

No. 27587

**SPAIN
and
PORTUGAL**

**Agreement on cinematographic relations (with annex).
Signed at Madrid on 8 February 1989**

Authentic texts: Spanish and Portuguese.

Registered by Spain on 24 October 1990.

**ESPAGNE
et
PORTUGAL**

**Accord sur les relations cinématographiques (avec annexe).
Signé à Madrid le 8 février 1989**

Textes authentiques : espagnol et portugais.

Enregistré par l'Espagne le 24 octobre 1990.

[TRANSLATION — TRADUCTION]

AGREEMENT¹ ON CINEMATOGRAPHIC RELATIONS BETWEEN
THE KINGDOM OF SPAIN AND THE PORTUGUESE REPUBLIC

The Kingdom of Spain and the Portuguese Republic,

Aware that co-productions can contribute to the development of both their film industries and to the growth of economic and cultural exchanges between the two countries,

Resolved to encourage the development of cinematographic cooperation between Spain and Portugal,

Have agreed as follows:

Article I

For the purposes of this Agreement, the term “film” includes cinematographic works of any length and using any technical medium, including fictional films, animated productions and documentaries, produced in accordance with the provisions in force in each country and for primary distribution to cinemas in both countries.

Films co-produced and qualified under this Agreement shall be considered both Spanish and Portuguese productions and shall be fully entitled to the benefits resulting from the provisions in force or to be enacted by each country.

These benefits shall accrue solely to the producer of the country that grants them.

Films to be co-produced by the two countries must be approved, after consultation between the competent authorities:

In Spain: by the Instituto de la Cinematografía y de las Artes Audiovisuales.

In Portugal: by the Portuguese Cinema Institute.

Article II

In order to qualify for the benefits of co-production, films must be made by producers whom the competent national authorities mentioned in article I consider to have good technical organization, sound financial backing and recognized professional standing.

Article III

Applications for co-production privileges submitted by producers from each of the two countries must, in order to be approved, be drawn up in accordance with the application procedure set forth in the annex to this Agreement, which forms an integral part thereof.

A co-production shall be recognized as such provided that it is made in conformity with the project proposal.

¹ Came into force on 1 August 1990, the date of the last of the notifications (of 28 June and 1 August 1990) by which the Parties informed each other of the completion of the required procedures, in accordance with article XVI.

Article IV

The proportion of the respective contributions of the co-producers from the two countries may vary from 20 (twenty) to 80 (eighty) per cent for each film.

The minority co-producer shall be required to make an effective technical and creative contribution. In principle, the contribution of the minority co-producer in creative staff, technicians and actors shall be in proportion to his investment. In exceptional circumstances, departures herefrom may be made through agreement between the competent authorities of both countries.

Creative staff shall mean those who act in an authorial capacity (author of any pre-existing work, writer of the script or screen adaptation, director, music composer), as well as the chief editor, the director of photography and the art director. The contribution of each member of the creative staff shall be considered individually. In principle, each country's contribution must include the participation of at least two of the above-mentioned creative staff (or only one in the case of the director), one actor in a leading role and one actor in a supporting role.

Article V

The films must be made by Spanish or Portuguese directors or directors who are residents of Spain or Portugal, with the participation of technicians and performers who are of Spanish or Portuguese nationality or residents of Spain or Portugal.

If the film so requires, the participation of performers and technicians other than those mentioned in the preceding paragraph may be permitted by agreement between the competent authorities of the two countries. This option also applies to directors.

When all or part of the film is shot in a third country, preference shall be given to production staff from the two countries parties to this Agreement.

Article VI

The two Contracting Parties shall view with interest the co-production of films by Spain, Portugal and other countries to which either of the two parties is bound by a co-production agreement.

The eligibility of such films shall be considered on a case-by-case basis.

No minority contribution to such films shall be less than 20 (twenty) per cent of the budget, unless an exception is granted.

Article VII

A balance must be achieved with respect both to participation by creative staff, technicians and actors and to the financial and technical resources of the two countries (studios and laboratories).

The Joint Commission referred to in article XVI of this Agreement shall determine whether such a balance has been achieved and shall decide what measures are necessary to correct any imbalance.

Article VIII

Studio scenes shall be shot and sound and laboratory work shall be carried out in accordance with the following provisions:

Studio scenes shall be shot preferably in the country of the majority co-producer.

In every case, each co-producer shall be a co-owner of the original negative (image and sound), regardless of where the negative is stored.

In every case, each co-producer shall be entitled to an inter-negative in his own language version. If one of the co-producers waives this right, the negative shall be stored at a place mutually agreed upon by the co-producers.

In principle, the negative shall be developed at a laboratory in the majority country, where copies intended for showing in that country shall also be made. Copies intended for showing in the minority country shall be made at a laboratory in that country.

Article IX

Subject to the legislation and regulations in force, each Contracting Party shall facilitate the entry into and temporary residence in its territory of the creative and technical personnel of the other party.

They shall similarly permit the temporary entry and re-export of any film equipment necessary for the production of films under this Agreement.

Article X

Contract clauses providing for the sharing of markets and receipts between co-producers shall be subject to approval by the competent authorities of both countries. Such sharing shall in principle be proportional to the respective contributions of the co-producers.

Article XI

When a co-produced film is exported to a country where film imports are subject to quotas:

(a) The film shall, in principle, be set against the quota of the country of the majority co-producer.

(b) If the respective contributions of the co-producers are equal, the film shall be set against the quota of the country that has better export opportunities.

(c) If any difficulties arise, the film shall be set against the quota of the country of which the director is a national.

(d) If one of the co-producing countries enjoys unrestricted entry of its films into the importing country, co-produced films shall, like its own films, be fully entitled to such unrestricted entry.

Article XII

A co-produced film shall, when shown, be identified as a “Spanish-Portuguese co-production” or a “Portuguese-Spanish co-production”.

Such identification shall appear in a separate credit title, in all commercial advertising, in film promotional materials and at the time of the film’s release.

Article XIII

Unless otherwise decided by the co-producers, co-produced films shall be entered in international festivals by the country of the majority co-producer or, in

the case of films produced on the basis of equal contributions, by the country of which the director is a national.

Article XIV

No restrictions shall be placed on the import, distribution and showing of Portuguese films in Spain or Spanish films in Portugal other than those contained in the legislation and regulations in force in the two countries.

Moreover, the Contracting Parties reaffirm their desire to foster by all available means the distribution in each country of films from the other country.

Article XV

The competent authorities of the two countries shall examine the implementation of this Agreement, as necessary, in order to resolve any difficulties arising out of its application. They shall consider possible amendments with a view to developing cinematographic cooperation in the interest of both countries.

They shall meet, in the context of a Joint Commission on cinematographic cooperation, alternately in the two countries, in principle once every two years. However, special meetings may be convened at the request of one of the competent authorities, particularly in the case of major amendments to the legislation or the regulations governing the film industry, or when the application of this Agreement presents serious difficulties.

Specifically, they shall examine whether the numerical and percentage balance of co-productions has been respected.

Article XVI

This Agreement shall enter into force when both parties have notified each other of the completion of the formalities required for this purpose. It shall be valid for a period of one year from the date of its entry into force. It shall be renewed automatically for successive one-year periods unless it is denounced by one of the parties three months before the expiration of any such period.

IN WITNESS WHEREOF the undersigned, being duly authorized by their Governments, have signed this Agreement at Madrid, on 8 February 1989, in two originals in the Spanish and Portuguese languages, both texts being equally authentic.

For the Kingdom of Spain:

[Signed]

JORGE SEMPRÚN Y MAURA
Minister of Culture

For the Portuguese Republic:

[Signed]

MARÍA TERESA GOUVEIA
Secretary of State for Culture

ANNEX

APPLICATION PROCEDURE

In order to benefit from the provisions of the Agreement, the producers from each country shall include with their co-production applications, submitted to their respective authorities one month before the shooting of the film is to begin, a set of documents including:

- A document concerning the acquisition of copyright for the use of the work;
- A detailed screenplay;
- A list of the technical and artistic contributions to be made by the two countries;
- A detailed cost estimate and financing plan;
- A detailed production schedule for the film;
- A co-production contract concluded between the co-producing companies.

The competent authorities of the two countries shall exchange the above-mentioned documentation as soon as they have received it. The authorities of the country having the minority financial share shall give their consent only after receiving the views of the authorities of the country having the majority financial share.
