



Strasbourg, 21 January 2013

Ref. 2013AO01

TERMS OF REFERENCE FOR THE SELECTION OF A SERVICE PROVIDER RESPONSIBLE FOR THE EVALUATION OF THE EURIMAGES FUND

1. Context of the evaluation

In 2009, the Eurimages Board of Management decided to change the method of calculating the contributions from member states. This new method of calculation, in use since 2011, takes into consideration new criteria: the volume of co-production, the sum of the support requests received by eligible projects and the financial supports granted. The objective is to spread the financial demand as fairly as possible between the member states, without sacrificing the principle of solidarity.

This change was accepted by all members on the condition that an assessment is carried out by 2014 "of both the results of the method [of calculating contributions] and of the global functioning of the funds" (report from the May 2009 Board of Management Meeting).

A previous assessment of the Fund was carried out in 1997. Since then the audiovisual and cinema sectors have undergone profound technological changes, major changes in the way that audiovisual works are viewed by audiences, and a development in the way these works are financed and produced. However, the intervention logic decided on when the Fund was established has evolved regularly in the implementation of the rules though not necessarily in its conception and design.

2. Description of the Fund

Presentation

Eurimages is the Council of Europe's Fund for cooperation in the field of cinema. The Fund aims to promote the European film industry by encouraging the co-production and distribution of films and the fostering of co-operation between professionals. It has two objectives:

- ✓ a cultural objective; the Fund endeavours to support artistic works which reflect the multiple facets of a European society;
- ✓ an economic objective; the Fund invests in an industry which creates jobs and is subject to market forces.

Eurimages was established in 1988 through a partial agreement within the Council of Europe. A partial agreement is a particular type of cooperation at the heart of the Organisation. This authorises some Council of Europe member states to take part in certain activities without imposing these activities on other member states. From a statutory point of view a partial agreement remains one of the Organisation's activities, in the same way as other activities are, but it has its own budget and working methods.

Currently Eurimages has 36 member states : Albania, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia" and Turkey. The Russian Federation and Georgia are the last two states to join Eurimages in March and October 2011 respectively.

Organisation and budget

The Board of Management is made up of representatives of each of the member States. The Board of Management determines the Fund's policy and the conditions on which it awards financial support. It also selects the projects for support. It generally meets four times a year. These meetings are mainly devoted to considering applications for support.

The Eurimages Secretariat administers the Fund on a daily basis and maintains contacts with cinema professionals. It also has the task of assessing funding applications as well as ensuring the follow-up of supported projects. The Secretariat is responsible for implementing the decisions taken by the Board of Management. It is made up of 19 agents working under the authority of an Executive Director and the Secretary General of the Council of Europe.

The total 2012 budget amounts to €25,296,000 coming essentially from contributions from member states. The Fund has its own revenues, primarily repayments of the support granted (in the form of advances against revenues) and bank interest, but these revenues remain rather low.

More than 90% of the fund's resources are devoted to co-production support.

Eurimages Activities

✓ Co-Production support Programme

This is the major activity of the Fund. The programme is open to independent European producers applying for co-production support. This support takes the form of a loan against receipts and is repayable according to the revenues generated by the film and according to the financing plan.

Eurimages funds full-length feature films, documentaries and animations which are of no less than 70 minutes and are destined for cinema release. The amount can be up to €700,000 (€500,000 from 1/01/2013) but is capped at 17% of the production budget. Projects submitted for selection must involve producers from at least two Eurimages member states and have confirmed finance at a level of at least 50% in each of the co-producing countries on the deadline of the call for projects. Finally, Eurimages is involved in the end stages of the financing process, as films must be ready for shooting within six months of the support decision.

There are four calls for projects per year each one linked to one of the meetings of the Board of Management. The selection procedure lasts approximately 7 weeks and is divided into three steps:

- the verification of the eligibility criteria (financial, legal and production aspects of the projects) by the Secretariat;
- the analysis of the scripts of eligible projects by external script readers (script doctors, scriptwriters, script teachers...);
- the selection, based on artistic criteria and an overall evaluation of the projects by the Board of Management.

No editorial line was defined in the founding text of Eurimages. However, Eurimages supports essentially quality art-house films

✓ Promotion Programme

This programme is aimed at promoting the concept of cinema co-production at a very early stage of the scriptwriting process, Eurimages grants the Eurimages Co-production Development Award - a cash prize of €30 000 – granted in the framework of three major co-production markets in Europe: Cinemart (Rotterdam Film Festival), Cinelink (Sarajevo Film Festival) and New Cinema Network (Rome Film Festival).

With the aim of promoting the Eurimages brand during the ceremony of the European Film Awards, the Eurimages Co-production Prize is awarded every year to a European producer who makes an outstanding contribution to filmmaking through co-productions.

Eurimages also supports a certain number of initiatives in several European festivals such as the FACE Prize (Human Rights Prize awarded in the framework of the Istanbul Film Festival, in collaboration with the Communication Department of the Council of Europe), *Producers on the Move* (Cannes Film Festival), Eurimages Award (Seville Film Festival) etc.

Three schemes are open to those member states which cannot benefit from the MEDIA Programme of the European Union, i.e. Albania, Serbia, Bosnia and Herzegovina, Georgia, the Russian Federation, “the former Yugoslav Republic of Macedonia” and Turkey

- ✓ Supporting the cinema theatres support scheme

This programme aims to increase the programming of European films in cinema theatres; it fosters diversity in the screening of these films and has developed a network of theatres in cooperation with Europa Cinemas.

- ✓ Supporting the roll out to digital for cinema theatres

For those exhibitors who operate theatres assisted by the exhibition scheme. Support can be applied for to cover the purchase and installation of digital projection equipment; this is capped at €30 000 and for a maximum of 50% of these costs.

- ✓ Supporting distribution of non-national European films

This programme aims at supporting the costs of print and advertising costs for the distribution of non-national European films. This programme has been temporarily frozen and is due to restart in 2013 with a different formula.

Summaries of the Fund’s activity reports for the period 2008-2011 are available on the Eurimages website (‘What we do’ section), as well as the regulations of each support programme.

Purpose of the Fund

Resolution (88) 15 establishing the Eurimages Fund (see appendix 2 attached), defines the statutory objectives of the Fund which are primarily:

- ✓ to foster the co-production and distribution of creative cinematographic and audiovisual works in order to take full advantage of the new communications techniques and to meet the cultural and economic challenges arising from their development (Preamble);
- ✓ to intensify co-operation and exchanges for the purpose of stimulating film and audiovisual production as an important means of promoting Europe’s cultural identity (Preamble);
- ✓ to encourage in any way defined by the Board of Management the co-production, distribution, and exploitation of creative cinematographic and audiovisual works, particularly by helping to finance the co-production, distribution, broadcasting and exploitation (art.1.1);
- ✓ When granting aid, the Board of Management shall take into account the quality of the work and shall ascertain whether it is apt to reflect and to promote the contribution of the diverse national components of Europe’s cultural identity (art.5.2).

As the Fund’s statutory texts remain very general, the practices and decisions of the Board of Management’s have defined Eurimages’ objectives more precisely:

- ✓ co-production support concerns only cinematographic works (fiction, animation or documentaries) primarily intended for exploitation in cinema theatres;
- ✓ criteria corresponding to the artistic quality are predominant in the decision process even if the “production” and “financial” criteria have to be taken into account. The eligibility criteria of

the projects, determined by the Board of Management, are detailed in the programme's regulations (available on Eurimages' web site);

- ✓ the co-production support aims, through the support of projects, to support the activity of independent producers in each of the member states;
- ✓ the distribution of European films in as many territories as possible is a major goal of the Fund but the distribution potential is difficult to assess *a priori*;
- ✓ despite the fact that the co-production support is granted in the form of an advance on revenues, the potential return on the investment for the Fund is not evaluated during the decision process.

Films supported by Eurimages often have a great success in international festivals. Every year several films supported by the Fund are among others presented at the Berlinale, the festivals of Cannes, Venice, Locarno, Karlovy-Vary, and San Sebastian. Eurimages seems to be a label of artistic quality and a reference in terms of art films.

The commercial results of supported films are more difficult to evaluate; the reimbursement of advances on receipts remain very low and even, importantly, have decreased since 2011.

Eurimages endeavours to adapt its functioning to the evolution of the cinema industry even if the intervention modalities of the Fund have not been fundamentally modified since its creation. Thus, the regulations of the co-production support programme are regularly revised and amended, while the Board of Management carries out an on-going review of its decision and selection process. For instance, a system of external script readers was recently implemented, a broader use of the collection account management agreements was introduced in 2009, new digitisation support programmes were created, the distribution support programme is currently being re-designed, etc.

The current evaluation is intended to reinforce the continuously adapting nature of Eurimages work

3. Scope and purpose of the Evaluation

The Service Provider will take the period 2004-2012 as the reference period for the evaluation. This period is long enough to allow the measurement of the effects of the Fund's activities, regardless of any cyclical factors.

The evaluation will focus on the co-production support programme which represents more than 90% of the Eurimages' budget. The Service Provider will also evaluate the other programmes run by the Fund and will check the global coherence of Eurimages' activities. **The aim of the evaluation is to reconsider the definition of the Fund's objectives and then to provide the necessary information in order to adapt, if necessary, the intervention logic and the decision making process.**

When voting for the method of calculating the contributions, the members of the Board of Management considered that the evaluation should be about the following points:

- ✓ An analysis of the impact and performance of the Fund;
- ✓ The improvement of the understanding of the Fund's mission;
- ✓ A better definition of the Fund's objectives;
- ✓ A potential re-definition of Eurimages' role in the European Fund's landscape;
- ✓ The relevance of Eurimages regarding the promotion of European co-productions;
- ✓ The quality of the results obtained on the market by the supported co-productions;
- ✓ The decision making process;
- ✓ The Fund's efficiency (the possibilities of reducing expenses).

These elements lead to the formulation of the following evaluation questions:

Q1: To what extent do Eurimages support programmes fit the needs of the European audiovisual sector and of the European professionals?

This question is about measuring the relevance of the support programmes managed by Eurimages in the current environment of the audiovisual sector and its future evolution.

Q2: To what extent does Eurimages' action promote and stimulate the co-production and circulation of audiovisual works?

This question is about measuring Eurimages' results compared to the Fund's objectives.

Q3: What is the added value of Eurimages support programmes compared to those of other Funds in Europe?

This question is about evaluating Eurimages' contribution to the audiovisual sector in Europe and its particularities compared to other public or private stakeholders.

Q4: To what extent do the implementation methods best suit the Fund's objectives? To what extent is the implementation of these programmes done with a good cost/efficiency ratio?

This question is about evaluating whether the regulations, procedures and contracts used by Eurimages can be considered as the best possible choice in order to reach the Fund's objectives.

Q5: To what extent does the decision making process, and in particular the selection of supported projects, fit the objectives of the Fund?

Further to the Fund's governance itself, this question is about evaluating if the eligibility criteria and the projects selection criteria, as well as their application by the Eurimages Secretariat and Board of Management, are coherent with the Fund's objectives.

Q6: To what extent does the new method of calculating contributions fit the situation of the member States? To what extent does it have an influence on the functioning of the Fund?

These questions are about evaluating whether the change in the method of calculating the contributions has had – or could have – an influence on the Fund's results and particularly on the decision making process and whether this change corresponds to the reality of the audiovisual industry's situation in the member States.

4. Organisation and methodology

The evaluation will be conducted under the authority of the Council of Europe and the Eurimages Board of Management. The Eurimages Secretariat will ensure the management and monitoring, with assistance from the Directorate of Internal Oversight of the Council of Europe. The Eurimages' Secretariat will provide the Service Provider with the necessary documentation and information on the Fund's programs and activities.

The evaluation methodology will be detailed in the Service Provider's proposal and will remain at their discretion. It may, however, include the following elements:

Structuring:

- ✓ (Re-)definition of the study questions, criteria and indicators;
- ✓ (Re-)definition of the Fund's intervention logic;

Observation:

- ✓ Data collection, document analysis and other relevant studies;
- ✓ Interviews, questionnaires and workshops with beneficiaries and stakeholders (producers, distributors, national representatives, members of the Eurimages Secretariat, professional organisations ...);

Analysis:

- ✓ Interpretation of the results obtained by the Fund;
- ✓ Analysis of the data and information collected;

Judgement:

- ✓ Conclusions concerning the evaluation questions;
- ✓ Recommendations for the future evolution of the Fund.

The evaluation report will be for Eurimages' internal use only and will be communicated to members of the Eurimages Board of Management and their supervising authorities, to the Secretariat of Eurimages or to any other service of the Council of Europe. The Board of Management and the Council of Europe reserve the right to make this evaluation report public. The Service Provider can make this report public only with the consent of the Eurimages Board of Management and the Council of Europe.

The Service Provider will be responsible for the logistical aspects of the study: offices, secretarial and administrative support, printing of documents etc. The Service Provider will also be responsible for the dissemination of methodological tools such as questionnaires or studies. However, the Eurimages Secretariat will facilitate the Service Provider's work, case by case, and as much as is possible.

5. Deliverables

a) Deliverable 1 :

An **evaluation plan** developed on the basis of the proposal submitted by the Service Provider, containing the methodology, the schedule with key dates, and the proposed data collection methods and data sources to be used for answering each evaluation question. This document will include a complete plan of action.

b) Deliverable 2:

A **preliminary evaluation report** will be submitted in time for discussion between the Eurimages Secretariat and the Directorate of Internal Oversight of the Council of Europe.

c) Deliverable 3:

The **final evaluation report** will contain answers to the evaluation questions. The recommendations, the implementation of which must be achievable, will be supported by research findings, lessons learned and conclusions of the analyses.

The **final evaluation report** should be structured as follows:

- 1) Executive Summary
- 2) Introduction
 - Description of the intervention
 - Purpose of the evaluation
 - Evaluation methodology
 - Difficulties encountered during the evaluation
- 3) Results/Findings
 - Findings related to the evaluation questions
 - Findings related to additional evaluation questions that came up while carrying out the evaluation
- 4) Conclusions
- 5) Recommendations regarding in particular:
 - The intervention design
 - The management and monitoring system
 - The implementation of the Fund's programmes (regulations, contracts, procedures...)
- 6) Annexes (including list of interviews and of documents reviewed, questionnaires and other methodological tools, etc.)

Deliverables are to be written either in English or in French. Within his tender, the Service Provider is free to adapt the deliverables according to his own working methods.

6. Provisional schedule

The implementation schedule of the evaluation, provided its approval by the Eurimages Board of Management on 13th December 2012, will be the following:

21 January 2013	Launch of the call for tenders
18 February 2013	Deadline for the sending of proposals
15 April 2013	Selection of the service provider*, signature of the services contract and start of the evaluation process.
3 May 2013	Submission of the evaluation plan
18-21 June 2013	Meeting of the Eurimages Board of Management (for information)
30 September 2013	Submission of the preliminary evaluation report
15-17 October 2013	Meeting of the Eurimages Board of Management (for information)
30 October 2013	Submission of the final evaluation report
17-19 December 2013	Meeting of the Eurimages Board of Management: presentation of the conclusions and recommendations of the evaluation report by the Service Provider.

*Subject to confirmation of the dates of the Tender's Board.

The Service Provider will take into account the above provisional schedule to prepare his own schedule which will be included in the evaluation plan.

7. Submission of tenders

a) Content of the bid

Information on the Service Provider:

- ✓ Service Provider's name and address;
- ✓ Service Provider's representative;
- ✓ A short list of references (with contact names and telephone numbers);
- ✓ Presentation of the company and a brief description of previous relevant experience.

Service Providers must demonstrate convincingly that they have the ability to undertake evaluations in a context which is comparable to the Council of Europe and the Eurimages Fund or which is related to the audiovisual and cinema industry. To this end, they must provide a brief description of the services provided in the past three years in the subject areas covered by the contract, indicating the objectives, summary of activities undertaken, amount, date and recipient.

Organisation and methodology

This part relates to deliverable 1, the evaluation plan, and can include the following points:

1. Rationale

- Any comments on the terms of reference of importance for the successful execution of the contract;
- An opinion on the key issues related to this evaluation;
- An explanation of the risks and assumptions affecting this evaluation;
- Any element that can demonstrate a good understanding of the key issues related to this evaluation.

2. Strategy

- A detailed description of the methodology that will be used for this evaluation;
- A description of the proposed activities (including their inputs, outputs and results);
- An indicative list of documents, reference studies, consultations (with individuals or organisations) or sources of information that will be used during the evaluation;
- A description of the assistance which the Service Provider would need from Eurimages during the evaluation period.

3. Activity plan

- The schedule of the proposed activities;
- The identification and timing of major milestones;
- The expected number of working days required from each study team member assigned to the evaluation.

Any changes motivated by the Service Provider's experience will be taken into consideration.

Evaluation team

The Service Provider shall provide a list of the proposed evaluation team member(s) and their respective role in the study as well as their full CV(s).

Financial offer

The financial offer must be presented as an all-inclusive flat fee in Euros. To avoid any doubt, this amount shall include all fees and allowances/expenses incurred by this assignment (in particular the possible travel and subsistence expenses and any other administrative expenses).

The Service Provider may propose a payment schedule which takes into account the deliverables and provisional schedule.

b) General clauses

Confidentiality

The content of these terms of reference is confidential. Any company or Service Provider who receives or is in possession of the present terms of references undertakes not to disclose the terms and content except to meet the needs of preparing a bid.

Representative of the bidder

The bidder shall notify the requesting party of their representative as soon as possible following receipt of these terms of reference. All subsequent communication relating to the tender shall be addressed to that representative.

Representative of the requesting party

The requesting party is represented by the Executive Director of Eurimages:

Mr Roberto OLLA
 Council of Europe – Eurimages
 F-67075 Strasbourg Cedex
 Tel: +33 3 88 41 26 40
 eurimages.tender@coe.int

In order to ensure uniformity in the interpretation of the terms of reference and to facilitate the exchange of information, questions concerning the present call for tenders should be addressed exclusively in writing no later than **[14 February 2013]** to the representative of the requesting party mentioned above. These questions and their answers will be communicated by Eurimages to all bidders who have left their contact details with the requesting party.

Amendment of the terms of reference

These terms of reference have been prepared with the utmost care. If, however, amendments are made thereto, the bidder shall be advised and time will be allowed to make any necessary changes.

Ownership of bids

The bids submitted and the related documents shall remain the exclusive property of the requesting party and shall not be returned to the bidder.

Duration of validity of the bid

The bid tendered shall remain valid for a period of 90 days from the date when the bids are submitted.

Cost of preparing the bid

All the costs of preparing the bid shall be at the sole expense of the bidder.

Selection procedure

The principal selection criteria are:

1. The references and experience of the Service Provider in the evaluation of public policies and in the audiovisual industry;
2. The methodological approach and evaluation plan proposed by the Service Provider,
3. The financial offer made by the Service Provider.

The choice of the Service Provider will be made by the Executive Director of Eurimages following the decision of the Tender's Board of the Council of Europe.

In conformity with rule No. 1334 du 29 June 2011 signed by the Secretary General of the Council of Europe, all meeting reports and discussions of the Tenders Board are confidential. As a result, the Council of Europe and Eurimages and are not required to justify their decision.

The Council of Europe reserves the right not to consider any of the bids.

c) Forwarding of bids

- ✓ The bid must be sent by post no later than **[18 February 2013]** the postmark will be taken as evidence of dispatch.
- ✓ Responses to the invitation to tender must be sent or received in a sealed envelope on which appear the name and address of the bidder.
- ✓ This envelope must be sealed and inserted into a second envelope addressed "for the attention of the Tenders Board" followed by the file reference number and the subject clearly indicated:

COUNCIL OF EUROPE
For the attention of the Tenders Board
Ref : 2013AO01
Subject: Evaluation of the Eurimages Fund

B.P. 7
F-67075 STRASBOURG CEDEX
France

Bids shall be simultaneously sent by electronic mail to the following address: cdm@coe.int indicating the reference « 2013AO01 » in the subject field.

Appendixes:

- ✓ Appendix 1: General conditions of the contract
- ✓ Appendix 2: Resolution (88)15 revised setting up a European support fund for the co-production and distribution of creative cinematographic and audiovisual works

APPENDIX 1
GENERAL PURCHASING CONDITIONS OF THE COUNCIL OF EUROPE

Preamble**Application of the General Purchasing Conditions**

The provisions of these General Purchasing Conditions shall apply to all contracts for the supply of goods, services or works, as well as framework agreements and partnership agreements entered into by the Council of Europe. They may, however, be supplemented or modified by special conditions accepted in writing by both parties.

Precedence clause

Any general purchasing terms and conditions of the supplier shall never prevail over these General Purchasing conditions. Any provision proffered by the supplier in its documents (general purchasing conditions or correspondence) conflicting with the clauses of these General Purchasing Conditions shall be deemed void, except for the suppliers' general conditions which are more favourable to the Council.

Definitions

For the purposes of these General Purchasing Conditions:

- a. "contract" shall mean the present General Purchasing Conditions and the order, contract or agreement to which they are appended, the two documents together forming the contract;
- b. "Council" shall mean the Council of Europe;
- c. "supplier" shall mean the person or legal entity executing works and/or supplying the goods and/or providing services to the Council of Europe under the contract or the partner under the partnership agreement.

1. Loyalty of the supplier

In the performance of the present contract, the supplier will not seek or accept instructions from any government or any authority external to the Council. The supplier undertakes to comply with the Council's directives for the completion of the work, to observe absolute discretion regarding all service matters and to refrain from any word or act that may be construed as committing the Council.

2. Confidentiality

The supplier shall observe the utmost discretion in all matters concerning the contract, and particularly any service matters or data that have been or are to be recorded that come to the supplier's attention in the performance of the contract. Unless obliged to do so under the terms of the contract, or expressly authorised to do so by the Secretary General of the Council of Europe, the supplier shall refrain at all times from communicating to any person, legal entity, government or authority external to the Council any information which has not been made public and which has come to the supplier's notice as a result of dealings with the Council. Nor shall the supplier seek to gain private benefit from such information. Neither the expiry of the contract nor its termination by the Council shall lift these obligations.

3. Disclosure of the terms of the contract

- a. The supplier is informed and gives an authorisation of disclosure of all relevant terms of the contract, including identity, for the sole purposes of internal and external audit and to the Committee of Ministers and to the Parliamentary Assembly of the Council with a view to these latter discharging their statutory functions.
- b. Whenever appropriate, specific confidentiality measures shall be taken by the Council to preserve the vital interests of the supplier.

4. Use of the Council of Europe's name

The supplier shall not use the Council's name, flag or logo without prior authorisation of the Secretary General of the Council of Europe.

5. Fiscal obligations of the supplier

The supplier undertakes to observe any applicable law and to comply with his/her fiscal obligations in conformity with the legislation of the supplier's country of fiscal residence.

6. Price

The price shall be stated in euros and without tax.

7. Amendments

The provisions of the contract cannot be modified without the written agreement of both parties.

8. Transfer of contract

The contract may not be transferred, in full or in part, for money or free of charge, without the Council's prior authorisation in writing.

9. Case of force majeure

1. In the event of a force majeure, the parties shall be released from the application of this contract without any financial compensation. Force majeure is defined as including the following: major weather problems, earthquake, strikes affecting air travel, attacks, a state of war, health risks or events that would require the Council to cancel the contract.

2. In the event of such circumstances each party shall be required to notify the other party accordingly in writing, within a period of 5 days.

10. Disputes

In accordance with the provisions of Article 21 of the General Agreement on privileges and immunities of the Council of Europe, all disputes between the Council and the supplier as regards the application of this contract shall be submitted, if a mutual agreement cannot be reached between the parties, to arbitration as laid down in Rule No 481 of the Secretary General (attached).

Strasbourg, 29 June 2011

Rule No. 481 of 27 February 1976 laying down the arbitration procedure for disputes between the Council and private persons concerning goods provided, services rendered or purchases of immovable property on behalf of the Council

The Secretary General of the Council of Europe,

Having regard to the Statute of the Council of Europe, of 5 May 1949, and in particular its Articles 11 and 40, Having regard to the General Agreement on Privileges and Immunities of the Council of Europe signed on 2 September 1949, and in particular its Articles 1, 3, 4 and 21, as well as the Special Agreement relating to the seat of the Council of Europe signed on 2 September 1949,

Considering that it is appropriate to determine the arbitration procedures for any disputes between the Council and private persons regarding supplies furnished, services rendered or immovable property purchased on behalf of the Council,

Having regard to the decision of the Committee of Ministers of the Council of Europe at the 253rd meeting of the Deputies,

DECIDES:

Article 1

Any dispute relating to the execution or application of a contract covered by Article 21 of the General Agreement on Privileges and Immunities of the Council of Europe shall be submitted, failing a friendly settlement between the parties, for decision to an Arbitration Board composed of two arbitrators each selected by one of the parties, and of a presiding arbitrator, appointed by the other two arbitrators; in the event of no presiding arbitrator being appointed under the above conditions within a period of six months, the President of the Tribunal de Grande Instance of Strasbourg shall make the appointment.

Article 2

However, the parties may submit the dispute for decision to a single arbitrator selected by them by common agreement or, failing such agreement, by the President of the Tribunal de Grande Instance of Strasbourg.

Article 3

The Board referred to in Article 1 or, where appropriate, the arbitrator referred to in Article 2 shall determine the procedure to be followed.

Article 4

If the parties do not agree upon the law applicable the Board or, where appropriate, the arbitrator shall decide *ex aequo et bono* having regard to the general principles of law and to commercial usage.

Article 5

The arbitral decision shall be binding upon the parties and there shall be no appeal from it.

Strasbourg, 27 February 1976

Georg KAHN-ACKERMANN

Secretary General

APPENDIX 2

RESOLUTION (88)15 REVISED SETTING UP A EUROPEAN SUPPORT FUND FOR THE CO-PRODUCTION AND DISTRIBUTION OF CREATIVE CINEMATOGRAPHIC AND AUDIOVISUAL WORKS



Strasbourg, 3 June 2003

**THE EUROPEAN SUPPORT FUND FOR THE
CO-PRODUCTION AND DISTRIBUTION OF CREATIVE
CINEMATOGRAPHIC AND AUDIOVISUAL WORKS
"EURIMAGES"**

RESOLUTION (88) 15 amended

RESOLUTION (88) 15
SETTING UP A EUROPEAN SUPPORT FUND
FOR THE CO-PRODUCTION AND DISTRIBUTION OF CREATIVE
CINEMATOGRAPHIC AND AUDIOVISUAL WORKS
(« EURIMAGES »)

(Adopted by the Committee of Ministers on 26 October 1988 at the 420th meeting of the Ministers' Deputies and amended by Resolutions (89) 6, (90) 34, (92) 3, (93) 10, (95) 4, (97) 65 and (98) 10 and decisions taken by the Ministers' Deputies on 15 December 1999 at the 692nd meeting and on 19 July 2000 at the 718th meeting)

The Representatives of the Committee of Ministers of Belgium, Cyprus, Denmark, France, the Federal Republic of Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden, ¹

Considering the European Cultural Convention;

Considering the Committee of Ministers' Resolution (86) 3 on European cultural co-operation;

Considering Resolution N°1 on the promotion of European audiovisual works, adopted by the 1st European Ministerial Conference on Mass Media Policy, held in Vienna on 9 and 10 December 1986;

Considering the Committee of Ministers' Recommendation N° R (86) 3 on the promotion of audiovisual production in Europe and Recommendation N° R (87) 7 on film distribution in Europe;

Considering the work of the 5th Conference of European Ministers responsible for Cultural Affairs, held in Sintra from 15 to 17 September 1987, and of the informal meeting of the European Ministers responsible for Cultural Affairs, held in Brussels on 13 and 14 September 1988, as well as the conclusions of the Colloquy on film co-distribution in the European area, organised by the Committee of Governmental Experts on the cinema of the Council for Cultural Co-operation in Rimini on 3 and 4 July 1987;

Realising that the constant advance of information and communication technology and the large-scale emergence of new transmission and distribution channels will result in increased demand for programmes and increased competition in the programme market;

¹ The following States have become members of the Fund:
Iceland, 26.1.1989; Norway, 26.1.1989; Switzerland, 26.1.1989;
Hungary, 1.1.1990; Finland, 5.2.1990; Turkey, 28.2.1990;
Austria, 5.2.1991; Poland, 19.9.1991;
Ireland, 1.9.1992;
Bulgaria, 1.1.1993;
Czech Republic, 1.1.1994;
Slovakia, 15.4.1996;
[United-Kingdom withdrew on 1.1.1997 after acceding on 1.4.1993];
Romania, 29.5.1998;
Slovenia, 1.1.2001;
Latvia, 1.1.2002;
Croatia, 1.1.2003; "the former Yugoslav Republic of Macedonia", 1.7.2003,
Estonia, 1.1.2004;
Bosnia and Herzegovina, 1.1.2005; Serbia, 1.1.2005
Lithuania, 29.5.2007
Albania, 1.9.2009
Russian Federation, 1.3.2011
Georgia, 18.10.2011

Wishing, therefore, to foster the co-production and distribution of creative cinematographic and audiovisual works in order to take full advantage of the new communications techniques and to meet the cultural and economic challenges arising from their development;

Wishing to intensify co-operation and exchanges for the purpose of stimulating film and audiovisual production as an important means of promoting Europe's cultural identity;

Wishing, accordingly, to take concrete measures in the financial field to encourage the production and distribution of films and audiovisual works and, thereby, the development of the programme industries;

Having regard to Committee of Ministers Resolution (51) 62, concerning partial agreements;

Having regard to the decision taken by the Committee of Ministers at the 420th meeting of the Ministers' Deputies (October 1988) authorising the Member States who so wish to pursue these objectives within the Council of Europe by means of a partial agreement,

Resolve to set up a European support Fund for the co-production and distribution of creative cinematographic and audiovisual works to be governed by the following rules:

1. *Purpose and functions of the Fund*¹

- 1.1. The purpose of the European support Fund for the co-production and distribution of creative cinematographic and audiovisual works, -hereinafter referred to as « the fund » - shall be to encourage in any way to be defined by the Board of Management the co-production, distribution, broadcasting and exploitation of creative cinematographic and audiovisual works, particularly by helping to finance the co-production, distribution, broadcasting and exploitation.
- 1.2. The Fund shall receive, hold and utilise the resources allocated to it in accordance with paragraph 4 below, in pursuance of decisions taken by the Board of Management set up pursuant to paragraph 2 below.
- 1.3. By a decision of the Board of Management, the Fund may enter into arrangements with any organisation pursuing objectives of cinematographic and audiovisual interest, with a view to co-ordinating their work.
- 1.4. The headquarters of the Fund shall be in Strasbourg.

2. *Board of Management*²

- 2.1. Each Member State of the Fund shall appoint one representative to the Board of Management.
- 2.2. The Board of Management shall take all decisions regarding the granting of financial aid. It shall determine the policy and modalities for the granting of financial aid, assuring itself beforehand that the works retained fulfil in particular the cultural criteria conforming to the objectives of the Fund. It shall also ensure the most effective use of the resources of the Fund.

¹ Amended according to the provisions of Resolution (93) 10 adopted by the Committee of Ministers on 13 April 1993 at the 492nd meeting of the Ministers' Deputies.

² Amended according to the provisions of Resolution (95) 4 adopted by the Committee of Ministers on 7 June 1995 at the 540th meeting of the Ministers' Deputies.

2.3. The Board of Management shall manage the Fund. For this purpose, it may secure the assistance of experts and representatives of the professional circles concerned.

2.4. The Board of Management shall adopt its rules of procedure.

Decisions shall be taken by a two-thirds majority of the votes cast, each of the Fund's Member States casting one vote. The decisions thus taken shall be valid provided the above-mentioned majority represents half of the paid-in capital of the Fund, calculated on the basis of the contribution of each of the Fund's Member States.

However, procedural decisions shall be taken by a majority of the votes cast.

2.5. The Board of Management shall invite the representative of an associate member to attend Board of Management meetings whenever such associate member is directly concerned by one of the items on the agenda. The associate member shall be entitled to vote in respect of any such item, and the voting rules set out in paragraph 2.4 above shall be construed accordingly.

3. *Audit of Accounts*¹

3.1. The accounts of the Fund shall be audited by the Board of Auditors of the Council of Europe.

3.2. The Board of Auditors shall examine the accounts of the Fund and verify the accuracy of the management account and balance sheet. It shall also verify whether the Fund's resources have been used for the specified purposes. It shall draw up an annual report on the financial situation and management of the Fund to be submitted to the governments of the Fund's Member States. The report shall also be submitted to the Committee of Ministers.

4. *Resources of the Fund*^{2 3}

4.1. The Fund's resources shall comprise:

4.1.a. the annual contributions of each of the Fund's Member States and associate Member States;

4.1.b. the amounts of repaid loans;

4.1.c. any other payments, donations or legacies, subject to the provisions of paragraph 4.3 below.

4.2. The contributions of the Fund's Member States and associate members shall be determined each year by their representatives on the Board of Management, duly authorised to that effect by their respective governments, according to a scale approved by the Board of Management. The obligatory contributions calculated according to this scale may be supplemented by annual voluntary contributions.

4.3. The crediting to the Fund of payments, donations or legacies referred to in paragraph 4.1.c above, in excess of the amount fixed by the Board of Management, shall be subject to the agreement of the latter.

¹ Amended according to the provisions of Resolution (89) 6 adopted by the Committee of Ministers on 15 June 1989 at the 427th meeting of the Ministers' Deputies

² Amended according to the provisions of Resolution (95) 4 adopted by the Committee of Ministers on 7 June 1995 at the 540th meeting of the Ministers' Deputies.

³ Amended by the Committee of Ministers on 19 July 2000 by a decision taken at the 718th meeting of the Ministers' Deputies.

4.4. The Fund's assets shall be acquired and held in the name of the Council of Europe and as such shall enjoy the privileges and immunities accorded to the Council's assets under the relevant agreements. The Fund's assets shall be kept separate from the Council of Europe's other assets.

5. *Conditions attaching to the award of financial aid*^{1 2 3 4 5 6}

5.1. The Board of Management may grant financial aid to natural or legal persons governed by the legislation of one of the Fund's Member States, which produce films and/or audiovisual works as well as to natural or legal persons which distribute, broadcast or exploit them.

5.2. In reaching its decision on whether to grant aid, the Board of Management shall take into account the quality of the work and shall ascertain whether it is apt to reflect and to promote the contribution of the diverse national components to Europe's cultural identity.

5.3. Co-production aid may be granted for co-productions originating in the Fund's Member States and including at least three co-producers from the Fund's Member States. The Board of Management may derogate from this rule in accordance with the implementing regulations that it has adopted for this purpose.

Such aid may also be granted for co-productions involving co-producers from Member States on the one hand and associate member or non-member States of the Fund on the other hand, provided that the contribution by the latter States does not exceed 30% of the cost of producing the co-production.

The contribution, from public or private sources, of each of the co-producers from Fund Member States may not exceed 70% of the production costs. The Board of Management may derogate from this rule in accordance with the implementing regulations that it has adopted for this purpose.

5.4. Aid for the co-production of films and audiovisual works shall be granted in respect of co-productions of works primarily intended for cinema showing and of co-productions of works primarily intended for broadcasting by television or cable distribution, where such work is produced by producers independent of the broadcasting agencies.

¹ Amended according to the provisions of Resolution (90) 34 adopted by the Committee of Ministers on 30 November 1990 at the 449th meeting of the Ministers' Deputies

² Amended according to the provisions of Resolution (92) 3 adopted by the Committee of Ministers on 10 February 1992 at the 470th meeting of the Ministers' Deputies.

³ Amended according to the provisions of Resolution (93) 10 adopted by the Committee of Ministers on 13 April 1993 at the 492nd meeting of the Ministers' Deputies.

⁴ Amended according to the provisions of Resolution (95) 4 adopted by the Committee of Ministers on 7 June 1995 at the 540th meeting of the Ministers' Deputies.

⁵ Amended according to the provisions of Resolution (97) 65 adopted by the Committee of Ministers on 19 December 1997 at the 613th meeting of the Ministers' Deputies.

⁶ Amended by the Committee of Ministers on 15 December 1999 by a decision taken at the 692nd meeting of the Ministers' Deputies.

- 5.5. Aid for the distribution, broadcasting and promotion of a film or audiovisual work originating in one or more Member States of the Fund shall be granted to cover expenditure specified in the application for the manufacture of copies, subtitling and/or dubbing and recourse to various means of promotion. Such aid may not exceed 50% of such expenditure.
- 5.6. Aid for exploitation shall be granted to support and develop the exploitation of European films or audiovisual works in the Member States of the Fund.
- 5.7. Distributors and exhibitors from an associate Member State can benefit from the support scheme for distribution and cinemas.
- 5.8. Aid shall be allocated in the form of grants, loans at a preferential rate or advances on receipts.

6. *Accession and withdrawal*^{1 2}

- 6.1. Any Member State of the Council of Europe may, at any time, indicate to the Secretary General its intention to join the Fund as a member or associate member. The Secretary General shall forward this request to the Board of Management, which shall hold a preliminary dialogue with the State concerned regarding the modalities of accession, with respect in particular to the provisions of paragraph 6.3 below. The Board of Management shall inform the Secretary General and the State concerned of its opinion, on the basis of which the State may notify its accession to the Fund.

In the event of disagreement about the modalities of accession, it will be for the Committee of Ministers, in its composition limited to the Member States of the Fund and in agreement with the State concerned, to take a decision.

- 6.2. A European non-member State of the Council of Europe may accede to the Fund, either as a member or associate member, provided that its application is unanimously accepted by the Fund's Member States. The European Union may also accede to the Fund on the same condition.
- 6.3. The Fund's Member States, represented on the Board of Management, shall agree with any new member or associate Member State upon the percentage of its annual financial contribution in relation to the total amount contributed to the Fund by States.
- 6.4. Any Member State or associate Member State may withdraw from the Fund upon giving six months' notice expiring at the end of the financial year.

7. *Secretariat*

- 7.1. The Secretariat General of the Council of Europe shall act as secretary of the Fund.

¹ Amended according to the provisions of Resolution (95) 4 adopted by the Committee of Ministers on 7 June 1995 at the 540th meeting of the Ministers' Deputies.

² Amended according to the provisions of Resolution (98) 10 adopted by the Committee of Ministers on 2 July 1998 at the 638th meeting of the Ministers' Deputies.

8. *Operation*¹

8.1. The Fund's operational expenditure shall be apportioned as follows:

8.1.a. The travel and subsistence expenses of participants at Meetings of the Fund shall be paid by each member or associate Member State of the Fund.

8.1.b. The cost of implementing decisions of the Board of Management and common secretariat expenditure (documents, staff, official travel, translation, interpretation and all other specific expenditure relating to the operation of the Fund) shall be provided for in a partial agreement budget, financed by the Member States and associate Member States of the Fund.

¹ Amended according to the provisions of Resolution (95) 4 adopted by the Committee of Ministers on 7 June 1995 at the 540th meeting of the Ministers' Deputies.