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Federal Act on Film Production and Film Culture (Film Act, FiA)

of 14 December 2001 (Status as of 1 January 2017)

*The Federal Assembly of the Swiss Confederation,
based on the Article 71 and 93 of the Federal Constitution¹,
and having considered the Federal Council Dispatch dated 18 September 2000²,
decrees:*

Chapter 1 General Provisions

Art. 1 Aim

This Act is intended to promote the diversity and quality of the films on offer and the creation of films and to aid the development of film culture.

Art. 2 Definitions

¹ A film is defined as any sequence of structured images, with or without a soundtrack, intended for reproduction, which when viewed, gives the impression of movement, irrespective of the technical procedure for shooting, recording or playback chosen.

² A Swiss film is defined as a film that:

- a. has to a substantial extent been created by an author of Swiss nationality or who is domiciled in Switzerland;
- b. has been produced by a natural person who is domiciled in Switzerland or a company with registered office in Switzerland in which the equity and borrowed capital as well as the management is predominantly held and controlled respectively by persons with domicile in Switzerland; and
- c. which was produced, insofar as possible, using performers and technicians who are of Swiss nationality or domiciled in Switzerland and by technical cinematographic companies in Switzerland.

AS 2002 1904

¹ SR 101

² BBl 2000 5429

Chapter 2 Film Promotion

Section 1 Promotion Areas

Art. 3 Swiss film production

The Confederation supports the cultural dissemination, the economic viability, the continuity and the development potential of the independent Swiss film industry. To this end, it may provide financial assistance and other forms of support for the development of projects as well as for the production and exploitation of:

- a. Swiss films;
- b. films co-produced by Switzerland and other countries.

Art. 4 Diversity and quality of the films on offer

In order to promote the cultural and linguistic diversity and the quality of the films on offer, the Confederation may provide financial assistance and other forms of support, in particular for distribution, public screening and sales.

Art. 5 Film culture

The Confederation may provide financial assistance and other forms of support for:

- a. the dissemination of film culture and for increasing film awareness;
- b. film festivals that make a significant contribution to the national or international film culture;
- c. the archiving and restoration of films;
- d. cooperation among the various sectors of the film industry;
- e. further institutions and efforts that make a significant contribution to the maintenance and development of film production and film culture in Switzerland as well as innovation in these fields;
- f. international cooperation in the film sector.

Art. 6³ Continuing education and training

The Confederation may provide financial assistance and other forms of support for the continuing education and training of persons working in the film industry.

³ Amended by Annex No 17 of the Federal Act of 20 June 2014 on Continuing Education and Training, in force since 1 Jan. 2017 (AS **2016** 689; BBl **2013** 3729).

Section 2 Promotion Instruments

Art. 7 Awards

The Confederation may reward outstanding contributions to film production and film culture by awarding prizes or other distinctions.

Art. 8⁴ Selective and success- or location-linked film promotion

¹ Financial assistance is provided in accordance with criteria related to quality (selective promotion), success (success-linked promotion) or location (location-linked promotion).

² The Federal Department of Home Affairs (FDHA) determines the requirements, in particular the reinvestment obligations, and the procedure.

Art. 9 Delegation of film promotion to institutions

¹ The Confederation may delegate film promotion in a particular field to a private organisation provided third parties make an important contribution to such promotion.

² The Federal Council decides on the principle of delegation on a case-to-case basis. The FDHA⁵ determines the general conditions and appoints the representatives of the Confederation.

³ The Confederation shall enter into a service agreement with the organisation in order to regulate the mutual obligations. The service agreement provides for a court of arbitration that decides, without right of appeal, on disputes between the organisation and entitled parties.

Art. 10 Service agreements

The Confederation may enter into service agreements with legal entities that regularly receive financial assistance.

Section 3 Promotion Concepts and Assessment

Art. 11 Promotion concepts

¹ The FDHA regulates the organisation of film promotion through promotion concepts.

⁴ Amended by No I of the Federal Act of 19 June 2015, in force since 1 July 2016 (AS 2015 5637; BBl 2015 497).

⁵ Name in accordance with No I of the Federal Act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5637; BBl 2015 497). This change has been made throughout the text.

² The promotion concepts are issued for the individual promotion areas in accordance with Articles 3–6 as well as for awards in accordance with Article 7. They define the goals that should be achieved, designate the promotion instruments and determine the decisive criteria.

³ The promotion concepts issued have a period of validity of from three to five years.

Art. 12 Assessment

¹ The appropriateness and effectiveness of the promotion concepts and the promotion instruments are assessed regularly.

² The results of the assessment are made public.

³ The FDHA regulates the assessment procedure.

Section 4 Financial Assistance and other Forms of Support

Art. 13⁶ Forms of financial assistance

¹ Financial assistance shall be provided within the limits of the authorised credits in the form of non-repayable cash payments, deficit guarantees, interest subsidies, credit guarantees, payments in kind or conditionally repayable loans.

² Support may also be provided in the form of advice or recommendations and by issuing letters of comfort or providing other services in kind.

Art. 14 Decisions on financial assistance and other forms of support

¹ Financial assistance and other forms of support are awarded by the Federal Office⁷ responsible (Federal Office).

² If the Federal Office does not have the required technical knowledge, it shall have the applications assessed by technical committees or specially instructed experts.

³ ...⁸

Art. 15 Provision and allocation of resources

¹ The financing of film promotion is governed by Article 27 of the Culture Promotion Act of 11 December 2009^{9,10}.

⁶ Amended by Annex No II 3 of the Culture Promotion Act of 11 Dec. 2009, in force since 1 Jan. 2012 (AS **2011** 6127; BBl **2007** 4819 4857).

⁷ Currently the Federal Office of Culture.

⁸ Repealed by Annex No 41 of the Administrative Court Act of 17 June 2005, with effect from 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

⁹ SR **442.1**

¹⁰ Amended by Annex No II 3 of the Culture Promotion Act of 11 Dec. 2009, in force since 1 Jan. 2012 (AS **2011** 6127; BBl **2007** 4819 4857).

² Income from the tax on the promotion of the diversity of films on offer, contributions from broadcasting organisations as well as any payments and benefits from third parties are included in the financial budget and earmarked for use in film promotion.

³ The Federal Office allocates the available resources annually to the promotion areas in accordance with Articles 3–6. In doing so it takes account of the promotion concepts and stipulates the maximum amounts of assistance that may be awarded to any individual project in each promotion area.

Section 5 Exclusion from Film Promotion

Art. 16

¹ No financial assistance is awarded to:

- a. advertising films;
- b. films that are primarily educational in their objective;
- c. films that produced to order.

² Films that are completely excluded from film promotion measures include films:

- a. that offend human dignity;
- b. that portray members of either sex of a specific group in a degrading manner;
- c. that glorify or trivialise violence;
- d. that are pornographic in character.

Chapter 3

Provisions on the Promotion of the Diversity of Films intended for Public Screening

Section 1 Measures to promote the Diversity of the Films on offer

Art. 17 Principles

¹ Distribution and projection companies must contribute in their activities to the diversity of films on offer by means of:

- a. their business policy;
- b. measures agreed within the industry.

² The measures include agreements in which distribution and projection companies or their professional associations undertake to organise the programming for a cinema region to provide as much diversity and quality as possible.

³ Before entering into an agreement within the industry, the associations involved shall consult the FDHA on the measures planned to promote the diversity of the films on offer and linguistic diversity.

Art. 18 Diversity of films on offer

The diversity of films on offer in a cinema region is guaranteed if the films on offer, given the number of screens used and the size of the cinema region, originate in sufficient numbers from a variety of countries, are of a variety of genres and represent a variety of film styles.

Art. 19 Linguistic diversity

¹ Films subsidised by the Confederation must be made available in more than one national language.

² A company may distribute a title for its first public showing in the cinema or for other uses of the work only if it holds the rights for the whole of Switzerland to all language versions that are available for exploitation in Switzerland.¹¹

³ The foregoing does not apply to exploitation by broadcasting organisations in programme services under Article 2 letter a of the Federal Act of 24 March 2006¹² on Radio and Television.¹³

Art. 20 Assessment and re-establishment of diversity

¹ The Federal Office regularly assesses the effect of the activities and measures in accordance with Article 17 on the basis of the information received in terms of Article 24 periodically. It publishes the results of the assessment and allows the industry, and in particular the promotion organisations that are party to agreements in terms of Article 17 paragraph 3, the opportunity to state its views.

² If the Federal Office establishes in the course of the assessment that the diversity of films on offer in a cinema region is inadequate, it shall require the distribution and projection companies concerned to take measures within a reasonable time to re-establish the diversity of films.

³ In relation to distribution and projection companies that have entered into an agreement in terms of Article 17 paragraph 3, the instructions are issued to the promotion organisation. This shall take the required measures independently in order to re-establish the diversity of films on offer within a reasonable time.

¹¹ Amended by No I of the Federal act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5637; BBl 2015 497).

¹² SR 784.40

¹³ Inserted by No I of the Federal act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5637; BBl 2015 497).

Section 2 Tax for the Promotion of Diversity

Art. 21 Tax

¹ If the position required by the law is not re-established within a reasonable time, the Confederation may levy a tax. The FDHA decides on whether the tax is levied after hearing the parties concerned and the Film Commission (Art. 25).

² The rate of tax is a maximum of 2 francs per admission, and is levied on the admissions achieved by the distribution and projection companies concerned in a cinema region. These companies, subject to the provisions of Article 22, each pay one half of the tax.

³ After deduction of the costs of implementation, the income from the tax is used to promote the diversity of films on offer in the distribution sector and in public projection in the cinema region concerned.

⁴ The tax may be levied for as long as is required to re-establish the position required by the law.

Art. 22 Exemptions from the tax

¹ Distribution and projection companies may secure exemption from payment of the tax by making a formal undertaking to the Confederation to make a special contribution to the diversity and quality of the films on offer in a cinema region.

² In the event of wilful non-compliance with the undertaking in terms of paragraph 1, the tax becomes due for payment without any further formalities.

Section 3 Registration and Reporting Requirements

Art. 23 Registration requirement

¹ Whoever on a professional basis screens films in public or distributes films intended to be screened in public must be registered in a public federal register before engaging in their activity.

² In order to be able to register, it is necessary to be domiciled or to have one's head office in Switzerland.

³ In order for a legal entity to be able to register, the members of its senior management must be domiciled in Switzerland. Notice must be given to the Federal Office of any change occurring in the members of the senior management.

Art. 24 Reporting requirements

¹ The production companies receiving support must submit a report every year on the titles and technical data of the films produced, as well as on the results obtained in Switzerland and abroad from their exploitation.

² The distribution companies must submit a report every month on titles of the films distributed, the places of screening, the screens on which they are projected and the number of admissions attained (cinema attendance).

³ The projection companies in the key towns submit a report every week, and other projection companies every month, on the titles screened, the screens on which they are projected and the admissions achieved per title and per screen.

^{3bis} Companies that exploit films in order to use the works outside cinemas shall file a report every year on the results obtained from the exploitation of the firms according to language version.¹⁴

⁴ The reports are made to the Confederation or to an organisation recognised by the Confederation.

⁵ The data referred to in paragraphs 2, 3 and ^{3bis} shall be published regularly.¹⁵

Chapter 4 Commissions

Art. 25 Federal Film Commission

¹ The Federal Council shall establish a Federal Film Commission («the Film Commission»), which advises the authorities on all important issues relating to film culture, film policy and the implementation of this Act.

² The Film Commission must in particular be consulted:

- a. on the provisions for the implementation of this Act, the promotion concepts and the distribution plans;
- b. on the assessment of the promotion concepts and promotion instruments;
- c. on the results of the assessment of the diversity of films on offer and linguistic diversity.

³ The Federal Council determines the composition of the Film Commission. It appoints its chairperson and its members.

⁴ The FDHA regulates the organisation and procedure. It may establish committees from the Film Commission and delegate specific tasks to them.

Art. 26¹⁶ Technical committees

¹ Technical committees shall be appointed to assess applications for promotion assistance.

² The FDHA shall regulate their organisation and the procedure.

¹⁴ Inserted by No 1 of the Federal act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5637; BBl 2015 497).

¹⁵ Amended by No 1 of the Federal act of 19 June 2015, in force since 1 Jan. 2016 (AS 2015 5637; BBl 2015 497).

¹⁶ Amended by No 1 2.3 of the Ordinance of 9 Nov. 2011 (Review of the Extra-Parliamentary Commissions), in force since 1 Jan. 2012 (AS 2011 5227).

Chapter 5 Criminal Provisions

Art. 27 Infringement of the registration requirement

¹ Any person who wilfully fails to comply with the registration requirement in Article 23 is liable to a fine.

² If the infringement is repeated, the penalty is a fine of up to 20,000 francs.

Art. 28 Infringement of the reporting requirement

¹ Any person who as a member of the senior management of a company subject to the reporting requirement fails despite receiving a reminder to provide the information due in terms of Article 24 or who wilfully provides false information is liable to a fine.

² If the infringement is repeated, the penalty is a fine of up to 20,000 francs.

Art. 29 Infringement of the provision on linguistic diversity

¹ Any person who wilfully distributes for first showing a title to which a registered company has already acquired the rights for the same exhibition sector (Art. 19 para. 2) is liable to a fine.

² If the infringement is repeated, the penalty is a fine of up to 100,000 francs.

Art. 30 Infringement of the provisions on the tax

¹ Any person who wilfully evades payment of a tax in terms of Article 21 or who secures for himself or another an unlawful tax advantage is liable to a fine of up to three times the amount of the tax evaded or of the advantage.

² If the offence is committed through negligence, the penalty is a fine of up to the amount of the tax evaded or of the advantage.

³ If it is not possible to ascertain the precise amount of the tax in figures, it is estimated.

⁴ An attempt to secure an unlawful tax advantage for oneself or for another is a criminal offence.

Art. 31 Responsibility for prosecution

¹ The Federal Act of 22 March 1974¹⁷ on Administrative Criminal Law applies in relation to the prosecution and judgement of the offence.

² The federal administrative authority responsible for prosecution and judgement is the FDHA.

Chapter 6 Procedure and International Cooperation

Art. 32¹⁸ Procedure and legal remedies

¹ The procedure and the legal remedies are governed by the general provisions on the administration of federal justice.

² ...¹⁹

³ In appeal proceedings against decisions on financial assistance, the complaint of unreasonableness is not permitted.

Art. 33 International cooperation

In order to promote international relations in the cinematographic sector, the Federal Council may enter into contracts under international law and private law, in particular in relation to:

- a. co-productions;
- b. financial participation in international productions;
- c. the promotion of films;
- d. cultural efforts in the cinematographic sector;
- e. financial participation in international promotion measures.

Chapter 7 Final Provisions

Art. 34 Implementation

¹ The Federal Council shall enact the implementation provisions unless this Act designates a different authority.

² The Federal Council may delegate individual implementation tasks to private organisations.

Art. 35 Repeal of current law

The Federal Act of 28 September 1962²⁰ on the Film Industry is repealed.

¹⁸ Amended by Annex No 41 of the Administrative Court Act of 17 June 2005, in force since 1 Jan. 2007 (AS **2006** 2197 1069; BBl **2001** 4202).

¹⁹ Repealed by Annex No II 3 of the Culture Promotion Act of 11 Dec. 2009, with effect from 1 Jan. 2012 (AS **2011** 6127; BBl **2007** 4819 4857).

²⁰ [AS **1962** 1706, **1969** 767 No II para. 1 No 6, **1970** 509, **1974** 1857 Annex No 4, **1975** 1801, **1987** 1579, **1991** 857 Annex No 7, **1992** 288 Annex No 18]

Art. 36 Amendment of current legislation

The following enactments are amended as follows:

...²¹

Art. 37 Referendum and commencement

¹ This Act is subject to an optional referendum.

² The Federal Council determines the commencement date.

Commencement date: 1 August 2002²²

²¹ The amendments may be consulted under AS 2002 1904.

²² Federal Council Decree of 3 July 2002.

