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EUROPEAN CONVENTION ON CINEMATOGRAPHIC CO-PRODUCTION

Strasbourg, 2.X.1992

Preamble

The member States of the Council of Europe and the other States party to the European Cultural Convention, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a 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 the defence of cultural diversity of the various European countries is one of the aims of the European Cultural Convention;

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

Determined to develop these principles and recalling the recommendations of the Committee of Ministers on the cinema and the audiovisual field, and particularly Recommendation No. R (86) 3 on the promotion of audiovisual production in Europe;

Acknowledging that the creation of the European Fund for the Support of Co-production and Distribution of Creative Cinematographic and Audiovisual Works, Eurimages, meets the concern encouraging European cinematographic co-production and that a new driving force has thus been given to the development of cinematographic co-productions in Europe;

Resolved to achieve this cultural objective thanks to a common effort to increase production and define the rules which adapt themselves to European multilateral cinematographic co-productions as a whole;

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

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- b to co-productions involving at least three co-producers established in three different Parties to the Convention and one or more co-producers who 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 co-produced work meets the definition of a European cinematographic work as defined in Article 3, paragraph 3, 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, cartoons and documentaries, which complies with the provisions governing the film industry in force in each of the Parties concerned and is intended to be shown in cinemas;
- 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 “European cinematographic work” 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 European 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.

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- 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 and 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 later date.

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 10% and the maximum contribution may not exceed 70% of the total production cost of the cinematographic work. When the minimum contribution is less than 20%, 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 20% and the largest contribution may not exceed 80% of the total production cost of the cinematographic work.

Article 7 – Rights of co-producers

- 1 The co-production contract must guarantee to each co-producer joint ownership of the original picture and sound negative. The contract shall include the provision that this negative shall be kept in a place mutually agreed by the co-producers, and shall guarantee them free access to it.
- 2 The co-production contract must also guarantee to each co-producer the right to an internegative or to any other 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 technical and craft team 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 country;
 - c help to promote a European identity; 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, with a view to maintaining its cultural identity, 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 his 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 party 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

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- 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 five States, including at least four 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 invite any European State not a member of the Council of Europe as well as the European Economic Community 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, 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 Economic Community, 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 such declaration by the Secretary General.
- 3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such 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 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council, as well as any State and the European Economic Community which may accede to this Convention or may be 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.

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

Done at Strasbourg, this 2nd day of October 1992, 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 any State and to the European Economic Community which may be 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, two months before shooting commences, submit an application for 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 copy of the contract for the purchase of the copyright or any other proof of purchase of the copyright for the commercial exploitation of the work;
- a detailed script;
- a list of the technical and artistic contributions from each of the countries involved;
- an estimate and a detailed financing plan;
- a production schedule of the cinematographic work;
- 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.

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

- 1 A cinematographic work qualifies as European in the sense of Article 3, paragraph 3, if it achieves at least 15 points out of a possible total of 19, according to the schedule of European elements set out below.
- 2 Having regard to the demands of the screenplay, the competent authorities may, after consulting together, and if they consider that the work nonetheless reflects a European identity, grant co-production status to the work with a number of points less than the normally required 15 points.

<u>European elements</u>	<u>Weighting Points</u>
Creative group	
Director	3
Scriptwriter	3
Composer	1
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	7
Performing group	
First role	3
Second role	2
Third role	1
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	6
Technical craft group	
Cameraman	1
Sound recordist	1
Editor	1
Art director	1
Studio or shooting location	1
Post-production location	1
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	6

N.B.

- a First, second and third roles are determined by number of days worked.
- b So far as Article 8 is concerned, “artistic” refers to the creative and performing groups, “technical” refers to the technical and craft group.