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**NOTE**

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
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Subject:	Draft Council conclusions on improving the cross-border circulation of European audiovisual works, with an emphasis on co-productions - <i>Adoption</i>

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The Audiovisual Working Party has prepared the above draft conclusions with a view to their adoption at the Education, Youth, Culture and Sport Council on 22-23 May 2019. The text now meets with the agreement of all delegations.

The Permanent Representatives Committee is accordingly invited to forward the text to the Council for adoption and subsequent publication in the Official Journal.

**Draft Council conclusions on improving the cross-border circulation of  
European audiovisual works, with an emphasis on co-productions**

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING

the political background as established in Annex I<sup>1</sup> to these conclusions, and in particular the Work Plan for Culture 2019-2022, adopted on 27 November 2018,

RECOGNISES THAT

1. Europe's cultural and linguistic diversity represents an important asset for the European audiovisual sector. Taking full advantage of digital online technologies, audiovisual content can overcome geographic and linguistic borders, promoting cultural diversity and shared European values, thus fostering a sense of belonging to a common cultural space and the competitiveness of the European audiovisual sector.
2. Audiovisual works, in particular films, series and serials, both for cinema release and for audiovisual media services, reflect the richness and diversity of European cultures and constitute a heritage which needs to be promoted and preserved for and by future generations.

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<sup>1</sup> Annex I lists relevant documents related to the issues in question (legislative acts, Council conclusions, European Commission communications etc.).

3. Digital development made possible the co-existence of cinema theatres and linear and non-linear audiovisual media services, which has impacted audience habits and preferences<sup>2</sup>. However, cinema theatres remain the main platform for exploitation of feature films<sup>3</sup>.
4. Important steps have been taken at European level to address online audiovisual piracy, but further efforts are needed to strengthen the creative economy in the digital age, to protect its cultural diversity and to ensure that more works are available to people across Europe and beyond.
5. Generally, the circulation of audiovisual works is stimulated by national and international funding measures related to promotion and marketing, including during the development stage through different digital means, as well as screenings in festivals etc. The European audiovisual legal framework, in particular the Audiovisual Media Services Directive, is an important pillar in ensuring the visibility of European audiovisual productions in EU countries.

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<sup>2</sup> In 2017, according to the European Audiovisual Observatory, the average share of EU films in 37 subscription video-on-demand (SVOD) country catalogues was 20%.

On average, 22% of the films produced yearly in the EU were co-productions, ranging from 24% in the catalogue of Flimmit to 53% in the catalogues of Horizon/UPC Prime. In the 27 Netflix catalogues, 36% of the films were co-productions on average.

Concerning the films produced and released in EU cinemas between 2005 and 2014, 64% were of EU origin, 16% of US origin, 15% of international origin and 4% of other European origin. EU non-national co-productions comprised the majority of EU non-national films in the catalogues.

<sup>3</sup> Only 47 % of European films released in cinemas over the same period were included on at least one video-on-demand (VOD) service, while European films represented around 25 % of total films on VOD platforms.

See studies 1 and 4 by the European Audiovisual Observatory, listed in Annex II.

6. Studies<sup>4</sup> by the European Audiovisual Observatory reveal that a large proportion of films produced in the EU are European co-productions and point to the advantages of co-producing, namely the possibility to reach larger audiences and markets than national films<sup>5</sup> and to benefit from more financing sources, including public funding<sup>6</sup>. Furthermore, co-productions result from creative, financial and practical cooperation based on expertise-sharing and they build bridges between different geographic and linguistic areas and contexts, having positive effects on both majority and minority co-production partners and on the entire audiovisual sector.
7. Improving the cross-border circulation of audiovisual works via different platforms and catalogues requires a coherent approach to policies in this field, including with respect to the use of new technologies such as artificial intelligence.

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<sup>4</sup> See studies 1-3 in Annex II.

<sup>5</sup> Co-productions accounted for 24% of Europe's total production between 2005 and 2014, but worldwide admissions to co-productions amounted to 50.3% of overall admissions to European films (56.9% for EU films), slightly exceeding the admissions for purely national films. On average admissions for European co-productions are more than three times higher than admissions for purely national films.

EU co-productions are available, on average, in 3.6 countries, according to the European Audiovisual Observatory.

See studies 1 and 4 in Annex II.

<sup>6</sup> See study 4 in Annex II.

8. A fit-for-purpose regulatory framework and complementarity between different funding sources are necessary to encourage high-quality creation and production in the audiovisual sector, taking into account the specificities of audiovisual markets and their capacities, the existing support policies and measures at national level, as well as the specificities of the financing and licensing mechanisms for certain audiovisual works, often based on exclusive territorial licensing. Most often, national film funds with different support schemes and different types of grants, loans, fiscal incentives and European funding mechanisms for multilateral projects, such as the MEDIA sub-programme and Eurimages, provide the audiovisual sector with critical resources for its projects. Whilst new funding tools are being tested and developed, pre-sales to and investments from public and private broadcasters and distributors from different countries continue to be essential for European film financing<sup>7</sup>. From regional to European level, public funds have developed increasing financial opportunities, including production incentives and minority co-production schemes.
9. The European audiovisual sector is characterised by geographical and/or linguistic specificities, which can cause market fragmentation. With a view to overcoming this, co-productions can strengthen the international circulation of audiovisual works and can contribute to enhancing national production and distribution capabilities and increasing competitiveness and visibility of national audiovisual productions.
10. The presence of co-productions at film festivals has the potential to ensure the visibility of quality works and enhance their circulation. Film festivals also play an important part in fostering cooperation (e.g. sharing of resources and know-how) between different actors in the value chain.

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<sup>7</sup> Presales to broadcasters and distributors in various territories accounted in total for 41% of cumulative financing volume in a sample of 445 European feature films. See study 5 in Annex II.

## HIGHLIGHTING IN THIS CONTEXT THAT

11. An Open Method of Coordination (OMC) expert group on the circulation of European films was established in the framework of the Work Plan for Culture 2015-2018. It recommended that more investment in co-productions be encouraged by incentivising co-productions in national legal frameworks and audiovisual support schemes, including by supporting bilateral co-production or co-development funds. It also recommended that co-productions among diverse partners from a wide range of Member States be encouraged.
12. Against the backdrop of the Work Plan for Culture 2019-2022, a new OMC expert group will focus on co-productions in the audiovisual sector. The group should build on the work of the OMC expert group on the circulation of European films and is expected to assess more specifically the issue of co-productions, including with non-EU countries, and report to the Council with concrete recommendations.
13. In light of the developments mentioned above, it is necessary to focus, within the limit of existing resources, on two lines of action:

### A. DIRECT MEASURES TO ENCOURAGE CO-PRODUCTIONS

#### THE COUNCIL OF THE EUROPEAN UNION

#### UNDERLINES THAT

14. Both majority and minority co-production partners benefit from the opportunities provided by cooperation, in terms of funding, technical facilities, expertise and knowledge, high production values and the enhanced circulation derived from co-producing.

15. National film funds, institutes and agencies – often in the context of co-production agreements – contribute significantly to the development and marketing of co-productions in Europe by supporting them in all phases (development, production and distribution).
16. The MEDIA sub-programme 2014-2020 comprises many different funding schemes and actions encouraging and supporting European co-productions. Its direct support to co-productions includes the operation of international co-production funds, specific actions under the development (single and slate funding) and the TV programming scheme, and support for distribution strategies improving the circulation of financed works.
17. Whilst bilateral co-production treaties or agreements facilitate access to national funding and support systems, the Council of Europe Convention on Cinematographic Co-Production (1992, revised in 2017) provides a comprehensive legal framework and standards for multilateral co-productions and for bilateral co-productions between parties that have not entered into a bilateral treaty.
18. Eurimages, the cultural support fund of the Council of Europe, is a very important instrument for providing financing for co-productions and is relevant for the distribution and exploitation of feature-length films, animations and documentary films.
19. Co-productions among countries that are close geographically and/or culturally have in some cases enhanced the practice of structured cooperation across the value chain.
20. Both European and international co-productions, most often supported by the above mentioned regional, national and European funds, have demonstrated an enhanced circulation potential and have very frequently been awarded with the most prestigious world film prizes and distinctions.

21. New opportunities offered by the digital environment are increasingly being used by producers in the structure and process of international co-production.
22. Different administrative requirements among public funding bodies and various sets of rules at regional, national, and European level may sometimes represent a challenge for co-producing partners, from a technical, artistic and financial point of view.
23. Whilst the scope of these conclusions is limited to co-productions among European countries, it is important to underline the increasing interest of Europe's audiovisual sector in co-productions with key non-European countries. Besides involving talents from all over the world, this has a high potential to increase the international circulation of co-produced European works.

INVITES MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES, TO

24. continue to encourage European co-productions between countries with various audiovisual capacities and/or between countries with a restricted linguistic or geographical area, as well as the circulation and visibility of these works;
25. intensify their efforts to share good practice and identify solutions for the administrative simplification, coherence and transparency of the rules of different public funds, including through digital technologies, in order to further facilitate European co-productions;
26. take into account the possibility of improving the circulation, promotion and exploitation of films when designing their support schemes and consider assessing their public funding schemes in light of clear objectives regarding the quality of co-funded works and their potential to circulate within the EU;

27. encourage all players, including online service providers, to share audience data with public authorities and rightsholders and make use of this data to know and better understand their audience in order to adapt support schemes accordingly.

INVITES MEMBER STATES TO

28. consider implementing support schemes, including schemes for minority co-productions, to supplement private funding and European financial instruments, in order to encourage the production and promotion of European works on all platforms;
29. further support regional and national funds in their key role of facilitators of co-productions, ensuring where possible complementarity with support measures;
30. make use of new technologies in the digitisation of the contractual and funding process in order to simplify access to financing, ensure a more efficient and transparent use of public money and reduce the number of legal issues arising in relation to co-production;
31. highlight the role of independent producers in the co-production process.

INVITES THE COMMISSION TO

32. explore ways of further developing, promoting and simplifying funding opportunities for co-productions under the MEDIA sub-programme;
33. promote measures to achieve better visibility and circulation of European audiovisual works, while ensuring a level playing field that takes into account the geographic and linguistic specificities of the Member States in terms of production, distribution and audience capacities;
34. consider options for increasing the visibility of all co-production partners – both majority and minority partners – for works supported by the MEDIA sub-programme;

35. present, in cooperation with the European Audiovisual Observatory, an assessment of co-productions in Europe, including an inventory of market-access opportunities for co-productions, suggesting ways to enhance their cooperation;
36. strengthen its cooperation, structured policy dialogue and exchange of best practices with relevant regional bodies and national bodies, European film agencies, the European Film Agency Directors (EFADs), as well as with the Council of Europe, in particular Eurimages and the European Audiovisual Observatory, exploring possible synergies and collaboration opportunities and informing Member States of the results of these exchanges;
37. explore options to support initiatives such as creative labs or writing rooms, where producers, writers and directors can work together on the development of co-productions;

## B. SUPPORTING A SUSTAINABLE ECOSYSTEM FOR CO-PRODUCTIONS

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#### UNDERLINES THAT

38. The potential of European co-productions can be further exploited by cultivating an ecosystem that encourages and promotes co-produced works all along the value chain. This includes implementing measures to support co-productions indirectly, but also facilitating collaboration at the scriptwriting and development stage, and the distribution of and access to co-produced works following their release.
39. As recommended by the OMC expert group on the circulation of European films in general, in order to increase circulation, action is needed in areas such as promotion, cinemas, festivals, VOD, audience data, support schemes, policy cooperation, access to finance, and monitoring of public funding results;

40. Transparency of the financial support offered to co-productions should be ensured. In particular, information concerning direct and indirect public funding received by co-production projects from different sources - be they (sub)national or European - should be accessible to the public financing bodies .
41. Under the MEDIA sub-programme, indirect measures to encourage co-productions include training, access to markets and international networking activities encouraging and increasing the capacity for cross-border cooperation.
42. Distribution and exploitation are key stages in building audience for co-produced works. The Europa Cinemas Network, funded by the MEDIA sub-programme, provides significant support for the screening of non-national European films. However, more efforts are needed to ensure that co-produced works are widely distributed, exploited, and promoted internationally on all distribution channels and platforms. In particular, cooperation in promoting co-produced works is key to ensuring their international success.
43. Audiovisual policies are generally centred on the supply of high-quality, culturally and linguistically diverse content. It is essential to develop audiences for high-quality, original and innovative European audiovisual works and support the visibility of and access to this type of content. According to the European Audiovisual Observatory, there is a significant imbalance between the number of European films released and their share of total admissions and therefore it is essential to strengthen connections between films and their intended audiences.
44. With respect to the distribution of audiovisual works through digital platforms, it is important to ensure a balanced ecosystem and respect for copyright, as a means of supporting creativity.
45. Talent lies at the heart of Europe's audiovisual sector. Investing in European audiovisual professionals – including in their training – therefore remains a precondition for a competitive ecosystem.

INVITES THE MEMBER STATES AND THE COMMISSION, WITHIN THE SPHERES OF THEIR RESPECTIVE COMPETENCES AND WITHIN THE LIMIT OF EXISTING RESOURCES, TO

46. Further support the audiovisual sector and consider the use of sectoral programmes to fulfil this objective.
47. Continue to promote measures providing indirect support to co-productions, including international networking, trainings for film professionals, talent development, co-production workshops, exchange of good practices and cooperation activities, as collaborative creative processes have the potential to generate high-quality and successful projects.
48. Assess whether it would be opportune to establish specific measures to encourage young professionals to develop and launch their first projects, thus contributing to the development of European cinema;
49. Facilitate audience access to audiovisual works and content through measures that encourage broader cross-border promotion and distribution, including the development of digital technologies for dubbing and subtitling in as many European languages as possible. This includes audiovisual works co-produced by countries or regions whose languages are less widely spoken, with a view to promoting linguistic diversity while at the same time overcoming barriers raised by language or special needs;
50. Step up efforts to ensure that co-produced works are supported and promoted all along the value chain, including at cross-border level, and that they reach the largest international audience possible.

51. Continue to cooperate on the development of a Directory of European Films, which will bring further visibility and transparency to European co-produced works available online.
52. Encourage structured and comprehensive dialogue with the broadest possible range of private stakeholders, to maintain their ongoing commitment to contributing to the co-productions ecosystem and to ensure the complementarity of sources of funding;
53. With due regard to subsidiarity, further encourage and support film literacy initiatives in formal, informal and non-formal education, providing young Europeans with creative skills and fostering their innovative potential. Film literacy has a fundamental role in engaging the young generations and enabling them to discover and appreciate European film heritage and cultural diversity.

## Legislative Acts

- Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020), OJ L 347, 20.12.2013, p. 221
- Regulation (EU) No 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, OJ L 168, 30.6.2017, p. 1
- Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU 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) in view of changing market realities, OJ L 303, 28.11.2018, p. 69.

## Council Conclusions

- Council conclusions on European film heritage, including the challenges of the digital era, OJ C 324, 1.12.2010, p. 1
- Council conclusions on the strengthening of European content in the digital economy, OJ C 457, 19.12.2018, p. 2
- Council conclusions on the Work Plan For Culture 2019-2022, OJ C 460, 21.12.2018, p. 12
- Conclusions of the European Council meeting on 14 December 2017, EUCO 19/1/17.

## **Council Recommendations**

- Council Recommendation on key competences for lifelong learning, OJ C 189, 4.6.2018, p. 1.

## **Communications from the Commission**

- Communication from the Commission on opportunities and challenges for European cinema in the digital era, 24 September 2010, COM (2010) 487 final
- Communication from the Commission on A New European Agenda for Culture, 22 May 2018, COM (2018) 267 final.

## **International conventions**

- UNESCO Convention of 20 October 2005 on the Protection and Promotion of the Diversity of Cultural Expressions
- Council of Europe Convention on Cinematographic Co-Production (revised), 30 January 2017

**European Audiovisual Observatory studies**

- How do films circulate on VOD services and in cinemas in the European Union? A comparative analysis, Christian Grece, 2016
- Film production in Europe. Production volume, co-production and worldwide circulation, Julio Talavera Milla, 2017
- YearBook 2017/2018. Key trends. Television, cinema, video-on-demand audiovisual services – the pan-European picture, Francisco Cabrera, Gilles Fontaine, Christian Grece, Marta Jimenez Pumares, Martin Kanzler, Ismail Rabie, Agnes Schneeberger, Patrizia Simone, Julio Talavera, Sophie Valais, 2018
- The legal framework for international co-productions, Francisco Javier Cabrera Blázquez, Maja Cappello, Enric Enrich, Julio Talavera Milla, Sophie Valais, 2018, IRIS Plus
- Fiction film financing in Europe: A sample analysis of films released in 2016, Martin Kanzler, 2018

