep separate records of all revenues and expenses related to the production as evidence of the use of funds for their specified purpose. To verify the use of grant funds for their specified purpose,



FERNSEHFONDS AUSTRIA shall be presented with an acceptance confirmation from the co-financing television broadcasters after completion and before the final grant instalment is paid out (requested).

(2) Should the second and third instalments not be requested within six months of the announced completion date, the FERNSEHFONDS AUSTRIA may set a grace period of no more than six months. Within that period, the grant recipient must submit the final cost statement for the production (co-signed with the authorised signatures of any and all co-producers); the statement must be presented in a well-structured and meaningful form as well as provide sufficient detailed information to enable verification. Otherwise, the grant recipient's claim to the unpaid instalment (or instalments) shall expire irrevocably.

(3) Should the grant recipient fail to submit the final cost statement on time, the grant recipient will be excluded from the application process and will not receive funding approvals for any further productions until an appropriate cost statement has been submitted.

## **12.2 Access to books and accounts**

FERNSEHFONDS AUSTRIA reserves the right to review the procedures of production, the use of grant funds for the specified purpose, the final cost statement on the basis of original records, account statements, records on own services at assessed value, original contracts etc., or to entrust a third party with this task. The grant recipient undertakes to make the original documents available to FERNSEHFONDS AUSTRIA or the third party entrusted with the review, to allow the inspection of documents, contracts, business ledgers and records, and to provide all information necessary for this purpose. The original documents will be returned to the grant recipient once the review has been completed. As a rule, such reviews will be carried out on site and must be permitted by the grant recipient.

## **12.3 Reporting and information obligations**

(1) The grant recipient is required to carry out the project according to the agreed schedule and to report to FERNSEHFONDS AUSTRIA immediately and in writing any and all events which might delay the production or render it unfeasible or imply a change in the agreed purpose of the grant or its requirements and conditions.

(2) Grant recipients are to provide FERNSEHFONDS AUSTRIA with information on the progress of their projects at all times upon request. Depending on the duration of the funded production or the amount of the grant, the grant agreement may require the recipient to present reports at regular intervals.

(3) An annual progress report is to be submitted in the first quarter of each calendar year for projects spanning several years.

## **13 Discontinuation and reimbursement**

### **13.1 Forfeiture of grants**

Grant recipients are obligated to repay grant funds in part or in full within 14 days upon written request by FERNSEHFONDS AUSTRIA, in which case any grant awarded but not yet paid out will be forfeited where:

- The applicant provided inaccurate or incomplete information on important circumstances
- A general or special grant requirement specified in law, these Guidelines or the grant agreement is not fulfilled
- Required reports or verifications are not submitted or necessary information is not provided, where in such cases the applicant fails to comply with a written request previously sent, setting an appropriate deadline and expressly stating the legal consequences of non-compliance
- Failure to report immediately and in writing any and all events which might delay the production or render it infeasible or require it to be changed
- Before proper completion of the funded production and before submission of the final cost statement, bankruptcy or settlement proceedings are initiated against the assets of the grant recipient, or bankruptcy proceedings are not initiated due to a lack of assets to cover costs and thus in particular achievement of the grant's purpose is or appears unfeasible
- The grant recipient impairs or obstructs agreed monitoring measures
- Part or all of the grant funds are not used for their specified purpose
- The production cannot or could not be completed at all or on schedule
- Failure to comply with the guideline prohibiting the assignment/cession of funds

### **13.2 Interest**

For the case where repayment of awarded grants is required, the grant agreement may stipulate interest at a rate 3.5 percentage points above the interest rate, published in the Official Journal of the European Union (Series C), on which the European Central Bank bases its main refinancing operations and which applies on the first calendar day of the month in which payment is due.

## **14 Contractual arrangements**

### **14.1 Written form**

(1) The grant agreement as well as any supplements to it must be in written form and shall govern the rights and obligations of the contracting parties.

(2) The following constitute the basis of the parties' rights and obligations as stipulated in the grant agreement: the screenplay or content description submitted by the grant recipient, the recognised total production costs, the financing plan, the crew and cast list, the production schedule, the co-production agreements, the

agreements with television broadcasters, and the agreements with other grant institutions and with other co-financers. All documents of this kind are considered integral parts of the grant agreement.

## **14.2 KommAustria Act**

The respective provisions of the KommAustria Act (*KommAustria-Gesetz*) and the Grant Guidelines are also integral parts of the grant agreement.

## **14.3 Acknowledgement obligation**

(1) The grant recipient undertakes to make mention of the grant from FERNSEHFONDS AUSTRIA, specifically in the recipient's public relations work as well as in all advertisements, announcements or other presentations of the production (on the main page of the press information folder, in press releases, on posters and wherever credits appear).

(2) Mention is to be made of the grant from FERNSEHFONDS AUSTRIA in the opening and/or closing credits of the production.

(3) At least one line of text is to be used in the opening credits of the production to make mention of the grant from FERNSEHFONDS AUSTRIA.

(4) The logo of FERNSEHFONDS AUSTRIA is to be used in the closing credits to make mention of the grant. The logo is available at [www.fernsehfonds.at](http://www.fernsehfonds.at) or [www.rtr.at](http://www.rtr.at). Compliance with the guidelines on logo use is mandatory. The use of the FERNSEHFONDS AUSTRIA logo must always be coordinated in advance with FERNSEHFONDS AUSTRIA.

(5) The scope of the acknowledgement obligation includes all utilisation and advertising of the production in every form of use worldwide.

(6) The grant recipient undertakes to submit, without explicit request, written reports on all exploitation activities, broadcasts (where known) and revenues from the exploitation of the production at least once a year for a period of 36 months following the premiere broadcast of the production.

(7) In addition, the grant recipient must provide FERNSEHFONDS AUSTRIA free of charge with one DVD copy of the funded production as well as press materials for archival purposes, and grant FERNSEHFONDS AUSTRIA the appropriate editing, reproduction and presentation rights as well as other non-commercial rights to use the relevant production free of charge for presentations in FERNSEHFONDS AUSTRIA's public relations work, and where possible provide FERNSEHFONDS AUSTRIA with such copies as are manufactured for the purpose of broadcasts.

## **14.4 Information obligation**

The annual report to be compiled by FERNSEHFONDS AUSTRIA has also to include information on developments in the field of television film production. Grant recipients are therefore obligated to provide FERNSEHFONDS AUSTRIA with the information and documents required for preparing this report.

## **15 Final provisions**

### **15.1 Entry into force**

(1) These Guidelines will enter into effect as of 1 December 2015 and will remain in force until 30 June 2021. The previous version of these guidelines (FFRIL0001-0002/2015) apply to all projects approved prior to 31 December 2018.

(2) FERNSEHFONDS AUSTRIA will review these guidelines at the latest two years after becoming effective and adapt them if necessary on the basis of experience and fund administration requirements in accordance with the objectives of FERNSEHFONDS AUSTRIA.

Vienna, 1 December 2018

**Austrian Regulatory Authority for Broadcasting and Telecommunications**

Oliver Stribl

Managing Director, Media Division