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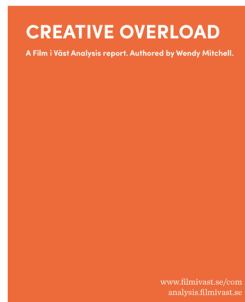
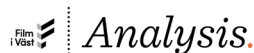
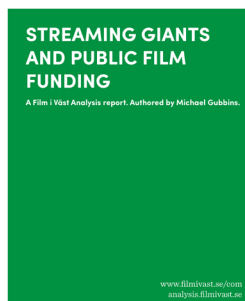
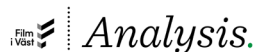
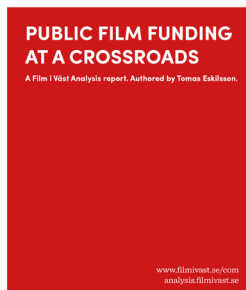
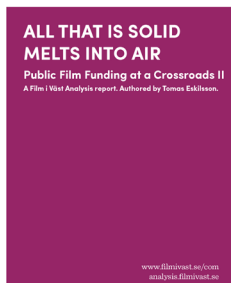
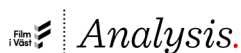
Analysis.

PUBLIC FILM FUNDING AT A CROSSROADS II

Close-up: Portugal

Authored by Nuno Fonseca

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ABOUT PUBLIC FILM FUNDING AT A CROSSROADS

All that is solid melts into air – *Public Film Funding at A Crossroads II* was launched in Venice in August 2022. Along with the first report *Public Film Funding at A Crossroads* it can be downloaded at www.analysis.filmivast.se. Here you also find the ten territorial reports, executive summaries, with strong links to the main topics. There you also find **Michael Gubbin's** report *Streaming Giants and Public Film Funding* and **Wendy Mitchell's** study *Creative Overload*.

Appendix 1	Topics for the interviews
Appendix 2	Survey to filmagencies
Appendix 3	Status of Article 13's transformation across Europe
Appendix 4	Presentation of the experts

Focus group

Eastern Europe (Assistant Professor **Petar Mitric**, Producer Joanna Szymanska)

French speaking Europe (Senior Consultant **Vincent Leclercq**, Senior Consultant Philippe Reynaert)

German speaking Europe (Senior Consultant **Manfred Schmidt**)

The Nordics (**Katarina Krave**)

UK (**Bengt Toll**, Associate Professor **Lydia Papadimitriou**)

Close-up

Flanders (Producer **Ilse Schooneknaep**)

Italy (Senior Consultant **Rickard Olsson**)

Netherlands (Senior Consultant **Doreen Boonekamp**)

Portugal (Visiting Professor **Nuno Fonseca**)

Spain (Journalist **Irene Jiménez**)

French speaking Belgium (Senior Consultant **Philippe Reynaert**)

PORTUGAL

Portugal – smalness, resilience, prodigies and the longing for policy maturity and stability

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Summary

In this contribution, we seek to provide a snapshot of the situation of the audiovisual industry and public policy in Portugal (section I) and to identify the way professionals perceive recent progress or stagnation and risks (section II), based on an anonymous, online survey sent to professionals in August 2023¹, in connection with some topics discussed in PFFC II.

To understand the weaknesses and structural imbalances of the market and the merits and shortcomings of the national support policy, we summarize the industry's key figures and other features (section III) and the main characteristics of the national support scheme (section IV). In section V we flash back to past crises and the respective policy responses, as far as this helps understand some of the concerns expressed by the professionals.

* * *

Based on responses to our survey, we can say that, in 2023, many Portuguese professionals are particularly concerned about policy and



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management aspects, at least as much as about market developments themselves. Stability of policy and funding instruments, policy maturity and the autonomy and efficiency of the national film agency (Instituto do Cinema e Audiovisual – ICA, I.P.) seem to be at the centre of the industry's attention. While they clearly fear most of all the decline of theatrical exhibition, the possible presence in a future government of ultraconservative or extremist political parties that could jeopardize creative freedom and the worsening of the national and international economic situation, they are also very concerned about unpredictability and policy (in)decisions, at least as much as they are about certain uses of IA.

This is hardly a surprise, considering the clout of public funding and audiovisual policies, especially in small and medium European countries[2]. Portugal is no exception, rather on the contrary: with a very difficult market (see section III, below), where national blockbusters able to cover their costs with commercial revenue are rare and irregular, the very existence of a production base (companies, producers, talent and talent attraction, technical infrastructure and HR) in the country depends to a great extent on public funding and on investment obligations, in particular the public broadcaster's mandatory investment.

Public funding attained an acceptable level in 2022. Now, producers need to be sure that there is no turning back in this path of improvement, and they would like to see significant improvements in certain areas and a better functioning policy and funding instruments. Beyond the quantity of funding, the quality of funding: attention to details, compliance by the public administration with their commitments and obligations, shared language and goals, efficiency...

* * *

Portuguese professionals, in particular producers, face different problems, which, so to speak, belong to different eras: they are concerned about topical issues such as the impact of fast market changes, how to work with the international streamers, how to balance line production services provided to major players and independent production (IP rights), how can the national film agencies cope with more and more complex business realities, etc, but, at the same time, they still have to find solutions for old or very old, unsolved questions, such as market-share of national films, sales or the general consistency of national audiovisual policy. One could say that each country's policy and industry has its own, distinctive asynchronies of this sort, and that these might be, at least in certain cases, indexes of a national policy's degree of maturity, of its degree of stability and enshrinement in national

public policies, society and politics.

I. SITUATION: RECENT PROGRESS

I.1. Public funding in Portugal in 2023

From a legal and financial point of view, the situation of public funding in Portugal since 2022 is objectively better than five years ago and much better than ten years ago, and maybe light years away from the situation fifteen years ago.

Portuguese national public funding is based on industry levies (see section IV.2, below), and the transposition of the AVMS Directive in 2020-2021² provided a very significant growth (over 30%) of the ICA budget and a reduction of future risks (by diversifying levies – see section IV.2, below) and improved the investment obligations scheme. In August 2023, with more than one year of implementation of the revised law, the Portuguese transposition looks successful: the law has not been contested and is being complied with; no substantial implementation problems have been reported.

In 2017, an automatic incentive was created in the form of a tax credit, transformed, in 2018, into an identical cash rebate fund (FATC), a tool whose absence had kept Portugal outside the international production locations market for many years³. The FATC cash rebate scheme (ca. 11 million euros per year⁴ in 2018-2022) has been a major game-changer, because, beyond attracting international productions via local line producers, it is a complementary funding source also for national films/series or coproductions.

With these two important legal changes in the last five years, public funding in Portugal finally approached the European average ratio of support per capita (€ 4,2)⁵, i.e., double of the ICA's budget in 2014 and four times more than in 2010.

I.2. Investment obligations

In a very limited, therefore risky market (see section III, below), spontaneous private investment (namely in the form of co-production, MGs/presales or equity) tends to be virtually non-existent. Hence, the critical importance of mandatory investment regimes.

The Portuguese framework of investment obligations provided for in the Cinema Law was also reviewed and updated in 2020. Television and VoD operators, distributors and DVD editors are now subject to investment obligations, established by progressive levels, depending on income in Portugal of each services provider. The maximum investment level, applicable to operators with annual revenues in excess of €50 million, is 4% of revenues, or €4 per subscriber. The system

includes rules on investment diversity.

At least 30% of the mandatory minimum investment must focus on independent European works, originally in Portuguese language. Only the public service broadcaster has a specific obligation to invest in film works.

The expected result is a total mandatory investment of at least 25 million euros per year in 2023, of which at least 14 million euros in independent production⁶, including film.

1.3. General balance

An essential condition of the effectiveness of any audiovisual policy is the compatibility and balance between public funding and (minimum) mandatory investment. With a good proportion between these two types of policy instrument, it is possible to ensure the necessary co-financing of “difficult” works and to leverage other types of production, including series, covering the independent producers’ stakes in independent works.

The post-2020 Portuguese system seems well-balanced: considering, on the one hand, the expected levels of ICA subsidies for development and production (film and audiovisual works) and the cash rebate Incentive and, on the other hand, the expected mandatory investments, conditions are met for the necessary match-funding.

Seen from a different angle, the system looks “fair”, as far as operators of audiovisual services can benefit indirectly from public funding, including ICA subsidies, if their engagement concerns independent works. Streamers may be direct beneficiaries of the Incentive for their non-Portuguese projects.

The wide scope of the Incentive, in particular its openness to big foreign productions, combined with the Incentive’s annual budget cap, might be at the origin of the recent situations of overcrowding at the Incentive’s applications pipeline, described above (see footnote 3).

1.4. Formal progress or real progress?

The FATC and the revision of the Film Law consolidated a path of legal and financial improvement that had started in 2014 with the entry into force of the Law nr. 55/2012. Was this long path a merely formal (legal, political) progress, or did it mean real, tangible progress?

The evaluation by professionals of progress in the last 10-12 years, as expressed by the respondents to our survey, is largely consistent with a recent independent report⁷. However, our consultation of professionals includes many questions not treated in that report, especially concerning more recent facts and trends, as well as policy, management, and public law/governance issues.

In short, professionals:

- Acknowledge that considerable progress has been achieved in many aspects, in particular: the quantity, diversity and quality of film and audiovisual works produced; artistic and technical quality; the international dimension (coproduction, international engagement of professionals, success and reputation of national film, but not so much success in sales); and emergence of new talent⁸.
- Have some reservations about progress in matters such as attracting audiences, opportunities for developing and financing projects, inclusivity (ethnic and social, with a slightly better score for gender equality) and aspects related to the functioning of the ICA and its interaction with users.
- Have strong reservations about progress in issues such as the place and recognition of audiovisual policy in the general framework of public policies; the consistency of the audiovisual policy as a whole; the technical capacity of the ICA (specific knowledge of production, funding, company management, etc.); and, last but not least, they seem to be very sceptical about progress on the ICA's real autonomy and its subordination to public administration and Treasury provisions.

II. THE 2023 ZEITGEIST IN THE PORTUGUESE FILM/AV INDUSTRY AND FUNDING POLICY

II.1. Main challenges, priorities and fears perceived by the professionals

In our survey, we asked professionals to identify the main challenges or priorities ahead, by choosing a maximum of four among the following options:

1. More funding.
2. Better funding (more adequate to each project, more rational and predictable calendars).
3. Revision of film law.
4. Revision of the ICA support scheme.
5. Ensuring continuity of an automatic fiscal incentive open to line production of foreign films – with budget or grant caps to contain the number of foreign productions that mobilize many resources.
6. Same as previous, without caps.
7. ICA with faster processes and decision times, but with the same profile/institutional posture as presently.
8. ICA not only more efficient, but also more proactive, concerning, e.g., sharing of knowledge.
9. Idem, but more knowledgeable (better trained human resources)

about the functioning of the industry and technically more developed.

10. Role of the public service broadcaster (RTP) concerning film and independent audiovisual production.

11. IP rights – position of independent producers vis-à-vis the big streamers.

The most often mentioned factor is clearly better funding (mentioned 25 times, 73,5 %), followed by the role of the public service broadcaster (55,9 %) and more funding (52,9 %). A better functioning of the national film agency (option 9) ranks fourth in this list of top challenges, with 44,1 %. The distance to the fifth most mentioned item (Revision of the ICA support scheme, 29,4 %) and to the remaining ones is considerable.

Therefore, the most challenging aspects and/or priorities are related to policy or public management issues, besides increasing available funding. Apparently, for many professionals, quality of funding comes before quantity per se.

The focus on RTP's role seems to contradict the very important part this broadcaster plays in relation to independent production (see section III.3, below) and RTP's vision of its role⁹. Part of the explanation for this *prima facie* contradiction might be found precisely in the weight of RTP's investment and possibly the wish, by some professionals, that the public service contract between RTP and the State is updated and improved in certain details. Also, the fact that most respondents to our survey are film producers (and not series producers) may have influenced its result.

II.2. What do Portuguese professionals fear most in August 2023?

In our survey, we asked professionals to indicate the extent to which certain hypothetical risk factors concern them, by severity and by the likelihood of occurring in the future (from 1, not at all concerned, to 5, very concerned). The factors presented to the respondents were the following:¹⁰

Immediate funding risks (cash rebate scheme):

- Continuity of the cash rebate incentive
- Changes of rules of the cash rebate incentive

Management risks or problems:

- Unpredictability of deadlines (ICA)
- Unpredictability of deadlines (cash rebate)
- Unpredictability of decisions (ICA)

- Unpredictability of decisions (cash rebate)
- Decisions and action by the Ministry of Finance

Policy risks:

- Discontinuity in the management of the ICA (change of Board of Directors)
- Changes of Minister of Culture
- Majority/government changes

Economic (general and industry-specific) and technological risks:

- Worsening of the national and international economic situation
- Continued erosion of traditional television audiences
- Decline of theatrical exhibition
- Artificial intelligence – devaluation of screenwriters and/or directors
- Artificial intelligence – conditioning the offer to the public based on advanced algorithms

Political risks:

- Presence in the country's government, in the future, of ultraconservative or extremist political parties that could jeopardize creative freedom
- Other forms of interference by governments or politicians

Responses received suggest that professionals in Portugal fear most of all (average 4 or more points out of 5):

- Decline of theatrical exhibition
- Presence in the country's government, in the future, of ultraconservative or extremist political parties that could jeopardize creative freedom
- Unpredictability of deadlines (ICA)
- Worsening of the national and international economic situation
- All remaining forms of unpredictability, continuity of the cash rebate incentive and changes in its rules

They are also considerably worried (almost 4 out of 5) with decisions and action by the Ministry of Finance.

If we order the answers according to the number of respondents who showed the maximum degree of concern, the first three items are:

- Presence in the country's government, in the future, of ultraconservative or extremist political parties that could jeopardize creative freedom
- Decline of theatrical exhibition

- Continuity of the cash rebate

and then the different forms of unpredictability. The priority assigned to the decline of theatrical explanation is certainly explained by the survey's bias in favour of film producers and directors.

In part, the professionals' anxiety about unpredictability of different kinds and uncertainty about the continuation of the FATC is likely to be explained by very facts that have affected the previously good functioning of the FATC incentive (see footnote 5, above) and chronic recurrent problems concerning the implementation of the ICA's support programmes (see section IV.5, below). However, in sections V.1 and V.2, we wonder whether there might be something else behind the industry's disquiet, which could perhaps explain some respondents' feelings towards political risks.

II.3. Priorities and their challenges

The film and audiovisual sector is used to fighting. The big players have been doing it among themselves since the Edison patents war. Others got used to fighting for existence or survival, against governments, against trends, against various opponents or enemies. European audiovisual policy has been a fight and search, largely successful, for difficult balances, including between European policies. European audiovisual policy, other multilateral audiovisual policies and all the numerous national and regional policies are based on exceptions in international trade agreements, in an equally difficult balance with the 2005 UNESCO Convention and other norms.

At times in the past, Portuguese professionals, like those in other countries, had to fight for more funding. Or for some funding. At present, it seems that the majority – without letting their guard down – feel that more funding is important, but that better funding is more important or a higher priority.

If the quality of funding does not improve (in its adequacy, in its details, in its times and conditions), the increase of funds may, in part, prove to be useless and be called into question – a risk to be avoided at all costs.

Improving the “quality” of funding and funding policies and the wishes that professionals express about the autonomy, institutional syntony and proximity of film agencies raise a clear and inevitable, but difficult, challenge for agencies as well as for policymakers and the industry in general.

Greater autonomy and proximity, more predictability and less bureaucracy are legitimate desires and must be met. But progress in these aspects cannot jeopardize the legality, transparency compliance at various levels and accountability that is required of the State. And

behind any public policy and behind any film agency, even an arm's length one, there is, by definition, the State as ultimately responsible. Media and public scrutiny is increasingly demanding. Film agencies have to find the best possible balance in this difficult zone without jeopardizing their credibility and their public service orientation. This means working a lot and perhaps with a new type of ambition, as well as innovative forms, standards and styles of public administration.

III. MARKET, PRODUCTION, CONTEXT

III.1. The theatrical exhibition market

With a lower rate of admissions per inhabitant than the European average and an average ticket price lower or much lower than in countries of comparable size, the Portuguese theatrical market is particularly limited. In 2019, 15.5 million viewers generated a total revenue of around 83 million euros.

Screens are very concentrated in multiplexes and in the largest urban areas along the coast. The possibilities in some small-medium towns in the interior are generally seen as insufficient. Likewise, there are few arthouse, small exhibitors' theatres, and consequently a small number of Portuguese members of the Europa Cinemas network¹¹, despite the fact that there is national public support for screens with a high program of European works, which can be accumulated with support from that European network.

The distribution market is highly concentrated: the four largest distributors account for 95% of admissions. The largest one (NOS, 65%-70% market share before the Covid pandemic; 45%-50% since 2020) is part of a large telecoms/audiovisual group, also dominant in the theatrical exhibition market (with 30 theatres, 214 screens and 60%-65% of total admissions in 2018-2022)¹².

US films and European-US co-productions captured 85% to 90% of admissions in 2018, 2019 and 2022, with a slight rise in admissions of European films in the infamous year 2020. The 9%-13% market share of European films in 2018-2022 includes the modest results of Portuguese films: average of 3.70% in 2018-2022, with 4.5% in 2019 and 5.6% in 2022¹³.

National films are, as a rule, distributed by small distributors or by NOS. Some of these films, shown in a few theatres, achieve better ratios of admissions per screening than many foreign films.

III.2. The TV and VoD markets

Exiguity is also a feature of the Portuguese television market. One

public service operator (RTP) and two private FTA operators (SIC and TVI) compete for a free-to-air (FTA) market that has been continuously decreasing. In 15 years, between 2008 and 2023, SIC lost 15 percentage points of share, TVI and RTP lost 10 percentage points each. Pay TV (channel-packages and individual subscription channels) and OTT have a total share of 41 % in 2023. The rise of the foreign streamers has only aggravated this trend, which had started with the high penetration of Pay TV in the country.

Pay TV in Portugal is operated by four telecoms companies, which offer TV-packages including thematic channels (including News) operated by the three FTA providers, international thematic services targeting Portuguese audiences, other international channels and a few thematic channels (incl. film/series and sports) accessible by specific subscription. The three largest operators (MEO/Altice, NOS and Vodafone) hold 97% % of an almost saturated market¹⁴.

With such strong competition from non-FTA TV services (lately also from OTTs) and migration of the advertising market towards video-sharing platforms and other media, the two Portuguese private FTA broadcasters have a difficult life. Under stringent commercial and financial pressure, they must permanently find the most cost-effective options, reducing average hourly costs to very low amounts, and they certainly cannot take risks (losing money and/or losing audiences in certain slots). High-end series are a forbidden luxury and film is clearly not their core business.

The prime-time paradigm common to both private operators is simple: very long 8 o'clock News (very often running until 9pm or 9.30pm) plus one or two telenovelas.

The telenovela genre, introduced in Portugal in the late 1970 decade with Brazilian works, has developed over the years and is now a vibrant production type. Portuguese telenovelas, produced mainly by SP Televisão, Plural (TVI group) and Coral Europa are exported, they have been awarded Emmy prizes more than once and nominated very often and they ensure high ratings in prime time at an average 30 000 to 45 000 euros? per hour.

SVoD services entered Portugal later than in other, comparable countries, but they have grown very fast, at the second highest CAGR in the EU in 2017-2022¹⁵. Streamers' revenues in Portugal correspond to 25%-50% of its revenue in demographically comparable countries, but their presence has already shaken the market, and they are playing a major role, in particular in the series market, raising in the local professionals the same hopes (services and other opportunities of business development) and fears as elsewhere.

III.3. The public service broadcaster

Supported by a very low license fee (yearly € 36,25 per household) and with limited commercial revenue, RTP lives on a small total budget of ca. € 230 million, of which 185 million comes from the license fee. Therefore, RTP is one of the less “expensive” public service broadcasters in Europe). However, despite its limited budgetary dimension, RTP plays a critical role in the financing of Portuguese film and audiovisual works, in particular because of its strong investment obligation, reinforced (from 8% to 10% of licence fee revenue) by the 2020 Law revision. RTP’s mandatory investment totals now ca. 16 million euros, of which at least 25% for cinematographic works and no more than 20% for non-independent works (i.e., works where the broadcaster holds 100% of production rights). Effective investment in 2022 was higher than the legal minimum above: 18,9 million euros¹⁷.

The amount earmarked for film works (ca. 4 million euros) is critical for Portuguese cinema and would be enough to give RTP broadcasting rights (and, in some cases, co-production rights) on most of the national production, including short films and minority co-productions.

RTP claims that they are responding positively to the challenge of the 2020 legislative review and seeing an opportunity in it¹⁸. Apparently, respondents to our survey do not share this vision of RTP’s action, and they ask for improvement.

The international trend towards the development of co-productions involving independent producers, broadcasters and SVoD operators has already begun in Portugal. Moreover, the new legal provisions on mandatory investments by audiovisual service operators and on independent production works seem to favour this type of new co-productions – close to the Grey Zone –, by clarifying criteria and issues of relative majority of production rights. Considering the very strong limitations of private operators (cf. above), RTP would naturally be the best-placed potential partner to join those co-productions.

III.4. Production and budgets

At present, annual production of fiction and animation feature films is ca. 20-22, plus 4-6 minority co-productions and ca. 20 feature length documentaries. There are few feature films that do not have the support of the ICA and very few that do not have any form of public support.

Despite the growth trend observed since 2014 (and which has strongly increased since 2022), Portugal still has a ratio of feature films (fiction and animation) per million inhabitants lower than that of countries comparable in demographic terms (Denmark, Sweden, Belgium, Netherlands, Czech Republic, among others).

In the same sense, the average budget of national films (fiction) is also much lower than that of comparable countries and the same is true for audiovisual series.

Given these aspects, it is understandable that many professionals demand more funding and more opportunities to produce. On the other hand, however, the sector cannot ignore the difficult option that is also discussed in other countries, between producing more works or not increasing the number of works, but funding, producing and distributing them better.

III.5. International partnering/engagement and export markets

Film coproduction has been a frequent practice among Portuguese producers in the last decades, and it plays a major role in the international circulation, reputation, and festival success of Portuguese arthouse films. This trend has intensified in recent years, partly because of support measures, but also, for sure, because of an evolution of producers' vision and training.

For decades, France, Spain and Brazil have been the most regular coproduction countries, especially France. The proportion of French-Portuguese coproductions (in some cases, including Third country coproducers) selected or awarded at Cannes, Berlin, Locarno, Venice or Toronto in recent years is impressive. Since the start of the French CNC's highly prestigious and selective Cinéma du Monde scheme, Portuguese directors have been among the most regular beneficiaries of support.

In old, recurring discussions about the "real size" and potential of Portugal's film industry, two "natural" markets are most often mentioned: our big European, next-door neighbour, Spain, and our overseas, linguistic and cultural brother, Brazil. In fact, cooperation and coproduction with Spain and Brazil are very important and should be stimulated, especially as part of Portugal's liaison role between Europe, America and Portuguese-speaking territories in Africa (PLPs)¹⁹. However, and for many different reasons, until now, neither Spain nor Brazil seem to be easy, accessible markets for Portuguese film. Spain has a strong funding system, but very different in nature from the Portuguese one, and no coproduction mini-fund has ever existed between Portugal and Spain. Brazil is a regular and important coproduction partner, and several Portuguese producers and directors have close ties with Brazil and its culture, people and industry²⁰.

Things may be different for TV series. Partnerships and coproductions with Spanish producers, in particular from Galicia, and the Galician and Portuguese public service broadcasters developed in the

last decade, and contacts between producers are regular and natural. Cultural (and linguistic, in the case of Galicia) ties seem to be much stronger and obvious between border regions from both countries than between the two countries in general.

These considerations raise a broader question: are there, in Europe or beyond, any natural affinities of Portuguese film and culture? Or, perhaps, elective affinities? Or do we suffer from a certain cultural singularity that blocks our potential film exports?

Clearly, the country has no “obvious” regional, cultural, or linguistic affinities in Europe as we find in the cases of the Nordic and Baltic countries, the Balkans, the Czech Republic and Slovakia, the German-speaking territories, or the French-speaking territories, except maybe the above-mentioned case of Galicia. Therefore, Portuguese producers must live with this absence of “obvious”, “natural” partners and markets and must creatively explore a complex chessboard of international audiovisual relations, where their ties with Brazil and Iberoamerica, France and Spain certainly play an important role. And they seem to be working that way: German and Swiss partners have been more important in the last ten years and coproduction horizons have widened to include partners in Austria, Finland, Belgium, the UK, Bulgaria, The Netherlands, Luxembourg, Argentina, Mongolia ...

Portuguese minority coproductions are more and more often part of the festival success described in section III.6, below. Portuguese producers are not looking only for foreign minority coproducers for their Portuguese projects, but they are investing as minority coproducers themselves and developing their portfolio of rights.

III.6. Small production capacity and low national admissions, but a very high artistic return

In his famous diagram of transcendental film, Schrader places the name of Pedro Costa beyond the “Tarkovski’s Ring separating theatrical cinema from film festival and art museum film, on their journey to pure concept²¹. Indeed, Portugal, with its tiny, hostile market and long-time underdeveloped film policy, is, paradoxically, the fatherland of filmmakers such as Pedro Costa and, before him, Manoel de Oliveira, João César Monteiro and others. I will refrain from mentioning here the young and even younger directors, all those who have created and continue reinforcing a global reputation for Portuguese filmmaking, in fiction, animation and documentary. They are numerous, bold and very talented.

It may look difficult – or absurd – to try to measure artistic success, if we try to use criteria such as a filmmaker’s place in film history or admiration of its work by film critics, scholars and cinephiles, or how

a great film can decisively influence an author many years or decades later. However, it is possible, to a certain degree, to work with indexes of the “artistic” achievements and reputation of a nation’s filmography, namely objective success in top international film festivals.

That is what Dinamia’CET/ISCTE did in their research mentioned earlier in this paper (see footnote 7, above). The Dinamia’CET team compared all films (all types, including short films) from a selected group of comparable countries²² selected and awarded in eleven top international film festivals²³ in 2013-2018 and measured national performance in number of films selected and number of awards. The results have also been put in proportion to each country’s amount of public support for film production.

It turns out from Dinamia’s research that:

- Portugal rank 4th among countries with the highest number of films selected and awarded, after The Netherlands, Denmark and Sweden and followed by Austria and Romania.
- Portuguese films rank 4th among the most successful countries (prizes/selections rate), after Latvia, Denmark, Sweden and followed by Finland and Romania.

From this, we can infer that Portugal and Romania are exceptions to the otherwise very clear correlation between festival success and the level of public funding in each country. The same applies to the also visible correlation between festival success and the budget of each country’s public service broadcaster.

III.7. Paradoxes and asynchronies

The results above are and what they mean for Portuguese film are a fascinating paradox. A very fragile film market and production scene generates a high, world-reference arthouse outcome, famous for, inter alia, freedom of expression, difficult subjects, very cinephile approaches, dialogues with the history of film, openness, LGBTQ-friendliness and, last but not least, a capacity for renewal and generating young talent.

Arthouse success in top international festivals is first and foremost the product of Portuguese filmmakers’ and producers’ talent. There is a long and interesting academic discussion about a “Portuguese school” of film and its nature and characteristics, but engaging in it would bring us outside the scope of this paper and regrettably the author would not be skilled enough for it.

On the other hand, we may consider that national funding schemes have been compatible with this outcome, and this leads us to our

second paradox: a sometimes hesitant and fragile film policy, with limited (and opposed by many professionals and other people) funding schemes, has helped this arthouse wonder come true.

Our third paradox is the contrast between this international artistic success and the problem of the low to very low market share of national films in Portuguese theatres – something that we share with a few other arthouse champions, namely Austria, Romania and perhaps other territories not considered in the Dinamia’CET research, quoted above, such as French-speaking Belgium.

The national films market share issue is an example of what we might call policy asynchronies: the fact that professionals and policymakers have, at present, to face very new, in progress mutations, trends and phenomena, while some “first-generation policies” issues remain unsolved (such as national admissions and audiences, arthouse vs. “commercial” or mainstream films, etc.). This means a double effort, and perhaps “old” unsolved questions must be rethought in light of new realities.

IV. PUBLIC FUNDING

IV.1. Institutional loneliness

The national film agency has been suffering from institutional loneliness since its establishment in 1973. In fact, in Portugal there are no regional or local funds nor other film funding bodies besides the ICA. The FATC is not an institution, but a simple fund, with no legal personality.

Institutional loneliness may be problematic for the industry, as it means less funding (than if there were regional/local or other funds) and fewer opportunities. It also implies a bigger systemic risk: in a system where the whole public funding depends on one single institution/source, when any negative factor(s) affect this institution, very bad things can happen to independent producers and the industry.

ICA is a public body (“indirect State administration”) under the minister of Culture, with “administrative and financial autonomy” and its financial resources come almost exclusively from industry levies – a parafiscal, market-based, French-style funding system – since 1971²⁴.

Autonomy is a fuzzy concept, and it corresponds to different realities in different countries. The length of the arm of arm’s length-type public bodies is shorter or longer in different States, depending on the respective administrative, legal and political systems.

The ICA has, like most of its counterparts in Europe, an acceptable degree of autonomy vis-à-vis the government. Its directors (President

and Vice-President), notwithstanding that they are nominated by the minister, are chosen from a pool of pre-selected candidates in a public competition and have their own mandate. However, autonomy is merely formal, if any, concerning HR recruitment and salaries, expenditure and other critical aspects, as the ICA, as an ordinary, institute-type public body is severely limited, in practice, by horizontal fiscal/Treasury rules, administrative law and other public law constraints.

IV.2. Market-dependence/ independence from general State budget

In the 1980s, an old levy on cinema tickets²⁵ was abolished, and since then the ICA has lived on a single levy on advertising shown in film theatres and, above all, on television advertising (“exhibition levy”). In the heyday of the FTA television market in Portugal, the ICA lived comfortably; during the bad years – and there were many, since 2007 and, later, in the period of financial and economic crisis and the *troika* intervention²⁶ – cinema and its professionals lived through tough times. In 2007 the ICA’s available budget was reduced to 8 million euros, down from 11 million in 2004, and it stayed until 2010; in 2011 it fell to less than 4 million euros; in 2012 no calls for projects were launched.

The 2012 Law (revised in 2013 and implemented since 2014) introduced a second levy, this one on a strong and fast-growing market: the Pay-TV levy (on TV-packagers). In 2020, a third levy (on SVoD services) was introduced, and the scope of the exhibition levy has been enlarged to include video-sharing platforms.

The ICA’s levy-based budget recovered and has slowly grown since 2013, until reaching ca. 22 million in 2021, i.e., around half the average European rate of cinema/audiovisual public support per capita. The cash-rebate incentive improved this ratio. The effect of the 2020 Law, sensitive since 2022, was an unprecedented jump of 69%, not so much the result of the new SVoD fee, but mainly of the expansion of the scope of the exhibition fee.

Thus, the Portuguese experience until 2014 unfortunately demonstrated the extremely high risk inherent in dependence on a single levy, applied to a single type of market and subject to its fluctuations. Would a system based on the general state budget (as in Spain, Italy, Denmark, the Netherlands, etc.) be safer? Nobody knows, but it is tempting to think that very nasty things could have happened in Portugal, in that case, during the period of financial and economic crisis (2010-2014), if we take into account certain facts (see section V, below) and if we remember the example of Spain and of the vulnerability of Spain’s public funding system (100% dependent on the general State and Auto-

conomic Communities' budgets – opposite the Portuguese levy-based system) during the sovereign debt and public finances crisis²⁷.

IV.3. Miseries and splendours of a mainly selective system

The ICA support scheme is essentially selective, based on artistic-cultural and production criteria. There is automatic support indexed to box office and sales results. Being, by definition, variable from year to year, this support is inevitably limited, given the low market share of national films.

The system is based on three major support programs (first works/new talent, Film and Audiovisual Production), including support for development, production (various modalities), distribution, exhibition, promotion, etc. In total, more than twenty different support lines and a corresponding number of calls for projects.

The legal and administrative framework of tenders, complex and cumbersome, has the advantage of being rigorous and contributing to a positive reputation of the ICA and its beneficiaries in terms of compliance, integrity, seriousness, good management, but at the same time, inevitably, has very negative implications at different levels: lengthy processes and decisions, risks of challenge or litigation in court, possibly quality of some decisions, distance of the administration from the life of the projects, etc.

The ICA selection contests recurrently raise discussions and controversy. The variables in the equation are many and complex. One of the most evident problematic aspects, from a public policy analysis point of view, is the imprecision, if not even the absence of clear and precise objectives for the different lines of support, which, logically, does not allow us to identify types or profiles of "ideal results", that is, the type of production that you want to make possible in each support line. In the existing system, in the same call from the same support line, films with a completely different profile and ambition or target can be supported.

An independent strategy report quoted above (Olsberg|SPI 2021) highlights these issues, while acknowledging the difficulty of finding optimal solutions, given the limits imposed by the legal framework for ICA funding and applicable national law.

The search for interpretations of Administrative Law that are more appropriate to the activity, but also complying with it, will certainly be one of the challenges for the sector and for political decision-makers in the near future, as otherwise it might not be possible to make the most appropriate and effective use of the financial resources of the ICA, greatly strengthened recently.

At the same time, this system, so contested by some and undoubted-

ly with some problems of logic and efficiency, has ensured the creative vitality of the sector and the prodigy of the international artistic recognition of Portuguese film, described above.

IV.4. Policy beyond funding?

In Portugal, film and audiovisual policy is expressed almost exclusively in the legislative acts themselves, especially in their preambles, or in statements to the press by policymakers, the ICA President or other major stakeholders.

The ICA's five-year strategic plans, mandatory since 2013 and very important, are not national audiovisual policy and strategy plans. Article 3 of the Cinema Law includes an extensive list of objectives and principles of State action in favour of cinema and independent audiovisual production. The text of article 3, which has not been modified since 2012, takes up much of article 3 of the 2004 Law. One might think that this article would summarize the public policy objectives that the law serves. However, the vague and generic formulation of "objectives" and "principles" does not contribute to make the underlying policy explicit. Moreover, the correctness of the article's wording is questionable, since, for example, objectives and means are sometimes confused. The text mentions "supporting", "encouraging" or "promoting", as if these were final goals, while in fact the ultimate objectives are not explained, or just vaguely.

IV.5. Policy implementation: The devil in the details

We know that a bad implementation of a good law can ruin a policy. In Portugal, this risk seems to have been effectively mitigated in the 2020-2021 legislative revision, in comparison with the cinema laws of 2012 and 2004. But the system has not been completely free from malfunctions that do not depend on the cinema law itself, but on other, lower ranking, legal provisions, or material constraints.

Thus, even in the post-2014 recovery period and more recently, despite a balanced budgetary situation, implementation problems continued to occur:

- Problems due to necessary authorizations from the Ministry of Finance and other budgetary provisions: delays in opening annual calls for projects; cash flow problems, with implications on signing support contracts and payments by ICA, etc.
- Problems linked to the functioning of ICA's selective calls for projects, i.e. decision times and unpredictability of deadlines; the fact that calendars and other conditions are (according to users) set according to the (limited) capacity of the administration and not based on the real dynamics of the sector, etc. These problems are partly due or aggravated by the very high number of applications and by a bureau-

cratically demanding system of justification of decisions, as well as by the limitations of the ICA in terms of HR.

- Recently, problems in the implementation of the FATC Incentive, referred to in note 5, above: non-compliance with deadlines for decisions, budgetary or cash flow constraints; overabundance of projects in 2022 and 2023 – as a consequence of the national and international success of the incentive.

As previously said, these circumstances could explain part of the results of our survey.

V. LESSONS LEARNED THE HARD WAY FROM HISTORY

The fears expressed by respondents to our survey about aspects related to the instability or unpredictability of film/AV policy and about political variables (risk of governments with ultraconservative members or other forms of political interference) may be partly explained by negative experiences linked to the implementation of existing funds. But these fears may also stem from deeper causes – a sort of traumatic policy experiences still alive in the industry’s collective memory. Two slices of legislative history and one story with bears and pawnshops illustrate this subconscious dimension...

V.1. Squaring the circle: the 2004 Film Law

The 2004 Film Law (Law nr. 42/2004) – the first film law since the beginning of the democracy era in Portugal, after 1974 – aimed at reinforcing financing capability, strongly threatened by the stagnation of ICA revenues, by integrating in the system, the then new and fast-growing sector of cable TV. Commendable intention. But the Law had design errors that heralded its future collapse. Eventually, the Law did not solve the financial problem of the ICA, whose situation, on the contrary, further deteriorated from 2007 onwards.

The Law provided for new contributions from cable TV, in addition to traditional television, but: the new funding thus obtained was assigned to a new instrument, different from the ICA; this new instrument would be an “investment fund”; cable TV operators contributed, in principle, with 5% of their revenues, but, alternatively, they could sign a contract with the State in which the amount of contribution to the new fund over five years could be freely established (and that amount could be much less than 5% - and so it was indeed).

The government opted for the creation of a special venture capital fund, not open to public subscription and, therefore, not supervised by the national securities and markets regulator. It worked between 2008 and 2010, approximately.

The system did not resist the extreme tension between the reality of the market and the sector and the logics of venture capital, which, among other things, threatened the ability to comply with the legal bases of the publicly financed part of the fund. In addition, by mobilising resources from the main market operators, the fund made financially significant pre-sales difficult.

It is difficult not to think that the idea of an “investment fund” was based, in addition to genuine wishful thinking, on an attitude of prejudice (negative connotation of “subsidies” and the ICA’s association with them), which therefore generated a biased policy and a technically bad solution.

V.2. Pawning the Bear: the situation in 2012

ICA’s financial strangulation worsened between 2007 and 2012. With the film production sector practically at a standstill, there were demonstrations, petitions and public statements by filmmakers, producers, and other professionals against the government. Some professionals felt that there was a clash of positions between the Secretary of State for Culture (who eventually put forward a very positive draft law) and other members of the (liberal) Government, who held very different views of the audiovisual sector, in particular film, and of audiovisual policy and the role of the State. In the same period (2011-2012), there was a public debate about the future of public service broadcasting in Portugal, including proposals for its privatisation. Paradoxically (again...), in such a hostile environment, new talent emerged and achieved recognition at the highest artistic level. After his Cannes Palme d’Or for Best Short in 2009 (Arena), in 2012, João Salaviza was awarded with the Golden Bear for Best Short Film (*Rafa*). In the same edition of the Berlinale, Miguel Gomes’ *Tabu* was awarded with the Alfred Bauer and the FIPRESCI prizes.

Perhaps in reaction to the “leveraging” of professional claims by the symbolic force of international artistic success, a columnist for a popular newspaper wrote on May 12, 2012:²⁸ “[except] a few quotes in the international press, our geniuses return to their homeland, (...) in search of public money” and “I suspect that the Portuguese film awards would yield more if they were pawned off”. This fascinating short text became even more popular when the filmmaker (João Salaviza) replied in a famous open letter, four days later: “My name is João Salaviza, and I am one of the “hat in hand” gentlemen that you mention in your article...”²⁹.

A pawnshop loan is a secured loan. Would the filmmaker pay it back, or was the Bear’s situation hopeless? Why didn’t the columnist suggest the direct melting of the Bear? Maybe because not even the statuette

is valuable. The Bear is gold-plated, but not entirely made of gold, and bullion couldn't pay Rafa's magnificent shots. Neither Tabu's.

V.3. Overcoming false starts: the 2012 Film Law

Law 55/2012 was a good law as it was ambitious regarding ICA revenues, providing for a new levy and a new investment obligations system for distributors, broadcasters operators and on demand services operators.

Unfortunately, as it turned out, the initial version of the law was too ambitious and/or previous negotiations with the new contributors had been imperfect or non-existent.

Pay TV operators refused to comply with the law, threatening to take action before the European Court of Justice and national courts, and this could put the ICA in penury for many years. A new political agreement led to a revision of the law in 2013. The operators' contribution was reduced compared to the initial version and supplemented with funds resulting from the net profit of the communications regulator. Investment obligations of private broadcasters were also relaxed.

The law was eventually implemented from 2014 onwards. The new resources allowed for a significant growth of the ICA's revenue, which increased, although at a slower pace, in the following years, as the advertising market recovered, and the Pay TV market kept growing. The new law also introduced changes in the ICA funding scheme, by expressly providing for three major support programs (with several support lines each):

- 1) first works/new talents;
- 2) film;
- 3) independent audiovisual production (until then non-existent).

An almost happy ending, after a long, painful period. But time had been lost, and meanwhile professionals had feared the worst. Hence the tiny traces of corporate and institutional PTSD that we might have found in our survey.

V.3. Did we learn something?

We might have learned

- From the 2004 mistakes, that policy (legal, financial) tools and measures should be adequate to reality and not the product of feelings or biases.
- From the 2012 difficulties in approving and implementing the law, that the implementability of a draft legal act should be carefully evaluated and, if possible, ensured before its voting or adoption, and that any draft legal act should be proportionate, fair, unambiguous, and, obviously, bulletproof compatible with international and European

law and existing national laws.

Perhaps these lessons have been used in the 2020-2021 law revision, as the process was relatively quick and ran smoothly.

The big challenges start now, and they concern putting funding and regulatory capacity to good use and responding to valid concerns and wishes expressed by the professionals. They certainly include the challenge of reconciling debureaucratization with 100% legal, financial and administrative compliance (possibly a noble target for IA...) and finding the right governance models.

Film funding/audiovisual policy is a technically sophisticated type of cultural policy that impacts on a market with both huge and minute players, different interests and many interactions and interdependence. Because of widely recognized market unbalances and fragility in most countries, public funding and regulatory and other measures are, so to speak, a very important part of the market itself. Big or tiny, strong or frail, this is an industry.

This industrial background would recommend policies and legal frameworks that are politically clear, technically correct, and feasible; that are future-proof because they combine in a good proportion a stable, comprehensive framework with safe but workable margins for adaptation, fine-tuning and improvement; whenever possible, that are future-proof because they rely on a wide, rational consensus and are not likely to be questioned or reversed by a new government; that are targeted at verifiable results; where public administrations share interest in the success of projects (and in having a positive impact on the sector) with their private promoters, artists and other professionals. The challenge of approaching this ideal is particularly demanding for film agencies and policymakers, but it also addresses producers, audiovisual operators and all professionals concerned.

Footnotes

1. The survey was sent by the author of this contribution to 70 professionals in Portugal, mostly producers, but also including a significant proportion of directors and other professionals (namely festival programmers and directors, TV executives, film critics and professors), or professionals who accumulate more than one role. 34 responses were received. Among the respondents, film producers predominate. This survey should be understood as an aid to the author's analysis, and not as a rigorous statistical reference.

2. The Directive was transposed by Law nr 74/2020, which amended the 2012 Film Law (Law nr. 55/2012) and the Television and Audiovisual Services Law (Law nr. 27/2007). The implementation act of the revised Film Law (Decree-law nr. 74/2021), which includes very detailed rules on the functioning of the levies and investment obligations systems, entered into force on January 1st, 2022.

3. The FATC – Tourism & Film Support Fund is funded and managed by Turismo de Portugal, I.P. (the national Film Board, under the minister of Economy), based on the potential of cinema and audiovisual to indirectly promote the country as a

tourist destination. ICA participates in the application evaluation process (automatic system, with cultural test, mostly first-come, first-served).

4. Budget allocation, as a ceiling for yearly capital injections in the fund. In practice, due to the FATC's budget and accounting rules (cash basis accounting, instead of accrual accounting), effective budget could be smaller. This fact and the post-Covid production boom led to financial constraints since 2022, as applications far exceeded the fund's available budget, and the same happened recently, in July 2023.

While these circumstances have caused some uncertainty in the industry, the need for this funding instrument has been demonstrated and recently the FATC has been very positively evaluated (PlanAPP/GEPAC/GEE, Cash Rebate – Avaliação do Incentivo à Produção Cinematográfica e Audiovisual, March 2023). The Incentive has in fact generated excellent results from several points of view. In recent interviews to the press, the Minister stated that he was working with the government on the continuation of a cash rebate scheme, as well as on a possible parallel tax credit scheme, possibly for larger foreign productions.

5. This often-quoted figure, in Talavera Milla, J., Fontaine, G., and Kanzler, M., *Public financing for film and television content – The state of soft money in Europe*, European Audiovisual Observatory, Strasbourg, 2016) does not include tax credits or tax shelters.

6. Two-thirds of the total expected investment comes from the public service broadcaster. Estimations based on ICA, *Relatório de Gestão 2022 and European Audiovisual Observatory*, Yearbook.

7. Dinamía/CET/ISCTE for the ICA: Diagnóstico do Setor do Cinema e Audiovisual em Portugal e Avaliação do Plano Estratégico 2014-18, https://ica-ip.pt/fotos/gca/diagnostico_dinamia_7585647a0397b04c5.pdf.

8. Progress in these areas might be due, in part, to changes in the ICA's support programmes and financial priorities after 2013 (programme dedicated to first works/new talent, reinforcement of support to project development and coproduction).

9. "The obligations were assumed by the Public Television Service as an opportunity to consolidate its position as the main driver of the Portuguese audiovisual industry. (...) RTP took responsibility for its investment obligations in direct contact with the [independent producers]. This proactive attitude in increasing dialogue and negotiation bridges with independent production was accompanied by work to define internal criteria for decision-making on investment options", RTP - Rádio e Televisão de Portugal, S.A., *Relatório e Contas 2022*, p. 57.

10. Presented to respondents in a random order, without the categorisation used in this text.

11. Contrary to this trend, in 2020 there was a significant increase in the number of Portuguese cinemas that joined the Europa Cinemas network ("mini-network" modality), including non-commercial cinemas managed by local authorities or associations.

12. Due to its concentration in Portugal, NOS is the only Portuguese distributor ranking among the 40 leading distributors in Europe, and one of the very few ones from small or medium countries included in this ranking (*Yearbook 2022, European Audiovisual Observatory*). NOS also operates Pay-TV services and electronic communications services.

13. The market share of national films in Portugal has slightly improved over time (average of 2,8% in 2009-2013), but remains uncomfortably low. Causes are complex, and the "problem" of the low market share is full of nuances that must be considered in any serious effort to tackle it.

14. Source: *Subscription television signal distribution service* - 1st quarter 2023, report by ANACOM, the Portuguese electronic communications regulator.

15. *European Audiovisual Observatory*, Yearbook, based on data by Ampere Analysis.

16. By all criteria: license fee per capita, total budget per capita, cost per hour.... See *Licence Fee 2020, EBU Media Intelligence Service*, November 2020, p. 8. See

also European Audiovisual Observatory, *Public Service Media: Money for Content* (IRIS plus 2010-4), Strasbourg, 2010.

17. RTP - Rádio e Televisão de Portugal, S.A., Relatório e Contas 2022, p. 57.

18. See footnote 9, above.

19. Many Portuguese producers have experience of complex international co-productions where they use Portugal's membership and active engagement in multilateral agreements and funds both in Europe and in Latin America (the Council of Europe Convention on Coproduction, Eurimages and Creative Europe, on the one hand, and Ibermedia and the Iberoamerican Coproduction Agreement, on the other hand) coupled with its bridges to Portuguese-speaking African countries and also using, in certain cases, Portugal's bilateral "mini-treaties" (coproduction funds with France, 2014-2022, and Brazil and, more recently, co-development funds with Italy and Luxembourg).

20. At the time of writing, the 2023 Call for Projects of the ICA-ANCINE bilateral agreement (coproduction mini-fund) has just been launched, after a few years of de facto suspension, during the Bolsonaro era.

21. Paul Schrader, *Transcendental Style in Film* - Ozu, Bresson, Dreyer, University of California Press, Oakland, 2018, p. 32.

22. Austria, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Latvia, Lithuania, Netherlands, Portugal, Romania, Sweden.

23. Clermont-Ferrand, Anima (Brussels), Annecy, Berlinale, Cannes, Venice, Sundance, Rotterdam, Locarno, San Sebastian, Toronto.

24. It has always been like this, not only since the adoption of the first "modern" cinema law in Portugal, in 1971, but since the National Film Fund, established in the late 1940s by the Propaganda minister of Salazar's authoritarian government.

25. Given the smallness of the theatrical market in Portugal, such a levy would not be a major source of revenue nowadays, unless it was relatively high, in which case it could be a deterrent for potential filmgoers.

26. European Commission, European Central Bank and the International Monetary Fund. Miguel Gomes' troika triptych, *Arabian Nights* (Cannes Quinzaine 2015), echoes this period...

27. "El cine español se lleva la peor parte del recorte de los presupuestos", *El País*, April 3, 2012, and many other press news.

28. João Pereira Coutinho, "Génios", *Correio da Manhã*, 12.05.2012, <https://www.cmjornal.pt/opinioao/detalhe/genios>.

29. <https://www.esquerda.net/en/comment/6389>.