

Strasbourg, 19 November 2024

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**STEERING COMMITTEE FOR CULTURE, HERITAGE AND LANDSCAPE
(CDCPP)**

Agenda Item 4. Eurimages: Legal mechanism to support international co-production of audiovisual works in the form of series

**Statements on the CPPWG-Series Report to be read out
by stakeholder representatives
(5-minutes each)**

a. ACT - Association of Commercial Broadcasting and Video on Demand Services in Europe

Erard Gilles, Director and Grégoire Polad, Director General

b. CEPI - European Audiovisual Production

Mathilde Fiquet, Secretary General

c. EBU - European Broadcasters Union

Sophia Wistehube, Legal Counsel

d. EFAD - European Film Agencies Directors

Julie-Jeanne Régault, Secretary General

e. EPC - European Producers Club

James Hickey and Alexandra Lebret, Managing Director

a. ACT - Association of Commercial Broadcasting and Video on Demand Services in Europe

Erard Gilles, Director and Grégoire Polad, Director General

Dear members of the committee,

I would like to thank you for inviting us to this hearing. I am speaking on behalf of the Association of Commercial Television and Video on Demand Services in Europe, ACT, which brings together Europe's leading commercial broadcasters. Our members are at the forefront of investing in and distributing European content, reaching millions of viewers daily across the continent.

First and foremost, I want to emphasize that we have consistently advocated for collaboration and expanded opportunities across our sector. We fully welcome and support the objectives of this Convention to enhance TV series co-production in Europe and ensure European producers can secure necessary financing. Indeed, our members have a long track record of successful co-productions that have enriched Europe's cultural landscape and demonstrated the strength of our creative industries.

However, I must express that we are concerned about the current direction of this process. Despite our industry's attempts to engage constructively, the development of this Convention has been marked by significant procedural shortcomings that require immediate attention.

Specifically, the current draft fails to acknowledge the crucial role that broadcasters play in the creative development and financing of TV series. We are not merely distributors - broadcasters are often the primary investors and creative partners in series development, from initial concept to final production. Our expertise and investment have been instrumental in creating many of Europe's most successful series.

The draft introduces overly restrictive definitions that do not align with industry realities, limits its scope to co-productions solely between certain kinds of producers, and attempts to introduce intellectual property rules and restrictions to creative processes, in an instrument where they have no place. These restrictions could actually discourage co-productions rather than facilitate them, creating artificial barriers in an industry that thrives on flexibility and diverse partnership models.

As a point of reference, the equivalent to this convention for cinema, the Convention on Cinematographic Co-production does not have such a narrow focus or such far reaching rules. It is therefore puzzling to see these concepts emerge here. The success of the cinema convention lies precisely in its balanced approach and recognition of diverse production models - principles that should guide this process as well.

Given these serious concerns, we strongly urge this committee to consider two essential steps:

First, we call for an immediate pause in the current process and a restart. This would allow for a comprehensive reassessment of the draft Convention's aims, methods and content, including a proper impact assessment and meaningful stakeholder consultation and involvement in the drafting.

This Convention has the potential to significantly impact Europe's media ecosystem. However, the draft seems to have been developed with limited understanding of how series are actually financed and produced in today's market. Therefore, it is crucial that all affected stakeholders are properly involved in its development. Key players - particularly European broadcasters - were largely sidelined from the process.

Second, we must ensure that the work of the Council of Europe does not conflict with existing European Union frameworks and initiatives in the audiovisual sector. The relationship between this Convention and EU policies needs careful consideration to maintain coherence and avoid potential conflicts that could harm our industry. This is particularly true given the on-going work of the European Commission ahead of the upcoming review of the AVMSD. We would not want these two parallel exercises to contradict each other. In our view, it would be wiser to wait until after the EU process is concluded. This coordination is crucial not just for legal clarity but for the practical effectiveness of both frameworks.

Finally, I want to emphasize that this position is not just that of the ACT, but one that resonates across our sector. Our earlier statement on this matter was co-signed by broadcaster associations from 18 countries, from Spain to Latvia, from the UK to Bulgaria. This unprecedented level of unity across European markets - spanning different business models, languages, and cultural traditions - underscores the gravity of our concerns.

This is not surprising, as the drafting process has been dominated by a small, unrepresentative group of producers. Indeed, we understand that many producers themselves have serious reservations about the current text - highlighting just how far this draft is from reflecting industry realities.

Let me conclude by reaffirming our commitment to European content creation and our willingness to engage in constructive dialogue. We stand ready to work with all stakeholders to develop a framework that truly serves the interests of our sector and strengthens Europe's position in the global audiovisual landscape.

Thank you for your attention.

b. CEPI - European Audiovisual Production

Mathilde Fiquet, Secretary General

Dear members of the CDCPP,

Thank you for this opportunity to testify in front of you on the draft Council of Europe Convention on the co-production of audiovisual works in the form of series.

My name is Mathilde Fiquet, and I am the Secretary General of CEPI, the European Audiovisual Production Association. CEPI represents independent producers across Europe via national associations, which, I am sure, have interacted directly with many of the Member States representatives in this meeting. This structure enables CEPI to develop positions at European level on behalf of over 2600 independent producers.

We have been part of the working group drafting the convention and this has been a collaborative effort, among all our members to define a position in the interest of all, supportive of independent producers and as close as possible to the reality of productions.

I want to focus on two aspects: what this convention doesn't do, and why this convention is important.

This draft convention does not create a new definition of independent producers. In fact, the working group has spent a huge amount of time on this issue, including seeking legal advice. As a result, the convention is very explicit, and refers to national definitions of independent producers already in place. In the absence of a definition, the working group has provided a limited number of two well established criteria in Annex III of the document.

It is equally important to clarify that this draft convention will not limit the capacity of producers to do co production outside of this convention. Its purpose is to facilitate the recognition of co-production of series in several countries and their access to financial support which is already reserved to independent producers.

Once this is said, yes, this draft convention gives a specific recognition to the role of the independent producers. This was in the mandate given to the working group. It is also fully in line with the mission of the Council of Europe to preserve cultural diversity and pluralism in the audiovisual sector.

The objective of this draft convention is to support culturally valuable co-productions of audiovisual works in the form of series in cooperation with broadcasters and platforms.

This is reflected in the draft convention with the recognition of the role of the independent producer in the promotion of cultural diversity in audiovisual works. Independent producers work with European creative talent in developing and producing TV Drama Series. Their role is to give access to the many diverse voices, languages and cultures of Europe and this draft Convention will facilitate the development, funding, production and promotion of such TV Series.

This draft Convention also recognises that independent producers should receive a share of rights and revenues from the TV Series they develop and produce for broadcasters and other media service providers. Independent producers develop many projects, a large proportion of which do not go into production. In order to remain viable and reinvest in creative talent for new drama series, they need to benefit from the success of the TV series that go into production.

However, CEPI is fully convinced that this draft convention is the right balance between the different interests and practices of the audiovisual sector, and the interest of the Council of Europe to preserve cultural diversity and pluralism.

Considering this careful balance, CEPI would like to encourage the members of the CDCPP to support the text which has been presented to them.

c. EBU - European Broadcasters Union

Sophia Wistehube, Legal Counsel

Honourable Chair, Members of the Committee,

The arrival of global streaming services on the European production market – and their subsequent retreat – have plunged the sector into a series of crises – with no end in sight.

At first, US streaming services invested heavily in co-productions with European producers and local broadcasters. Numerous independent production companies sprung up to cater to the increased demand. But that level of investment was never meant to be sustainable.

Through their European partners, Netflix and Co. were able to scout local markets for talent. Having been connected to the best, they began entering into exclusive agreements with them directly, sidestepping European producers and local broadcasters. The bubble burst, forcing many European production companies to close or sell out to global conglomerates – so-called “superindies”.

Today, our members struggle to find small – “real” – independent producers to collaborate with. It is part of their public service mission to support their local creative ecosystem, including young talent and small independent producers. Consequently, they have a vital interest in developing new ways and instruments to support these smaller production companies.

We hoped that this Convention would address the adverse impacts of global players on European TV series – as it was initially supposed to do.

Nothing in this draft Convention addresses the current crisis.

We fear that it will do more harm than good.

First, the current draft would harm small and medium-sized independent producers. It does not exclude powerful “superindies” from the benefits of the Convention while potentially excluding very small producers – these most vulnerable, but often also most precious ones for cultural diversity – who only produce one or few series at a time and are thus financially dependent on the broadcaster they collaborate with.

We would have liked to see a draft Convention that preserves and supports small and medium-sized independent producers rather than expanding the influence of global production companies on the European market.

Second, the current draft would hamper investment by local broadcasters in TV series, thus increasing the power of global streaming services. As publicly funded companies, our members must ensure that they invest responsibly in content that will serve their audiences and conform to their societal mission. By limiting their intellectual property rights and editorial control, the Convention will inevitably force our members to take fewer risks and invest less in any given TV project.

Currently, our members are the best partners for independent producers. They are the biggest funders of European TV series. Their investments are guided by artistic value rather than commercial payoffs. And they share ownership in the final work and editorial control with their other co-producers. Curbing their investment will particularly harm cultural diversity by reducing the overall budget for quality TV series and forcing more independent producers into collaboration with global streaming services, where they become mere service providers – losing all their ownership rights and working for a fee.

We believe that one key to promoting cultural diversity in the TV sector lies in fostering instead of hindering co-productions between independent producers and public service media.

Third, the European production market is marked by extreme diversity. Each state has its own delicate mix of historically grown cultural policies. What is more, project needs vary significantly. What is more, the market has not settled yet into a new equilibrium – in fact, the situation has significantly changed over the past two years while this Convention was being drafted.

We urge this Committee to ensure that the draft Convention respects the diversity of cultural policies across CoE member States and is based on a thorough understanding of the underlying problem and the impact of its provisions on the audiovisual market. This can only be ensured through an extensive and inclusive stakeholder consultation at domestic level and a diverse drafting group with experts from all walks of the industry.

The problems facing the European production market are grave, highly complex and – on top of that – still evolving. It is not often that an international instrument for the audiovisual sector is considered. Let's aim for a Convention that will be widely used to meaningfully improve cultural diversity in Europe – like the Convention on Cinematographic Co-productions does. The EBU stands willing and ready to support the Council of Europe in its goal to create such an instrument.

d. EFAD - European Film Agencies Directors

Julie-Jeanne Régnault, Secretary General

Special hearing within the framework of the CDCPP Plenary Session

19 November

EFAD Draft speaking points

(duration: max 5 min)

- Thank you very much for giving us the opportunity to share the EFAD perspectives on this draft Convention. EFAD is representing here the **public interest voice** as we bring together 38 public funding bodies in charge of supporting the audiovisual sector at national level. You know, our mission is to promote cultural diversity in the audiovisual sector and the independence of European creation. Fundamental objectives - that we share with the Council of Europe and that contribute to our common democratic values and freedoms.
- We therefore have followed with great interest the development of the initiative from the beginning and believe that this future legal instrument will foster European coproductions of drama series **by facilitating access to national public funding**, in the same vein as with the Council of Europe Convention on Cinematographic Co-production that celebrated its 30 anniversary a few weeks ago
- We have heard criticism from certain stakeholders as to the current draft and would like to debunk some misconceptions. The Convention:
 - does **not interfere with the AVMS directive** – it does not regulate quotas nor impact the definition of European works;
 - **does not harmonize the definition of independent producers** - it refers to the definition applied at national level and the appendix III is only referring to some general criteria commonly used in European countries; it provides a minimum standard of independence for those very few countries that do not already prescribe a specific standard;
 - is **open to projects financed by public and private broadcasters**: broadcasters are recognised partners – even as potential coproducers in the text of the Convention -, and their projects may very well benefit from support whenever they respect the conditions foreseen by the national relevant funding regulations;

- is **in line with the EU objectives** to promote the independent sector and coproductions;
- will simply facilitate access to national funding that is indeed channeled towards independent producers. **Supporting the independent sector** with public aid is at the **heart of our members'** missions - while broadcasters are financed by other means (revenues derived from commercial activities for the private ones, state budget allocation for the public ones).
- We believe that the opposition from certain stakeholders is **purely ideological** and an attempt to undermine any positive initiative for independent producers, with no arguments or evidence about the concrete negative impact on their current or future activities.
- To conclude: we strongly encourage the CDCPP **to proceed with the approval** of this convention text has been discussed with all the relevant stakeholders for an extensive period of time, and that the text has been modified on numerous places to meet the demands of different interest groups.

e. EPC - European Producers Club

James Hickey and Alexandra Lebret, Managing Director

The European Producers Club ("EPC") is a gathering of over 200 independent producers from across 36 countries in Europe plus Canada, including most of the Member States of the Council of Europe.

Our members include large, medium and small companies. They have produced recently a TV series called **Kollektiv** for FranceTV, Rai and ZDF, which is about a consortium of journalists created to work together on investigations. **Dear Child**, a German crime TV Series that was one of the top 10 on Netflix for many weeks and **Romulus and Remus**, a TV series in Latin for the private channel Sky in Italy, among many others series. Our members are working with the full range of broadcasters, from public to commercial, and streaming services.

We are today approaching the end of a process which started in Budapest, in October 2021, 3 years ago!

It has been a long process, where the Council of Europe team, as part of the process, gave the floor to and paid attention to all observers. Observers gave their views, sometimes going in different directions, but the decisions were taken by the representatives of the Member States on your behalf. The text of the draft Convention that you have in front of you is the fruit of many compromises, based on those decisions taken by the representatives of the Member States.

The initial question of the Budapest Drama Series process was: "Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Coproduction be Part of the Solution?"

At the center of this question is independent production. Will this legal instrument foster diversity and pluralism through enhancing the independent production sector?

The answer is YES!

How will it work? The draft Convention proposes a coproduction structure between at least two independent production companies, one from each Member State and also recognizing broadcasters and other media service providers in role of coproducers. It ensures a proportionate share of rights between these independent co producers, and

certain conditions on the retention of the rights by those independent producers when dealing with broadcasters and streaming services.

Let's take an example of how the draft Convention will help. The TV Series **A Better Place** is the coproduction between Germany and Austria. This series is produced by two independent production companies, which developed the project, to which three broadcasters have brought their financing : WDR in Germany Canal + Austria and France. Being a German majority TV series, it got access to the German funding, having the German nationality, but not to all Austrian funding. In fact the TV Fund in Austria is reserved to Austrian works. This draft Convention would have allowed the independent producer in Austria to get access to this funding, because it would allow recognition of the TV series as having both German and Austrian nationality under its provisions.

Having approval under the draft Convention would have allowed each of the independent producers to finance the TV series in its own market.

It would have allowed the works to get more financing, bringing to the project a higher budget, and a better production value, for the benefit of all parties, including the broadcasters.

Would the conditions included in the Convention impede the collaboration between broadcasters and the independent production company? No of course not.

All the conditions to get access to the TV Fund are stricter than the conditions established in the draft Convention and the broadcasters indirectly benefit from the funding which independent producers are able to access in their territories. It is thus reducing their financial risk.

We do believe that this draft Convention will make the world of European coproduction "A Better Place", pardon the pun!

The Convention does not restrict in any way, any stakeholders from continuing to do what they are already doing. Broadcasters and VOD platforms are contractually free to make whatever arrangements they want to make for the production and coproduction of TV series. And they will continue to be able to do that. They will also continue to use independent producers as service providers. Nothing in the draft Convention will impede this.

Much has been said about the definition of independent producer. That's a question we debated a lot. The solution that resulted here is very simple: It is left to the Members State to define what is an independent production company. In the rare cases of the

absence of a definition, the draft Convention is proposing a set of three criteria that reflect existing criteria in EU legislation and EU funding schemes. Many of those who wrote to you protesting about the "definition" of independent producer in the draft Convention themselves qualify as "independent producers" in their Member States and even acknowledge this when writing to you.

The reason independent producers are a vital part of the ecosystem is that they develop many projects from which the broadcasters and streamers are able to select the best and most suitable for them. It is a competitive market where European creative talent are given many opportunities and many voices are empowered to develop their work.

Many projects are developed but few are chosen. Lots of investments are written off.

In order to make this investment of capital and time by independent producers sustainable, they must be able to benefit from the success of the projects that are financed by broadcasters and streamers.

Vertical integration of the audiovisual production sector into the hands of broadcasters and streamers alone will not foster pluralism and cultural diversity. Independent producers need to flourish as well.

Broadcasters will be tempted to produce content directly responding to their audience where as an independent producer is fighting for their creative talent to be heard. I would like to mention, to illustrate this, the TV Series **Occupied**, that some of you may know. The story was Russia is invading Norway. It was produced in 2015 with TV 2 in Norway but then TV2 changed its strategy and the independent producer had to change broadcaster, which she did, to the streaming service Viaplay,

The persons struggling to achieve the production of tv series are the independent producers, and they need a legal instrument supporting European coproduction.

The draft Convention is a compromise achieved between all the stakeholders. No one stakeholder is entirely happy with the balance achieved. Often the best arrangements are achieved this way. The EPC would urge you to approve the draft Convention. It will promote cultural diversity, foster innovation and enhance economic resilience, providing a framework for sustainable growth in the audiovisual sector in Europe.