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Draft Council of Europe Convention on Cinematographic Co-production (revised)

Request for an opinion
Committee of Ministers

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Letter from the Chair of the Ministers' Deputies to the President of the Assembly (26 October 2015)

At their 1238th meeting (14 October 2015), the Ministers' Deputies decided to transmit the Draft Council of Europe Convention on Cinematographic Co-production (revised) and its explanatory report to the Parliamentary Assembly and invited the Assembly to give priority to this issue and adopt its opinion on the draft Convention as a matter of urgency.

Accordingly, I have the honour of sending you the enclosed draft Convention, together with the related explanatory report for information purposes.

On behalf of the Ministers' Deputies, I thank you in advance for your attention to this urgent matter.

I look forward to receiving the Assembly's opinion.

Yours sincerely,

[signed]

Almir Šahović

Chair of the Ministers' Deputies

Appendix 1 – Draft Council of Europe Convention on Cinematographic Co-production (revised)

Preamble

The member States of the Council of Europe and the other States Parties to the European Cultural Convention (ETS No. 18), signatory hereto,

Considering that the aim of the Council of Europe is to achieve greater unity between its members in order, in particular, to safeguard and promote the ideals and principles which form their common heritage;

Considering that freedom of creation and freedom of expression constitute fundamental elements of these principles;

Considering that fostering the cultural diversity of the various European countries is one of the aims of the European Cultural Convention;

Having regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005), which recognises cultural diversity as a defining characteristic of humanity and strives to strengthen the creation, production, dissemination, distribution and enjoyment of cultural expressions;

Considering that cinematographic co-production, as an instrument of creation and expression of cultural diversity on a global scale, should be reinforced;

Aware that film is an important means of cultural and artistic expression with an essential role in upholding the freedom of expression, diversity and creativity, as well as democratic citizenship;

Determined to develop these principles and recalling the recommendations of the Committee of Ministers to member States on the cinema and the audiovisual field, and particularly Recommendation No. R(86)3 on the promotion of audiovisual production in Europe and Recommendation CM/Rec(2009)7 on national film policies and the diversity of cultural expressions;

Acknowledging that Resolution (88) 15 setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works, “Eurimages”, has been amended to allow the accession of non-European States;

Resolved to achieve these objectives thanks to a common effort to foster co-operation and define rules which adapt themselves to cinematographic co-productions as a whole;

Considering that the adoption of common rules tends to decrease restrictions and encourage co-operation in the field of cinematographic co-production;

Considering the technological, economic and financial evolution of the film industry since the opening for signature of the European Convention on Cinematographic Co-production (ETS No. 147) in 1992;

Believing that this development necessitates a revision of the 1992 Convention in order to ensure the continued relevance and effectiveness of this framework for cinematographic co-production;

Acknowledging that the present Convention is intended to replace the European Convention on Cinematographic Co-production,

Have agreed as follows:

Chapter I – General provisions

Article 1 – Aim of the Convention

The Parties to this Convention undertake to promote the development of international cinematographic co-production in accordance with the following provisions.

Article 2 – Scope

1. This Convention shall govern relations between the Parties in the field of multilateral co-productions originating in the territory of the Parties.

2. This Convention shall apply:

a. to co-productions involving at least three co-producers, established in three different Parties to the Convention; and

b. to 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.

In all cases, this Convention shall only apply on condition that the work meets the definition of an officially co-produced cinematographic work as defined in Article 3, sub-paragraph c, below.

3. The provisions of bilateral agreements concluded between the Parties to this Convention shall continue to apply to bilateral co-productions.

In the case of multilateral co-productions, the provisions of this Convention shall override those of bilateral agreements between Parties to the Convention. The provisions concerning bilateral co-productions shall remain in force if they do not contravene the provisions of this Convention.

4. In the absence of any agreement governing bilateral co-production relations between two Parties to this Convention, the Convention shall also apply to bilateral co-productions, unless a reservation has been made by one of the Parties involved under the terms of Article 20.

Article 3 – Definitions

For the purposes of this Convention:

a. the term “cinematographic work” shall mean a work of any length or medium, in particular cinematographic works of fiction, animation 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;

b. the term “co-producers” shall mean cinematographic production companies or producers established in the Parties to this Convention and bound by a co-production contract;

c. the term “officially co-produced cinematographic work” (hereafter “the film”) shall mean a cinematographic work which meets the conditions laid down in Appendix II, which is an integral part of this Convention;

d. the term “multilateral co-production” shall mean a cinematographic work produced by at least three co-producers as defined in Article 2, paragraph 2, above.

Chapter II – Rules applicable to co-productions

Article 4 – Assimilation to national films

1. Cinematographic works made as multilateral co-productions and falling within the scope of this 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 this Convention participating in the co-production concerned.

2. The benefits shall be 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 this Convention.

Article 5 – Conditions for obtaining co-production status

1. Any co-production of cinematographic works shall be subject to the approval of the competent authorities of the Parties in which the co-producers are established, after consultation between the competent authorities and in accordance with the procedures laid down in Appendix I. This appendix shall form an integral part of this Convention.

2. Applications for co-production status shall be submitted for approval to the competent authorities according to the application procedure laid down in Appendix I. This approval shall be final except in the case of failure to comply with the initial undertakings concerning artistic, financial or technical matters.

3. Projects of a blatantly pornographic nature or those that advocate violence or openly offend human dignity cannot be accorded co-production status.

4. The benefits provided by co-production status shall be granted to co-producers who are deemed to possess adequate technical and financial means, and sufficient professional qualifications.

5. Each Contracting State shall designate the competent authorities mentioned in paragraph 2 above by means of a declaration made at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession. This declaration may be modified at any time afterwards.

Article 6 – Proportions of contributions from each co-producer

1. In the case of multilateral co-production, the minimum contribution may not be less than 5% and the maximum contribution may not exceed 80% of the total production cost of the cinematographic work. When the minimum contribution is less than 20% or the co-production is financial only, the Party concerned may take steps to reduce or bar access to national production support schemes.

2. When this Convention takes the place of a bilateral agreement between two Parties under the provisions of Article 2, paragraph 4, the minimum contribution may not be less than 10% and the largest contribution may not exceed 90% of the total production cost of the cinematographic work. When the minimum contribution is less than 20% or the co-production is financial only, the Party concerned may take steps to reduce or bar access to national production support schemes.

Article 7 – Rights of co-producers to the cinematographic work

1. The co-production contract must guarantee to each co-producer joint ownership of the tangible and intangible property rights of the film. The contract shall include the provision that the film master (first completed version) shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it.

2. The co-production contract must also guarantee to each co-producer the right to access the material and the film master for use as a medium of duplication.

Article 8 – Technical and artistic participation

1. 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.

2. Subject to the international obligations binding the Parties and to the demands of the screenplay, the crew involved in filming the work must 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.

Article 9 – Financial co-productions

1. Notwithstanding the provisions of Article 8, and subject to the specific conditions and limits laid down in the laws and regulations in force in the Parties, co-productions may be granted co-production status under the provisions of this Convention if they meet the following conditions:

a. 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;

b. 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;

c. help to promote cultural diversity; and

d. are embodied in co-production contracts which include provisions for the distribution of receipts.

2. 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 of Article 10 below.

Article 10 – General balance

1. 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.

2. A Party which, over a reasonable period, observes 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.

Article 11 – Entry and residence

In accordance with the laws and regulations and international obligations in force, each Party shall facilitate entry and residence, as well as the granting of work permits in its territory, of technical and artistic personnel from other Parties participating in a co-production. Similarly, each Party shall permit the temporary import and re-export of equipment necessary to the production and distribution of cinematographic works falling within the scope of this Convention.

Article 12 – Credits of co-producing countries

1. Co-producing countries shall be credited in co-produced cinematographic works.

2. The names of these countries shall be clearly mentioned in the credit titles, in all publicity and promotion material and when the cinematographic works are being shown.

Article 13 – Export

When a co-produced cinematographic work is exported to a country where imports of cinematographic works are subject to quotas and one of the co-producing Parties does not have the right of free entry for its cinematographic works to the importing country:

a. the cinematographic work shall normally be added to the quota of the country which has the majority participation;

b. in the case of a cinematographic work which comprises an equal participation from different countries, the cinematographic work shall be added to the quota of the country which has the best opportunities for exporting to the importing country;

c. when the provisions of sub-paragraphs a and b above cannot be applied, the cinematographic work shall be entered in the quota of the Party which provides the director.

Article 14 – Languages

When according co-production status, the competent authority of a Party may demand from the co-producer established therein a final version of the cinematographic work in one of the languages of that Party.

Article 15 – Festivals

Unless the co-producers decide otherwise, co-produced cinematographic works shall be shown at international festivals by the Party where the majority co-producer is established, or, in the case of equal financial participation, by the Party which provides the director.

Chapter III – Final provisions

Article 16 – Signature, ratification, acceptance, approval

1 This Convention shall be open for signature by the member States of the Council of Europe and the other States Parties to the European Cultural Convention which may express their consent to be bound by:

a. signature without reservation as to ratification, acceptance or approval; or

b. b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

2. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 17 – Entry into force

1. The Convention shall enter into force on the first day of the month following the expiration of a period of three months after 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 in accordance with the provisions of Article 16.

2. In respect of any signatory State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of the instrument of ratification, acceptance or approval.

Article 18 – Accession of non-member States

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties, invite any State not a member of the Council of Europe, as well as the European Union, to accede to this Convention, by a decision taken by the majority provided for in Article 20.d, of the Statute of the Council of Europe (ETS No. 1), and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of any acceding State or of the European Union, in the event of its accession, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 19 – Territorial clause

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of the declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such a declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 20 – Reservations

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that Article 2, paragraph 4, does not apply to its bilateral co-production relations with one or more Parties. Moreover, it may reserve the right to fix a maximum participation share different from that laid down in Article 9, paragraph 1.a. No other reservation may be made.

2. Any Party which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

Article 21 – Denunciation

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 22 – Amendments to Appendices I and II

1. In order to update the provisions of Appendices I and II of this Convention to ensure their continuing relevance to common practices in the cinematographic industry, amendments may be proposed by the Board of Management of the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works, “Eurimages”. They shall be communicated by the Secretary General of the Council of Europe to the Parties.

2. After having consulted the Parties the Committee of Ministers may adopt an amendment proposed in accordance with paragraph 1 by the majority provided for in Article 20.d, of the Statute of the Council of Europe. The amendment shall enter into force following the expiry of a period of one year after the date on which it has been forwarded to the Parties. During this period, any Party may notify the Secretary General of any objection to the entry into force of the amendment in its respect.

3. If one third of the Parties notifies the Secretary General of an objection to the entry into force of the amendment, the amendment shall not enter into force.

4. If less than one third of the Parties notifies an objection, the amendment shall enter into force for those Parties which have not notified an objection.

5. Once an amendment has entered into force in accordance with paragraphs 1 to 4 of this Article and a Party has notified an objection to it, this amendment shall come into force in respect of the Party concerned on the first day of the month following the date on which the Party has notified the Secretary General of the Council of Europe of its acceptance of the amendment. A Party which has made an objection may withdraw it at any time by notifying the Secretary General of the Council of Europe.

6. If the Committee of Ministers adopts an amendment, a State or the European Union may not express its consent to be bound by the Convention without accepting at the same time the amendment.

Article 23 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, as well as the European Union and any State which has acceded to this Convention or has been invited to do so, of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance, approval or accession;

c. any date of entry into force of this Convention in accordance with Articles 17, 18 and 19;

d. any declaration made in accordance with Article 5, paragraph 5;

e. any denunciation notified in accordance with Article 21;

f. any other act, notification or communication relating to this Convention.

Article 24 – Effects of the Convention

1. This Convention shall replace, as regards its States Parties, the European Convention on Cinematographic Co-production, which was opened for signature on 2 October 1992.

2 In relations between a Party to the present Convention and a Party to the 1992 Convention which has not ratified the present Convention, the 1992 Convention shall continue to apply.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this … day of … …, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to the States mentioned in Article 16, paragraph 1, as well as to the European Union and any State which has been invited to accede to this Convention.

Appendix I – Application procedure

In order to benefit from the provisions of this Convention, the co-producers established in the Parties must, in due time before principal photography or principal animation commences, submit an application for provisional co-production status and attach the documents listed below. These documents must reach the competent authorities in sufficient number for them to be communicated to the authorities of the other Parties at the latest one month before shooting commences:

– a declaration of the situation of the authors' rights;

– a synopsis of the film;

– a provisional list of the technical and artistic contributions from each of the countries involved;

– a budget and a provisional financing plan;

– a provisional production schedule;

– the co-production contract or a short-form agreement (“deal memo”) made between the co-producers.

This document must include clauses providing for the distribution of receipts or territories between the co-producers.

Final co-production status is granted on completion of the film and after examination of the following definitive production documents by the national authorities:

– a complete chain of title;

– a final script;

– a definitive list of the technical and artistic contributions from each of the countries involved;

– a final cost report;

– a definitive financing plan;

– the co-production contract made between the co-producers. This contract must include clauses providing for the distribution of receipts or territories between the co-producers.

National authorities can request any other document necessary for the evaluation of the application in accordance with national legislation.

The application and other documents shall be presented, if possible, in the language of the competent authorities to which they are submitted.

The competent national authorities shall send each other the application and attached documentation once they have been received. The competent authority of the Party with the minority financial participation shall not give its approval until the opinion of the Party with the majority financial participation has been received.

Appendix II – Definition of a qualifying cinematographic work

1. A cinematographic work of fiction qualifies as an official co-production in the sense of Article 3, sub-paragraph c, if with regard to the elements originating in the States Parties to the Convention, it obtains at least 16 points out of a possible total of 21, according to the list of elements set out below.

2. Having regard to the characteristics of the co-production, the competent authorities may, after consulting each other, grant co-production status to a work with a number of points that is less than the normally required 16 points.

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
	21

N.B.

First, second and third roles are determined by number of days worked.

3. A cinematographic animation work qualifies as an official co-production in the sense of Article 3, sub-paragraph c, if it obtains at least 15 points out of a possible total of 23, according to the list of elements set out below.

4. Having regard to the characteristics of the co-production, the competent authorities may, after consulting each other, grant co-production status to a work with a number of points that is less than the normally required 15 points.

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
	23

5. A cinematographic documentary work qualifies as an official co-production in the sense of Article 3, sub-paragraph c, if it obtains at least 50% of the total applicable points according to the list of elements set out below.

6. Having regard to the characteristics of the co-production, the competent authorities may, after consulting each other, grant co-production status to the work with less than the normally required 50% of the total applicable points.

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) location	1
	16

Appendix 2 – Draft Council of Europe Convention on Cinematographic Co-production (revised) – Explanatory Report

Introduction

1. The European Convention on Cinematographic Co-Production (ETS No. 147) 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. The main objective of the Convention was to foster co-operation amongst the Parties by setting minimum standard provisions aimed at facilitating the establishment of cinematographic co-productions.

2. By providing a platform to make co-productions more systematic and easier to construct, the Convention's contribution to the co-production arena, and therefore to European cinema as a whole, has been fundamental to its success. Not only has the 1992 Convention provided a common legal basis governing the multilateral cinematographic relations of all the States Parties to the Convention but it has also allowed many smaller countries not in a position to conclude multiple bilateral agreements to benefit from a legal framework for co-productions involving just two Parties.

3. More than twenty years after the adoption of the 1992 Convention, the landscape of European film production has changed profoundly. New technology has modified production, distribution and exhibition techniques, public funding at national and regional level has evolved, fiscal incentives have multiplied and many smaller European countries now seek to enhance the international activities of their film sectors. More generally, the European film industry has become increasingly open to exchanges with partners from across the globe. Against this background, it became imperative that the Convention be revised so as to keep pace with changes in the industry and to ensure its continued relevance.

Background

4. Following the Council of Europe Film Policy Forum "Shaping Policies for the Cinema of Tomorrow" (Cracow, 11-13 September 2008), the Council of Europe's Steering Committee on Culture (CDCULT – predecessor to the CDCPP) at its last plenary meeting of 2011 discussed the importance of the European Convention on Cinematographic Co-production and the need to ensure its continued relevance. The CDCULT delegates agreed on the principle of a possible revision of the Convention and decided that an evaluation study should be carried out and a draft roadmap drawn up for this process.

5. Mr Jonathan Olsberg, a British consultant, was commissioned to carry out an assessment of the implementation of the Convention. Mr Olsberg interviewed national public funds, competent national authorities and private professionals (such as film producers and law firms specialised in negotiating co-productions). The result was a report entitled "Evaluation and Proposed Revisions of the European Convention on Cinematographic Co-production", which was first submitted in February 2012.

6. This report showed that the Convention was a flexible and easy-to-use instrument, which interacted easily with national legislation and existing bilateral co-production agreements and which had helped to develop good practice in the film sector for both national administrations and film producers. It had helped increase the number of co-productions and ensure their greater circulation potential beyond the co-producing countries. However, the Olsberg study also showed that the instrument urgently needed to be adapted to new technologies, to current diversified funding capacities in different countries, to economic and financial changes in the film industry and to an increasing trend in setting up co-productions with non-European countries.

7. A group of five experts representing the European independent cinematographic industry met twice during 2012 and examined the report presented by Mr Olsberg and its recommendations. They unanimously agreed on the necessity of modernising the Convention in line with industry practice and recent technological developments. On the basis of the Olsberg report's recommendations and their discussions, the experts made a number of proposals for modernisation of the Convention.

8. At its plenary meeting in May 2012, the Council of Europe's Steering Committee for Culture, Heritage and Landscape (CDCPP) took note of these findings and agreed on the need to draw up a revised version of the Convention. In the framework of the CDCPP mandate for 2014-2015, it was decided that the revision of the Convention would be carried out by a committee composed of experts appointed by the 43 States Party to the Convention (CPP-CINE). However, the work on the draft amendments to the Convention would be carried out by a smaller working group of 15 experts selected from among the 43 experts. This working group would meet twice in 2014 and submit a proposal to the plenary meeting of the CPP-CINE in 2015. The CPP-CINE's recommendation would subsequently be transmitted to the CDCPP for examination and submission to the Committee of Ministers of the Council of Europe.

9. The working group, comprising 15 national experts,2 met twice in Paris on 3 and 4 April and 29 and 30 September 2014. At both of these meetings the group evaluated the proposals arising from the Olsberg study and the industry experts' recommendations as well as reviewing a number of additional proposals made by the group. The proposals of the expert working group were reviewed by a plenary meeting of the Parties3 to the 1992 Convention in Strasbourg on 30 and 31 March 2015 and a proposal for a revised Convention agreed upon. This proposal was forwarded to the CDCPP for consultation and adopted at its plenary meeting from 1 to 3 June 2015 and subsequently submitted to the Committee of Ministers of the Council of Europe for final adoption.

Commentaries

Preamble

10. The preamble situates the aims of the revised Convention within the wider aims both of the Council of Europe and of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

11. It acknowledges the contribution of film to upholding freedom of expression, diversity and creativity, as well as democratic citizenship, in line with the Recommendations made by the Committee of Ministers of the Council of Europe (CM/Rec(2009)7) at the outcome of the Council of Europe Film Policy Forum (Cracow, 11-13 September 2008).

12. A specific reference to the UNESCO Convention on the Protection of and Promotion of the Diversity of Cultural Expressions has been included in the preamble to the revised Convention, in view of the importance of this framework and given the number of countries worldwide which have ratified it. 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.

13. Finally, the preamble specifies the reasons for which a revision of the 1992 Convention has been deemed necessary.

Article 1 – Aim of the Convention

14. The purpose of this article is to define the aim of the revised Convention, namely, the promotion of the official co-production of cinematographic works.

The Parties agree to restrict the scope of the Convention to cinematographic works, in view of the existence of a widely accepted definition of such works. Audio-visual works are therefore excluded, for the following reasons:

– their production is not usually governed by co-production agreements concluded between States. There is thus no need to harmonise the international rules concerning them;

– due to the rapid evolution of production and distribution technologies there is currently no widely accepted definition of an audio-visual work, thus creating a practical barrier to inclusion in the scope of the Convention.

Article 2 – Scope

15. Article 2, paragraph 1, refers to the fact that the Convention institutes rules of international law intended to govern relations between States with regard to cinematographic co-production arrangements involving producers from at least two States. The Convention may also serve as a bilateral agreement between two countries when no bilateral co-production agreement has been concluded between them and when neither of the countries has made a reservation under Article 20 of the present Convention.

16. It is agreed that the words "multilateral co-productions originating in the territory of the Parties" do not imply that there exists one single certificate of origin, but one per co-producing State.

17. The Parties are those that are Parties to the Convention. The Convention may be invoked only by producers who are nationals of States which are Parties to the Convention. These producers must furnish proof of their origin, that is, of their establishment in one of the States Parties to the Convention.

18. When the Convention applies to a multilateral co-production, it may also include co-producers who are established in countries not Parties to the Convention, provided that the co-production involves at least three co-producers established in States Parties to the Convention and that those co-producers contribute at least 70% of the financing of the production. In order to comply with the aims set forth in Article 1 of the text, namely, the promotion of official co-productions, it seemed necessary to establish a general eligibility condition regarding the origin of the work in the States Party to the Convention. The criteria used to define that origin are set forth in Article 3 and in Appendix II, which is an integral part of the Convention.

19. In the case of a bilateral co-production, the provisions of the bilateral intergovernmental 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 Convention are directly applicable and override the conflicting provisions of the bilateral agreements.

Article 3 – Definitions

20. The definition of a “cinematographic work” reproduces the definition generally adopted in existing co-production agreements. It is to be noted that cinematographic works must be intended for theatrical release; nonetheless, the fact that the resulting work is not screened in a cinema does not cause it to lose its co-production status.

21. It is for each Party to define the status of a producer in accordance with the rules laid down for the purpose by that Party. As a general rule, the production enterprise must be specifically engaged in the production of cinematographic works, which excludes, inter alia, financial institutions.

Article 4 – Assimilation to national films

22. The chief aim of a co-production agreement is to confer on qualifying cinematographic works the nationality of each of the partners in the co-production. Works may thus benefit from national aids accorded for the production, distribution and exhibition of films. They may also benefit from national rules regarding origin where television and on-demand audio-visual media services are concerned. Co-production agreements may also permit such qualifying works to benefit from tax exemptions in the countries concerned. Co-produced works are thus placed on an equal footing with national works with regard to access to the advantages available to the latter.

23. Co-produced works are, however, subject to the national rules governing cinematographic production and access to aids in the various countries that are partners in the production. By virtue of the non-discrimination rule, a co-production, even where it is a minority co-production, cannot enjoy a status different from that of a majority co-production.

24. However, the application of the above-mentioned national rules implies prior proof of the conformity with the provisions of the Convention (see Article 5) of those co-productions claiming the benefits thereof. This statement is actually the result of the Convention system, which specifies the conditions in which the co-productions concerned are assimilated with national films in order that they may benefit from the advantages provided by the domestic legislation of the various partner countries involved in the co-production.

Article 5 – Conditions for obtaining co-production status

25. In accordance with the rules laid down in bilateral co-production agreements, recognition of the status of co-production requires consultation between and approval by the competent authorities of each country. The purpose of these formalities is to establish that the co-production conforms to the rules set forth in the Convention.

26. Each Party designates the competent authority to be responsible for application of the Convention. A list of such authorities will be transmitted to the Secretary General of the Council of Europe and be regularly updated by the Parties.

27. As regards recognition of the producer’s qualifications, it should be borne in mind that these may be officially recognised in some countries (by means of a system of professional registration), but that this is not always the case. The purpose of the provision is above all to ensure that producers embarking upon co-productions have the professional competence necessary to complete the project successfully.

Article 6 – Proportions of contributions from each co-producer

28. The 1992 Convention foresaw a minimum contribution level for multilateral co-productions of 10% and a maximum contribution level of 70%. However the minimum contribution rate of 10% has in practice proved difficult to apply in countries where the cinema industry is relatively fragile, as producers in these countries cannot raise sufficient finance to allow them to participate in more ambitious co-productions with the minimum contribution. Considering that participation in higher budget co-productions alongside experienced partners would allow industry professionals in smaller countries to gain valuable expertise and establish useful contacts, as well as providing helpful financial and creative input, the Parties agree to lower the minimum contribution rate to 5% and raise the corresponding maximum participation to 80%.

29. Nonetheless, in the case of a minority contribution lower than the 20%, the minimum participation typically foreseen in bilateral co-production agreements, the country of origin of the minority co-producer may take steps to limit access to national co-production support mechanisms, 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 by the co-producer concerned.

30. Where the Convention is used to provide a legal framework for a bilateral co-production and in line with the preceding, the minimum contribution is reduced from 20% to 10% and the maximum contribution is increased from 80% to 90%. A safeguard similar to that foreseen for multilateral co-productions is introduced, allowing Parties to bar access to national support schemes where the contribution is less than 20%, the minimum level foreseen in most bilateral co-production agreements, or where the contribution does not include effective technical and artistic participation by the co-producer concerned.

Article 7 – Rights of co-producers to the cinematographic work

31. This article has been redrafted both to clarify the underlying concept of co-ownership of the rights to the work and to reflect technological evolution in the industry.

32. The object of co-production is to establish joint ownership of all the rights necessary to the production, distribution and exploitation of the cinematographic work. The co-production contract signed between the co-producers must clearly specify this joint ownership as well as mentioning the joint ownership of the physical material of the film.

33. The co-production contract should also provide that the first completed version of the cinematographic work (“the master”, which is here understood to include not only the first completed version in the original language(s), but also 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 original protection and reproduction material from the work (“the film material”) and the master, in order to allow the preparation of the elements necessary for the exploitation of the work in the producer’s exclusive territory or territories.

Article 8 – Technical and artistic participation

34. As the Convention confers upon the co-produced work the nationalities of the countries partners in the co-production, this recognition of nationality must be reflected in genuine technical and artistic participation by cast and crew members from the countries involved. This participation creates a link between the co-produced work and the countries whose nationality it will acquire. Logically, this technical and artistic participation should be proportional to the financial participation of the co-producer. Where these participations are not proportional, the competent authorities may refuse to grant co-production status to the work in question. The terms “technical” and “artistic” are to be interpreted by competent authorities in the light of national legislation and film industry standards.

35. The obligation, except as otherwise provided, to use crew members and technical facilities established in the countries that are partners in the co-production ensures that it will not be possible to use crew or technical facilities enjoying a lesser degree of protection and established in countries outside the framework of the co-production. Crew members legally established in the countries that are partners in the co-production are considered to be nationals of these States.

36. 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.

37. A State may assimilate the residents of countries belonging to its cultural sphere to its own residents.

Article 9 – Financial co-productions

38. It is not the intention of this Convention to encourage widespread use of co-productions involving one or more purely financial contributions. Moreover, where countries have established bilateral co-production relations, only a very small number of these agreements allow for this possibility. The generally applied principle should be that evoked in Article 8; a technical and artistic contribution commensurate with the financing participation should be provided by each co-producer. However, 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 preclude 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. Recourse to these provisions does not however confer exemption from the conditions set forth in Article 5, paragraph 4, concerning the involvement of bona fide co-producers. Furthermore, and particularly where the financial co-production gives full entitlement to the aids to traditional co-productions available at national level, the conditions regarding an overall balance set forth in Article 10 take on particular importance.

39. With regard to the particular requirements for financial co-productions, it is considered that the maximum financial participation should not exceed 25%, since it can be argued that beyond that threshold the financial contribution of the minority producer is such that technical and artistic production will follow as a matter of course. A Party is free, however, to derogate from this maximum participation under the conditions laid down in Article 20, paragraph 1. The minimum contribution remains at 10%. It should be noted however, that under the terms of Article 6, where the contribution is less than 20% and financial only, the Party concerned may take steps to reduce or bar access to national support schemes.

40. It also follows from the text that only minority participations may be granted exemption from the rule set forth in Article 8 concerning artistic and technical participation. As the purpose of financial co-productions is to ensure respect for cultural diversity, the artistic and technical participation by majority producers is in fact logically greater than their financial share in the co-production.

41. Furthermore, the producers of a financial co-production must be able to present co-production contracts providing for the sharing of income between all the co-producers. This is necessary so as to avoid participation by purely financial institutions that do not participate in the risks and profits of the production.

42. The conditions for the recognition of financial co-productions on a case-by-case basis by competent authorities may give rise to individual agreements between States.

Article 10 – General balance

43. The aim of the Convention is the promotion of 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, Parties may wish to maintain a balance in their co-productions relations with other Parties to the Convention. This article introduces the concept of overall balance in cinematographic relations and 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. It is emphasised, however that the spirit of the Convention calls for a flexible and open interpretation of this principle.

44. Where a Party observes a deficit in its co-production relations with one or more other Parties, that deficit may take several forms:

– a State may observe a manifest imbalance 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 observe 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;

– finally, the imbalance may take the form of a lack of correlation between use of directors and artistic and technical staff on the one hand, and the number of majority and minority co-productions on the other.

45. However, the competent authority should refuse to grant official co-production status only as a last resort, after the usual channels of consultation between the Parties concerned have been exhausted.

Article 14 – Languages

46. With regard to the language of the original version, it is obvious that the spirit of the Convention, whose aim is to promote the emergence of official co-productions as an instrument of creation and expression of cultural diversity, is clearly in favour of the use of the language culturally suited to the work.

47. Choosing to shoot the film in a language unrelated to the demands of the script for purely commercial reasons is patently contrary to the spirit of the Convention. However, it has not proved possible to clearly formalise this requirement in the Convention in the form of a legal rule. This is because the language deemed as culturally appropriate is generally considered to be the "natural language of the narrative", that is the language which the characters would naturally speak according to the demands of the script. Defined in this way, the language of the narrative may be completely unrelated to the financial structure adopted by the co-production, which means there can be no legal definition of that language.

48. For this reason, it seemed preferable to leave the States Parties to the Convention entirely free on this point, so that they may define their own requirements in this matter.

49. Consequently, Article 14 merely provides that in order to enable a film to be distributed in all the countries which co-produced it, the countries concerned may require presentation of a final version in their own languages, either dubbed or sub-titled, depending on each country's cultural customs. In accordance with the provisions of Article 4, Article 14 does not rule out the possibility for a State Party to the Convention to lay down linguistic rules regarding access to certain aid systems, provided that such arrangements are not discriminatory in relation to the nationality of the film.

Articles 16 to 24

50. These provisions draw upon the model final clauses for Conventions and Agreements concluded within the Council of Europe, as adopted by the Committee of Ministers.

51. In accordance with Article 16, 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.

52. 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 Union. However, 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. This decision was prompted by the following considerations:

– an increasing number of bilateral cinematographic co-production agreements are signed between European and non-European countries. These agreements extend the benefits resulting from national rules to works co-produced by the two countries (i.e. "national treatment");

– evidence of growing internationalisation in both project financing and public funding; the Eurimages co-production fund amended its statutes in 2014 to allow non-European States to accede to the Fund; the European Commission's Creative Europe – MEDIA sub-programme (2013-2017) has also a number of support schemes facilitating international co-operation; new European-based funds targeting non-European filmmakers have been established;

– an evolution in the status of the Council of Europe's Conventions, the majority of which are now open for accession by non-European countries.

53. 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. This conceptual change has been reflected by appropriate modifications throughout the Convention.

54. The general procedure for the accession of a non-European State involves an initial expression of interest by the State concerned. In accordance with the Council of Europe's practice, and before formally placing the point on the agenda of the Committee of Ministers, the Secretariat consults the member States' delegations, and the non-member States which are Parties to the Convention, on the request for accession. Requests for an invitation to sign and ratify a convention are then examined by the Committee of Ministers. In the case of the Council of Europe Convention on Cinematographic Co-Production, 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.

55. Article 20 outlines the only two reservations which are permitted under the revised Convention. The first is with a view to the non-application of Article 2, paragraph 4, of the Convention to the bilateral co-production relations of the State making the reservation with one or more Parties, the second allowing a State to fix the maximum limit of a purely financial minority participation at a level other than that foreseen in Article 9, paragraph 1, sub-paragraph a.

56. Article 22 contains a simplified amendment procedure for the appendices, in order to take into account their technical nature. Given that the opportunity for the amendment of a Convention arises only at long intervals and that future technological and financial evolutions of the film industry could render some elements of Appendices I and II of the revised Convention obsolete in the intervening time, a simplified amendment procedure has been foreseen. As the Board of Management of Eurimages brings together representatives of many of the authorities competent for the recognition of projects under the Convention, it seems appropriate that the Board be permitted to formulate proposals for the amendment of these Appendices.

57. Article 24 regulates the cases where a co-production involves a combination of States Parties having ratified the revised Convention and Parties who have not, and are thus subject to the provisions of the 1992 Convention. In this case the 1992 Convention will apply. Only where all the participants in a co-production are established in States having ratified the revised Convention can the revised Convention apply.

Appendix I

58. Appendix I brings the procedure for the awarding of co-production status by national authorities 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.

Appendix II

59. Given that the aim of this Convention is the creation of cinematographic works co-produced by States Parties to the Convention, this appendix defines the conditions under which a work can qualify as such an official co-production under the revised Convention. It quantifies the overall contribution to the work of the States Parties to the revised Convention and provides distinct points scales allowing for the evaluation of each of the principal types of cinematographic work: fiction, animation and documentary films.

60. It should be noted that where the producers of the work are based in States Parties to the revised Convention and thus the revised Convention will apply, but the production draws upon personnel and facilities based in States Parties to the 1992 Convention and not to the revised Convention, then these elements should be assimilated by competent authorities to elements based in States Parties to the revised Convention. In the case of animation projects, a similar assimilation should be applied for expenditure and activities undertaken in States Parties to the 1992 Convention.

61. For the fiction scale, the increased importance of the role of the director has been recognised by the allocation of an additional point, which passes from the 3 points foreseen under the 1992 Convention to 4 points under the revised Convention. The number of points for the scriptwriter remains at 3 and it should be noted that these points may be distributed, on the basis of nationality, between the various authors (creator of the original idea, adaptor, scriptwriter, author of the dialogues, etc.…). The terminology used to describe the leading members of the crew has been updated in line with industry practice and a new point has been awarded for location used for the production of special visual (VFX) and digital effects (computer-generated images or C.G.I.), as these increasingly form an important part of production activities. In relation to the shooting location, it should be noted that the point is allocated to the studio, the location being taken into consideration only where a studio is not used. The scale now totals 21 points. In order to maintain a ratio close to that established in the 1992 Convention, a total of 16 points is now required to qualify as an official co-production.

62. The new scale to be applied to animation projects has been developed in collaboration with industry experts and is loosely based on the scale in use at the Eurimages co-production fund. It provides a number of alternatives allowing its use for the evaluation not only of traditional 2D animation but also for projects involving the use of 3D techniques. While 75% of expenses or a group of activities must be undertaken in

States Parties to the Convention in order to obtain the full three points for these elements, a single point can be awarded for each 25% of the work thus executed. Thus a project with 50% of expenses for animation in States Parties to the Convention would obtain 2 points for this element. In order to qualify as an official co-production, the project must obtain a total of 15 out of 23 points.

63. The new scale for documentary works is an expanded and updated version of that used at the Eurimages co-production fund. It reflects the increasing importance of the director in the creation of these works by awarding a total of 4 points for this role, while the lesser contribution of the scriptwriter to documentary works is reflected in a single point awarded for this activity. A point has also been allocated to the location used for special visual and digital effects, as these make an important contribution to many such projects. As some documentary projects would not call upon all the personnel or activities listed in the points scale, a project will qualify as an official co-production provided it obtains 50% of the points which actually apply to the project.

64. In their application of points scales, competent authorities should note that in the case of fiction and animation projects, where a position or role is not occupied, the point or points may be nonetheless be awarded. For example, should the production not require a composer, this point may still be awarded. Competent authorities should also note that where positions or roles are held by more than one person, points may be allocated on a pro rata basis, with points being subdivided if necessary. The same principle should be applied to locations, activities and expenses.

65. The Parties believe that this triple scale will also provide increased flexibility for competent authorities in their evaluation of hybrid or cross-over works, by allowing them to select which scale to apply according to the predominant nature of the project.

66. The points scales contained in Appendix II are not intended to exempt the co-produced work from the provisions of Article 8 regarding the technical and artistic participation of the various partners in the co-production. They simply constitute a necessary, but not sufficient, condition for eligibility for the status of official co-production.