

Theatrical Release Windows: A Playground for “Cultural Exception” Policies?

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In recent years, cinema culture in Europe has undergone a substantial reorganization of production models and a profound change of public intervention in favor of the film industry. This article aims to reconstruct the different combinations between protectionist and liberalist policies through a comparative analysis of the contemporary European national cinema aids, identifying differences and shared trends and verifying the existence of a “continental” cinema support model. Therefore the article will analyze public support policies on cinema production, distribution, and exhibition in the EU and in several of its member states (including France, Germany, England, Spain, and Italy) from 2018 to 2022. Focusing on theatrical release windows, this essay will attempt to answer the following main questions: is there a “European” mark in policies in favor of cinema? Can we speak of a “European” model (even outside the European Union) of support for the cinema? What are the elements and actions that define it? What are the sectors of the industry in which it is most fully expressed (production, distribution, exhibition)? And what are the themes and areas in which, on the contrary, national differences (sometimes driven by resurgent nationalisms) are most marked?

Keywords

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INTRODUCTION

Disregarding optimistic forecasts about the digital switch and its ability to usher in a new season for film and media, characterised by the collapse of borders and logics of dialogue and free exchange (Iordanova and Cunningham 2012; Tryon 2013; Hartley, Wen, and Li 2015; Smith and Telang 2016), recent studies have highlighted the persistence of mechanisms of separation and localistic policies in cinema and media.¹ Phenomena such as geoblocking, for instance, demonstrate the downsizing that the “digital promise” has undergone (Lobato and Meese 2016; Lobato 2019).²

¹ Applying here the observations that James Hay made in 2012 about the boundaries erected within the web, similar to those conventionally drawn to divide airspace, and which undermined the free movement of content (Hay 2012).

² These studies also raise important methodological questions. Ramon Lobato for example questions the appropriateness of categories such as global, national and international when it comes to describing and evaluating the trajectories of cultural

The difficulty in developing a supranational or community vision in the cinema and audiovisual sectors in Europe, in particular, is shown in a number of ways: from the differing speeds of development of screen industries, even between markets that are usually considered comparable (EAO 2023); to the lack of a common set of indicators and metrics to assess the industrial, employment, economic, social and cultural value of screen industries (see article by André Lange in this theme issue), transversally to the national markets (Nieborg, Duffy, and Poell 2020), to the heterogeneous public support, by mode and amount of aid that each country offers to the sector (EAO 2019).

This essay aims to focus on this last issue, examining the solutions that five major European filmed entertainment markets—France, Germany, Italy, the United Kingdom and Spain—have identified to balance liberalist drives and protectionist instances. The policy of the “cultural exception”, inaugurated in the early 1990s to protect the European specificity of film and audiovisual products, has in fact been transposed and implemented differently, even by countries that, in terms of history and size of the film and audiovisual sector, are traditionally considered comparable.

Specifically, the essay’s intent is to examine an exemplary place of comparison, in which the trajectories of many players in the theatrical supply chain intersect: the theatrical release windows. This exemplary case study can help to understand which direction European cultural policies are taking, and highlight the ever-lively debate on public support for the audiovisual industry as a whole. Moreover, analysing these differences and their effects on the structures of the film and audiovisual industry means being able to assess the progress of the process of establishing a European film and audiovisual policy, even in the face of the challenges posed by the entry of platforms, that is capable of negotiating between national identities and maturing a supra-local and community vision (Bergfelder 2005).

THE CULTURAL EXCEPTION AND THE PLATFORMING TEST

The term “cultural exception” was introduced in the early 1990s as part of the debate related to the redefinition of free market agreements (General Agreement on Tariffs and Trade or GATT) (Buchsbaum 2006; Richieri Hanania 2019). The expression soon became a “symbol of resistance” of the cultural industry to neoliberal logics (Farchy 2008) and turned into a collector around which broader reflections and debates were gathered: from the one on globalisation (Kim and Parc 2020) to reflections on the role of cinema as a tool of soft power in cultural diplomacy (Dagnaud 2011; Vlassis 2016).

With the new millennium, the term “cultural exception” began to be replaced,

products across new touchpoints (Lobato 2019).

both in public discussion and in official documents (UNESCO 2005) by the term “cultural diversity”, perceived as less radical and more acceptable (Acheson and Maule 2004). More specifically, “cultural exception” has come to denote a composite set of measures whose aim is the protection and enhancement of the diversity of cultures and within cultures (Farchy 2008). Concurrently, its scope has been progressively widened: from actions safeguarding national productions and their presence in distribution channels, to interventions aimed at protecting local cinemas, in particular those located in smaller urban centres or screening national and quality films, as opposed to international multiplex circuits, as a place of memory and expression of community identity.

Moreover, compared to an initial phase characterised by a broad agreement in the academic sphere on the good will of such a policy, recently critical voices have increased, expressing reservations about the effectiveness of the measures ascribable to the principle of “cultural exception” in promoting the *genius loci*, supporting independent producers, guaranteeing pluralism and enhancing innovation (Naldi, Wikström, and Von Rimscha 2014). Added to this is the diverseness of the ways in which the cultural exception paradigm is interpreted and applied, which risks promoting localism and nationalism. Although the “cultural exception” is rooted in a pro-European perspective, it has not given rise to a unified policy, accentuating national primacy even when the aim was to foster maximum product circulation. For instance, in order to bypass the stumbling block of differing regulations on the copying right of works, which made their international circulation complex, the European Union decreed the primacy of the “country of origin”, instead of working on the establishment of a common, at least European, system of governance of the works and copyright protection (Cabrera Blázquez et al. 2015 and 2019b). More generally, the EU has limited itself to pursuing a “prominence” of the European audiovisual film product, which would guarantee at least its availability (Cappello 2022).³ An analysis of the mechanisms regulating public film funding clearly reveals the persistence of substantial differences between countries (Weiss 2016). The incentive techniques, that Lucia Bellucci calls “cultural welfare”, aimed to “support national cultural production, thereby maintaining and developing not only a national industry, but also a certain diversity in the supply of cultural content and therefore a plurality of choices for the public” (Bellucci 2017: 200–01), take on, in fact, different features depending on the country being considered and is also subject to local and international political pressures that make these sets of tools not only dissimilar but also unstable (Bellucci 2019).

If we limit the examination to the main markets and a few traits⁴ in France

3 “The findability and discoverability of European audiovisual content is first and foremost a matter of cultural diversity. Only if a variety of voices can be effectively heard, and a multitude of works effectively enjoyed by the greatest numbers, can there be real cultural diversity.” (Cappello 2022, 4).

4 Refer to the report on the mapping of public financing criteria of the audiovisual enterprise in EU countries published by the European Audiovisual Observatory (EAO 2019).

and, to some extent, the United Kingdom⁵ for instance, they tend to adopt a centralised model of public aid, while Spain and Germany, despite their administrative division into autonomous regions, have both a centralised line of funding, as well as distinct regional measures. In Germany, for example, the national funding agency for the audiovisual industry, the Filmförderungsanstalt (FFA) administers its own funding lines as well as directing to other federal funding lines, linked in particular to the Federal Delegate for Culture and Media (Beauftragte der Bundesregierung für Kultur und Medien, BKM). Italy also has a regional public support system, which offers possible complementary financing for approximately 10% of the overall volume of state commitment (MIC 2022). Besides the different structures, the forms of public contribution also differ from country to country: in the case of France, the national agency, the CNC (Centre national du cinéma et de l'image animée) manages over 90 different funding lines, which obviously do not have a direct correspondence with the options and paths chosen by other countries.

The scale of public financing also differs: in 2021, for example, the UK allocated more than £700 million to support movie industries; the CNC managed over €600 million in funding; Germany's public investment in the audiovisual market exceeded €480 million in total; while funding managed by the Spanish Instituto de la Cinematografía y de las Artes Audiovisual (ICAA) was just under €70 million. Finally, the Italian government, aside of the extraordinary interventions in the field to counter the effects of the lockdown, awarded over €885 million (MIC 2022) to the cinema and audiovisual sector.

Finally, there are no specific and reliable indexes that are able to evaluate the effectiveness of "cultural welfare" policies transnationally. Sarah Walkley, in her assessment of cultural exception policies, does not believe these can be referred to European policies, but considered only at a national level and in comparison, with the big US player. "That said, France is most concerned about unfair competition from the USA and its potential to dominate the market", and Walkley (2018, 240) argued that the indexation she proposes mainly concerns the French film industry in opposition to the American one, relegating third countries (not only from the EU) to an outsider position. Assessing the effectiveness of protectionist policies is also complicated (and almost impossible at the moment) by the lack of data regarding the performance of platforms; in fact, this absence is likely to become a problem when it comes to defining possible logics of coexistence between new and old channels of distribution of film content, as Antonios Vlassis (2021) recently observed questioning the direction taken by the media system and, specifically, platforms in the post-pandemic era.

While Walkley suggests considering balance, disparity and variety for

5 The organization of support for the audiovisual industry in the UK is divided into two paths: on the one hand, a selective funding model linked to public bodies (state entities, England, Wales, Scotland and Northern Ireland, educational institutions and training agencies in the first place), on the other automatic access to tax relief models.

measurable indexes (238), the European Audiovisual Observatory attempts, if only to be consistent with its mission, to overcome the national industry barrier; however, it has to limit its criteria to two indicators of mere product circulation: findability and discoverability. These indeed give us an intuitive reference of the impact of regulations, however without being able to delve into economic impact assessments, nor actually into considerations on the contents and messages of the products distributed.⁶

PERIMETERS, MAGNITUDE AND TRENDS

The following analysis will examine the five main European markets (the so-called big 5: France, Germany, Italy, the United Kingdom and Spain), highlighting their pre-eminence in the European scenario and pointing out the structural assets of the theatrical supply chain: production, distribution, exhibition. The choice of these five countries is motivated by the size of the industry and the industrial set-up of the sector, which, unlike other markets on the continent (for instance Russia), sees all the nodes of the supply chain, including exhibition facilities, significantly represented.⁷ As regards the size of the income, in 2021 France, Germany, Italy, the United Kingdom and Spain together generated 70.5% of the total turnover of the audiovisual market of the EU-27 and the United Kingdom, and produced a share of European theatrical market receipts exceeding 70%: €5.184 billion in the pre-pandemic year (72% of the total box office of the area comprising the EU-27 and the United Kingdom) and just over €2 billion in 2021 (71%) (EAO 2022). If we consider them both as a whole as well as how each of them impacts its own national market, these five countries are also able to compete in Europe with the US offer, as is shown not only by theatrical box offices, but also by the data on the presence of films produced in these countries on European digital Video On Demand platforms. If we look at the EU-27, 34% of the films (individual titles) offered on the TVOD (Transaction Video On Demand) platforms are in fact produced in the five countries mentioned, against 37.5% of US origin; moreover, the share of product from the "big 5" exceeds that of the United States if we consider the Subscription Video On Demand platforms: 31.7% compared to 28.6% of US titles; only on the FVOD (Free Video On Demand) platforms does the ratio appear more clearly in favour of US products, with 40.7%, against 27.68% by major European producing countries.⁸

6 "In the EU context, there is unlikely to be harmonization on the type of content concretely to be regarded as having public value or being of general interest as these are aspects closely linked to cultural and democratic traditions in the member states." (Cappello 2022, 8).

7 In 2021, 70% of the operating facilities in the EU-27, including the UK, were concentrated in the five markets taken into consideration, with relative stability over the five-year period (EAO 2022).

8 In September 2022, French films represented 10% of the titles in TVOD catalogues and 9% of the titles in European SVOD catalogues, compared to 5% and 6%

Finally, France, Germany, Italy, the United Kingdom, and Spain are the countries with the highest volume of public investment in the film market, although, as mentioned, differing in terms of size and allocation logic. The same is true for the general volume of the film production sector, as can be seen from the average resources invested per year, again with reference to the period 2017–2021: over 2 billion for the UK, more than 1 billion for France, 436 million and 383 million respectively for Germany and Italy (EAO 2022).⁹

In fact, although these five markets are highly comparable, and have seen an overall growth over the five-year period 2017–2021, they differ in size, characteristics, and trends. Cinema aids, or, in Bellucci's sense, "cultural welfare" actions, and specifically theatrical release window policies, enter this scenario as a further element of differentiation, both because they take on different forms and because they operate in diverse realities. Though we can't reconstruct these differences here point-by-point, the following tables allow us, at least, to grasp the complexity of the scenario where cultural welfare is exercised.¹⁰

To begin with, in the theatrical supply chain, production has shown a general upturn in both investment and the number of titles produced,¹¹ in the case of France and Italy, the value invested in 2021 in the production of feature films also destined for theatrical release was even higher than in 2019: +21% in France, with 340 new titles compared to 301 in 2019, and + 8% in Italy, with 313 works produced compared to 325 in 2019. But the reaction in Spain and the United Kingdom has been slower (EAO 2022) [Tab. 1].

	2017	2018	2019	2020	2021
France	300	300	301	237	340
Germany	247	247	265	152	185
Italy	235	273	325	252	313
Spain	301	283	252	193	154
United Kingdom	241	266	263	215	263

Table 1. Number of theatrical feature films produced (source: EAO 2022)

Similarly, distribution and exhibition show some common trends, and

of Italian films (Grece 2022). French film production also enjoys an important share of visibility on television, where in 2020 it represented, with reference to the first TV broadcast on free national channels, 47.6% of the films broadcast, compared to 14.2% in Germany and 30% in the United Kingdom (CNC 2022; SPIO 2022; BFI 2022).

⁹ Spanish data are not available.

¹⁰ The analysis will use data from the European Audiovisual Observatory, country reports and data from survey and field agencies: more specifically, for France, the Bilan du CNC, for Germany the reports of the national agency dedicated to audiovisual public financing, the FFA, and the statistics office of the SPIO trade association, Spitzenorganisation der Filmwirtschaft (SPIO 2022); for Italy the evaluation reports on the impact of the so-called "Legge Cinema" by the Italian Ministry of Culture (MIC); for Spain the annual reports of the Instituto de la Cinematografía y de las Artes Audiovisual (ICAA), and for the UK the statistical yearbooks of the British Film Institute (BFI).

¹¹ A partial exception is Germany, whose recovery has been slower.

concurrently a series of transformative processes of a local nature that highlight those enduring specificities mentioned at the beginning. In particular, the health crisis and the lockdown accentuated the screen concentration process in Spain and in the United Kingdom, by a decrease in the number of active movie theatres (respectively, -3.9% and -5%, again with reference to the period 2017–2021) and an increase in the number of screens, reaching a ratio of 5 screens per cinema in these two countries, against a 3:1 ratio in France, Italy and Germany (EAO 2022) [Tab. 2 and Tab. 3].

	2017	2018	2019	2020	2021
France	2.046	2.040	2.045	2.041	2.028
Germany	1.672	1.672	1.734	1.728	1.723
Italy	1.204	1.210	1.223	1.309	1.221
Spain	739	734	764	750	710
United Kingdom	977	1.061	1.080	985	928

Table 2. Number of cinemas (source: EAO 2022)

	2017	2018	2019	2020	2021
France	5.913	5.983	6.114	6.127	6.193
Germany	4.803	4.849	4.961	4.926	4.931
Italy	3.510	3.541	3.545	3.667	3.482
Spain	3.618	3.589	3.695	3.701	3.631
United Kingdom	4.512	4.640	4.782	4.682	4.610

Table 3. Number of cinema screens (source: EAO 2022)

Above all, however, what is significant is the data on the trend of film viewing in theatres in the post-pandemic period. The recovery has in fact registered different speeds and dynamics in the 5 countries: in 2021, admissions in the United Kingdom amounted to 74 million, +68% compared to the year of the pandemic; Spain and France also saw a significant recovery (respectively 54% and 46%); the restart was slower in Germany, with +10% of tickets sold between 2020 and 2021, amounting to 42.1 million admissions, and in Italy, which saw even fewer admissions in 2021 than in 2020 (EAO 2022) [Tab. 4].¹²

	2017	2018	2019	2020	2021
France	5.913	5.983	6.114	6.127	6.193
Germany	4.803	4.849	4.961	4.926	4.931
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United Kingdom	4.512	4.640	4.782	4.682	4.610

Table 4. Number of admissions (mill.) (source: EAO 2022)

¹² It must be said that the 2022 figures are all positive compared to 2021; even in Italy, ticket sales were almost 80% higher than in 2021 (<http://www.anica.it/documentazione-e-dati-annuali-2/cinetel-i-dati-del-cinema-in-sala-nel-2022>). The drop in theatrical consumption during the pandemic period was, as we know, offset by an increase in ticket prices (MIC 2022).

RELEASE WINDOWS: A TEST BENCH FOR “CULTURAL WELFARE”

A central issue in the film market organisation concerns the so-called windows, i.e. the time period between the theatrical release and the possible subsequent exploitation in the different modalities available today. A recent study by the European Audiovisual Observatory defines windows as “piliers fondamentaux de l’exploitation des oeuvres cinématographiques et audiovisuelles en Europe” (Cabrera Blázquez et al. 2023, 1). A part of the relationship between the different elements that make up a country’s audiovisual industry is played out on a symbolic level through the management of windows, obviously with a specific focus on distribution and exhibition. In general, specialist literature over the years has recognised on the one hand the idea of a defence against the “cannibalisation” of the theatrical sector and, on the other, a need for product marketing: “Distributors prefer longer windows to the extent that they protect box office revenues (cannibalisation effect), but shorter windows in so far as this lets them capitalise on DVD sales while a film remains fresh in the minds of the public (marketing effects)” (Bakshi 2007, 2).¹³ A key issue in this framework is obviously also the defence of copyright and piracy.

In European Union countries, the windows policy refers to a regulatory framework which, from an initial stringency (the initial two years as a general interval from cinema to broadcasting determined by the ECTT, European Convention on Transfrontier Television of 5 May 1989), was later relaxed to represent, in the current Audiovisual Media Services Directive (AVMSD), in fact only a moral suasion aimed at ensuring dialogue between the different stakeholders. The ways in which windows are organised therefore vary structurally from country to country and a systematic comparison is not possible.

Generally speaking, in Spain¹⁴ and the UK (even before Brexit) there is no compulsory legislative intervention and windows are set by the distributors themselves on the basis of a market self-regulation logic. Moreover, this is the logic that directs sector policies in most European countries.¹⁵ France, on the other hand, opts for a more regulated system: sector legislation, the Code du cinéma et de l’image animée, defines release windows to be applied to all sector operators which are renewed at pre-established intervals of one to three years,

13 For a historical analysis of the evolution of windows see Cabrera Blázquez et al. (2019a, 5–8).

14 The Spanish government decided to abolish the release windows proposed by the so-called “Ley del Cine” No. 55/2007 requested of national productions aspiring to public support by Royal Decree No. 1084/2015 of December 4, 2015. The current new proposal for an emended “Ley del Cine” does not contain any difference in this respect.

15 Only in four countries with freedom of regulation have framework agreements been reached for the whole sector: Norway, Poland, Slovakia and Sweden. See Cabrera Blázquez et al. 2023, 38.

although they require the agreement of field representatives on the one hand, and of the major platforms on the other.¹⁶ Germany and Italy have a mixed system, in which all titles eligible for support in their respective public financing systems are subject to regulation.¹⁷

An evaluation of windows and their impact is particularly difficult. The EAO itself does not put forward an impact assessment. Research on the impact assessment of public funding interventions in the sector in those countries that provide for them has not revealed sufficient parameters to define their effectiveness: neither in Italy, in the general evaluation reports of the so-called "Legge Cinema" (MIC 2022), nor in Germany in a specific dedicated study by the Filmförderungsanstalt (FFA) following a parliamentary mandate (FFA 2022). Nonetheless, if we look at the publication of specific data by the Spanish exhibitors' trade association (FECE, Federación de Cines de España), and analyse the market data of the Italian case (Cinetel, the official box office system of the national film industry), we can highlight some useful data for a circumstantial comparison.

Let us start with market data, analysing the recent Italian box office. How long is the actual exhibition period of films in theatrical release? The analysis focuses on the titles with the greatest impact as these are obviously the ones with the longest-running release. For titles grossing less, the period is consequently shorter, and we know it is the cinema itself, that will not necessarily favour their continuation beyond the initial weeks. So, let's look at the Italian Cinetel's data on box office receipts for the last year with consolidated data, that of 2022, and select the top twenty box office movies.¹⁸ For the most part, these are foreign films, which do not have to follow window regulation rules. Together, these twenty titles grossed €199,647,872 in Italy. Of these almost two hundred million,

16 Among other EU countries, only Bulgaria has opted for a similar system, but with much shorter windows even than the European average, see Cabrera Blázquez et al. 2023, 42.

17 The legislative reference for Germany is the law for the public financing of German-produced films, the "Gesetz über Maßnahmen zur Förderung des deutschen Films" (Filmförderungsgesetz – FFG), Abschnitt 4, Sperrfristen, Absatz 4 FFG 2022. For Italy, Law No. 220/2016, known as "Legge Cinema": it should be noted that the ministerial decree of March 29, 2022, reduced the deadlines from the previous 105 to 90-day operating windows. Similar policies are also adopted in Austria and Ireland (Cabrera Blázquez et al. 2023, 38).

18 In order of box office in Italy: *Avatar: The Way Of Water* (James Cameron); *Minions: The Rise Of Gru* (Kyle Balda); *Doctor Strange In The Multiverse Of Madness* (Sam Raimi); *Top Gun: Maverick* (Joseph Kosinski); *Thor: Love And Thunder* (Taika Waititi); *The Batman* (Matt Reeves); *Black Panther: Wakanda Forever* (Ryan Coogler); *Fantastic Beasts: The Secrets Of Dumbledore* (David Yates); *Jurassic World: Dominion* (Colin Trevorrow); *Uncharted* (Ruben Fleischer); *Death On The Nile* (Kenneth Branagh); *Spider-Man: No Way Home* (Jon Watts); *Strangeness (La stranezza)* (Roberto Andò); *Black Adam* (Jaume Collet-Serra); *Il Grande Giorno* (Massimo Venier); *Sonic The Hedgehog 2* (Jeff Fowler); *Puss In Boots: The Last Wish* (Joel Crawford); *Me Contro Te. Il Film: Persi Nel Tempo* (Gianluca Leuzzi); *Elvis* (Baz Luhrmann); *Morbius* (Daniel Espinosa). For each title, the entire release period was taken into account, even if it began in 2021, or ended in 2023.

42.18%, or €84,220,595, were grossed in the first week of release. In the following weeks, only *Avatar: The Way of Water* initially kept pace (almost twelve million in the first week, almost ten and a half million in the second), but the other titles in general fell steadily. The average of the first twenty (including *Avatar*, therefore) sees a weekly decrease in earnings consistently close to 40% in the first five weeks following the premiere (in detail: -44.55% from the first to the second, -42.19% from the second to the third, then respectively up to the sixth: -36.60%, -48.38%, -40.59%). Over a month and a half, earnings were reduced to a tenth: more precisely, by 89.51% at the end of the fifth week (€8,836,075), and even by 93.77% at the end of the sixth (€5,249,480).

It is no chance occurrence then, that not even all the top twenty highest grossing films of the year made it to the regular four-month release period: only the first seven titles of 2022 made it to sixteen weeks, with a peak of twenty-two (*Top Gun: Maverick*), while the average of the top twenty is thirteen and a half weeks (i.e., 115.5 days). Only ten titles exceeded twelve weeks, the three-month quota. We would like to point out again: all other titles, from the twenty-first place of the Italian box-office chart of 2022 downwards, generally had even shorter theatrical release periods. The theatrical performance data therefore show that only a very small proportion of the titles distributed reach a three- and four-month theatrical release period range. Let's then try actually evaluating how consistent the distribution's push to shorten windows is. Let's analyse a partially regulated legislation framework, for example the German one, which provides legal limits only for publicly financed titles. The FFA's dossier *Evaluierung der Sperrfristen* does not evaluate the overall window system, but focuses on one detailed element of German legislation, namely permission to deviate from the statutory limit. We must bear in mind that the legislation for the public financing of films places strict obligations on German production titles admitted to the financing itself (§53), but also provides for two lines of possible exceptions: the first (§54) with time periods defined as regular in cases where there are economic motivations prevalently due to the possible brevity of the exploitation in theatres (for example documentaries); and defined exceptional in the case of particular necessities (for example the thematic correlation with particular events, anniversaries, celebrations). The windows may thus shrink from 6 to 5 or 4 months for home videos and TVOD, from 12 to 9 or 6 months for pay-TV and from 18 to 12 or 6 months for free-TV and FVOD offerings. The second option (§55), on the other hand, establishes ad hoc timing, and even the cancellation of the window, for special reasons (e.g. multimedia launches of innovative products).

The number of films for which a waiver is requested allows an assessment of the distribution needs. In detail, on average for three quarters of the eligible films at least one application for a pre-defined waiver according to §54 is made, either regular, exceptional or both (applications are platform-specific and therefore can be multiple for each film). But in almost no cases are extraordinary requests made on the basis of §55, which would allow for a window of less than 4 months.

We can therefore assume that the drive by national distribution to go below this threshold is not equal to the drive to ensure a timeframe of between four and six months for all distribution platforms: in other words, the interest does not seem to be in the abolition of the 120-day window, but in the inclusion of all platforms under that limit. As a matter of fact, what is taking place seems not be interpreted as a “cannibalisation” process, but as a policy attentive to marketing possibilities and to the construction of a value chain based on theatrical exhibition/performance. Let us try to ask exhibition itself, shifting our gaze to an unregulated market case. The Spanish association of film exhibitors FECE in its annual 2023 dossier points to the decrease of average window durations particularly after Covid: until 2019, only 6% of films were available on other channels before the customary 112-day threshold (de la Prida 2023). It should be noted that the variance indicated is three days short of minimum, i.e., with windows between 109 and 111 days. In 2022, however, this share had risen to 38% of films, with a 60% incidence for titles programmed by American majors, whereas national and independent films appear to have remained prevalently on pre-pandemic thresholds. The minimal gap seems to indicate, in a country with no agreed or compulsory windows, that even in this case the market can guarantee a self-regulation of exploitation times. Yet even the warning signs should not be downplayed.

Indeed, exhibition’s concerns are understandable in light of trends and how reduction is impacting strong box office titles. We can assume that the option of windows agreed upon by national governments and industry associations at round tables may be the best solution to satisfy the many stakeholders.

CONCLUSIONS

The literature review described a switch from an approach to the “cultural exception”, based on an attempt to separate culture from market in toto, to a broad, elastic and multi-level model, that aims to promote cultural exchanges through cooperation, while maintaining policies to safeguard the “cultural diversity” and “prominence” of the European product. However, the discipline of the “cultural exception”, in its narrower sense as a set of rules and regulations, in order to sustain the critical judgment to which—more than thirty years after ECTT—it is rightly subjected, must be evaluated.

This assessment must be carried out on at least four levels: a. the actual possibility of measuring the impacts of the actions carried out, with specific reference to the theatrical release obligation of national works that have benefited from public support; b. the form taken by the regulation and the way it is applied; c. the data currently available to assess the impacts of the actions carried out and the conclusions that can be drawn from them; and d. the consistency of these rules and politics with the overall European policies on cinema and audiovisuals.

On the first point, according to the literature review, the sector lacks a shared

and continuously applied methodology to assess the protectionist actions, building a comparable base of insights, at least on a European level, which is a necessary premise to try to think in terms of EU—and not only national policies.

On the second point, the analysis conducted highlighted, even within the so-called comparable markets, different ways of understanding and applying for “cultural welfare”, with reference to the specific measure of film release windows: from contexts where there is no specific regulation, to contexts where, on the contrary, the obligation is provided for, but with different rules—exceptions included; this second level of analysis also shows the *elasticity of the regulation system*, characterized by various and flexible application modes, which provide for a wide range of derogations, *and its complexity*, that risk building a framework characterized by overlapping and exceedingly localistic rules.

Concerning the results of the analysis carried out, the film release window regulations, perhaps also due to the many derogations, do not seem to have a discriminating impact both on the average tenure of national works in the theatrical market or on the “health” of the movie-theaters networks. On this second point, the data relating to the recovery of the theatrical market in the post-Covid period are also emblematic, showing different trends in the five comparable countries, and independent of the presence or absence of the obligation for the works to be shown in cinemas (in Italy, for example, the recovery was slow and the gap with the pre-pandemic situation continues to be important, despite the fact that the country has one of the most stringent regulations on film theatrical release).

Finally, if we move on to assess the broader level of political necessity of protectionist politics, the traditional European position in the negotiation of trade agreements (at a multilateral, regional, and bilateral level) is to maintain the widest possible cultural policy space for the film and audiovisual sector, by providing different degrees of “exceptionality” agreements, and placing them within the framework of guaranteeing the cultural diversity and prominence of the European product.

In summary, on the basis of the above insights, we can conclude that the specific rule of distribution windows has no demonstrable impact at an economic level (of increased tenure of works in the theatrical market) or at an industrial employment level (strengthening of the exhibition sector). On the contrary, it seems to us, also by virtue of the many exceptions provided, that it currently serves as a tool to govern the mediation between the parties involved, with specific reference to the different distribution channels. Also and above all in a panorama of platformisation and the push towards digital consumption, we must conclude that this “cultural welfare” model continues to guarantee the background of operability for national, sectoral, or multinational and cross-sectoral regulatory or steering choices. And it is precisely in its ability to build a dialogue between all operators, supply chains or member states, rather than a one-size-fits-all regulatory system, that its strength and future lie.

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