

STEERING COMMITTEE FOR CULTURE, HERITAGE AND LANDSCAPE (CDCPP)

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1st Plenary Session

Strasbourg, 14 – 16 May 2012

REVIEW OF THE EUROPEAN CONVENTION ON CINEMATOGRAPHIC CO-PRODUCTION

DOCUMENT FOR DISCUSSION AND DECISION

Item 4.1.2 of the draft agenda

Draft decision

The Committee:

- **noted** the study on “Evaluation and Proposed Revisions of the European Convention on Cinematographic Co-production”, as well as of the Explanatory Report on “Proposals for Modernisation of the European Convention on Cinematographic Co-production”;
- **decided** on the basis of the recommendations set out in these documents, to proceed with the review of the Convention;
- **decided** to set up a group of national experts (dead-line for nomination: 15 June 2012), to meet twice (September and December 2012) with a view to discuss and propose the necessary amendments to the European Convention on Cinematographic Co-production, in order to transmit the draft of the revised Convention to the Bureau of the CDCPP in January 2013 for consultation and final adoption at the next plenary meeting of the CDCPP;
- **asked** its Bureau to follow closely the revision process;
- **invited** member states to support the revision process by appointing their national experts to the experts group on the revision of the Convention and covering the expenses related to their participation.

BACKGROUND

The European Cinematographic Co-Production (ECCC) was opened to signature on 2 October 1992 and entered into force on 1 April 1994 and has been ratified by 43 Council of Europe member States. The main objective of the Convention was to foster cooperation amongst the member States by setting minimum standard provisions aimed at facilitating the establishment of cinema co-productions.

Following the Cracow conference in 2008, the CDCULT underlined at its last plenary meeting in May 2011 the importance of the European Convention on Cinematographic Co-production and its potential review in order to possibly update this instrument in view of recent developments in the sector. CDCULT delegates agreed on the principle of the revision work and the production of a study and draft roadmap for a Convention review and mandated the Bureau to closely follow-up the potential review process. The Secretariat was asked to proceed with the next steps, i.e., the preparation of a study on the possible revision of the Convention.

Subsequently, a tender has been launched¹ and Mr Jonathan Olsberg, a British consultant, was commissioned to conduct an assessment on the implementation of the ECCC. Mr Olsberg organised interviews with national public funds, competent national authorities (i.e., those authorities appointed nationally for the implementation of the Convention) and private professionals (producers and law firms specialized in assisting producers in negotiating international co-productions). In February 2012 Mr Olsberg submitted a report on “Evaluation and Proposed Revisions of the European Convention on Cinematographic Co-production”. This report is attached to the present document.

PROGRESS:

Explanatory Report on “Proposals for Modernisation of the European Convention on Cinematographic Co-production”

Introduction to the ECCC and its possible revision

The study conducted by Mr Olsberg has revealed substantial overall satisfaction with the implementation of the Convention. It has also found a few areas where the Convention would need modernisation, namely changing the level of minimum and maximum financial participation in multilateral and bilateral co-productions under specific conditions, creating an implementation toolkit and an intranet for use by national authorities, establishing a system of data collection to track the impact of co-productions, envisaging the internationalisation of the Convention membership and revisiting the point system.

A group of five experts representing the European independent cinematographic industry met twice and examined the report by Mr Olsberg and its recommendations. They unanimously agreed with the conclusions of the Report according to which the ECCC needed to be modernised in line with the industry practice and trends and recent developments in European cinematographic co-production. On the basis of the Report and of the results of their discussions, the experts made a number of proposals to modernise the ECCC.

¹ Given the relevance of the issue for Eurimages, it was decided to involve the Fund in the preliminary study process; Eurimages has entirely financed the study by Mr Olsberg.

The Context

Twenty years after the adoption of the ECCC the landscape of the European cinema production has profoundly changed. In 2011 the number of films for theatrical release produced in Europe is almost double that of the US. European co-productions have played a key role in the dramatic increase of films produced in Europe over the last decade and have proved to be more successful beyond their national borders than purely national films. A study carried out by the European Audiovisual Observatory has given concrete evidence of these trends.

The report by Mr Olsberg stressed the success of the ECCC. The ECCC has proved to be a crucial instrument for facilitating co-productions. It has revealed itself to be a flexible and simple instrument that has accommodated a full range of production budgets and different co-production structures. It has easily interacted with national legislations and existing bilateral treaties. It has also helped to develop good practices in the cinema sector for both national administrations and producers. It has also assisted the growth in the number of co-productions and their greater circulation potential beyond the co-producing countries. It may therefore be concluded that the ECCC has fully achieved its initial aims.

However, the assessment of the ECCC implementation also underlined that this instrument needed to be adapted to technological developments, to current diversified funding capacities in European countries, to economic and financial changes in the film industry and to an increasing trend in setting up co-productions with non-European countries. The experts observed that the adaptation of the ECCC to current trends in respect of both technology and funding trends was crucial for the Convention to keep pace with cinematographic industry realities. They stressed the need for the ECCC not to lose its impact and effectiveness.

The report identified the main areas of the Convention requiring modernisation as follows: minimum and maximum financial participation, avoiding discrepancies in the interpretation of the Convention by national authorities, updating the point system, collecting extensive data as to the performance of co-productions, opening the membership of the Convention beyond Europe and adapting the wording used in a few provisions of the Convention.

The report also pointed out that the internationalisation of membership was likely to provide a number of advantages that reflect the increasing globalisation of the sector. This trend exists in other sectors of the Council of Europe where treaties are open to third party countries' accession, such as the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, the Convention on Action against Trafficking in Human Beings, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and several Partial Agreements (the European Commission for Democracy through Law, the European Pharmacopoeia and the Co-operation Group to Combat Drug Abuse and Illicit Trafficking in Drugs).

The European Union also adopted a MEDIA Mundus programme, a broad international cooperation programme for the audiovisual industry to strengthen cultural and commercial relations between Europe's film industry and film-makers of third party countries. The same rationale can be found in the European Commission proposal to establish the new programme "Creative Europe" as of 2014.

Areas of Modernisation

Summary of Proposals for modernisation of the ECCC:

- To modify Article 6 (maximum and minimum contribution to co-production)
- To modernise the wording of Article 7 (Rights of co-producers)
- To establish an administering body of the ECCC
- To open the membership of the ECCC to non-Council of Europe member States
- To modernise the point system

Maximum and Minimum Contribution to co-production (Article 6)

The current maximum and minimum contribution rate to co-productions has proven to be difficult to apply in countries where the cinema industry is still very fragile. When producers established in those countries contribute to co-productions but their contribution rate is inferior to 10%, the film cannot be recognised as a national film in their country and does not benefit from the advantages granted to national films. Smaller countries with a fragile financing market available for cinema production are cut off from most of the international co-productions. An average budget in Europe may vary as much as 5 M € to 500 000 €. Co-productions between richer countries and more fragile ones become impossible.

The report concluded that the contribution to co-production should allow producers established in smaller countries with low financial capacity to fully participate in co-productions and recommended that the minimum contribution on multilateral co-production be reduced from 10% to 5% and on bilateral co-production from 20% to 10%. The maximum contribution should increase from 70% to 80% in multilateral co-production and from 80% to 90% in bilateral co-production.

Though the experts agreed in principle with the need to offer the possibility to fully participate in co-productions to producers established in countries with limited financial capacity, they felt that changing current rules indiscriminately would probably have a negative impact in terms of real artistic and technical contribution by minority producers. They also considered the consequences that this would entail for public funds when recognizing the “national treatment” to a larger number of projects.

Therefore they proposed to add the possibility to reduce the minimum contribution from 10% to 5% and the maximum contribution from 70% to 80% only in the case of at least four party multilateral co-productions and upon condition that in those specific co-productions, minority contributions rating less than 10% should bring real artistic and technical co-operation and not purely financial contribution.

As regards bilateral co-productions, they also proposed to keep the current rule and to add the possibility to decrease the minimum contribution from 20% to 10% and increase the maximum contribution from 80% to 90% only in co-productions where budgets attain at least a three million Euro threshold. As for the multilateral co-productions, they stressed the importance that these co-productions should require real artistic and technical contribution from the minority co-producers. No such requirement was expressed for bilateral co-productions.

Modernisation of Article 7 (Rights of co-producers)

The experts suggested that in view of the technical changes due to digital technology the wording of this provision should be updated to reflect reality. In the first paragraph “The original picture and sound negative” should be replaced by “tangible and intangible rights of the film” and

“this negative” by “the film material”. In the second paragraph after “internegative” the words “and equivalent material” should be added.

Establishment of an Administering Body of the ECCC

The report noted that there were national discrepancies and inconsistencies in the interpretation of the ECCC. In order to better share national authorities practices and further harmonise the implementation of the Convention, the report suggested that the creation of an “implementation toolkit and an intranet for use by national authorities would be a useful initiative”. The report also stressed that there was a strong desire among national authorities to have access to data concerning the impact and performance of European co-productions (number and origin of co-productions, European box office success, number of broadcast transmissions, number of theatrical, DVD and electronic sales, critical success and ratio production volume/production value). Though part of this data is already available thanks to the work of the European Audiovisual Observatory, it was noted that a more comprehensive approach to providing precise indicators was still lacking.

The experts considered the proposals of the report relevant and they came to the conclusion that in order to implement those proposals the creation of an administering body of the ECCC would be needed. This body would work in a very flexible manner using the internet tools suggested by the report. It would provide guidance to national authorities as to the implementation of the Convention and collect and make accessible comprehensive data concerning co-productions. They suggested that, in order to minimise the financial impact of the creation of this body and to avoid duplications, synergies could be developed with Eurimages Board of Management.

Should Article 6 of the ECCC be updated as suggested by the experts, the administering body could also revise the budget threshold for bilateral co-productions. It could also make recommendations to the Committee of Ministers of the Council of Europe on the accession of third party countries to the ECCC.

Internationalisation of Membership

The ECCC allows producers established in third party countries to participate as minority co-producers in a European co-production with a maximum contribution of 30% (Article 2.2.b). However, their contribution is not assimilated into national European contributions and does not count in the point system.

Several European states have already entered into a great number of bilateral treaties with non-European countries. Those treaties extend the benefit resulting from national rules to works co-produced by the two countries (i.e., “national treatment”).

Opening the possibility for third countries to accede to the ECCC would follow the trend existing at national level. As has been the case at European level, the ECCC would provide a framework for countries that have not entered into bilateral treaties with those third party countries acceding to the ECCC. Finally, it would make multilateral co-productions easier to implement by replacing the complicated use of multiple-bilateral co-productions (i.e., multilateral co-productions established through several bilateral treaties).

The internationalisation of membership of the ECCC would foster the co-operation with third party countries that share the European approach to cultural diversity and author driven cinematographic production (such as Canada, Argentina, South Africa and many others). It would also greatly improve the circulation of cinematographic works outside European borders.

Modernisation of the point system

The report made a detailed list of suggestions as regards the modernisation of the point system. The experts agreed only partially with those suggestions and added their own recommendations. Overall, they suggested increasing the number of points from 19 to 21, keeping the minimum threshold at 15. This increase would provide more flexibility in including non-European talent in co-produced projects and help European co-productions to become more attractive for the international market rather than solely for local markets. This change would also be in line with a recent update in Eurimages rules, according to which projects submitted to the Fund no longer need to have a European or European resident Director as a condition of eligibility.

In respect of the “creative group”, the report questioned the current allocation of points and suggested increasing the number of points allocated to the Director from three to four and decreasing the points allocated to the Scriptwriter from three to two. It also recommended including the producer as a key member of the creative group. The experts found that the current allocation between the Director and the Screenwriter was fair and still reflected the reality of production. Instead, they agreed to add a point for the Producer. This would represent a visible recognition of the Producer’s creative input and reinforce the value of the Producer’s role as initiator of projects. The point would be attributed to the Producer who developed the project (i.e., the Producer who brings the underlying rights to the co-production).

As regards the “performing group”, the report found that the allocation of three points to the lead role and the overall allocation of six points to the use of European talent could be in some cases restrictive. However, the experts felt that the current allocation was adequate. The increase of the total number of points would give adequate flexibility to allow the use of non-European talent, whilst safeguarding the European character of the project.

Both the report and the experts considered that the wording of the “technical craft group” needed to be modernised to reflect current practice. They agreed to propose the following wording which better corresponds to the so called Heads of Department (within a standard crew list): Director of Photography instead of Cameraman, Picture Editor instead of Editor, Sound instead of Sound Engineer and Production Designer instead of Art Director. They also added one point for VFX and CGI location.

The experts also recommended including three different posts under the “sound” point (Engineer, Designer, Mixer) and to attribute the point when two thirds of the posts are occupied by European nationals.

Additional areas

The experts evoked two areas of concern that do not currently fall under the application of the ECCC, but that they considered of crucial importance in the practical implementation of this instrument.

They expressed their concern as regards the difficulties encountered in some countries by minority co-producers in raising adequate funding. In fact public bodies, broadcasters and telecom operators very seldom invest in minority contributions to co-productions. Though the ECCC foresees an obligation of general balance (Article 10) in the cinematographic relations of the parties, in practice distortions exist in some countries due to the lack of national provisions foreseeing obligations to invest in minority co-productions.

The experts also noted that national differences in fiscal regulations applying to the cinema sectors often resulted in making the setting up of co-productions very difficult, if not impossible.

Therefore they proposed to add a third appendix to the ECCC that would include two general clauses making recommendations on these two issues (soft law provisions).

NEXT STEPS

1. The CDCPP decides at its plenary meeting (14-16 May 2012) to carry out the Convention review.
2. The members of the CDCPP are invited to appoint by 15 June 2012 national experts to the working group on the revision of the Convention.
3. National experts will meet twice in an experts group, in September and December 2012 with a view to discuss and to undertake the necessary revisions to the European Convention on Cinematographic Co-production.
4. The experts group transmits the draft of the revised Convention to the Bureau of the CDCPP in January 2013 for consultation and adoption.
5. Adoption of the revised Convention by the CDCPP at its next plenary meeting (spring 2013), followed by submission of the text to the Committee of Ministers for final adoption.
6. Beginning of ratification of the new Convention by member states.