

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2015 Nr. 202

A. TITEL

*Verdrag tussen de Regering van het Koninkrijk der Nederlanden en de Regering van de Republiek Zuid-Afrika betreffende audiovisuele coproductie
(met Bijlage);
's-Gravenhage, 11 december 2015*

B. TEKST

Agreement between the Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa on audiovisual co-production

Preamble

The Government of the Kingdom of the Netherlands and the Government of the Republic of South Africa (hereinafter jointly referred to as the "Parties" and in singular as a "Party");

Seeking to enhance co-operation between the two countries in the audiovisual sector;

Desirous of expanding and facilitating the co-production of audiovisual works which may be conducive to the audiovisual industries of both countries and to the development of their cultural and economic exchanges;

Convinced that these exchanges will contribute to the enhancement of relations between the two countries;

Have agreed as follows:

Article 1

Definitions

1. For the purposes of this Agreement:

(a) „audiovisual work" means, any aggregate of images or of images and sounds, embodied in any material, and includes but is not limited to, fiction films, documentaries, animation films and digital format productions, but does not include an item which is outside the scope of the laws and regulations applicable to the audiovisual industry of either Party;

(b) „co-producer" means audiovisual production companies or producers of South Africa or audiovisual production companies or producers of the Netherlands involved in the making of a co-produced audiovisual work, or, in relation to third-party co-productions under Article 7(4), includes co-producers which are not nationals of either South Africa or the Netherlands; and

(c) „co-produced audiovisual work" is an audiovisual work made by one or more South African producers in conjunction with one or more producers from the Netherlands through joint investment and copyright, and includes an audiovisual work to which Article 7(4) applies.

2. The provisions of the Agreement are accordingly applicable to co-productions for television, video and other categories of audiovisual works, only if such is provided for by the national laws and regulations of both the Parties.

3. Regarding the Kingdom of the Netherlands, this Agreement shall apply to the European part of the Kingdom of the Netherlands only.

Article 2

Competent authorities

1. The Competent Authorities responsible for the implementation of this Agreement shall be:

- (a) in the case of the Government of the Republic of South Africa, the National Film and Video Foundation;
and
 - (b) in the case of the Government of the Kingdom of the Netherlands, the Netherlands Film Fund.
2. The Parties shall inform each other in writing in case of alteration of the Competent Authorities.
 3. The Competent Authorities shall acknowledge co-productions to which this Agreement applies.

Article 3

Recognition of national audiovisual works and benefits

1. The audiovisual works that are co-produced within the scope of this Agreement shall be designated by the Competent Authorities of each of the Parties as national audiovisual works, in accordance with the applicable law and regulations in the territories of each of the Parties.
2. The co-producers of audiovisual works that are co-produced within the scope of this Agreement shall be granted access to support and other financial advantages in the territory of each of the Parties in accordance with their national laws and regulations.
3. The Competent Authorities communicate to each other a list of texts of the national laws and regulations from each of the Parties relating to support and financial advantages for audiovisual works. If these texts come to be amended by one of the Parties, in whatever way, the Competent Authority of the involved Party undertakes to communicate the contents of these changes to the Competent Authority of the other Party.
4. The benefits intended by this Agreement for co-produced audiovisual work shall be granted to co-producers which are considered to operate an adequately equipped technical and financial entities and to have sufficient professional qualifications and experience. Both Parties will inform each other via their Competent Authorities regarding this acknowledgement.

Article 4

Office of co-producers

Co-producers of audiovisual works to be produced within the scope of this Agreement shall have their registered office or a branch in the territory of one of the Parties.

Article 5

Approval of a co-produced audiovisual work

1. The Competent Authorities, acting jointly, may approve a co-production audiovisual work which complies with the requirements set down in the Annex to this Agreement.
2. The approval shall be in writing and shall specify the conditions, if any, upon which it is granted.
3. The Competent Authorities shall communicate to one another relevant information regarding the approval of qualifying audiovisual works. Before rejecting a request for approval, both Competent Authorities shall consult and agree on such an outcome.
4. Provisional or final approval can only be withdrawn with the mutual consent from both Competent Authorities in a case where substantial deviations occur in the artistic, financial or technical characteristics of the co-produced audiovisual work as specified in the request for provisional or final approval.
5. The provisional or final approval by the Competent Authorities shall not be related in any way to the audiovisual work rating systems of either Party.

Article 6

Contributions

1. The proportion of respective contributions of the co-producer(s) of each Party in a co-produced audiovisual work shall be no less than 20% (twenty per cent) and not more than 80% (eighty per cent) of the audiovisual work's total budget. In exceptional circumstances, the Competent Authorities may agree to different limits, but subject to new minimum and maximum limits of no less than 10% (ten per cent) and no more than 90% (ninety per cent), respectively.

2. Every co-producer shall contribute an effective artistic and technical participation and comply with the respective conditions of each Party.

3. The participation of the minority co-producer shall comprehend both artistic and technical positions in accordance with its respective contribution.

Article 7

Participation, location filming and soundtrack

1. Major artistic and technical positions in a co-produced audiovisual work shall be held by persons from the following categories:

With regard to the Republic of South Africa:

- (a) citizens of the Republic of South Africa; or
- (b) permanent residents of the Republic of South Africa;
- (c) persons having the nationality of another member state of the African Union.

With regard to the Kingdom of the Netherlands:

- (a) persons having the Dutch nationality; or
- (b) persons permanently residing in the part of the Kingdom of the Netherlands referred to in Article 1(3); or
- (c) persons having the nationality of another member state of the European Union; or
- (d) persons having the nationality of another state that is party to the Agreement on the European Economic Area of 2 May 1992.

2. A co-produced audiovisual work shall have main artists and technicians originating from either of the Parties to participate in it. The proportion of composition of main artists and technicians originating from either of the Parties shall be negotiated by the co-producers before the audiovisual work is submitted to the Competent Authorities of both Parties for provisional approval.

3. Persons not belonging to the categories described in sub-Article(1) can only be accepted as equals to the persons belonging to the categories described in sub-Article(1) subject to the written approval by both Competent Authorities, taking into account the requirements of the audiovisual work.

4. The Parties agree that if audiovisual works are co-produced with one or more co-producers from other states that one of the Parties has concluded co-production agreements or treaties with, such audiovisual works can also be granted access to the benefits of this Agreement by the Competent Authorities on a case by case basis. The proportion of the contributions from a state to such a co-production shall be no less than 20% (twenty per cent) of the audiovisual work's budget. In circumstances, the Competent Authorities may agree to different limits, but subject to a limit of 10% (ten per cent).

5. Studio shootings and shootings on location for a co-produced audiovisual work shall be preferably done in studios established in the territory of one, or both of the Parties. The Competent Authorities of both Parties can approve for artistic reasons that shootings on location takes place elsewhere, in case the scripts or the original setting of the audiovisual work so demands.

6. The original soundtrack of every co-produced audiovisual will be made in one of the official languages of either the Republic of South Africa or the Kingdom of the Netherlands or in any combination of the permitted languages. The dialogues can contain other languages in case the script so demands.

Article 8

Import

Each of the Parties shall provide, in accordance with the relevant domestic laws in force in their countries, temporary admission of cinematographic and technical equipment for the making of co-production audiovisual works, free of import duties and taxes, subject to provision of security, until the equipment is exported.

Article 9

Immigration and facilitation

The Parties shall permit the personnel of the other Party, who conform with Article 7(1), or of a third state contemplated in Article 7(4), as the case may be, to enter and remain in South Africa or the Netherlands for the purpose of making or exploiting a co-produced audiovisual work, subject to the requirement that they comply with the relevant laws in the respective territories relating to entry and stay including return.

Article 10

Assessment and evaluation

1. A general balance shall be maintained between the Parties with regards to actors' performances and artistic involvement and financial and technical participation (studio's, laboratories and post production) originating from either of the Parties. Maintenance of this balance shall be assessed and evaluated by the joint Committee referred to in Article 15(2).
2. For the purpose of such assessment and evaluation, the Competent Authorities of both Parties shall, on the basis of the files for the access granting procedure of an audiovisual work to the benefits of this Agreement, establish a recapitulative list of all subsidies and financing sources.

Article 11

Ownership

In order to have access to the benefits of this Agreement, the co-producers shall jointly have the ownership of the tangible elements of the audiovisual work, including the film master, and all other source materials of the co-produced audiovisual work. Further, each co-producer shall have the right to make copies of the co-produced audiovisual work for exploitation in its own country. The audiovisual work material shall be kept in a place mutually agreed by the co-producers and to which each co-producer has access.

Article 12

Credits

Credits, trailers and all promotional material of audiovisual works coproduced within the scope of this Agreement shall mention the audiovisual work's status as official coproduction between the Republic of South Africa and the Kingdom of the Netherlands or where relevant, a credit reflecting the participation of the Republic of South Africa, the Netherlands and a third party co-producing country.

Article 13

Share of revenues

1. In principle, the share of all revenues derived from exploitation of an audiovisual work co-produced within the scope of this Agreement shall be proportional to the financial contribution from each co-producer. If duly reasoned, contributions with regards to acting and to artistic and technical involvement may be taken into consideration.
2. Without prejudice to the principle set out in sub-Article(1), the co-producers, instead of sharing revenues, can opt for dividing territories between them in which they take all revenues, or for a combination of both formulae, taking into account the difference of volume of the existing markets in the territories of the Parties.
3. The Competent Authorities shall strive to align the recoupment schedules used for designating revenues for the repayment of support and other financial advantages supplied by the Parties in accordance with their national procedures and legislation.

Article 14

Film co-operation

1. The Agreement between the co-producers shall provide for arrangements with regards to the revenues derived from international sales and distribution of the audiovisual work co-produced within the scope of this Agreement.
2. The Parties agree to use their best efforts and means available to enhance the distribution and promotion of the co-produced audiovisual works in their territories.
3. The Parties agree to use their best efforts and means available to bring to the public attention and to generate publicity for the audiovisual works co-produced within the scope of this Agreement, during national film festivals, film education programs, programs to promote the participation in film festivals and other cultural events.
4. For the presentation in film festivals of audiovisual works co-produced within the scope of this Agreement the majority co-producer is primarily responsible, unless otherwise agreed by the co-producers.

Article 15

Joint committee

1. The Competent Authorities from both Parties shall inform each other with regards to the application of this Agreement, in order to solve problems in connection with the interpretation of the provisions of this Agreement. Further, the Competent Authorities from both Parties shall propose on a case-by-case-basis, for the enhancement of the collaboration between the Parties through this Agreement and corresponding amendments of this Agreement, in the interests of the Parties.
2. A joint Committee is hereby established from representatives of the governments of the Parties, the Competent Authorities and the audiovisual industry, in order to assess and evaluate application of the Agreement and to recommend amendments to the Agreement.
3. The joint Committee will meet every two years, alternately in the Netherlands and in South Africa.
4. Further, the joint Committee will meet upon request of one of the Parties, within 3 (three) months after the date of such request, in particular if relevant legislation from the Parties is amended or if application of this Agreement meets severe difficulties.
5. The Competent Authorities shall exchange with each other all information regarding co-production, audiovisual exchanges and, in general, any details relating to cinematographic relations between both Parties, subject to the applicable laws of the respective countries of the Parties.

Article 16

Annex

1. The Annex to this Agreement forms an integral part of this Agreement and shall be read in conjunction with the provisions of this Agreement.
2. The Competent Authorities shall jointly decide on detailed arrangements, within the framework of this Agreement, to facilitate the implementation and application of this Agreement.

Article 17

Amendments

1. Any amendment of the Agreement shall be agreed between the Parties through an exchange of notes between the Parties through diplomatic channels, and shall enter into force in accordance with Article 20(2).
2. Notwithstanding sub-Article(1), any amendments of the Annex to this Agreement shall be agreed between the Competent Authorities, through diplomatic notes and shall enter into force on the date specified in such notes.

Article 18

Obligations

The provisions of this Agreement are without prejudice to the international obligations of the Parties, including the obligations of the Kingdom of the Netherlands arising from European Union Law.

Article 19

Settlement of disputes

Any dispute between the Parties arising out of the interpretation, application or implementation of the provisions of this Agreement shall be settled through consultations and negotiation through the diplomatic channel.

Article 20

Entry into force and termination

1. This Agreement is concluded for an indefinite period of time.

2. This Agreement shall have effect as of the first day of the second month after the Parties have informed each other in writing via diplomatic channels that the constitutional or national conditions to become effective have been met.

3. This Agreement remains in force unless terminated by one of the Parties by written notice via diplomatic channels. Six months after receipt of such notice by the other Party to this Agreement it shall become ineffective. Termination of this Agreement has no effect on the completion of co-productions approved before the termination of this Agreement.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed and sealed this Agreement in duplicate in the English language.

DONE at The Hague on this 11th day of December 2015.

For the Government of the Kingdom of the Netherlands,

M. BUSSEMAKER

For the Government of the Republic of South Africa,

N.E. MTHETHWA

Annex

1. Provisional approval

To be granted access to the benefits of this Agreement, the co-producers of the respective Parties shall, append to their request of provisional approval, at the latest 40 days before the beginning of the shootings, address to the Competent Authorities, a file including:

- (a) a document concerning the acquisition of the author's rights for the exploitation of the audiovisual work;
- (b) a synopsis providing accurate information on the nature of the topic of the audiovisual work;
- (c) a list of the estimated cast and crew (the artistic and technical professionals involved);
- (d) the provisional work plan with the indication of the amount of days and/or weeks of shootings (studios and outside) and of the countries (or regions) in which these shootings will take place;
- (e) estimated and detailed budget and financial plan, including charges and resources of each Party;
- (f) contracts or confirmations of commitment for director and where these have already been signed with cast and crew with each of concerned Party;
- (g) promotion and theatrical and non-theatrical distribution plans;
- (h) the co-production contract(s);
- (i) any other document requested by the authorities to examine the artistic, technical and financial sides of the project.

The Competent Authority of the Party with minority participation only grants its approval after receipt of the advice of the Competent Authority of the Party with majority participation.

2. Final approval

At the latest four months after the theatrical release on the territory of one of the Parties, the producers shall address to their Competent Authorities a file including:

- (a) an update of the provisional file;
- (b) audited production cost report, prepared by a certified accountant independent of the production company;
- (c) final financial structure showing any variance from the original financial structure submitted at the Advance Ruling stage accompanied by all of the co-producers related contracts;
- (d) complete list of head and tail credits giving the nationality of each participant.

This list must be approved and signed by the co-producer.

D. PARLEMENT

Het Verdrag, met Bijlage, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring van de Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag, met Bijlage, zullen ingevolge artikel 20, tweede lid, in werking treden op de eerste dag van de tweede maand nadat de partijen elkaar schriftelijk via diplomatieke kanalen op de hoogte hebben gesteld dat is voldaan aan de constitutionele of nationale voorwaarden voor inwerkingtreding.

J. VERWIJZINGEN

Titel : Overeenkomst betreffende de Europese Economische Ruimte;
Oporto, 2 mei 1992
Tekst : *Trb.* 1992, 132 (Nederlands)
Laatste *Trb.* : *Trb.* 2014, 149

Uitgegeven de *dertigste* december 2015.

De Minister van Buitenlandse Zaken,

A.G. KOENDERS