

Regulations concerning co-production support for feature-length fiction, animation and documentary films for 2015/2016

1. Call for projects

1.1. Applications

1.1.1. Applications for financial support shall be submitted to the SCFF Management by one of the co-producers based in MEDIA sub-programme member countries in Former Yugoslavia or Southeast Europe, with the consent of all the co-producers.

1.1.2. Applications shall be submitted electronically in English in line with the application forms published on the SCFF website and must include relevant evidence of financing. Incomplete applications or projects, or those that do not conform to the eligibility criteria at the time when they are submitted for funding, shall be declared ineligible.

1.1.3. The Executive Director may carry out any verification he or she considers appropriate as to the compliance of the project with SCFF Regulations.

1.2. Deadlines

1.2.1. Application deadlines, fixed biannually by the SCFF Management, will be published on the SCFF website:

1.3. Currency and applicable exchange rates

1.3.1. The accounts of SCFF are kept in Bosnian currency (BAM), and the amount of financial support is expressed in Bosnian Konvertibilna Marka (KM).

1.3.2. In determining the equivalent in KM 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 KM is that regularly set by the Central Bank of Bosnia and Herzegovina.

1.4. Re-submissions

1.4.1. A project can be resubmitted twice to the SCFF Management.

1.4.2. A project previously rejected by the SCFF Board can be resubmitted only once. Resubmissions must be accompanied by a detailed report of all applicable changes.

2. Eligibility criteria

2.1. General provisions

2.1.1. The SCFF Management will decide on the eligibility of projects based on the eligibility criteria listed hereafter.

2.1.2. Projects for feature-length fiction, animation and documentary films of a minimum length of 70 minutes, intended for cinema release, are eligible.

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

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

2.1.5. Projects must include a digital master copy for cinema release (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema).

2.2. Eligible producers/sales agents

2.2.1. Financial support may only be awarded to European legal persons governed by the legislation of one of the Creative Europe MEDIA sub-programme member states, whose principal activity consists in producing cinematographic works, and whose origins are independent of public or private broadcasting organisations or telecom companies.

2.2.2. 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.

2.2.3. 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.

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

2.3. Co-production structure

2.3.1. Projects submitted must be co-productions between at least two independent producers, one from Creative Europe MEDIA subprogram member country and one from a non- Creative Europe MEDIA subprogram member country.

2.3.2. Applicant producer must be from a Creative Europe MEDIA subprogram member country in Former Yugoslavia or Southeast Europe region¹.

2.3.3. The coproduction share of Creative Europe MEDIA subprogram member countries producer(s) must be at least 25% (20% for documentaries).

2.3.4. The coproduction share of non- Creative Europe MEDIA subprogram member countries producers must be above 30% of the total budget.

2.3.5. The structure of the co-production shall be attested by a duly signed co-production agreement. For the purposes of the project selection procedure, 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 overbudget;
- reference to the applicable treaties.

2.4. Technical and artistic co-operation and financial co-productions

2.4.1. Projects can be shot anywhere in the world, artistic and technical team can be from anywhere in the world.

2.4.2. However, projects must display artistic and/or technical co-operation between at least two co-producers, one established in MEDIA subprogram member country and one in a non-Creative Europe MEDIA subprogram member country. 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 roles), as well as on the studio or

¹ Slovenia, Hungary, Croatia, Romania, Bosnia and Herzegovina, Montenegro, Bulgaria, Albania, Greece, Macedonia, Cyprus and Malta.

shooting location, and the location of the post-production and laboratory facilities and service providers.

2.4.3. However, a co-production with an exclusively financial contribution from one or more co-producers is also eligible.

2.5. Start/end of principal photography

2.5.1. Applications are eligible only if principal photography/principal animation is scheduled to commence not later than six months after the application has been submitted.

2.5.2. Applications are eligible only if principal photography/principal animation is scheduled to be completed before November 2016.

2.5.3. Applications with projects in production and postproduction are also eligible. Producers have to provide assembly/rough cuts of the material.

2.6. Copyright regulations and joint ownership of the negative

2.6.1. 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.

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

2.7. Financial requirements

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

2.7.2. At least 60% of the overall financing 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 confirmation that the financing threshold has been met. Deferrals (including producers' fee and overheads) and in-kind contributions shall be accepted as confirmed sources of financing only up to a maximum of 20% of the total co-production budget.

2.7.3 The SCFF Management may request any further evidence it may consider necessary in order to assess the financial capacity of the co-producers or financiers.

2.7.4. The production budget shall clearly include the costs necessary for the completion of a digital master copy for cinema release (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema).

3. Selection of projects

3.1. Analysis by the SCFF Management

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

3.2. Selection criteria

3.2.1. The Board will select projects keeping in mind the objectives of the Fund.

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

ARTISTIC CRITERIA

Quality of the script/level of development:

- Story and theme (originality of content, subject);
- Characters and dialogue;
- Narrative structure;
- Style (director's intention, cinematic vision, genre, tone).

Contribution of the creative team (including experience, track records):

- Director and author(s);
- Producers;
- Cast and crew.

PRODUCTION CRITERIA

- Artistic and technical co-operation;
- Circulation potential (festivals, distribution, audience);
- Financing (consistency and level of confirmed financing).

4. Nature of financial support and amounts

4.1. Production support

4.1.1 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 to coproduction shall not exceed 50% of the total production cost of the film and shall in no event be superior to the equivalent of €60 000.

4.2.2. The budget, the financing plan and the amount of support requested from SCFF will be assessed and verified by the SCFF Management.

4.3. Allocation of financial support

4.3.1. The financial support shall be allocated to the producer from Creative Europe MEDIA subprogram member country in Former Yugoslavia or the Southeast Europe region.

4.4. Validity of the support decision

4.4.1. The validity of any decision to support the co-production of a cinematographic work will expire if no agreement between SCFF and the co-producers has been entered into within a period of six months from the date when the SCFF Management decision was taken and if principal photography has not commenced within the same period. For duly justified reasons, the SCFF Management may extend such a period by a maximum of six months.

5. Support agreement and payments

5.1. Conclusion of the support agreement

5.1.1. An agreement between the co-producers involved and the Director of OAC, acting on behalf of SCFF shall stipulate the terms on which the support is awarded.

5.1.2. The support agreement shall be drawn up on 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 SCFF;
- confirmation of artistic and/or technical co-operation;
- confirmation of the attribution of provisional national accreditation (if any);
- contracts or firm undertakings confirming the financing of the project;
- any other document proving that the conditions precedent set by the Board of Management have been met.

5.1.3. The Director may, at his or her own discretion, terminate the support agreement 10 years after the first commercial exploitation of the film.

5.2. Payment of financial support

Unless otherwise agreed by the Director, payment will be made in three instalments:

5.2.1. The first instalment of 50% 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;
- if appropriate, after signature of the collection account management agreement.

5.2.2. The second instalment of 35% of the total amount awarded is payable:

- after submission of the rough cut of the film;
- 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;

5.2.3. The third instalment of 15% of the total amount awarded is payable:

- after confirmation of completion of the digital answer print from the laboratory (minimum 2K, compatible with DCI specifications or ISO norms on D-Cinema);
- after approval of the credit list by the SCFF Management;
- after receipt and approval by SCFF of the total final costs of the production and the expenditure of each co-producer, presented in a standard form approved by SCFF and certified by a qualified chartered accountant independent from the production companies involved, showing any variations in the costs compared with the budget approved by the SCFF Management;
- after receipt of the final financing plan;
- after receipt of the evidence of the payment of the minimum guarantees included in the financing plan and the list of deductions approved by SCFF. Minimum guarantees paid in cash shall not be accepted;
- after receipt and approval by SCFF of the publicity material for all the co-producing countries and receipt of a HD file of the film with English subtitles, or with a sound track in English;

5.3. Production bank account

Payment of the amount awarded shall be made by SCFF to the respective productions bank account in the Bank of the applicant producer of the film.

5.4. Completion guarantee

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

6. References to SCFF's Support

6.1. SCFF' 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 in accordance with its financial contribution, as well as in major publicity material for the film.

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

7. Repayment of the support

7.1. SCFF recoupment corridor

7.1.1. The support amount is repayable, from the first revenue, from each producer's net receipts at a rate equal to the percentage of the SCFFs share in the financing of the film, and after deduction – if formally approved by the SCFF Management– 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. Where part of the distribution minimum guarantees are financed by "Sofica" and/or other financial institutions (e.g. gap financing), these sums shall not be recouped before SCFF. Any other deductions or comparable financing arrangements are to be approved by the SCFF Management.

7.1.2. Repayment is due up to 100% of the amount awarded.

7.1.3 When there is a group of applicant co-producers (i.e. co-producers within the same country in the region), one co-producer responsible for reporting obligations and repayment of the sums due by the whole group shall be appointed. Failing this, SCFF will appoint one.

7.2. Producers' net receipts

7.2.1. The following are considered as producers' net receipts: all receipts resulting from 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 "deductible costs" linked to the exploitation of the film (as defined in Article 7.3.1. 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 SCFF as well as those concluded after completion of the answer print are considered as net receipts for the purpose of repayment to SCFF. The SCFF Management must have received valid documentation before payment of the second instalment of the support (see Article 5.2.2. above).

7.2.3. Should the producers and/or distributors be beneficiaries of any form of support covering a part or the totality of the distribution costs, this must be clearly indicated in the revenue statements.

7.3. Deductible amounts

All deductions must be approved by the SCFF Management.

7.3.1. The only "deductible costs" accepted by SCFF for the calculation of net receipts are:

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

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.

7.3.3. In the event that the distribution costs are directly borne by the producers and such costs are not already included in the financial statements provided by the distributors and/or sales agents, SCFF may accept the deduction of such costs as follows:

a) Should the producers decide to distribute the film themselves, the corresponding costs shall be deducted in the same manner as indicated in Article 7.3.1., provided that these costs are certified by an independent chartered accountant who confirms that such costs are directly related to the film in question, were established using project-based accounting, and were not included in the production budget. The deduction of a distribution commission is acceptable provided that it is within the percentage limits generally accepted in the territory in question and for the relevant rights.

b) Should the producer appoint a distribution company which does not bear all the distribution costs, the share of the costs borne by the producer himself shall be deducted in the same manner as indicated in Article 7.3. provided that (i) the distribution company certifies in writing that it has not borne the distribution costs deducted by the producer, and (ii) the distribution costs deducted by the producer are certified by an independent chartered accountant who confirms that these are directly related to the film in question, were established using project-based accounting and were not included in the production budget.

7.3.4. A sales agent's fee superior to 25% can be accepted on condition that:

a) the distribution commission of up to 25% (per set of rights sold in one territory), except in domestic co-producing countries, and with the exception of the case mentioned in Article 7.3.3.;

the fee includes the technical and publicity costs listed in Articles 7.3.1. to 7.3.3. No other deduction from gross receipts will in this case be accepted by SCFF;
and

b) the fee is not superior to 50% of gross receipts.

7.4. Revenue statements

7.4.1. Starting from the first commercial exploitation of the project, co-producers shall, without prior request, provide SCFF with revenue statements concerning the exploitation of the film at the end of each half-year period for the first two years and at the end of each calendar year thereafter. These statements shall be presented in a clear and detailed format, showing the exploitation results of the film for each type of media, clearly indicating the "deductible costs", and shall include a copy of the royalty statements from distributors and sales agents, as well as a copy of all sales and licence agreements. SCFF reserves the right, if necessary, to request producers to use a standard form approved by SCFF for the presentation of revenue statements.

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

7.5. Collection account

SCFF reserves the right to demand the setting up of a collection account by a collection agency for every project it supports regardless of the projects budget. SCFF 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 request the prior approval of the SCFF Management, and provide adequate documentation, concerning any modification to the artistic, technical, legal or financial aspects of the project as approved by SCFF.

8.1.2. Any substantial modification of the artistic or financial structure of the project must be approved by the Director of OAC. Any other changes shall be approved by the SCFF Management.

8.1.3. Without prejudice to the above provisions, a change of director shall automatically entail the cancellation of the SCFF financial support to the project, provided that shooting has not yet started. Producers are entitled to submit a new application for support.

8.2. Decrease in 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 SCFF and the producers, the support granted by SCFF will be reduced proportionally to the decrease exceeding 10%.

8.3. Cancellation of financial support

8.3.1. SCFF financial support shall be cancelled if the film is not completed within the time limit set in the support agreement.

8.3.2. SCFF' financial support shall also be cancelled or immediately repayable if a producer fails to meet the terms of these Regulations or the obligations contained in the terms of the support agreement.

8.3.3. SCFF may exceptionally and for duly justified reasons derogate from Article 8.3.2.

9. Dispute settlement and interpretation of the Regulations

9.1. There can be no appeal against a decision 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.

9.3. However, the parties may submit the dispute for a decision to a single arbitrator chosen by them by common agreement.

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* having regard to the principles of law, as well as observing customs used in the cinematographic and audio-visual field.

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

9.7. OAC reserves the right to interpret and amend these Regulations.