The legal framework for international co-productions

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Foreword

There's a lot of things that you can do alone

You can get into debt on your own

Spend a lot, go to pot on your own

But it takes two to tango

"Takes two to tango" (Al Hoffman & Dick Manning)

As you all know, the tango is an Argentinian dance form. Maybe you are less aware of the fact that its forefathers include the German Waltz, the Czech Polka, the Polish Mazurka, and the Bohemian Schottische, as well as the Spanish-Cuban Habanera, the African Candombe, and the Argentinian Milonga. Plenty of cultural diversity here!

Otherwise, if you have ever tried to dance the tango, you know that it is anything but easy! Jorge Luis Borges once said:

> *"Tango is a direct expression of something that poets have often tried to state in words: the belief that a fight may be a celebration."*

Co-producing a film is similar to tango dancing. The results might be worth a celebration, but obtaining these results will certainly require a fighting spirit. And a flair for handling cultural diversity too.

But what exactly is a film co-production? In one sentence: it is a joint (ad)venture! More down to earth, a co-production is the production of an audiovisual work by more than one producer. This joint adventure is agreed upon via a co-production contract, which can take different legal forms. And very importantly, each co-producer co-owns the work. This means that a company that merely participates in the financing of the work (without obtaining the status of co-owner through the co-production contract) is not a co-producer.

There are many good reasons for entering the co-production arena: financial (pooling resources); artistic (collaboration between artists from different backgrounds, cultures, etc.); accessing foreign markets (each producer knows their country best, it is easier to obtain pre-sales or local investment and the work gets distributed in each country).

But the main reason in most cases is that the resulting work will be considered "national" in all countries involved in the co-production and will therefore be eligible for public funding in all of those countries. In order to achieve this, the co-production must be "official", that is, an international co-production which follows the rules of a co-production agreement (be it bilateral or multilateral) or the rules of the European Convention on Cinematographic Co-Production. Besides this, in the case of a co-

production with EU countries, the resulting work will also be considered European, so that it may profit from the broadcasting and VoD quotas envisaged by EU legislation.

Needless to say, in the same way that it takes two to tango, it also takes two to tangle! Like any other type of relationship, tying the co-production knot can very quickly lead to an "entangled" situation if one chooses to overlook certain factors. For example, such a marriage can be marred by a badly drafted co-production contract, leading to an ugly divorce. Also, the amount of red tape demanded by certain co-production agreements can put any producer's patience to the test. Cultural diversity also means more ways of misunderstanding each other. And the list goes on.

This publication aims at providing an overview of many relevant issues concerning the co-production of films and other audiovisual works in Europe, including market figures, international and national rules, funds supporting co-production, the intricacies of drafting contracts for this type of joint adventure or the joys and sorrows of court quarrelling.

Considering the relevance of contractual issues, this edition of the IRIS Plus sees one of our correspondents as guest-writer, Enric Enrich, practitioner in Barcelona and with long experience in entertainment law.

Our special acknowledgment goes to Susan Newman-Baudais, project manager at Eurimages, for her precious peer-reading of the report.

Strasbourg, November 2018

Maja Cappello
IRIS Coordinator
Head of the Department for Legal Information
European Audiovisual Observatory

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Executive summary

There is one thing that all industries have in common: big players make big products and dominate the market. At the same time, when small players collaborate, they are often able to create something together that is able to compete in the market. This also happens in the case of cultural industries when audiovisual works are co-produced. But co-production goes beyond simple financial support. It implies the co-financing of the audiovisual work, the co-ownership of rights and the sharing of revenues.

Beyond cultural benefits, co-production offers several advantages also from the financing and marketing perspective, especially when it happens on an international scale. While smaller and medium-sized producing countries can access more financial and technical resources, big producing countries can expand the circulation of their works by reaching a wider audience. Over the period between 2010 and 2015, co-productions showed overall positive figures in terms of releases, admissions and circulation. **Chapter 1** provides facts, figures and indicators about the performance of European co-productions.

Besides public funding, fiscal incentives and quotas aimed at supporting and promoting European cinematographic and audiovisual production, public authorities have put in place different measures to allow cross-border cooperation between producers. "Official" co-productions, that is, those covered by the umbrella of international conventions or bilateral agreements, are considered as "national" in each of the co-producing countries, subject to approval by the respective competent authorities, making them eligible to apply for public funding and able to benefit from the promotion obligations set for European and national works.

At the European level, the Council of Europe's Convention on cinematographic co-production was set with the aim of promoting multilateral co-production; providing a legal structure; strengthening cultural ties between European communities while protecting cultural diversity; and spreading core values across countries party to the Convention. In 2016, the Convention was revised with the intention of offering greater flexibility to co-producers, ensuring balance and reciprocity between the parties, and adapting it to meet current challenges and market realities by taking into account the needs of smaller producing countries and by extending its scope to non-European countries. **Chapter 2** presents the scope of the Convention and the main changes introduced by the revision it underwent. It also provides an overview of the two biggest programmes supporting film and audiovisual co-production, respectively the Council of Europe's cultural support fund, Eurimages, and the European Commission's Creative Europe - Media sub-programme.

With the same aim of fostering cross-border collaboration, many European countries signed bilateral or multilateral agreements regulating international co-

production. The difference of stature between bigger and smaller producing countries, along with the singularity of the procedural model specific to each country, is reflected in different policy interests, which in turn result in a diversity of approaches – some countries, such as France, have a more formal and structured approach, while others, such as the Nordic countries, offer more flexibility. Moreover, some film funds/institutes have even established international schemes dedicated to the support of bilateral or multilateral co-productions. **Chapter 3** lists the different sets of requirements in the agreements signed by some European countries which reflect these different approaches, as well as some of the international schemes proposed by European film institutions.

The legal nature of a co-production is determined in a co-production contract, which covers each party's obligations and rights. It may take on different forms and evolve according to the successive stages of the co-production. In addition to the usual clauses that are present in all audiovisual production contracts, there are typical clauses that are often included to meet the specific needs of international co-productions, such as clauses on access to aids and subsidies for each of the co-producers' countries, as well as the designation of the competent jurisdiction and the applicable law. **Chapter 4** looks at the different sets of clauses which frequently regulate this type of contractual agreement.

Although the detailed structure of such contracts aims at reducing the risk of conflict and avoiding uncertainty, the complexity of international co-production, both from the procedural and practical side of things, nevertheless remains, given that we still witness cases of litigation. **Chapter 5** provides a quick glance at the most frequent causes of dispute, which may concern the financing plan of the co-production, the ownership and exploitation of rights or the qualification as a "national" film and the subsequent access to public aid.

Finally, despite all the goodwill behind the different conventions and agreements in place, stakeholders still express the need to simplify the often very demanding procedural frameworks and to further promote international co-production as a financial model for cinematographic works. **Chapter 6** provides some of the views highlighted by European stakeholders during the European Audiovisual Observatory's conference at the Cannes Film market 2018.

1. Setting the scene

More than 18 000 films were produced in Europe between 2007 and 2016, with overall production in Europe growing by 47%, from 1 444 feature films in 2007 to 2 124 in 2016.[1] A large proportion of those productions (425 films in 2016) were the result of the collaboration (co-production) between film producers from different countries. With the exception of a few parity co-productions,[2] these international co-productions have a majority co-producer, who is the one contributing (through his/her own resources, public funds and different kinds of private investment in his/her country) the highest share of the budget, therefore retaining a proportional share of the copyrights, and one or more minority co-producer(s) contributing the rest of the financing, thus retaining the remaining copyrights. Precise legal definitions and legal instruments related to international co-production are described and explained in chapter 2 of this report.

1.1. Overall figures on co-production in Europe

According to figures provided by the different national or federal film institutes in Europe,[3] the number of majority co-productions[4] produced rose from 297 in 2007 to 425 in 2016 – that is a 43% increase over the decade, showing a rather constant growth trend. This growth was slightly below the even higher increase in overall production in Europe (including fully national productions and majority co-productions), which surged by 49% over the same period. The share of majority co-productions out of the total production volume in Europe remained relatively constant over the said period: between a 19.2% low in 2008 and a 22.1% high in 2015 (20% in 2016).

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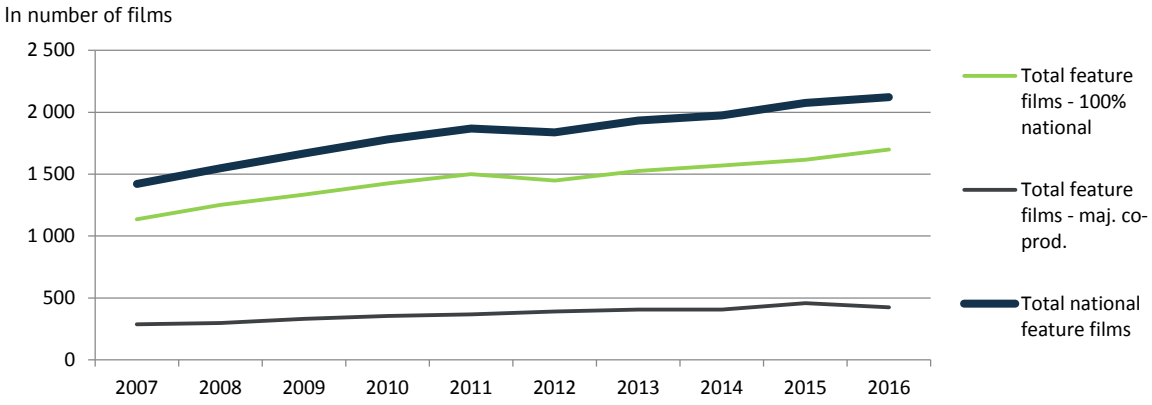
[1] Talavera Milla, J., Fontaine, G. and Kanzler, M. (2016). Public Financing for film and television content. The state of soft money in Europe. *European Audiovisual Observatory*, https://rm.coe.int/public-financing-for-film-and-television-content-the-state-of-soft-mon/16808e46df.

[2] Co-productions where all co-producers contribute equally to the financing of the film. In the case of parity co-productions, for analytical purposes, the European Audiovisual Observatory may assign the leading nationality of a film to a country based on a series of criteria, such as the nationality of the director.

[3] Includes 36 countries: the 28 EU countries plus Bosnia and Herzegovina, Iceland, "The former Yugoslav Republic of Macedonia", Montenegro, Norway, Russia, Turkey and Switzerland.

[4] Minority co-productions in which European countries participated were not taken into account for the calculation of the overall production volume in Europe for two reasons: first and foremost, to avoid double counts - any minority co-production of one country is simultaneously a majority co-production of another country; secondly, while the country of the majority co-producer is an univocal indicator, several countries may be involved in a co-production as minority co-producers.

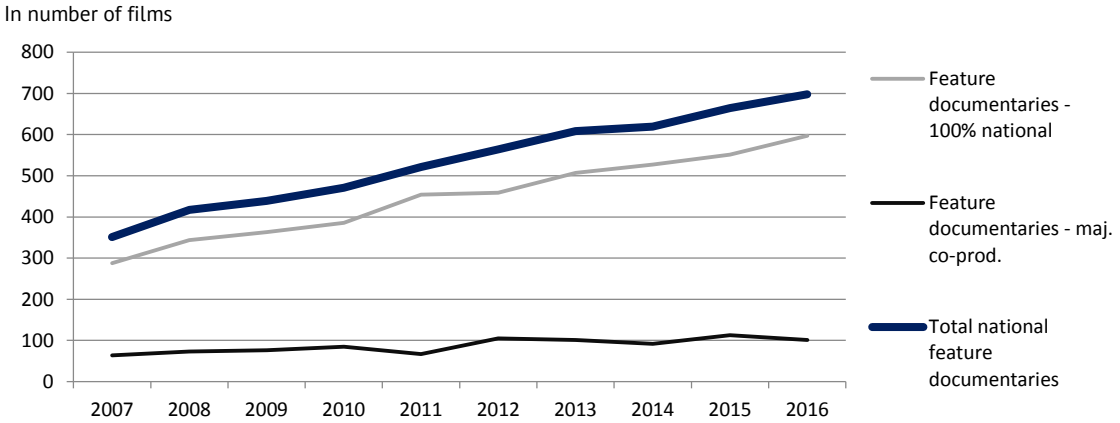
Figure 1. Evolution of production volume in Europe by type of production (total, 100% national and majority co-production), 2007-2016



Source: National film centers, European Audiovisual Observatory elaboration.

Most of this growth was due to a boom in the production of documentaries, with figures almost doubling over the period 2007-2016 to reach a maximum of 698 films in 2016. Moreover, this was mostly due to a remarkable surge in the production of fully national documentaries (especially in the European Union): from 287 fully national feature documentaries in 2007 to 597 fully national feature documentaries in Europe in 2016.

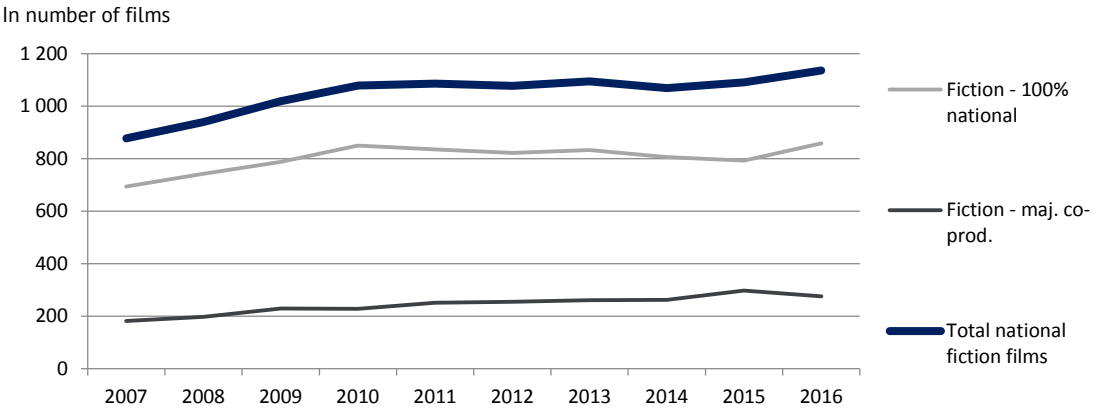
Figure 2. Evolution of the production volume of feature documentary films in Europe by type of production (total, 100% national and majority co-production), 2007-2016



Source: National film centers, European Audiovisual Observatory elaboration.

In turn, when we look at the 10-year growth for majority co-productions, there is not such a big disparity between the figures for documentary (57.8%) and feature fiction (52.5%), the latter increasing from 198 in 2007 to 276 in 2016 (with a high of 298 in 2015 over this period).

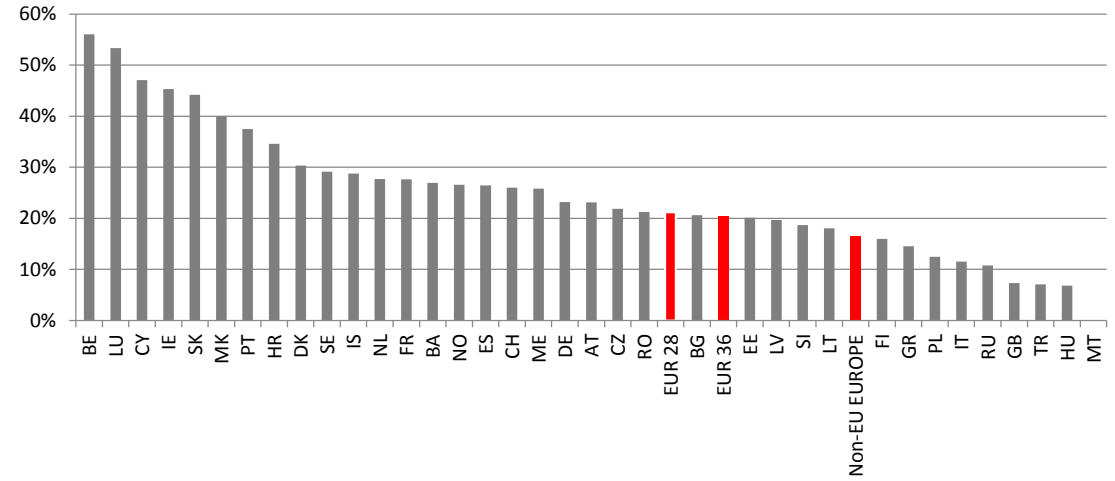
Figure 3. Evolution of production volume of feature fiction films in the EU by type of production (total, 100% national and majority co-production), 2007-2016



Source: National film centers, European Audiovisual Observatory elaboration.

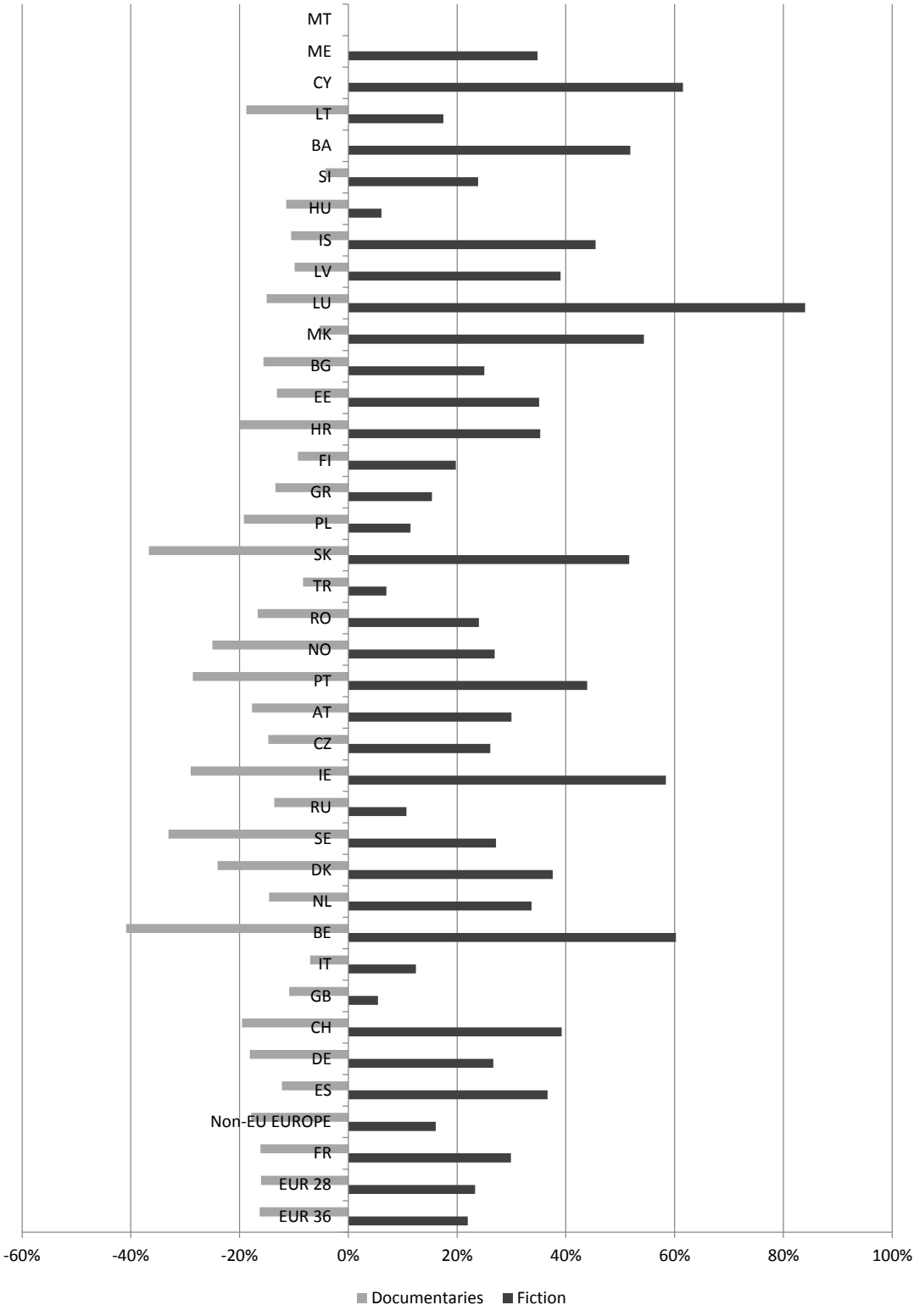
Most countries produce many more national films than majority co-production ones. On average, 20% (21% at EU level) of the overall production in Europe over the period 2007-2016 were majority co-productions, with only two countries producing more as majority co-producers than as fully national producers: Belgium (56%) and Luxembourg (53%). In turn, the share of co-production was below European levels in 13 countries, including the United Kingdom and Italy. Moreover, the co-production of feature fiction films was more frequent than that of documentary films, with 22% of the feature fiction films being co-productions between different countries compared to 16% in the case of feature documentaries.

Figure 4. European countries by share of majority co-productions out of the total number of national productions, 2007-2016



Source: National film centers, European Audiovisual Observatory elaboration.

Figure 5. Countries by share of fiction and documentary co-production (out of overall production within each format), 2007-2016



Source: National film centers, European Audiovisual Observatory elaboration.

In absolute terms, the top producing countries in Europe were, as expected, also the main co-producers, with France topping the list with 566 co-productions over the 2007-2016 period, followed by Spain (460), Germany (411) and Switzerland (221). In terms of concentration, the top 10 co-producing countries in Europe accounted for 70% of all majority co-productions. Only 11 countries co-produced more than a yearly average of 10 films.

Three types of co-producers were distinguishable:

- Countries with few production resources (usually due to the size of the country and/or the production industry) which need a foreign partner for productions (Luxembourg, Cyprus, Slovakia, Montenegro, Iceland, etc.);

- Medium-sized production countries which try to maximise their production potential by seeking co-production with foreign partners (Belgium, Ireland, Portugal, Croatia, Denmark, Sweden, etc.); and

- Top producing countries which aim to maximise their production potential but with an industry and market that allow for a vast majority of fully national films. Not surprisingly, the share of co-production in the total production volume of the top eight co-producing countries in Europe was below 30%, and in some cases, such as in Italy (12%), Russia (11%), Turkey (7%) and the United Kingdom (7%), well below the European average of 20%.

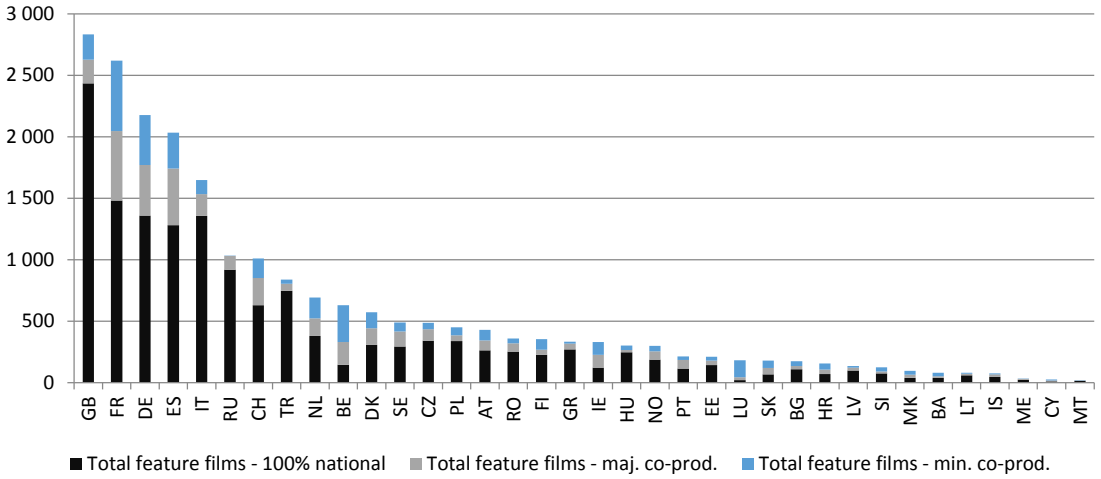
1.2. Minority co-productions

Thanks to a different set of data obtained from the European Audiovisual Observatory's Lumière Database,[5] an analysis of minority co-productions[6] with European involvement was also possible. Most of the main producers in Europe shot a roughly even share of majority and minority co-productions over the period 2007-2016. Moreover, the share of minority co-productions in the total number of co-productions in most European countries was between 35% and 55%, with just some small- and medium-sized production countries shooting significantly more minority co-productions than majority co-productions.

[5] http://lumiere.obs.coe.int.

[6] In the context of international co-production, the term minority co-production refers to a bilateral or multilateral co-production from the perspective of the party or parties (co-producers) with a lower level of financial involvement and, therefore, lower retention of copyrights.

Figure 6. European countries by number of productions broken down into fully national, majority and minority co-productions, 2007-2016



Source: European Audiovisual Observatory's Lumière Database.

In addition, very few countries with a relevant minimum yearly production volume could be considered as being specialised in foreign projects as a minority partner (co-production accounting for more than half of overall production and minority co-production for more than half of overall co-production); only Luxembourg, Belgium, Slovakia, Ireland and Croatia could be included in this group of countries with noteworthy participation in minority co-productions in relative terms.

1.3. Co-production partners

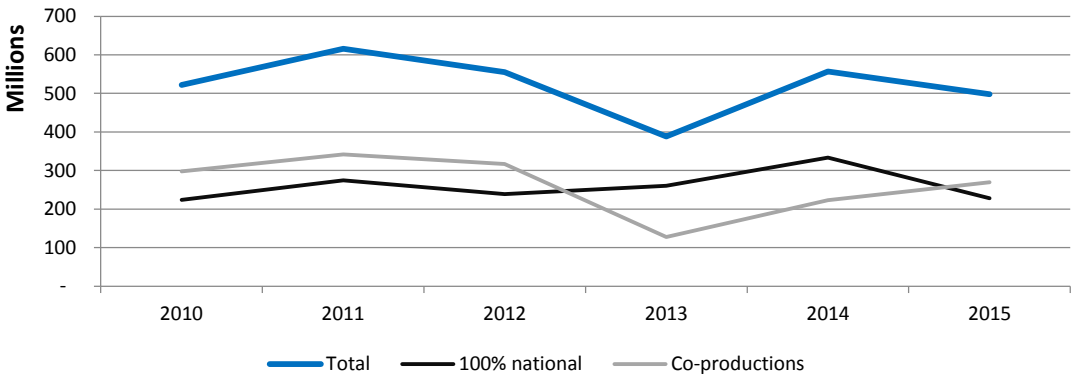
150 countries were involved in European co-productions over the period 2010-2015; however, only 11 European majority co-production countries interacted with more than 30 countries over this period. On average, 40% of the interactions with other countries in European majority co-productions were with non-European partners. Most of the interactions were relatively recurrent, with French-Belgian co-productions emphatically topping the ranking of most frequent bi-national co-production tie-ups, with 207 such films between 2010 and 2015. British-American (80), Italian-French (63), French-German (61) and Belgian-French (60) productions completed the list of the top five more frequent bi-national co-production tie-ups with the involvement of at least one European partner over this period. France was the most frequent minority co-production partner in European co-productions, followed by Germany, the United States and Belgium.

The average number of co-production partners in European countries was 1.58 partners per co-production (that is, the main production country plus 1.58 foreign co-production partners), with bi-lateral co-production as the most frequent form. A total of 27 countries were within a bracket of 1.45 to two co-production partners, on average, per co-production and only four countries offered an average above two.

1.4. Admissions to co-production

Despite accounting for only 24.2% of the total production volume in Europe over the period 2010-2015, worldwide admissions[7] to co-productions were slightly higher than those for purely national films, amounting to a yearly average of 262.9 million admissions over the period 2010-2015, or 50.3% of overall admissions to European films (56.9% for EU films). In other words, co-productions generated, on average, approximately three times more admissions than purely national films.

Figure 7. Worldwide admissions to EU films by type of production, 2010-2015



Source: European Audiovisual Observatory's Lumière Database.

However, British productions with support from American majors represented a significant portion of the admissions to European co-productions. If we exclude this category of films from the calculation, we come to the more modest figure of European co-productions accounting for a yearly average of 34.9% of overall admissions to European films between 2010 and 2015.

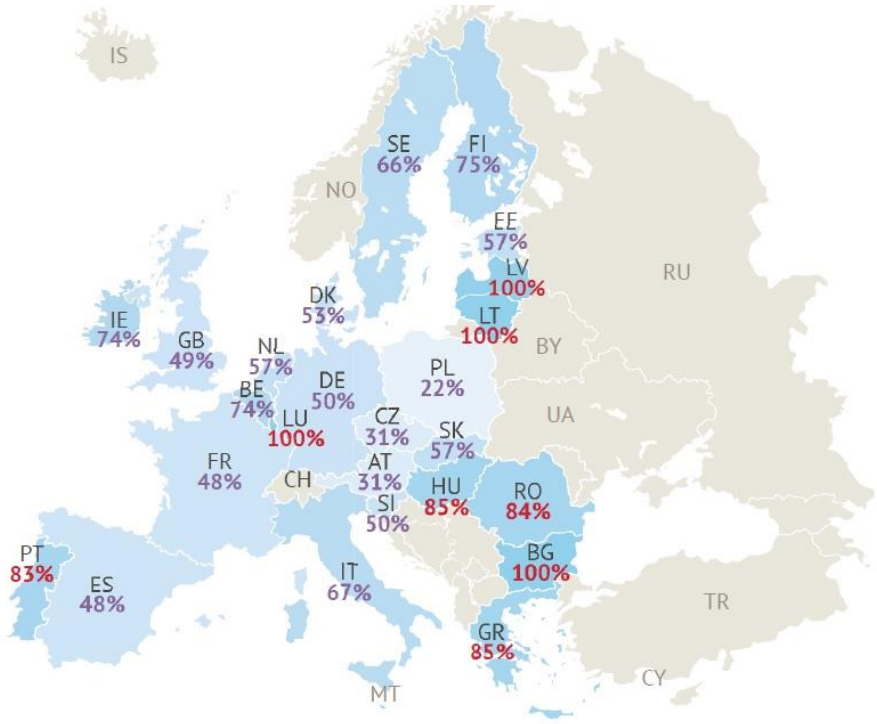
1.5. Circulation of co-productions

A total of 39.5% of the films produced in Europe between 2010 and 2015 received a theatrical release in a country other than the main country of production. For majority co-productions, this figure rises to 62.9%. On average, European co-productions circulate almost twice as much as purely national productions (32.1%). However, it is also true that

[7] This includes all 36 European countries covered for production volume, except for Malta, plus key non-European markets, including Argentina, Australia, Brazil, Canada, Chile, China, Colombia, Mexico, New Zealand, South Korea, the United States of America and Venezuela.

international co-productions have a potentially larger distribution market, at least in the territories of the minority co-producers involved.

Figure 8. Theatrical co-production share of total film exports within the EU by country*



* First releases in cinemas in 25 EU countries (EU minus Croatia, Ireland and Malta) in 2015.

Source: European Audiovisual Observatory's Lumière Database.

2. International support

2.1. The importance of being European

The co-production of an audiovisual work is agreed through a co-production contract, under the terms of which each co-producer is the co-owner of the work.[8] Although co-production contracts may take different legal forms, a plethora of national and international initiatives to support greater co-production activity have contributed significantly to the increased use and importance of co-productions in Europe.

At national level, bilateral or multilateral co-production agreements between countries have played such a role,[9] while at European and international levels, the Council of Europe instrument, the European Convention on Cinematographic Co-production,[10] has been at the forefront of these initiatives to directly support international co-productions, as well as funding schemes specifically aimedat co-production such as Eurimages or the Creative Europe programme at pan-European level, or at multilateral level for regional areas.

In all cases, the ultimate aim of an "official" co-production, that is, either governed by the rules of a bilateral or multilateral agreement or by a Council of Europe Convention, is that the resulting co-produced film or audiovisual work be considered "national" in all countries involved in the co-production and therefore it is potentially easier to access public support in all these countries. In the case of co-production with EU countries, the resulting work will also be considered European so that it can benefit from broadcast and VoD quotas under the AVMS Directive's rules.[11]

[8] By contrast, a company that would only participate in the financing of the work (without obtaining co-ownership status under the co-production contract) would therefore not be a co-producer, but a co-financer.
[9] See more details on national initiatives in Chapter 3 of this publication.
[10] European Convention on Cinematographic Co-Production (ETS No. 147, Strasbourg, 2 September 1992, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/147. The revised Convention came into force for a number of countries in 2018. For more details, see Section 2.2.1.2. of this Chapter.
[11] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (codified version), http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0013&from=EN.

2.2. Council of Europe

2.2.1. The Convention on Cinematographic Co-production

The Convention on Cinematographic Co-production is an instrument aimed at promoting the development of multilateral cinematographic co-productions, safeguarding creation and freedom of expression and defending the cultural diversity of the various countries that are party to the Convention. Initially adopted in 1992 under the name of European Convention on Cinematographic Co-Production,[12] it was later revised in 2017 and renamed as the Council of Europe Convention on Cinematographic Co-Production[13] in order to provide new flexibility in constructing co-productions and to reflect technological change and evolving industry practice, as well as to reflect the expansion of its scope to non-European countries. Despite its revision, the original Convention remains in force and will exist side by side with the revised one.[14]

2.2.1.1. Key terms of the 1992 Convention

2.2.1.1.1. Aims

The European Convention on Cinematographic Co-Production (hereafter, the Convention) was opened to signature on 2 October 1992, entered into force on 1 April 1994 and has been ratified by 43 Council of Europe member states. Its aim is, namely, the promotion of European cinematographic co-productions (Article 1, paragraph 1).

The Convention was adopted in response to the need to promote European cultural cooperation in the field of cinema at a time when film production in Europe was essentially an activity carried out on a national basis. With the development of television and the resulting decline in cinema attendance in the 1960s and 1970s,[15] the considerable increase in production costs and the fact that national markets were often no longer sufficient to finance productions, European film producers turned to co-productions. Although designed for bilateral relations, co-production agreements have also been used to set up co-productions involving more than two countries. However, bilateral agreements are not standardised and leave room for disparities, with the risk that one of the co-producers may be offered less favourable conditions than the others. Against this

[12] European Convention on Cinematographic Co-Production (ETS No. 147, Strasbourg, 2 October 1992, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/147.
[13] Council of Europe Convention on Cinematographic Co-production (revised), 30 January 2017, https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168069309e.
[14] Macnab G., "How the revised European co-pro treaty can benefit producers", https://www.screendaily.com/features/how-the-revised-european-co-pro-treaty-can-benefit-producers/5114776.article.
[15] http://screenville.blogspot.com/2010/03/admissions-1955-2008-world-cinema-stats.html.

background, the 1992 Convention offered the advantage of providing a common legal basis for the multilateral cinematographic relations of all states parties to the Convention. By setting the conditions for obtaining co-production status applicable to all states parties, the Convention has made it possible to overcome the disadvantages that would result from many different multilateral intergovernmental agreements, both from the disparity in the provisions of these agreements, and from the complexity of the legal relations that would result, particularly with regard to states parties to several bilateral agreements defining different co-productions conditions. A single contractual instrument is an important means of developing and promoting co-productions in Europe and simplifying cinematographic relations between producer states.

With regard to the type of works concerned, the Convention only applies to co-productions of cinematographic works, thereby excluding from its scope co-productions of audiovisual works. As detailed in the Explanatory Report to the Convention,[16] "The Parties did not wish to extend the scope of the Convention to audiovisual works because these are not normally governed by co-production agreements concluded between states. There is thus no need to harmonise the international rules concerning them."

2.2.1.1.2. Scope

The Convention affects two different types of co-producers:

- A co-producer established in a country that is party to the Convention, and
- A co-producer established in a country that is not party to the Convention.

The Convention applies to:

- Co-productions involving at least three co-producers, established in three different parties to the Convention;
- Co-productions involving at least three co-producers established in three different parties to the Convention and one or more co-producers that are not established in such parties (the total contribution of the co-producers who are not established in the parties to the Convention may not, however, exceed 30% of the total cost of the production); and
- Bilateral co-productions in the absence of any agreement governing bilateral co-production relations between the parties to the Convention (provided no reservations have been made under the Convention).

In the case of a bilateral co-production, the provisions of the bilateral agreements are fully applicable. In the case of multilateral co-productions, the provisions of the bilateral agreements between states parties to the Convention are applicable only if they do not contradict the provisions of the Convention. If there is a discrepancy, the provisions of the

[16] Explanatory Report to the European Convention on Cinematographic Co-Production, (Article 1, paragraph 2), https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800cb5e4.

Convention are directly applicable and override the conflicting provisions of the bilateral agreements (Article 2.3).

In all cases, the Convention only applies on condition that the co-produced work meets the definition of a "European cinematographic work". By "cinematographic work", the Convention refers to "a work of any length or medium, in particular cinematographic works of fiction, cartoons and documentaries, which complies with the provisions governing the film industry in force in each of the parties concerned and is intended to be shown in cinemas" (Article 3 a). As recalled in the Explanatory Report to the Convention, this definition reproduces the one which is generally adopted in co-production agreements. In addition, the Explanatory Report specifies that "given the distribution difficulties in Europe, the fact that a cinematographic co-production was not screened in a cinema does not cause it to lose its co-production status."

For a cinematographic work to qualify as European and access the benefits of the Convention, it must achieve at least 15 points out of a possible 19 under a test based on the European elements included in the work, as detailed below:

Table 1. Points test under the European Convention on Cinematographic Co-Productions

European elements	Points
CREATIVE GROUP	
Director	3
Scriptwriter	3
Composer	3
PERFORMING GROUP	
First role	3
Second role	2
Third role	1
TECHNICAL CRAFT GROUP	
Cameraman	1
Sound recordist	1
Editor	1
Art director	1
Studio or shooting location	1
Post-production location	1

If a work has less than 15 points, the competent authorities may, however, after consulting together, exercise their discretion to grant it European co-productions status if they consider that the work reflects a European identity.[17]

2.2.1.1.3. Assimilation to national film

European cinematographic co-productions falling within the scope of the Convention are entitled to the benefits granted to national films by the legislative and regulatory provisions in each Convention country participating in the relevant co-production (Article 4.1). As detailed in the Explanatory Report to the Convention, this means they may benefit from national aids granted to the cinematographic industry and the exhibition of films.[18] In addition, they "(…) may also benefit from national rules regarding origin where television broadcasting is concerned", as detailed in Article 4 of the Explanatory Report to the Convention.[19] Co-production agreements also make it possible to extend the benefit of tax exemptions granted to these works in certain countries. They are thus placed on equal footing with national works with regard to access to the advantages available to such works.

However, such benefits are granted to each co-producer by the party in which the co-producer is established, under the conditions and limits provided for by the legislative and regulatory provisions in force in that party and in accordance with the provisions of the Convention (Article 4.2). It is worth mentioning that the national support is normally proportional to the share of contribution/ownership of the national producer of the international co-production. The Explanatory Report to the Convention points out that minority co-productions enjoy the same status as majority co-productions by virtue of the non-discrimination rule.

In order for the above-mentioned national rules to apply, the co-production shall first obtain the recognition and approval of its status by the competent authorities of each country. These formalities establish that the co-production complies with the rules set forth in the Convention and include the recognition of the producers' qualifications (Article 5). As pointed out in the Explanatory Report to the Convention, although in most countries there is no such official recognition of the producers' qualifications, the purpose of this provision is above all to prevent producers whose professional incompetence is commonly acknowledged and amateur producers from making co-productions.

2.2.1.1.4. Contributions from each co-producer

Each co-producer shall contribute a share of the finances. The minimum and maximum financial contributions established in the 1992 Convention are detailed below. The largest contributor is deemed to be the majority country for that film.

[17] European Convention on Cinematographic Co-production, op. cit., Appendix II, paragraph 2.
[18] See the Explanatory Report – ETS 147 – Cinematographic Co-Production, op. cit., Article 4.1.
[19] Ibid, Article 4.1.

Table 2. Financial contribution under the European Convention on Cinematographic Co-Productions

	Minimum threshold	Maximum threshold
Non-Party	10%	30%
Bilateral Party	20%	80%
Multilateral Party	10%	70%

The contribution of the co-producers relating to creative, technical and artistic personnel, cast and facilities, must be proportional to their investment (Article 8.1). In fact, it was considered that since the Convention grants the co-produced work the nationalities of the various countries that are partners in the co-production, that recognition of nationality must be reflected in a genuine participation by the technical and artistic staff of those countries in the making of the film in order to create a link between the co-produced work and the countries whose nationality it will acquire. That participation must logically be commensurate with the size of each partner country's share of the co-production.

The craft team involved in filming must also be made up of nationals of the states which are partners in the co-production, and post-production shall normally be carried out in those states (unless justified by the demands of screenplay, for example, or in the absence of adequate technical facilities in those countries) (Article 8.2). As highlighted in the Explanatory Report to the Convention, this obligation to use technicians and technical industries established in the countries that are partners in the co-production aims at ensuring that it will not be possible to use workers or technical industries enjoying a lesser degree of protection, outside the framework of the co-production.

The Explanatory Report to the Convention clarified that, where the financial participation fails to be proportional to the artistic and technical participation, the competent authorities may either refuse to grant co-production status to the project or withdraw their provisional agreement.

There are, however, conditions under which a minority financial only contribution may be permitted. This situation is dealt with in Article 9 of the Convention, which grants to these co-productions the co-production status under specific conditions and limits, if they meet the following conditions:

- include one or more minority contributions which may be financial only, in accordance with the co-production contract, provided that each national share is neither less than 10% nor more than 25% of the total production costs;
- include a majority co-producer who makes an effective technical and artistic contribution and satisfies the conditions for the cinematographic work to be recognised as a national work in his country;
- help to promote a European identity; and
- are embodied in co-production contracts which include provisions for the distribution of receipts.

Article 9.2 of the Convention specifies that such financial co-productions shall only qualify for co-production status once the competent authorities have given their approval in each individual case, in particular taking into account the provisions regarding an overall balance set forth in Article 10 of the Convention. This rule is to be understood in the light of Article 9 of the Explanatory Report, which details the purpose and conditions of this exception to the general principle of an artistic and technical contribution commensurate with the share in financing.

2.2.1.1.5. Rights of co-producers

Co-production contracts must guarantee to each co-producer joint ownership of the original picture and sound negatives. The contract shall include the provision that this negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it (Article 7.1), so as to be able to make the copies necessary for the exploitation of the work.

In addition, in order to facilitate distribution, it is often necessary for the co-producer to have, for his own use, an internegative[20] or any other medium which enables the work to be reproduced. Under the Convention, the co-production contract must also guarantee to each co-producer the right to such internegative or to any other medium of duplication (Article 7.2). In cases where this right is relinquished for financial reasons, agreement must be reached between the various co-producers regarding the place where the original negative is to be kept.

2.2.1.2. Main changes introduced by the revised 2017 Convention

More than twenty years after the adoption of the 1992 Convention, the landscape of European film production has changed dramatically: new technologies have changed production, distribution and exhibition techniques; public funding at national and regional level has evolved; tax incentives have multiplied; and many small European countries are now seeking to strengthen the international activities of their film sectors. More generally, the European film industry is increasingly open to exchanges with partners from all over the world.

An evaluation of the implementation of the Convention was carried out in 2011 with national public funds, competent national authorities and professionals.[21] The assessment showed that although the Convention was a flexible and easy-to-use instrument, which helped to increase the number of co-productions and ensured their circulation ability, it was, however, necessary to adapt it to new technologies and recent

[20] An internegative is a duplicate motion picture film negative that is made from the original as an intermediate step used especially for colour control.

[21] Olsberg SPI, Evaluation and proposed revisions of the European Convention on Cinematographic Co-production. A report prepared for the Council of Europe, 30 March 2012, https://www.o-spi.co.uk/wp-content/uploads/2013/09/Evaluation-of-the-European-Convention-on-Cinematographic-Co-Production.pdf.

developments in the film industry in order to ensure the effectiveness of this framework for cinematographic co-productions.

In this context, a revised Convention, the Council of Europe Convention on Cinematographic Co-production (hereinafter, the CoE Convention or the revised Convention), was adopted on 29 June 2016 by the Committee of Ministers, with a view to replacing the 1992 Convention and opened for signature on 30 January 2017.[22] The revised text is intended to give film producers greater flexibility by facilitating their participation in co-productions. It also updates the procedures for obtaining recognition by national authorities of a film which has been co-produced. In addition, in line with increasingly globalised working methods, the scope of this revised Convention has been extended to allow non-European countries to benefit from its provisions. This reflects the recent opening of the Council of Europe's Eurimages Fund to non-European countries.

2.2.1.2.1. Aims

The revised Convention situates its aims within the wider aims both of the Council of Europe and of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[23] Through its aim to reinforce cinematographic co-production as an instrument of creation and expression of cultural diversity, the revised Convention contributes to the wider aims of the UNESCO Convention, which fosters, among other things, national policies and measures to promote creation, production, distribution and access with regard to diverse cultural goods and services.[24]

As a result, the initial objective of the Convention has been adapted from promoting the development of European film co-productions to promoting international film co-productions. Audiovisual works remain excluded from the scope of the revised Convention, since it was considered, as in 1992, that the production of such works is generally not the subject of co-production agreements concluded between states, and there is therefore no need to harmonise international rules concerning them. In addition, the parties to the Convention considered that, due to the rapid development of production and distribution technologies, there is currently no widely accepted definition of an audiovisual work, which constitutes a practical obstacle to its inclusion in the scope of the Convention.

2.2.1.2.2. Scope

The revised Convention continues to apply to the same types of co-productions as the 1992 Convention.[25] However, the definition of "cinematographic works" covered under the

[22] Council of Europe Convention on Cinematographic Co-production (revised), 30 January 2017, op. cit..
[23] UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Paris, 20 October 2005, https://en.unesco.org/creativity/convention.
[24] For more details, see Explanatory Report to the Revised Convention at: https://rm.coe.int/16806930a1.
[25] That is to say, co-productions involving at least three co-producers, established in three different parties to the Convention; co-productions involving at least three co-producers established in three different parties to

2017 Convention has evolved since the 1992 Convention and refers now to "officially co-produced cinematographic works". In addition, one of the main innovation of the revised Convention is not only that the points test has been updated to weigh up the elements originating in the States parties, but that there are now dedicated points scales for fiction, animation and documentary, which should facilitate the work of the competent authorities in assessing applications for recognition under the Convention.[26]

Accordingly, under the revised Convention, a cinematographic work of fiction qualifies as an official co-production, if with regard to the elements originating in the States parties to the Convention, it obtains at least 16 out of a possible total of 21 points according to the list of elements set out below.

Table 3. Points test for cinematographic works of fiction under the CoE Convention on Cinematographic Co-Productions

Elements originating in States parties to the Convention	Weighting Points
Director	**4**
Scriptwriter	3
Composer	**1**
First role	3
Second role	2
Third role	1
Head of Department – cinematography	1
Head of Department – sound	1
Head of Department – picture editing	1
Head of Department – production or costume design	1
Studio or shooting location	1
Visual effects (VFX) or Computer-generated imagery (CGI) location	1
Post-production location	1
Total	21

the Convention and one or more co-producers that are not established in such parties, provided their contribution does not exceed 30% of the total cost of the production; and bilateral co-productions under certain conditions. For more details see paragraph 2.2.1.1.2. of this publication.

[26] See Appendix II of the revised Convention.

On the other hand, a cinematographic animation work qualifies as an official co-production, if it obtains at least 15 points out of a possible total of 23, according to the list of elements set out below.

Table 4. Points test for cinematographic animation works under the CoE Convention on Cinematographic Co-Productions

Elements originating in States parties to the Convention	Weighting Points
Conception	**1**
Script	2
Character design	**2**
Music composition	1
Directing	2
Storyboard	2
Chief decorator	1
Computer backgrounds	1
Layout (2D) *or* layout and camera blocks (3D)	2
75% of expenses for animation in States parties to the Convention	3
75% of the cleaning, inter-betweening and colouring in States Parties to the Convention (2D) *or* **75% of the colouring, lighting, rigging, modelling and texturing in States Parties to the Convention (3D)**	3
Compositing *or* camera	1
Editing	1
Sound	1
Total	23

Concerning cinematographic documentary works, these qualify as official co-productions, if they obtain at least 50% of the total applicable points according to the list of elements set out below.

Table 5. Points test for cinematographic documentary works under the CoE Convention on Cinematographic Co-Productions

Elements originating in States parties to the Convention	Weighting Points
Director	4
Scriptwriter	1
Camera	2
Editor	2
Researcher	1
Composer	1
Sound	1
Shooting location	1
Post-production location	2
Visual effects (VFX) *or* Computer-generated imagery (CGI)	1
Total	16

As in the 1992 Convention, cinematographic works falling within the scope of the revised Convention shall be entitled to the benefits granted to national films by the legislative and regulatory provisions in force in each of the parties to the Convention participating in the co-production concerned.

2.2.1.2.3. Contributions from each co-producer

The 1992 Convention provides for a minimum level of financial contribution[27] for multilateral co-productions of 10% and a maximum level of contribution of 70% of the total production cost of the cinematographic work. However, the minimum contribution rate of 10% has proved difficult to apply in practice in countries where the film industry is relatively fragile, as producers in these countries cannot raise enough funds to enable them to participate in more ambitious co-productions with the minimum contribution. Considering that participation in higher budget co-productions with experienced partners would allow industry professionals from small countries to acquire valuable expertise and

[27] According to Article 8 of the 1992 Convention, the contribution of each of the co-producers shall include effective technical and artistic participation. In principle, and in accordance with international obligations binding the parties, the contribution of the co-producers relating to creative, technical and artistic personnel, cast and facilities, must be proportional to their investment. In addition, Article 10 of the same Convention provides that a general balance must be maintained in the cinematographic relations of the parties, with regard both to the total amount invested and the artistic and technical participation in co-production cinematographic works.

establish useful contacts while making a useful financial and creative contribution, the parties agreed to reduce the minimum contribution rate to 5% and to increase the corresponding maximum contribution to 80% in the revised Convention (Article 6.1). Nonetheless, when the minimum contribution is less than 20% or the co-production is financial only, the country of origin of the minority co-producer may take steps to limit access to national production support schemes.

In bilateral co-productions, the minimum contribution may not be less than 10% and the largest contribution may not exceed 90% of the total production cost. As for multilateral co-productions, when the minimum contribution is less than 20% or financial only, the country of origin of the minority co-producer may take steps to limit access to national production support schemes, notably where automatic support is granted irrespective of the national share in the co-production. Such access may also be barred where the minimum contribution does not include effective technical and artistic participation (financial co-productions only) by the co-producer concerned (Article 6.2).

Table 6. Proportions of contributions from each co-producer under the CoE Convention on Cinematographic Co-Production

	Minimum threshold	Maximum threshold
Non-Party	10%	30%
Bilateral Party	10% (20%)	90% (80%)
Multilateral Party	5% (10%)	80% (70%)

(Into brackets the former percentages under the 1992 Convention)

As in the 1992 Convention, the revised Convention considers that the recognition of nationality must be reflected in genuine technical and artistic participation by cast and crew members from the countries involved. According to the Explanatory Report to the revised Convention, the terms "technical" and "artistic" are to be interpreted by competent authorities in the light of national legislation and film industry standards (Article 8).

The revised Convention also specifies that post-production should be carried out in a country which is a partner in the co-production, except in the absence of adequate technical facilities in the countries concerned. According to the Explanatory Report to the revised Convention, a state may assimilate the residents of countries belonging to its cultural sphere to its own residents.

2.2.1.2.4. Rights of co-producers

This provision has been redrafted in the revised Convention, both to clarify the underlying concept of co-ownership of the rights, and to reflect the technological evolution in the industry. The revised Convention thus clarifies that a co-production establishes joint ownership of all the rights necessary to the production, distribution and exploitation of the cinematographic work and (but not limited to) the physical material of the film.

The revised Convention also specifies that the co-production contract should provide that the first completed version of the cinematographic work (the master), including the first completed version in the original language(s) and any associated material necessary for the production of alternative linguistic versions, be deposited in a place mutually agreed by the co-producers. Each producer must be guaranteed free access to the film material and the master for use as a medium of duplication (Article 7).

2.2.1.2.5. Financial co-productions

In order to allow the Convention to provide a framework for those productions where the need to respect the cultural identity of a project and ensure coherent artistic choices precludes effective technical and artistic co-operation, and to reduce the complexity of the structuring of multilateral co-productions involving many co-producers, purely financial participations can be envisaged, within certain limits, under the revised Convention (Article 9). They shall meet the following conditions:

- Include one or more minority contributions which may be financial only, in accordance with the co-production contract, provided that each national share is neither less than 10% nor more than 25% of the production costs;
- Include a majority co-producer who makes an effective technical and artistic contribution and satisfies the conditions for the cinematographic work to be recognised as a national work in his or her country;
- Help to promote cultural diversity and intercultural dialogue; and
- Are embodied in co-production contracts which include provisions for the distribution of receipts.

Such financial co-productions shall only qualify for co-production status once the competent authorities have given their approval in each individual case.

2.2.1.2.6. General balance

As explained in the Explanatory Report to the revised Convention, the aim of the Convention is to promote official cinematographic co-productions between the parties. In many countries, the cinematographic industry receives substantial public funding, and the status of official co-production may provide access to this funding for minority co-producers. In these circumstances, the parties may wish to maintain a balance in their co-production relations with other parties to the Convention. In order to do so, the revised Convention introduces a new concept of overall balance in cinematographic relations, with regard both to the total amount invested and the artistic and technical participation in the co-production of cinematographic works (Article 10).

This new provision allows parties to insist upon re-establishing balance, where they have observed a lack of reciprocity in their co-production relations with a particular country. Manifest imbalances may relate for example to the difference between the flow of national investment to finance foreign films and the flow of foreign investment to finance its own film industry. It may also refer to an imbalance over a given period

between the number of majority co-productions and the number of minority co-productions with one or more partner countries, etc.

According to the revised Convention, a party which, over a reasonable period, observes such a deficit in its co-production relations with one or more other parties may withhold its approval of a subsequent co-production until balanced cinematographic relations with that or those parties have been restored. However, as indicated in the Explanatory Report to the revised Convention, such a refusal to grant official co-production status should happen only as a last resort, after the usual channels of consultation between the parties concerned have been exhausted.

2.2.1.2.7. Accession of non-CoE members

In accordance with Article 18, the revised Convention is open for signature by member States of the Council of Europe and the other States parties to the European Cultural Convention.[28] As clarified in the Explanatory Report to the revised Convention,[29] "[…] *in view of a significant trend towards internationalisation in the film industry, the Parties have decided to open the revised Convention to accession by non-European countries* [….]". Whereas the 1992 Convention promoted and provided a framework for European co-productions, the revised Convention now promotes and provides a framework for officially-recognised international co-productions. The general procedure for the accession of a non-European State is detailed in Article 20 of the revised Convention and involves an initial expression of interest by the State concerned. The decision on whether or not to issue an invitation to accede has to be unanimously agreed by those Council of Europe members which have ratified the Convention. This decision is taken by the Committee of Ministers. Then an invitation to accede to the Convention is notified to the State concerned by the Secretariat General. The instrument of accession may then be deposited by the non-European State.

2.2.1.2.8. Application procedure

Another important innovation of the revised Convention relates to the application procedure for the awarding of co-production status by national authorities. Under Appendix 1 of the revised Convention, such procedure is brought into line with the prevailing practice of competent authorities. An initial, provisional phase of recognition of the co-production prior to shooting is followed by a second phase which corresponds to the definitive award of official co-production status on completion of the film. The documents required for each phase are listed, though national authorities may require additional documents as foreseen in national legislation.

[28] As a reminder, Article 18 of the 1992 Convention specified that the Convention was also open for accession by *European* States non-members of the Council of Europe as well as by the European Economic Community.
[29] See the Explanatory Report to the revised Convention, op. cit., paragraph 57 and following,

2.2.1.2.9. Final provisions

The revised Convention shall replace, as regards states parties, the 1992 Convention. However, where a co-production involves a party to the revised Convention and a party to the 1992 Convention which has not ratified the revised Convention, the 1992 Convention shall continue to apply (Article 16).

In addition, as the 1992 Convention did not envisage the creation of a monitoring mechanism, Article 17 of the revised Convention entrusts the responsibility for the follow-up of the revised instrument to the Board of Management of the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works (Eurimages). Any Party to the Convention which is not a member of "Eurimages" may be represented and have one vote in the Board of Management of "Eurimages" when the Board carries out tasks assigned to it by the Convention.

In order to promote the effective application of the Convention, the Board of Management of "Eurimages" may make proposals to facilitate the exchange between Parties of experience and good practices. It can also formulate its opinion on any question concerning the application and the implementation of the Convention and make specific recommendations to Parties in this respect (Article 17).

The Convention entered into force on 1 October 2017, the date on which three States, including at least two member States of the Council of Europe, have expressed their consent to be bound by the Convention As to the date of publication, the revised Convention has been signed by 15 countries and ratified by seven of them.[30]

2.2.2. Eurimages

2.2.2.1. Aims and internal governance

Eurimages is the cultural support fund of the Council of Europe. It promotes independent filmmaking by providing financial support to feature-length films, animation and documentary films. In doing so, Eurimages encourages co-operation between professionals established in different countries. Since being set up in 1989,[31] Eurimages has supported 1962 European co-productions for a total amount of approximately EUR 574 million.

Eurimages currently numbers 37 of the 47 member states of the Council of Europe, plus Canada as an associate member. It is managed by a Board of Management,

[30] Croatia, Lithuania, Malta, Netherlands, Norway, Slovak Republic, and Sweden.

[31] See Council of Europe Resolution (88) 15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works ("Eurimages"), Committee of Ministers, 26 October 1988, https://rm.coe.int/setting-up-a-european-support-fund-for-the-co-production-and-distribut/16804b86e2.

where each member state is represented. The Board of Management determines the fund's policy and the conditions under which it awards financial support. It also selects the projects for support and meets four times a year. The Board of Management elects its president from amongst the persons proposed by the member states. The president's role is to represent the fund on audiovisual policy matters, to conduct debates and to engage in an active dialogue with professionals from the cinema sector. The Secretariat of Eurimages, headed by an Executive Director and under the responsibility of the Secretary General of the Council of Europe, ensures the administration of the fund. It is responsible for implementing the decisions taken by the Board of Management and maintaining contacts with cinema professionals, and it also has the task of assessing applications for funding, as well as ensuring the follow-up of support agreements.

2.2.2.2. Co-production support

Eurimages has a total annual budget of approximately EUR 25 million. This financial envelope derives essentially from the contributions of the member states and associate members (as well as returns on the loans granted). These contributions are determined each year by the member states' representatives on the Eurimages Board of Management according to a specific scale (also adopted by the Board of Management), which takes into account four criteria:[32]

- The country's wealth (GDP) and the size of its population;
- Each country's co-production volume (with different coefficients for majority co-productions and for minority co-productions);
- The amount of support requested from Eurimages by co-producers in a given country for eligible projects (whether supported or not);
- The amount received from the fund by co-producers in a given country for projects supported.

In total, Eurimages currently runs four main support schemes:[33]

- Feature film co-production;
- Theatrical distribution;[34]
- Exhibition;[35]

[32] See for details Eurimages Financial Regulations regarding the support fund for the co-production and distribution of creative cinematographic and audiovisual works "EURIMAGES", https://rm.coe.int/financial-regulations-of-the-support-fund-for-the-co-production-and-di/16808f1e6e.

[33] See details at: https://www.coe.int/en/web/eurimages/coproduction.

[34] The Distribution Support Programme is intended only for professionals based in Eurimages' member states which do not have access to the EU Creative Europe-MEDIA distribution programme, namely: Armenia, Canada, Georgia, the Russian Federation, Switzerland and Turkey.

[35] The objectives of this funding line is (i) to increase the programming of eligible films in cinemas in Eurimages' member states that do not have access to support under the Creative Europe MEDIA sub-programme. The following countries are eligible for the Eurimages programme of support for cinemas: Armenia, Canada, Georgia, the Russian Federation, Switzerland and Turkey; (ii) to support the cinema's efforts to enhance the programming and promotion of such films; (iii) to develop a wider network of cinemas,

- Promotion;[36]

Eurimages' support takes the form of soft loans (co-production support) or subsidies (theatrical distribution and exhibition). Soft loans are repaid on the basis of revenues generated by the projects supported. More specifically, the co-production support aims at promoting co-productions between Eurimages member states and supports fiction, animation and documentary feature films of a minimum length of 70 minutes.

There are four calls for projects per year. The Secretariat applies the eligibility criteria contained in the funding regulations and reports to the Board of Management. Projects declared eligible by the Secretariat are then evaluated by the Board of Management. In taking its decision on the support it grants, the Board of Management applies the selection criteria contained in the regulations.

2.2.2.2.1. Eurimages Regulations for Co-production Support 2018

Regulations are adopted each year by the Board of Management of Eurimages in relation to support for the co-production of feature-length fiction, animation and documentary films. The latest version of the regulations[37] entered into force as of 1 January 2018 and reflects the changes brought to the revised Convention. The regulations organise everything in relation to the granting of support to films, as explained in the following table.

allowing joint initiatives, both between exhibitors and distributors and with other Eurimages member states and European organisations that support cinemas.

[36] Eurimages' support in terms of promotion includes participating in the main film markets in Europe; co-operating through partnerships with film festivals; co-operating with co-production markets all over the world in order to award the Eurimages awards (Co-production Development Award, Lab Project Awards, Co-production Award); ensuring the presence of Eurimages films in major festivals.

[37] Current regulations for the support of co-production of full-length feature films, animation and documentaries, https://rm.coe.int/eurimages-support-for-co-production-feature-length-fiction-animation-a/168076e918. See also main changes in the 2018 regulations at: https://rm.coe.int/information-for-producers-main-changes-in-the-regulations-for-co-produ/168076dea8.

Table 7. Main provisions included in the 2018 Regulations

Main provisions	2018 Regulations
Call for projects	- Requirements for the applications; - Deadlines
General provisions	- Feature-length, animation and documentary films with a minimum length of 70 min., intended for cinema release; - Co-productions between at least 2 independent co-producers established in different member states of the fund; - Compliance with legislation, bilateral treaties and the cultural objectives of the fund; - Including a digital master copy for cinema release.
Eligible producers	- Independent production company (that is, when less than 25% of its share capital is held by a single broadcaster or less than 50% where several broadcasters are involved); - Producers established in one of the member states of the fund; - Producers who have previously received support from Eurimages must have met all their contractual obligations to the fund.
Co-production structure (% of production costs)	- For multilateral co-production: majority co-producer: max. 70% / minority co-producer: max. 10%; - For bilateral co-production: majority co-producer: max. 80% / minority co-producer: max. 20% (max. 90% for the majority co-producer of bilateral co-productions with a budget of over EUR 5 million); - In the case of projects falling under the revised Convention, the co-production contributions set out in that Convention shall be applied; - Duly signed co-production agreement.
Participation of producers and financiers	- Co-producers from non-member states of the fund may participate in the project provided that their combined co-production percentage does not exceed 30% of the total co-production budget.
Technical and artistic co-operation and financial co-productions	- Artistic and/or technical co-operation between at least two co-producers established in different member states of the fund; - Financial co-productions under certain conditions.
Qualifying project	- Based on points test, which varies depending on the type of project – fiction, animation, documentary.
Start of principal photography	- After the Board of Management's examination and not later than six months after this date, with the possibility of derogations under certain conditions.
Copyright regulations and joint ownership of	- Projects submitted must comply with the copyright regulations in force in the co-producing countries, *inter alia* with regards to decisions

Main provisions	2018 Regulations
the negative	concerning the final cut. - The negative must be jointly owned by all co-producers.
Financial requirements	- Projects should have the benefit, in each co-producing country, of either public support, a television pre-sale, a minimum guarantee or any other financial arrangements verifiable by and acceptable to Eurimages. Public support for development and post-production is also acceptable under certain conditions; - At least 50 % of the financing in each of the co-producing countries must be confirmed; - The production budget shall clearly include the costs necessary for the completion of a digital master copy for cinema release.
Selection of project	- Analysis by the Secretariat; - Selection criteria by the Board of Management, based on the quality and originality of the script; the vision and style of the director; the contribution of the team and the level of artistic and technical cooperation; the consistency and level of confirmed financing; the potential for circulation.
Nature of financial support and amounts	- Repayable interest-free loan – advance on receipts; - Max. 17% of the total production cost (25% for documentaries) within the limit of EUR 500 000.
Allocation of financial support	- To each co-producer, according to the proportion of his or her financial participation in the co-production, with exceptions under certain conditions.
Payment of financial support	- In three instalments, unless otherwise agreed with Eurimages: o 1st instalment of 60% of the total amount at the time of signature of the Support Agreement with Eurimages and the start of principal photography; o 2nd instalment of 20% under the condition of receiving certain documents: confirmation of the completion of a digital master copy for cinema release; distribution guarantees and/or pre-sales; signature of the List of Deductions, financial plan; credit list; o 3rd instalment of 20%: after confirmation of cinema release in the co-producing countries, or (for documentaries) selection in at least one significant festival, after receipt and approval by Eurimages of the total final costs of the production and expenditures of each co-producer; the final financial plan; evidence of payment of the minimum guarantee shown on the list of deductions; the publicity material for each co-producing country.
Repayment of the	- Eurimages recoupment corridor: the support amount is repayable from

Main provisions	2018 Regulations
support	the first euro, from each producer's net receipts, at a rate equal to the percentage of the Eurimages share in the financing of the film and after deduction of distribution guarantees and/or pre-sales necessary for the financing of the film; - Producers' net receipts; - Deductible amounts; - Revenue statements; - Collection account;
Modification of the support granted and termination	- Evolution of the co-production; - Decrease in production costs; - Cancellation of financial support; - Theatrical release.
Dispute settlement and interpretation	- No right of appeal against a decision of the Board of Management not to support a request for financial support; - Arbitration Board; - The Board of Management reserves the right to interpret and change these Regulations.

2.2.3. Nordisk Film & TV Fond

Established in 1990, and based in Oslo, Norway, Nordisk Film & TV Fond's[38] primary purpose is to promote high quality film and TV productionsin the five Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), by providing support for the top-up financing of feature films, TV fiction/drama series and creative documentaries.

Nordisk Film & TV Fond is funded by 18 partners; the Nordic Council of Ministers, five national film institutes/funds and 12 public service and private TV stations within the region.[39] The annual budget is approximately NOK 100 million (EUR 10,500,000). One third of the Fund's budget is contributed by the Nordic Council of Ministers, one third by the Nordic Film Institute and one third by the Nordic Television Companies who are the

[38] http://www.nordiskfilmogtvfond.com.

[39] The parties to the Fund include: The Nordic Council of Ministers (www.norden.org); the Danish Film Institute (www.dfi.dk); DR (www.dr.dk); TV2 Denmark (http://tv2.dk); the Finnish Film Foundation (http://ses.fi/etusivu/); Yle (http://yle.fi); MTV Oy (https://www.mtv.fi); Icelandic Film Centre (www.icelandicfilmcentre.is); RUV (http://ruv.is); 365 Media – Stod2 (www.stod2.is); the Norwegian Film Institute (www.nfi.no); NRK (www.nrk.no); TV2 Norway (www.tv2.no); Discovery Networks Norway – TVNorge (www.tvnorge.no); Swedish Film Institute (www.filminstitutet.se); SVT (www.svt.se); TV4 (www.tv4.se); Discovery Networks Sweden – Kanal 5 (www.dplay.se/kanal5/);

Parties of the Fund. The financial contribution is subject to the renewable five-year Agreement[40] between The Nordic Council of Ministers and the Parties of the fund.

The Board is appointed by the Nordic Council of Ministers. It includes representatives of the Fund's Parties, is composed of individuals who have insight into Nordisk Film & TV Fond's areas of work. At least two of the board members must have special expertise in the film industry, and at least two must have particular expertise in the television sector.

Nordisk Film & TV Fond's funding programmes are:

- Production funding for feature films;
- Production funding for TV fictions / series;
- Production funding for documentaries;
- Funding for distribution (single film);
- Slate funding for distribution (up to three films);
- Funding for dubbing;
- Funding for film cultural initiatives;
- Funding for strategic development (only upon request by the Fund).

2.3. European Union

2.3.1. Creative Europe – MEDIA – Co-production funds

Since 2014, international co-production funds have been able to benefit from MEDIA support to foster co-productions between Europe and third countries.[41] With a dotation of EUR 1.5 million per year, this mechanism co-finances four to seven funds[42] to support 25 international co-productions. Through this support, Creative Europe aims to encourage European co-production funds to co-produce creative film projects involving European and non-European partners and to facilitate their circulation on the international market.

Funds supporting international co-production established in a MEDIA country and active for at least one year are eligible. The Union's financial contribution to the funds may not exceed 80% of the total eligible costs of the action. The maximum contribution per selected applicant fund is EUR 400 000. Co-production funds eligible for MEDIA support must have as their activity either support to the co-production of feature-length fiction, animation or documentary works or implementation of a distribution strategy for the supported works (maximum EUR 15 000 per territory). .

[40] See the Agreement 2015-2019 translated into English at: http://cdn.nordiskfilmogtvfond.com/assets/download/Agreement-of-the-fund-English-translation.docx.
[41] Creative Europe – MEDIA – Co-production funds International Co-production Funds, Creative Europe, https://eacea.ec.europa.eu/creative-europe/actions/media/creative-europe-media-co-production-funds_en.
[42] See later in the paragraph for the list of funds for 2018.

These co-productions must be financed between 20% and 70% by European producers for documentaries and between 25% and 70% for fiction and animation films.

Applications from eligible funds are evaluated on 100 points according to the following weighting:

- Relevance and European added value (40 points)
- Quality of content and activities (30 points)
- Dissemination of project results, impact and sustainability (25 points)
- Team quality (5 points)

This MEDIA funding has largely contributed to the development of co-production funds at national level, such as the IDFA Bertha Fund Europe in the Netherlands or ACM (*Aide aux Cinémas du Mond*e, CNC) in France.[43] As part of the results of the last call for tenders published in July 2018, MEDIA supported five international funds (the same as of 2017) for a total amount of EUR 1 549 800, as follows:[44]

- HBF+ Europe (EUR 300 000);
- TFL Co-production Fund, TFL World Co-production Fund & TFL Audience Design Fund (EUR 324 800);
- IDFA Bertha Fund Europe (EUR 320 000);
- World Cinema Fund Europe (EUR 205 000);
- ACM Distribution (EUR 400 000).[45]

2.4. Beyond Europe

2.4.1. Ibero-America

2.4.1.1. International treaties on cinematographic co-production

Since the early 1990s, several countries in Latin America have joined forces to create an Ibero-American audiovisual space (*Espacio audiovisual Ibero-Americano*), which also involves some European countries, such as Spain and Portugal. In particular, two constitutive treaties, namely the Latin American Agreement on Cinematographic Co-production (*Acuerdo Latinoamericano de Coproducción Cinematográfica*, ALCOCI)[46] and the Agreement on Ibero-American Cinematographic Integration (*Convenio de Integracion*

[43] For further details please refer to Section3.2. of this publication.
[44] http://www.creativeeuropeuk.eu/news/five-co-production-funds-supported-creative-europe.
[45] https://mediadeskbelgique.wordpress.com/category/soutien-aux-producteurs/coproduction-internationale/page/1/.
[46] Acuerdo Latinoamericano de Coproduccion Cinematografica, Caracas, 11 November 1989, http://caci-iberoamerica.org/wp-content/uploads/2016/09/alcoci-1989.pdf.

Cinematográfica Iberoamericana, CONICI),[47] were signed in Caracas, Venezuela, on 11 November 1989 and amended by means of Amendment Protocols, in Bogota, Colombia, on 14 July 2006 and in Cordoba, Spain, on 28 November 2007, respectively. Both instruments were conceived to contribute to the cultural development of the region and its identity, and above all, to give impetus to its cinematographic and audiovisual development, with special emphasis on those countries with insufficient infrastructure, within the framework of an effective development of the cinematographic community of their member states. Cinematographic co-productions between the states parties were considered as a direct and efficient way to promote the cinematographic and audiovisual industries in the region.

As regards co-productions, depending on the case, the applicable frame of reference varies according to the country in question.

The Ibero-American Cinematographic Co-production Agreement (*Acuerdo Iberoamericano de Coproducción Cinematográfica*, AICOCI),[48] resulting from the 2006 Amendment, has been in force since 15 September 2016. It is a regulatory framework for co-productions whose application is limited to the eight countries that have ratified it so far: Brazil, Colombia, Costa Rica, Spain, Nicaragua, Panama, Paraguay and Uruguay.

Alternatively, on a transitory basis, the text of the Ibero-American Cinematographic Co-production Agreement (*Acuerdo Latinoamericano de Coproducción Cinematográfica)*[49] of the Conference of Latin American Cinematographic Authorities (*Conferencia de Autoridades Cinematográficas de Iberoamérica*, CACI)[50] of 22 June 2000, signed in Madrid, Spain, is applicable to another group of eight countries (Argentina, Bolivia, Cuba, Chile, Mexico, Peru, Portugal and Venezuela).

In addition, on 28 November 2007, the CACI approved, in Córdoba, Spain, the Regulations of the Ibero-American Cinematographic Co-production Agreement (*Reglamento del Acuerdo Iberoamericano de Coproduccion Cinematografica*, RAICOCI),[51] which provides the member countries to the CACI with a regulatory instrument that facilitates the application of the AICOCI, through the adoption of more specific procedures and criteria.

Finally, apart from Ecuador, to which the ALCOCI applies, the other five countries (the Dominican Republic, Puerto Rico, Guatemala, El Salvador and Honduras) that make

[47] The Convenio de Integracion Cinematografica Iberoamericana was signed on 11 November 1989 by Argentina, Bolivia, Colombia, Cuba, Ecuador, Spain, Mexico, Nicaragua, Panama, Peru, Venezuela, the Dominican Republic, Brazil, http://www.recam.org/_files/documents/convenio_integr_cine_al.pdf.

[48] Acuerdo Iberoamericano de Coproduccion Cinematografica, Texto refundido resultante del Acuerdo Latinoamericano de Coproduccion Cinematografica (1989) y de su Protocolo de Enmienda (2006), http://www.programaibermedia.com/wp-content/uploads/2013/04/ACUERDO-IBEROAMERICANO-DE-COPRODUCCI%C3%93N-CINEMATOGR%C3%81FICA-Texto-Refundido-V....pdf.

[49] Acuerdo Latinoamericano de Coproduccion Cinematografica, http://caci-iberoamerica.org/wp-content/uploads/2016/09/acuerdo-de-coproduccion-madrid-2000.pdf.

[50] http://caci-iberoamerica.org/quienes-somos/.

[51] Reglamento del Acuerdo Iberoamericano de Coproduccion Cinematografica, http://caci-iberoamerica.org/wp-content/uploads/2016/09/raicoci-2007-reglamento-acuerdo-coproduccion-2007.pdf.

up the Ibero-American Audiovisual Space and which are in the process of acceding to or ratifying the CACI international instruments, are currently governed by the existing internal regulations in each case and/or in accordance with the provisions of the bilateral co-production agreements available to them.

2.4.1.2. Ibermedia

Ibermedia[52] was born with the aim of stimulating the co-production of feature films and documentaries made in the Ibero-American region. Approved as a Programme by the 5th Ibero-American Summit of Heads of State and Government, held in Bariloche, Argentina, in 1995, its definitive launch came after the 7th Ibero-American Summit, held in Isla Margarita, Venezuela, in November 1996, with the first open call for project grants the following year.

Ibermedia's mission is to work towards the creation of an Ibero-American audiovisual space, by means of financial aid and through calls that are open to all independent film producers from the member countries of Latin America, Spain, Portugal and, more recently, Italy. In addition, it promotes excellence in cinema in the Iberoamerican community; contributes to the realisation of audiovisual projects aimed at the market; fosters the production companies' integration into networks in order to facilitate co-productions; and helps with the continuous training of production professionals and audiovisual business management through workshops, scholarships or seminars, encouragement to solidarity collaboration and the use of new technologies.

2.5. Other multilateral / regional programmes

Other programmes can be found at multilateral or regional level[53] that provide grants to cinematographic co-productions, either as a main activity or as a punctual one, as presented in the table below.

[52] http://www.programaibermedia.com/el-programa/.

[53] For a detailed list of funding bodies in Europe, please consult Talavera Milla, J., Fontaine, G., Kanzler, M., "Public financing for film and television content, The state of soft money in Europe", Annexe, p. 97 and following, July 2016, European Audiovisual Observatory, Strasbourg, France, https://rm.coe.int/public-financing-for-film-and-television-content-the-state-of-soft-mon/16808b6dee.

Table 8. List of other main multilateral / regional programmes

Outreach	Programme	Objective	Website
South Eastern Europe	SEE Cinema Network	The South Eastern Europe Cinema Network (SEE CINEMA NETWORK) was founded in the year 2000 on the island of Hydra, Greece, by organisations representing the national cinemas of 11 countries in South Eastern Europe. It draws its funding from its member nations' cinema organsations. The network seeks to develop collaboration between cinema professionals in its member states. To this end, it supports the development of international co-productions (fiction films) and the production of short films.	http://seecinemanetwork.com/index.php/about
ACP – Africa	ACP Films[54]	ACP Films is a programme of the Group of African Caribbean and Pacific States (ACP), implemented by the ACP Secretariat and financed under the 9th European Development Fund (EDF). It is implemented within the framework of the EU-ACP Partnership Agreement signed in Cotonou, Benin, on 23 June 2000. Article 27 of the agreement states that cooperation shall aim at "recognising, preserving and promoting cultural values and identities to enable inter-cultural dialogue". It must also be aimed at "developing cultural industries and enhancing market access opportunities for cultural goods and services".	http://www.acpfilms.eu/
Western Balkans	European Fund for the Balkans (EFB)	Joint initiative of European foundations that envisions, runs and supports initiatives aimed at strengthening democracy, fostering European integration and affirming the role of the Western Balkans in addressing Europe's emerging challenges. It includes grants to film festivals, although not specifically oriented towards co-productions.	http://www.balkanfund.org

[54] Not operational by September 2018.

3. National measures

3.1. Bilateral/multilateral agreements

As explained in previous pages of this publication, so-called "official" co-productions are those international co-productions which follow the rules of an international co-production agreement (be it bilateral or multilateral) or the rules of the European Convention on Cinematographic Co-production (or similar treaties). In all cases, the policy aim of an official co-production is for the resulting work to be considered as "national" in all countries involved in the co-production and therefore be eligible for public funding in all of those countries. In the case of a co-production with EU countries, the resulting work will also be considered European, so that it may benefit from the broadcasting and VoD quotas of the AVMSD.

Many countries have signed bilateral or multilateral agreements[55] with other countries concerning the regulation of international co-productions and the acquisition of "national" status. These agreements list the requirements (financial, artistic and technical) for a co-production to be considered as "national". The co-production must be approved by the authorities representing each signatory to the agreement (normally the ministry of culture or the national film agency).

Other than giving films the nationality of all countries involved, co-production agreements have many other advantages, as well as some limits. They can be a motivator or multiplier of co-productions and encourage smaller countries to co-produce with bigger ones. But all that glitters is not gold. The number of co-productions made under treaties does not necessarily correlate with the number of co-productions a country makes in reality. They open the door to funding, but in cases where public funding can be obtained without the co-production being official (like some regional funds, or Nordic funds), their purpose might be void. Furthermore, they imply a lot of red tape and their rules can be rather inflexible. Finally, since the European Convention on Cinematographic Co-production already provides a good legal framework for international co-production, co-production agreements between parties to the Convention may be irrelevant.[56]

[55] The main difference between bilateral and multilateral agreements is that the latter involve more than 2 countries and usually require smaller participation percentages.
[56] A good summary of issues surrounding co-production agreements is available at: https://focal.ch/medici-training/reports/5-module1.html.

3.1.1. Main features

A bilateral or multilateral agreement usually regulates at least the following aspects:

- Scope of the agreement: which types of works are covered (short or feature films or audiovisual works), which type of support (film or digital), which genre (fiction, animation or documentary);
- Definitions (for the purposes of the agreement): what is a "co-production film" and a "co-producer" (including producers of the countries signatories to the agreement but also third-party co-producers), and what are "nationals", "residents", "competent authorities", "member states", "production costs", etc.;
- Requirements for approving co-production status;
- Minimal and maximum number of co-producers from each signatory state;
- Ownership relationship between co-producers;
- Place of establishment of co-producers;
- Minimal financial contribution of each co-producer (including that of third-party co-producers);
- Percentage of the production cost that may be used to source goods and services from each of the signatory countries, as well as from third-party countries;
- Sharing of rights, revenues and prizes;
- Content-related aspects of the film (violence, pornography, protection of minors, human dignity, etc);
- Language of the original version of the film and dubbing/subtitling obligations;
- Film credits;
- Place of filming, pre- and post-production;
- Nationality and residence requirements of participants in the production;
- Conditions of work;
- Minimum requirements concerning the co-production contract;[57]
- Participation of third-country producers;
- Finance-only contributions;
- Entry of persons in the co-producing countries for the purposes of film production;
- Competent authorities for assessing co-production projects;
- Mixed commission (supervising the working of the Agreement);
- Entry into force and length of the agreement;

3.1.2. Diversity of approaches

Paraphrasing Jimmy Carter, Europe is "not a melting pot but a beautiful mosaic. Different people, different beliefs, different yearnings, different hopes, different dreams."[58] And also different ways of doing things, it could be added. When it comes to drafting bilateral and

[57] For more details concerning co-production contracts see Chapter 4 of this publication.
[58] https://en.wikiquote.org/wiki/Talk:Jimmy_Carter.

multilateral agreements and managing official co-productions, different European countries tend to do things in their own way, which reflects different policy interests and also different administrative cultures.

France and the United Kingdom are perfect examples of opposite regimes. France has signed more than 50 bilateral co-production treaties,[59] the highest number in Europe, whereas the United Kingdom phased out all its bilateral agreements with European countries (except with France) the moment it signed the European Convention.[60] France's system of co-production is structured and formal; official certificates are mandatory requirements for every action (production, distribution, selling a film to French television, etc.). The United Kingdom, for its part, has a more laissez-faire, market-driven approach. The rather informal approach taken by Nordic countries is also marked by a lot of flexibility: certificates are not necessary and only provided in order to meet the requirements of Eurimages or some national funds across Europe. For example, the Norwegian Film Institute does not require a co-production to be made under a treaty, the only requisite being that a local producer participates in the project and that he/she can apply for the funding.[61]

3.1.2.1. France[62]

Qualifying as a co-production with France gives automatic access to aid schemes in France. The work of European authors can also be eligible for Sofica finance and this could offer a broadcasting advantage in that the French distributors of these films, like their French producers, have access to automatic support.[63]

Concerning the general rules of agreements signed by France,[64] in principle:

- the sharing of revenues is done either in proportion to the intervention of each co-producer, or by geographical sector;
- the original material must contain as many negatives as co-producers;
- the film must exist in as many versions as there are co-producers of different nationalities, an original version is not mandatory and post-synchronisation is possible;
- the majority co-producer must carry out the essential work in his country;
- for festival selection, the film's nationality is based on that of the majority co-producer.

[59] https://www.cnc.fr/professionnels/reglementation/accords-internationaux.
[60] The United Kingdom has been signing a lot of treaties with non-EU countries (China, India, Israel, Morocco, etc) to access new markets.
[61] See https://focal.ch/medici-training/reports/5-module1.html.
[62] See Filmfrance, "The incentives guide", https://www.filmfrance.net/telechargement/IncentivesGuide2017.pdf.
[63] See Domehri D., "Co-producing with France", https://prezi.com/pv8bjtcirb5t/co-producing-with-france/.
[64] See Jurispedia.org, "Cadre contractuel de la coproduction cinématographique", http://fr.jurispedia.org/index.php/Cadre_contractuel_de_la_coproduction_cinématographique_(fr)#Coproductions_franco-.C3.A9trang.C3.A8res.

These agreements are subject to approval by the respective authorities of each country and may also be submitted to a joint committee which grants derogations according to specific cases. The CNC is the competent authority for assessing applications for the qualification of a feature film (that is, French citizenship for the project). For feature films:

- Two scales are used to determine whether it is European enough and whether it is French enough. Films must score enough points on both scales.
- When the co-production is made within the framework of a bilateral treaty, the citizens of the other country qualify as European.

Table 9. Bilateral co-production agreements signed by France

Country	Majority contribution	Minority contribution	Derogation
Belgium, Germany, Lebanon, Luxembourg, Switzerland	90%	10%	
Italy	90%	10%	5%
Algeria, Austria, Burkina Faso, Cameroun, Canada, China, Colombia, Georgia, Guinea, Iceland, the Ivory Coast, Mexico, the Netherlands, New Zealand, Senegal, South Africa, South Korea, Spain, Tunisia, Turkey, the United Kingdom	80%	20%	
Argentina, Brazil, Cambodia, Croatia, India, Israel, Lithuania, the Palestinian territories, Poland, Romania, Slovenia, Ukraine	80%	20%	10%
Denmark	75%	25%	
Bosnia and Herzegovina, Chile, Egypt, Greece, Macedonia, Portugal, Serbia, Venezuela	70%	30%	20%
Bulgaria, the Czech Republic, Finland, Hungary, Russia, Sweden	70%	30%	
Morocco	70%	30%	10%
Australia	60%(FR) 80%(AU)	20%(FR) 40%(AU)	

Source: Filmfrance, "The incentives guide", https://www.filmfrance.net/telechargement/IncentivesGuide2017.pdf.

3.1.2.2. The United Kingdom[65]

Qualifying as an official co-production, and therefore as a British film, means eligibility to apply for:

- UK Film Tax Relief;

[65] See weareukfilm.com, "A guide to co-producing with the UK", https://www.bfi.org.uk/sites/bfi.org.uk/files/downloads/bfi-uk-film-guide-co-producing-with-uk-2016-01.pdf.

- BFI Film Fund;
- National film agencies Creative England, Ffilm Cymru, Creative Scotland and Northern Ireland Screen (depending on the producer's location);
- International sales and distribution support.

Further benefits include:

- British qualification can be a requirement for entry to some film festivals and awards;
- British qualifying films also count as local content for UK TV.

Films can qualify as official co-productions under either:

- The European Convention on cinematographic co-productions;
- Bilateral co-production treaties;[66]
- Unofficial co-productions.[67]

Each treaty has its own particularities, but the following rules apply to all of them:

- A co-producer from each co-producing country needs to make both a financial contribution (20% minimum for all countries except for Australia (minimum of 30%)) and an effective creative, technical and artistic contribution to the film. These need to be broadly in proportion.
- The creative, technical and artistic contribution to the film needs to be made using personnel, goods and services from the co-producing countries (including personnel from the EEA).
- The film needs to be made in the co-producing countries (third country location shooting and some third country personnel may be allowed depending on the treaty being used but must not exceed 30% of the budget).
- The co-production status must be applied for at least 4 weeks before principal photography commences.

3.1.2.3. Norway

As an example of the Nordic model mentioned above, the following requirements concerning Norwegian funding for co-productions[68] are not particularly formalistic:

- Application must be made by the Norwegian minority producer.

[66] The United Kingdom has currently eleven active bilateral treaties with Australia, Brazil, Canada, China TV, China, France, India, Israel, Jamaica, Morocco, New Zealand, the Occupied Palestinian Territories, South Africa, South Africa TV, see https://www.bfi.org.uk/film-industry/british-certification-tax-relief/co-production.
[67] The United Kingdom can also co-produce with countries with whom it does not have a treaty. This involves qualifying as a British film under the Cultural Test, see https://www.bfi.org.uk/supporting-uk-film/british-certification-tax-relief/cultural-test-film.
[68] For more information see: https://www.nfi.no/eng/grantsfunding/co-production.

- The project must be acknowledged as a cultural product in the country of the delegate producer.
- If an application is made under the European Convention on Cinematographic Co-production, it should be forwarded to the Norwegian Film Institute (NFI) through the Competent Authority in the delegate producer's home country.
- A deal memo from a Norwegian film distributor confirming the intention of a release in Norway is required.
- The volume of support will be determined on the basis of Norwegian spending and the share of other Norwegian investment.

3.2. National funds supporting co-production

Beyond creating a legal framework to ease and facilitate bilateral or multilateral international co-production, film funds can also earmark resources especially devoted to fostering international co-production. Official international co-productions are usually eligible, within certain conditions, for most production support schemes. Some film and audiovisual funds even run international schemes – bilateral or multilateral lines of support exclusively devoted to the co-production and/or co-development[69] with particular countries or groups of countries, or for minority co-production with other countries (see, for instance, the international co-production support[70] granted by the Finnish Film Foundation ("*Suomen elokuvasäätiö*", FFF)). In addition, some countries have also established independent funds devoted to the support of certain types of international co-productions with a given country or region (these can be multilateral funds – covered in the previous chapter – or outreach funds – see below).

As happens with co-production treaties, the mere existence of a line of support devoted to a particular type of co-production does not automatically guarantee an increase in collaboration between the countries involved. Moreover, these measures can be proactive (aimed at promoting more collaboration between producers of certain countries) or reactive (responding to an interest from the industry).

With some exceptions, most of these funds or lines of support are launched and managed by supra-national or national/federal film funds/institutions, with the main examples of the former being analysed in the previous chapter. Moreover, depending on the aim of the scheme, we can distinguish between those pulling their resources together to foster cultural and economic cooperation through film co-production (usually international schemes) and those devoted to external aid and the cultural development of developing countries (usually outreach funds).

[69] The development of a project includes all steps before starting the principal photography. It may include the acquisition of copyrights, script development or project development, among other things.
[70] Co-production Fund, SES, http://ses.fi/en/funding/co-production-funding/.

3.2.1. International schemes

In acknowledgment of the need to foster cooperation between countries from the outset, there has been a proliferation of bilateral and multilateral schemes (schemes run and funded by two or more existing public funds based in different countries) especially devoted to the co-development and/or co-production of international productions. In this way, the countries involved do not need to create new structures, they simply use the existing ones to develop new, targeted lines of support.

The German-French Minitraité[71] is a fine example of this type of scheme. The 3.2-million-euro scheme is managed by the Federal Government Representative for Culture and Media (*Beauftragter der Bundesregierung für Kultur und Medien*, BKM) and the German Federal Film Board (*Filmförderungsanstalt*, FFA) from the German side and the National Center for Cinema (*Centre national du cinéma et de l'image animée*, CNC) from the French side, including EUR 200 000 allocated to the co-development of bilateral projects. Along the same lines, there are other schemes exclusively focused on the co-development of bilateral projects, such as the Polish-German co-development fund;[72] in this case, the line of support is operated by two German regional funds, - *Medienboard Berlin-Brandenburg* (MBBB) and *Mitteldeutsche Medienfoerderung* (MDM), as well as by the Polish Film Institute (*Polski Instytut Sztuki Filmowej*, PISF).

Set up by the Italian Ministry of Cultural Heritage Activities , (*Ministero per i beni e le attività culturali*, MiBAC) and the FFA, the German-Italian co-production development fund supports the development of bilateral projects with a budget of up to EUR 100 000 a year. The MIBAC also has a line of support along with the CNC to support the development stage of Italian-French co-production projects[73].

The Flemish-Dutch co-production scheme[74] brings the Netherlands Film Fund (*Nederlands Filmfonds*, NFF) as a minority co-producer to five Flemish feature fictions, three Flemish feature documentaries and one feature animation film every year. The German-Turkish co-production development fund[75] is a EUR 75 000 joint scheme by the MBBB (*Filmförderung Hamburg Schleswig-Holstein*, FFHSH) and the Istanbul Film Festival section *Meetings on the Bridge*.

Moreover, the CNC and the Greek Film Centre (*Ελληνικό Κέντρο Κινηματογράφου*, GFC) renewed their French-Greek co-production fund[76] for three additional years (until the end of 2019); this fund was created in 2014 and can grant up to EUR 450 000 to a

[71] German-French "Minitraité", FFA, https://www.ffa.de/german-french-co-productions.html.
[72] Polish-German Co-development Fund, PISF, http://en.pisf.pl/news/polish-german-co-development-fund.
[73] Franco-Italian co-development fund, CNC, https://www.cnc.fr/professionnels/aides-et-financements/multi-sectoriel/production/aide-au-developpement-de-la-coproduction-doeuvres-cinematographiques-francoitaliennes_191635.
[74] VAF-NFF co-production scheme, NFF, https://www.filmfonds.nl/page/2693/minority-co-productions-with-vaf.
[75] German-Turkish Co-production Development Fund, MBBB, https://www.medienboard.de/en/film-funding/german-turkish-co-production-development-fund/.
[76] French-Greek Co-production Fund, CNC, https://www.cnc.fr/professionnels/aides-et-financements/multi-sectoriel/production/aide-a-la-coproduction-doeuvres-cinematographiques-francogrecques_191659.

bilateral co-production project between these two countries. The CNC renewed its line of support for French-Portuguese co-productions along the same lines.[77] Moreover, the Croatian Audiovisual Centre, the Friuli Venezia Giulia Audiovisual Fund and the Slovenian Film Centre set up a co-development funding scheme in 2015.[78]

3.2.2. Outreach funds

Outreach funds could be defined as funds established in one or several countries aimed at supporting cultural development and cooperation with developing countries. Since the goal of this type of support is very close to foreign aid and development, public film funds or institutes may or may not be part of them and, in any case, there are other types of institutions involved, such as institutes for cultural promotion or foreign aid agencies.

Outreach funds should be distinguished from supra-national funds, which would be those bringing together a cluster of countries or launched by international organisations in order to foster cultural and economic cooperation at the film and audiovisual production level (such as Eurimages or the Creative Europe – MEDIA sub-programme).

[77] French-Portuguese Co-production Fund, CNC, https://www.cnc.fr/professionnels/aides-et-financements/multi-sectoriel/production/aide-a-la-coproduction-doeuvres-cinematographiques-francoportugaises_191667.
[78] RE-ACT Co-Development Funding Scheme, http://www.filmreact.eu

Table 10. List of outreach funds

Country	Programme	Objective	Website
CH	visions sud est	The Swiss fund, visions sud est, was initiated in 2005 by the Foundation trigon-film Baden and the Fribourg Film Festival, with the collaboration of Nyon's Visions du Reel and the support of the Swiss Agency for Development and Cooperation. In 2011, the Festival del film Locarno joined the fund as a new partner. The fund supports film productions from Asia, Africa, Latin America and Eastern Europe, and aims at making them visible worldwide and guaranteeing their distribution in Switzerland.	http://www.visionssudest.ch/en
DE	World Cinema Fund (WCF)	Together with the Federal Foundation for Culture and in cooperation with the Goethe Institute, the Foreign Ministry and German producers, the WCF works to develop and support cinema in regions with a weak film infrastructure, while fostering cultural diversity in German cinemas. It supports exclusively the production and distribution of feature films and feature-length documentaries and is focused on the following regions and countries: Latin America, Central America, the Caribbean, Africa, the Middle East, Central Asia, Southeast Asia, the Caucasus as well as Bangladesh, Nepal, Mongolia and Sri Lanka.	https://www.berlinale.de/en/branche/world_cinema_fund/wcf_profil/index.html
FR	Aide aux cinemas du monde	Aide aux cinémas du monde, is a fund dedicated to international co-productions. Jointly created by the Ministry for Culture and Communication and the Ministry of Foreign and European Affairs, it is managed by the Centre national du cinéma et de l'Image animée (CNC) and the Institut français.	https://www.cnc.fr/web/en/funds/aide-aux-cinemas-du-monde_190870
NL	Hubert Bals Fund (HBF)	The HBF is designed to help remarkable or urgent feature films by innovative and talented filmmakers from Africa, Asia, Latin America, the Middle East and parts of Eastern Europe on their road to completion. It provides grants in various categories that often turn out to play a crucial role in enabling these filmmakers to realise their projects. Among its activities, the HBF, in collaboration with the Netherland Film Funds, offers a co-production	https://iffr.com/en/hubert-bals-fund-0

Country	Programme	Objective	Website
		scheme.	
NL	IDFA Bertha Fund (IBF)	By supporting both documentary filmmakers and organisations that promote documentaries, the IBF (formerly known as the Jan Vrijman Fund) enables documentary professionals to find their own unique voice. The Fund not only provides financial support to realise this endeavour, but also facilitates access to consultancies, training and the documentary industry. Among the funding it offers, IBF provides, through IBF Europe, support to international co-productions between at least one European and one non-European producer.	https://www.idfa.nl/en/info/about-the-idfa-bertha-fund
NO	SØRFOND	SØRFOND (The South Film Fund) is funded by the Norwegian Government and aims to contribute to an increased cooperation between Norwegian and international film industries and to stimulate the production of films in developing countries where such production is limited by political or economic causes. It grants support for the production of films whose main producer is based in a country on the OECD's current list of countries and territories eligible to receive assistance (DAC-list).[79] The grant shall contribute to strengthening film as a form of cultural expression, to promoting diversity and artistic integrity on the international film scene, and to strengthening freedom of expression.	http://filmfrasor.no/sorfond

It is worth noting that some of these funds are, in turn, funded by the Creative Europe MEDIA sub-programme80 support scheme to international co-production funds.[81]

[79] http://www.oecd.org/dac/financing-sustainable-development/development-finance-standards/DAC_List_ODA_Recipients2018to2020_flows_En.pdf.
[80] See section 2.3.1 for more information on the Creative Europe MEDIA Sub-programme.
[81] https://eacea.ec.europa.eu/creative-europe/selection-results/support-international-coproduction-funds-call-eacea162017_en

4. Co-production in (legal) practice

4.1. Introduction

As mentioned before, a co-production is a joint (ad)venture, but it is certainly one that requires strict legal security. This security is achieved through a co-production contract, in which two or more persons agree to:

- collaborate and pool goods, rights or services in order to produce an audiovisual work of some kind,
- attribute ownership of the rights in respect of the audiovisual work resulting from such collaboration, and
- make use of the work jointly, and share the ensuing profits (or losses) in agreed proportions.

Co-production makes it possible to combine forces and consequently realise an audiovisual work that the individual co-producers would have found difficult to achieve by themselves in any other way.

A distinction must be drawn between co-production and ordinary financial participation, in which the "financial partner" (also called the "financial co-producer") participates in the results of exploiting the audiovisual work without being a co-owner of its constitutive elements and without having a decisive participation in the film production and industry-related decisions. Moreover, not all producers who participate in a production are in fact co-producers – it is only those persons who have specifically agreed to this by means of a contract.

The legal nature of co-production may vary considerably, depending on the various forms that may be agreed by contract (a non-registered company, a corporation, a partnership) and they may even take on different forms at successive stages (for example, an irregular non-registered company at the start and then a community of goods once the film has been completed). The fiscal consequences of adopting one or other form also differ; in order to avoid tax risks, the intervention of a tax consultant is necessary.

Co-production may be undisclosed (where a third party participating with the producer in the results of the production has no desire to be known to third parties) or open or disclosed (where the co-producers are known as such). Given the usual lack of precise legal norms regulating this contractual relationship, it is of the utmost importance that the agreements reached by the parties are set out clearly in the contract so that the relationship between the co-producers is stipulated clearly in a legally binding document.

This chapter is a checklist; it sets down and comments on the main points that must be borne in mind when negotiating an international co-production contract. It is meant as a purely informative guide, and should in no way be considered as a substitute for professional legal advice.

4.2. Main features of a co-production contract

As mentioned above, an international co-production is a film production in which the co-producers are from different countries. The case may arise of a foreign producer merely making a contribution but not being qualified as a co-producer, or then again he/she may be considered as such, but the audiovisual work of which he/she is a co-producer is not considered as having the nationality of his/her country. International co-production has the advantage of the audiovisual work being produced by persons who are established in various countries and are well acquainted with the national markets where the work is to be shown; the work also has the advantage of being considered a "national audiovisual work" in the co-producers' respective countries (and therefore may receive the different countries' aids and subsidies). Its disadvantage is that it is more complex in both practical terms (different languages, different ways of thinking and working, and physical distance) and legal terms (different legal systems have to be harmonised).

4.2.1. Clauses usually found in international co-production contracts

4.2.1.1. Prior documents

In the course of negotiations between the parties, it is usual for an agreement in principle to be reached on the basic elements of the future co-production agreement. To give substance to the agreement, documents called, for example, "deal memo", "memorandum of understanding" (MOU), "letter of intent", etc may be signed. These documents may have one of the following consequences:

- they may constitute mere proposals of intentions or rough drafts and not be binding, being subject to the negotiation and signature of a contract in which the definitive conditions are set out in detail, or
- they may be binding, although the details are to be set out in the subsequent long form contract.

In any case, it is necessary for the parties to be very aware of the specific nature of the document being signed and of its effects, whether binding or not, so that these truly match the intentions behind the signature of the document in question.

Also, in order to avoid the possibility of confusion, the contract should indicate that it constitutes the final agreement of the parties and replaces any other earlier document.

4.2.1.2. Parties to the Contract

Not all parties to the co-production contract need to be producers; they may be television broadcasters, distributors, banks, private investors, etc. In any international contract, particularly in those in which one of the parties is a multinational company with subsidiaries established in a number of countries, it is particularly important to specify and ensure which contracting party will assume the obligations of the contract (to ensure that it is indeed the party with whom the contract is entered into); a very solvent parent company and its subsidiary which may not have the same solvency may well not be equally reliable. A check should also be made on the signatory authority of the person signing the contract to ensure that that person is entitled to bind the company.

4.2.1.3. Background

This part of the contract will explain what each party does, what they hope to achieve by the contract and, for example, if the parties want to apply for the benefit of the clauses of an international agreement for the audiovisual work. Although this background information does not constitute rights and obligations, it can be of help in interpreting any obscurely worded sections of the contract.

4.2.1.4. Object of the contract

The object of the co-production contract is:

- to define the audiovisual work with precision, including details that are normally set out in an appendix (see following point);
- to list the various tasks, responsibilities and contributions or investments on the part of the co-producers and third parties in the pre-production, production and post-production stages of the audiovisual work;
- to apportion the quotas of ownership of all the elements of the audiovisual work, including the copyrights in the work;
- to specify how commercial and derived exploitation of the audiovisual work is to be achieved; and
- to lay down the rules for the distribution of income (or losses) from the exploitation of the audiovisual work.

4.2.1.5. Definition of the audiovisual work

The audiovisual work, as the object of the co-production contract, must be defined in detail in the contract and its appendices. For example, one appendix will specify its

content (title, theme, type or genre, screenplay) and give details of the various authors (scriptwriter, producer, composer) and technical points (medium, format, duration, versions, subtitles, dubbing, technical staff, final version), specifying the nationality of each one to check the existence of the quotas necessary for obtaining the benefit of the agreements. These are called the "key elements" of the work being co-produced.

Another appendix will include the budget for the audiovisual work and all its component parts, and the financing or payment schedule, which will cover the contributions to be made by the contracting parties (see section 8) or third parties (pre-sales, aid and subsidies). A third appendix will include the production plan.

In this way, the audiovisual work covered by the co-production contract will remain completely determined; there should also be a clause indicating that no changes may be made without the unanimous agreement of the co-producers, as this will avoid any confusion if either co-producer should unilaterally decide to make any changes.

4.2.1.6. Copyright and image rights

4.2.1.6.1. Rights of the author of the audiovisual work and of the performers

The definition of who the authors of an audiovisual work are will depend on the law applicable to the work. The various legal systems may have different standards for attributing rights, despite the various EU Directives designed to harmonise this aspect, at least in terms of the principal director.[82]

In order to avoid interpretation problems, the co-producers will have to specify in the contract the people they consider as authors (taking as a minimum what is laid down by law), and give details of the chain of title: for example, if one of the co-producers is the person who signed a transfer of rights with the authors (for the screenplay, for example, or a pre-existing work), this should be stated in the contract, with a guarantee that the rights have been duly acquired (good "chain of title" completed) and, obviously, the rights contributed to the community.

Account should also be taken of the copyrights and image rights of the performing artists.

4.2.1.6.2. Acquisition of rights in respect of pre-existing works and rights in respect of personal image

The use of any pre-existing work in the audiovisual work to be produced will require the transfer of the rights held by its author or other rightsholder in the case of a novel,

[82] For more information on this issue, see Angelopoulos C., "Determining the Term of Protection for Films: When Does a Film Fall into the Public Domain in Europe?", in IRIS Plus 2012-2, *The Lifespan for Copyright of Audiovisual Works* (Susanne Nikoltchev (Ed.), European Audiovisual Observatory, Strasbourg 2012 https://rm.coe.int/1680783bd3.

screenplay or music; if the image of a person is used (face, physical representation, name, voice, etc), the person's consent must be obtained. If this consent or transfer of rights has been obtained by one of the co-producers, it should be for the benefit of the co-production.

4.2.1.7. Assignment of the responsibilities of the contracting parties

Each co-production has its own special features, and this means that each of the parties will have its own functions and responsibilities. More particularly, decisions need to be made on who is to be the executive producer[83] and what the scope of that person's responsibility is (with the possibility of requiring assurance of completion from the other co-producers), who is to sign contracts with staff and insure them, artistic responsibilities, technical tasks, commercialisation, etc, and it must be stated whether or not there is to be any specific payment in this respect.

4.2.1.8. Representation in respect of third parties

It is important to establish if and under what conditions any one of the co-producers may enter into contracts in the name of all the others (for example, contracts for commercialising the audiovisual work).

4.2.1.9. Contributions by the contracting parties and by third parties

The co-production will only be possible if each of the contracting parties does indeed contribute with what it has undertaken to contribute. Contributions may be:

- monetary,
- non-monetary, consisting of goods or rights previously acquired (usually rights in respect of a pre-existing work, options, rights in respect of a screenplay), or
- production or commercialisation services, in which case the provider thereof may receive a fee (for example, commercialisation commission) or count this as a contribution in exchange for rights in respect of the audiovisual work.

Keeping to the schedule for contributions is a prerequisite for being able to complete the production; in case one of the parties should fail to make its promised contribution, the contract should include a list of covenants enabling the complying co-producer(s) to continue with the production. For example, a mechanism may be set up according to which, if the defaulting party fails to contribute what is due within eight days of being

[83] An executive producer, in general, supervises the production of the film: he/she can influence the formation of the story or the script; actively contribute to the budget, its collection and administration; and usually participate in the name of the production company and defend its interests. They are usually at the top of the command, and their tasks and authorities may be specified in the co-production contract. Different co-producers may appoint their executive producers.

summoned to do so, the remaining co-producers may terminate the contract in relation to that party (without prejudice to the possibility of claiming damages in reparation) and substitute another co-producer from the same country for the defaulting party; the defaulting co-producer would then become a creditor of the production in respect of the contributions already made. The credit would be held as a last resort, even if the replaced co-producer had recovered his/her contribution.

It is also important to reflect upon the consequences should the production exceed its budget.

The contributions made by third parties not involved in the co-production (financial contributions, for example) may be conditional on obtaining guarantees from the co-producers, or on the fact of completion of the audiovisual work being guaranteed by a third party (completion bonds).

4.2.1.10. Co-ownership of copyright and elements of the audiovisual work

One key element of the contract is that, on condition that the co-producers have made the promised contributions, they are the co-owners of the copyrights and any other intellectual property rights due to a producer in respect of an audiovisual work and all the integral elements of it – brand names, masters, cuts, sketches, characters, sequel rights, remakes, spin-offs, etc – in proportion to their respective contributions. This community of goods will be governed by the agreements laid down in the contract (and subsidiarily by the rules governing community of goods in the law applicable to the contract). The fact of owning these rights and goods justifies the receipt and sharing of income in the same proportion. This means that in law, the chain of events in the co-production is as follows: the total contribution made by each co-producer determines the proportion of the goods and rights arising out of the co-production, and consequently, the resulting income from its exploitation and the weight of each co-producer's vote in any decision or agreements between the co-producers.

The contract should contain clauses protecting the co-producers from any action that could enable creditors to instigate proceedings against a single co-producer with a view to taking over ownership of the audiovisual work (for example, in such circumstances, establishing purchase option rights in favour of the remaining co-producers).

It should also be determined which of the co-producers is to carry out the formalities required (such as registration with a copyright office).

4.2.1.11. Method for adopting agreements among the co-producers

The contract should include a clause that states the method for adopting agreements among the co-producers: which agreements must be adopted by a majority vote, whether simple or qualified, and which require unanimity (with the risk of producing a block). It is important to state the way to adopt decisions on the definitive version ("final cut") of the audiovisual work.

4.2.1.12. Accounting and documentation, and access to the same

If one of the co-producers keeps the accounts of the co-production, that person is required under the contract to:

- keep them in a clear form, separate from the rest of his/her accounts. In the case of co-producers with other audiovisual works in production at the same time, the rules for the work's share in overhead costs should be set out very clearly. In international co-productions, it is important to check whether accounting practices and rules in force in the country of the co-producer keeping the accounts are different from those of the other co-producers, and what effect such a difference could have. It should also be stated how the exchange rates are to be calculated in the case of co-producers from countries with different currencies;
- use a separate bank account;
- designate an auditor for the co-production;
- inform the other co-producers and provide them with the necessary documentation;
- allow the accounts to be checked (even if there is an auditor for the co-production) should any of the co-producers so desire, the cost of any such check being payable by either party according to whether the check shows that the accounts or liquidations are being kept correctly or not.

Also, if one of the co-producers is empowered to subscribe a contract in the name of all the others, copies of any such contracts should be sent to the other co-producers.

4.2.1.13. Share of revenue from exploitation

It should be pointed out that this is a key clause in the contract because it specifies the way in which revenue from exploitation is to be divided among the co-producers.

Once the total cost of the audiovisual work has been determined (cost of all the expenses actually paid or owing in respect of the pre-production and production of the audiovisual work and marketing expenses, up to completion of the standard copy) and this amount has been recouped, the co-producers will be able to share the net income (it is necessary to define clearly which expenses may be deducted from gross revenue before any division is carried out). Revenue obtained from a particular state subsidy will normally correspond to the co-producer of that country; if these amounts are to be shared, it should be specifically stated.

4.2.1.14. Attribution of specific rights for given markets or countries, or for a specific type of exploitation

Given that each co-producer knows his/her own market well, it is usual for 100% of the exploitation rights in respect of the audiovisual work within that market to be reserved for that co-producer exclusively. Thus, for example, in the case of a co-production with a

French producer contributing 80% and a Spanish producer contributing 20%, the following arrangement could be made:

- exploitation rights for France (and all French-speaking territories in Europe and overseas): exclusively for the French co-producer, who would assume the full cost of commercialisation in those countries and receive all the income obtained by any means of exploitation in them;
- exploitation rights for Spain (and possibly territories where Spanish is spoken): exclusively for the Spanish co-producer, who would assume the full cost of commercialisation and receive the income exclusively;
- other territories: income would be shared in the proportion 80:20; if one of the co-producers were responsible for commercialisation (on his/her own behalf or for a third party), he/she would receive commission of, for example, 25%.

The case may also arise of one co-producer being assigned the revenue from one mode of exploitation to the exclusion of all the others, for example, a television channel participating as a co-producer being assigned the television rights, in which case it would receive all the revenue from television exploitation (either worldwide or limited to the national territory in question) exclusively and may not have a share in revenue obtained from the other modes of exploitation in its national territory or from any mode of exploitation in other countries. It is necessary to check the separation of territories and modes of exploitation and set up any "hold-back" periods that may be necessary.

In the case of audiovisual works with a soundtrack of music composed specially for the work, the co-producer involved in the selection and hiring of composers and performers may reserve editorial (publishing) rights (although in many cases, it is the co-producer who is quickest off the mark who obtains these), including the right to use the soundtrack as a phonogram. Although, normally, all income obtained from the audiovisual work (including music publishing or recording rights) is to be shared amongst co-producers.[84]

4.2.1.15. Information and meetings of the parties

In addition to indicating which actual person representing each of the co-producers is the contact person for the others (and noting whether that person is authorised to approve those elements that require approval), the form of transmitting information and the intervals at which the parties are to meet in the course of the co-production must also be set down.

[84] For more information see Cabrera Blázquez F.J., "An Introduction to Music Rights for Film and Television Production", IRIS Plus 2009-5, European Audiovisual Observatory, Strasbourg, 2009, https://rm.coe.int/1680783407.

4.2.1.16. Deposit and access

Traditionally, as co-owners of physical materials (original picture and sound negative and the digital master) resulting from the production, that is to say, the audiovisual work, the co-producers must designate by mutual agreement the laboratory where these physical materials are to be deposited and may be accessed, either jointly or individually, in the form provided for in the contract.

4.2.1.17. Credits

The credits of the audiovisual work will be laid down in the contract, and they may be different in each of the countries involved. For example, a work with French and Spanish co-producers will be announced as being "Spanish and French" in the Spanish copies and "French and Spanish" in the French copies, the local co-producer being the first named in each case.

4.2.1.18. Aid and subsidies from each of the co-producers' countries; condition precedent

As mentioned before, if the co-production satisfies the criteria for being granted the benefit of an international co-production agreement, the audiovisual work will have the nationality of each of the party states and will be able to obtain aid and subsidies from those states as if it were an audiovisual work produced by a national producer on his/her own. The contract should state if this type of revenue belongs to all the co-producers jointly or only to the producer of the state from which it is obtained.

It could happen that the co-producers would not be able to complete the production if they did not obtain the benefit of the applicable co-production agreement. The validity of the contract may therefore be conditional upon approval by each state authority; if this does not happen, the contract will be totally void or could be terminated by the other co-producer, who would then have to repay the co-producer from the country which did not grant aid those amounts paid out previously.

4.2.1.19. Publicity, promotion and attendance at markets and festivals

The parties should agree on the form this should take, and it is important to plan the promotion of the audiovisual work and the details of attendance at markets and festivals in order to benefit synergies and not overlap, with the possibility of the co-producers each carrying out such action as they see fit, at their own expense, in the markets assigned to them.

4.2.1.20. Insurance

The co-producers will have to insure the production of the audiovisual work and the "negative" (if any) against the usual risks of loss and civil liability. If distributors or broadcasters (usually Anglo-Saxon) participate in the production of the audiovisual work, they will demand the subscription of an "errors and omissions" insurance to cover the risk of any infringement of third-party rights or of a "completion bond" as assurance of completion. The premiums for such insurance or completion bonds will be accounted as production costs, and it is necessary to decide who will subscribe and who will be the beneficiaries.

4.2.1.21. Participation of third parties in a co-producer's share; transfer of the share to a third party

A co-producer may in turn share his/her part of the co-production with a third party, and it is necessary to state in the contract if this requires authorisation from the other co-producers. It would be conditional on the original producer meeting the obligations assumed in respect of the others; it also needs to be stated whether or not it would be possible for a co-producer to transfer or assign all his/her rights to a third party.

4.2.1.22. Duration of the contract

The co-production contract can be divided into two stages:

- the first stage includes all those activities and contributions necessary for completing production of the audiovisual work (which will be listed in the production schedule appended to the contract), and
- the second stage covers the period of time during which the audiovisual work may generate exploitation revenue, which means that this stage may last indefinitely and is independent of the duration of the rights held by the co-producers in respect of the audiovisual work.[85] Even after such rights have lapsed, the audiovisual work may continue to be exploited and generate income. It is important to check how long rights are protected under the various legislations applicable to the audiovisual work.

4.2.1.23. Early termination

The contract may contain conditions allowing for early termination, that is to say, before its stated expiry date (in addition to termination by mutual agreement, which is a possibility that always exists), in the following cases:

[85] See Angelopoulos C., *op.cit.*

- failure to perform, breach or poor performance of the obligations set out in the contract (and more particularly breach of the obligation to make the promised contributions);
- one of the parties goes bankrupt or goes into liquidation (in which case, it must be determined what is to happen to the share of the failed party – for example, a purchase option right in favour of the remaining co-producers may be stipulated).

4.2.1.24. Other terms and conditions

The terms and covenants mentioned above are the main specific terms in a standard co-production contract, and they should be completed by other covenants that should, as a general rule, be included in any international contracts, such as:

- declarations and guarantees by each of the parties;
- no partnership;
- force majeure;
- notifications;
- protection of personal data;
- confidentiality;
- an authoritative version in the event of the contract being translated.

4.2.1.25. Law applicable to the contract

There can be no contract without law, and contracts are binding because there is a law under which they are born, and which lays down the conditions for their formation, conclusion, nullity, grounds for termination, etc. As mentioned before, the more detailed the contract, the less need there is to state which laws might be applicable. A national co-production is already a complex matter, and this is even more so in the case of an international co-production, since the two (or more) legal systems involved may differ substantially. To avoid any ambiguity and legal insecurity, the parties may state in the contract which law they choose to govern the co-production; normally it is that of the country of the principal producer. The law applicable to the contract is independent of the law applicable to the audiovisual work; it may or may not be the same.

4.2.1.26. Competent jurisdiction and arbitration

In an international contract it is important to state to which jurisdiction or arbitration board the parties must submit any disputes that may arise. To avoid lengthy discussions caused by each co-producer wanting to designate the courts of his/her own country, it is advisable to reach a formula that is a priori neutral and effective – that the matter should be submitted to the jurisdiction of the court of the place of domicile of the defendant party. In this way, enforcement of the ensuing court order will be more effective and proceedings will not need to be brought in two countries, once for the dispute itself and subsequently another one in the country of the defendant party for the enforcement of the initial court's order.

Provision may also be made for a system for resolving disputes before they come to court (for example, by referring to a "tiebreaker" – a person independent of all parties and trusted by each of them), including considering the possibility of submitting such matters to arbitration, which may be of the general institutional type (for instance, through an International Chamber of Commerce or an Arbitration Court in a specific city) or specific to the audiovisual sector, such as the IFTA (Independent Film and Television Alliance).

5. Case law

As described in Chapter 4 of this publication, a co-production contract is a commercial contract between two or several producers who decide to pool resources to achieve the objective of producing an audiovisual work. The conclusion of such an agreement confers on each of the contracting parties the status of co-producer, that is to say, undivided co-owner of the work and its products, in principle in proportion to their contribution. The co-production contract then seals a project and specifies how each of the co-contractors intends to participate and what type of means they will bring to this collaboration. It will also clarify the roles and responsibilities of each party.

As in any commercial contract, co-production contracts may be the subject of litigation if there is disagreement between the parties on the terms of the contract or if a partner fails to comply with its obligations. Disputes may concern key financial, commercial or creative aspects of the co-production project, such as the film's production costs; the financing plan and the contribution of each party; the co-ownership of the rights; the decisions on artistic aspects of the project; the distribution of profits in proportion to the co-production; the exploitation of the film, etc. Due to its complexity, an international co-production contract will be stricter and more demanding in its content, and must therefore include specific clauses concerning the exploitation, distribution or even marketing of the work. Specific questions may also arise due to differences in legal systems and definitions, access to national film funds, conflicts of jurisdiction, etc. This chapter includes a selection of case-law decisions illustrating some of these legal disputes.

5.1. Legal disputes over the financing plan

In a case brought before the commercial court of Paris in 2013,[86] a company co-producing full-length films that had signed a contract with two executive producers for the co-production of the film *Sans Arme, Ni Haine, Ni Violence*, which came out in 2008, claimed that the executive producers had infringed the provisions of the contract by failing to keep to the budget, the financing schedule and even the scenario for the film, as set out in the contract. The company alleged that the executive producers had submitted an

[86] Commercial court of Paris (8th chamber, for disputed cases), 5 February 2013 - Studio 37 *S.A. v. Vertigo Productions and Elia Films;* For more details, please see, Blocman, A., "Court re-assesses financing for co-producers of a film", IRIS newsletter 2013-3/15, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2013/3/article15.en.html.

excessively high budget in order to obtain more financing, and had allowed themselves remuneration very much in excess of the amount that had been agreed. In addition, the company claimed that, by seeking to make savings to their sole advantage, the executive producers had had a substantially adverse effect on the scenario, and the final film was not what had originally been agreed. It argued that the result did not correspond to what the company had expected on the basis of the original budget and its own investment, and it therefore claimed compensation for the prejudice suffered.

The commercial court noted that the co-production contract signed by the parties in the case referred to a forecast budget of EUR 10.8 million, with the executive producers contributing EUR 4.1 million, that is, 63% of the financing requirement, taking into account the contribution made by the distributors, and indicated that "no change may be made to the forecast budget without the joint agreement of the parties". The court found that staff costs in respect of the executive producer and the line producer corresponded to an increase of over 84% to the forecast budget, which had not been the subject of any agreement between the parties. It considered that the forecast budget and the final financing schedule were therefore considerably out of step with the balance agreed in the contract, to the advantage of the executive producers. In the absence of any elements proving that the applicant co-production company would have agreed to maintain its financing unchanged despite the lower budget and the reduced contribution from the producers, the court found that the respective amounts of financing contributed by the parties should be recalculated on the basis of the actual cost.

5.2. Legal disputes over the ownership of rights

In international film co-production agreements, it is common for the parties to reserve 100% of the exploitation rights and corresponding revenues in their respective countries and in the countries that may be associated with them, since each co-producer is familiar with his or her market. Alternatively, it may also happen that a co-producer has been assigned the revenues of one mode of exploitation to the exclusion of any other: for example, a television channel that participates in the project as a co-producer may benefit from television broadcasting rights. The revenues thus obtained (which may be limited to its territory) will be granted exclusively to it. On the other hand, it will not share in the revenues obtained by other modes of exploitation on its territory, or will not share in the revenues obtained in territories other than its own, whatever the mode of exploitation. Whichever system is chosen, it may need to be modified during the creative process due to complications in the relationships between the different stakeholders involved. It may then become particularly difficult, in the event of a dispute, to clearly determine which co-producer owns which rights, particularly in the context of a multilateral co-production involving different legal systems and national jurisdictions.

5.2.1. Option obligations

The collection of copyrights that constitute ownership of a film, the "chain of title", begins with the script and, if the script is based on previously created material, the copyright to that material as well. An "option" is a term that refers to the possibility granted to the producer to license the material under negotiated circumstances. Therefore, an option agreement will also contain an acquisition agreement for the underlying material should the option be exercised.

In a ruling of 21 January 2010,[87] the *Bundesgerichtshof* (the German Federal Supreme Court - BGH) considered the conditions under which a film production company had correctly met its obligation to offer a so-called "final option". In the case concerned, the plaintiff, a film production company (the "producer"), and the defendant, which is involved in film distribution and trading in film licences (the "distributor"), concluded a contract in 2002, under which the distributor was granted exclusive rights to exploit the film "Der W.", as well as the so-called "final option", according to which the producer was obliged to offer the distributor the right to publish a sequel to the film under the same conditions as would be offered to a third party.

The BGH had to determine, in this case, whether a subsequent deal concluded by the producer with another company and submitted to the defendant as "final offer" had been sufficiently precise so that it could be considered an offer in the sense of the option obligation. The BGH ruled that, although it was true that some of the details were not finally resolved in the document, it contained all the essential components of an agreement (parties, subject-matter, and services to be provided by each party) and therefore met the definition of a preliminary agreement. Such a preliminary agreement was a suitable means of correctly fulfilling option obligations such as those agreed in this case.

5.2.2. The share of exploitation rights

The legal dispute around the co-production of the film "The man who killed Don Quixote" illustrates well some of the complications that may arise in relation to the share of the exploitation rights among co-producers. In this case,[88] the question of rights ownership had a significant media impact because the court's decision conditioned the screening of the film at the close of the 2018 Cannes Film Festival and in cinema theatres.

[87] For more details, please see Yliniva-Hoffmann, A., Supreme Court rules on option obligations under film production agreements, IRIS newsletter 2010-4/14, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2010/4/article14.en.html.

[88] For more details, please see Blocman, A. Courts authorises showing of « The Man Who Killed Don Quixote » to close Cannes Film Festival », IRIS newsletter 2018-7/16, European Audiovisual Observatory, Strasbourg, https://merlin.obs.coe.int/iris/2018/7/article16.en.html.

More specifically, in the late 1990s, Terry Gilliam wanted to embark on the production of a film he referred to as "The Man who Killed Don Quixote", inspired by Cervantes' novel. In addition to the many incidents that occurred during filming, a dispute arose between the author/director and the company Alfama Films Production and its manager Paulo Branco. This reached breaking point in August 2016 when Gilliam felt that the conditions imposed by the producer would not allow him to make the film he had had in mind for all that time. The film was therefore produced by other companies, but the initial producer felt that his contract with Terry Gilliam - and all the associated rights - was still valid.

The *Tribunal de grande instance* (Regional court - TGI) of Paris was called on to deliberate on the dispute over ownership of the production rights; on 19 May 2017, it rejected the author/director's application for the courts to terminate the contract binding him to the original producer. The latter's application for filming to be suspended was also rejected. The case went to appeal in April 2018 and was scheduled for deliberation by the Court of Appeal in Paris on 15 June 2018. And so it was that the film company and its manager (on learning that the film was to be shown on 19 May 2018 to close the Cannes Film Festival) had the Festival's organiser, AFFIF, summoned to appear in court to hear the court ban the screening of the film.

In its decision delivered on 9 May 2018, the court, sitting under the "urgent procedure" at the TGI in Paris, first noted that it was apparent from the contracts and court decisions already delivered[89] that Alfama Films Production and Paulo Branco were justified in their claims, as their contracts as producers of the film had not been terminated, even though, in the end, the film had been made by Terry Gilliam and produced with other companies. They also produced evidence that they were indeed the holders of rights that had been disregarded by the continuation without their agreement of the project to produce and screen the film. The judge therefore felt that the violation of those rights was characteristic of a "manifestly unlawful disturbance", within the meaning of Article 809 of the [French] Code of Civil Proceedings, and that steps should be taken to put a stop to that disturbance.

However, the court found that the requested ban on the screening of the film would manifestly exceed what was fair and necessary in order to put a stop to the disturbance invoked, and accordingly ordered the AFFIF, at its own expense, to screen a warning to audiences stating that the screening of the film at the close of the Festival in no way prejudiced the dispute between the parties, which had not yet been resolved. And so the film was screened on 19 May 2018 to close the Cannes Film Festival, and in cinema theatres.

The French Appeal court eventually rendered its judgment on 15 June 2018, confirming the invalidity of the breach of contract between Alfama Films and Terry Gilliam. However, the dispute over the ownership of rights in relation to this film is not

[89] Proceedings had also been instigated in the United Kingdom and reached the same conclusions as the French court. For more details, please see the Order of Ms Lesley Anderson QC sitting as a Deputy Judge in the Chancery Division of the High Court, dated 8 December 2017, and Recorded Picture Company Ltd v Alfama Films Production & Anor, Court of Appeal - Civil Division, April 13, 2018, [2018] EWCA Civ 767.

finished yet as, in parallel to these court proceedings, another procedure is pending before Spanish courts between the first producer (Alfama Films) and one of the other co-producers (Tornesol).

5.3. Legal disputes over the qualification as "national" film and access to public aid

As explained in Chapter 3 of this publication, if a co-production benefits from an international co-production agreement, the work will take the nationality of each of the partner states and may be backed by the aid and subsidies of these states, as if it were a work produced by a single national producer. In addition, the validity of the contract may be subject to the condition that public support be granted by each of the public authorities concerned, that is, in the event of a failure to obtain support, the contract may remain ineffective. It may also be terminated by the co-producer of the other country, who will have to reimburse the producer of the country that has not granted the aid for any contributions it has made in the meantime. In view of these elements, the determination of the nationality of a film under each national legal system is not a mere theoretical question, as it can have a direct impact on a co-production project, insofar as it will condition access to aid and subsidies.

5.3.1. The notion of national film

In an interesting decision of 8 August 2008,[90] the Federal Administrative Tribunal of Switzerland (*Tribunal administratif federal* - TAF) had to define the notion of "Swiss film" within the meaning of the Swiss Cinema Law (*Loi fédérale sur la culture et la production cinématographiques* – LCin), which is eligible for federal aid under the provisions of the LCin. According to Article 2 (2) of the LCin, a "Swiss film" is deemed to mean a film:

(a) that has been produced in the main by an author who has Swiss nationality or is domiciled in Switzerland;

(b) that has been produced by a natural person domiciled in Switzerland or a company that has its registered office in Switzerland and the majority of both its own and its investors' capital and management are in the hands of persons domiciled in Switzerland, and

(c) that has been made as far as possible by actors and technicians of Swiss nationality or domiciled in Switzerland and by technical industries established in Switzerland. These conditions are cumulative.

[90] Decision of the Federal Administrative Tribunal No. C-5736/2007 of 8 August 2008, http://merlin.obs.coe.int/iris/2009/9/article10.en.html.

In determining whether the third of these conditions is met, the Ministry of Culture (*Office Fédéral de la Culture,* - OFC) used to apply by analogy Article 8 (2) of the Order on Encouragement of Cinema (*Ordonnance sur l'Encouragement du Cinéma* - OECin), in the version in force since 1 July 2006. According to this provision, a film was recognised as Swiss if, in the absence of an international co-production agreement, the Swiss part amounted to at least 50%. The OFC therefore considered the condition contained in Article 2 (2)(c) of the LCin as being met only if the majority of the artistic and technical participants were of Swiss nationality or domiciled in Switzerland.

In its decision of 8 August 2008,[91] the TAF nevertheless considered that Article 8 (2) of the OEC was not applicable where a film, produced exclusively by Swiss producers, involved the participation of foreign actors or technicians. According to the Tribunal, the very open, vague wording of Article 2 (2)(c) of the LCin did not make it possible to lay down a strict quota for a minimum of 50% participation, nor in consequence to apply by analogy Article 8 (2) of the OECin to films that were not co-produced with foreign interests. Indeed, Article 2 (2)(c) of the LCin required an appreciation, taking into consideration the specific features of each individual case, of whether the film involved the sufficient participation of elements connected with Switzerland. The term "as far as possible" should consequently be understood as a criterion of what may reasonably be demanded, as the authority has considerable latitude in its appreciation of the issue. The Tribunal therefore judged the OFC's practice as being contrary to the law.[92]

5.3.2. Access to public aid

The Paris administrative court issued an important decision on 10 November 2004, by cancelling the approval - and the related right to public aid - given by the French national film centre (*Centre national de la cinématographie - CNC*) to Jean-Pierre Jeunet's film " *Un long dimanche de fiançailles*".[93]

Under the terms of the French decree of 24 February 1999 on financial support of the film industry, feature-length films made by French companies or through international co-production were entitled to financial aid, provided they fulfilled the conditions laid down, particularly in relation to their commercial success in cinemas. In order to qualify for automatic support, films had to be granted production approval by the CNC Director General. The amount granted was paid into accounts opened at the CNC on behalf of the production companies concerned and could be used by the producers to invest in film production.

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[91] See Aubry, P. "Qualification as a "Swiss Film" for the purpose of the Cinema Act", IRIS newsletter 2009-9/10, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2009/9/article10.en.html.

[92] It should be noted that the OECin has been amended since then. The latest version is dated 21 April 2016 and can be consulted here: https://www.admin.ch/opc/fr/classified-compilation/20152987/index.html.

[93] See Blocman, A. "Towards public film aid reforms", IRIS newsletter 2005-1/22, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2005/1/article22.en.html.

On 23 October 2003, the CNC granted approval for a new feature film to the company 2003 Productions, which was to produce the film. However, an association and a federation of independent producers, believing that the production company concerned was mainly American-owned, asked the courts to cancel the approval that had been granted, as according to Article 7 of the decree of 24 February 1999,[94] in order to be eligible for financial aid, the production company could not be controlled by one or more natural or legal persons domiciled in states outside the European Union.

In view of the capital of 2003 Productions, 32% of which was held by Warner Bros France, a subsidiary of the American firm Warner Bros Entertainment Inc, the Court considered that "the creation of the company 2003 Productions had no other purpose than to enable the company Warner Bros France, 97% of which is owned by its American parent company, to obtain financial aid which [...] is reserved for the European film industry". The cancellation of approval meant that the producers were no longer entitled to the automatic support generated by the number of tickets sold in French theatres. This ruling was upheld on 31 May 2005 by the Paris administrative court of appeal on the same grounds, namely that the producer was not European.[95] This decision, which was in accordance with a previous ruling cancelling the approval granted to 2003 Productions for another film, "*L'ex-femme de ma vie",* was widely criticised at the time, insofar as the film was shot in France by an entirely French crew and was expected to be released worldwide in French (arguing that the anticipated film aid would have been spent on the production of other "French" films).

Interestingly though, a few weeks later, on 21 July 2005, the administrative court of appeal in Paris invalidated the judgment of the administrative court cancelling the approval granted to the film "*L'ex-femme de ma vie"* on another ground.[96] This time, the court dismissed the question of the nationality of the co-producer company, partially owned by an American company, and held that in the case of a co-production, although only the delegated producer is allowed to submit an application for approval in the name and on behalf of the other production company or companies, the approval granted to the delegated co-producer cannot be considered to be implicitly and necessarily granted to all co-producers of the work. This is particularly so when some of the co-producer companies refrained from seeking approval (either because they had no interest in doing so, because they did not meet the legal conditions for obtaining it, or because they only became involved in the production when approval had been granted to the latter delegated co-producer). Rejecting the notion of global approval, the court noted that, in the present case, a single decision on approval had been issued in respect of the film *L'ex-*

[94] Later modified in 2008 and 2014, see at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=7CD9DEB4FB6A69BCBF10B9C31FE55BBF.tpdjo07v_3?cidTexte=JORFTEXT000000575329&dateTexte=20111027#LEGIARTI000019566059.

[95] For further details, see Blocman, A., "Cancellation of approval for 'Un long dimanche de fiançailles' upheld, IRIS newsletter 2005-7/20, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2005/7/article20.en.html.

[96] For further details, please see Marcangelo-Leos, P., "Cancellation of investment approval for the film 'L'ex-femme de ma vie' invalidated on appeal, IRIS newsletter 2005-8/19, European Audiovisual Observatory, Strasbourg, http://merlin.obs.coe.int/iris/2005/8/article19.en.html.

femme de ma vie in favour of the companies Josy Films and ICE 3. This decision could not on its own be taken to constitute approval in respect of the company 2003 Productions, a co-producer company in the film, which indeed had not requested approval. This rendered inoperative the nationality argument.

5.4. Disputes over the legal regime applicable to regional aids to co-production

Public aids for co-productions can also be the subject of proceedings before the courts. Thus, in a decision of 3 April 2014, the Lyon administrative court of appeal in France ruled that a regional subsidy granted to a regional co-production structure constituted state aid and must therefore be notified by the government to the European Commission and be validated by the latter.

In the present case, a member of the regional council had applied to the administrative court for the cancellation of the council's decision to renew the region's subsidy to Rhône-Alpes Cinéma, its co-production structure,[97] for the period 2011-2015. Rhône-Alpes Cinéma is the leading co-production fund at regional level aimed at financing and supporting the development, production and distribution of feature films, a significant part of whose production is located in the region. Pursuant to the convention approved by the contested decision, the Rhônes-Alpes Region was paying a subsidy of EUR 2 million to Rhône-Alpes Cinéma to be invested in films, as well as an additional contribution from the *Centre national de la cinématographie et de l'image animée* (National Centre of Cinematography – CNC) of a global annual amount of one million euros. In support of its application, the complainant claimed, in particular, that since the subsidy constituted state aid within the meaning of European Union law, the contested decision infringed the rules on economic aid deriving from the EU Treaty, which are incorporated in the General Code on Local Authorities.

The court found that there was no question that this regional subsidy constituted state aid within the meaning of Article 107 of the Treaty on the Functioning of the EU, which had to be notified to and validated by the European Commisison. The Rhône-Alpes Region had not demonstrated that the specific subsidy it had granted to Rhône-Alpes Cinéma would be part of the aid notified by the French Government to the European Commission and validated by the Commission on 22 March 2006. Consequently, the applicant's claim for the cancellation of the contested decision was upheld. At the time, the President of the Rhône-Alpes Region considered that this judgment jeopardised the continuity of the entire system of regional aid for cinema.[98]

[97] Rhône-Alpes Cinéma, now renamed as « Auvergne-Rhône-Alpes Cinéma », http://www.rhone-alpes-cinema.fr/.

[98] For more details, please consult Blocman, A. "Regional aid to the cinema under threat?", IRIS 2014-6/17, European Audiovisual Observatory, Strasbourg, France, http://merlin.obs.coe.int/iris/2014/6/article17.en.html.

6. State of play

The previous chapters discussed the variety of legal frameworks for international co-production and presented some of the benefits of co-producing. But are these frameworks actually meeting the stakeholders' expectations, especially those of the producers? And what more can be done, by both public authorities and stakeholders, to promote co-production as a financing model for cinematographic works? In order to discuss these and other relevant issues, the European Audiovisual Observatory organised a conference during the Cannes Film Market 2018 with the title "*International Co-productions - a success formula for European films?*".[99] On this occasion, panellists and members of the public provided a wealth of information and very useful insights for the drafting of this chapter.

6.1. Co-production as a financing model for cinematographic works

6.1.1. Promoting international co-production

It is safe to say that simply having all these international co-production incentives, the Council of Europe's convention, and bilateral treaties well in place does not necessarily mean that they will actually work on their own and fulfil the high expectations built upon them. The responsibility for promoting co-production as a financing model for cinematographic works lies in the hands of the public entities behind these conventions and agreements, both at national and European levels.

Representatives from the film funds have pointed out that such promotion can exploit positive market figures on circulation, admissions, sales and even online views, as well as performances in festivals,[100] to encourage producers to invest more in international co-productions. This is especially true for bigger producers who are more reluctant to join forces and share revenues and might therefore prefer to produce works all by themselves. VoD releases are also something to look at while assessing the

[99] For more information on this conference (including a full video recording of it) see: https://www.obs.coe.int/en/web/observatoire/-/international-co-productions-a-success-formula-for-european-films-.

[100] For an overview of market figures concerning co-production see Chapter 1 of this publication.

performances of co-productions, due to a *de facto* growing VoD market, especially following the introduction of the 30% minimum share obligation dedicated to European works in VoD catalogues under the revision of the AVMS Directive.

However, promoting co-production as a model might not be enough. The final co-produced work itself needs to be promoted. The frequently large gap between the number of theatrical releases of co-productions and the overall market share they achieve shows that providing support for co-productions after their release, through promotion and advertising, is equally as vital to their success as supporting co-production projects during the first stages. That is also why producers are not the only ones who need to be addressed, distributors do too. While many incentives promoting co-production exist, similar parallel efforts could be made to incentivise collaboration amongst distributors in order to insure that co-productions better reach their target audience and perform better in the different markets.[101]

6.1.2. The benefits of international co-productions from a cultural perspective

While assessing the benefits of co-production, it is important not to focus exclusively on measurable indicators, mainly economic ones, but to look at the wider picture and to consider cultural benefits as well. Indeed, co-production fosters the stimulation and circulation of creativity; strengthens cultural ties between communities of film professionals and artists; and helps spread core values such as pluralism and freedom of expression across countries.

Some producers are of the view that co-production helps support independent creativity and build pluralism and freedom of expression. In some cases, art films and works dealing with controversial and political topics tend to struggle more to get financed or to be granted support from funding institutions, for political, cultural, aesthetic or marketing reasons. Co-production makes it possible for these projects to be eligible to apply for public support in other countries engaged in the co-production if the works meet the requirements to qualify as national.

Also, the simple fact of being part of a community, with cultural and social similarities between European countries, means that there are a lot of topics and ideas that are worth discussing across borders and these can benefit from co-production to circulate and reach wider audiences.

Certain activities with access to limited financial resources from cultural funds, such as subtitling and dubbing, can benefit from co-production, which would enhance their circulation.

[101] European Audiovisual Observatory, "International Co-productions - A success formula for European films?", 2018 Cannes Film Market conference, 12 May 2018, Cannes, France, www.obs.coe.int/en/web/observatoire/-/international-co-productions-a-success-formula-for-european-films-

6.2. The challenges of international co-production

Despite all the benefits mentioned above, there are some practical barriers that might dissuade producers from co-producing internationally.

Operating under a legal framework offers protection to co-producers; but, at the same time, the rigidity of a treaty might negatively affect the smooth running of the cooperation, the effectiveness of certain tasks and decisions or the quality of the final product. As mentioned earlier, in order to qualify as a national work in all countries party to an agreement/convention, the co-produced work needs to fulfil the financial, technical and artistic requirements set under the framework. This implies considerable efforts to adjust to different legal systems regulating, among other things, taxes and copyright, and to bear the extra administrative burden.

Furthermore, there are natural challenges that can arise in any kind of international collaboration, such as the working distance and cultural and linguistic differences, and these are not specific to the cinematographic industry.

However, the way international co-production operates under agreements, from a practical point of view, varies a lot depending on geographical or cultural factors. For instance, the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) have a strong tradition of co-production, and collaboration between producers from the Nordic countries was already a common occurrence before the introduction of the Council of Europe's Convention.

6.2.1. Challenges faced by smaller markets

Smaller markets such as Austria and the French-speaking community of Belgium cannot easily put together a majority co-production, especially when facing competition from and being in the shadow of bigger neighbouring audiovisual markets, respectively Germany and France.

This adds to the existing challenges facing smaller markets with regard to developing and branding a recognisable identity for their national film industry. All too often, works originating from smaller countries are associated with countries of a bigger market speaking the same language due to the linguistic version of the work, for example, Austrian films mistakenly thought to be German or Belgian films thought to be French.[102]

[102] Focal, Report of the Workshop "MEDICI — The Film Funding Journey", September-October 2015, Santpoort, Netherlands, https://focal.ch/medici-training/reports/docs/MEDICI_Fifth_Workshop_Report.pdf.

6.2.2. Minority co-productions

It is worth mentioning that under the current state of play, minority co-productions face more difficulties. However, national film funds or film institutes in countries like Croatia, the Czech Republic, Estonia, Ireland, Poland, the Netherlands and Norway offer a financing scheme dedicated to minority co-producers.

Nevertheless, the conditions are sometimes quite demanding. Many countries providing special schemes for minority co-productions require a minimum spend of the grant in the country – 50% for the Czech Republic,[103] 60% in Croatia[104] – or even that the whole amount of the grant be spent in the country/region or on national services and staff/actors, as is the case in Estonia[105] and the Netherlands.[106] Some of them have also fixed a minimum share of the total production cost to be borne by the national co-producer applying for the support or have imposed a maximum share of in-kind investment, or they have restricted the application to producers who had previously produced a theatrically released work. These requirements make accessing these selective schemes relatively challenging, especially for new producers willing to enter the market, or minority producers with limited resources.

For countries where national or bigger film funds do not have a dedicated scheme for minority co-productions, such as Austria and France, minority co-producers have to apply through the general scheme and compete with more attractive applications from majority or higher-contributing co-producers for the resources.

6.2.3. The impact of Brexit on co-production and on the British cinematographic industry

As the United Kingdom is set to leave the European Union, Brexit will certainly have significant consequences that will impact the British audiovisual industry.[107] It is worth mentioning that 12% of British cinematographic productions are co-productions and that approximately one third of them are with European partners, mainly under the Council of Europe's Convention on Cinematographic Co-Production, since France is the only European country with whom the United Kingdom has signed a bilateral co-production agreement.

Part of the industry fears that British works would no longer qualify as European works, and thus would not be eligible to benefit from the promotion obligations envisaged by the AVMS Directive. However, a Policy Paper on The future relationship

[103] https://fondkinematografie.cz/assets/media/files/fond/EN/co-productions&incentives_CZE.pdf.
[104] https://www.havc.hr/eng/about-us/project-funding/international-co-production-support.
[105] http://www.filmi.ee/en/funding/categories-of-support/minority-co-production-support.
[106] https://www.filmfonds.nl/page/2691/minority-coproduction-support.
[107] For more information, see IRIS Plus 2018-2 "Brexit: The imipact on the audiovisual sector", https://rm.coe.int/brexit-the-impact-on-the-audiovisual-sector/16808f064f.

between the United Kingdom and the European Union asserts that works originating in the United Kingdom would still qualify as European works due to the United Kingdom's position as a party to the ECTT.[108] British stakeholders also fear that Brexit and exiting the EU single market might affect the circulation of the British workforce across the European Union, as well as affecting the British industry as far as benefiting from a skilled European workforce is concerned. Of course, the uncertainties of a possible "no deal" scenario makes the situation even more complex.

6.3. The future of the CoE Convention on Cinematographic co-production (revised)

As of November 2018, 22 Council of Europe member States have signed the revised Convention, and 7 of these countries have ratified the instrument. [109]

The revised Convention applies only to co-productions involving countries which have signed and ratified the new instrument. Co-productions where at least one country involved has not yet signed and ratified the new text will continue to be regulated by the 1992 Convention. Given the complexity for producers and national authorities of the co-existence of the two conventions, it is clearly desirable that the revised text be signed and ratified by Parties to the old text as soon as is feasible. Once all of the parties to the 1992 Convention has ratified the revised Convention, this older instrument will be abrogated.

As yet, no country outside the Council of Europe has expressed interest in becoming a party to the revised Convention, but the continuing enlargement of the Eurimages fund may give rise to such an event in the years to come.

The 1992 Convention contributed significantly to the growing importance of co-production within Europe. In the absence of a monitoring mechanism, however, it has never been possible to demonstrate factually the impact of the instrument. This flaw has been remedied in the revised Convention, as the Board of Management of Eurimages, sitting in an enlarged configuration representing all the States party to the Convention, will undertake a monitoring activity and contribute to the spread of best practice among the Parties.

As is demonstrated by the twenty-five year gap between the two conventions, the opportunity to revise and update such a multilateral instrument arises only rarely. The

[108] Policy paper "The future relationship between the United Kingdom and the European Union", published on 12 July 2018 (last updated on 17 July 2018), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/725288/The_future_relationship_between_the_United_Kingdom_and_the_European_Union.pdf.

[109] A continuously updated list of the countries which have signed and ratified the revised Convention can be found here: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/220/signatures?p_auth=ZKUFZGKq.

film and audiovisual sector is characterised, however, by its rapid evolution. To take at least a partial account of this, the revised Convention foresees that its two technical can be amended using a simplified procedure. This provision will not doubt prove very valuable in the future as technology and financial conditions evolve, and make the work of the competent authorities tasked with applying the revised Convention significantly easier.

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