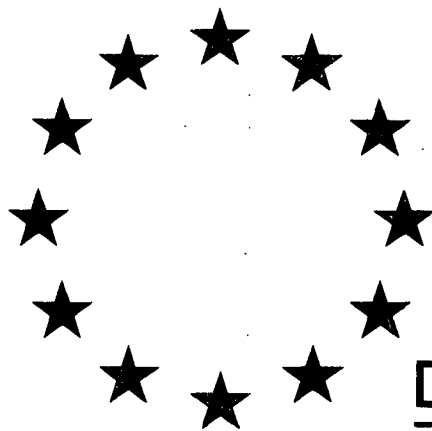


**COUNCIL
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ATEL (90) 20

Strasbourg, 24 September 1990

**Workshop on the specific problems
of the production and distribution
of audiovisual works
encountered in European countries
with a low audiovisual output
and limited geographic or linguistic coverage**

Hanasaari (Finland), 19-20 October 1990

**STUDY ON FINANCE AND TAXATION IN THE AUDIOVISUAL
SECTOR IN EUROPE**

INTRODUCTION

This memorandum reproduces a study on finance and taxation in the audio-visual sector in Europe, conducted by the Council of Europe in 1989.

This study will be updated in the near future in order to take into account modifications which have taken place since 1989.

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0. INTRODUCTION

0.1. The issues at stake in the financing of audio-visual production in Europe. Action by the Council of Europe

The development of the financing capacities of audio-visual production in Europe is a major factor in the promotion of European audio-visual works. This question has already been the subject of several Council of Europe texts, in particular :

- Recommendation N° R (86) 3 of the Committee of Ministers to the member States on the promotion of audio-visual production in Europe, which lays down inter alia :

"2.1. The member States shall take adequate measures, of a financial and fiscal nature, to encourage audio-visual creation and the development of their programmes industries.

2.2. The member States shall endeavour to establish or, as the case may be, improve national schemes for the financial support of audio-visual production. They shall ensure that the audio-visual production of other member States shall have access to their respective schemes and thereby seek to establish between themselves bilateral or multilateral aid schemes for the production, co-production and distribution of audio-visual works of European origin.

2.3. The member States shall endeavour, in co-operation, to eliminate tax obstacles to the co-production of audio-visual works of European origin.

2.4. The member States shall grant to co-production of audio-visual works of European origin the same tax and financial advantages as national productions.

2.5. The member States shall take steps with a view to developing aids to facilitate the distribution, broadcasting and exchange of their audio-visual works between themselves, as well as the distribution of such works outside member States. In particular, they shall endeavour to institute aids for the dubbing and subtitling of audio-visual works of European origin."

- The Resolution N° 1 on the promotion of European audio-visual works as adopted by the First Ministerial Conference on Mass Media Policy, which lays down inter alia :

(The Ministers) "RESOLVE to implement policies on the basis of the principles embodied in Recommendation No R (86) 3 to stimulate the production, scheduling, distribution and transmission of audio-visual works of European origin, and, with this in mind,

1. recommend the establishment in all participating States, taking into account their specific situation, of national public and private schemes for the promotion of audio-visual production, including that of independent production undertakings ;

2. agree to take appropriate steps, such as the conclusion of bilateral and multilateral agreements, with a view to :
 - increasing the opportunities for personnel and capital from all participating States to take part in productions and co-productions made under such promotion schemes ;
 - promoting the realisation of co-productions ;
 - providing assistance under such promotion schemes for the distribution of co-productions as well as of productions of European origin ;
3. agree to promote conditions to enable investment at national and European level for financing the production of audio-visual works of European origin irrespective of the originating State ;
(...)

RECOMMEND that the Committee of Ministers of the Council of Europe :

1. review progress in the mutual promotion of audio-visual works of European origin under national promotion schemes and formulate, where appropriate, further measures in this regard ;
2. pursue the elaboration of concrete measures aimed at :
 - facilitating private savings and investment in the audio-visual field, accompanied by incentives notably of a fiscal nature, as well as their transfrontier circulation, inter alia through the possible creation of a private European stock exchange for companies operating in the audio-visual field ;
 - encouraging audio-visual creation through measures in the fiscal field and overcoming tax obstacles to European co-productions ;
 - overcoming other obstacles, notably of an administrative nature, to European co-productions (...);"
 - The Recommendation N° R (87) 7 of the Committee of Ministers on film distribution in Europe, which recommends inter alia to Member States to :
 - "2. Give financial backing to distributors of cinematographic works of European origin in the form of subsidies, advances or guarantees to cover the cost of making copies, in order to facilitate, in particular the distribution of quality films which do not receive adequate support in the regular commercial market ;"

The importance of the financing aspects of the European audio-visual industry has also been highlighted by other bodies such

as the Parliamentary Assembly of the Council of Europe (1), the European Commission (2), the European Parliament (3) and the European Television Task Force (4). The professional associations involved also attribute particular importance to the matter (5). Finally, various research reports have emphasised the central importance of matters concerning the financing of the European audio-visual industry (6).

0.2. Methodology of this report

The CDMM Secretariat has been asked by the Steering Committee to present a consolidated document on the financing and taxation of audio-visual production in Europe, with a view to deciding on follow-up action to Resolution N° 1 on the promotion of European audio-visual works, adopted by the Ministers at the Vienna Conference. A Contact Group has been set up and has held three meetings (7).

The present memorandum has been drafted on the basis of :

- information collected from CDMM experts with the help of a detailed questionnaire. Twenty one States either answered the questionnaire or submitted information material ;

- information collected by the DECS from the members of the Group of Experts on the Cinema, when the Eurimages Fund was being set up ;

- information communicated by OECD, the European Commission and various professional organisations, particularly the EBU, which gave the Contact Group considerable assistance (although FIAPF, FIAD, IFPI and BFTPA also contributed) ;

- information collected from the general and specialised press.

1. See in particular Recommendation 862 (1979) on cinema and the State and Recommendation 1067 (1987) on the cultural dimension of broadcasting in Europe.
2. See inter alia "Programme d'Action pour le Renforcement de l'Industrie européenne de Production audiovisuelle" (COM (86) 255 final) and the "Note de la Commission sur la relance de l'action culturelle dans la Communauté européenne" (COM (87) 603 final).
3. See the "Papapietro report" of the Committee on Youth, Culture, Education, Information and Sport on the MEDIA programme and the European Cinema and Television Year (PE 121.329/B).
4. European Television Task Force, "Europe 2000 : What kind of television?" Haigh and Hochland, Manchester, 1988.
5. See inter alia the 23rd Symposium of the EBU in Lisbon (September 1987), Round Table of the Symposium "European co-production" of the European Cinema and Television Year (Munich, 24-25 June 1988), etc.
6. F. ROUET, Des aides à la culture, Pierre Mardaga, Brussels, 1986 ; A. LANGE, "The future of the European audio-visual industry", European Institute for the Media, Haigh and Hochland, Manchester, 1988.
7. See meeting reports CDMM-GC-FF (88) 2 and CDMM-GC-FF (88) 4 and CDMM-GC-FF (88) 5.

0.3. Structural changes in the financing of the audio-visual sector in Europe

The weaknesses in the financing of the European film industry and audio-visual programmes in relation to its main competitor, the American industry, are well-known and will not be analysed in detail here (1). However, the main factors are :

- fragmentation of the production centres in line with the political fragmentation of Europe and general weakness of European communications undertakings in relation to their American competitors ;
- political, economic, cultural and linguistic fragmentation of the European market which inhibit the circulation of audio-visual works, complicate the development of marketing and often prevent the complete amortisation of investments ;
- poor export potential of programmes of European origin on the world market ;
- slump in cinema attendances ;
- reluctance of governments to adjust the level of radio-television licence fees in line with inflation ;
- political limitations on the importance of advertising, sponsorship and television shopping as methods of financing broadcasting ;
- development of new media comparatively slow (pay television, satellite television, cable, video) ;
- little tradition for the involvement of the banking sector in the audio-visual sector.

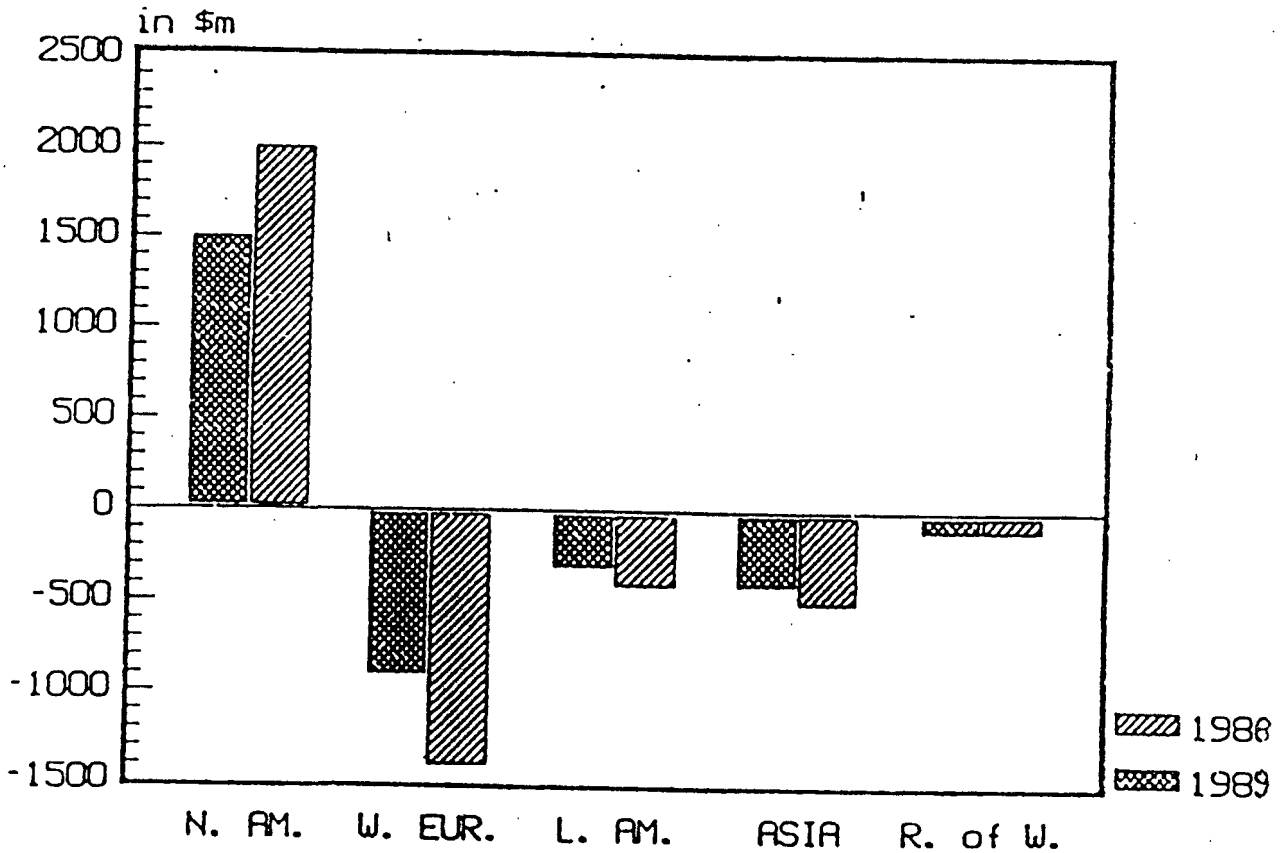
The accumulation of these factors tends to place the European audio-visual industry in an unfavourable situation in relation to its American competitor, but also in relation to the industries of the new producing countries (Japan, Australia, Brazil...). The hegemony of American production on the various European markets, particularly the production of fiction, is increasingly evident :

- for the first time since 1987, American films account for more than 50 % of box office receipts on each of the European markets ;
- depending on the country, American fiction accounts for between 30 % and 60 % of fiction programming on public television channels ;
- the new private television companies resort even more to American fiction (sometimes more than 80 %) ;
- the video market is also heavily dominated by American production.

(1) See A. LANGE, op. cit.

Although the political and cultural risks of this dependence have been frequently exposed, scant attention has been paid to the economic dimension. Estimates given by the BIPE for the total trading deficit of audio-visual programmes for Europe were 900 million dollars in 1985 and 1.4 thousand million dollars in 1986. It is likely that the deficit will deepen further for 1987 and 1988 because of the inflated purchase prices recorded in France for American programmes and the drop in the export income of European undertakings on the American market, particularly because of the fall in the dollar (1).

TABLE 1 WORLD TRADE BALANCE OF FILMS AND AUDIO-VISUAL PROGRAMMES EXCHANGE



Source : BIPE

(1) See BIPE, "The international market for audio-visual programmes", Paris, 1987 and A. LANGE, "La balance commerciale des échanges de programmes audiovisuels entre l'Europe et les Etats-Unis", in Almanach of the European Cinema and Television Year, Luxembourg, 1988 (to be published).

According to the official statistics of the US Department of Commerce, the whole audio-visual sector (sales of programmes and TV advertising series) in Europe in 1984 had a turnover of the order of 1.5 thousand million dollars, or 6 % of total sales in Europe (excluding banking services) and almost 16 % of sales of services (excluding banking services).

The financing structure of the European audio-visual industry is currently undergoing a structural change, and this is summarised in Table 2. By taking as a basis the various sources of income of the audio-visual industries of the countries signatory to the European Cultural Convention in 1985, and taking as a hypothesis the average annual rates of growth for the period 1988/1990, it is possible to obtain an evaluation of the breakdown of income in 1990 (1).

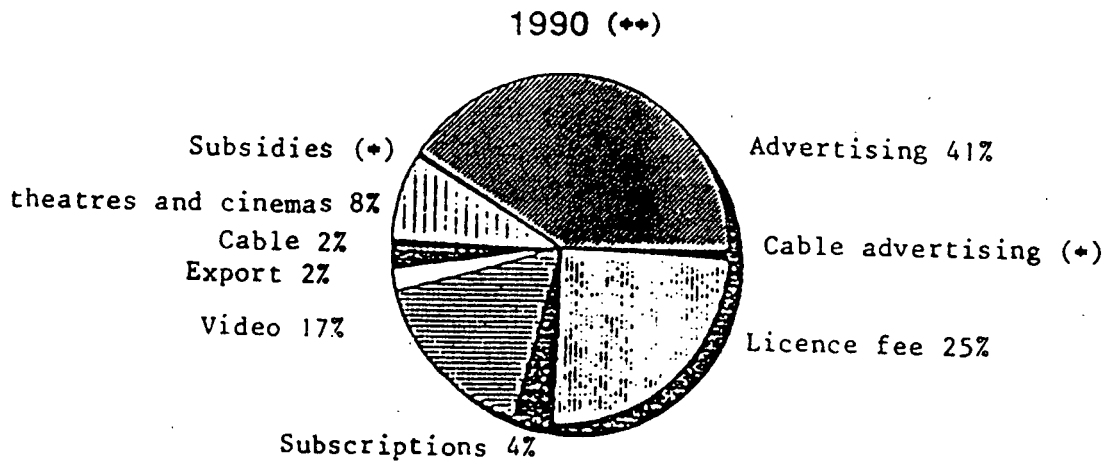
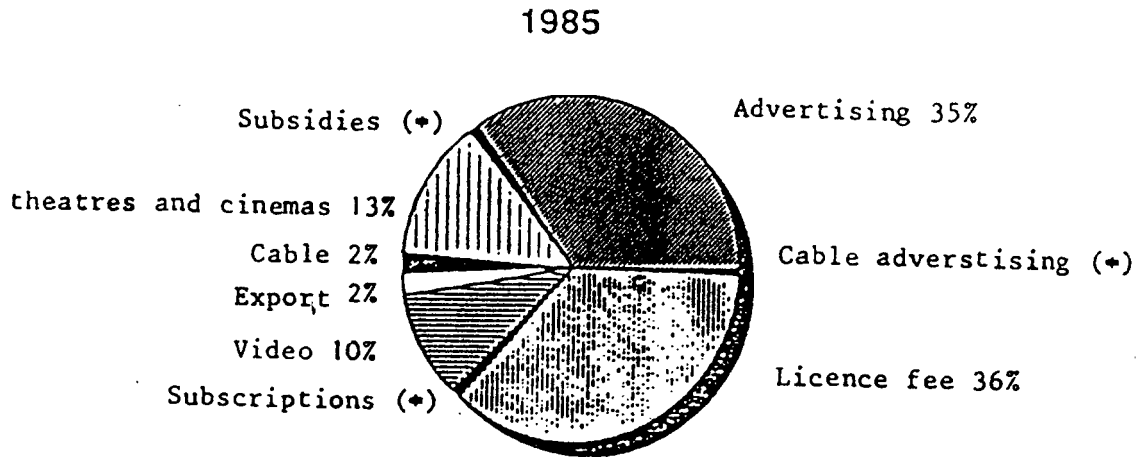
TABLE 2 FORECAST OF THE FINANCING STRUCTURE OF THE EUROPEAN AUDIO-VISUAL INDUSTRY (1985-1990)

Sector	Basis 1985 (million ECUs)	Hypothesis of medium annual rate of growth	Estimate 1990 (million ECUs)
Film Theatres	2 201	- 3 %	2 135
Video	1 565	+ 24 %	4 588
TV Advertising	5 753	+ 14 %	11 272
TV Licence Fee	5 854	+ 3 %	6 786
Pay TV Subscription	101	+ 60 %	1 059
Cable	403	+ 12 %	695
TV subsidies	88	- 35 %	10
Exports	365	+ 5 %	466
Advertising Cable	9	+ 75 %	148
TOTAL	16 339		27 159

Source : European Institute for the Media

(1) Yugoslavia, which joined the Cultural Convention in 1987, has not been covered. It was not possible to take into account forms of financing such as sponsorship and public subsidies to the cinema and audio-visual industry. The basic figures themselves should be approached with caution in view of the often hypothetical nature of national aggregates.

TABLE 3
SHARE OF THE DIFFERENT SOURCES OF INCOME FOR THE AUDIO-VISUAL
INDUSTRY BETWEEN 1985 AND 1990



(*) Shares below 1%
Source: EIM treatment

(**) Estimate

The decline of investment in the European audio-visual industry leads to a reduction in production, although demand actually tends to increase. As there is no European agency monitoring programmes, it is hard to give accurate figures for the fall in production. Nonetheless, Tables 4 and 5 give an indication of the decline in the production of feature films (approximately 20 % between 1980 and 1986 in countries which signed the Cultural Convention) and of TV drama.

TABLE 4 PRODUCTION OF FEATURE FILMS, 1955-1987

	1955	1970	1975	1980	1981	1982	1983	1984	1985	1986	1987
Austria	28	7	6	7	na	13	11	17	11	3	12
Belgium	2	4	9	6	7	6	12	8	7	5	12
Cyprus	0	0	0	0	0	0	0	1	1	3	
Denmark	13	20	19	13	11	13	10	11	12	10	
Spain	56	105	98	114	137	118	99	102	75	77	70
Finland	na	na	na	10	11	11	16	17	13	24	12
France	113	110	138	222	189	189	164	162	136	131	133
Greece	20	88	38	25	46	37	47	40	38	200	18
Ireland	1	5	2	0	1	1	3	2	2	1	
Iceland	na	na	na	na	na	na	na	4	na	2	
Italy	133	235	198	163	103	114	110	103	89	114	116
Luxembourg	0	0	0	0	0	0	0	2	0	1	
Norway	6	11	12	10	10	na	6	5	10	9	9
Netherlands	3	4	16	7	11	13	15	12	16	11	
Portugal	2	8	16	11	9	8	4	8	9	6	
Federal Republic of Germany	128	113	73	49	76	70	75	80	65	64	70
United Kingdom	94	86	69	29	14	45	44	53	58	46	51
Sweden	34	22	23	22	25	23	23	17	12	20	24
Switzerland	3	5	43(1)	9	11	17	16	19	20	24	21
Turkey	na	na	na	na	na	na	na	na	80	na	
Yugoslavia	na	na	na	na	na	na	na	na	na	26	
EEC (12)	586	778	676	639	604	614	583	583	507	486	
United States	269	443	425	321	338	307	342	313	330	515	578
Japan	-	423	335	320	332	322	317	310	300	319	311

(1) For 1975/1976 : Documentary Films for the cinema included

Sources : National statistics ; Prouvost Report, 1986; Anica ; Variety ;
FIAD ; MEDIA, FIAPF, CNC informations ; European Institute for
the Media (EIM)

TABLE 5 COMPARISON BETWEEN TOTAL PROGRAMMING BY TV CHANNELS AND NATIONAL PRODUCTION OF TV DRAMA

	Channel	Evolution of hours of broadcasting	Evolution of TV drama
Years 1975-1985 (1)			
Belgium	RTBF	+ 39.4 %	- 80 %
Cyprus	CyBC	+ 20 %	- 40 %
Federal Republic of			
Germany	ZDF	+ 28 %	- 4 %
Italy	RAI1	+ 29 %	- 50 %
	RAI2	+ 25 %	- 77 %
Spain	RTVE	+ 150 %	- 50 %
Switzerland	SSR	+ 54 %	0
United Kingdom	BBC	+ 14 %	0
	ITV	+ 3 %	0
Years 1980-1985 (2)			
Austria	ORF	+ 17.7 %	na
France	TF1	+ 22.4 %	- 24.8 %
	A2	+ 20.6 %	0
	FR3	+ 26.7 %	+ 17.8 %

(1) See R. Chaniac, "Evolution de la production de fiction télévisuelle en Europe", Dossiers de l'audiovisuel, INA/La Documentation française, Paris, février 1987 ; l'Europe des programmes, INA/La Documentation française, Paris, mai-juin 1987.

(2) For France, see P. Florenson, M. Brugière & D. Martinet, "Douze ans de télévision 1974-1986", CNCL/La Documentation française, Paris 1987 et "La création française dans les programmes audiovisuels", Conseil économique et social, Paris 11, 12 juin 1985. For Belgium, "On vous raconte des histoires", SACD, Bruxelles, 1986.

Source : INA, Channels, European Institute for the Media (EIM)

0.4. The State's regulating role in the allocation of income and financing of the audio-visual industry

The regulating role of the authorities in the distribution of income and the financing of the audio-visual industry may be exercised in various ways.

- a. Allocation of a part of the resources of television organisations to other sectors. In France, the television organisations and also the cable networks and Canal Plus, are required to contribute to the support fund for the cinematographic industry and the audio-visual programme industry; in the Netherlands, 1.5% of receipts from the licence fee and radio-TV advertising are allocated for supporting the press; in Italy, part of the licence fee is allocated to the Academia Santa-Cecilia (an institute for the promotion of music), in Switzerland, the operating firms of the Association Suisse concessionnaire pour la télévision par abonnement (ACTA) have to allocate two to four per cent of their revenue to supporting the Swiss film industry.
- b. Apportioning of the licence fee. Generally speaking, public broadcasting organisations benefit from all or nearly all the fees paid. However, as indicated in Table 6, part of the receipts from the fee may be deducted either in the form of taxation (VAT in France and Italy), or in the form of levies (Federal Republic of Germany, Austria, United Kingdom, Switzerland), or for allocation to other cultural sectors (see above). In Belgium, the fee is actually a non-allocated tax, which is partially returned to the broadcasting organisations.
- c. Apportioning of advertising income. This is probably the field where the State is most active and should remain so. The authorities may in fact
- ban television advertising (Sweden), or ban television advertising for certain products (Austria, France, Federal Republic of Germany - where advertising for cigarettes is not allowed - Switzerland - where advertising for tobacco, alcoholic drinks and some pharmaceutical products is not allowed -, under consideration in Norway);
 - reserve income from television advertising for the public service (Austria, Denmark, Greece, Ireland, Netherlands, Portugal, under consideration in Norway. This is not the case any longer for Switzerland since the entry into force of the Federal Act on satellite broadcasting on 1st May 1988);
 - place a ceiling on television advertising income accessible to the public service (France, Federal Republic of Germany - only in terms of time allocated to advertising - Italy);
 - reserve advertising income for the private sector (United Kingdom, Luxembourg);
 - privatise a public service organisation and thus alter the general balance (France).

The question of the allocation of advertising income is very controversial. In the Federal Republic of Germany, France, and Italy, private television promoters defend the principle that all TV advertising income should revert to them and that the public service should depend solely on the licence fee and their own income. By indicating the dependence of public organisations on advertising, table 7 shows the consequences which might ensue from the application of such a principle. In the United Kingdom on the contrary, the proposal put forward in 1985 and now abandoned, to partially finance the BBC by advertising has led to strong opposition from both the public service and ITV. In Belgium, the principle of a monopoly of advertising for one channel per Community (in this case RTL-TVi in the French-speaking part of the country) is strongly opposed by the protagonists of the public service.

d. Sectoral aid policies

The authorities play an important part in the financial regulations of the audio-visual sector, by operating direct or indirect forms of aid. Such aid was originally intended as support for the production of cinema films, but its scope has now broadened: in addition to aid for cinematographic production, the authorities have progressively granted aid to the various branches of the cinema industry (distribution, screening, export, promotion ...), and also in some countries aid for the production of audio-visual programmes.

The various forms of sectoral aid for the audio-visual industry are covered in 1. below.

e. The policy of limiting imports

The policy of film quotas for the cinema or programme quotas for television constitutes one method of limiting the loss of income of the audio-visual industry to third countries. Film quotas now operate only in France, Spain and Italy. Programme quotas may be the subject of legal provisions or they may merely be operated by rules which the channels impose on themselves.

TABLE 6 APPORTIONING OF THE LICENCE FEE RECEIPTS AND OF THE ADVERTISING REVENUES BETWEEN PUBLIC AND PRIVATE SERVICES

(in percentage of the collected licence fee and of the advertising revenues)

	Public sector		Private sector	
	Share of the licence fee	Share of the TV advertising	Share of the TV advertising	Share of Pay-TV Subscription
Austria (87)	(1)96 %	100 %	-	-
Belgium (86)	(2)69 %	11.2 %	88.8 %	(9)100 %
Cyprus	100 %	100 %	-	-
Denmark (87)	100 %	-	-	100 %
Spain (87)	-	100 %	-	-
Finland (85)	100 %	10.1 %	89.9 %	100 %
France (86)	(3)93 %	86 %	14 %	100 %
(87)	(3)93 %	34.9 %	65.1 %	100 %
Greece (87)	100 %	100 %	-	-
Ireland (87)	100 %	100 %	-	-
Italy (86)	(4)88 %	32.1 %	68.9 %	-
Luxembourg (87)	-	-	100 %	-
Norway (87)	100 %	-	-	-
Netherlands (87)	(5)98.5 %	99 %	1 %	100 %
Portugal (87)	100 %	-	-	-
Federal Republic of Germany (86)	(6)97 %	96.9 %	3.1 %	-
United Kingdom (86)	(7)94.3 %	-	100 %	100 %
Sweden (87)	100 %	-	-	100 %
Switzerland (87)	(8)77 %	100 %	(10)-	100 %

Sources : Channels/European Institute for the Media

Notes

- (1) 4 % paid to PTT for collecting expenses
- (2) Share represented by endowments to the RTBF and the BRT from the total amount of licence fee collected by the Ministry of Finances
- (3) VAT of 7 %.
- (4) VAT of 2 %. The rest is shared between the Ministry for Tourism and Entertainment, Finances, PTT and the Academy Saint Cecilia.
- (5) 1,5 % from licence fee and advertising to the press
- (6) 3 % to the collecting body (GEZ).
- (7) 5,7 % to the Post Office (for collection, detection of fraud and interferences).
- (8) 23 % to the PTT for transmission expenses. A draft federal Bill on radio and television provides for a possible levying of 2 % for local and regional broadcasters.
- (9) FilmNet authorized since 1986 in the Flemish Community, RTBF was not able to achieve its project for a pay-per-view TV.
- (10) From 1988 onwards, a share of television advertising will be allocated to the private sector.

TABLE 7 IMPORTANCE OF ADVERTISING REVENUES IN THE TOTAL REVENUES OF TELEVISION ORGANISATIONS

	Public sector		Private sector(*)	
Austria	ORF(86)	36.7%		
Belgium	RTBF(85)	1%	RTL-TVi(86)	100%
	BRT(86)	4.1%		
Cyprus	CyBC(87)	50 %	-	-
Denmark	DR(87)	0%	TV2(86)	100%
Finland	YLE(86)	23%	MTV(85)	93.1%
France	A2(86)	62%	TF1(87)	100%
	FR3(86)	18%	Canal+ (87)	6.2%
			La Cinq (87)	100%
			M6(87)	100%
Federal Republic of Germany	ARD(86)	12.4%	RTL+(87)	100%
	ZDF(85)	37%	Sat-1(87)	100%
Greece	ERT1(85)	21.2%		
	ERT2(85)	80.8%		
Iceland	RU/TUV(86)	32%		
Ireland	RTE(86)	33%		
Italy	RAI(86)	32.7%	C.privées(86)	100%
Luxembourg			RTL(87)	100%
Monaco			TMC(87)	100%
Netherlands	NOS(86)	35.1%	FilmNet(87)	0%
Norway	NRK(87)	0%		
Portugal	RTP(86)	43.9		
Spain	RTVE(86)	97.6%		
	TV3(85)	49.6%		
Sweden	STV(87)	0%		
Switzerland	SSR(87)	25.4%	Téléciné(86)	0%
			TeleClub(86)	0%
			ITV/C4(86)	95%
United Kingdom	BBC(86)	0%	SkyC.(87)	100%

* 100% is a theoretical figure. Private television services have other marginal revenues (sponsorship, sale of programmes, various commercial activities, services, teleshopping, etc) which are difficult to account for, due to the lack of precise information on the subject.

Source : national channels ; EBU ; EIM.

1. SECTORAL AID TO THE AUDIO-VISUAL INDUSTRY

Classically, sectoral aid is defined as any financial involvement of the authorities in the normal play of market forces in a given economic sector. Financial involvement of the authorities in favour of the audio-visual industry may take various forms:

- a. Direct intervention in the form of subsidies, in the strict sense of the word;
- b. Waiving of receipts, in the form of tax relief ;
- c. Granting of financial guarantees or credits at preferential rates;
- d. Financial transfers ordered by the State between private persons;
- e. Organisation of contributions from the television channels to cinema production;
- f. Organisation of systems for the collection of small scale contributions.

These various forms of intervention may be found either in isolation or in combination, and in the latter case the formulas are extremely variable,

- either as regard their means of financing:
 - direct commitments by the authorities,
 - various parafiscal levies (tax on cinema tickets, tax on the income of television channels, cable networks or the video trade),
 - contributions by television channels,
 - copyright fees not redistributed to the copyright holders,
- or as regards their nature: support fund, film institute, entertainment fund, ...
- or as regards their purpose: fund for the support of the whole entertainment sector (eg Italy), the cinema and audio-visual production sectors (eg COSIP in France), one or the other of these two sectors or certain parts thereof,

- or as regards their method of involvement: aid mechanisms may be as diverse as:
 - a. subsidies proper,
 - b. repayable loans (advances on receipts) which in practice are rarely repaid and thus sometimes are similar to actual subsidies,
 - c. loans at preferential rates,
 - d. indirect forms of aid (research and development, training, counselling,...).

The many possible combinations and the variations in methods of accounting make European comparisons difficult. Only detailed studies on the origin and apportioning of the sums levied and redistributed could afford a comparison of the extent of public intervention, and in particular an evaluation of direct subsidies. Table 9 outlines the mechanisms in force in the various member States.

1.1. Direct subsidies and aid funds

The most traditional practice is that of direct subsidies, or the intervention of a support scheme. This kind of support was developed mainly for the cinema as from the 1960s.

The principle of aid for the cinematographic industry and its compatibility with Article 92 of the Treaty of Rome gave rise to numerous debates in Community countries in the period from 1979 to 1981. The Commission had invited States to review their aid schemes in order to eliminate discriminatory measures based on nationality. Motivated opinions were addressed to Denmark, France, Federal Republic of Germany and Italy (1).

In 1987, the Commission decided that "State aid schemes for the cinema in Italy, Denmark and Greece contained nationality-based restrictions which were likely to limit the participation of nationals of other member States in films receiving such aid". It held that these restrictions violated the Treaty, and particularly Articles 48, 52 and 59, covering free movement of persons and the right of establishment. While accepting the principle of aid for the film industry, the Commission invited these three member States, on 21 December, to remove these nationality-based restrictions from the schemes in question (2). It also informed the Spanish Government that the new Act on aid for the film industry was incompatible with the Treaty (3).

(1) See C. DEGAND "Aide et Production" Etude pour le Colloque européen "Création et production cinématographiques face à l'Etat en Europe" organisé par l'Assemblée parlementaire AS/Cult (33) 25.

(2) EC Bulletin, 12-1987

(3) "El pais", 22 July 1988.

TABLE 8 : VALUATION OF THE AMOUNT OF DIRECT FUNDING TO THE FILM INDUSTRY

	PRODUCTION		DISTRIBUTION		EXHIBITION	EXPORT	MISCELL. (Awards, Archives, Research)	TOTAL
	Economic support	Cultural support	National Films	Foreign Films				
AUSTRIA 1986 1987								40 mio AS 53.7mioAS
BELGIUM FL.C. 1986 FL.C. 1987 Nat. 1987	117 mio BF	112.3 mio BF	33.8 mio BF 4.6 mio BF		5 mio BF		37.8 mio BF	125 mio BF 151.1 mio BF 164.8 mio BF
CYPRUS								
DENMARK 1986		7.5 mio DKR		0.4 mio DKR	0.6mio DKR			8.5 mio DKR
FINLAND 1988		19 mio FMK			4.6 mio FMK		8.9 mio FMK (Archives) 4.4 mio FMK (miscell.)	37 mio FMK
FRANCE 1987	111 mio FF		14.6 mio FF		3 mio FF	1.9 mio FF	57.2 mio FF	187.7 mio FF

	PRODUCTION		DISTRIBUTION	EXHIBITION	EXPORT	MISCELL. (Awards, Archives, Research)	TOTAL
	Economic support	Cultural support	National Films	Foreign Films			
FEDERAL REPUBLIC OF GERMANY							
Nation. 1986	1.35mio DM	10 mio DM	0.25 mio DM	0.5mio DM		9 mio DM	21.1 mio DM
Bavaria 1986		12.4 mio DM		1.5 mio DM		0.25 mio DM	14.15 mio DM
1987							11 mio DM
1988							14.3 mio DM
Berlin		15.3 mio DM					15.3 mio DM
Hamburg							5.2 mio DM
North Rhine W.							3 mio DM
Hessen							1.1 mio DM
Schleswig H							0.2 mio DM
Lower Saxony							4.5 mio.DM
Baden-Wurt.							min.
GREECE 1987		4 mio Dr.					
IRELAND 1987							-
ICELAND							n.a.
ITALY 1986		14.6 mia LIT			51.8 mia LIT	4 mia LIT	65.4mia LIT
LUXEMBOURG							minimum support
MALTA							-
NETHERLANDS 1986		12 mio Fl.	0.83 mio Fl	0.3 mio Fl	0.8 mio Fl	2.5 mio Fl	16.4 mio Fl

	PRODUCTION		DISTRIBUTION		EXHIBITION	EXPORT	MISCELL. (Awards, Archives, Research)	TOTAL
	Economic support	Cultural support	National Films	Foreign Films				
NORWAY 1985								65 mio NRK
PORTUGAL 1986		140.8 mio ESC			55 mio ESC			195.8 mio ESC
SPAIN 1988		2.5 mia Pts						
SWEDEN 1985		33 mio SKR						
SWITZERLAND (Fed) 1987								8.5 mio SF
1988								9.5 mio SF
TURKEY								
UNITED-KINGDOM 1986		£1.7 mio					£8.1 mio	£ 9.8 mio

TABLE 9 : AID FUND FOR THE CINEMA AND THE AUDIO-VISUAL PROGRAMME INDUSTRY IN EUROPE

COUNTRY	FUND	REFERENCE YEAR	ORIGIN OF FUNDS	BUDGET	ALLOCATION OF FUNDS
AUSTRIA	Österreichische Filmförderung	1986	State Budget	30 million AS	Subsidy per script Interest free loans for production and distribution
		1987		43.7 million AS	
BELGIUM (French speaking community)	Aid fund for audio-visual production	1988	French Community Budget (100%) contribution from channels under study	20 million BF	Advances on receipts to independent producers
		1988	Community Budget	120 million BF	Advances on receipts for cinematographic production
DENMARK	Danish Film Institute "50-50" Fund (projected)	1987	State Budget Danmarks Radio 50% State Budget 50% private producers	79 million DKR	Support for cinema production (72.8%) Support for script writing Festivals Creative workshops Publication
FINLAND	Finnish Film Foundation	1987	State Budget Tax on Cinema tickets YLE contribution Levy on videocassettes	31 million FMK	Support for cinema production, Promotion of export, import and screening festivals

COUNTRY	FUND	REFERENCE YEAR	ORIGIN OF FUNDS	BUDGET	ALLOCATION OF FUNDS
FRANCE	COSIP	1987	Tax on cinema tickets 43% Repayment advances 0.6% Taxes and levies on income of TV companies 48.5% State Budget (abolished from 1988) 8%	1190 million FF	Support for the cinematographic industry 68.5% Support for the programme industry 31.5%
FRANCE	ARCANAL	1987	State Budget 100%	9.7 million FF	Audiovisual subsidy/live entertainment
	Fund for new electronic image technologies	1987	State Budget 100%	10 million FF	Production of programmes using new media or new potentials for the electronic image
	Audiovisual creation fund	1987	State Budget 100%	20 million FF	Support for script writing, preparation of pilot schemes, etc.
FEDERAL REPUBLIC OF GERMANY	Filmförderungsanstalt (FFA)	1986	Tax on cinema tickets 74.3% Video library tax (as of 1988) Länder contribution 3.8% ARD and ZDF contribution 17.9% Liquidation UFZ 4.2%	36.25 million DM	Support for the production of full length films Support for the production of short films Support for scripts Support for distribution Support for theatres Diurnal aid
	Stiftung Kuratorium junger deutscher Film	1986	Länder Conference 100%	2.2 million DM	Support for first productions and cultural productions

COUNTRY	FUND	REFERENCE YEAR	ORIGIN OF FUNDS	BUDGET	ALLOCATION OF FUNDS
GREECE	Greek Film Centre	1984	Tax on cinema tickets	143.6 million Dr	Advances on receipts Support for promotion Support for distribution Support for screening
ICELAND	Cultural Foundation		Taxes and TV advertising revenues		
IRELAND	Irish Film Board	abolished in 1987			
ITALY	Ente Autonomo Gestione Cinema	1988-1999	State Budget	226 milliard LIT	57 % cinema production and TV, 20 % cinecitta, 23 % distribution
	Fondo unico per lo spettacolo	1987	State Budget	750 milliard LIT	Support for musical and choreographic activities 55% Support for cinematographic activities 25% Support for live theatre 15% Support for the circus 1.5% Miscellaneous 3.5%
LUXEMBOURG	National Cultural Fund		State Budget 100%		Financial aid for cinematographic production distribution and promotion
MALTA	-		-		
NETHERLANDS	Production Fund	1987	State Budget 100%	7 million Fl	Support for cinematographic production Support for script writing Promotion of exports
	Dutch film fund	1987	State Budget 100%	5.3 million Fl	Aid to films of artistic and cultural interest

COUNTRY	FUND	REFERENCE YEAR	ORIGIN OF FUNDS	BUDGET	ALLOCATION OF FUNDS
	Promotion fund for audio-visual cultural productions	1987	State Budget 100%	5 million Fl	Support for cultural production
	CO-B0	1985-87	Copyrights on cable	5 million Fl	Financial support for co-production projects with other national funds and with BRT
NORWAY	Norwegian cinema foundation		State Budget Video tax from 1988 and film		
PORTUGAL	Portuguese Film Institute	1986	Tax on cinema tickets	approximately 200 million ESC	Support for production, screening and cinematographic promotion
	Support fund for television production	1987	State Budget 100%	200 million ESC	Support for audio-visual production
SPAIN	Institute of cinematography and the audio-visual arts	1988	State Budget 100%	2.5 milliard Pts	Support for production, screening (subsidies for theatres with box office receipts up to 1.5 million ptas) and distribution
SWEDEN	Swedish film institute		State Budget 30% Tax on cinema tickets 40% Tax on videos 20% Various activities 10%		
SWITZERLAND	-	-	-	-	-
TURKEY	-	-	-	-	-

COUNTRY	FUND	REFERENCE YEAR	ORIGIN OF FUNDS	BUDGET	ALLOCATION OF FUNDS
UNITED KINGDOM	British Screen Finance Consortium	1987	State 44% Private 56%	£4.5 million	Support to production
	New fund (project)	1988	Tax concession Business Expansion Scheme		Support to production
	British Film Institute Production Board	1987	State - Patronage	£0.25 million	Support for low-budget video and film production

This table does not include direct support without an intermediary Fund (ex. Belgium, Switzerland, Turkey,...).

On average, for the European Community, a posteriori subsidies represent 13 % of box office receipts.

Subsidies to the audio-visual programme industry are less prevalent than subsidies to the cinematographic industry, as indicated in Table 9. In some cases, the role of the State is confined to organising a support fund, without necessarily any direct participation in this fund (eg CO-B0 in the Netherlands, COSIP in France as of 1988).

In addition to these production subsidies, there are also subsidies to broadcasting organisations, which may also be producing organisations (Table 10), and export subsidies.

Focusing solely on sectoral aid may give a distorted picture of the real situation in a given country by concealing the fact that this sector, while receiving no specific aid, nonetheless benefits from generally favourable conditions, for industry e.g. low taxation on company earnings or subsidies for small and medium-sized firms (1).

(1) This is particularly true of States which offer non selective investment incentives (e.g. Malta, Netherlands, United Kingdom).

TABLE 10 : PUBLIC SUBSIDIES TO BROADCASTING ORGANISATIONS

BELGIUM	French Com.	Local and Community Television	1987	71.9 mio BF
			1988	86.8 mio BF
CYPRUS	Ministry of Finance	CyBC	1986	500000 Cyprus pounds
DENMARK	Ministry of Culture	Local television	1987	na
FRANCE	Ministry of Foreign Affairs	TV5	1987	40.5 mio FF
		Privatisation TF1	Antenne 2	1988-89
		FR3	1988-89	200 mio FF
		Surplus of Advertising income from TF1	SFP	1987-88
PORTUGAL		RTP (Compensation)	1987	1 mia Esc
SPAIN	Ministry of Culture	RTVE		na
		Basque Government	ETB	1987
			1988	4.4 mio Pts
	Government of Catalonia	TV3		na
	Government of Galicia	TVG		na
	Government of Valencia	TVV		na

1.2. Waiving of receipts in the form of tax relief

One of the most frequent forms of indirect aid to the audio-visual industry is the waiving of receipts by the authorities in the form of tax relief: there are various formulas and these will be studied in detail in chapters 2 and 3:

- consumer incentives in the form of VAT exemption, zero rating or reduced rating;
- exemption from taxation on all or part of the income of public broadcasting organisations;
- investments incentives in the form of relief for speculative investments, income or in the form of accelerated amortisation;
- incentives for small investments, through the establishment of investment trusts, generally with tax relief;
- incentives for the temporary provision of services (in particular the shooting of films by companies incorporated in another country) in the form of relief;
- reduction in the rate of registration fees in the case of coproduction;

1.3. Special rate loans and guarantees

The authorities may support cinematographic and audio-visual production by granting low interest loans and/or guarantees to enable producers to raise funds from private banks.

The difference between direct subsidies and loans may be tenuous, inasmuch as the loans (sometimes called "advances on receipts") are often not repaid by the producers because of inadequate returns. It is not therefore always easy, from the information provided, to assess what the proportion of loans in direct subsidies is. Loan repayments are generally recycled by the aid funds for subsequent aid. In the European Community, the "advances on receipts" cover, on average, between 25 % and 30 % of a film's budget but may sometimes be significantly greater (50 % in the case of Spain) (see table 11).

TABLE 11: SYSTEMS OF LOANS AND ADVANCES ON RECEIPTS GRANTED BY THE AUTHORITIES TO THE CINEMATOGRAFIC AND AUDIO-VISUAL INDUSTRY

		<u>AMOUNTS</u>
AUSTRIA	Interest free loans for cinema production and distribution by the Österreichische Filmförderung Fund (OFF)	
	The Ministry for Education has a budget (a year) to support film productions or film distribution (not repayable loans).	10 mio AS
BELGIUM French Com.	Advances on receipts repayable after recovery of 100% of the initial investment	
DENMARK	Loans for cinematographic production up to 85% of the budget of the film	52 mio DKr (1986)
FRANCE	Advances on receipts for cinematographic production	85 mio FF (1987-88)
	Advances on receipts for audio-visual production	100 mio FF (1987)
	Loans for the restoration of auditoriums	
	Guarantee fund for credits in the cinematographic sector (IFCIC)	47.5 mio FF
	Guarantee fund for credits to audio-visual production (IFCIC)	5.5 mio FF
ITALY	Loans at favourable rates for production, the technical industry, cinematographic distribution	42.7 mio LIT (1986)
	Loans for films of artistic and cultural merit	9.1 mia LIT
	Advances on receipts (13% on admissions)	25 mia LIT (1986)
	Contribution of 6% on BNL loan agreements	3.6 mia LIT
	Investment by Sezione Autonoma del Credito Cinematografico de la Banca Nazionale del Lavoro	194 mia LIT (1986)
		243 mia LIT (1987)
NETHERLANDS	Interest free loans up to 60% of the production budget (90% for films of artistic merit)	0.75 mio G (1985)

NORWAY	Guaranteed loan of up to 90% of the production budget	49 mio NOK (1988)
	The Government may redeem the guarantees after four years, NOK 21 million allocated to private companies, NOK 28 million by the Norwegian Film Institute	
SPAIN	Protection Fund, including "Advances on receipts" (up to a maximum of 60 % of the budget) and "a posteriori subsidies" (15 % of box office gross receipts + from 10 % to 25 % of B.O. receipts when it exceeds 85 mio Pts + a further 25 % of box office receipts for film of special artistic merit certified by the Spanish Institute of Cinema)	2.500 mio Pts (1987)
	Official credit by the Banco Industrial de Crédito	
	Low-interest loans for foreign films made in Spain	
	4 % interest reduction in loans for the renovation of auditoriums	
UNITED KINGDOM	Low-interest loans	

1.4. Financial transfers between private persons by public decision

This form of aid is particularly typical in the audio-visual sector, where the authorities frequently organise transfers within the sector in order to establish corrective mechanisms to ensure reproduction in the sector:

- tax on cinema tickets, the proceeds of which go to aid funds or tax on public shows : France, Federal Republic of Germany, Greece, Italy, Malta, Norway, Portugal, Sweden, Switzerland (in the United Kingdom, the "Eady Levy" was abolished in 1981);
- tax on the income of television channels and cable networks, which also goes to support mechanisms or production aid (France, Iceland, Ireland);
- tax on the sale or hire of prerecorded or blank video cassettes (Federal Republic of Germany, Norway, Sweden);
- tax on recording equipment (Norway, Sweden).

Another form of transfer operated by the authorities consists in financing one television service from advertising income from another service. A case in point is Channel 4 in Great Britain, which is basically financed by a levy of 17% of the advertising income of the ITV companies. In fact the British government is at present considering severing the "umbilical cord" between ITV and Channel 4, on the grounds that this channel could become self-sufficient with the advertising income it presently generates.

Those different specific taxes or levies are detailed in chapter 4.

The operation by the public authorities of such redistributing mechanisms has the advantage of reducing dependence on direct subsidy aid. This type of regulation ensures that the strong branches in the sector support the weak ones (in particular in production and creation). In as much as the film and video markets are dominated by American products, taxes on cinema tickets and the sale of video cassettes can also be interpreted as a corrective mechanism which benefits the national production of the European States concerned.

Such mechanisms call for constant appraisal in accordance with market developments. The most striking contradiction is the fact that the decline in cinema attendance leads inevitably to a reduction in the amounts levied for production support through support taxes. If this type of mechanism is not adapted to the new consumer patterns - in particular the development of video and pay television - it may lead to a diminishing returns situation which will be harmful to the whole sector.

The need to take steps to initiate contributions from organisations in the new audio-visual media which differ from the cinematographic sector (in particular the cable networks and videogrammes) to the support funds for the various branches of the cinema is one of the Recommendations made by the Committee of Ministers of the Council of Europe in Recommendation No R (87) 7 on the distribution of films in Europe (1).

1.5. Contributions from broadcasting organisations to independent film and audio-visual productions

The contribution of broadcasting organisations to cinematographic production has become a major factor in the economy of the audio-visual industry in Europe (2). This type of contribution, which often depends on the autonomous initiative of broadcasting organisations (cinema-television co-production, creation of cinematographic production or distribution subsidiaries) does not necessarily represent a form of public involvement. Nevertheless, the latter can play a decisive role in the organisation of such contributions, either by making them compulsory by means of the "cahiers des charges" of the broadcasting organisations (France, pay television in Switzerland), or by establishing outline agreements between the authorities subsidising cinematographic production and the broadcasting organisation (French community in Belgium, Greece, Norway) or again by means of mediation between producers and broadcasters.

Recommendation No R (87) 7 of the Committee of Ministers to the member States on the distribution of films in Europe recommends the adoption by the member States of provisions to ensure contributions by the broadcasting organisations to production aid funds (3).

-
- (1) Sweden and the United Kingdom have expressed a reservation in this connection.
 - (2) See A. LANGE, "The future of the European Audio-visual Industry, op. cit." ; Cinemaction, July 1987. Cinema/television relations are the subject of one of the symposiums of the AECTV (Venice, 1-2 September 1988).
 - (3) Sweden and the United Kingdom entered a reservation on this aspect of the recommendation.

In parallel with the organisation of contributions to cinematographic production, the authorities can also organise contributions by the broadcasting organisations to the financing of independent audio-visual production. This may take the binding form of legal provisions (Channel 4 in the United Kingdom, the second channel in Denmark), "cahiers des charges" (TVi in the French Community, French channels), guidelines issued by the controlling authority (rules defined by the IBA for ITV contractors in the United Kingdom). Less binding could be the method of policy guidelines issued by the Ministry concerned (BBC in the United Kingdom) or agreements between the authorities and the broadcasters (foreign private channels seeking access to the cable networks of the French community in Belgium).

In its modified proposal for a directive on broadcasting activities, the European community has incorporated the following provision:

(Article 3)

"1. Member States shall ensure that television broadcasters reserve at least 5% of their programming budget for Community works created by producers who are independent of the television companies."

Article 21.2 specifies that "Member States shall take measures to establish the concept of independent producer by providing sufficient opportunities for smaller producers and reserving the right to allow financial contributions by co-production subsidiaries of television companies."

1.6. Organisation of small investment collection

The authorities may finally encourage the investment in the audio-visual sector by organising the possibility of small investments in the form of investment trusts, generally coupled with tax relief.

This type of operation, which is used in France, Italy, Sweden and the United Kingdom will be examined in detail in chapter 2.3.

2. DIRECT TAXATION APPLICABLE TO THE AUDIO-VISUAL SECTOR

2.1. Ordinary and special schemes for the audio-visual sector

The direct taxation applicable to the audio-visual sector in Europe is in line with that applicable to the whole economy and is extremely complex and varied (see Table 12).

In several member States, the various audio-visual undertakings (broadcasting organisations, cinematographic industry, audio-visual industry) are subject to the general rules (see Table 13) : Austria, Belgium, Denmark, Greece, Luxemboug, Netherlands, Sweden.

The use by certain audio-visual undertakings of the general tax facilities offered by certain States cannot be excluded, including broadcasting undertakings, as in the recent case of Canal 10, a short-lived pay television channel beamed to Spain and located in the principality of Andorra (1). According to a survey on the registration of Eurosport Channel carried out by the EBU, the United Kingdom and the Grand-Duchy of Luxembourg would be for tax purposes the most attractive States for this operation. As far as holdings are concerned, one can refer to Pergamon (a holding of Maxwell Group) based in Liechtenstein and Pargesa (a holding of Bruxelles-Lambert Group) based in Switzerland. American production and distribution companies also take advantage of the facilities provided by some European States (eg UIP based in the Netherlands even for their activities in Australia, Cannon N.V., main company of the Cannon Group based in the Dutch West-Indies).

(1) On tax havens, see A. DEUCHAMP, Guide mondial des paradis fiscaux, Grasset, Paris, 1987. It is to be noted that the Convention on mutual administrative assistance in matters of taxation, which was opened for signature on 25 January 1988 and which is mainly designed to prevent the development of tax evasion, has not yet been signed by a single member State of the Council of Europe.

On corporate taxation in the EEC, see inter alia J. M. TIRARD, La fiscalité des sociétés dans la CEE, La Villeguerin, Paris, 1988.

The international tax documentation bureau, (Amsterdam) publishes a monthly review European Taxation reporting on developments in national tax systems.

TABLE 12

MAIN FEATURES OF CORPORATE TAX SYSTEMS IN MEMBER COUNTRIES (1986)

	NORMAL DEPRECIATION METHOD SL = Straight line DB = Declining balance AD = Accelerated Depreciation M = Machinery ; B = Buildings	INVESTMENT ALLOWANCE OR CREDIT GENERALLY AVAILABLE (IA or IC) (M = Machinery only)	NORMAL RATE OF TAX %
AUSTRIA	SL or AD	IC	30-55 (1986)
BELGIUM	DB	IC	30-43
CYPRUS	na	na	42.5
DENMARK	DB(M) SL(B)	-	50
FRANCE	SL	-	45
FEDERAL REPUBLIC OF GERMANY	DB or SL	IC	56
GREECE	DB	IA	44
ICELAND	na	na	na
IRELAND	AD	DB(M), SL(B)	50
ITALY	SL	-	53
LIECHTENSTEIN	na	na	20
LUXEMBOURG	SL	IC(M)	40
MALTA	AD	IA	na
NETHERLANDS	DB or SL	IC	43
NORWAY	DB	-	51
PORTUGAL	SL	IA/IC	30/47
SPAIN	DB or SL	IC	35
SWEDEN	DB(M), SL(B)	IC	52;
SWITZERLAND	DB or SL	-	39(1)
TURKEY	DB or SL	IA	46
UNITED KINGDOM	DB(M) or SL(B)	-	35

(1) Average Canton Plus National rate.
Main Source : OECD

TABLE 13 : EXISTENCE OF SYSTEMS DEROGATING FROM DIRECT TAXATION
(Tax on the income of companies)

	PUBLIC SECTOR BROADCASTING ORGANISATION		CINEMATOGRAPHIC INDUSTRY	AUDIVISUAL INDUSTRY
	Total	Partial		
AUSTRIA	No	No	No	No
BELGIUM	No	No	No	No
CYPRUS	Yes	-	No	No
DENMARK	No	No	No	No
FINLAND	Yes	-	No	No
FRANCE	No	No	Yes	Yes
FEDERAL REPUBLIC OF GERMANY	No	Yes (*)	Yes	No
GREECE	No	No	No	No
ICELAND	na	na	na	na
IRELAND	Yes	-	Yes	Yes
ITALY	No	No	Yes	Yes
LEICHTENSTEIN	-	-	na	na
LUXEMBOURG	No	No	No	No
MALTA	Yes	-	No	No
NETHERLANDS	No	No	No	na
NORWAY	na	na	na	na
PORTUGAL	Yes	-	No	No
SPAIN	Yes	-	Yes	Yes
SWEDEN	No	No	No	No
SWITZERLAND	Yes	-	No	No
TURKEY	Yes	-	No	No
UNITED KINGDOM	No	No	Yes	No

(*) Public service broadcasters are only subject to taxation for their advertising revenue. The revenue of ARD stations are taxed for revenues which exceed programme expenditures. ZDF is taxed on a basis.

Other States operate certain forms of exemption or relief from direct taxation:

- for all the income from public sector broadcasting organisations: Ireland, Malta, Norway, Portugal, Turkey;
- for some of the income of public sector broadcasting organisations: Federal Republic of Germany;
- for some of the activities of the cinematographic industry: France, Ireland, Italy, Spain, United Kingdom;
- for some of the activities of the audio-visual industry: France, Ireland, Italy.

The harmonisation of company tax has been considered for a long time in the European community, but no concrete provisions have yet been established. No Directive has so far been adopted and, with the prospect of the single European market of 1992, the European Commission is encouraging the harmonisation of indirect taxation. A fortiori, harmonisation within the member States of the Council of Europe would seem to be a long way off.

2.2. Tax incentive schemes to promote investment in the audio-visual sector

The concept of "tax shelter" for the cinematographic industry was developed in the early 70s in three countries: United States, the Federal Republic of Germany and Canada (1). It was abandoned by the first two, but subsequently developed in Australia and New Zealand before arousing further interest in Europe since the early 80s. Before examining the current situation in the member States of the Council of Europe, it appeared interesting to make a rapid evaluation of the first extra-European experiences (2).

(1) P. WILLARTS, "Défense et illustration de l'abri fiscal cinématographique appliqué dans trois pays", Film Echange, spring 1980.

(2) The most complete, but already partly dated, study of the matter was carried out by Arthur YOUNG Limited for the British Film and Television Producers Association: "A Comparative Study of Tax Allowances and other Fiscal Incentives available to the Film Industry in the United Kingdom and Other Countries", BFTPA, London, 1986.

2.2.1 Tax shelter experiences for the cinematographic industry outside Europe.

United States

Two tax shelter systems have been available in the United States:

- the Amortisation Purchase system:

In this system an individual or a group of individuals buys a finished film. The Federal Investment Credit Act granted a tax credit of 10% of the declared purchase price. In addition, the purchaser could claim an accelerated amortisation rate in the first years, thus creating a deductible loss. This system became interesting when it was accompanied by a lever effect. The purchaser - with the tacit consent of the vendor - generally paid out only 25%, and sometimes less, of the declared price.

- The Kanter system:

American tax law firstly allowed the deduction of the losses of an association of persons from the taxable income of the individual entity (the sine qua non of the tax shelter). Moreover, expenditure on services are not considered to create a fixed asset. (...). In the Kanter system, a group of tax payers forms a limited partnership with a limited liability company as an active partner. The sleeping partners pay 25% of the total cost of production of the film and, on the basis of a distributor guarantee, a bank lends the remaining 75% against notes as above. The limited partnership does not produce the film itself but entrusts it to a production company. The expenditure is therefore expenses for services and does not create assets according to American law. The production service company (PSC) then grants a licence to use the product to a distribution company.

Initially, the independent production companies benefited from this system (...). But the major companies also surrounded themselves with PSCs. A major holding the rights to a book (an important factor in American production) gave a licence to a PSC which then gave the major an order to physically produce the film. Since the major was mainly a distribution company, the distributor guarantee which it made to the PSC was incontestable as far as the bank was concerned. Films produced by the majors in accordance with this method were designed, made and screened with the object of making a commercial profit (...). Abuses were attributable to small production companies, which were sometimes happy to receive orders without having to pay attention to the quality of the film (...). The marketing of supply was done discreetly through investment counsellors in order to avoid the very strict monitoring of the Securities and Exchange Commission. (...).

It is estimated that in 1974 approximately 100 to 150 million dollars were invested in the cinematographic industry through tax shelters. The major part of this goldmine was divided between the majors (in particular Columbia), with approximately 30 million dollars going to the independents. Financing from tax shelters was nevertheless more important for the survival of the independents than for that of the majors (...).

In 1975, abuses of the tax shelter (Indian films shown for one day to an empty house, pornographic films financed by funds destined for the tax authorities, tourist films with enormous budgets but no commercial worth) attracted the attention of the Ways and Means Committee of the American House of Representatives, which prepared a reform of the tax code (...). The majors (...) did not lobby much to maintain the system, perhaps because it breathed new life into the independent production sector. Particularly scandalised by the use of an indirect subsidy for the production of pornographic films, the American electors modified the law, which entered into force in the middle of 1976 (...). The new law no longer allowed deductions in excess of the sum actually paid and "at risk", and no longer allowed the losses of a cinema company to be deducted from losses arising from other sources. It should be noted that the reform retained the tax shelter for oil, gas and property. In the months following the decision, small investors turned to oil, which was becoming increasingly interesting because of the price rises for crude dictated by OPEC (1).

- Investment tax credit (2)

The only tax incentive generally available in respect of film production in the U.S.A. is the investment tax credit. This is available as follows:

- Investment tax credits do not represent a tax deduction but a credit which is available to reduce the actual tax liability on a dollar for dollar basis. The credits are available to taxpayers who have an economic ownership in the film.
- The credit is a percentage of qualified production costs, including all "direct production costs" allocable to the US and, if such costs are 80 % or more of the total direct production costs, all indirect production costs. "Direct production costs" are specified as compensation (other than profit participations) payable to actors, production personnel, directors and producers; and the costs of the "first" distribution of prints. Indirect production costs include a reasonable allocation of general overheads; the cost of all screen rights and other material being filmed; "Residuals" payable under contracts with unions; Profit participations payable to those persons specified above.

(1) Extract from P. WILLARTS, op.cit.

(2) From A. YOUNG, op.cit.

- The investment tax credit can be calculated using one of two methods, regardless of the sums invested :

- (i) By taking credit currently at 6.6 per cent in respect of qualifying production costs regardless of the useful life of the film;
- (ii) By electing to take a 10 per cent tax credit if the period of write off for 90 % of the film costs under normal depreciation rules (see below) is seven years or more. If the period of write off proves to be less than five years, then the investment tax credit is reduced to 3.3 per cent.

Individuals generally declare income only when it is received as opposed to receivable.

Various proposals have been put forward in favour of this tax credit and this cash method of accounting.

Capitalised film costs (net of investment tax credit) can be amortised using the income forecast method. This method results in films being written off over the expected flow of income, with the result that the majority of the cost is written off over a two-year period during which time most of the income is generated. Most major studios in the U.S. use the income forecast method.

Various local State tax incentives exist (for example in the State of Arkansas)

- Tax facilities for activities outside the United States

American cinematographic firms were also able to benefit from tax facilities for activities outside the United States.

The Revenue Act passed in the United States in 1971 contains clauses which allow an American company to set up a subsidiary (Domestic International Subsidiary Corporation, DISC) to organise overseas sales. The subsidiary buys from the parent company and sells abroad. If a DISC subsidiary achieves at least 95 % of its revenues from overseas sales transactions, leasing and hiring, and if other requirements concerning the setting up of the company are fulfilled, it can write off more than half of its export revenues against tax. This money can then be used to develop export activities or it can be earmarked for production destined for export. These revenues are only taxable if they are distributed to shareholders. In 1972, the European Commission judged this practice to be a tax exemption on exports and consequently a violation of Article VIII of GATT.

The Treasury Department considers the files relating to DISC subsidiaries to be confidential which makes it impossible to know which companies have availed themselves of such an arrangement. It is more than likely, however, that American exporters of audio-visual programmes have done so (1).

- Use of tax havens by American cinematographic firms

A system sometimes used by the American cinema industry is the use of tax havens offered by third countries. A well-known case is that of the activities of the Cannon group. By virtue of various treaties with the United States and about 40 countries throughout the world, the Dutch West Indies offer producers, in particular American producers, an important tax haven for their unrepatriated export income. In 1984, Cannon was thus able to declare in the United States only 2% of the true export income, showing that almost 12 million dollars of income out of 12.4 million came from the Dutch West Indies subsidiary, where the rate of tax on foreign income was 1 to 3% (2).

It is to be noted that a new treaty between the United States and the Dutch West Indies signed on 8 August 1986 was denounced by the United States on 1 January 1988.

(1) T. GUBACK, "Film as International Business : The Role of American Multinationals", in G. KINDEM (ed), The American Movies, Southern Illinois Press, Carbondale and Edwardsville, 1982

(2) A. YULE, "Hollywood A GOGO", Sphore Bouts Ltd, London, 1987

CANADA

Canada is an example of a tax shelter system designed specifically for the development of a national cinematographic and audio-visual industry and generally considered as a model. However, the system was reformed several times.

On 18 November 1974, a change in the law on income tax allowed 100% depreciation during the first year of cinematographic goods which fulfilled certain specific conditions in the law. An investor may deduct the sum invested from his taxable income from other sources provided that:

- the producer is of Canadian nationality;
- at least 2/3 of the associates are of Canadian nationality;
- 75% of the payments for services other than those already mentioned are made to Canadians;
- 75% of the expenditure on production and post-production of the film are committed for services rendered in Canada.

These measures applied only to full-length films.

This system met with considerable success. During the period 1974-78, in the absence of further changes, the number of full-length films increased by 53% and the average budget by 100%. Private investment increased by 450%.

With effect from 26 May 1976, new rules were applied, in particular an extension of the deduction rate of 140% to audio-visual programmes and short films and the principle of the issue of certificates by the General Department of the Arts and Culture of the Secretariat of State in Ottawa.

In 1981, the possibility of capital deduction was limited to 50% of the sums invested.

Various levels of capital deduction were established according to the type of production:

- short and full-length audio-visual films are allowed amortisation over two years;
- non-Canadian productions may obtain a capital deduction on the basis of 30% (limited to 15% in the year of acquisition).

The deduction is granted only on the net income from production.

A minimal degree of Canadian participation has however been maintained.

With effect from 1 January 1986, further changes were made:

- redefinition of the term "Canadian" (in particular extension to immigrants resident in Canada for more than two years);

- adoption of rules for approval;
- exclusion of indirect costs from deductible amounts.

An income guarantee system was established to guarantee pre-sales to broadcasting organisations or distributors.

Since productions under the tax shelter system often resulted in bankruptcies, the incentive system was re-organised in particular by means of a reform of the Canadian Film Development Corporation, which became Telefilm Canada. The Canadian Broadcast Programme Development Fund was established, operating mainly as an investment bank with two major objectives: to stimulate and encourage private production and produce high-quality Canadian programmes for the national and international television market. The fund also operates in the distribution and marketing of Canadian films and TV programmes.

Investment through this fund takes various forms: shareholding, guaranteed loan, loan guarantees or a combination of all three. Investment is limited to a maximum of 1/3 of the Canadian participation, but Telefilm can invest up to 49% of the cost of entirely Canadian productions. The budget of the fund is 60 million Canadian dollars for the tax year 1987-88 (1).

This new formula has facilitated the development of Canadian co-productions with the American producers (majors, mini-majors and television networks). Subject to the requirements of a nationality certificate and the association of a Canadian producer or co-producer, American distributors or broadcasters can benefit from Euro-Canadian co-productions by supplying financial support, a distribution commitment and American actors or contributions.

An expansion of Euro-Canadian co-productions linked to distribution in the United States or to broadcasting commitments is considered likely when the private European channels increase their investments in production (2).

There are also tax incentives in the provinces:

- The Province of Alberta has established the Alberta Motion Picture Development Corporation, which subsidises films made in the province and tax facilities which allow profits of 5-10% on production costs;

(1) Information taken from A. YOUNG, op.cit.

(2) G.O. CONCOFF "Coproduction et financement intermédiaire: la situation aux USA", in Film Echange, Paris, automne 1987.

- In Quebec the first purchaser of a film which is certified by the Institut québécois du cinéma as originating in Quebec can write off 100% of the capital cost in the year of purchase against Quebec taxation, whereas in the federal system this deduction is limited to 50% of the cost in the year of purchase, the remaining 50% being deductible only with effect from the following year. Also available in the Quebec system alone, was a further deduction of 50% of the cost, claimable as of the first year, and this brought the possible deductions to 150%.

With effect from the 1987 tax year, the additional deduction of 50% can no longer be claimed. This measure was justified by the government as a result of the unprecedented increase in the use of this tax shelter in 1986. The writing off of 100% for films originating in Quebec, as of acquisition of the film, is however still allowed (1).

(1) Journal des débats, Assemblée nationale, Québec, 11 décembre 1986, pages 5189-5190 et 5302.

AUSTRALIA (1)

Australia established a particularly remarkable tax shelter system in 1981. The tax legislation is available to Australian residents who invest in Australian films and audio-visual programmes. The facility is granted by the Minister for Home Affairs and Environment on the basis of certain criteria: a substantial part of the film must be made in Australia, and have an Australian content, or it must be made in the context of an agreement between the Australian government and another government.

The benefits available are since 19 September 1985:

- A deduction of 120 % (formerly 133 %) allowable in the year of expenditure, from assessable income for the capital cost of acquiring an interest in an initial copyright of a film.
- Net earnings of the film up to 20 % of the capital investment are exempt from tax.

To be eligible for the benefits the taxpayer must be a resident of Australia who outlays capital expenditure in producing (or as a contribution towards the production of) a film and as a consequence, becomes the first owner or one of the first owners of the copyright in the film.

The film must be completed, released and produce assessable income within two years after the end of the year in which funds for production costs were expended or contributed. Assessable income is that which is derived from public exhibition in cinemas or on television. An investor must be evaluated by the taxation authorities to be "at risk" of economic loss should the film venture fail. However, the tax-payer's risk of loss is not automatically eliminated simply because the film has a pre-sale or limited guarantee return.

A certain proportion of the capital expenditure not directly incurred in film production (such as legal costs for drawing up a prospectus and brokerage/commission charges paid to a promoter) do not qualify for the 120 % deduction nor the normal deduction provisions detailed below. Such costs generally represent approximately 10%-15% of the total production cost.

According to a previous law, investors, in particular when the investment is not considered as a speculative investment, can have a two-year amortisation rate. Such amortisation can also be obtained for the acquisition of non-initial copyrights. A longer amortisation rate is also available if it is desirable.

The advantages, apart from the two-year amortisation, are not available in the case of non-Australian films. However, European producers have been able to evolve co-production formulas to make use of the benefits available in the Australian system (eg Captain Cook, a series co-produced with the French company Revcom).

(1) From A. Young op.cit.

The success of the tax shelter in 1985 led the Australian Film Commission to propose a ceiling of 100 million Australian dollars on amounts qualifying for exemption.

Notwithstanding the fears of the professionals of the cinema, the budget for the tax year 1987-88 has not called the tax shelter into question. Direct subsidies to the Australian Film Commission, the Australian Film, Television and Radio School and Australian Children's Television amounted to a total of 43.1 million Australian dollars, or 5 million more than the previous year (1).

NEW ZEALAND (2)

New Zealand has virtually ceased to be a tax haven for the cinematographic industry since October 1984.

Until 1982, the principles of limiting tax for the cinema industry were a great incentive for individual investors such as physicists, dentists and lawyers, and non-repayable loans lent impetus to the whole industry. A tax deduction of 2 or 3 dollars for every dollar invested was the norm, and the highest rate of taxation was 66 cents in the dollar. The investors actually preferred films which were a failure at the box office!

There were attempts to negotiate a system based on Australian legislation at the time, but the national budget of August 1982 rejected this project and abolished non-repayable loans (Section 106 A of the Income tax law of 1976), except in the case of films already in pre-production. A time limit for the completion of films was fixed at 30 September 1984.

The definition by the tax authorities of the concept "in pre-production" was unintentionally generous and 17 full length films were made in 1983/84 - an artificial production boom which was not to be repeated.

Section 224 D of the Income tax law of 1987 provides for 100% amortisation of investments made in the production of films with a significant New Zealand content. The amortisation is operated when the film is finally edited and completed. The New Zealand nationality of the film is attested by the New Zealand Film Commission.

The Labour government has abolished the interesting Tax Credit, which was an incentive to exports, and the Foreign Market Development Scheme. Its object was to create a "neutral" tax system with no social or economic incentives, leading to an even handed economy for all activities in which market forces alone would determine the location of investments.

Investments have been deflected away from the cinematographic industry towards more profitable sectors and stock exchange and property speculation.

(1) Variety, 23 September 1987.

(2) Information taken from P DAVIES, "Coproduction et fiscalité en Nouvelle-Zélande", Film Echange, autumn 1987.

Relations between the cinema industry and the tax office are not good. The tax authorities were outraged at the tax shelter systems that were in force until August 1982, and the way in which films in pre-production proliferated in 1983 and 1984. There are continual enquiries on the financing of films and on investors, to the extent that the producers are talking about a witch hunt and Mr de Cleene, Under-Secretary of Finance responsible for the tax department, is alleging conspiracy to falsify accounts. Mr de Cleene evaluates the tax evasion at 56,000 dollars. Some spectacular court cases are likely to follow.

2.2.2. Tax incentives to investment in the film and audio-visual industry in Europe

AUTRICHE

No specific fiscal incentives for audio-visual investment. There are, however, general schemes to encourage investment.

BELGIUM

The possibility of setting up a tax shelter system is being investigated since 1982 by the Ministre de la Communauté française. Two Bills were proposed during the former Parliament (Grafé Bill, 21 January 1985 ; Van der Biest Bill, 19 June 1985).

On 9 May 1986, the Commission consultative de l'audiovisuel de la Communauté française, proposed the following system :

- a. writing off of the capital as soon as incurred,
- b. fiscal exemption for 125 % of the invested capital, by analogy with the preferential rate and for the innovative companies,
- c. exemption of revenues, if profits are reinvested in the next 3 years in a national production,
- d. guarantees on the fact that fiscal incentives are used for Belgian audio-visual production,
- e. temporary scheme (5 years).

The Inland Revenue did not accept these proposals, which were suspected of producing tax evasion.

DENMARK

No fiscal incentives for audio-visual investment.

FRANCE

a. The SOFICA system

A tax incentive system was established by law no 85.695 of 11 July 1985, which allowed the incorporation of companies to finance cinematographic and audio-visual works (SOFICA).

Individuals are to be allowed a 100 % deduction from their taxable income for cash contributions to the share capital of companies, agreed by the Ministry of Finance, whose exclusive activity is the financing of films and radio and television productions. The productions they finance in equity must be approved by the Centre National de la Cinématographie. The deduction by the individual will, however, be limited to 25 % of an individual's total income.

A company making a similar investment will be allowed to deduct 50 % of the amount invested.

Income arising to individuals or companies putting up capital will be taxed in full according to normal taxation regulations.

The companies established under these new fiscal incentives for cinema and audio-visual products are called SOFICA (Sociétés pour le Financement de l'Industrie Cinématographique et Audiovisuelle).

Subscriptions to capital or increases in capital in the SOFICA must be in cash. No minimum investment is specified. Sums invested by individuals must be for a period of 5 years.

The sums invested by the SOFICA may not amount to more than 50% of the budget of the film. Any profit made by these companies is subject to company tax. The investments made by the SOFICA must be:

- Either subscriptions to the capital of the production companies whose exclusive activity is the making of cinematographic or audio-visual works, or
- Cash payments made by deed of partnership. In this case, the deed must be concluded and the payments made before the commencement of shooting. The deed makes it possible to acquire a right over the export revenue of a cinematographic or audio-visual work. It is specified that the holder of the deed does not possess any exploitation right in the work and cannot benefit from the system of State financial support to the cinematographic industry and to the industries of audio-visual programmes.

The main requirements by which works can be approved by the Centre National de la Cinématographie are:

- a) The production company must be established in France and the majority of the Board must be of French nationality or citizens of an E.E.C. country, or a non E.E.C. citizen established in France for more than five years.
- b) The producers, authors, main technicians and actors must be of French or other E.E.C. nationality.
- c) At least 50 % of the production expenditure must be incurred in France.

An audio-visual work which is an international co-production can receive approval if French financial participation is equal to at least 20 % of the cost and a minimum of 20 % of the total costs must be incurred in France. The participation of French or any other E.E.C. member country's artists must be in the same proportion as that of the French or other E.E.C. country's financial contribution.

- Enforcement and limits of the fiscal exemption

When the SOFICA scheme was implemented by the Fabius government, it was subject to criticism, including from the COB (Commission des opérations en bourse). According to the COB, the profitability of a SOFICA portfolio, considering the exemptions, in the terms of the 10 year subscriptions, varies from 7 to 11% (in a scale of imposition between 50 and 65%) in the hypothesis in which the subscriber would recover the whole of his investment in the term of a 10 year's subscription. The profitability falls to 0-2% in a less favourable hypothesis when only 50% of the initial capital is recovered at the due date (1).

- Assessment (end 1987)

Since the setting up of the scheme, on 1 January 1986, the amount collected by the SOFICA was almost 600 million FF and the total investments were 436.801 million FF out of which 295.142 were for film production and 106.44 for television production. 35.219 million FF were subscriptions to the capital of companies.

Investments in film production amounted to 114.542 million FF in 1986 for 39 pictures (it means an average of 2.94 million FF per film and of 2.04 million FF by SOFICA (Various SOFICA can invest in the same production).

For the year 1987 (until 30 September), those investments amounted to 180.6 million FF invested in 55 films. It means an average of 3.28 million FF by film and 2.07 millions by SOFICA.

(1) P. Peyrelevade, "Les SOFICA ou la grande illusion", Les Petites Affiches, 23 octobre 1987.

The share of the investment against the global budget of films was of 15.6 % in 1986 and 18.2 % in 1987 ; the share of the SOFICA in the whole investment was 4.8 % in 1986 and 11 % in 1987. This data shows that the share of the SOFICA in the financing of the film production has more than doubled from 1986 to 1987. On the other hand, the average investment by a SOFICA for one film remains more or less the same, around 2 million FF.

26 TV productions have taken advantage of the scheme since its launch. The SOFICA have invested 14.2 % of the total cost for those productions, that is to say an average investment of 4.09 million FF (for a film and 2.6 million by SOFICA (in this case again, various SOFICA can invest in the same production). In conclusion, the average investment by the SOFICA is greater in the TV production than in the film production, but not in the overall investments.

The estimated loss of tax revenue in 1987 resulting from the SOFICA scheme was 100 million FF.

- Evaluation and prospects

In two years, the SOFICA have demonstrated their efficiency in the financing of French production. The scheme is well received by professionnals. At the end of 1987, various SOFICA increased their capital by appealing to public savings. In 1988, some companies which had already created a SOFICA, created another one. This proves how successful the formula is.

However, it is useful to note that :

- SOFICA are inclined to behave as lenders more than venture-capital providers. Some projects are characterized by financial arrangements which reserve to them the near exclusivity of receipts in France until they recover their initial investment and the interest charges. As film distributors and broadcasters have set up their own SOFICA, the scheme means mainly a rationalisation of financing. Financing by SOFICA is a substitute to traditional credit and decreases the events of professional credits. It is not without risk, as noted by Senator Cluzel in his report to the Finance Committee of the French Senate (1) ;
- the action of the SOFICA could mean a diminution of the share of investments subscribed by broadcasters, without necessarily implying a consolidation of the financial situation of the producers ;

(1) "Cluzel Report", 16 November 1987, Sénat 1987-88, no 93. See also the proposals for reform set out in the short report to the Minister for communication and culture on the situation of the French cinema industry (February 1988).

- the rationalisation of financing leads to a more significative influence of the lender in the process of production. This could be detrimental to the freedom of filmmakers, as the investor wishes first of all to reduce the commercial risks;

- the EEC Commission has taken proceedings according to Article 92 (2) against the law of the 11 July 1988. The Commission considers that this law was not ratified according to Article 93 (3) and that it includes a specification, excluding citizens from other member States. The law could be contrary to Articles 48, 52 and 59 of the Treaty of Rome (1).

The French government is considering the possibility of improving the existing SOFICA. In December 1988, J. Graindorge, laid down a report putting forward different flexible formulas aimed at reforming a system which in 1988 was out of breath (100 millions were collected in 1988 against 300 in 1987). The measures would tend in particular :

- to encourage the development of corporate investments through the setting-up of an investment trust mainly for pre-production;
- to cover investors by making it possible for them to leave after a five-year subscription;
- to make SOFICA more commonplace by converting them into cinematographic investment companies;
- to make sure that cinematographic production is directed towards cinemas and not only or mainly to television broadcasting (3).

b. Facilities for writing-off production costs

The system of amortisation for cinematographic films was modified by an instruction of 6 August 1987 published in the official tax bulletin under reference 4-D-1-87. This also applies to the system of amortisation for audio-visual works (2).

Producers of cinematographic films are authorised to write off the rights they hold on films produced over a short period of time.

Amortisation may be effected either in accordance with the takings of the film or, if these are insufficient, the takings from other films, or finally over a period of 3 years.

Provision is made for the following procedure:

- each film may be amortised, at the end of the financial year, to the extent of the net receipts derived from its showing during that financial year;

(1) "Competition Report", EEC, Brussels, 1986.

(2) For more details, see P. KUPERBERG et S.S. FADDA, "L'amortissement des oeuvres audiovisuelles", Film Exchange, Paris, printemps 1988.

(3) Le Figaro, 30 December 1988. Le Monde, 7 January 1989.

- if, at the end of the financial year, the amortisation accumulated for a film is less than the figure obtained by applying to the cost price of that film a depreciation coefficient calculated on the basis of the table below, it may be supplemented up to that amount by a deduction from the net receipts available from other films produced.

The applicable rates are as follows:

<u>Periods</u>	<u>monthly rates</u>
First year	
- first 2 months	25%
- following 10 months	3%
Second year (first 10 months)	2%

Depreciation is calculated on the basis of the last shooting.

- Finally, a linear amortisation over three years with effect from the certificate of showing is also allowed.

This system also applies to the distributors of cinematographic films for the amortisation of the screening rights they hold pursuant to:

- a mandate agreement accompanied by a guaranteed minimum clause in favour of the producer;
- an agreement for the transfer of the rights of screening of the film by the producer.

c. Limitation of the basis of the stamp duty on co-productions

Contributions by producers to a joint company are subject, pursuant to the provisions of Article 809-1 of the Code Général des Impôts, to stamp duty of 1%. In a noteworthy decision of 11 February 1985, the Chambre Commerciale de la Cour de Cassation had occasion to specify that the basis of this stamp duty consisted of "the total amount of sums placed at the disposal of the company by the associates to enable it to fulfil its object". The solution amounts to making the budget of the film the basis of the 1% duty payable by virtue of the above-mentioned text.

In order to correct the consequences attaching to this case-law, an agreement was recently reached between the organisations representing the producers and the tax administration, limiting the basis of the stamp fee to 15% of the budget. It should also be emphasised that it will be up to the producers to assume responsibility for the payment of the stamp duty (1), up to the amount of the basis so defined and in accordance with their respective contributions.

(1) Information taken from O CARMET, "Nature et régime juridique de la coproduction", Film Echange, autumn 1987.

d. Possibilities for tax credits for research and development and tax credits for training

Provided that they fulfil the requisite conditions, undertakings in the audio-visual sector taxed on their true profit can benefit from the research and development tax credit and the training tax credit provided for respectively in Article 244 quater B of the Code Général des Impôts and in Article 69 of the Law No. 87-1060 of 30 December 1987.

However, the research and development tax credit applies only to the scientific and technical research operations defined in Article 49 septis F of Annex III to the Code.

This could be the case for research operations connected with the material characteristics of audio-visual media, or the instruments for the recording of sound or picture, or for transmission or reception.

On the other hand, artistic "research" does not come within the scope of the tax credit.

e. Possibility of exemption for associations and foundations having a purpose of general interest

Activities covering the production, distribution and screening of audio-visual works (films, television films, broadcasts, clips ...), when they involve payments, constitute profit-making activities.

Undertakings carrying out these activities are therefore liable to company tax under the conditions of general law. This applies whatever the legal form of the body which carries out these operations (commercial company, local semi-public corporation, association or foundation).

Nevertheless, associations and foundations whose purpose is of general interest and whose management is unbiased may, subject to certain conditions, be exempt from company tax and VAT when they carry out operations which are incidentally taxable.

This would for instance apply to:

- an association whose activities consisted of aiding artists in difficulty, which charged for the showing of an audio-visual document (films...), the receipts from which are exempt from VAT pursuant to Article 261-7-1° (c);

- an association which aided handicapped persons and which might produce a documentary film on the situation of such persons for public information purposes.

FEDERAL REPUBLIC OF GERMANY

A tax shelter system for the cinematographic industry developed in the Federal Republic of Germany until the late seventies. It was, however, abandoned as it failed to fulfil its purposes (1).

(1) See Information at P. WILLARTS, op. cit.

The possibilities of tax relief for the cinematographic industry are currently as follows (1):

1. When an audio-visual work is produced, a new asset protected by copyright comes into being, i.e. the so-called film rights, which are protected by law. These film rights are a self-created immaterial asset, which under sect. 5 para 2 of the Income Tax Act (EStG) do not constitute an asset item in the determination of income for tax purposes. The business expenses incurred in connection with the production of an audio-visual work have to be deducted from the profits in the year in which they occurred.

Pursuant to sect. 10 of the Corporation Tax Act (KStG), losses which cannot be squared in the balance of the total income of the taxpayer (e.g. in case of sole proprietorship) have to be deducted like special expenses - the maximum amount being 10 million DM - from the total amount of income of the second tax assessment period preceding that particular tax assessment period; to the extent that such deduction is not possible, losses have to be deducted like special expenses from the total amount of the first tax assessment period preceding that particular tax assessment period. In so far as a loss carry-back is not possible, losses can be brought forward to the following tax assessment periods without any time limitation. The possibility of loss carry-forward without any time limitation takes effect for the first time for unbalanced losses of the 1985 tax assessment period.

The production costs of a film incurred by a producer cannot be capitalised but must be expensed. This results in substantial tax losses arising during the production period which can be carried forward and applied against income generated by the sale or rental of the film.

As a result of this situation, there were no large investments in production. The reason for this was that too many investors, having benefited from the deductions in the first year, had to bear losses as the result of their investments.

2. Sect. 7 para 1 sentence 1 of the Income Tax Act (EStG) says that, for economic assets which are normally used or exploited by the taxpayer over a period of more than one year, a part of the acquisition costs shall be depreciated for each year which, if one equally distributes these costs over the total period of use or exploitation, can be apportioned to one year (depreciation on the basis of equal annual rates). The deduction for depreciation is subject to the ordinary useful life of the respective asset. The aforementioned deductions are no tax relief for the film industry.

As regards the loss deduction for corporations, the regulation of sect. 10 of the Income Tax Act applies pursuant to sect. 8 para. 1 of the Corporation Tax Act (KStG). Accordingly, the deduction of losses is allowed under the same prerequisites as apply to individuals. For reasons of completeness, reference should also be made to the following :

The loss carry-back is limited to an amount of 10 million DM.

(1) Information taken from A YOUNG, op cit and M SCHWARZ, "Coproductio et tax shelter en République fédérale d'Allemagne", Film Exchange, Paris, autumn 1987.

The time limit for loss carry-forward was repealed by the 1990 Tax Reform Act. This provision takes effect for unbalanced losses starting with the tax assessment period 1985.

3. If an audio-visual production enterprise has the legal form of a limited partnership, a limited partner is not allowed to utilise out his share of the loss of the limited partnership against other income from business operations nor against income of other types to the extent that this causes or increases a negative property account of a limited partner (see sect. 15a Income Tax Act). Losses that cannot be set off due to a negative property account reduce profits that will accrue to the limited partner in later business years from his share in the limited partnership (see sect. 15a para 2 Income Tax Act).

If the producer is not organised in the form of a limited partnership but instead as a corporate or sole proprietorship, any losses can be utilised to shelter other income without any restriction, subject to a two year carry-back of losses.

4. In general, it can be said that a profit liable to tax exists, if an asset (a thing or a right) is sold on the market, e.g. in the form of alienation or permitting the use of the asset. The time of the realization of a profit is subject to the economic performance of the transaction. It is normally not dependent on the granting of possession, advance payments have to be carried as liability so that no tax liability arises before the profit is actually realised. These general principles also apply with regard to the issue of profit realisation in case of enterprises in the film sector. The 1990 Tax Reform Act does not provide any particular tax privileges for film producers.

GREECE

There are certain tax facilities in Greece for the cinematographic industry:

- possibility of tax deduction from investments;
- possibility of amortisation at graded rates;
- exemption of export income (1).

IRELAND

Both general and specific fiscal incentives are available to production companies.

a. General measures to encourage investment

- companies producing films and audio-visual programmes are taxed at the reduced rate (10%) applicable to manufactured goods and certain international services;
- investors in film production companies are entitled to incentives under the Business Expansion Scheme, which confers exemption from tax on personal income from investments up to a ceiling of 25,000 IrL p.a. Four films have been produced under this scheme with a total budget of 2 million £.

(1) Response to the questionnaire.

b. Specific measures to encourage investment in the audio-visual sector

The 1987 Finance Act has set up a scheme of fiscal incentive for production of films. At the same time the Irish Film Board was abolished.

The new provisions are the following:

- the first 100,000 IrL of investment gets full tax write-off immediately ;
- other realised investments - up to a ceiling of 60 per cent of the film's budget get 100 per cent relief after three years.

For these benefits to be granted :

- 75 % of production work must be carried out in Ireland ;
- the film must be completed in two years ;
- the company must be resident in Ireland.

Criticism was made on the new scheme (1) :

- the scheme could profit more to distributors than to producers;
- relief on sole depreciation is not attractive enough for investors;
- the disappearance of the Film Fund is weathering the scheme ;
- low budget film are most at risk.

c. Exemption from income tax for cultural associations

Non-profit-making associations, organisations of public interest etc, engaged in audio-visual production activities for cultural or educational purposes may be exempt from income tax.

ITALY

The "mother-law" of 30 April 1985 which introduced new regulations for State support to the entertainment industry has created the general conditions for fiscal incentives for investments in the cultural sector.

For audio-visual investments, the scheme is as follows :

a. The subsidies based on the gross box office receipts granted to a producer are included as part of the taxable income. However, recognition of the subsidies may be deferred as follows :

- Although the subsidy would be accounted for as income under the normal accruals accounting concept, recognition of such income for taxation may be deferred until the tax year in which the Italian nationality of the film is obtained, as only at that time will the producer be entitled to receive the subsidy.

(1) Screen Digest, London, August 1987.

(2) L 30 april 1985, No. 163 and DM 4 giugno 1985.

- If the subsidy is accrued by the producer to a special reserve in the balance sheet, the taxation arising is deferred until the tax year in which the reserve is utilised for whatever purposes, other than that of offsetting losses.

b. Exemption is granted to producers, distributors and other undertakings in this sector (technical services, cinemas) covering up to 70% of the income normally subject to personal, corporate, and local income taxes, provided that such profits are re-invested in the production of new films recognised as Italian productions, or, in the case of co-productions, in which Italian investors have a major share (1).

The absence of implementing laws specifying the procedures for applying the main law in the case of each cultural sector has not facilitated the use of this provision, which enables to raise considerable amounts of money which in turn add to more classical means of financing.

	Amount	of which 25 % for cinema
1985	600 mia ItL.	150 mia ItL.
1986	700 mia ItL.	175 mia ItL.
1987	750 mia ItL.	187.5 mia ItL.
1988	897 mia ItL.	224.25 mia ItL.
1989	943 mia ItL.	
	<u>-100 mia ItL. (2)</u>	
	<u>=843 mia ItL.</u>	around (3) 210.75 mia ItL.
<hr/>		
1990	991 mia ItL.	
	<u>-100 mia ItL.</u>	
	<u>=891 mia ItL.</u>	around (3) 222.75 mia ItL.
<hr/>		
1991	1082 mia ItL.	around (3) 270.5 mia ItL.
<hr/>		
1985-91	5763 mia ItL.	1440.75 mia ItL.

- (1) The Commission of the European Community initiated in January 1985 procedure in accordance with Article 92 (2), on the grounds that it was discriminatory in the sense of Articles 48, 52 and 59, "Report on competition", op cit.
- (2) Curtailment proposed by the government in the Bill of Finance for 1989, in the context of the general reductions in the State budget.
- (3) After 1988, the Ministry for Tourism and Entertainment may alter the distribution percentages between the different branches of entertainment (see art. 1 of the Bill N° 3203 which accompanies the Finance Act and which at the end of October 1988 had not been passed by Parliament).

A delegation from the Italian cinematographic industry met Minister of Finance Gava in January 1988 with a view to obtaining an interpretation of the principle law (1).

c. The Italian Ministry of Finance has accepted the treatment of film production costs as a capital asset which have a duration of 3 years. Consequently such costs can be amortised over that period within the following criteria :

Year	Minimum Rate	Maximum Rate
First	40 %	75 %
Second	15 %	40 %
Third	10 %	14 %

However, the provisions of the Testo Unico delle Imposte sui redditi (Gazetta Ufficiale No. 126 of 31.12.1986), which entered into force on 1 January 1988, and in particular Article 68 concerning intangible assets, are considered by the producers as likely to have serious effects. Negotiations are in progress with the tax authorities in this connection (2).

LUXEMBOURG

Discussions are in hand in Luxembourg with a view to creating the potential for creating national production. The association of independent producers (PAL) has proposed that Luxembourg should introduce tax facilities for investment in audio-visual production on the French SOFICA pattern. The CLT and the Société européenne de Satellites have also associated themselves with this move.

In May 1988, the government adopted a bill introducing a tax shelter system, the provisions of which should be more favourable than in the case of the SOFICA. The tax concession should be of the order of 30% of the taxable income of the investor.

The system would not include any repatriation freeze clauses. The tax concession, which would be subject to the issue of "certificates of investment in the audio-visual industry" would not be reserved for individual entities and could benefit companies. The certificate is transferable, and a non-resident foreign investor could therefore transfer his right to a resident tax payer in order to benefit from the tax concession. According to the project, it can "be assumed that the high street banks, which are big tax payers, will offer their customers a discount on the certificates, and that the average tax benefit will be of the order of 36%". Transferability is "desirable with a view to making a support system available to foreign undertakings which are thus not subject to discrimination vis-a-vis the Luxembourg taxpayer". The certificate may however be endorsed only once by the shareholder of the company and the abatement will cover only own capital invested in Luxembourg (3).

(1) Cinema d'Oggi, 28 January 1988.

(2) ibidem.

(3) Variety, 3 February 1988, Les Echos, 21 June 1988.

On 13 December 1988, the bill providing for a provisional and special fiscal regime for certificates of investment in the audio-visual industry was adopted (1).

When it was presented at the roundtable of the symposium of the European Cinema and Television Year on Co-productions (Munich, 23-24 June 1988), the project aroused great interest in professional circles. American production companies have also shown interest in the system, which should indirectly make it possible to achieve a significant reduction in the costs of production and post-production in Europe.

MALTA

There is no tax incentive system for investment that is specific to the audio-visual sector. However, audio-visual undertakings could benefit from the provisions laid down in the Industrial Development Act of 1988, a law intended to encourage the establishment of new industries (10-year tax holiday for export firms, Export Incentive Scheme, 20% relief for training, research and development activities, subsidies, credit facilities, etc).

NETHERLANDS

There is no tax incentive scheme to encourage investment in audio-visual production. However, producers can claim to general schemes of credit to investment for small and medium companies and to INSTIR (subvention scheme for inovative investment).

According to P.S. Bayliff, it would seem possible to use the Dutch tax treaties in order to avoid creating a permanent establishment on locations. Otherwise it might be that the country in which the film is being made considers that there is a permanent establishment whereas the country in which the producer has his headquarters considers that there is not; double taxation could ensue.

In this example, and subject to a tax treaty, the Netherlands can be interesting in the case of a co-production between Holland and a country with low rates of tax such as the Dutch West Indies. By virtue of the co-production contract, the Dutch company could act as a service company for a small profit (taxable). The partner in the low tax country would supply most of the risk capital and take the biggest profits (2).

NORWAY

There are tax exemptions for third parties investing in co-productions with the public production company Norsk-Film (3).

(1) Memorial of 16 December 1988

(2) P S BAYLIFF, "La coproduction aux Pays-Bas", Film Exchange, autumn 1987.

(3) Quoted in J CHITTOCK, op cit.

PORTUGAL

There is no tax incentive scheme for investments in the audio-visual sector. However, firms can use general incentives to investment, in particular tax credit on investment (CFI).

There are, however, possibilities for tax relief for imports of foreign films which are judged to be of high quality by a special commission. This practice was established as a counterbalance to poor quality, and in particular pornographic, films. One of the consequences of this provision was that films such as "ET", "Indiana Jones" and "Out of Africa" were exempted from import duty (1).

SPAIN

Since the 1986 tax year, cinematographic productions which allow for the manufacture of a physical medium designed for series industrial reproduction can benefit from a deduction for investment on company tax.

The deductions applicable were 15% for 1986 and 1987 and 10% for 1988.

Moreover, income resulting from the hiring or licensing of films and cinematographic production for non-resident individual entities has been increased for 1988 from 9 to 10% by the Tax Law 33/1987 of 23 December 1987 (2).

SWEDEN

The normal rules of taxation apply to undertakings in the audio-visual sector. These companies may therefore benefit from the deferred tax payment system by making transfers to a general investment reserve.

There are no tax regulations specific to audio-visual production. However, a 1980 decision of the Supreme Administrative Court had some impact for persons and companies normally not active in audio-visual business.

In accordance with this decision, finished films and films in production are considered to be short-term investments, which can therefore be amortised as soon as they are made. When the receipts are received, they must be declared entirely as income. Thus the State and the investor share the risk. Should the investment result in a profit, the investor has had a tax holiday.

Non-profit making associations and associations with an educational or cultural purpose may, subject to certain conditions, be exempt from tax.

SWITZERLAND

There is no tax incentive system for audio-visual investment in Switzerland.

(1) Information quoted in the report of the Film Büro, Hamburg, on the distribution of films in Europe.

(2) European Taxation, February 1988.

TURKEY

Non-profit-making associations with a cultural and educational bias may benefit from tax exemption.

UNITED KINGDOM (1)

a. Previous position

The 1984 Finance Act reformed the tax system applicable to the cinematographic sector (abolition of the Eady Levy on box office tickets and reform of the tax facilities system).

Until 1979 the cost of producing films in the United Kingdom could be written off as incurred at rates individually negotiated with the Inland Revenue, although the treatment of films as stock was generally resisted by the Revenue as this enabled films to qualify potentially for faster write-downs under the accounting concept of valuing them at the lower of cost or net realisable value.

Pressure from the British film industry resulted in acceptance by the Inland Revenue that film production expenditure should be treated as capital expenditure and, therefore, qualify for capital allowances, in particular the 100 per cent first year allowance which was then available. In order to qualify for capital allowances the "master-print" had to be retained by the production company and have an anticipated potential life of at least two years. This change of policy took effect from June 1, 1979.

Following further discussions between the Inland Revenue and the BFTPA, it was announced that the Inland Revenue would accept claims for first year allowances from sources of third party finance, independent of the production company. In order to qualify, the party providing the finance had to do so under a contract which gave it ownership of the master negative and the associated rights to distribute and exploit it.

As a result of this change in practice, coupled with the elimination of exchange control procedures, many overseas films were financed at the Exchequer's cost. As a consequence, under the Finance Act 1982, capital allowances were restricted to those films which qualified as British quota films under the Eady Levy rules (Film Levy Finance Act 1981), and television films which would under those rules also have qualified were it not for the fact that television films as such were not covered by those rules. However, even on British quota films, capital allowances were initially continued only for expenditure incurred until March 31, 1984. Under Section 32 Finance Act 1983, however, capital allowances on British films were extended for a further period of three years until March 31, 1987.

(1) From A. YOUNG, op.cit.

b. Present position

The Finance Act 1984 included provisions which phased out first year allowances with the result that, after April 1, 1986, only a 25 % writing down allowance (on the reducing balance) will be available. As a further concession the time limit for capital allowances on "Eady films" was also abolished to enable such films to qualify indefinitely for the 25 % writing down allowance.

The taxpayer may now elect to claim tax allowances on one of the following basis :

- 1) Writing down allowances (as above) but only available for "British" films;
- 2) Write-off expenditure on a "just and reasonable" basis. This is designed to spread the expenditure over the income subsequently earned from the film ("income forecast" method);
- 3) Write-off expenditure to the extent that it matches the income from the film ("cost recovery" method).

In practice it is unlikely that capital allowance will be claimed as, at 25 %, it will take five years to write off approximately 75 % of the cost. However, the cost recovery and income forecast methods suffer from the disadvantage that no expenditure on film production may be written off ahead of the income, unlike the capital allowances provisions which allowed expenditure to be claimed as incurred. Both the income forecast and cost recovery methods may, therefore, result in a considerable delay in the obtaining of any relief in view of the time period involved in the production of a film.

The Business Expansion Scheme ("BES") which is an incentive for individuals to invest by obtaining tax relief for the investment, has also been extended (by the Finance Act 1984) to include companies carrying on the trade of receiving royalties or licence fees if they are :

- a. Engaged in the production of films; and
- b. all royalties and licence fees received are in respect of films produced by them or on their related sound recordings or other products.

This scheme is considered by producers as being ill-adapted to the sector. The fact that individuals investing in a BES Scheme can only claim relief up to £ 40,000 in total per tax year means that films, with even a medium budget, are unlikely to be capable of being financed by the BES method, although monies for development costs might be raised in this way. Furthermore, individuals have to hold their shares for a minimum period of five years.

The BFTPA was unsatisfied with these arrangements and ordered a report from Arthur Young Ltd (1). This report recommends that consideration should be given to implementing the following tax and fiscal incentives.

1. An agreed write-off period should be allowed for production costs commencing from the date they are first incurred as follows :

	<u>% of Costs incurred</u>
From commencement of production to the date of first release	60 %
During first year of release	30 %
During second year of release	10 %
	<hr/>
	100 %

2. A system similar to the French SOFICA should be set up which would enable an individual to deduct investments of up to 25 % of his income, thereby allowing investments greater than the present £40,000 ceiling.

It should also be extended to corporate investors and allow them to deduct a set percentage (say 50 %) of the amount invested as tax relief. Any income subsequently arising from the investment would be taxed in full in the year of receipt but, by granting an allowance in the year in which the investment was made, recognition would be given to the high degree of risk involved.

3. To prevent abuse of the above incentives, similar to that which occurred when expenditure on films was eligible for the 100 % first year allowance, relief should be restricted to films which qualify as a British film, according to the criteria in the Films Act 1985.

The Government did not accede to the producers' request. Once investment had ceased to be tax-deductible and the entertainment tax (see below) had been introduced, investment, and particularly American investment, in the British cinema declined sharply. The number of feature films produced in Britain by American companies fell from 12 in 1986 to 6 in 1987 (although the number of Anglo-American co-productions increased from 4 to 20). In 1988, it is expected that investment in film-making will decrease by 50 %. (2)

(1) A. YOUNG, op.cit.

(2) Screen Digest, February 1988, June 1988

EUROPEAN COMMUNITY

In May 1985, the European Commission proposed a Draft Resolution of the Council and of the Ministers responsible for cultural affairs meeting within the Council concerning the adoption of tax measures in the cultural sector (COM (85) 194 final).

Point 8 of this Draft was :

"(Member States) will not impose tax disadvantages on cultural investments, and in particular will eliminate possible tax obstacles to the development of cinema and television co-productions".

This draft was tabled in the Council of Ministers responsible for cultural affairs on 9 January 1986. The Ministers agreed on a large consensus about the advisability of fiscal incentives for cultural activities. They invited the Commission to up-date the inventory of existing incentives in Member States. Six delegations considered that the draft resolution was too detailed in the measures proposed and that more autonomy for the member States was necessary.

The Media Programme (COM (86) 255 final) notes that "it could be opportune to examine the interest for an approximation of the financial and fiscal incentives (grants of funds, tax shelter...) existing in different member States".

In 1986 the Commission opened an Article 92 (2) procedure against the Italian and French fiscal incentives laws. The Commission considered that the two schemes neither of which had been notified in advance under Article 93 (3), contained conditions which excluded nationals of other member States from participating in the aided audio-visual works. The conditions would therefore infringe Articles 48, 52 and 59 of the Rome Treaty.

When taking office, Mr Dondelinger, the new European Commissioner for audio-visual affairs, voiced his support to harmonise public aid and tax incentives in the sector in order to foster the setting up of European industrial groups capable of fighting foreign competition (1).

(1) Le Monde, 12 January 1989.

2.3. Incentives to small and speculative investments

The authorities may encourage small investors by various techniques:

- authorisation to undertakings in this sector to use the formula of investment trusts of the general type (Italy, Netherlands, United Kingdom) or the venture capital type (France, United Kingdom);
- organisation of a legal framework for investment trusts specialising in the audio visual field (SOFICA in France);
- organisation of specialist investments trusts under public control (Sweden) or in a mixed system (United Kingdom);
- incentives for undertakings to resort to conventional Stock Exchange quotations (France, United Kingdom).

BELGIUM

In examining the possibility of setting up in Belgium a system of tax benefits for the audio-visual industry, the French-speaking Community's Consultative Committee on the Audio-visual Industry consulted the Banking Committee on the possibility of setting up a joint investment fund subject to the supervisory measures presented in the Act of 27 March 1957.

The Banking Committee considered that under the existing legislation, the idea of setting up a joint investment fund especially for the audio-visual industry presented a certain number of fiscal, legal and practical problems. It was pointed out in particular that, in order to spread the risks, the banking committee required joint funds to accept certain restrictions on the investment of their assets.

The fund may not hold more than 5 % of the shares issued by the same company. It should also be noted that the manager of a joint investment fund may not be concerned in the management of the companies. Finally, on the basis of the information supplied by the Banking Committee, it must be pointed out that the economic viability of a joint investment fund can only be assured by an investment of at least five hundred million (Belgian francs). In this context, the creation of joint investment fund specialised in the public audio-visual sector could raise problems.

FRANCE

The Fabius government set up the SOFICA system, already described, which is available to both individual investors and companies (see above).

The Chirac government has for its part encouraged applications for Stock Exchange quotation. The privatisations at the beginning of 1987 of TF1 and the Havas Agency led to Stock Exchange quotations for these companies and offers of shares to the general public. The TF1 shares (50% of the capital) met with only qualified success, whereas the Havas shares - enhanced mainly by Canal Plus - are selling well (520,000 shareholders). The press regularly reports rumours of massive covering purchases by the large investors.

In Spring 1988, the risk capital fund formula was also used:

- Part of the funds derived from the privatisation of TF 1 (50 million FF out of 450 millions) was allocated to the endowment of a risk capital company designed to invest specifically in the audio-visual and cinematographic production sectors, but also in technical services.

Provisionally named SUAN (Société universelle de l'audiovisuel nouveau), the company, incorporated under the aegis of IFCIC (Institut pour le financement du cinéma et des industries culturelles) already has among its shareholders private banks such as Crédit National, la Compagnie financière de Suez and the Compagnie bancaire.

In all, 50 million francs will be contributed by banks and financial establishments, and the 50 million francs deriving from the privatisation law will be lodged in an investment fund managed in parallel by the risk capital company (1).

- Moreover, in the context of the revision of its procedures for involvement in the financing of the French cinema industry, the pay channel Canal Plus has decided to create risk capital funds. The constitution of several of these funds is under discussion with banking establishments. One of them has already been established with partners from the Rothschild bank. This fund has at its disposal about 100 million francs, which have already been invested in two films aimed at the international market (2).

(1) Les Echos, 19 April 1988.

(2) Sonovision-Hebdo, 14 April 1988.

ITALY

Silvio Berlusconi's Fininvest group makes use of the system of the Fondi Comuni di Investimento mobiliare, set up by the law of March 1983. Fondi Fininvest were not affected by the crisis which hit the FCIs between August and November 1987. Of the 689 thousand million lire in the FCIs, the Fininvest fund attracted 133 thousand million, representing 19.3 % of the total. In 1988, Fininvest plans to launch two or three new funds, specialising in investments abroad (1).

NETHERLANDS

In May 1985 the Pierson, Heldring and Pierson bank set up an investment fund known as the Television and Film Venture Fund (TFVF) to finance Netherlands audio-visual productions. This project was set up because of the insufficient risk capital available to producers (2).

On the basis of this experience, Pierson, Heldring and Pierson have proposed that a European Fund should be set up, to be known as European Media Venture Fund (EMVF). The basic principles were to be as follows :

- investment of capital in companies having a direct interest in the media industries, such as publishers, television companies, producers of equipment;
 - the EEC has been contacted with a request to guarantee up to 50 % of investors' losses over a period of 4 years, up to a maximum of 160 million ECU. If the EEC accepts this proposal, 25 % of a guarantee company set up to that end would be funded annually by the Community. This fund would start with the sole objective of providing guaranteed capital and would amount to 160 million ECU after 4 years;
 - an agreement would be signed between the fund and the guarantee company, which would entitle the fund to claim from the guarantee company up to 50 % of any loss incurred. The agreement would last 4 years. If total losses do not exceed 320 million ECU, the guarantee company's remaining capital would revert to the Community;
 - the capital issued by the fund would be in ECU.
- Contact has been made with the American networks and distributors to ensure the international distribution of any films and programmes produced.

The Commission has shown some interest in the project, but has not as yet committed itself.

(1) La Repubblica, 11 December 1987.

(2) S. BAVEYSTOCK, "ECU's and the Money Man", Producers, London, May 1987

SWEDEN

The Swedish Film Institute has established an investment company, AB Filmhuset, for small private investments. Shares in different films are sold in packets. The legal mechanism is that the companies and private persons take shares in a limited partnership which is active only for the films in question. A limited partnership is taxed in accordance with the rules for trading partnerships, which means that the surplus or deficit in the partnership is declared by the partners in proportion to their investments or in accordance with another agreement. This body turned over 9 million kroner in 1986 in addition to the financing subsidy granted by the institute.

UNITED KINGDOM

a. Investment funds

In the United Kingdom there is a significant movement towards the establishment of investment funds for the production of audio-visual programmes. The movement comes more from the financial sector than the producers. Some fund managers think that it is possible to reduce the risk by spreading the investments over a carefully chosen portfolio - on the principle of unit trusts - and/or investing part of the capital in rather safer securities (1).

In 1984, the Samuel Montagu merchant bank launched two funds, one for the investment of 22 million dollars in films made in Hollywood, the other to raise £10 million for investment in medium budget British films. The British fund (Square Mile fund) interested investors who would have agreed to invest £5 million if other investors doubled the input, which was not the case.

It is unusual for British companies created to raise capital for production to operate solely in this sector. They may diversify their activities (eg Goldcrest) or acquire distribution rights for American films (for instance in May 1987 Rank announced a 100-million dollar renewable fund to acquire distribution rights outside the United States for 12 films; the First Media Entertainment Fund plans to raise 15 million dollars for distribution and production, 30% of which would revert to distribution).

Star Partners plans to raise 65 million dollars for a 50% financing of seven films already made by MGM/UA. Shareholders must subscribe a minimum of five thousand-dollar shares; 80% of their original investment is guaranteed.

(1) "Changing face of film finance", Screen Digest, London, December 1987.

In November 1987, the Sun Alliance Insurance Group launched Film Bond Management. The principle is that half the investment (minimum £1,000) is invested in Sun Alliance's insurance fund with guaranteed profitability (17.2% since 1982), and the other half in a fund to supplement the budget for six or seven films with budgets of the order of £1-3 million (1).

In February 1988, the S. Pearson Group and the Development Capital Group (DCG), a branch of the Lazard merchant bank, set up a fund which is to invest £30 million in three years in small undertakings developing new media projects (2).

b. The British Screen Finance Consortium

The British Government has also encouraged private investment by replacing the National Film Finance Corporation (NFFC) (originally subsidised from the Eady Levy on cinema tickets) by the British Screen Finance Consortium (BSFC). This consortium has a subsidy of £1.5 million per year. Rank, Cannon and Channel Four have subscribed £850,000 and Granada Television has agreed to invest £750,000 over three years. Further finance of £500,000 will come from the previous investment of the NFFC. The BSFC is looking to raise a further £3 million for investment for the period 1987-90. More than £4.5 million have been invested in 1987, against £3.7 million in 1986. Profits should be made on at least four of the seven films financed in 1986 (3). In 1988 the BSFC hopes to invest £6 million in 18 new films (4) with BBC involvement.

The BSFC finances only high quality British films and possibly films co-produced with television. The average budget of the films in question is between £1-2 million. Interest is 2.5% below the normal rate. The BSFC envisages that the investors will share 60% of the profits.

Following the investment crisis in the British cinema industry, as a result of the abolition of investment deductions (see above), the BSFC plans to set up a new fund, using tax concessions under the Business Expansion Scheme. This could produce a further £6 million (3).

- (1) Financial Weekly, 15 October 1987.
- (2) Screen Digest, March 1987.
- (3) Screen Digest, May 1988.
- (4) New Media Market, 17 February 1988.

c. Incentive for Stock Exchange quotations by broadcasting organisations

The British Government also encouraged since 1984, the contracting companies of ITV to use this method. The Checkland Plan for the reform of the BBC (October 1987) provides for a Stock Exchange quotation for 50% of the financing of BBC Enterprises, the marketing subsidiary of the BBC. Finally, the large investors in transfrontier television (Rupert Murdoch, Robert Maxwell, etc...) have also launched flotations on the London and Paris stock exchanges.

Although the Stock Exchange crash of October 1987 had a strong effect on the communications sector, it does not seem to have permanently discouraged speculators in this sector (1).

(1) B. MADDOX, "Post 'Black Monday Blues?", TV World, January 1988.

2.4. Incentives to patronage

Incentives for patronage, in the form of tax relief on gifts by individuals or undertakings to non-profit making associations, foundations, etc is another possible form of tax aid to the audio-visual sector. However, as a recent report commissioned for the Council of Europe (1) has shown, the cinema and audio-visual sectors are not much favoured by the patrons, who generally prefer to support art and music. There are however signs that certain activities such as cinema festivals, film archives and film salvaging and aid to young script writers may be of interest to patrons.

Patronage activities observed in the cinema and audio-visual sectors include the following:

- in Finland, in 1984, the cinema received 2.8% of the amounts offered by patrons;
- in France, patronage of the cinema and audio-visual sectors, whilst not at present extensive, is developing (Apple Foundation for the cinema, regional patronage in Auvergne, RATP, Kodak support for short film on the Tour de France, etc). From 3 % in 1986, this form of patronage represented 5.3 % of patronage activities in 1987;
- in Italy, the Law of 30 April 1985 allows deductions of up to 2% of declared income, net of other deductions, on gifts to non-profit making organisations and institutions active solely in the entertainment industry. However, the implementing regulations for this law have not yet been published;
- in Portugal, the Decree Law No. 258/86 of 28 August 1986 on the taxation of patronage allows tax exemptions of up to 2% of turnover for patronage of various cultural entities, including cinematographic and audio visual production;
- in the United Kingdom, the film and video industries come only 14th in the list of activities supported in 1985-86 by the members of the Association for Business Sponsorship of the Arts (ABSA). A noteworthy initiative was taken in July 1988 by Shell UK, which will make £3 million available over three years to the British Academy of Film and Television (BAFTA) for the promotion of British films in the United Kingdom and abroad. In association with the Post Office, BAFTA is giving grants to students at the National Film and Television School (2). Also well-known is Paul Getty's support for the British Film Institute.

(1) J. DE CHALENDAR and G. DE BREBISSON, Mécénat en Europe, La Documentation française, Paris, 1987, passim.

(2) Screen Digest, April 1988.

2.5. Taxation of authors' income

The taxation of authors' income, particularly taxation on copyright, have not been investigated in detail in the present study. This question would require a separate study owing to its complexity. Several international documents concerned themselves with settling the problems resulting from double taxation. As early as 1943, the Standing Tax Committee of the League of Nations drafted standard conventions, so-called Mexico conventions, which were revised in London in 1946. The OECD also proposed a Model convention in 1963, revised in 1977. The OECD Model Convention was, however, subject to reservations, made in particular to Article 12 which related to revenue (category under which copyrights are incorporated).

Some European States reserve the right to tax revenue at source, without limiting this taxation (Portugal, Spain), or with a limitation (Austria, Greece, Luxembourg, Turkey). France "reserves the right to maintain taxation on revenues which proceed from France when the flux of revenues between France and the co-contracting State shows an imbalance against France". Belgium proposes the inclusion of a provision which would define the revenue at source. Italy reserves the right to tax revenue "whenever their beneficiaries own a steady establishment in Italy, even if the right or the good bearing the revenue is not effectively linked to the said steady establishment" (1).

2.6. Taxation of artists' income

The taxation of the entertainers income raises particular problems of collection, and these have been the subject of a recent report by the OECD Committee on Tax Affairs (2). In view of the characteristics of the work of entertainers (itinerant, temporary, increasingly tenuous distinction between independent or dependent activities and commercial activities) the OECD Committee on Tax Affairs considers that collection involves difficulties:

"Sophisticated tax avoidance schemes, many involving the use of tax havens, are frequently employed by top-ranking artists and athletes. Whilst some countries do not consider such activities of major importance, given the limited number of persons involved in international activities of this sort and the relatively small amounts of revenue involved, there is general agreement that where a category of - usually well-known - taxpayers can avoid paying taxes this is harmful to the general tax climate, which therefore justifies coordinated action between countries."

(1) On these questions see K.L. BERNELAS and S. BUCHALET, "les droits d'auteur. Approche juridique et Etude fiscale," Economica, Paris, 1986.

(2) Thin capitalisation. Taxation of Entertainers, Artists and sportsmen. Issues in international Taxation, OECD, Paris 1987.

The most important principle on which the report of the OECD Committee on Tax Affairs is based is that income derived from entertainment and sporting activities should be taxed in the same way as that derived from any other activity. Exceptions to this principle should be reduced to a minimum. According to the report, a problem may arise from the fact that certain governments can accept that a particular event can be classified as a "cultural exchange" and that no tax is due on the resulting profits. The report considers that in fact these events are usually billed for profit-making purposes, and the granting of special arrangements for certain events of this type would make it more difficult to resist other similar demands by the representatives of other national bodies, invoking grounds of unfair competition. Experience shows that some tax administrations are better equipped than others to resist pressure groups which invoke "cultural exchanges" or to check that the receipts deriving from them are taxable in the country of residence. Events (which in theory do not generate any "income") or other non-taxable representations given by companies benefiting from State support pose similar problems. The OECD Committee considers that the tax privileges should be limited to authentic and justified cases, such as events organised under an official programme of "cultural exchanges".

According to the replies to the questionnaire sent to the experts of the CDMM, measures derogating from the general rule of law in favour of artists exist in the following countries of the Council of Europe : Austria, Federal Republic of Germany, Ireland, Sweden.

The second principle on which the report of the OECD Tax Committee is based is that artists and sportsmen are, like all other tax payers, actually taxable in their country of residence. Certain countries exempt income of foreign origin, but even in this case income earned abroad should be known, since, as the general income tax is progressive, other income is taken into account in determining the rate of tax.

The OECD Committee also considers that generally, in the case of itinerant activities, the country of residence finds it difficult to identify the activities of its residents abroad. It therefore has to rely on information from the country in which these activities take place. For this reason, and also in order to avoid difficulties of a practical nature, it is considered desirable to abide by the principle which inspired Article 17 of the Model Convention of 1977. The main object of the report of the OECD Committee is therefore to help the member countries to establish a system to enable them to tax effectively the income of artists and sportsmen in the country in which it is earned.

The taxation of artists and sportsmen poses certain problems for tax administrations. Firstly, information has to be obtained on the events which took place; the assessment, and then the recovery, of the tax then raise problems which have to do with the actual nature of the profession or the use of lawful mechanisms of tax avoidance.

The conclusions of the OECD Committee Report are as follows:

a. improvements to be effected in national legislation

"Having agreed on the principle that activities should be taxable in the country of performance, it was found that there were many instances where, for practical or legal reasons, such taxation was presently not possible or was ineffective. Improvements should therefore be looked for in the first instance in the domestic sphere. Admittedly, in providing for domestic changes, countries may have different approaches as to the proper way of dealing with resident and non-resident artists and athletes, or with performers and other taxpayers (...); suggestions for improvements can be offered:

- Exemptions from tax for artistic or athletic events vary in degree among countries and depend on sovereign rights. Where they exist, however, they may lead to considerable inequalities, thereby discouraging tax compliance. Also from a technical point of view special concessions to some parts of the industry may be detrimental to the good functioning of the tax system;

- Information : an effective and comprehensive information-gathering system is required. Setting-up specific units for this purpose would facilitate centralizing the information available and communicating with foreign partners (see b. below);

- Assessment and collection: in addition to stricter accounting and reporting obligations on organisers, withholding tax systems at fairly high level could be set up to cover payments to self-employed artists and athletes. Although special taxes constitute a useful system for taxing such people, they appear to have drawbacks especially in an international context. From the investigation point of view, a centralized approach to deal with larger domestic cases or with the liability of foreign artists and athletes is desirable."

b. improvements to be effected in international legislation

The OECD Committee Report also recommends an increase in the exchange of information between tax administrations on the movements of artists and the extension of aid for the recovery of tax debts.

The OECD Committee Report is concerned mainly with recovery of the tax. It will, however, be noted that the taxation of artists is one of the most important factors in the relatively favourable climate which a State may create to encourage investments in production. This is particularly noticeable in the United Kingdom, where the government has introduced, with effect from 1 May 1987, a deduction at source from the earnings of non-resident entertainers, which is designed to resolve the Inland Revenue's difficulties in recovering tax from non-resident, in particular American, actors and musicians. The introduction of this deduction is considered by the producers as one of the determining factors in disinvestment by the American Majors, which had got into the habit of using British studios (1).

(1) R. REESPULLEY, "Give us a break", Producer, London, Autumn 1987. The BPI, which represent the British producers in the phonographic industry submitted similar observations. A study on this question was carried out in October 1988 by Arthur Young Ltd. It suggested more flexibility. See Bilboard, 5 November 1988.

3. TURNOVER TAXES (VAT AND SIMILAR TAXES) IN THE AUDIO-VISUAL SECTOR

One of the most significant factors in the diversity of the tax system in the audio-visual sector in Europe is the variation in systems for tax on turnover (VAT and similar taxes). The question of the harmonisation of these systems is highly topical in the context of the single internal market planned by the Commission of the European Communities in its White Paper (June 1985), and adopted by the governments in the Single Act (December 1985). The European Commission considers that the alignment of VAT rates should be sufficient to ensure that the operation of the Common Market is not affected by commercial distortions, deflections of trade or effects on competition. It is generally considered that the creation of the single Community market could have important effects on the non-member European countries.

The Commission is currently seeking to resolve three problems:

- uniformity of the basis of taxation or scope,
- the number of rates,
- the level of the rate/s, and particularly the main or normal rate.

This harmonisation should have significant effects for the audio-visual sector.

3.1. The basis of VAT

3.1.1. The cinematographic industry

The cinematographic industry is not directly concerned, since it is wholly subject to VAT and no change is planned in this connection.

3.1.2. Broadcasting organisations

In regard to the activities of public sector broadcasting organisations, it should be recalled that the sixth directive on VAT provides, in Article 13, A, 1, for:

"A. Exemptions for certain activities in the public interest

1. Without prejudice to other Community provisions, member States shall exempt the following under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any possible evasion, avoidance or abuse:

(...)

(q) Activities of public radio and television bodies other than those of a commercial nature."

The Sixth Directive also provides in Article 4 (5) for exemption of public organisations in the following terms :

"States, regional and local government authorities and other bodies governed by public law shall not be considered taxable persons in respect of the activities or transactions in which they engage as public authorities, even where they collect dues, fees, contributions or payments in connection with these activities or transactions.

However, when they engage in such activities or transactions, they shall be considered taxable persons in respect of these activities or transactions where treatments as non-taxable persons would lead to significant distortions of competition."

In the implementation of these texts, the status of the broadcasting organisations in regard to VAT varies significantly from one country to another. They may be:

- not subject for any of their activities: Belgium, Greece, Ireland, Netherlands, Portugal, Spain;
- subject for activities of a commercial nature: Federal Republic of Germany;
- subject for all of their activities: Denmark, France, Italy, United Kingdom.

The private channels, where they exist (Belgium, Denmark, France, Italy, Luxembourg, Federal Republic of Germany, Switzerland, United Kingdom) or are planned (Spain, Ireland, Portugal) are or will be subject to VAT.

The European Commission wishes to put an end to this diverse situation. The development of the transnational activities of the broadcasters and the appearance, in almost all Community countries, of a pattern of competition between the public and private sectors, may lead to significant distortions of competition, as specified in Article 4 (5) second paragraph of the 6th Directive (1).

(1) COM (87) 272 final, 17 June 1987

A proposal for an 18th Directive of 13 November 1984 has been submitted to the Economic and Social Committee and the European Parliament, which have issued their opinions. This proposal has been modified and its new version is dated 17 June 1987. The most important element in this proposal for broadcasters is the abolition, in Annex E of the 6th Directive, of the operations referred to in Articles 13 A, paragraph 1, (q). In plain language, this means that exemption from VAT for the activities of public broadcasters would become mandatory.

In the non-member countries of the EEC, the public sector broadcasting organisations are:

- subject to turnover tax in Austria, in Norway, licence fees revenues of the NRK excepted,
- exempt from this tax in Sweden, Switzerland and Turkey.

Tax on turnover does not exist in Cyprus, Iceland (where it will be introduced on 1 January 1989) and Malta.

The EBU stresses the problem of taxation on the turnover of programme exchanges between public service broadcasters which are of considerable importance. It does not seem possible to classify a priori these activities under the head of a public mission fulfilment and therefore of exemption as is the case in some countries. However, such activities, because of their nature, are separate from the purely commercial operation of programmes. In this respect, one should note that the exchange of news pictures in the context of Eurovision is made without a district remuneration payment. Exchanges and in particular those which carry an obligation of payment could indeed be considered by some tax authorities as taxable. In some cases, such as Eurovision, this hypothesis could have very serious consequences (additional financial fees, additional burden to the daily exchange management).

The solution might be to consider as an indissociable part of the acquisition of programmes - whether sold or purchased - for tax purposes on the turnover, the transfer of programmes to foreign television broadcasters (so far considered for tax on profits purposes as commercial activities).

The administrative aid principle, provisionally adopted by the German tax authorities in order to defer provisionally the collection of taxes on turnover in the case of exchanges between public service broadcasters, could be definitely adopted at the European level.

3.1.3. Artists' work

Article 13 (n) section A of the 6th VAT Directive provides exemption from VAT of "certain cultural services and goods closely linked thereto by bodies governed by public law or other cultural bodies recognised by the member State concerned".

In its proposal for a 19th VAT Directive (COM (84) (648, 5 December 1984, OJEC C 347/5 of 29.12.1984) the Commission, considering that "an exemption for the creative work of artists is an appropriate means of encouraging the development of cultural activities and the distribution of culture without causing distortion of competition, provided that it is limited to artists who create original works" provided exemptions for various services provided by public law corporations or other cultural bodies recognised by the member State concerned (in particular cinema films), the supply of works of art by the artist himself and services consisting in the presentation to audiences of their art by actors, musicians, dancers and other performers and also the services provided by authors, composers and writers.

In its opinion on this proposal for a Directive the Economic and Social Committee considered that "bearing in mind the taxation of other supplies and services, particularly those in the medical and social fields special treatment for the supply of works of art and the provision services by artists does not appear to be justified" (OJEC 218/13 of 29.08.1985).

The European Parliament expressed similar views in its opinion of 6 April 1987. This is why the Commission has withdrawn the part of its proposal for a 19th Directive concerning the exemption of deliveries of works of art and the services of artists.

There remains therefore in the proposal for a 19th Directive the section concerning services of a cultural nature (theatre and cinema shows, etc) provided by recognised bodies. The 6th Directive permits this only on a transitional basis.

At present, certain member States exempt the services of artists. The Belgian VAT code for instance, in Article 44, paragraph 2 (8), exempts services supplied to the organisers of entertainments and concerts, the publishers of records and other sound media and the producers of films and other picture media by actors, conductors, musicians and other artists for the performance of theatrical, cinematographic or musical works and the performance of circus, music hall or cabaret entertainments. The object of this exemption is not cultural, rather does it aim to keep out of the tax net those persons whose liability would be likely to cause practical difficulties.

France also allows exemptions (Article 261-4-5 of the CGI), but the legislation permits those concerned to opt for the payment of VAT (Article 260 of the CGI).

The services of artists are also exempt from tax on turnover in Sweden.

3.1.4. Copyright

Transfers of copyright by their holders are currently exempt from VAT in Belgium, Italy, the Netherlands, Spain and Sweden.

3.2. Applicable rates

3.2.1. Diversity of current rates

Tables 14 to 16 show the very great variation in the rates of VAT applicable to the main transactions in the audio-visual sector and to the main cultural goods.

TABLE 14 RATE OF VAT ON THE VARIOUS TYPES OF INCOME OF THE AUDIO-VISUAL INDUSTRY

	Cinema ticket	Sale/hire video	TV advertising time	Licence fee	Subscription to pay television	Subscription cable networks
AUSTRIA	10 %	20 %	20 %	10 %	10 %	10 %
BELGIUM	6 %	25 %	19 %	Ex.	19 %	25 %
DENMARK	22 %	22 %	(22 %)	22 %	22 %	22 %
FINLAND	0 %	16 %	0	0	0	0
FRANCE	7+%	18.6 %	18.6 %	7 %	7 %	7 %
FEDERAL REPUBLIC OF GERMANY	7 %	14 %	14 %	Ex.	-	10++ %
GREECE	6 %	18 %	6 %	6 %*	-	-
IRELAND	10 %	25 %	25 %	Ex.	25 %	25 %
ITALY	9 %	9 %	18 %	2 %	18 %	18 %
LUXEMBOURG	12 %	12 %	12 %	-	-	12 %
NETHERLANDS	20 %	20 %	20 %	Ex.	20 %	20 %
NORWAY	0	20 %	(20 %)	Ex.	Ex.	20 %
PORTUGAL	0	17 %	17 %	Ex.	-	-
SPAIN	6+%	12 %	12 %	-	-	12 %
SWEDEN	0	23.46 %	(10 %)	Ex.	-	0
SWITZERLAND ICHA	0	6,2 %	0	Ex.	0	0
UNITED KINGDOM	15 %	15 %	15 %	0	15 %	15 %

+ : 33% on films classified X

++ : tax on the subscription income of the Bundespost, due to be replaced by a VAT levy.

* VAT on electricity accounts
Source : Council of Europe

TABLE 15: RATES OF VAT ON THE MAIN EXPENDITURE OF AUDIO-VISUAL PRODUCERS (1)

	Transfer of rights	Services of artists	Hire of studios	Technical services
AUSTRIA	10 %	10 %	10/20%	20 %
BELGIUM	6+%	Ex.	19 %	19 %
DENMARK	22 %	22 %	22 %	22 %
FINLAND	0 %	0 %	0 %	0 %
FRANCE	7++%	Ex.*	18.6 %	18.6 %
FEDERAL REPUBLIC OF GERMANY	7 %	7 %	14 %	14 %
GREECE	6 %**	0 %	0 %	0 %
IRELAND	25 %	25 %	25 %	10-25%
ITALY	18 %°	18 %	18 %	18 %
LUXEMBOURG	12 %	12 %	12 %	12 %
NETHERLANDS	20 %#	20 %	20 %	20 %
NORWAY	Ex.	Ex.	Ex./20 %	20 %
PORTUGAL	na	na	na	na
SPAIN	12 %°°	12 %	12 %	12 %
SWEDEN	Ex.	Ex.	Ex.-23.46%	Ex.-23.46 %
SWITZERLAND	0	0	0 - 6,2 %	6,2 %
TURKEY	na	na	na	na
UNITED KINGDOM	15 %	15 %	15 %	15 %

+ exemption for transfers from author to producer

++ 18.6% in certain cases of transfer from TV producer to distributor and TV distributor to broadcaster

* 18.6% if option of liability

** 0% for transfers from author to producer

° exemption for transfers from author to producer, 9% for transfers from cinema distributors to user

°° exemption for transfers from author to producer, 6% for transfers from cinema producer to distributor and for transfers from cinema distributors to users.

exemption for transfers from author to producer, from distributor to user or broadcaster

(1) It will be noted that the operation of dubbing and sub-titling comes under the 3 headings of services of artists, hire of studios and technical services.

Source : Council of Europe

TABLE 16 RATE OF VAT ON THE MAIN CULTURAL GOODS

	Records	Blank tapes	Newspapers	Periodicals	Books
AUSTRIA	20 %	20 %	10 %	10 %	10 %
BELGIUM	25 %	25 %	0 %	0 %	6 %
DENMARK	22 %	22 %	0 %	0 %	22 %
FINLAND	16 %	16 %	16 % (*)	16 % (*)	16 %
FRANCE	18.6%	18.6%	4 %	4 %	7 %
FEDERAL REPUBLIC OF GERMANY	14 %	14 %	7 %	7 %	7 %
GREECE	18 %	18 %	3 %	3 %	6 %
ICELAND	25 %	25 %	na	na	na
IRELAND	25 %	25 %	10 %	25 %	0 %
ITALY	9 %	18 %	0 %	2/18 %	2 %
LUXEMBOURG	12 %	12 %	6 %	6 %	6 %
NETHERLANDS	19 %	19 %	6 %	6 %	6 %
NORWAY	20 %	20 %	0 %	0 %	0 %
PORTUGAL	16 %	16 %	0 %	0/8 %	0 %
SPAIN	12 %	12 %	6 %	6 %	6 %
SWEDEN	23.46%	23.46%	23.46 %	23.46 %	23.46 %
SWITZERLAND	6.2 %	6.2 %	0 %	0 %	0 %
UNITED KINGDOM	15 %	15 %	0 %	0 %	0 %

Sources : European Parliament/IFPI.

(*) Subscribed newspapers and periodicals 0 %, retail sale 16 %

3.2.2. Foreseeable consequences of the approximation of VAT rates in the EEC

It is known that in the course of establishing the internal market scheduled for 1992 the Commission of the European Communities is proposing that the rates of VAT should be approximated (1). The number of rates should be reduced to 2, at the latest on 31 December 1992 :

- a reduced rate, which may not be less than 4 % nor more than 9 %
- a normal rate, which may not be less than 14 % nor more than 20 %.

The reduced rate may only be applied to operations relating to the following goods and services:

- food products, excluding alcoholic beverages,
- energy products for heating and lighting,
- water supply,
- pharmaceutical products,
- books, newspapers and periodicals,
- carriage of persons.

The normal rate should apply to other goods and services, including those of the audio-visual sector.

Tables 17 to 19 show the probable effects of the changes in rates of VAT in the audio-visual sector if the directive proposed by the Commission is adopted unchanged (2). At the meeting of the Finance Ministers of 12 December 1988, the Commissioner Lord Cockfield suggested to replace the initial proposal of the Commission for a normal rate between 14 and 20 % with a minimum normal rate of 17 %, without ceiling (3).

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- (1) See proposal for a directive on the alignment of the rates of VAT, COM (87) 321 final/2, 21 August 1987.
- (2) At the Symposium of the European Cinema and Television Year 1988 (Venice, 1-2 September 1988), the EBU and the film industry associations claimed that the the minimum rate applicable to the film industry be upheld. The European Task Force on Television, chaired by Mr Valery Giscard d'Estaing, made recommendations on the same lines. The Social and Economic Committee suggests in its opinion on the approximation of rates (CES.741/88) to add audio-visual supports and sound recordings to the products benefiting from a reduced rate.
- (3) Financial Times, 13 December 1988.

TABLE 17 RATES OF VAT COMPARED WITH CURRENT RATES IN THE CASE OF ADOPTION OF THE PROPOSALS FOR A DIRECTIVE (1)

	Cinema ticket	Video Sale	TV Advertising	Radio-TV Licence-fee	Pay-TV Subscription	Cable Subscription
BELGIUM	+ 8 %	- 5 %	id	id	id	- 5 %
DENMARK	- 2 %	- 2 %	- 2%	- 22 %*	- 2 %	- 2 %
FRANCE	+ 7 %	-	id	- 7 %*	+ 7 %	+ 7 %
FEDERAL REPUBLIC OF GERMANY	+ 7 %	id	id	id	-	+ 4 %
GREECE	+ 8 %	id	+ 8 %	id	-	-
IRELAND	+ 4 %	- 5 %	- 5 %	id	- 5 %	- 5 %
ITALY	+ 5 %	+ 5 %	id	- 2 %*	id	id
LUXEMBOURG	+ 2 %	+ 2 %	+ 2 %	-	-	+ 2 %
NETHERLANDS	id	id	id	id	id	id
PORTUGAL	+ 14 %	id	id	id	-	-
SPAIN	+ 8 %	+ 2 %	+ 2 %	-	-	+ 2 %
UNITED KINGDOM	id	id	id	*	id	id
AUSTRIA	+ 4 %	id	id	*	+ 4 %	+ 4 %
FINLAND	+ 14 %	id	+ 14 %	*	+ 14 %	+ 14 %
NORWAY	+ 14 %	id	id	id	-	+ 14 %
SWEDEN	+ 14 %	- 3.5%	+ 4 %	id	-	+ 14 %
SWITZERLAND	na	na	na	na	na	na

(1) On the assumption that governments would choose the rate closest to the current rate. Changes in non-member States of the EEC are given as an indication.

* outside the scope of VAT

TABLE 18 CHANGES IN RATES OF VAT FOR THE MAIN ITEMS OF EXPENDITURE OF AUDIO-VISUAL PRODUCERS ACCORDING TO THE PROPOSAL FOR A DIRECTIVE OF 21.8.87 AND THE PROPOSAL FOR A 19TH DIRECTIVE ON VAT

	Transfer rights	Services artists	Hire of studios	Technical services
BELGIUM	+ 4 %	+ 14 %*	id	id
DENMARK	- 2 %	- 2 %	- 2 %	- 2 %
FRANCE	+ 7 %	+ 18,6 %*	id	id
FEDERAL REPUBLIC OF GERMANY	+ 7 %	+ 7 %	id	id
GREECE	+ 8 %	+ 14 %	+ 14 %	+ 14 %
IRELAND	- 5 %	- 5 %	- 5 %	+ 4/-5 %
ITALY	id.	id.	id	id
LUXEMBOURG	+ 2 %	+ 2 %	+ 2 %	+ 2 %
NETHERLANDS	id	id	id	id
PORTUGAL	na	na	na	na
SPAIN	+ 2 %	+ 2 %	+ 2 %	+ 2 %
UNITED KINGDOM	id	id	id	id
AUSTRIA	+ 4 %	+ 4 %	+ 4 %	id
SWEDEN	+ 14 %*	+ 14 %*	+14/-3.5%	+14/-3.5 %
SWITZERLAND	na	na	na	na

* outside the scope of VAT

TABLE 19 CHANGES IN THE RATES OF VAT FOR THE MAIN CULTURAL GOODS ACCORDING TO THE PROPOSAL FOR A DIRECTIVE OF 21.8.87

	Records	Blank tapes	Newspapers	Periodicals	Books
BELGIUM	- 5 %	- 5 %	+ 4 %	+ 4 %	id
DENMARK	- 2 %	- 2 %	+ 4 %	+ 4 %	- 13 %
FRANCE	id	id	id	id	id
FEDERAL REPUBLIC OF GERMANY	id	id	id	id	id
GREECE	id	id	+ 1 %	+ 1 %	id
IRELAND	- 5 %	- 5 %	- 1 %	- 16 %	+ 4 %
ITALY	+ 5 %	+ 5 %	+ 4 %	+2/-9%	+ 2 %
LUXEMBOURG	+ 2 %	+ 2 %	id	id	id
NETHERLANDS	id	id	id	id	id
PORTUGAL	id	id	+ 4 %	+4% /id	+ 4 %
SPAIN	+ 2 %	+ 2 %	id	id	id
UNITED KINGDOM	id	id	+ 4 %	+ 4 %	+ 4 %

3.2.3. Problems connected with VAT in co-productions

- International co-productions

Differing interpretations of the Sixth VAT Directive (particularly Article 13 (q) cited above which authorises the exemption from VAT of non-commercial activities of public service broadcasting corporations) raise difficulties in Franco-German co-productions.

The solution to these problems would appear to be a European definition (at least as far as the Community is concerned) of co-production, and its tax position.

- Co-productions between public service corporations and independent producers

The questionnaire intended to obtain details of possible problems in this type of co-production (relationship TV/cinema; co-productions with independent undertakings, etc). No such problems were quoted in the answers.

4. PARAFISCAL TAXES, SPECIAL TAXES AND OTHER LEVIES IN THE AUDIO-VISUAL SECTOR

Special levies, generally intended to finance funds to aid the production of films or audio-visual programmes, are widely used in Europe. They are the privileged means of redistribution between the different branches of the sector organised by the public authorities.

4.1. Entertainment tax or supplementary tax on cinema tickets

Taxes on cinema tickets, designed for support funds for cinematographic production, are the most classical form of public support to this sector.

AUSTRIA

In Austria the entertainment tax is the responsibility of the Länder. It varies from 1 to 17.6 % depending on the Land. These taxes raised 367 million AS in 1985 and 414 millions in 1986.

FINLAND

There are three categories of taxes on cinema tickets (0.10 and 30%). Theatres which pay a contribution of 4% to the Finnish Film Foundation are exempt from such taxes. Revenues generated by the the ticket tax were :

1985	0.8 million FMK
1986	0.4 million FMK
1987	0.2 million FMK

Revenues generated by the support tax to the Film Foundation amounted to 2 million FMK for 1985-1987.

FRANCE

A special additional tax at an average rate of 14% finances the mechanisms for automatic and selective assistance managed by the National Cinema Centre. There is also a special levy on profits from the production, distribution and presentation of pornographic films or films inciting violence.

In the 1987 budget revenues from the special additional tax were estimated at 485 million FF (ie about 45% of the anticipated revenue of the support scheme for the cinema industry and the audio-visual programme industry.)

FEDERAL REPUBLIC OF GERMANY

Cinemas whose takings are higher than 80,000 DM per annum are subject to a tax ranging from 1.5 to 2.5% of the annual takings depending on the amount taken. In 1986 the amount of tax received by the Filmförderungsanstalt (FFA) was 27 million DM.

It should be noted that the showing of films classified as "wertvoll" (quality) and "besonders wertvoll" (very high quality) by the Filmbewertungstelle (film assessment board) exempts the persons showing the film from the entertainment tax existing in some Länder.

In some Federal Länder, the exhibition of films is subject to entertainment tax. The entertainment tax is a local expenditure tax within the meaning of Article 105 para 2 a of the Basic Law. The legislative power for this tax is held by the Länder. Therefore neither the assessment of taxation nor the tax rates are uniform in the Federal territory.

Entertainment tax is imposed at the moment in Bremen, Lower Saxony, North-Rhine/Westphalia, Rhineland-Palatinate, Baden-Württemberg and the Saarland. In all these Länder, the entertainment tax is levied by the communities which pursuant to Article 106 para 6 are entitled to receive the amounts. An obligation to levy the entertainment tax only exists in Bremen and North-Rhine/Westphalia.

In the Länder, Bremen, North-Rhine/Westphalia, and Saarland, the legal basis for imposing entertainment tax are special entertainment tax laws. In the other Länder, the tax is levied pursuant to municipal ordinances which the municipalities are entitled to adopt according to the relevant law on local rates.

In Bremen, film presentations are subject to an entertainment tax. In case of entrance fees up to DM 1.50, the tax amounts to 20 per cent. In case of higher entrance fees, the tax adds up to 25 per cent of the entrance fees. When certain films for which an award has been received are shown this tax rate is reduced.

In North-Rhine/Westphalia, film presentations are subject to an entertainment tax. According to a new Act passed in 1988, tax is equal to 20 % of the entrance fee. It is however reduced for films which are in conformity with the regulations on Youth protection. If a film is acknowledged as being "of particular value" or "of value" or if it has been produced thanks through public funding, then there is no entertainment tax.

In the Saarland, commercial film presentations are subject to the entertainment tax. Films that have received an award and that have a certain minimum duration are exempt from tax. The tax rate amounts to 10 per cent of the entrance fee.

The yields from entertainment tax provide general funds for the budget of the municipalities. They do not have to be used for a particular purpose.

GREECE

The new Cinema Act passed in the spring of 1987 fixed the tax on tickets at 12% for the larger towns and 8% for the rest of the country. As a result of opposition from the cinema owners an amendment reduced the rates in certain cases:

- 6% for summer showings in Athens and Thessalonica
- 4% for summer cinemas everywhere else
- 4% for frontier cinemas.

Following this increase numerous cinemas have to close during winter.

ITALY

The Gazetta ufficiale of 3 October 1987 published the text of the Entertainment Tax (Act no. 403). This provides for maintaining the 8% rate on showing cinema films until 31 December 1989 after which there is to be a general reform of the whole entertainment tax system.

MALTA

An entertainment tax is levied on cinema tickets and allocated to the State budget. It generated 141.922 Lm in 1985, 128.047 in 1986 and 67.648 in 1987. Its rate was reduced with effect from January 1987.

NORWAY

There is a tax on cinema receipts, the rate of which was reduced from 2.6 to 2.5 % on 1 January 1988. The tax which until now was on a voluntary basis is now compulsory.

PORTUGAL

The tax on tickets is 15 % and it is used to finance the Portuguese Film Institute.

SWEDEN

A levy on 10 % on tickets is used to finance the Swedish Film Institute.

SWITZERLAND

An entertainment tax operates in all the cantons, with the exception of SZ, OW, AG and TG. This tax is levied in all the cantons, as a cantonal or communal tax or by both authorities at the same time. It is a tax on paying public events, and is levied in the form either of a tax on tickets (in general 10 % of the entrance price on gross receipts), or in the form of a fixed tax, depending on the case.

TURKEY

There is a tax on cinema tickets.

4.2. Special tax on TV advertising transactions

AUSTRIA

Länder are authorized to tax television advertising income.

FRANCE

A special tax on TV advertising transactions is allocated to the general budget of the State. It raised 15.325 million FF in 1987.

4.3. Special tax on export profits

UNITED KINGDOM

Since 1986, ITV companies have been subjected to a tax on export profits replacing a special tax on comprehensive profits. This step can be interpreted as lightening the burden on small ITV companies.

4.4. Tax on television and cable networks

FRANCE

In 1984 a special tax was introduced on the income of the new television networks (not including the public sector) from advertising and subscriptions. The scope of this tax was extended by the 1986 Finance Act to all television services. The tax was complemented in the same year by a deduction from the licence fees paid to public television companies.

The products of the tax and deduction mentioned above are partly allocated (34% in 1986, 35% in 1987 and 44% in 1988) to support for the film industry in addition to the special tax on cinema tickets. The balance is allocated to support the audio-visual programme industry in order to be redistributed to the producers of these programmes for re-investment only. The total amount raised by the tax and the deduction amounted to 4 million francs in 1985, 340 million francs in 1986 and 698 million francs in 1987. The estimated figure for 1988 is 710 million francs.

ICELAND

A tax on the advertising income of television channels is used to finance the Icelandic Foundation for Culture, which contributes to the financing of the cinematographic industry.

IRELAND

In Ireland television programme distributors pay a charge (as distinct from a tax) of 15% (soon to be reduced to 5%) of their income after deduction of VAT. The net amount, after deduction of costs, is paid to the national radio and television organisation (RTE) in the form of an annual subsidy. This system is designed to compensate RTE for the loss of advertising revenue resulting from the reception in Ireland of foreign television channels. The amounts concerned were £1.3 million in 1985, £1.3 million in 1986 and £1.4 million in 1987.

ROYAUME-UNI

A levy of 17 % on advertising revenues by the ITV companies is used by the Independent Broadcasting Authority to finance Channel 4. The government is considering the possibility to end this system and to invite Channel 4 to self-financing by advertising.

4.5. Tax on the sale or rental of pre-recorded and blank videocassettes

In view of the development of the video market, various States have begun to tax cassettes (blank, pre-recorded or both), using the proceeds to help fund cinema subsidy schemes. This type of tax should not be confused with the levies payable on blank cassettes in certain countries to compensate copyright-holders for losses incurred through private copying. These levies are covered by the law on intellectual property and lie outside our present scope of study (but see the special case of Sweden).

FEDERAL REPUBLIC OF GERMANY

The Cinema Act which came into force on 1 January 1987 introduced a tax on video libraries. Like the tax on cinema tickets it ranges from 1 to 2% of the annual takings of video libraries and is to be employed in financing the Filmförderungsanstalt (FFA).

NORWAY

An Act imposing a 2.5% tax on cassettes sold or hired came into force on 1 January 1988. The proceeds of this taxation (about 3.5 million dollars) will be managed by the Norwegian Cinema Foundation.

SWEDEN

The Cassette Tape Taxation Act (1982/691) was passed in 1982 to compensate various proprietor categories for the losses resulting from the domestic copying of their works and performances by means of cassette technology.

The cassette tax is payable in connection with the sale or hire in Sweden, or the importation to Sweden, of recorded and blank sound and video cassettes. The National Tax Board (RSV) is the taxation authority responsible.

Tax is payable at rates of SEK 15 for video tapes and SEK 1.50 for sound cassettes.

Data concerning video cassette tax revenue have been obtained from RSV and the Board of Customs for 1985-1987. The RSV figures refer to video cassette tax only, while those from the Board of Customs also include tax on sound cassettes.

<u>Year</u>	<u>RSV</u> Revenue MSEK	<u>Customs</u> Revenue MSEK
1985	41.290	4.242
1986	67.897	9.224
1987	89.149	23.309

Part of the amounts collected is returned to the right holders. Another part is used to finance the Swedish Film Institute.

Turkey

There is a tax on videotapes in Turkey.

5. CUSTOMS DUTIES

According to the answers to the questionnaire that we received, it appears that there are no major customs obstacles to the circulation of audio-visual programmes. However, it is possible to make an inventory of some cases where import duties exist for audio-visual programmes from other Member States :

- import duties on films (Cyprus, Norway, Portugal, Spain, Switzerland, Turkey);
- import duties on videotapes and/or videodiscs (Cyprus, Iceland, Malta, Norway, Portugal, Spain, Turkey) (for details see Table 20) (1).

As regards exchanges of programmes between Council of Europe member countries and the rest of the world discussions are in progress in GATT, the OECD and UNESCO on custom duties.

5.1. GATT

To our knowledge, application of the GATT agreements to the customs regulations governing the circulation of programmes does not raise any particular problem. However, it should be noted that discussions on broadcasting matters should begin in the framework of the Uruguay Round. Discussions will mainly focus on the quota and issue and protection of copyright against piracy (2).

5.2. UNESCO

Customs regulations affecting international trade in audio-visual material are also covered by the Agreement on the importation of educational, scientific and cultural materials ("Florence Agreement") adopted by the General Conference of UNESCO in 1950.

The Florence Agreement, which came into force on 21 May 1952, was intended to remove customs duties and other barriers restricting the exchange of educational, scientific and cultural materials.

(1) See "World Import Duties and Taxes", IFPI, Londres, 1988
Detailed inventory of indirect taxation (custom duties, VAT) applicable to cultural goods in the world.

(2) See A. LANGE, "The Uruguay Round Negotiations of GATT and their Implications for European Audio-visual Policy", in Towards a European Common Market for Television. Contribution to the Debate, European Institute for the Media, Manchester, 1987 pp. 123-135.

TABLE 20
IMPORT DUTIES ON FILMS
(1987-1988)

EEC (Common External Tariff)	General 1988	Israel	Turkey and EFTA
CINEMATOGRAPHIC FILM (exposed and developed) whether incorporating sound track or consisting only of sound track ;			
1. Of a width of 35 mm or more :			
a. Consisting only of sound track	Free	Free	Free
b. Other :			
- Negatives ; intermediate positives	Free	Free	Free
- Other positives	1.9 Ecu/ 100 m	Free	Free
2. Other :			
a. Consisting only of sound track	Free	Free	Free
b. Other :			
- Negatives ; intermediate positives	Free	Free	Free

- Other positives :

. Newsreels	1.07 Ecu/ 100 m	Free	Free
. Other, of a width of :			
.. Less than 10 mm	0.28 Ecu/ 100 m	Free	Free
.. 10 mm or more	1.60 Ecu/ 100 m	Free	Free

AUSTRIA

No import duties

CYPRUS

Import duty is levied varying from 5 to 1.8 Cyprus pounds per 100 m. depending on gauge and country of origin.

	<u>GENERAL</u>	<u>PREFERENTIAL</u> <u>EEC</u>
CINEMATOGRAPHIC FILMS	60cts/100ft	39cts /100ft
a. over 16 mm wide	33cts /100ft	21.5 cts /100ft
b. other	33cts /100ft	21.5cts /100ft

FINLAND

No import duties

ICELAND

No import duties

MALTA

No import duties

NORWAY

	<u>EEC/EFTA</u>	<u>SPAIN</u>	<u>OTHER</u>
CINEMATOGRAPHIC FILMS	Free	NOK 1.12 /KL	NOK 3.64 /KL

PORTUGAL

	<u>EEC/EFTA/SPAIN</u>	<u>OTHER</u>
Magnetic tapes	5.2 %	21.2 %

SPAIN

	<u>GENERAL</u>	<u>EEC & EFTA</u>
CINEMATOGRAPHIC FILMS		
a) consisting only of sound track	Free	Free
b) other :		
- negative, intermediate positive	Free	Free
i) newsreels	ECU/100m 0.30	Free
ii) other : with of -		
- less than 10 mm	ECU/100m 0.10	Free
- from 10mm but under 34mm	ECU/100m 0.40	Free
- from 34mm but under 54mm		
i) monochrome	ECU/100m 0.50 + pts 30	20 pts/100m
ii) polychrome	ECU/100m 0.50 + pts 130	100 pts/100m
- 54 mm and over		
i) monochrome	ECU/100m 0.60 + pts 30	20 pts/100 m
ii) polychrome	ECU/100m 0.60 + pts 130	100 pts/100m

SWEDEN

	<u>General</u>	<u>EEC&EFTA</u>
CINEMATOGRAPHIC FILMS	SEK 350 /100KL	Free

SWITZERLAND

	<u>General</u>	<u>EEC-EFTA</u>
CINEMATOGRAPHIC FILMS		
- educational, scientific or cultural	Free	Free
- 35 mm wide or more	CHF 0.12 /m	CHF 0.12 /m
- other	CHF 0.08 /m	CHF 0.08 /m

TURKEY

EEC

OTHER COUNTRIES

CINEMATOGRAPHIC FILMS

(exposed and developed)
whether incorporating
sound track, negative or
positive :

- a) black and white
- b) colour

TRL 60 /kg
TRL 80 /KG

TRL 75 /KG
TRL 100 /KG

Source : IFPI

TABLE 21

Audio-visual taxation in Switzerland :

Customs treatment of audio-visual programmes	Custom duties		tax on turnover	Permit from the Federal Office for Culture
	country of origin EEC/EFTA	other countries		
	Francs	Francs	rate	
- aimed at broadcasting company/public service television or society/organisation of public interest				
- cinematographic films with scientific, cultural and educational character ; news films	exempted	exempted	6.2%	from 16 mm necessary ; if directed towards radio/TV company
- other cinematographic films (entertainment, advertising, etc)	35 mm and over others	-.12 /m -.08/ m	6.2%	- idem -
- sound recorded medium		exempted	exempted	without
- exposed magnetic tape (Video, Ampex MAZ/VCR)		exempted	6.2%	without
- For other receivers :				
- cinematographic films	35 mm and over others	-.12/ m -.08/ m	9.3% or 6.2%	needed
- Sound recorded medium		exempted	55.-/100 kg 9.3% or 6.2%	without
- exposed magnetic tapes (video, Ampex, MAZ/VCR)		exempted	55.-/100 kg 9.3% or 6.2%	without
- General Customs management				

In 1976 the General Conference of UNESCO adopted the Protocol to the Florence Agreement (Protocol of Nairobi) which extended its scope to a wide variety of new types of materials, including various kinds of audio-visual materials (1). Annex C1 to the Protocol gives audio-visual materials the same status as books, by guaranteeing them - in accordance with Resolution 4.04 adopted in November 1968 - the same treatment as books, newspapers and periodicals.

The protocol, ratified by 13 member States of UNESCO, entered into force on 2 January 1982. Among the member States of the Council of Europe, Denmark, Ireland, Luxembourg and the United Kingdom have ratified it, Greece and Portugal have acceded - together with the Holy See and Yugoslavia - the Netherlands have approved it. However, Denmark, Greece, Ireland, Italy, Luxembourg and the Netherlands declared that they would examine the possibility of accepting Annex C 1 in the light of the Community position. By a decision (79/505/EEC) of 8 May 1979, the Council of Ministers of the Community approved the protocol. The EEC declared that it is not bound by Annex C 1. Certain member States of the Community (inter alia the Federal Republic of Germany and Spain) have not so far ratified the protocol.

To our knowledge, no European State is at present bound by Annex C1.

The reservations of the EEC member States, and the Commission itself, result from their desire to see strict reciprocity established, as permitted by paragraph 16 (a) of the Protocol. On 26 April 1983, the Commission's Committee on the Removal of Customs Barriers decided that it was premature to abandon the protection afforded by the Common Customs Tariff.

(1) Importation d'objets de caractère éducatif, scientifique ou culturel. Guide pour l'application de l'"Accord de Florence" et de son protocole, Unesco, Paris, 1978.

5.3. OECD

International trade in cinematographic films comes within the scope of the OECD's Code of Liberalisation of Current Invisible Operations, which stipulates that member States must abolish restrictions on current invisible transactions and transfers (1).

Various Council of Europe member States (the Federal Republic of Germany, Italy and Spain) and Finland have made reservations excluding the application of the Code to audio-visual material (2).

The Invisible Transactions Committee is currently examining the updating of Appendix IV to Annex A of the Code, so as to extend the provisions for films to all audio-visual works. The results of this committee's work have not yet been published. However, it should be noted that in the context of these negotiations, the United States asked that the national public support schemes for films and the audio-visual industry be dropped.

(1) See OECD, "International Trade in Services, Audio-visual works" OECD, Paris 1986 ; OECD, "Introduction to the OECD Codes of" "Liberalisation", OECD, Paris 1987.

(2) OECD, "Code of Liberalisation of Current Invisible" "Operations", OECD, Paris, 1986.

6. CONCLUSIONS

Discussing the economics of the audio-visual sector in terms of finance and taxation is a delicate matter for various reasons (States' desire to preserve their autonomy in this area, the difficulty of collecting and interpreting data, etc.).

At the end of this study, a few general remarks can be made.

1. Heterogeneity of types of aid. The types of aid provided vary greatly from country to country, and this makes it hard to compare their relative significance.

2. There are still major differences in the taxation of the audio-visual sector in Europe;

- direct taxation:

. differences in the taxation of public service broadcasting bodies,

. differences in the taxation of private companies,

. differences in investment incentive schemes;

- indirect taxation;

. continued levying of customs duties on imported audio-visual material in some member States,

. differences in the basis and rate of VAT;

- specific taxation;

. differences in internal levy schemes in the audio-visual sector, with the proceeds being used to support production.

3. Although taxation plays an important role in the economics of national audio-visual systems, it is hard to assess its precise impact:

- there are no consolidated statistics on taxation of this sector;

- it is hard to quantify the fiscal cost of incentives;

- it is hard to reconstruct tax-deduction/subsidy flows.

4. There are various fiscal measures which States can use to support the audio-visual industry :

- reduced VAT on cinema tickets is the commonest;

- income tax exemptions for public service bodies are also common;

- special investment incentives (tax relief for investments and/or income, accelerated repayments) for this sector are still unusual. These can either complement the traditional types of subsidy (as in France and Italy) or provide an alternative to them (as in Ireland).
5. Variations in tax systems - and particularly VAT - can act as a brake on European co-productions.

* * *

At this stage, and bearing in mind the above, one should remember :

1. The importance of the issues (economic, political, social and cultural) at stake in the development of an audio-visual industry in Europe can justify favourable tax treatment for this sector. At the same time, the effects of any favourable measures introduced must be carefully analysed.
2. Current tax situations are so varied that there is a need for the exchange of information and analyses covering schemes, even when they are experimental.

Moreover, it would be appropriate to consider the purpose of a tax status for European co-production.

3. Some countries still levy customs duties on audio-visual material imported from other member States. To permit the free circulation of programmes, it would appear desirable that these obstacles should be removed, always remembering that the audio-visual industries of the countries which levy these duties are comparatively under-developed.
4. The formulation of a common European policy on finance and taxation would appear desirable with a view to forthcoming discussions in various international fora (GATT, OECD, UNESCO, CSCE).

Moreover, the development of the Commission's initiatives on tax, and particularly VAT, approximation have to be closely followed.

APPENDIX

Agreements against double taxation

AUSTRIA

ORF is required to deduct 20% at source as income tax in its commercial relations with foreign broadcasters, subject to exemptions or reductions in an agreement against double taxation.

Argentina	Luxembourg
Australia	Malta
Belgium	Netherlands
Brazil	Norway
Bulgaria	Pakistan
Canada	Philippines
Czechoslovakia	Poland
Denmark	Portugal
Egypt	Romania
Finland	Soviet Union
France	Spain
Federal Republic of Germany	Sweden
Greece	Switzerland
Hungary	Thailand
India	Tunisia
Indonesia	Turkey
Ireland	United Kingdom
Israel	United States
Italy	
Japan	
Korea	
Liechtenstein	

BELGIUM

BRT and RTBF are required to deduct 25 % at source as income tax in their relations with foreign broadcasters, subject to any agreement against double taxation.

Australia	Malaysia
Austria	Malta
Brazil	Morocco
Canada	Netherlands
Cyprus	New Zealand
Czechoslovakia	Norway
Denmark	Pakistan
Finland	Philippines
France	Poland
Federal Republic of Germany	Portugal
Greece	Romania
India	Singapore
Indonesia	Sweden
Ireland	Switzerland
Israel	Thailand
Italy	Tunisia
Republic of Côte d'Ivoire	United Kingdom
Japan	United States
Korea	Yugoslavia
Luxembourg	

CYPRUS

CyBC is required to deduct 5 % (10 % for Canada) as income tax in their dealings with foreign countries except in the case of the following countries with which agreements exist for the avoidance of double taxation :

Kuwait
Bulgaria
Romania
Greece
Italy
Denmark
Sweden
Norway

Ireland
Soviet Union
German Democratic Republic
Czechoslovakia
Hungary
United States
Canada

DENMARK

Argentina	Lebanon
Australia	Luxembourg
Austria	Malaysia
Belgium	Malta
Brazil	Mauritius
Bulgaria	Netherlands
Canada	New Zealand
China	Nigeria
Cyprus	Norway
Czechoslovakia	Pakistan
Egypt	Philippines
Faroes (Is.)	Poland
Fiji	Portugal
Finland	Seychelles
France	Singapore
Federal Republic of Germany	South Africa
German Democratic Republic	South Korea
Greece	Soviet Union
Greenland	Sri Lanka
Hungary	Spain
Iceland	Sweden
India	Switzerland
Iran	Tanzania
Ireland	Thailand
Israel	Trinidad and Tobago
Italy	Tunisia
Japan	Uganda
Jordan	United Kingdom
Kenya	United States
Kuwait	Yugoslavia

FRANCE

Algeria	Luxembourg
Argentina	Madagascar
Australia	Malawi, Zambia and Zimbabwe
Austria	Malaysia
Belgium	Mali
Benin Bourkina Faso (ex Upper Volta)	Malta
Brazil	Mauritania
Cameroon	Mauritius
Canada	Monaco
Central African Republic	Morocco
China	Netherlands
Comores and Mayotte	New Caledonia
Cyprus	New Zealand
Czechoslovakia	Niger
Denmark	Norway
Egypt	Pakistan
Finland	Philippines
French Polynesia	Poland
Gabon	Portugal
Federal Republic of Germany	Romania
Greece	Saudi Arabia
Hungary	Senegal
India	Singapore
Indonesia	South Korea
Iran	Spain
Ireland	Sri Lanka
Israel	Sweden
Italy	Switzerland
Republic of Côte d'Ivoire	Thailand
Japan	Togo
Jordan	Tunisia
Kuwait	United Kingdom
Lebanon	United States
	Yugoslavia

FEDERAL REPUBLIC OF GERMANY

ARD is required to levy, on behalf of the tax authorities, 25 % for income tax purposes when there is a transfer of copyright, whenever the broadcasting authorization is limited in time, and subject to any agreement against double taxation.

ZDF is required to levy a prior deduction of 25 % for income tax when purchasing programmes from foreign broadcasters. This rate may be reduced by virtue of double taxation agreements.

Exceptionally, the deduction is not made in the following cases :

- if the Federal Republic of Germany is deprived of the right to impose tax under a double-taxation convention, and if the vendor has applied for exemption, or

- if the broadcasting right is transferred without time limit and additional payments are not due for repeats if any.

Argentina	Indonesia	New Zealand
Australia	Iran	Norway
Austria	Ireland	Pakistan
Belgium	Israel	Philippines
Brazil	Italy	Poland
Canada	Republic of Côte d'Ivoire	Portugal
Cyprus	Jamaica	Romania
Czechoslovakia	Japan	Singapore
Denmark	Kenya	South Africa
Egypt	Korea	Soviet Union
Finland	Liberia	Spain
France	Luxembourg	Sri Lanka
Greece	Malaysia	Sweden
Hungary	Malta	Switzerland
Iceland	Mauritius	Thailand
India	Morocco	Trinidad and Tobago
	Netherlands	Tunisia
		United Kingdom
		United States
		Zambia

GREECE

Belgium
Cyprus
France
Federal Republic of Germany
Italy
Sweden
Switzerland
United Kingdom
United States

IRELAND

Australia
Austria
Belgium
Canada
Cyprus
Denmark
Finland
France
Federal Republic of Germany
Italy
Japan
Luxembourg
Netherlands
Norway
Pakistan
Sweden
United States
United Kingdom
Zambia

MALTA

Malta has signed a large number of double taxation agreements, particularly with European countries.

NETHERLANDS

By virtue of double taxation agreements, NOS makes no collection for income tax purposes in its relations with foreign broadcasters.

With numerous countries. List not supplied.

NORWAY

There are agreements with 43 countries in all, most of them European, such as the Nordic countries, the Federal Republic of Germany, France, the United Kingdom, the Soviet Union, etc. and also the United States and Japan.

PORTUGAL

Austria
Belgium
Brazil
Denmark
Finland
France
Federal Republic of Germany
Italy
Norway
Spain
Switzerland
United Kingdom

SPAIN

Spain has signed such agreements but no list of co-signatory countries is available.

SWITZERLAND

Australia	Malaysia
Austria	Netherlands
Belgium	New Zealand
Canada	Norway
Denmark	Pakistan
Finland	Portugal
France	Singapore
Federal Republic of Germany	South Africa
Greece	Spain
Hungary	Sri-Lanka
Ireland	Sweden
Italy	Trinidad & Tobago
Japan	United Kingdom
Korea	United States

TURKEY

Austria
Norway

Under negotiation with :

Finland
Federal Republic of Germany
Jordan
Sweden

UNITED KINGDOM

Antigua	Malawi
Australia	Malaysia
Austria	Malta
Bangladesh	Mauritius
Barbados	Monserrat
Belgium	Netherlands
Belize	Netherlands Antilles
Botswana	New Zealand
Brunei	Nigeria
Burma	Norway
Canada	Pakistan
Cyprus	Philippines
Denmark	Poland
Dominica	Portugal
Egypt	Romania
Falkland Islands	St Kitts
Faroe Islands	St Lucia
Fiji	St Vincent
Finland	Seychelles
France	Sierra Leone
Gambia	Singapore
Federal Republic of Germany	Solomon Islands
Ghana	South Africa
Greece	South West Africa
Grenada	Spain
Guernsey	Sri Lanka
Hungary	Sudan
India	Swaziland
Indonesia	Sweden
Ireland	Switzerland
Isle of Man	Tanzania
Israel	Thailand
Italy	Trinidad and Tobago
Jamaica	Tunisia
Japan	Tuvalu
Jersey	Uganda
Kenya	United States of America
Kiribati	Yugoslavia
Korea	Zambia
Lesotho	Zimbabwe
Luxembourg	

FINLAND

Argentina	Malta
Austria	Morocco
Belgium	Netherlands
Brazil	New Zealand
Canada	Norway
Czechoslovakia	Philippines
Denmark	Poland
Egypt	Portugal
France	Romania
Federal Republic of Germany	Singapore
Greece	South Africa
Hungary	Soviet Union
Iceland	Spain
India	Sri Lanka
Ireland	Sweden
Israel	Switzerland
Italy	Tanzania
Japan	United Kingdom
Korea	United States
Luxembourg	