

# BAVARIAN GUIDELINES FOR THE FUNDING OF DIGITAL GAMES

## PREAMBLE

The Free State of Bavaria grants subsidies for the funding of digital games in accordance with these Guidelines and the general budgetary provisions, in particular Articles 23 and 44 of the Bavarian Budget Code (BayHO) and the related administrative regulations.

Grants under these Guidelines are awarded only within the limits of the funds made available for this purpose in the budget of the Free State of Bavaria.

There is no legal entitlement to funding.

The funding is based on the approval No. SA.100581 (2021/N) of the European Commission.

## 1. PURPOSE OF THE FUNDING

The funding is intended to support the development of high-quality, culturally or educationally significant digital games and innovative, interactive media projects with game character (hereinafter: "games").

In addition, it should enhance the efficiency of games development and production economy in the Free State of Bavaria, ensure a diverse cultural landscape and support innovation. Furthermore, the funding is also intended to contribute to strengthening the digital audiovisual sector in Europe.

Special attention is paid to the promotion of young talent.

## 2. OBJECT OF THE FUNDING

The funding of games according to Section 1 covers the following project phases:

- a) Concept development,
- b) Prototype development, and
- c) Production.

## 3. FUNDING RECIPIENTS

3.1 Recipients of grants/loans may be natural or legal persons or partnerships with legal capacity who, as a rule, develop or distribute digital games on a full-time and business basis, and who have their registered office, permanent establishment or branch office in the Free State of Bavaria, or who can credibly demonstrate at the time of application that they will have their registered office, permanent establishment or branch office in the Free State of Bavaria at the time of disbursement of the first instalment.

3.2 Students enrolled full-time in a bachelor's degree program and high school students are not eligible to apply.

3.3. For all leadership and key positions on the applicant's team (lead positions), proof of a completed relevant university degree (e.g. bachelor's degree), comparable education, or equivalent relevant work experience is required. Students enrolled full-time in a bachelor's degree program and high school students may not hold lead positions on the applicant's team. For individuals, the requirement of the above evidence applies accordingly.

#### 4. GENERAL ELIGIBILITY REQUIREMENTS

The following conditions apply for the granting of funding:

4.1 The expenses of the project are to be budgeted in line with normal industry practice and in accordance with the principles of economic management. The conclusion of a grant agreement in accordance with Section 6.2.2 requires proof of the overall financing of the project for which funding is requested. In the case of interest-bearing loans, the interest rate is based on the capital market situation at the time of approval. The relevant interest rate will be communicated to the grantee in the grant agreement. The prerequisite for payment of the first instalment is the actual existence of a registered office, permanent establishment or branch office in the Free State of Bavaria.

4.2 The project must not have been started at the time of submission of the application. Approval for early project start is generally granted upon receipt of the complete funding application by FFF Bayern.

4.3 Projects funded under these Guidelines must be expected to be worthy of being funded according to the criteria of quality and economic efficiency.

Projects that violate the Constitution or laws, or offend ethical or religious sensibilities, or depict sexual or brutal acts in an obtrusively coarse and speculative manner will not be funded.

Only games that are expected to have an age rating of no more than “16 years upwards” (according to the German Entertainment Software Self-Regulation Body USK) or corresponding ratings from other applicable regulatory systems (such as for example IARC) for the German market will be funded.

4.4 Any funding recipient may subcontract only up to 50 percent of the eligible recognized production costs per project.

4.5 The funding applicant must state in the appendix to its application which of the criteria in the catalogue of criteria are met.

4.6 On completion of the project, a copy (in digital or physical form) of the completed project must be made available to the FFF Bayern free of charge for archiving purposes.

4.7 For Games funded in compliance with these guidelines, reference must clearly be made in the credits to the fact that funding has been provided from budgetary funds of the Free State of Bavaria – according to a recommendation of the FFF Bayern.

4.8 Funds under these Guidelines may be cumulated with funds from other funding institutions. Insofar as maximum limits are set under German or European law for the aggregation of state subsidies, these limits must also be observed for any finance provided under these Guidelines. Support under these Guidelines is ruled out if funding is provided by other parts of the Free State of Bavaria.

4.9 A company in difficulties within the meaning of Art. 1 para. 4 lit. c) in connection with Art. 2 No. 18 of Commission Regulation (EU) No. 651/2014 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 cannot receive any financial support.

4.10 No aid may be granted under these Guidelines to a company which has not complied with a recovery order issued pursuant to a previous Commission decision declaring an aid granted by the same Member State incompatible with the internal market.

## 5. DETAILED REGULATIONS FOR THE PROJECT PHASES

### 5.1 Concept Development

5.1.1 A grant may be awarded for concept development by way of fixed-sum financing.

5.1.2 The grant may not exceed the following maximum limits in any individual case:

– up to 20,000 euros for an applicant whose team consists of at least two people with at least two different qualifications (e.g. technology and graphics) and who has not yet developed and published more than one game with the intention of making a profit. An application under this indent may be submitted no more than twice.

– up to 30,000 euros for an applicant who has already developed at least two games and published them for profit.

5.1.3 The grant is paid in two instalments: the first half after conclusion of the grant agreement, the second half after submission of the completed concept. The granting authority decides on the grant on the recommendation of the Allocation Committee; the granting authority decides on the disbursement of the second instalment in agreement with the management of FFF Bayern.

5.1.4 The deadline for submitting the completed concept is four months after payment of the first instalment. In justified exceptional cases, the submission deadline may be extended.

5.1.5 Funding of the concept does not create a legal entitlement to prototype development or production funding. The costs of a subsidized concept cannot be claimed as part of the budget calculation for a subsequent prototype development or production support application.

### 5.2 Prototype Development

5.2.1 For the development of a prototype, the applicant can apply for either a grant or a conditionally repayable, interest-free loan by way of part-financing.

5.2.1.1 Grant:

The grant from Bavarian budget funds can amount to up to 80 percent of the calculated development expenditures, up to a maximum of 100,000 euros per project.

5.2.1.2 Loan:

The loan from Bavarian budget funds can amount to up to 80 percent of the calculated development expenses, but not more than 200,000 euros per project. The loan must be repaid upon market launch or sale of the rights to the funded prototype. For the repayment of the loan, the repayment conditions as stated in No. 5.3.7 and No. 5.3.9 shall apply. The obligation of repayment ends five years after disbursement of the last loan instalment by LfA Förderbank Bayern.

5.2.2 The applicant must provide own financing of at least 10 percent of the eligible expenses. In the case of junior projects, lower own funds may be permitted. Junior projects are first and second projects of an applicant, regardless of whether they are already state-funded projects.

5.2.3 A calculated profit is not recognized as eligible development expenditure. The recognition of flat-rate overheads (general, typically non-project-related expenses) in the amount of 10 percent of the eligible expenses is possible. A contingency reserve of up to 10 % can be claimed.

Ten months after disbursement of the first grant or loan instalment, a report on proof of use must be submitted to LfA Förderbank Bayern for verification of the final development costs. In justified exceptional cases, this deadline can be extended upon request.

5.2.4 The grant will be paid on request in the following instalments: first instalment

of 50 percent after conclusion of the funding contract, second instalment of 30 percent according to project progress and the final instalment of 20 percent after presentation of proof of use and acceptance of the prototype by FFF Bayern. The costs for the development of funded prototypes can no longer be claimed in the budget calculation in the event of subsequent production funding.

5.2.5 Any funding recommendation will expire if the overall financing is not closed within nine months after announcement of the Allocation Committee's decision. It will also expire if work has not commenced within twelve months after the Allocation Committee's decision is announced. In justified exceptional cases, the management of FFF Bayern may extend the deadlines upon request.

5.2.6 Funding for prototype development does not create a legal entitlement to production funding.

### **5.3 Production**

5.3.1 For the production of a game, a conditionally repayable and interest-bearing loan may be granted by way of part-financing. The obligation to pay interest ends after the expiry of the twelfth month after market release of the funded game. After the end of the obligation to pay interest, the loan is granted without interest.

5.3.2 The production of a game can be subsidized with up to 50 percent of the eligible costs pursuant to Section 4.1, but with a maximum of 500,000 euros from budget funds of the Free State of Bavaria, if the return of the loan from marketing the game on the national or international market appears to be a possibility.

5.3.3 The applicant must provide an appropriate contribution of his or her own to the financing in accordance with his or her financial, liquidity and earnings position. The own contribution may be provided in the form of private funds, royalty advances and distribution guarantees. Private funds will include the developer's own private financial contribution as well as third-party funds obtained by the developer by way of a loan with an unconditional obligation for repayment, such as bank credits. The own funds must amount to at least 10 percent. In the case of a junior project, lower own funds may be permitted. Junior projects are first and second projects of an applicant, regardless of whether they are already state-funded projects.

Other subsidy funding may not be set off against the applicant's own contribution.

5.3.4 A Calculated profit is not recognized as eligible production cost. Flat-rate overheads (general, typically non-project-related expenses) may be recognized up to 10 percent of the eligible costs. A contingency reserve up to an amount of 10 percent may be claimed. Investor and marketing contracts, if available, must be submitted with disclosure of all partners involved.

5.3.5 The loan is disbursed in instalments after the funding contract has been concluded and according to the proven progress of the project.

5.3.6 The funding recommendation expires if the overall financing is not closed within nine months of the announcement of the Allocation Committee's decision. It will also expire if work has not commenced within twelve months after the Allocation Committee's decision is announced. In justified exceptional cases, the management of FFF Bayern may extend the deadlines on request.

5.3.7 The loan and the interest on the loan shall be repaid from the domestic and foreign profits from the exploitation of the subsidized game. 50 percent of the applicant's profits realized from the exploitation of the game shall be used for the interest payments and repayment of the loan. Moreover, the order of priority set forth in the loan agreement shall apply.

Within a period of three years following the repayment of the first loan instalment, the applicant may apply for a new loan for prototype development or production

in the amount of the repaid principal (repayment and interest) ("success loan"). The success loan shall be granted if the new project meets the requirements of an eligible project. It is to be used in its entirety in the Free State of Bavaria. The recommendation to grant the success loan is made by the management of FFF Bayern. In addition to the success loan, project funding is also possible through the Allocation Committee. The amount of funding pursuant to Sections 5.2.1 and 5.3.2 may not be exceeded.

If a lower priority and/or repayment corridor is agreed upon with another funding institution involved in the project, the same repayment conditions shall also apply to the loan under these Guidelines. If the game has been funded by several funding institutions, repayment shall be effected in accordance with the respective funding percentages. In this case, the 50 percent rule in sentence 2 applies to the percentage owing to the Free State of Bavaria. The repayment obligation ends no earlier than three years after market launch.

5.3.8 During production of the game, the applicants shall ensure an appropriate amount of specific professional education and training.

5.3.9 If the developer or producer undertakes the publishing of the funded game on its own, proven, project-related distribution expenses, up to a maximum of 30 percent of the production budget, as well as a self-publishing fee of up to 10 percent of the gross proceeds may be included in the revenue statement submitted to LfA Förderbank Bayern.

## **6. PROCEDURE**

### **6.1 Application Requirements**

6.1.1 Funding is only granted upon application. Applications must be submitted using the forms available from FFF Bayern and the Internet portal provided. The documents required in the application forms should be attached in German or English (English applies only to Game Design Document 1.0 and 2.0, as well as Technical Design Document).

6.1.2 Applications must be submitted by the deadlines announced by the FFF Bayern on its website on the Internet.

### **6.2 Approval Procedure**

6.2.1 Unless otherwise stated in these Guidelines, an Allocation Committee organised by FFF Bayern gives recommendations on each individual project.

6.2.2 Based on the funding recommendations of the Allocation Committee pursuant to Section 6.3, LfA Förderbank Bayern, Königinstrasse 17, 80539 Munich, Germany (granting authority) approves the grants on behalf of the Free State of Bavaria by means of a grant agreement and disburses the grants and loans.

### **6.3 Allocation Committee**

6.3.1 The Allocation Committee consists of the management of FFF Bayern, a representative of the State Ministry responsible for digital games, and at least five other members from industry and science in the field of games development. The Allocation Committee is chaired by the management of FFF Bayern.

6.3.2 The Committee members are appointed by the State Ministry responsible for digital games for three years at a time. The Allocation Committee has a quorum if at least two-thirds of its members are present.

6.3.3. The Allocation Committee decides on its funding recommendations on the basis of the list of criteria outlined in Annex 1.

6.3.4 Recommendations of the Allocation Committee require the approval of two-thirds

of the members present. Exceptions to these Guidelines are possible if all members present are in unanimous agreement.

6.3.5 The Committee members are independent and not bound by any orders or instructions. They are obliged to maintain confidentiality regarding the contents of the application documents, deliberations and recommendations. Members of the Allocation Committee do not participate in deliberations and recommendations if they themselves or relatives are affected by the subject matter of the deliberations.

6.3.6 The Allocation Committee makes recommendations for funding on a case-by-case basis. With regard to the overall scope of its recommendations, the Allocation Committee is bound by the budget funds provided for this purpose.

6.3.7 In cases that cannot be postponed, the Chairperson has the right to expedite proceedings and make decisions on individual recommendations. In such a case, the Chairperson shall report on this at the next meeting of the Allocation Committee.

6.3.8 The recommendations of the Allocation Committee are announced directly to the applicants by the State Ministry responsible for digital games together with the management of the FFF Bayern.

6.3.9 For applications recommended for funding by the Allocation Committee, the LfA Förderbank Bayern shall examine the calculation and the finance plan as well as the other requirements for approval of the grant and shall handle the disbursement of funds. To this end, LfA draws up the respective loan or grant agreement with funding recipients. The relevant provisions shall, unless otherwise provided in these Guidelines, be included correspondingly in the contracts of the LfA Förderbank Bayern with the funding recipients. In particular, the transfer of No. 3 ANBest-P is excluded from this.

Should the audit give rise to any doubts as far as the calculations or financing plan are concerned, LfA Förderbank Bayern may refer the particular application back to FFF Bayern for resolution, if necessary.

## **6.4 Guarantees**

Any loans granted by the LfA Förderbank Bayern for development and production must be adequately secured. Loan recipients shall grant the LfA Förderbank Bayern or its appointed trustee, in accordance with a special security agreement, security rights to the exploitation rights pursuant to Articles §§ 15 to 23 of the German Copyright Act or assign claims arising from the agreements concluded in the context of the exploitation, in particular any claims to transfer the exploitation revenues due to the loan recipients; moreover, any claims arising from insurance agreements are to be assigned.

## **6.5 Proof of Use of Funds**

The proof of use for the disbursed loans or grants must be submitted to the LfA Förderbank Bayern, which shall monitor their use for the intended purpose. The submission of a simple proof of use within the meaning of No. 6.1.5 ANBest-P is generally permitted. In the case of multiple subsidies, the LfA Förderbank Bayern may agree on a joint audit with other funding institutions.

## **6.6 Auditing Rights**

The Bavarian Supreme Audit Office (Bayerischer Oberste Rechnungshof) is authorized to carry out audits at the premises of the grant recipients in accordance with Art. 91 of the Bavarian Budget Code (BayHO). The EU Commission is entitled to conduct audits of the grant recipients. The LfA Förderbank Bayern informs the grant recipients of these audit rights as part of the approval process.

## 7. COSTS

LfA Förderbank Bayern retains an examination fee of 3 percent of the grant or loan amount.

## 8. EFFECTIVE DATE, TERMINATION

These guidelines are effective as of 1 April 2022. They shall expire on 30 June 2026.

## 9. NOTICE

The information provided in the application and in the supplementary documents submitted are subsidy-relevant within the meaning of Article 264 of the German Criminal Code in conjunction with Article 2 of the German Subsidies Act of July 29, 1976 (BGBl I p. 2037) and Article 1 of the Bavarian Subsidies Act of December 23, 1976 (GVBl p. 586).

## APPENDIX 1: CRITERIA CATALOG ACCORDING TO SECTION 6.3.3

A game can be supported if it meets at least 2 (two) criteria each of the following categories I. and II. (of which II.1 or II.2) and at least 1 (one) criterion of the category III. is fulfilled.

### I. Cultural Context and Cultural Content

1. The setting of the game is located in Germany or the European Economic Area (EEA) or has contemporary or historical references to it.
2. The main characters of the game have reference to Germany or the EEA or represent a personality of German or European contemporary and world history or a fictional character of German or European cultural history.
3. The game is published at least also in German language.
4. The underlying theme of the game, its motives or ideas are related to Germany or the EEA, e.g.
  - a. game design, story or the design of the game address Germany's culture (everyday culture, pop culture, game culture, youth culture, high culture, learning culture, media culture, etc.), society, identity, German history or aspects of life in Germany or in the EEA,
  - b. the story of the game is based on a literary, cinematic, television or other basis from the German or European (language) area, e.g. also fairy tales, legends and science fiction
  - c. the game corresponds to the German game traditions or further develops them,
  - d. the game highlights aspects of regional diversity in Germany or the EEA; or
  - e. reflects Bavarian/German cultural heritage.

The cultural context and content may, in exceptional cases, also be non-European if it is very clearly outlined and particularly creative or innovative in nature, and when particularly many criteria from Sections II. and III below are met.

### II. Cultural/Creative Platform

1. The project is expected to have a special subsidy I effect on the local cultural and creative industries, for example because a significant proportion of the creative work (concept development, programming, music recordings) takes place in the Free State of Bavaria.

2. At least 50 percent of the team members have their first residence in the Free State of Bavaria, are taxed there or are otherwise familiar with Bavarian culture, for example due to their qualifications acquired in the Free State of Bavaria or due to a corresponding stay in the Free State of Bavaria or Germany.

In any case, the following team members must meet these criteria:

- a. Producer
- b. Leading Texter/Author/Concept Developer
- c. Leading Composer/Sound Designer
- d. Art Director
- e. Technical Director
- f. Leading Game Designer.

3. Cultural promotion of young talents: The team includes graduates of universities or colleges whose graduation was up to 2 years ago, if

- a. the university or college is located in the Free State of Bavaria or
- b. from foreign universities or colleges, if the graduate's current place of residence is in the Free State of Bavaria.

### **III. Design, Creative and Technological Innovation**

The game is particularly creative or innovative in the following areas, for example:

1. Narrative structure or game structure,
2. Design of the characters, the setting, the story and the environment,
3. Games' music,
4. Interactivity, multiplayer function, user interface, user-generated content,
5. Application of artificial intelligence,
6. Use of new technology for the development, implementation or application of the game.