

**DISTRIBUTION OR INTERNATIONAL SALES ADVANCES
REFINANCED BY A FRENCH SOFICA INVESTMENT OR BY AN EQUITY/GAP INVESTOR**

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This note explains how the derogation set out in **Article 7.1.1 of the Eurimages Co-production Support Regulations¹** allowing **priority recoupment of distribution or international sales advances refinanced by a French Sofica investment or a private investor (equity / gap financing)** is applied by Eurimages.

The full text of the Article can be found overleaf. This derogation can be used only for films supported since 1 January 2018.

Explanatory Note

Use of the derogation set out in this article requires **the prior agreement of Eurimages**.

Eurimages will decide whether the Article can be applied after:

- Review of the fully signed distribution and/or sales agency agreements:
 - ✓ These contracts **must specify the total amount of the advance or minimum guarantee** and clearly state that this is partially or totally refinanced by Soficas or equity/gap financing investments;
- Review of the fully signed contracts with Soficas or equity/gap financing investors:
 - ✓ These contracts must state that the investment is a partial or total refinancing of the corresponding distribution or international sales advance;
- Review of the recoupment schedule (waterfall) for the project, which must:
 - ✓ Provide for recoupment of the refinanced MG or sales advance in priority position;
 - ✓ Immediately afterwards, foresee for Eurimages a corridor of 100% of revenues, broken down as follows:
 - a percentage corresponding to the standard corridor allocated to Eurimages (as shown on the first page of the support agreement); and
 - a "catch-up" corridor of at least 100% minus the standard corridor. This corridor allows recoupment of the Eurimages share of the refinanced advance or minimum guarantee and remains until Eurimages has effectively recouped the deferred share.
- ✓ Only distribution or sales fees **actually paid to the distributor or international sales agent** can be deducted prior to Eurimages (Article 7.3.1.a of the co-production support regulations). Shares of fees retroceded to the investors refinancing the MGs or advances are not recoupable prior to Eurimages' position.

¹ <https://www.coe.int/en/web/eurimages/regulations-coproduction>

Example

Assumptions:

- ✓ Total international sales MG, as mentioned in the sales agency agreement = €100.000
- ✓ Including Soficas/Equity/Gap contribution = €50.000
- ✓ Share of the revenue allocated to Eurimages in the support agreement = 10%

Recoupment of revenue from ROW receipts:

1. 100% to the sales agent in recoupment of the sales fee actually paid to the international sales agent and of the sales expenses; then on the remaining revenues,
2. 100% to the sales agent and Soficas/equity/gap investors in recoupment of the international sales MG of €100.000; then on the remaining revenues,
3. 100% to Eurimages broken down as follows:
 - 10% of the revenue as the standard recoupment corridor,
 - 90% of the revenue as the "catch-up" corridor (deferred Eurimages share) until Eurimages recoups 10% x €50,000=€5,000. This catch-up corridor can be reduced to a minimum of 40% should any **public fund** require a position in this tier.

Extract from the Eurimages Co-production Support Regulations 2023

Article 7.1.1: Financial support granted in the form of an advance on receipts is repayable, from 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 upon which binding agreements have been concluded before completion of the digital master. Any other deductions or comparable financing arrangements are to be approved by the Executive Director.

Subject to prior written approval from the Executive Director, the share of distribution guarantees or international sales advances financed by "Soficas", financial institutions or risk investors such as gap and equity financiers (hereafter "refinancing") may be assimilated to minimum guarantees or international sales advances and recouped prior to Eurimages provided that:

- The refinancing takes the form of a distribution guarantee or international sales advance whose nature can be clearly and objectively verified in the contractual documents provided to Eurimages (allocation of receipts alone constitutes an insufficient proof). The distribution or international sales contract must mention the total amount of the guarantee including the refinancing. In the absence of a distribution or international sales agreement in standard industry form, the refinancing will not be accepted by Eurimages;
- The refinancing must be provided by independent companies or third-party organisations, without shareholding or legal links with the producers involved in the project;
- The refinancing agreements must be signed before the completion of the digital master;
- Once the distribution guarantee or international sales advance including the refinancing has been recouped by the distributor, an additional recoupment corridor will be allocated to Eurimages, above and beyond Eurimages' standard recoupment position as defined above. The additional corridor will be equivalent to the total of remaining receipts until recoupment by

Eurimages of an amount equal to the application of the standard Eurimages recoupment percentage to the refinancing. The overall corridor granted to Eurimages will therefore be equal to 100% of receipts after recoupment of the distribution guarantees and international sales advances. Exceptionally, and on a case-by-case basis, this corridor can be reduced to no lower than 50% of receipts only in order to allow public bodies to recoup their shares;

- Only the nominal value of the refinancing, excluding any premiums or interest, will be considered as recoupable prior to Eurimages.

Moreover, **Article 7.3.1 a)** of the co-production support regulations states that “[...] the only “deductible costs” accepted by Eurimages for the calculation of net receipts are: The distribution commission of up to 25% (per set of rights sold in one territory), except in domestic co-producing countries, and with the exception of the cases mentioned in Article 7.3.4. Retrocessions of distribution or sales commissions to entities other than distribution or sales companies cannot be considered as recoupable prior to Eurimages [...]”.