

Memorandum on Territorialisation

prepared for the

European Film Agencies Directors

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Executive Summary

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1. Executive Summary

1.1 Purpose of this Memorandum

The European Film Agencies Directors (“the EFADs”) has consistently endorsed the way in which the European Commission has treated territorialisation as defined in the *2001 Cinema Communication*.¹ This document re-affirms the EFADs common position on territorialisation, outlines a number of further arguments for maintaining it and considers the impact of territorialisation on European co-productions.

In response to the European Commission's current Study into the economic and cultural impacts of territorialisation, the EFADs have prepared this memorandum as an explanation of the rationale behind territorialisation and to consider the actual impacts of territorialisation on European co-productions.² The EFADs have previously made a number of common statements in defense of territorialisation. This memorandum reaffirms these previous statements and outlines a number of new observations. The EFADs believe that the current territorialisation provision is necessary, proportionate and the lynch-pin of European public support. As a result, the EFADs fear that any modification to the current territorialisation regime will have a negative and destabilising effect on European film.

1.2 European Film is a Non-Standard Product

Audiovisual works are both economic and cultural in nature. This has been recognised by both UNESCO and the Commission. European Film is part of the Single Market but its economics do not obey normal market analysis.

As a cultural industry, European film is dual-faceted: it is both economic and cultural in nature. The dual nature of cultural industries have recently been celebrated by the Commission in its *Communication on a European agenda for culture in a globalizing world*. As with other cultural industries, film is an industry, which is capable of creating jobs, generating other economic benefits and generally contributing to the social and economic cohesion of the Community. As a result, the audiovisual industry is fundamental to the growth of the European knowledge economy. European film is subject to the rules of the Internal Market. However, film production is unlike the manufacturing of simple industrial products. The creation of a range of diverse and distinct cultural audiovisual products requires a consideration of cultural diversity both as an input and output of the production process. This is not the case of purely industrial products. In this respect, European film requires to be considered in light of 'an economy of diversity' rather than from a purely economic perspective.

1 *Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on Certain Legal Aspects Relating to Cinematographic and Other Audiovisual Works*. COM (2001) 534 Final.

2 *Study on the economic and cultural impact, notably on co-productions, of territorialisation clauses of State aids schemes for films and audiovisual productions*: Contract notice 2004/S 11-008538, in O.J. S84-071312, published 29th April 2004; Contract notice 2005/S 85-082039 in O.J 2005/S85-082039, published 30 May 2005; Contract notice 2005/S 227223528 in O.J 2005/S227-223528 published 25th November 2005.

1.3 Localised Spend Exists in Many Sectors

The Commission has claimed that the film industry seeks special consideration and that no other industry is permitted to have localised spend requirements. However, localised spend is a feature not only of film funding but of cultural funding generally. Moreover, there are numerous other sectors in which localised spend requirements are deemed natural or acceptable.

Cultural spend is inherently localised

The production of a cultural product, like film, differs from the standard model of goods and services production/provision. Culture is special in that, unlike other industries or production processes, where various elements of production can be located wherever natural centres have developed within the free market, the production/ consumption of cultural product will generally be located in a specific place – be it a museum, art gallery, opera house, theatre, etc. Accordingly, cultural funding in general is inherently localised by nature. Cultural funds are, in the vast majority of cases, tied to particular cultural localities and so economic benefits of the funding are experienced by those locations. For example, just about all of the expenditure required to build a museum is spent at the location of the site for the museum. Once built, the economic benefits from visitors are of course experienced at the location. These are natural circumstances that no one questions. The local funders of such cultural schemes know that the economic benefits of their realisation will be experienced by the locality that funds the schemes. It is partly because of this that so many policy-makers have creative and cultural industries as priority sectors.

Film is unusual because it is partly mobile

Audiovisual production, unlike the majority of cultural expenditure and production, is partly mobile. Therefore the location of the production process becomes an issue in a way that it is not for most other cultural processes. However, audiovisual expenditure is not as mobile as it may seem. Each audiovisual production is associated with a few key locations, as dictated by the needs and aims of the project. Moreover, the realisation of the project is dependent on the contributions of individuals and organisations which share the cultural sensitivity that the screenplay demands. These individuals and organisations are likely to be physically located in the same place. So there is an inherent territorialisation in film production also. One can therefore say that audiovisual production, as a cultural industry, is a special case, but in this regard, it is by no means unique.

European film needs to be localised

Films originating from Hollywood are the most consumed cinema product in Europe, though Europe is just one of the markets in which these global films dominate and earn profits. European films, whether made by substantial companies such as Gaumont and Nordisk or by SMEs, represent a narrow set of films and a comparatively marginal market both in Europe and in global terms. In order for European cinema to find a place in its home market, films must be of a high quality and be relevant to viewers in ways in which Hollywood films cannot. As such European film needs to be localised both in its production and its cultural content.

In addition to its appeal to audiences, European film celebrates European cultural diversity and consolidates cultural exchange amongst Member States. It is for these and other reasons that Member States support the creation of national film. Territorialisation provisions are an essential element of the availability of such funding, as explained below, and moreover allow for the localisation of cultural product as demanded by audiences and policy-makers.

1.4 Economic Outputs Motivate Political Will

Political willingness to provide public support for film, while arising from a commitment to promote cultural diversity, depends, in part, on film delivering economic benefits in terms of employment and investment in infrastructure and in the local economy in general. This is equally true of other cultural sectors.

Film is increasingly seen as an economic driver

While film is undoubtedly a cultural product, which requires state subsidy to ensure its existence, it is also an industry capable of providing training, employment, and business opportunities for communities, regions and Member States. It is partly this economic impact of film that feeds the wider political will in Member States to invest in an otherwise risky and unpredictable sector. Cultural support, particularly towards the audiovisual sector (including film, television, games) can also be an economic regenerator, a fact often recognised by Member States, and the regions contained within Member States, in their support of these industries. Member States are not alone in recognising the positive economic and cultural benefits of the audiovisual sector. In the objectives of MEDIA 2007, the Commission too has recognised that desirable economic objectives go hand in hand with the cultural.³ In its recent Cultural Communication, the Commission recognised the potential of the cultural industries in general to promote prosperity and social cohesion.⁴ Film delivers on all such anticipated and interlinked economic and cultural outputs. These outputs include the building of a critical mass of activity, job retention and skills development.

Cultural funding is subject to political will

Cultural products require both cultural (creative and artistic) and economic (financial) inputs. As a result, without Member States' financial input, Europe's current level of cultural activity would be severely curtailed. Conversely cultural products deliver highly desirable economic and cultural outputs in return for such investment. Some degree of clear economic benefit is often a strong motivator for providing funding. As a result of these underlying driving forces, the support of national and regional culture can be seen as politically untenable if this support does not also accrue some positive economic benefits.

Territorialisation levels allow cultural support to provide a basic level of industrial support to audiovisual industries. Territorialisation ensures economic benefits which demonstrate the wider effectiveness of cultural funding to government. Territorialisation is the condition which allows additional sources of funding (regional, developmental) to be given towards the creation of audiovisual products which reflect and enhance Europe's local, regional and national cultural diversity.

3 "The audiovisual sector is an essential vector for conveying and developing European cultural values and for creating highly skilled future-oriented jobs. Its creativity is a positive factor for competitiveness and cultural appeal with the public. The programme is intended to strengthen the audiovisual sector economically to enable it to play its cultural roles more effectively by developing an industry with powerful and diversified content and a valuable and accessible heritage and to add value to national support." Decision number 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007), Chapter 1, Article 1, point 2 p.3

4 *Communication on a European agenda for culture in a globalizing world*

1.5 Cultural Funding Addresses Structural Weaknesses

Fragmentation in the European film industry partly arises as a consequence of cultural diversity. Such fragmentation can be considered positive as a means of creating culturally specific film.

Culturally specific European programming requires a distributed industry

UNESCO's *Convention on Cultural Diversity* states that “cultural activities, goods and services have both economic and a cultural nature.”⁵ The Convention enshrines the importance of preserving the diversity of culturally specific expression in an increasingly globalised economy. The industry that delivers that diversity in Europe consists of a handful of major companies and numerous SMEs – all of which, regardless of size, generally operate in one or a very small number of countries.

The audiovisual sector in Europe is often criticised for this fragmented nature. It is suggested that the industry in Europe should operate more like the large vertically-integrated companies of Hollywood. While there are certainly ways in which Europe’s audiovisual sector can operate more efficiently, to some degree the ‘fragmented’ European audiovisual sector protects the individual cultures of European Member States against cultural hegemony. It is notable that when US majors wish to create culturally specific European programming, they generally do so via production subsidiaries in individual Member States rather than through pan-European production operations.

Possible negative aspects of this fragmentation are mitigated against via the principle of territorialisation in that territorialisation requirements create a network of pan-European support available to all Member States. In a real sense, territorialisation links Europe's inter-dependent funding schemes. Support to Europe’s audiovisual industries addresses both the need to create a more sustainable, efficient sector as well as retain cultural expression.

Territorialisation is a means via which Member States can support both audiovisual industries and their unique audiovisual culture

Currently, State aid to the audiovisual industry is assessed, as to its legality, either on cultural grounds or on an industrial (Risk Capital, SME exemption) basis. The Commission has recognised that SMEs in the film and audiovisual industries suffer from a ‘market failure’,⁶ however, in its decisions the cultural nature of film and the unique structural problems of the film industry have remained separate. Although MEDIA 2007 proposes in future to focus on SMEs in supporting audiovisual production,⁷ the means via which the EFADs can do the same is the territorialisation provision of the *2001 Cinema Communication*. Current territorialisation regulations allow a proportion of cultural funding to address the industrial nature of the sector, recognising that audiovisual funding may well carry both cultural and economic motivations. Territorialisation requirements take into account the structural character of the audiovisual industries by allowing cultural funding to be targeted at developing local industries including SMEs. In this way, territorialisation permits funding to simultaneously support culture and sustainability, allowing funding with cultural and economic motivations to be made available to the audiovisual industries.

5 UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Preamble, point 18.

6 See the recent approval of three schemes under the Risk Capital Guidelines, which require the proof of market failure: the Greater London High-Tech and Creative Industries Fund, East Midlands Media Investment and Screen East Content Investment Fund.

7 See the Proposal for a Decision of the European Parliament and the Council [COM(2004) 470].

1.6 Co-productions Have Many Challenges

While European co-productions can sometimes be difficult, territorialisation is not an obstacle.

The importance and success of Europe's co-productions

Since the European Convention on Cinematographic Co-Production was first introduced in 1994, 38 countries have ratified the Convention. In this intervening period, European co-productions have become increasingly important. Film budgets have risen significantly in the last ten years, while sources of financing for European filmmakers remain limited. Co-production has allowed countries with cultural and/or linguistic affinities to pool resources in order to produce films and audiovisual products which speak to a larger audience. European co-productions are also typically more successful on a pan-European level than nationally-produced films; in 2005, out of the top ten most successful European films in terms of total admissions in Europe, seven were European co-productions.⁸

European co-productions continue to face a complex set of challenges

European co-productions are not immune from challenges, however. Difficulties of language, finding the right co-producing partner, developing a market-driven script, talent requirements, as well as issues of balance (cultural and financial) can all contribute to the difficulty of creating a successful European co-production. The volume of European co-productions has fluctuated in the past ten years, for a number of complex and interrelated factors including changes in national financing instruments, economic changes and the increase of multilateral co-productions. The EFADs have supported, and will continue to support, ways to overcome these difficulties – through co-production summits, dedicated co-production development and production funds.

Territorialisation cannot be singled out as the dominant factor affecting European co-production

The purpose of the official co-production is to access public funding from different public bodies in different countries. Since territorialisation is one of the factors that enables the presence of public funding, then clearly territorialisation is positive for co-productions. However, beyond this simple relationship is the question of whether the occasional conflicting requirements of public funders act as a disincentive for co-productions. From time to time this claim is made by various audiovisual professionals in Europe. Admittedly, in a very few number of cases, conflicting requirements arising from different countries' support schemes may mean that producers will not be able to combine two countries' public financing schemes as a result of potentially conflicting territorialisation requirements. However, this is a rare occurrence and overall territorialisation is very positive for assisting in the raising of finance.

Some producers may complain about these few cases where there are conflicts. One would expect that all producers would prefer to have as few requirements made on them by public funders as possible. However, one could also state that it is one of the tasks of the producer to manage the financing process to combine different funding sources. With regard to commercial funding for film projects, the task of managing the conflicting terms of private funding is accepted and taken on by all producers.

⁸ European Audiovisual Observatory, *World Film Market Trends, Focus 2006*

Given the complexities which dictate European co-productions, it would be reductive to simply connect any changes in European co-production volume to any one factor, including territorialisation. That said, territorialisation regulation does not seem to have impeded co-production volume in the past. The number of European co-productions under the current territorialisation regime, since the French cinema decision of 1998 (N 3/98) and the 2001 Cinema Communication, has grown from 154 in 1998 to 201 in 2001 to 257 in 2004.⁹ It is obvious that correlation does not prove causality. However, it can be concluded that current territorialisation requirements are not a significant obstacle to the growth and success of European co-productions.

Co-production relationships rely on current levels of territorialisation

There is a complex web of relationships between audiovisual industries in various Member States, between smaller and larger Member States and those with and without territorialisation. Member States with no territorialisation restrictions or limited territorialisation frequently co-produce with Member States with stronger territorialisation requirements. Linguistic, historic and cultural affinities typically define co-production relationships, as do reciprocal relations between smaller and larger Member States. Co-productions enable smaller Member States' productions to access increased levels of finance, while providing a potentially larger market for both parties. By combining sources of public finance, co-productions allow for an increase in the level of aid intensity, within legal limits, which may be otherwise unattainable in only one Member State.

Cooperation defines European co-productions, not competition

It is precisely this web of relationships which ensures that the financing mechanism of a co-production remains viable. Member States have different approaches to territorialisation but this does not constitute an obstacle nor impinge on competitiveness. Rather, stronger territorialisation requirements in some of the Member States ensure efficient access to higher levels of finance to all European producers. This relationship between 'strong' territories and 'weaker' territories is mutually helpful and co-operative.

1.7 Territorialisation benefits the European film industries

Territorialisation requirements do not distort competition between Member States but support the establishment of a critical mass of audiovisual activity in different parts of the Union. Changes could destabilise funding for European film and have considerable negative impacts on European audiovisual culture and industry.

Territorialisation does not distort competition

Territorialisation requirements vary from country to country. However no Member State considers the actual prevailing territorialisation requirements in other Member States to represent a barrier to co-operation. Territorialisation is the condition through which Europe's audiovisual SMEs continue to be supported. In turn for this support and protection these SMEs not only contribute to the vibrancy of Europe on a cultural output level, but also, as cultural industries, help Europe towards its new knowledge economy goals. Territorialisation's support of a particular set of Europe's cultural industries therefore uniquely helps Europe towards the ultimate realisation of the European project.

⁹ European Audiovisual Observatory - Lumière database (<http://www.lumiere.obs.coe.int>)

Territorialisation ensures the critical mass necessary for co-productions

Territorialisation requirements ensure that a critical mass of audiovisual activity takes place – not only in those Member States with territorialisation, but also in those Member States without territorialisation which may depend on co-productions with territorialisation-enforcing Member States. Although territorialisation requirements vary across European Member States, territorialisation helps to create and retain a mutually accessible infrastructure for European audiovisual activity.

Changes to territorialisation are a threat to Europe's audiovisual industries

The majority of Europe's audiovisual production companies are under-capitalised SMEs supported in part by public sector financing. The current network of co-production relationships is complex. It is supported by a framework created via mutually beneficial territorialisation agreements. If current territorialisation requirements were to be altered, it is likely that some Member States' funding mechanisms would be severely affected, bringing instability not only to that Member State, but to its producers and to Europe as a whole. A climate of uncertainty can have an immediate and dramatic effect on production, as the experience of many Member States can attest. A change in circumstances in one large Member State following the alteration of territorialisation could have widespread effects across Europe.

The EFADs believes that the currently permissible levels of territorialisation represent the minimum level for the continuation of current levels of support.

Territorialisation protects European culture

Ultimately, European filmmakers need state funding in order for the European film industry to survive in the face of the international integrated major companies. One solution would be the availability of substantial amounts of production funding from pan-European sources. This, however, does not exist.

In the absence of substantial pan-European funding for production of European cultural films, territorialisation allows a variety of European funders at the local, regional and Member State level to continue to provide this funding, and receive the returns in the form of cultural outputs and the economic benefits that expenditure in the audiovisual sector can provide. In the process, those funders are investing in the long-term sustainability of Europe's film industries. Therefore rather than viewing territorialisation as a measure which hampers the development of Europe's film industries, it should be seen as a necessary part of the preservation and promotion of Europe's cultural heritage, ensuring that Europe's film industries can continue to produce high-quality, cultural films and audiovisual product for all of Europe and the world to enjoy. Ultimately, territorialisation protects the diversity of Europe's cinematic culture.