

# REGULATIONS FOR THE SUPPORT OF CO-PRODUCTION OF FULL-LENGTH FEATURE FILMS, ANIMATION AND DOCUMENTARIES

## 1 ELIGIBILITY CRITERIA

### 1.1. General Provisions

1.1.1. Projects for feature films, animation and documentaries of a minimum length of 70 minutes, intended for cinema release, are eligible.

1.1.2. Projects submitted must be co-productions between at least two independent producers, established in different member States of the Fund.

1.1.3. Projects submitted must comply with the legislation of the countries concerned, **the bilateral treaties in force between the co-producing countries or, where applicable, with the European Convention on Cinematographic Co-production.**

For the purposes of this regulation, if appropriate, Eurimages **will** consider awarding a national public support equivalent to the national accreditation (**co-production status certificate**) issued by the **national** competent authorities.

1.1.4. Projects submitted must conform to the cultural objectives of the Fund.

1.1.5. Projects of a blatantly pornographic nature or advocating violence or openly inciting to a violation of human rights are not eligible.

### 1.2. Eligible Producers

1.2.1. Financial support may only be awarded to **European** natural or legal persons governed by the legislation of one of the Fund's member States, whose principal activity consists in producing cinematographic works, and whose origins are independent of public or private broadcasting organisations.

1.2.2. **A company is considered European if it is majority owned and continues to be majority owned, either directly or indirectly, by nationals of the member States.**

1.2.3. **A production company is considered independent when less than 25% of its share capital is held by a single broadcaster or less than 50% where several broadcasters are involved.**

1.2.4. Producers who have previously received support from Eurimages must have met all their contractual obligations to the Fund, in particular, the submission of revenue statements for any project(s) previously supported by Eurimages and the reimbursement of any outstanding amounts due.

### 1.3. Co-production Structure

1.3.1. **In the case of a multilateral co-production, the participation of the majority co-producer must not exceed 70% of the total co-production budget and the participation of each minority co-producer must not be lower than 10%.**

In the case of a bilateral co-production, the participation of the majority co-producer must not exceed 80% of the total co-production budget and the participation of the minority co-producer must not be lower than 20%.

Notwithstanding the above, in the case of bilateral co-productions with a budget superior to 5 M Euros, the participation of the majority co-producer must not exceed 90% of the total co-production budget.

1.3.2. The structure of the co-production shall be attested by a duly signed co-production agreement. For the purposes of the selection procedure of projects, a deal memo may exceptionally be accepted provided it contains detailed provisions on the following essential aspects of the co-production:

- Clear indication of the participation of each co-producer in the financing of the project.
- Joint ownership of all the rights.
- Sharing of the revenues between the co-producers (exclusive and/or shared territories).
- Definition of the total budget, spending requirements and the event of over-budget.
- Reference to the treaties applicable.

#### ***1.4. Participation of Producers and Financiers from non-Member States of the Fund***

1.4.1. Co-producers from non-member States of the Fund may participate in the project provided that their combined co-production percentage does not exceed 30% of the total co-production budget.

1.4.2. The Executive Secretary may carry out any verification s/he considers appropriate in order to ensure that control of the project remains in the hands of the co-producers from the member States of the Eurimages Fund.

#### ***1.5. Technical and Artistic Co-operation and Financial Co-productions***

1.5.1. Projects must display artistic and/or technical co-operation between at least two co-producers established in different member States of the Fund.

This co-operation will be assessed on the basis of the nationality and/or residence of the heads of departments (director, scriptwriter, composer, director of photography, sound engineer, editor, art director, costumes) and of the main roles (first, second and third role), as well as on the studio or shooting location, post-production location and services providers.

1.5.2. However, a co-production with an exclusively financial contribution from one or more co-producers, is also eligible on condition that it has access to national accreditation in the co-producing countries.

#### ***1.6. European Origin and Character of the Project***

1.6.1. Projects must be European in terms of origin, investments and rights.

1.6.2 The director of the film must possess a valid passport issued by one of the member States of the Council of Europe or have permanent resident status in one of those countries.

1.6.3. In the case of fiction projects, the European character will be assessed on the basis of the points system included in the European Convention on Cinematographic Co-production. These projects must achieve at least 15 out of 19 points, according to the scheme of points set out below:

Director	3
Scriptwriter	3
Composer	1
First role	3
Second role	2
Third role	1
Cameraman	1
Sound recordist and mixer	1
Editor	1
Art director and costumes	1
Studio or shooting location	1
Post-production location	1
TOTAL	19

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

1.6.4. In the case of animation projects, the European character will be assessed on the basis of the points system set out below. The project must achieve at least 14 out of 21 points:

Conception	1
Script	2
Characters' design	2
Music composition	1
Directing	2
Storyboard	2
Chief Decorator	1
Computer backgrounds	1
Layout	2
50% of the expenses for animation in Europe	2
50% of the colouring in Europe	2
Compositing	1
Editing	1
Sound	1
TOTAL	21

1.6.5. In the case of documentary projects, the European character will be assessed on the basis of the point system set out below. The project must achieve at least 50% of the total points:

Director	3
Scriptwriter	2
Cameraman	2
Editor	2
Shooting location	2
Post-production location	2
Researcher	1
Composer	1
Sound engineer	1

1.6.6. In the event that a project does not achieve the minimum points described in the provisions above, it can still be considered eligible on condition that it has access to national accreditation in accordance with the legislation in force in the co-producing countries concerned.

This requirement shall be proved by written confirmation of provisional accreditation (provisional co-production status certificate) granted by the competent national authorities.

### **1.7. Start of Principal Photography**

1.7.1. Applications for fiction and documentary projects are eligible only if principal photography has not commenced at the time of the Board of Management's examination of the application and is scheduled to commence not later than six months after this date.

1.7.2. Applications for animation projects are eligible only if principal animation has not commenced at the time of the Board of Management's examination of the application and is scheduled to commence not later than six months after this date.

1.7.3. Further to a justified written request notified to the Secretariat prior to the submission of the application, the Executive Secretary may grant a derogation to Article 1.7.1 where a pre-shooting for a limited duration is required for climatic or technical reasons.

### **1.8. Copyright Regulations and Joint Ownership of the Negative**

1.8.1. Projects submitted must comply with the copyright regulations in force in the European co-producing countries, inter alia with regard to decisions concerning the final cut.

1.8.2 The negative must be jointly owned by all co-producers.

### **1.9. Financial Requirements**

1.9.1. Projects should have the benefit, in each of the co-producing countries of either national support, or a television pre-sale, or a minimum guarantee or any other financing arrangement verifiable by and acceptable to the Executive Secretary (except for equity investments, deferrals and contributions in-kind).

1.9.2. At least 50% of the financing in each of the co-producing countries must be confirmed by formal undertakings or agreements in principle such as **contracts, deal memos, letters of intent with amounts, confirmations of public support and bank statements**. However, a bank statement cannot be the sole means of reaching the financing threshold. Deferrals (including producers' fee and overheads) and in-kind contributions shall be accepted as confirmed sources of financing, only up to a maximum of 15% of the total co-production budget.

1.9.3 The Executive Secretary may request any further evidence s/he may consider necessary in order to assess the financial capacity of the co-producers or financiers.

## **2 SUBMISSION OF PROJECTS**

### ***2.1. Applications***

2.1.1. Applications for financial support shall be submitted to the Executive Secretary of Eurimages by one of the co-producers, with the consent of all the co-producers attested in writing.

2.1.2. Applications shall be submitted in French or English in typescript on the application form. Any incomplete application shall not be placed on the agenda of the Board of Management's meeting.

2.1.3. Co-producers must contact their National Representatives on the Board of Management of Eurimages at the earliest opportunity. If one of the National Representatives concerned has not been contacted prior to the meeting of the Board of Management, the project shall be withdrawn from the agenda.

2.1.4. The Executive Secretary may carry out any verification s/he considers appropriate as to the compliance of the project with the Eurimages' regulations.

### ***2.2. Deadlines***

2.2.1. Application deadlines, fixed annually by the Board of Management, will be published on the Eurimages web-site: <http://www.coe.int/Eurimages>.

2.2.2. Applications must be received by the **Secretariat on the day of the application deadline before 6 pm, without exception** (i.e. the date of receipt is valid).

### ***2.3. Currency and Applicable Exchange Rates***

2.3.1. The accounts of Eurimages are kept in Euros, and the amount of financial support is expressed in Euros.

2.3.2. In determining the equivalent in Euros of the total production costs, of the contribution of each co-production partner and of the amount of financial support applied for, the only applicable exchange rate for foreign currencies into Euros, is that regularly fixed by the Finance Division of the Council of Europe and published on the Eurimages web-site: <http://www.coe.int/Eurimages>.

### ***2.4. Re-submissions***

2.4.1. The same project cannot be placed on, and withdrawn from, the agenda of the Board of Management more than three times.

2.4.2. A project previously rejected by the Board of Management cannot be re-submitted.

2.4.3. It must be noted that a project withdrawn from the agenda will not automatically be placed on the agenda of the next Board of Management's meeting. Any request for re-submission must be made in writing by the delegate producer within the application deadlines mentioned under para 2.2.

### **3 SELECTION OF PROJECTS**

#### ***3.1. Analysis by Secretariat***

The Executive Secretary will provide the Board of Management with a systematic and detailed analysis of each project.

#### ***3.2. Selection Criteria***

3.2.1. The Board of Management will select the projects keeping in mind the cultural, diversity and economic objectives of the Fund.

3.2.2. In doing so, it will carry out a comparative analysis of the applications submitted, upon the basis of the following selection criteria:

- the artistic merits of the project,
- the experience of the director, of the producers, of the artistic team (authors, scriptwriters, casting, etc.) and crew members;
- the circulation potential of the project;
- the commercial potential of the project;
- the artistic and/or technical co-operation between the co-producers;
- the level of confirmed financing for the project.

### **4 NATURE OF THE FINANCIAL SUPPORT AND AMOUNTS**

#### ***4.1. Production Support***

Financial support is provided in the form of a conditionally repayable interest-free loan (advance on receipts).

#### ***4.2. Amount of Financial Support***

4.2.1. Financial support shall not exceed **17%** of the total production cost of the film and shall in no event be superior to 700.000 €.

4.2.2. The budget, the financing plan and the amount of support requested to Eurimages will be assessed and verified by the Executive Secretary.

### **4.3. Allocation of Financial Support**

4.3.1. The financial support shall be allocated to each co-producer according to the proportion of his/her financial participation in the co-production.

4.3.2. To assist producers established in member States of the Fund with low cinematographic production levels\*, Eurimages' financial support can be allocated disproportionately. Such disproportionate allocation to one of the co-producers shall not be lower than 10% nor exceed 50% of the total amount allocated by EurimageS to the co-production concerned. In such a case, Eurimages' contribution shall not exceed 50% of the total financing of any of the co-producers. These provisions shall not apply to financial co-producers. Notwithstanding, the repayment of the amount awarded will be in proportion to each producer's percentage in the co-production.

### **4.4. Validity of the Support Decision**

The validity of any decision taken to support the co-production of a cinematographic work, will expire if no agreement between Eurimages and the co-producers has been entered into, within a period of **twelve** months from the date of the Board of Management's meeting at which the decision was taken and if principal photography has not commenced within the same period. In the event of duly justified reasons, the Executive Secretary may extend such a period by a maximum of three months.

## **5 SUPPORT AGREEMENT AND PAYMENTS**

### **5.1. Conclusion of the Support Agreement**

5.1.1. An agreement between the co-producers involved and Executive Secretary, acting on behalf of Eurimages, shall stipulate the terms on which the loan is awarded.

5.1.2. The Support Agreement shall be drawn up upon receipt of the following documents:

- definitive co-production contract(s) plus any addenda thereto;
- revised financing plan including the actual amount of the support allocated by the Board of Management;
- confirmation of the artistic and/or technical co-operation,
- confirmation of the award of the provisional national accreditation;
- contracts or firm undertakings confirming the financing of the project;
- any other evidence that the conditions which the Board of Management has formulated by the time of the selection have been met.

**5.1.3. The Executive Secretary may, at its own discretion, terminate the Support Agreement 10 years after the first commercial exploitation of the project.**

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\* All member States of the Fund except: France, Germany, Italy and Spain.

## **5.2. Payment of the Financial Support**

Unless otherwise agreed by the Executive Secretary of Eurimages, payment will be made in three instalments:

5.2.1. The first instalment of 60% of the total amount awarded is payable following:

- the signature of the support agreement as defined in Article 5.1 above;
- the first day of principal photography.

5.2.2. The second instalment of 20% of the total amount awarded is payable:

- after receipt of confirmation of the completion of the answer print from the laboratory;
- after receipt of distribution guarantees and/or pre-sales upon which binding agreements have been concluded before the answer print of the film has been completed;
- after approval of the credit list by the Executive Secretary.

5.2.3. The third instalment of 20% of the total amount awarded is payable:

- after confirmation of the cinema release in the co-producing countries or, if appropriate, for documentaries only, selection in at least one significant film festival;
- after receipt and approval by Eurimages of the total costs of the production and the expenditure of each co-producer, presented in a standard form approved by Eurimages and certified by a qualified chartered accountant independent from the production companies involved, showing any variations to the cost compared with the budget approved by the Board of Management;
- after receipt of the final financing plan;
- after receipt of the evidence of the payment of the minima guarantees included in the financing plan approved by Eurimages;
- after receipt and approval by Eurimages of the DVD and publicity material for each co-producing country;
- after confirmation of the award of the definitive national accreditation.

## **5.3. Production Bank Account(s)**

Payment of the co-producers' share of the amount awarded shall be made by Eurimages either to the respective production bank accounts opened by each co-producer, or to a single production bank account opened by the delegate co-producer, on condition that written consent is received from each of the co-producers concerned.

## **5.4. Completion Guarantee**

Should the Co-producers conclude a completion guarantee, Eurimages must be a signatory to the contract and have the status of beneficiary.

## **6 REFERENCE TO EURIMAGES SUPPORT**

6.1. Eurimages' support must be mentioned clearly and visibly in the main credits at the beginning of the film, as high as possible after the producers and according to its financial contribution, as well as in the major publicity material for the film.

6.2. The draft front and end credits must be submitted to Eurimages for prior approval. Failing this, Eurimages reserves the right to refuse payment of the outstanding balance of the support awarded.

6.3. On completion of the work, the publicity material and a DVD of the film, subtitled in English or French, must be submitted to the Executive Secretary.

## **7 REPAYMENT OF THE SUPPORT**

### ***7.1. Eurimages' Recoupment Corridor***

7.1.1. The support amount is repayable, from the first Euro from each producer's net receipts at a rate equal to the percentage of Eurimages' share in the financing of the film, and after deduction – **if formally approved by the Secretariat** – of distribution guarantees and/or pre-sales necessary for the financing of the film upon which binding agreements have been concluded before completion of the answer print. Any other deductions or comparable financing arrangements are to be approved by the Board of Management.

7.1.2. Each co-producer shall be proportionally responsible for the repayment of the part of the support allocated to him/her. Repayment is due up to 100% of the amount awarded.

In the case of disproportionate allocation of Eurimages' support (according to the conditions under Article 4.3.2 above), the repayment of the support awarded will be in proportion to the co-production percentages.

**7.1.3 In the case of a group of national co-producers (ie. co-producers within the same member State), they shall appoint the co-producer who shall be responsible for the reporting obligations and the repayment of the sums due by the whole group. Failing this, Eurimages will appoint one.**

### ***7.2. Producers' Net Receipts***

7.2.1. The following are considered as producers' net receipts: all receipts resulting from the exploitation of all or part of the film and from any products derived from the film in the territories exclusively allocated to the producers, as well as in the territories other than those exclusively allocated to the producers, after deduction of the «deductible costs» linked to the exploitation of the film (as defined in Article 7. 3 below). These net receipts shall constitute the basis for the reimbursement of the support.

7.2.2. Any pre-sales and distribution guarantees in excess of the financing necessary to cover the production cost approved by Eurimages as well as those concluded after the completion of the answer print are considered as net receipt for Eurimages' repayment purposes. The Executive Secretary must have received valid

documentation before the payment of the second instalment of the support (See Article 5.2.2. above).

### **7.3. Deductible Amounts**

7.3.1. Only the following shall be accepted by Eurimages as «deductible costs» in the calculation of the net receipts :

a) the distribution commission up to 25% (per set of rights sold in one territory), except in domestic co-producing countries;

b) provided that the costs listed below are not fully or partially already included in the production budget approved by Eurimages :

- technical costs related to the manufacture and the forwarding of release prints of the film, as well as the manufacture of a foreign language version of the work ;
- costs related to publicity for the launch of the film (P&A) announced, incurred and paid by the distributors and/or sales agents, and approved by each producer upon receipt of all items of evidence of these costs.

c) non-deductible taxes paid to public authorities for the exploitation of the film ;

d) customs duties and fees to professional organisations, costs related to submission of the film to censure, control and archive bodies, insofar as they are directly related to the film concerned.

**Therefore, deferrals, equity investments, royalties, profit participations and authors' rights cannot be deducted from the revenues generated by the project.**

7.3.2. All such «deductible costs» should be duly specified in the financial statements provided by the distributors and/or sales agents and shall be subject to verification. All deductions must be approved by the Executive Secretary.

### **7.4. Revenues Statement**

7.4.1. Starting from the first commercial exploitation of the project, co-producers shall, without prior request, provide Eurimages at the end of each half-year period for the first two years and at the end of each calendar year thereafter with the revenues statements concerning the exploitation of the film.

These statements shall be presented in a clear and detailed format, showing the exploitation results of the film for each of the media, by clearly indicating the 'deductible costs' together with a copy of the royalty statements from distributors and sales agents, as well as a copy of all sales and licence agreements.

Eurimages reserves the right, if necessary, to request producers to use a standard form approved by Eurimages for the presentation of the revenue statements.

7.4.2. Each co-producer is obliged to provide Eurimages with a copy of all contracts for the exploitation of the film or any part thereof.

### **7.5. Collection Account**

Eurimages may, if appropriate, demand the appointment of a Collecting Agent for receipts. Whenever such a Collection Agent is appointed, Eurimages must be a signatory to the subsequent agreement.

## **8 MODIFICATION OF THE SUPPORT GRANTED AND TERMINATION OF THE SUPPORT AGREEMENT**

### **8.1. Evolution of the Co-production**

8.1.1. Co-producers must inform the Executive Secretary, for prior approval, and provide adequate documentation on any modification pertaining to the artistic, technical, legal and financial aspects of the project as approved by the Board of Management.

8.1.2. Any substantial modification of the artistic or financial structure of the project must be approved by the Board of Management. Any other changes shall be approved by the Executive Secretary.

### **8.2. Decrease of Final Production Costs**

Should the final production costs of the film be more than 10% lower than the budget described in the Support Agreement between Eurimages and the producers, Eurimages' support will be reduced proportionally for the part exceeding the 10% decrease.

### **8.3. Cancellation of Financial Support**

8.3.1. Eurimages' financial support shall be cancelled if the film is not completed or theatrically exhibited in each of the co-producing countries within the time limit set in the Support Agreement. It shall also be cancelled or immediately repayable if a producer fails to meet the terms of these Regulations or the obligations upon him under the terms of the Support Agreement.

8.3.2. If, however, the Board of Management considers that the producers have valid reasons for failing to complete the film, or for exceeding the time limit set, it may decide not to withdraw its financial support.

## **9 DISPUTE SETTLEMENT AND INTERPRETATION OF THE REGULATIONS**

9.1. There can be no appeal against a decision of the Board of Management not to support a request for financial support.

9.2. Any dispute relating to the execution of any agreement concluded pursuant to

these Regulations 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 a presiding arbitrator, appointed by the other two arbitrators. If a presiding arbitrator is not appointed under the above conditions within a period of four months, the President of the European Court of Human Rights shall make the appointment.

9.3. However, the parties may submit the dispute for a decision to a single arbitrator chosen by them by common agreement or, failing such agreement, by the President of the European Court of Human Rights.

9.4. The Board referred to in paragraph 9.2 or, if appropriate, the arbitrator referred to in paragraph 9.3, shall determine the procedure to be followed.

9.5. Failing agreement between the parties on the law applicable, the Board, or if appropriate, the arbitrator, shall decide *ex aequo et bono* in the light of general legal principles, as well as observing customs used in the cinematographic and audiovisual field.

9.6. The arbitration decision shall be final and shall be binding on the parties.

9.7. The Board of Management reserves the right to interpret and amend these Regulations.