



Broadcasters' obligation to invest in (cinematographic) film: The Netherlands

Amsterdam, 2005.

J.J.C. Kabel & S. Gorini

1. Overview

The public broadcasting organisations in the Netherlands play a fundamental part with respect to the production of cinematographic films, produced by the Dutch film industry. These organisations are involved in the production of virtually all films of this kind. Participation in cinematographic production takes place on a voluntary basis and, as from 2005, the public broadcasters have announced the adoption of a streamlined film policy which will cover their coordinated investments in cinematographic feature films. The contribution of public broadcasters takes the form of direct investment in film productions. In addition, funding institutions (CoBO and STIFO) exist which are specifically aimed at supporting projects involving a public broadcasting organisation. Although commercial broadcasting organisations have hitherto played a negligible role in this respect, the main commercial broadcaster in the Netherlands, RTL Nederland, has also recently adopted a voluntary policy of investment in cinematographic films.

STIFO (*Stimuleringsfonds Nederlandse Culturele Omroepproducties*) is a publicly funded private organization; its main task is the financing of cultural broadcast programmes. STIFO is financed by the advertising revenues of the Dutch Radio and Television Advertising Foundation, STER (*Stichting Ether Reclame*). CoBO (*Coproductiefonds Binnenlandse Omroep*) is also a publicly funded private organisation, that is financed by the levies paid by German and Belgian cable operators for the transmission of Dutch public broadcast programmes to those countries. Its main task is the financing of co-productions.

2. Obligations for Public Service Broadcasters

2.1 Legal Obligations and their Transposition

Section 170 Media Act

The only existing provision in Dutch law which is relevant to this subject is contained in Section 170 Media Act, [\[1\]](#) which concerns the Fund to promote Dutch cultural radio and television broadcasting productions (*Stimuleringsfonds Nederlandse Culturele Omroepproducties* - STIFO). This Fund was set up in 1988 to provide financial support to public broadcasters for the development and the production of works of a high artistic quality. It is only open to public service, and not to commercial, broadcasters. Funding is among others also available for feature films, providing they are cultural programmes. The STIFO will only decide on the allocation of funding once an affirmative response has been received from the Netherlands Film Fund (the national agency entrusted with

supporting film production and cinema in the Netherlands). [2]

Section 170.5 of the Media Act states that each year at least 1/16th of STER's revenue (i.e. the advertising revenue of the public broadcasting organisations) for that year is to be allocated to STIFO. [3] The total average amount of this contribution is EUR 16 million per year. Please note that the amount of 1/16 is to be considered as a monetary unit; the Ministry of Education, Culture and Science (OCW) provides directly an amount at least equal to 1/16 of STER's revenue. The Secretary of State had granted an amount of EUR 15.621.384, to be increased with a yearly 'accres' for the period 2004-2008 (Decision (Beschikking) d.d. 24 March 2005).

Out of this amount, EUR 0.8 million is specifically earmarked for support by STIFO of public broadcasters' investments in artistic cinematographic feature films (this source of funding is integrated in the broadcasters general film investment policy - see Section 2.2 below). In addition, STIFO also supports documentaries and animation films, a few of which are released in cinemas.

The Fund has been set up by the Ministry of Culture (pursuant to Section 170 Media Act) but operates in an autonomous manner. It sets its own content policy, deciding internally which types of works and genres to support. The Ministry does not interfere with these choices, although the Fund is held accountable to it. STIFO's granting of support to feature films is therefore the result of an internal decision by the Fund and is not a legal obligation.

Section 13c Media Act

Section 13c, Par. 1 (a) of the Media Act reads as follows:

"1. The tasks of public broadcasting shall be: (a) to provide a varied and high-quality range of programme services for general broadcasting purposes at national, regional and local level in the fields of information, culture, education and entertainment and to transmit them, or cause them to be transmitted, on open networks;"

The Ministry does not interpret Article 13c Media Act as being in any way relevant to broadcasters' investment in film, nor do the broadcasters themselves ever mention their investment in film as evidence of their fulfilment of their obligations under this article.

Article 5 "Television without Frontiers" Directive

As regards the "Television without Frontiers" Directive, the Netherlands in its implementation of Article 5 of the Directive (promotion of works by independent producers), has opted for an obligation on broadcasters to reserve a minimum percentage of their broadcasting time for such works rather than a minimum percentage of their broadcasting budget. [4]

2.2 Voluntary Obligations

Aside from the provisions in Section 170 Media Act, the financial participation of Dutch public service broadcasters in cinematographic production takes place on a voluntary basis. Support is granted through direct investment in a number of feature films each year, pursuant to a coordinated film policy which was recently defined collectively by all the public broadcasting organisations (see below for the content of this policy). Direct support is also granted to cinema documentaries, short films and animation films, although this is not part of a streamlined policy. Alongside cinematographic production, public broadcasters also financially participate each year in the production of a number

of films made for television (through the so called *Telefilm* project), some of which are also distributed in cinemas. In addition, the public broadcasters' investments are supported by a funding institution (*Coproductiefonds Binnenlandse Omroep* – CoBO) specifically aimed at aiding co-productions involving public broadcasters.

CoBO

In 1986 the public service broadcasting organisations set up, upon their own initiative and within their own contours, a Co-production Fund for National Broadcasters (*Coproductiefonds Binnenlandse Omroep* – CoBO). [5] The aim of the Fund is to boost the investments made by public service organisations as co-producers in certain audiovisual and theatrical productions. Among others, CoBO supports co-productions involving a Dutch public broadcaster and an independent film producer. [6] The objects of this support are feature films, documentaries, short films and animation films made for cinematographic exploitation (the films have to be distributed in cinemas in the Netherlands before they can be broadcast on television).

CoBO's contribution to a project amounts to 20% of the total production costs (with a maximum of EUR 181,512). The public broadcaster applying for CoBO funding must contribute at least 50% of the money applied for. Pursuant to an Agreement concluded in 1996, higher contributions by CoBO are permitted in the case of productions involving also the Netherlands Film Fund. [7] CoBO's financial participation is risk-money. In case of profits, CoBO's investment has to be reimbursed. For feature films, the recoupement schedule gives priority to private investments, after which CoBO receives a share. This is all carried out in accordance with the regulations of others involved (e.g. Eurimages).

CoBO's primary source of funding are the copyright payments due to the Dutch public broadcasters for the cable retransmission of their programmes in Germany and Belgium. In addition to this, COBO receives the following funding from the Ministry of Culture:

- EUR 2.4 million is earmarked from the yearly broadcasting budget for coproductions between public broadcasters and film producers and is paid to CoBO. This funding is specifically aimed at high budget cinematographic feature films and documentaries produced also with the support of the Netherlands Film Fund. The Ministry's decision to grant such funds is taken yearly but is now standard.
- A further amount of EUR 3.2 million from the yearly broadcasting budget is paid to CoBO for the financing of the *Telefilm* project (see below) [8]. This is also a yearly decision but the Minister has now made a commitment to finance the project for 3 years. [9]

A Dutch public service broadcaster must always be involved in a project for this to benefit from funding from CoBO. [10] The Fund is not open to commercial broadcasters.

The Public Broadcasters' Film Policy

As mentioned, Dutch public service broadcasters invest a significant amount of money directly in cinematographic film production, with the support of CoBO and to a lesser extent of STIFO. In the period from 1999 to 2003 the public broadcasters and the two funds have invested an average of EUR 9 million per year in feature films. [11] The main difficulty in this respect has been that because of the high number of public broadcasting organisations it has proved complicated for producers to shop around for support. Many producers have voiced their preference for a system whereby they could address themselves to one single organisation (a single *guichet*) when seeking financial backing from public broadcasters for a project. The Ministry of Culture in 2004 therefore took the

initiative of encouraging the public broadcasting organisations to streamline their film policies, in response to which the organisations adopted a unified film policy which is being implemented since 2005. [12]

As part of their new policy, the public broadcasters have announced their intention to participate as co-producers in 17 to 18 feature films each year, for an amount of approximately EUR 9 million, starting from the beginning of 2005 (this includes the 2 cinematographic films produced yearly under the *Telescoop* project, but excludes the *Telefilms*— see below). The broadcasters will participate in:

- 11 to 12 films with a wide audience appeal that will be divided equally and transmitted over the three public channels (Net 1, Net 2 and Net 3) during feast days and around public events (see below for window restrictions) and
- 6 artistic films that will be transmitted over Net 3 with a regular transmission slot.

It is specified that the public broadcasters will finance the stated amount of films only to the extent that the projects they are presented with by producers are sufficiently attractive to them (i.e. there is no obligation on them to fulfill the target number).

As regards funding, it is proposed that the plan be financed through a combination of sources (the total of which amounts to the proposed yearly EUR 9 million): EUR 1.5 million from the public broadcasters themselves; EUR 0.8 million from STIFO (i.e. STIFO's contribution to artistic feature films as detailed in Section 2.1 of this Report); EUR 4 million from CoBO; and the respective contributions by the public broadcasters' umbrella organisation (EUR 0.9 million), by CoBO (EUR 1.1 million) and by the Ministry of Culture (EUR 0.6 million) for the *Telescoop* project (see below).

The public broadcasters point out that, given their own uncertain financial situation and that of CoBO, these proposed contributions are subject to the necessary funds actually being available and that they are therefore not in a position to make a firm commitment in this respect.

As regards procedure, the implementation and coordination of the policy has been placed in the hands of CoBO. As from 2005, CoBO will act as a single *guichet* for producers. It will receive the projects proposed by producers and will collect the advice of the broadcasters' chief drama editors on each project. The channels' editorial staff will then make the final choice. Although this set up is already in force, more detailed procedural aspects are still in the process of being defined.

Concerning the return on their investment, the public broadcasters generally only receive transmission rights (to broadcast the film and to show it over the internet after this) in return for their financial participation in a film. BThere is an industry practice whereby broadcasting of the film takes place 24 months from the date of first release of the film. Broadcasters are not concerned with other forms of exploitation (e.g. video and DVD sales and rentals). In certain cases, where broadcasters have invested higher sums than what is the norm in a project, they also have a right to receive a share of the profits of the film. As already mentioned, where a film makes a profit any contribution received by CoBO has to be reimbursed (subject to the priorities noted above).

The Ministry is currently working towards the conclusion of a service agreement between the public broadcasters umbrella organization (NOS) and the Government and hopes to include the commitment by broadcasters to invest in 17 to 18 feature films per year in the agreement.

In addition to feature films, which are covered by the new streamlined policy, public

broadcasters also invest in cinema documentaries, short films and animation films, with the support of CoBO. Investments in these works are carried out on an individual basis and are not part of a coordinated policy.

The Telefilm/Telescoop Projects

The *Telefilm* project [13] was initiated in 1998 to further promote cooperation between Dutch film producers and the public broadcasting organisations. It brings together funds from the Ministry of Culture, STIFO, CoBO and the public broadcasting organisations for the production of 6 television films per year, with a budget of approximately EUR 800,000 per film. A *Telefilm* is defined as a Dutch drama of approximately 90 minutes length, intended for television screening. Some of these films (e.g. "Cloaca" and "Schnitzelparadijs") have also been distributed in cinemas. The implementation of the project has been entrusted to CoBO. Furthermore, since 2000 the *Telefilm* project has been complemented by another project financed by the public broadcasters, CoBO, the Ministry of Culture and the Netherlands Film Fund for the production of two Dutch feature films for a wide audience (the *Telescoop* project). [14] These films must first be shown in cinemas and are also financed through private means. [15] .

3. Obligations of Private Broadcasters

There are no obligations in the Netherlands on commercial broadcasters to invest in film. The above mentioned funds (STIFO, CoBO) are not open to commercial broadcasters. In fact, up until now commercial broadcasters have invested only to a very limited extent in film production. The principal Dutch private broadcaster, RTL Nederland, has however recently announced its intention to become active as an investor in the production of Dutch feature films, through the creation of its new company RTL Entertainment. [16]

According to its announced plans, RTL Nederland intends to invest in the production of 3 to 5 Dutch feature films per year. It will finance films capable of attracting a wide audience and with sufficient commercial potential, which also fit into the profile of its channels. It will also be active in the exploitation of the films through all distribution channels, including television, DVD and video sales and rentals, Internet, telephony and digital media, using its existing competencies for this purpose. The goal of this initiative is to generate a new source of revenue for the company, independent of the advertising market, through all possible forms of exploitation of the films. Indeed, it is expected that significant profits can be made, all the more so given that RTL Nederland already possesses the necessary structures and competencies to fully exploit the commercial potential of the films. The broadcaster has announced that it will cooperate with a number of partners in the various stages of the production and exploitation process, namely: M4All and Endemol (production), Universal and Independent (distribution), RTL Licensing (video and DVD distribution) and Filmfan (payTV).

A few projects involving RTL Nederland are already underway ("Wild Romance" co-produced with M4all which should be distributed in cinemas in 2006 and "Baantjer" co-produced with Endemol). [17]

4. Useful Documentation

- Jaap Wils and Arnold Ziegelaar, *Sectoronderzoek film en televisie. Eindrapport. Een onderzoek in opdracht van de federatie Filmbelangen*, Leiden 16 June 2005.
-

Notes

[1] *Mediawet* (The Media Act), *Staatsblad* (Official Gazette) 1987, 249, available at:

<http://www.cvdm.nl/pages/regelgeving.asp?m=w&>

English version available at: <http://www.cvdm.nl/pages/english.asp?m=a&>

[2] For further information on the STIFO funding programme, see the KORDA databank at:

http://korda.obs.coe.int/web/en/display_aide.php?aide_id=160

[3] See <http://www.stimuleringsfonds.nl/>

[4] For further details, see Section 54 of the Dutch Media Act, available in English at:

<http://www.cvdm.nl/documents/mediaact.pdf>

[5] <http://sites.omroep.nl/cobofonds/index.html>

[6] The Fund also supports co-productions involving a Dutch public broadcaster and:

1) a theatrical institution organising productions first performed on stage in the Netherlands; 2) the Belgian public broadcaster VRT; 3) a German public broadcaster.

[7] Agreement of 16 January 1996 between the *Stichting Nederlands Fonds voor de Film* (Netherlands Film Fund), CoBO and the *Nederlandse Omroep Stichting* (Dutch Broadcasting Foundation).

[8] Within the EUR 3.2 million budget granted to CoBO by the Ministry for the *Telefilm* project a specific amount is earmarked for the production of two cinema feature films each year (the *Telescoop* films).

[9] See TK 2004-2005, 29800 VIII (*vaststelling begroting Ministerie van Onderwijs, Cultuur en Wetenschap voor het jaar 2005*), p. 26.

[10] While this set up has encountered some criticism from the Dutch film industry, it is considered rather normal by the public broadcasters as they consider the Fund as administering their own money.

[11] Source: CoBO Fund

[12] Letter of the *Raad van Bestuur* to the Minister of Culture of 14 February 2005. See also Letter of 19 September 2004 from the *Raad van Bestuur* to the Minister of Culture available at:

<http://www.minocw.nl/brief2k/2004/doc/54630j.pdf>

[13] See <http://sites.omroep.nl/cobofonds/index.html> for details of the *Telefilm* project.

[14] See <http://www.filmfund.nl/>

[15] See Jaap Wils and Arnold Ziegelaar, *Sectoronderzoek film en televisie. Endrapport. Een onderzoek in opdracht van de federatie Filmbelangen*, Leiden 16 June 2005, p. 63.

[16] See *Woordvoering RTL Entertainment*, RTL Nederland press release on RTL Entertainment.

[17] See RTL Nederland press releases of 11 April 2005, of 26 May 2005 and of 5 September 2005.
