



**Recommendation CM/Rec(2009)7
of the Committee of Ministers to member states
on national film policies and the diversity of cultural expressions**

*(Adopted by the Committee of Ministers on 23 September 2009
at the 1066th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members in order to safeguard and promote the ideals and principles which form their common heritage;

Reaffirming the fundamental importance of freedom of expression and of safeguarding diversity as common European ideals;

Considering the European Convention on Cinematographic Co-Production (ETS No. 147) and the vital contribution of the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual works "Eurimages" to European film culture;

Taking into account its Resolution Res (97) 4 on confirming the continuation of the European Audiovisual Observatory, created with the mission to improve the transfer of information within the audiovisual industry and to promote a clearer view of the market and a greater transparency;

Considering the European Convention on Transfrontier Television (ETS No. 132), which foresees specific measures to ensure the broadcasting of European works;

Considering the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005), which recognises cultural diversity as a defining characteristic of humanity and strives to strengthen the creation, production, dissemination, distribution and enjoyment of cultural expressions;

Taking into account the Memorandum of Understanding between the Council of Europe and the European Union of 11 May 2007, and its potential to strengthen information exchange and co-operation in relation to audiovisual policies;

Affirming, in the spirit of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, that film has both an economic and a cultural nature so that making a distinction between cultural films and commercial films is neither possible nor desirable;

Aware that film is an important means of cultural and artistic expression with an essential role in upholding the freedom of expression, diversity and creativity, as well as democratic citizenship;

Recalling Parliamentary Assembly Recommendation 1674 (2004) on "Challenges facing the European audiovisual sector", which states that the European audiovisual sector remains in a precarious state and that the real challenge facing this sector at present is to combine the artistic creativity and cultural diversity of European works with a truly European dimension, in terms of the cultural values that these represent and in terms of their market reach;

Taking into account the results of the Council of Europe Forum "Shaping policies for the cinema of tomorrow" held in Cracow from 11 to 13 September 2008;

Asserting that national and regional policy makers and film bodies are responsible for putting in place policies that cover not only production but all aspects of the film value chain (development, production, distribution and marketing, screening, media literacy and training, access to audiences and film heritage) and that they encompass not only financial support but also regulation, research and data collection ;

Affirming that it is notably through its ability to reach distinct audiences that film fulfils its cultural goals, in particular in relation to cultural diversity, and that film policies should seek to facilitate film's access to audiences;

Aware that globalisation and market developments, technological developments and changing audience behaviour require constant adaptation of film policies in order to ensure that they continue to fulfil their goals,

Recommends that governments of member states:

- a.* use every available means in accordance with their constitutions and their national, regional or local circumstances to take into account the principles and implement the measures set out in the appendix to this recommendation with respect to the development of their film policies;
- b.* bring this recommendation to the attention of the relevant public and private bodies in their countries through the appropriate national channels;
- c.* use the existing Council of Europe cultural policy information tools to follow up on this recommendation, including knowledge transfer and the exchange of good practice;
- d.* reinforce the positive impact of the European Convention on Cinematographic Co-production, the goal of which is to foster transnational co-operation in the cinema sector by reviewing this instrument with the view of ensuring its long-term effectiveness;
- e.* co-operate in the framework of the Council of Europe and, where appropriate, with other international organisations with common objectives and goals in the cultural field, in particular in the audiovisual field, in order to:
 - i.* study the possibility of developing a set of common goals and indicators, as well as common evaluation and benchmarking tools and guidelines for film policies, that could be used by member states on a voluntary basis;
 - ii.* consider future opportunities to continue the discussion, at European level, on key principles and issues for film policy in order to support the implementation of the measures and objectives set out in this recommendation and in other relevant legal texts of the Council of Europe and of the European Union in the field of film policy, creative industries and cultural diversity;

Asks the Secretary General of the Council of Europe to bring this recommendation to the attention of States Parties to the European Cultural Convention (ETS No. 18) which are not members of the Council of Europe.

Appendix to Recommendation CM/Rec(2009)7

Context

1. The conditions under which European films are financed, produced and accessed are undergoing massive change. While new opportunities are apparent, in particular as a function of technological progress and its potential impact on more diverse and improved access to film, most of the prevailing business models are obsolete and European films are struggling to obtain fair representation on screens worldwide.
2. While there is a longstanding consensus on the economic and cultural importance of having strong film production in Europe, it is clear that such production can be maintained and strengthened only if there is an increased emphasis on the effectiveness and efficiency of film policies and the optimisation of the use of resources at all levels.
3. Relevant European organisations and discussion fora allow the opportunity for the enhancement of synergies between national film policies and are a framework for continuous learning and the exchange of good practices.

4. A review of national film policies taking into account market and technology changes is needed to improve policy decisions that in turn will determine whether and to what extent the changes will be beneficial to the specificity and quality of European film.

Purpose

5. This appendix provides general guidelines for the review of national film policies with the aim of furthering their development and increasing their effectiveness in a changing audiovisual environment. The following priority areas have been identified: I) developing a comprehensive approach to film policies; II) addressing film development and production; III) improving the regulatory frameworks for co-production and co-distribution; IV) encouraging the distribution and circulation of European films ; V) European cinema and young people; VI) realising the full potential of digital technologies; and VII) transparency and accountability.

I. Developing a comprehensive approach to film policies

6. Film policies should place emphasis on the different stages of the film value chain.

7. The role of public film bodies is to develop, implement and evaluate these policies, through funding, regulation and other appropriate means.

Recommended measures

8. National and (where appropriate) regional film authorities in Europe should in general:

- develop comprehensive film policies which address not only production, but also training, development, distribution, promotion and exploitation, as well as education and film heritage, in order to increase the chances of European films reaching audiences. Film policies should have clear principles and goals; combine continuity and adequate, evidence-based review mechanisms; dispose of clear and effective rules and instruments with a strong emphasis on transparency and accountability;
- ensure that the objectives of film policies and the specificity of audiovisual products are duly taken into account when devising and implementing other policies and regulations, and in particular in the areas of education, intellectual property rights, media, competition and trade. To that end, better co-ordination should be sought between the public bodies in charge of these policy areas, at regional, national and European levels;
- encourage film policy bodies to exchange, develop and implement common objectives and good practices;
- engage, on a voluntary basis and in a spirit of co-operation and solidarity, in transnational initiatives aimed at making best use of financial support available at the European level and in particular at enhancing the user-friendliness, efficiency and operational complementarity of regional, national and European public financing and other forms of support ;
- ensure that films that have been financed with public funds can be collected, preserved, restored and made available for cultural and educational purposes by recognised film heritage institutions. For example, film producers who have received public funding could be asked to agree that film heritage institutions arrange cultural screenings of those films without having to pay any fee.

II. Addressing film development and production

9. Public funds should reduce the risks linked to development for producers and, if possible, make a more effective use of production funding by providing adequate development funding.

10. In particular, development support should encourage the emergence of new talent and innovation.

11. Film policies should reward producers and distributors for taking greater responsibility for the results of their films. Therefore, producers and distributors should be encouraged to set up common strategies, as early as possible in the production process, with a view to better taking into account promotion and distribution costs and to developing realistic distribution strategies.

12. Film policies should adopt a comprehensive and structured approach to helping companies to grow, for instance by providing the opportunity for the funding of slates of films and facilitating access to finance.

III. Improving the regulatory frameworks for co-production and co-distribution

13. Co-production and co-distribution foster artistic and technical co-operation across borders and contribute to transnational circulation of films. Encouraging the conclusion of co-production and co-distribution agreements and ensuring their effective implementation are instrumental in promoting cultural diversity through film production. The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions recognises the contribution of co-productions to diversity and invites Parties to encourage the conclusion of co-production and co-distribution agreements (Article 12.e).

14. A range of opportunities exist for co-production in Europe and between European and non-European producers, but co-production rules in Europe need to support films' artistic aims properly and to contribute as much as possible to the cross-border distribution of films.

15. The European Convention on Cinematographic Co-Production could advance these two objectives. It might need to be reviewed to fully take into account the changes that are taking place in how films are made, distributed and viewed, as well as the overall objectives of film policy.

Recommended measures

16. Member states should engage in a review of the European Convention on Cinematographic Co-Production to take into account new developments in markets, in technologies and in co-production practices.

17. States should also turn their attention to supporting slates of co-productions.

18. The circulation of co-produced works in each of the territories could be enhanced by making public funding conditional upon the existence of a realistic distribution plan.

IV. Encouraging the distribution and circulation of European films

19. European countries produce a wealth of films, but many of them encounter severe difficulties in reaching audiences, being in effect "crowded out" by productions from dominant players. The potential for cultural diversity of European film is therefore not being fully realised.

Recommended measures

20. While maintaining their commitment to supporting the circulation of films in cinemas, public policies should take account of how, film is consumed in the digital age. Public policies should also fully embrace the role that broadcasters (in particular public-service broadcasters), video on-demand providers and festivals play – or can play – in the circulation of films.

21. Linguistic barriers are ones that can be largely overcome by technology. Therefore, providing support for the subtitling and dubbing of films, in particular those intended for digital distribution, should be a priority.

22. All operators involved in the distribution of audiovisual content have a role to play in the development and implementation of film policy objectives. Such operators need to define and implement clear strategies to contribute to film policy goals relating not only to the financing of production, but also to the promotion of films and of film culture.

23. Member states should consider the possibility of improving the monitoring of the cultural objectives of the European Convention on Transfrontier Television in order to assess whether those objectives have a positive impact on the circulation of European films.

V. European cinema and young people

24. Particular attention needs to be paid to measures aimed at children and young people: the films they watch, how they watch them and how they engage with film culture. The development of audiences which appreciate the diversity of European films and actively seek such films is crucial to the success of European film. The objective is not

to support films specifically produced for young audiences, which is a separate issue, but rather to bring quality films to young audiences, with a view to teaching them about the variety and richness of film culture.

25. Film education is essential for the development of young audiences. It is important to provide film education both within the curriculum and through out-of-school activities. Within schools, the objective is to bring films to young audiences (discovering a film and making comments about it and analysing it). Outside school, several objectives can be advanced: encouraging film practice (through the organisation of specific workshops with a view to training young people in film programming, film direction, etc.) and nurturing the “film experience” (through taking them to cinema screenings).

Recommended measures

26. Public film policies should actively support the production and distribution of films for young audiences.

27. Film education should be included in the curriculum in schools and film education initiatives should be developed both inside and outside school. Film education should preferably include the cinema experience.

28. Obstacles to the use of film in school should be removed, for instance by providing adequate equipment and facilitating licensing or special pricing. Producers of publicly supported films could be asked to agree to the educational use of their films as a condition for receiving public funding.

29. Instruments to facilitate the transborder circulation of European films for young audiences should be adopted or reinforced, for instance a video-on-demand service for children and young people both within and outside the educational environment, a European film education network and a European children’s channel.

30. Public funding for the dubbing and subtitling of children’s film should be a priority.

VI. Realising the full potential of digital technologies

31. Digital technologies are having an impact on the whole value chain, leading to new ways of creating, producing, distributing and accessing film, and offering new opportunities such as better quality of screening, increased flexibility of programming, and direct access to much wider film catalogues – at any time, and anywhere.

32. These benefits do not, however, flow automatically from the technology. Technology in itself cannot secure the circulation of European films.

33. More specifically, many European cinemas are struggling to switch to digital, in particular those with one or only a few screens.

Recommended measures

34. Robust, well informed public policies relating to digitisation in every phase of the value chain need to be developed urgently in every State Party to the European Cultural Convention.

35. Public policies should urgently and proactively take into account the need to support the emergence of business models for digital film and the development of new platforms and services for European cinema.

36. Such models should respect the diversity and specificity of cinemas in Europe and of their programming, and make sure that distributors keep control of release plans. Models should also ensure that all theatres wishing to engage in such a “digitisation process” can do so in a co-ordinated way, and within a reasonable timeframe.

37. European participation in the ongoing international digital cinema standards definition process should be strengthened and enforcement of these standards should be ensured.

38. Public intervention, including public-private partnerships, is essential to avoid further reduction of the screen space for European film.

39. Public policies should also:

- provide incentives for producers and distributors to take advantage of the opportunities that digital distribution offers;
- facilitate transborder distribution of film in digital format;
- review the release-window system to maximise the potential of digital distribution in all its forms;
- encourage people to copy digital films via legal means and combat film theft and infringement of copyright;
- encourage the accessibility of European film heritage through Europeana.

VII. Transparency and accountability

40. Transparency and accountability are key elements of effective policy making. The current level of transparency should not be considered as satisfactory: for example, vital data, related to film distribution on DVD, on television and through new on-demand services, or the presence of European film on international markets, are either too limited or not available.

41. Evaluation of performance and the results obtained, both cultural and economic, provides the basis for demonstrating the value of film policies and their further improvement.

42. Comprehensive, reliable and up-to-date data on the sector will furthermore contribute to a more favourable environment for private investment and for bank involvement in the sector.

Recommended measures

43. Both the providers and the recipients of public support should have the duty to ensure that the information is available to permit the proper evaluation and the fair remuneration of owners of copyright and the repayment of public loans.

44. In a context of growing competition between the various stakeholders, voluntary disclosure of data appears insufficient to ensure transparency. Therefore, regulatory intervention may be required both to ensure fair play and the accuracy, availability and disclosure of data, while securing the legitimate confidentiality of individual companies.

45. Public authorities in charge of film policies should be empowered to collect, process and make public, relevant data on all aspects of film production, distribution and exploitation, and be provided with sufficient resources to perform this task on the basis of sound methodology, as proposed by the European Audiovisual Observatory and the European Film Agency Research Network.

46. Governments should strengthen the position of the European Audiovisual Observatory and its ability to rise to the challenges of the audiovisual markets and technological change.