

ANNEX XV

REFERRED TO IN ARTICLE 3.21

CO-PRODUCTIONS

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CO-PRODUCTIONS

Article 1

Objective

Recognising that the co-production may serve the development of production of films and television programmes and encourage a further development of the cultural and technological ties between them, the Parties aim at facilitating the co-production of films and television programmes between them.

Article 2

Scope and Definitions

1. This Annex applies to co-productions of films and television programmes between the Parties.
2. For the purposes of this Annex:
 - (a) “competent authorities” means the competent authorities responsible for the implementation of this Annex or related domestic laws and regulations:
 - (i) for Turkey: the Ministry of Culture and Tourism, General Directorate of Cinema
 - (ii) for Iceland: the Icelandic Film Centre (KMI)
 - (iii) for Liechtenstein: Liechtenstein Cultural Foundation
 - (iv) for Norway: the Norwegian Film Institute (NFI)
 - (v) for Switzerland: the Federal Office of Culture.
 - (b) “co-producer” means a person or an entity established in the territory of a Party by whom the arrangements for the making and financing of the cinematographic work or the television programme and providing other conditions are undertaken;
 - (c) “co-production” means a cinematographic work or a television programme, with or without accompanying sound, regardless of length or genre, including fiction, animation and documentaries, which is intended

to be shown first in cinemas or which is produced for television, including new media services, as the case may be.

Article 3

Approval and Procedures

1. A co-production shall be approved by the competent authorities of the countries of the participating co-producers.
2. The application of a film or television programme for co-production benefits shall follow the procedures set out in the Appendix to this Annex, unless otherwise agreed by the competent authorities.
3. A project shall not be approved where the co-producers are linked by common management or control, except to the extent that such an association has been established specifically for the purpose of the co-production.
4. An approval of a co-production by the competent authorities does not imply any permission or authorisation to show or distribute the film or television programme thus produced.
5. Co-productions must be made, processed, dubbed or subtitled, up to the creation of the first release film master in the countries of the participating co-producers.
6. Notwithstanding paragraph 5,
 - (a) if a scenario or the subject of the film or television programme so requires, location shooting, exterior or interior, in a country not participating in the co-production may be authorised by the competent authorities;
 - (b) if processing, dubbing or subtitling services of satisfactory quality are not available in a country participating in the co-production, the competent authorities may authorise the procurement of such services from a supplier in a third country.

Article 4

Requirements regarding Co-producers

1. If a Party's co-producer fails to fulfil the conditions, under which that Party has approved a co-production, or of the provisions of this Annex the other Party or Parties concerned may revoke the co-production status of the production and the associated rights and benefits.
2. In order to qualify for the benefits of co-production, the co-producers must provide evidence that they have the proper technical organization, adequate financial

support, recognised professional standing and qualifications to bring the production to a successful conclusion.

3. To be entitled to the benefits under this Annex, co-producers must comply with the legislation and regulations of each of the participating Parties.

Article 5

Requirements regarding Natural Persons

1. The producers, co-producers, authors, scriptwriters, performers, directors, professionals and technicians participating in co-productions must be nationals of the Parties in accordance with their domestic laws and regulations, regardless as to whether they are living in third countries.

2. Should the co-production so require, the participation of professionals who do not fulfil the conditions provided by paragraph 1 may be permitted, in exceptional circumstances, and subject to the approval of the competent authorities.

3. Each Party shall fulfil the obligation concerning social security of staff members who are nationals of the Parties working during the production.

4. Use of any languages in a co-production other than the languages permitted according to the domestic laws and regulations of the Parties may be added to the co-production if the screenplay requires it.

Article 6

National Treatment

1. Any co-production produced in accordance with this Annex shall be considered by the competent authorities as a national production, subject to the domestic laws and regulations of the Parties. Such co-productions shall be entitled to the benefits to which the domestic production industry is entitled by virtue of each Party's domestic laws and regulations. These benefits accrue solely to the co-producer of a Party that grants them.

2. In all matters concerning the marketing or export of a co-production, each Party shall accord the co-production the same status and treatment as a domestic production, subject to the domestic laws and regulations of that Party.

Article 7

Marketing in Third Countries with Quota

1. If a co-production is marketed in a country that has quota regulations in regard to all participating Parties, it shall be included in the quota of the Party of the majority co-

producer. In the event that the contributions of the co-producers are equal, the co-production shall be included in the quota of the Party of which the director of the co-production is a national.

2. If a co-production is marketed in a country that has quota regulations in regard to one of the participating Parties, the co-production shall be marketed by a Party in regard to whom there is no quota, unless otherwise agreed by the competent authorities.

Article 8

Co-production Credits and Festivals

1. All co-productions shall name all participating Parties and third countries accepted under subparagraph 4 of Article 9. Such identification shall appear in a separate credit title, in all commercial advertising and promotional material, whenever co-productions are shown at a public performance.

2. Unless otherwise agreed by the competent authorities, co-productions shall be entered in international festivals by the Party of the majority co-producer.

3. Co-productions produced on the basis of equal contributions shall be entered in international festivals by the Party of which the director is a national.

Article 9

Contribution in Co-Productions

1. The respective financial contribution of the producers of the Parties may vary from 20 to 80 per cent for each co-production. In addition, the co-producers shall be required to make an effective technical and creative contribution, proportional to their financial investment in the co-production. The technical and creative contribution should be comprised of the combined share of authors, performers, technical-production personnel, laboratories and facilities.

2. In special cases, the respective financial contributions by the producers of the two countries may vary from 10 to 90 per cent if approved by the competent authorities.

3. In the event that the participating co-producer or co-producers are composed of several production companies, the financial contribution of each company shall not be less than five 5 percent of the total budget of the co-production.

4. In the event that a producer from a third country is authorised to participate in the co-production, its financial contribution shall not be less than 10 per cent. In the event that the co-producer from a third country is composed of several production companies, the financial contribution of each company shall not be less than 5 per cent of the total budget of the co-production.

Article 10

Entry and Temporary Stay of Natural Persons and Film Equipment

1. Subject to its domestic laws and regulations, each Party shall facilitate the entry and temporary stay of the artistic and technical personnel and the performers engaged by a co-producer of the Parties participating in the co-production.
2. Subject to its domestic laws and regulations, each Party shall facilitate the entry and re-export of any film equipment necessary for the production of co-productions.

Article 11

Distribution of Profit

The distribution of profits between co-producers should be proportionate to the contribution of each co-producer.

Article 12

Rights of Co-producers to the Cinematic Work and Television Programmes

1. For the purposes of this Annex and, in particular, the provisions set forth in subparagraph (a) of Article 3 of the Appendix, the co-producers shall ensure that, to the extent any intellectual property rights are embodied in any element of the cinematographic work or television programme these rights will be within the sole authorship and/or right holdership according to the domestic laws of Parties or control of persons who participated in its creation. Such intellectual property rights will be licensed to the Parties in writing, upon terms and conditions in accordance with the objectives of this Annex.
2. Allocation of intellectual property rights in a co-production, including authorship and/or right holdership and licensing thereof, shall be made in the co-production contract according to the domestic laws and regulations of the Parties.
3. Each co-producer shall, according to the domestic laws and regulations of the Parties, have free access to all the original co-production materials and the right to duplicate or print there from, but not the right to any use or assignment of intellectual property rights in the said materials, except as determined by the co-producers in the co-production contract.
4. Each co-producer shall, according to the domestic laws and regulations of the Parties, be a co-owner of the physical copy of the original negative or other recording media in which the master co-production is made, not including any intellectual property rights that may be embodied in the physical copy, except as otherwise determined by the co-producers in the co-production contract.

5. Where the co-production is made on film negative, the negative will be developed in a laboratory chosen by the co-producers and be deposited therein, with an agreed name.
 6. Each co-producer shall be entitled to retain a copy of the original of the initial record of the cinematographic work or television programme, subject to paragraphs 1 and 2.
 7. Co-producers must give a subtitled film master to each party following the production. The co-production contract must also guarantee to each co-producer the right to a film master or to any other medium of duplication.
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APPENDIX TO ANNEX XV

REFERRED TO IN ARTICLE 3 (2)

RULES OF PROCEDURES

1. An applications of a film or television programme for co-production benefits must be conveyed to the competent authorities at least 60 days prior to the commencement of shooting or key animation of the film or television programme. The applications shall be reviewed by the competent authority within a month after the Party with the highest proportion of financial contribution expresses its opinion. The decision shall be notified to the applicants within ten days. If the Party with the highest proportion of financial contribution as well as the competent authority in the Party having received the application give their affirmation, the co-production shall be considered as approved.
2. The competent authority shall notify the competent authorities of the other Parties of the decision regarding any such application for co-production within 30 days from the date of submitting the complete documentation listed in this Appendix.
3. Applications must be accompanied by the following documents in English language for:
 - (a) a proof of license arrangements with respect to intellectual property rights, of any sort, including in particular copyright and neighboring rights (“neighboring rights” shall be understood as including, *inter alia*, producers’ rights, performers’ rights, phonogram producers’ rights and broadcasters’ rights), embodied in, or arising from, a co-production, to an extent sufficient for purposes of fulfilling the objectives of the co-production contract, including clearance arrangements for public performance, distribution, broadcast, making available by internet or otherwise, and sale or rental of physical or electronic copies of the co-production in the territories of the Parties’ home countries as well as in third countries, and including copyright and neighboring rights clearance with respect to any literary, dramatic, musical or artistic work which has been adapted by the applicant for purposes of the co-production;
 - (b) the signed co-production contract, which is subject to the approval of the competent authorities.
4. The co-production contract must make provision for the following issues:
 - (a) the title of the co-production, even if provisional;
 - (b) the name of the writer or the person responsible for adapting the subject if it is drawn from a literary source;

- (c) the name of the director (a safety clause is permitted for his replacement, if necessary);
- (d) the budget of the co-production;
- (e) the amount of the financial contributions of the co-producers;
- (f) the financial undertakings of each producer in respect of the percentage apportionment of expenditures with regard to development, elaboration, production and post-production costs up to the creation of the answer print.
- (g) the distribution of revenue and profits including the sharing or pooling of markets;
- (h) the respective participation of the co-producers in any costs which exceed the budget or in the benefits from any savings in the production cost;
- (i) allocation of intellectual property rights in a co-production, including ownership and licensing thereof.
- (j) a clause
 - (i) recognising that the approval of the co-production, entitling it to benefits under the agreement, does not obligate the competent authorities of each Party to permit the public screening of the co-production; and
 - (ii) setting out the conditions of a financial settlement between the co-producers in the event that the competent authorities of each Party refuse to permit the public screening of the co-production in that Party or in third countries.
- (k) breach of the co-production contract;
- (l) a clause which requires the major co-producer to take out an insurance policy covering all production risks;
- (m) the approximate starting date of shooting;
- (n) the list of required equipment (technical, artistic or other) and personnel, including nationality of personnel and the roles to be played by the performers;
- (o) the production schedule;
- (p) a distribution agreement, if one has been concluded;

- (q) the manner in which the co-production shall be entered in international festivals; and
- (r) other provisions required by the competent authorities.

5. In addition to the agreement, the following documents must be sent to the competent authority:

- (a) a synopsis of the co-production;
- (b) the treatment;
- (c) the full text of screenplay;
- (d) the list of technical and artistic personnel that produce the co-production;
- (e) the curriculum vitae of the director;
- (f) a detailed budget and financing plan;
- (g) the document of intellectual property transfer for commercial use of the production;
- (h) a production schedule of the co-production;
- (i) the nationality of personnel and the roles to be played by the performers.

6. The co-producers must provide any further documentation and information, which the competent authorities deem necessary in order to process the co-production application or in order to monitor the co-production or the execution of the co-production agreement.

7. Any material provisions in the original co-production contract may be amended, subject to prior approval by the competent authorities.

8. The replacement of a co-producer is subject to the prior approval by the competent authorities.

9. Competent authorities must be informed about the participation of a producer from a third country in the co-production.
