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CULTURAL AFFAIRS

European Colloquy on
"Creative art and cinematographic production
vis-à-vis the State in Europe"

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AID AND PRODUCTION

Study by Mr C DEGAND

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NOTES TO CHAPTERS 5, 6 AND 7

CHAPTER 5

1. Consequently the aid schemes authorised by Brussels must normally involve limited and progressively reducing amounts and be satisfactorily "transparent" economically.
2. Doc. IV/128/1977 pointing out that the member states had not responded to calls made in 1970 and 1973 to draw up "guidelines" such as: gradual opening of national aids, Community co-financing and European co-distribution.
3. This notice does not affect the Belgian and Netherlands aid schemes because of their selective nature and low volume.
4. Decisions based on the concept of "direct applicability" of fundamental articles in the Treaty:
 - Art. 48 (free movement of persons)
 - Art. 52 (freedom of establishment)
 - Art. 59 (freedom to provide services).
5. In accordance with Article 93-3, Bonn had notified the European Commission of the text of the bill; the same article states that, in the event of a state's failing to take note of the Commission's observations, the Commission shall initiate the procedure (as laid down in Article 92) and the state in question may not then implement the projected aid. And yet Bonn did do so because the new form of aid has been in operation since that time. The following hypothetical question might therefore be asked: in the light of certain decisions by the European Court of Justice on parafiscal taxation, would not an appeal to the Court against the German aid scheme result in an obligation to repay the proceeds of an illegal levy?
6. On 30 April 1981, the CICCE lodged a complaint against television for abuse of a dominant position with the Directorate-General for Competition (Brussels, DG IV).
7. See Film Act (1980), clause 8 (the implementing regulations for which were published in July 1981).
8. France was the subject of three other procedures: against the special levy on "X-certificate" films from EEC countries, against the quota for "French" films (instead of "films of Community origin") on television, and, like Denmark, against the Franco-Danish co-production agreement for non-observance of the free movement of film-makers (on the understanding that all other co-production agreements were in fact also in breach of Community regulations).

9. Furthermore, Brussels also considers as contrary to Community law: (a) the new Italian cinema bill (to replace Law No. 1213) allowing a non-Italian belonging to the Italian cultural orbit (this condition is deemed fulfilled after two years' residence in Italy) to work in an "Italian" film and thus be entitled to aid; (b) the special Franco-German co-production agreement of July 1980 (combining the two selective aid schemes for a limited number of films). In the first case, an American or a Chinese who had lived in Rome for two years could take part in an Italian film, but not a Frenchman or a German, etc. In the second case, the free movement of EEC nationals is no longer operative (here, as with the other co-production agreements in force, it would be sufficient to say: "film made by cineasts who are French, and/or German, and/or nationals of the member countries ...").

10. The British and German aid schemes, like the French scheme, are funded by a parafiscal levy and therefore might also be declared "illegal". In fact, the reason why Lord Carrington came so rapidly to an agreement with Viscount Davignon on the nationality criteria in 1979-80 is that he had been assured that in so doing he could consider his aid levy as immune from subsequent proceedings. To which might be added that it was also because the Foreign Office reckoned that the change thus made in the definition of "British" films would be of little practical consequence ...

11. Confirmation of this attitude may be seen in the CICCE's express request to the European Commission in May 1981 not to regard as a precedent the Court's argument in Rome in the "De Sica case" in which national status and hence aid had been refused by the Ministry of Tourism and Entertainment to one of De Sica's films on the grounds that the director now had French and not Italian nationality.

12. Based on the statement by Viscount Davignon in Paris on 13 November 1980 to members of the cinema industry at a lunch-debate.

13. Curiously enough, this attitude does not always win the approval of the professionals: eg the Italian producer Zingarelli criticised Brussels for its failure to give a lead (article entitled "Wake up, Europe" in "Cinema d'Oggi", Rome). Is the profession criticising the "Eurocrats" for being insufficiently "technocratic"?

14. Whence the obligation to "open up": the nationality criteria.

15. Note that this distinction between two levels of intervention is to be found in Recommendation 862 adopted by the Parliamentary Assembly of the Council of Europe in May 1979 in response to the debates at the Lisbon Symposium (June 1978).

16. In making such a proposal, the Commissioner bore in mind the project just submitted to and approved by him for the creation in the near future of an annual European film festival to be preceded by a conference on the whole range of problems facing the European cinema.

17. See chapter entitled "European media policy" - report by C Degand (Lisbon Symposium), Doc. 4306, p. 48.

18. Motion for a Resolution on "Radio and television broadcasting in the European Community" tabled on 18 September 1980 by W Hahn, Pedini et al. Motion for a Resolution on "the promotion of European films" tabled on 7 May 1981 by L Tindemans, Pedini, Hahn, Diligent et al. Motion for a Resolution on "Film-making in the Community countries" tabled on 6 July 1981

by Mrs Pruvot, Mr Lecanuet, et al. (These texts were published in Nos. 33, 34 and 35 of "Lettre mensuelle d'information européennes" distributed by the Centre National du Cinéma (CNC) (European Film Office - Paris).)

CHAPTER 6

1. This view and what follows are P A Touchard's response to the report "Un projet pour le théâtre" presented in 1980 by a working party set up by the French Ministry of Culture. Touchard is struck by the disappearance from the theatre of what J Vilar described as the spirit of "public service". He also deplores the impression given by the working party that the crisis in the theatre boils down to the insufficiency of state aid - and his view appears to be shared by M R Abirached of the private office of the new Minister for Culture who said in July 1981: "there is a welfare state mentality which simply cannot be allowed to continue".
2. In Italy, on the other hand, theatre attendances rose by 0.4% in 1979 despite rising prices. Observers reckon that authors, directors and actors satisfied the demands of their audiences, including young people. In the same period cinema attendances fell by 13.3%.
3. Cf J P Belmondo's comments: "... by becoming too intellectual, the theatre has lost touch with its audiences and they have deserted it ...".
4. Report on "The Film Industry - 1977" produced by the interprofessional committee under the chairmanship of R Bolt at the instigation of AIP.
5. This view is shared by Prof. J C Batz (Brussels), A Filson (London), Prof. T Guback (USA) and by the author of this report.
6. Serge Moatti, French film producer.
7. At the Council of Europe's Lisbon Symposium (June 1978) H Schein (Sweden) noted the importance of an "atmosphere" that might encourage or discourage creativity. Similarly, in connection with music publishing, D Toscan du Plantier (Gaumont) believes that "renewed emphasis must be given to the role of the talented individual who brings out talent in others".
8. This applies to the art cinema too: "There is no thought, since the films must be paid for, of doing without the public" says J Lescure in his paper for the Strasbourg Colloquy (2 October 1981); similarly, M Karmitz states that "from production to exhibition a film forms a whole".
9. Cf the view expressed by L Comencini at Lisbon (June 1978): "I can only make Italian films, but I need European structures to finance and distribute them" and apparently shared by another Italian director Mrs Liliana Cavani. It should be added that CLT has also made a similar agreement with a British company "Consolidated".

10. Another problem is that the "Majors" are generally criticised for being inexperienced in distributing "small films". But when, in fact, do they take on the distribution of such films? Rarely, and no doubt "by mistake".

11. In this way, Europeans make their mark, and sometimes very successfully, but they do not build an "industry". In sum, the gilt without the gingerbread!

12. Mr Toscan du Plantier had this experience with a Gaumont film which had nonetheless been very successful in American cinemas; the American "independents" fare no better as the executive scriptwriter and producer of "Alien" explained in detail in the aftermath of their accounting "differences" with 20th Century Fox who distributed the film (see "Film Echange", Paris, autumn 1980, pp 31-38). It would likewise be interesting to know what Seitz and Artemis Films, the two German firms which produced "The Tin Drum", were finally paid by "United Artists" who distributed this highly successful film ...

13. Secretary of State for Trade's decision of 12 July 1976 on the operation of the National Film Development Fund (NFDF).

14. The government has again referred the matter to the Monopolies and Mergers Commission: an enquiry is therefore being made, focussing essentially on the Rank and EMI circuits.

15. Especially as a new act had to be drafted for 1980 and as there was the problem of compatibility with Community law.

16. Mr Meacher, the then Minister for Trade in the Labour Government.

17. "The Economist" magazine's reaction was that "these figures are so scandalous that if they had been published earlier, aid would have been stopped long ago ..."

18. This cartel constituted by the members of MPEA was authorised by the Federal Cartel Office (BKA) in 1975 despite opposition from the cinema operators.

19. In the early years of aid, the "levy" amounted at first to 3% (1968 and 1969), then slightly over 2% of box-office receipts, while it now amounts to 3.5% (1980). But the British "levy" (at 5.5% of receipts) and above all the French "levy" (at 12% of receipts) are very much higher.

20. The "Gremienfilm" is one of the negative aspects of the German aid system condemned by the German producer and director G Ehmck. He notes that the 80 members of the New German Film-makers' Action Committee, to which he belongs, account for at least 75% of film production but hold a derisory 6% of the national market, and therefore believes that the system must be reformed (see "Film Echo" dated 20 May 1981).

21. The 2nd agreement with the FFA practically doubling television's contribution to the Aid Fund (79m DM compared with the 43m under the first agreement) was only signed on 26 June 1980. But television provides funds for film-making in other ways: the second channel (ZDF), for example, has a film budget for 1981 of 200m DM for 80 firms in the private sector.
22. The Interprofessional Committee in London (see above) is highly critical of the German example: "Financing by TV, with its uncertainty as to its audience and its mixed artistic objectives, has brought about the total collapse of the German film industry".
23. Lisbon Symposium (June 1978) - "Closing remarks" by N Garnham, Doc. 4306. J C Batz also points out that "state budgets were hardly designed to be dispersed in the form of private profits".
24. Report by C Degand - Doc. 4306 - Lisbon Symposium, June 1978.
25. Some of the films which had received aid from various sources, including television, were commercial successes, eg "Die Ehe der Maria Braun" and "Die Trommel". But, taken as a whole, aid "to projects" was only very rarely repaid owing to lack of success with the public (see Table 2).
26. The aid earmarked for the 3,000 German cinemas amounts on average to 1,000 DM per cinema, whereas the production may qualify for 1m DM in aid per film.
27. Questions tabled by Mrs Martiny (SPD) on 8 December 1977 (answered by State Secretary Gruner) and in 1981 (answered on 13 April 1981 by State Secretary D von Würzen).
28. See interview with Mr Von Andrenyi, member of the Administrative Council of the FFA and Chairman of the aid awards committee, in "Film Echo" of 29 November 1980.
29. The Americans are devoting ever-increasing sums of money to launching their films - in some cases they are close to the "negative copy" cost of the films in question.
30. Cf W Grassman at the seminar organised by the "A G Kino" Association: he urged the need for a survey of the exact state of the distribution sector.
31. One of the standard criticisms made by economists of aid and grant systems is that they tend to shield the receiving sector from economic realities whereas P Uri argues that aid is acceptable only as a means of helping the sector in question to do without aid. The "perverse" effects of aid may, of course, be felt in branches other than the production of films. For example, some observers attribute the excessive film theatre capacity in some towns and districts in France to the aid given to the exhibition branch. But it is also true that surplus capacity may exist in the absence or near-absence of aid, as in the Federal Republic of Germany where some towns are threatened with surplus capacity in "Programmkinos" (cinemas with programmes focussing on a particular theme, author, etc).

32. In 1979 American production amounted to 138 films by MPAA firms and to a total of 215 if films made by other companies are included (and including 26 films made earlier but put on to the market in 1979). In the same year, the four "major" European countries produced approximately 300 "different" films, allowing for co-productions; if the three "smaller" countries are included, the total rises by about 30.

33. In the USA the average cost (according to MPAA estimates) rose from \$2m in 1972 to \$4m in 1976 and \$8.5m in 1979. The companies are worried by this rise: in 1981 they estimate launching costs at \$10m, and reckon that in 1985 production and launching will cost \$14m and \$11m respectively, ie a total of \$25m per film.

34. W J Baumol and W G Bowen, Performing Arts - the Economic Dilemma, New York, 1966.

35. "Existe-t-il une économie de la production lyrique?" by X Greff and X Dupuis in Le Monde, 13 July 1980.

36. "Culture et Industrie dans les rapports cinéma-TV" in Film Exchange, No. 9, Paris, winter 1980.

37. It might be argued that aid derived from a levy on box-office receipts has the advantage of "making the Americans pay" since they pay their dues and - in theory at least - are not entitled to receive aid to production. It might be added that the lower the national film's share of the market, the greater the aid burden borne by foreign (particularly American) films: at present, levies on American films account for about 65 million out of the 135 million ECU paid out in aid by the four major European countries (ie approximately 50%). But such a system has obvious limitations.

CHAPTER 7

1. In "Film und Recht" - Munich, 15 June 1976.

2. He noted in passing: "If, as we are unceasingly told, it is the creative and irrational components which are decisive in determining the value of a film, then the shortage of material resources should not hinder the production of films that are not only of high quality but also commercial successes".

3. See his report for the Colloquy in Strasbourg on 2 October 1981.

4. In his preface to a study by C Degand - Le Cinéma dans le Marché Commun, May 1978.

5. For a maximum of six films per annum, the number of majority co-productions for each country being equal; the total budget amounts to 3.5 million FF (0.75 million DM + 1.75 million FF) and each film project is to receive between 100,000 and 200,000 DM on the German side and between 230,000 and 460,000 FF on the French side.
6. Report of the working party on "Le cinéma et les nouvelles techniques de l'audiovisuel" (The film industry and the new audio-visual technology), Paris, October 1980.
7. J Losey, for the film "Monsieur Klein", an instance all the more surprising for Brussels in that the film was a French entry for the Cannes Festival, an international competition.
8. Sam Pechinpah.
9. V de Sica, who had French nationality.
10. This happened in Italy for years: at the height of the American "run away production", Rome was nicknamed "Hollywood-on-Tiber".
11. "Quartet" by James Ivory.
12. Especially as commercial and other pressures can be relied upon to continue to act as a brake on freedom of movement and choice once these freedoms have been enshrined in the texts.
13. Are artistic qualities and, ultimately, talent a question of nationality? Certainly not, says Brussels, which quotes the example of France's entrusting the destiny of the Paris Opera to an Austrian; and does not the same spirit underly the comment by J Lang (French Minister for Culture) that "... cultural cross-breeding and immigration enrich and revive a nation's values and potential ..."?
14. Interview with the administrator of RTL in "Le Film Français" of 3 July 1981, in which J Rigaud adds that the creativity in question extends, above and beyond the cinema and television, to the very source of all intellectual creation, viz books and the press.
15. See "The US Film Industry 1969-79" by C Degand, published by the Council of Europe, December 1979.
16. See "Der Film aus Weltweiter Sicht - Gegenwart und Zukunft", C Degand, in "Film und Recht", Munich, 15 January 1981.
17. Cable-TV, with the advertising revenue it procures, existed in 3 million homes in 1969; at the present time it is in 19 million and is approaching 30% coverage (over 73 million homes in the USA). In some towns, cable-TV offers a choice of 37 programmes, some of which are of high quality (new films, with no advertising spots, 24 hours a day).
18. "Hollywood expands into the new markets for TV, pay-TV and home-video" by T Guback, in "Media Perspektiven", 1981/3, Frankfurt-am-Main.