

## II – THE PROGRAMMING OF THE FESTIVAL

The programming choices undertake discernment by the artistic direction and its capacity to anticipate the consistency and quality of the shows solicited while depending on festival funding opportunities. The aesthetic choices thus interact with the evolution of the balanced budget constraint. It is even more so when the programmed genres and the artists' reputations attract specific flows of spectators whose enlargement is uncertain even when deploying major efforts in the implementation of cultural action devices<sup>36</sup>.

According to the survey conducted by sociologists Catherine Duteil-Pessin and Francois Ribac on programmers in the region of Pays de Loire from 2011 to the end of 2013 with a contrasting panel of 30 people, the programming work has to combine the identification of quality shows coping with material constraints but also organizational and legal ones, and taking into account social and political configurations of the territory.<sup>37</sup>

### A. Networks and balanced budget constraint

#### 1. MigrActions

In the case of a collective artistic direction of the festival, a collegial deliberation on all the choices seems preferable to a delegation of the selection of certain areas to the people part of the direction team. This can help increase coherence in the arrangement of programming by avoiding juxtaposition of shows of which some would be proposed as a carte blanche to one of the festival's co-directors.

A balance must be found for the share reserved for music companies or groups already programmed in previous editions, and the share dedicated to discovering new artistic proposals. The renewal of already scheduled artists can contribute to create links of loyalty which can potentially and mutually benefit the reputation of the shows producers and organizers' festival if the choices are relevant. For MigrActions, about 70% of companies and musical ensembles are invited for the first time and 30% have already been programmed in earlier editions. The share is more irregular in the programming of VolterraTeatro. For 65 people who answered this question in our online survey, the share of first invitations in the festival program is about 60%.

In the case of a multidisciplinary program built by a matrix organization, it should take into account the artistic identified specialization instead of a large number. A diversification of artistic disciplines within the festival, with a sizeable share of concerts in the case of MigrActions, can be seen as a way to attract music lovers and help them discover a theatrical venue. One can plan a possible opportunity to stimulate a desire to later attend the theater program as in the original project of Maisons de la Culture de Malraux. However, the movement of spectators in an artistic field to another requires the activation of provisions for mobility, which are not commonly shared. "Omnivorous" spectators with eclectic tastes are in fact over-represented among the theatre-educated or regular audience<sup>38</sup>. An expensive

---

<sup>36</sup> Voir l'analyse de la programmation du Forum du Blanc-Mesnil dans Daniel Urrutiaguer, "Performing Arts Programming Strategies and Demand. The case of the Blanc-Mesnil Forum (France)", *International Journal of Arts Management*, 17 (1), 2014, p. 31-42.

<sup>37</sup> Catherine Pessin-Dutheil, François Ribac, *La fabrique de la programmation culturelle*, Paris, La Dispute, 2017, p. 98-100.

<sup>38</sup> Bernard Lahire, *La Culture des individus. Dissonances culturelles et distinction de soi*, Paris, La Découverte, 2004.

investment in image is also necessary to change the perception of the identity of the place to a larger artistic pluralism.

Thus, as shown in the table below the annual average, the musical programming MigrActions is generally less crowded than that of theater and brings lower ticket revenue with an average price of tickets quite similar. The share of music in the programming MigrActions has also passed two thirds of total performances in 2008 to 35% in 2013 and 38% in 2014.

*Table - Average indicator for MigrActions for the main areas of the repertoire between 2008 and 2014*

	Number of performances	Tickets sold	Exempt tickets	Ticketing revenue	Average ticket price
Music	9	151	74	1174.5	11.53 €
Theater	8.2	153	98	1765	11.51 €
Danse	1.5	26.5	11.5	302	11.4 €

The choices are based on personal knowledge of sensed artists and / or supply of shows, as well as advice heard from professionals with a wide cultural and aesthetic judgment quite similar to that of the artistic direction. The recommendations on the aesthetic interest and ethical productions of artists save transaction costs for the discovery of new shows. They direct the part of the schedule for the artistic direction dedicated to viewing shows. For example, the recommendation of a journalist friend prompted the artistic director Rui Frati to go to a show of a dancer with whom he could feel strong affinities for sensory original choreographic proposals without exclusive listing to a school of special gesture. The personality of the dancer and his political commitment was compelling additions to reserve him a slot in the 9<sup>th</sup> edition of MigrActions in 2016. Opportunities are created when artists already met around earlier proposals and put on a show in the format suitable to the size of the theater stage and the spirit of the festival. This was the case for example in the context of the 9<sup>th</sup> edition of the festival for a staging of an Italian play on Albert Speer, made by a member of a group from the ENSATT (Ecole Nationale Supérieure d'Arts et Techniques du Théâtre), and for the participation of an actor and a musician in a cabaret. The performances of the selection process begins in the fall of the year before, six to seven months before the start of the festival, with the desire on the part of the artistic direction to leave at least a late programming window in order to integrate heart-stoppers.

The choice of the opening show is important to set the tone that the director wanted for the festival. This is the opportunity to present the entire festival to attendees and potentially generate by the marks of attention brought to viewers' loyalty desires to the programming<sup>39</sup>.

The festival format must take into account the competitive events. For example, program a festival during a European or World football championship expose the organizers to disturbing compromises to get people's attention to the festival. The difficult-to-avoid installation of a giant screen for the broadcasting of matches, especially where the national team is involved, is a source of dispersion of attention and motivations mixture among the audience. The 9th edition of MigrActions has been shortened by one week and advanced in

<sup>39</sup> Olivia Guillon, "Loyalty Behaviours and Segmentation of Performing Arts Audiences: The Case of Théâtre de l'Athénée in Paris", *International Journal of Arts Management*, 14 (3), 2011, p. 32-44; Daniel Urrutiaguer, « Dialogues artistiques et affiliation à un lieu de spectacles », *Théâtre S*, n° 25, 1<sup>er</sup> semestre 2007, p. 19-30.

the schedule in order to avoid overlappings with the Euro championship following the malfunctions in the previous World Cup in 2014.

## **2.VolterraTeatro**

In the case of VolterraTeatro Festival, programming choices are largely dominated by theater while leaving room for concerts. This was particularly the case during the 2016 edition for the musician of the compagnia della Fortezza, which has developed his research at a concert conducted under the accompaniment of the staging of *Doppo la Tempesta*, inspired from the Shakespeare play, directed by Armando Punzo. The dining gauge was busy at that time and the audiences's reviews quite enthusiastic.

The choices of programming are guided by a theme built to explore a facet of the "theater of the impossible." The informal deliberative process is accurate as of January and February. The collaboration of the artistic director and the executive director is crucial to imagine the possibilities of performances resonating with the desired philosophical orientation and transfer pricing, consistent with the budget. The opinions of the playwright, the general coordinator and director of Carte Blanche, are asked occasionally. Explicit criteria for programming decisions concern the philosophical and linguistic adherence to the theme proposed by the artistic direction, the quality of past experiences of artists and adapting logistical performance features to the possibilities of the festival.

The need to apply to the call for projects of the municipality for the festival organization retards programming decisions and complicates when the budget allowed is lowered. For example, in 2016, the available margin of the grant for artistic expenses forced to lower projected sale price. About a quarter of the companies approached in March withdrew, forcing the artistic and administrative leadership to find alternatives to some emergencies for three weeks after the positive response of the municipality in May.

The construction of the call for municipal project does not seem to make a decisive improvement in the organization of the festival. This is a municipal subsidy flow lever which requires editorial effort so that decision makers are reassured about the adjustment of supply to the needs of the municipality. Its terms are specified in the chapter on budgetary management.

The interactions between the aesthetic and ethical reflection on the content of the festival and funding opportunities were reflected in the choices made on the festival performance venues. The more constrained budget no longer made it possible to ensure the viability of a deployment of festival activities on a plurality of places; concentration on one place is more efficient by reducing the costs of installation and dismantling shows, the running costs of the rooms. Meanwhile, the choice of the theme "the ideal city" lent itself to a focus of the festival on one "place-island" experience to invent utopia. Focus programming on a single theater gave meaning to the principal philosophical themes as theatrical venue can organize dramatic fictional space where new relationships with otherness can be imagined.

### **B. Responses to the questionnaire on programming**

The questionnaire asked to assign ratings from 1 to 4 with the criteria in Table 3.1 according to their importance in the programming choice in the current situation and the next three years. A comparison of responses between MigrActions and VolterraTeatro was performed before that of the 72 festivals that responded to this question.

*Table 3.1 - The average rating of the relative importance of the programming criteria*

	current state (score 4-0)	desired state within three years (score 4-0)
Consider the ethical values programmed artists	2,79	3,01
Consider the aesthetic qualities of artists scheduled	3.42	3.05
Consider the reputation of artists scheduled	2.14	3.37
Encourage young designers	3.10	2.38
consider generational diversity artists	2.43	3.24
possible collaborations between artists scheduled	2.36	2.51
taking into account the cultural diversity of the population	2.63	2.76
the festive revitalization of territory	2,78	2,98
the inventiveness of the artists in the reports public	3.01	3.03

## 1. Comparison of MigrActions and VolterraTeatro

### *Common points*

MigrActions VolterraTeatro share a vital interest in the aesthetic qualities of scheduled artists (Note 4 in both cases) and a strong interest in their ethical values (note 3 and 4 MigrActions VolterraTeatro).

Both festivals share strong concerns in their reports to the audience for the consideration of the cultural diversity of the population in the programming choices (note 3 and 4 MigrActions VolterraTeatro).

The budget of the two festivals and their philosophical positioning explain a secondary interest in the reputation of the programmed artists (Note 2 in both cases). A nuance, largely due to differences in budget size, however distinguished festivals in the influence of artists, national first for VolterraTeatro, and regional for MigrActions.

### *Differences between the two festivals*

VolterraTeatro festival's team sees the inventiveness of the programmed artists in their relationship with the audience an essential feature because of the emphasis on participatory mechanisms, especially with the presence of practical workshops in addition to some shows and regular meetings to present books. For the team of MigrActions, this criterion is currently marginal but is expected to become more important in three years.

Moreover, the festive revitalization of the territory is an essential objective assigned to the artists for the team VolterraTeatro unlike that of MigrActions. Team MigrActions aims to give more weight to this aspect in the next three years.

## 2. Comparison in the questionnaire sample

### *The current importance of programming criteria*

Programming criteria whose importance lies above the average first concerns the aesthetic qualities programmed artists, in accordance with scale professional judgment directed first by the appreciation of the artistic merits and the encouragement of young artists, an attitude reflected in the assessment of discernment qualities of programmers, and inventiveness of artists in audience's review, which indicates a concern in terms of sociability in the arrangement of cultural events. The importance of this criterion is confirmed by that given to the festive revitalization of the territory. This objective is a common expectation of local

authorities wishing to offer their playful rally-facilitators voters opportunities to strengthen the feelings of living together. Another criterion with a slightly higher weighting than the average of the sample involves the consideration of ethical values of the programmed artists, which joined the concerns in terms of citizenship when it comes to defending the general interests or philosophical and political commitment which resonates with societal issues or the reflexivity of the artistic line put forward by some festivals.

Taking into account the cultural diversity of the population is a less important criterion like that of generational diversity of welcomed artists. The least decisive criteria concern the anticipation of possible collaborations between artists and the consideration of the reputation of programmed artists. The last two criteria are subject to a contrasting correlation with the budget festivals.

The consideration of the reputation of scheduled artists is positively correlated with the size of the festival (the average score from 1.87 for budgets of less than 50 000 € 2.37 for budgets above 250,000 €). The appeal to the public related to the notoriety is logically considered by the major festivals that need to rely on high traffic flow and budgetary resources to program better renowned artists and therefore more expensive. Conversely seeking synergies between the programmed artists is negatively correlated with the size of the festival (with an average score of 2.93 for budgets of less than € 50 000 and 2 for budgets above 250,000 €). All other criteria are not correlated to the size of the festival.

### ***The development of criteria for three-year horizon***

Projecting the importance of programming criteria to three-year horizon does not substantially alter their ranking but shows some interesting developments.

The most dominant criterion in the assessment of aesthetic criteria is known only to a stability of its average rating for budgets not exceeding € 250,000 and a decrease of 5% for major festivals. Conversely, the criterion of artistic reputation is one that should increase the most in relative terms for small and medium festivals. The logic of action and the fame of evaluation is called upon to play a more important role to try to expand the attendance of the least important festivals.

The highest rate of change in average scores on the three-year horizon concerning the search for possible synergies between programmed artists (17%), criterion for artistic purposes considered by most major festivals, and taking into account cultural diversity of the population (13.7%), more criteria resonate with consolidation projects territorial anchorage. The following variation rate (+ 9%) concern the festive boosting prospects of the territory and consideration of programmed artists' ethical values. Other criteria for the specific characteristics of artists experience lower rates of change (+ 6.4% for inventiveness in the reports public, + 4.5% for the encouragement of young artists and +3.2 generational % for diversification of artists).

## **C. Facilities for programmed companies**

### **1. The types contracts**

#### ***The copyright assignment agreement***

The sale contract operating right shows corresponds to a distribution contract between a show producer and an organizer on payment of a fixed sum.

The producer is committed to representing the show ready-to-be-performed a number of times. The show organiser is liable to provide a place in working order and to bear the costs,

including paying the technical staff needed to run the place, assembly, disassembly and operation the show, as well as administrative staff to greet the public and promote the show.

The negotiation involves the precise extent of mutual obligations between the producer and the organizer, and the sale price of the performances. It depends on the cost of the plateau, the rating of the company according to its corporate reputation and media that allows him to negotiate a greater or lesser margin to cushion the performing assembly costs. The pressure on the margin rate by companies also depends partly on production conditions; it is increased when a limited involvement of co-producers in the assembly increases the financial fragility of the producer delegate. An interest in the ideological and artistic values of the festival may nevertheless encourage popular producers to concede a lower sale price than in a relationship based on commercial logic.

The sale price does not include additional costs, particularly concerning the transport and accommodation costs. An annex details the distribution of the management of these costs, which can be devolved but not necessarily to the show organizer. For VolterraTeatro the budget imposes the burden of transportation costs taken by guest companies while accommodation and meals are offered by the festival.

Negotiating and drafting sale agreements may possibly be separated. In the case of the VolterraTeatro festival, the executive director negotiates the content and sale price of the representations with the companies after the finalization of the provisional budget, which is delayed by waiting for the response of the municipality of Volterra to the call for projects. The reduction of the budget commitment from the municipality of Volterra has imposed low selling price, on a range of 1 000 to 2 000 per show except for two companies whose shows were bought for 5500 euros. One was involved in a series of performances in the community of common stakeholders of the festival (Volterra, Pomarance, Castelnuovo, Montecatini) and the other in the preparation of a participatory show with the local population.

A first prospection of shows is done for two months to present a pre-program in March, four months before the start of the festival depending on the chosen annual theme. A new prospection is needed to offset the withdrawals that have occurred during the waiting period before confirmation by Carte Blanche to the delegated organization of the festival. Negotiations on the low sale price takes place in a context where the Italian theater and dance companies incorporated the fiscal discipline that limits the margin on subsidies to cultural institutions for arts spending. The director of the association Carte Blanche then writes the copyright assignment agreement along the lines defined by both parties.

### ***The coproduction contract***

The coproduction contract is a broadcast contract such as the copyright assignment agreement, only with the right to exploit shows that specifies the absence of fixed remuneration in favor of a shared ticket sales as in a range negotiated by the two parts. A guaranteed minimum may possibly be proposed. When this guaranteed minimum is in favor of the show producer, the contractual configuration is similar to that of the copyright assignment agreement since the organizer agrees to pay a fee to the producer if ticket sales are lower than the latter. When the guaranteed minimum concerns the show organizer, the producer is actually placed in a nearly room-rental situation, increasing his risk-taking operating loss. It should be specified the exact date when the ticket sales revenue is counted (before or after the payment of various taxes) and the dates for payments.

For MigrActions, the budget constraint does not offer transfer agreements with programmed companies. As it is commonly practiced in small Parisian rooms, a coproduction contract is offered but the specificity is the lack of guaranteed minimum. The Centre Théâtre de

l'Opprimé usually offers companies a distribution set with a share of ticket sales for them that increases according to the attendance gauge by distinguishing three levels (40 to 60%). Teams are thus encouraged to get financially involved in promoting their show. However, since companies programmed in this festival perform *a priori* only once, it is not possible to activate a leverage by word of mouth and the key is consistent with a rate of 50% .

The administrator of the Centre Théâtre de l'Opprimé takes responsibility of the negotiations on the content of contracts of co-production and their redaction after the programming decisions are made. The prospection of companies usually starts six to seven months before the start of the festival; the temptation of the direction to leave a window to one or several heart-stoppers during the season can lead to late adjustments, less troublesome to write contracts than for communication on programming.

## **2. Contractual obligations**

As with any contract, the parties' identity should be specified and their legal capacity verified. In France, the producer must hold a category 2 show contractor's license and the show organiser a category 3 license. If s/he is also the operator of the venue, s/he must also have a category 1 license. The purpose of the contract must be circumscribed with the name of the show, the names of the authors of choreographic, dramatic, musical, and theatrical writings, the distribution, and the dates, times and place of the performances.

### ***Intellectual property law***

The show producer must have obtained permission from the writer.s of the play or music composition for performances under contract. The copyright system, dominant in Anglo-Saxon countries practicing common law provides for a transfer of ownership of works of the mind for a fee, which removes the possibility of moral control over the business cycle by authors. The Roman civil law recognizes an author's monopoly rights on the operating conditions of his intellectual works provided they are original and written on physical media.

The Roman civil law of intellectual and artistic property articulates for protected authors a property right, usually calculated on the basis of a percentage of operating revenue when the author is alive or died less than 70 years ago, and a moral right. The latter consists of four imprescriptible, inalienable and elusive components: right for respect for the work, which can restrict the freedom of scenic writings; right to paternity; right of disclosure and right to reconsider, which in theory allows the writer.s to interrupt an operating cycle already on provided to reimburse any expenses already incurred. The right for respect for the work and the right of authorship are perpetual and exercised by the Ministry of Culture and Communication at a last resort if the rights' holders do not manifest themselves. Breaches of law of literary and artistic property are considered legally as infringement actions.

When authors, composers, or their rights' holders are represented by a civil society of collection and distribution rights (DPRS), the producer should contact the company to request the agreement to use a work for a certain number of performances in specific places, except with an exclusivity clause which may not exceed five years in France. For the Société des Auteurs et Compositeurs Dramatiques (SACD), professionals are bid to formalize a first application six months before the date of the first scheduled performance and then to come back to the agency three months later to finalize the agreement after a better knowledge of the extent of scheduled performances. Fans are also required to seek the authorization of the author.s with a shortened time to a minimum of one month. The fee schedules are indicated on the websites of the DPRS. A minimum package is provided for the free performances by amateur companies. In the case of the Society of Authors Composers and Publishers of Music

(SACEM), a package is offered when the budget for the concert or variety show does not exceed € 3,000 including VAT if input prices do not exceed 20 €. A guaranteed minimum may be imposed on the producer of the show in order to protect authors' income against the vagaries of the broadcast. Partnership negotiations are also envisaged to reduce the economic rights in exchange for visibility at festivals that DPRS wish to promote.

*A priori*, it is the organizer's responsibility to pay copyright since s.he collects the ticket sales revenues. The contract may nevertheless indicate that the producer can be responsible. In contracts of co-direction, each party pays the copyright on its share of ticket revenue received. The producer is *a priori* liable to pay neighboring rights for the use of recorded music or audiovisual works.

### ***Social obligations***

The producer must meet the social obligations of the artistic plateau employer, that is to say the payment of social contributions.

When the assignment contract exceeds €3000 in France, a clause on financial solidarity binds the show organiser to the programmed producer in case of default in the payment of salaries and social contributions. The show organiser should solicit the producer vigilance clearance, when the contract is concluded and possibly every six months during the execution of it. It is issued by Urssaf<sup>40</sup> to the French employers to date with their reporting obligations and payment of social security contributions to collection agencies. The organizer is committed to check on the website of Urssaf the authenticity of this certificate. The show producer must also provide an extract of registration to the society and commercial register or an identification card of the trade directory and a quote with the name, address, registration number of the organization or its professional category and the number of the licence category for shows (art. D8222-5 2°, Code du travail).

If the producer does not have an establishment in France, the certificate shall be issued by the National Center for Foreign Firms and its authenticity must be verified by the organizer. Where registration in an official register is compulsory in the country of origin, it must be communicated to the organizer. When employees are employed for more than one month by the producer, s.he must issue a certificate of honor indicating the issuance of pay slips with the mandatory information required by the Article R3243-1 of the Code du travail. In the case of secondment of employees, the producer must issue individual certificates of secondment from the social protection scheme of the country of origin. Outside the case of secondment, the latter must send a certificate of the supply of social declarations issued by the French social welfare agency responsible for collecting social contributions dating from less than six months.

If foreign producers programmed in the festival lack administrative structuring, it is probably preferable for the organizer to substitute themselves for them in order to produce the performances on an international tour and to pay directly the artistic plateau. This avoids the risk of a financial solidarity to be assumed after the findings of breach of social obligations or a laborious follow-up of the administrative operations of the foreign producer. The question of verifications also arises for contracts concerning the provision of technical, reception, security or catering services. It is important to ensure that the employer meets its social obligations. Even if the contract is less than € 3000, the absence of a verification procedure can trigger the financial solidarity of the organizer of shows for the regularization of remunerations and social contributions.

---

<sup>40</sup> Union de recouvrement de cotisations de sécurité sociale et d'allocations familiales = Organizations for the Collection of Social Security and Family Benefit Contributions



## ***Taxes***

In France, a tax of 3.5% on ticket sales revenues or the sale price of the right to use tax-free representations is levied when the producer of the show is private, i.e. when s.he received no public subsidy.

If the performances are to be paid for, the organizer of the shows is obliged to report to the ASTP (Association de Soutien pour le Théâtre Privé) for a dramatic performance or to the song, jazz and variety national centre (CNV) if the show is musical or humorous. It is then up to him/her to pay the tax. In the case of a contract of assignment without paying performances, these obligations shall be borne by the producer of the show.

Regarding the payment of VAT for copyright assignment agreements with a foreign partner, if the national show organizer and the foreign producer are both subject to VAT, the transfer price is mentioned in the contract and the VAT rate is paid by the organizer of the shows.

If the foreign producer is subject to VAT and not the national organizer, VAT is payable in the country of the organizer and the transfer price is negotiated with the organizer, tax included. If the producer resides in a country of the European Union, s.he has the option between completing the formalities for declaring and paying VAT with the Taxation Service of foreign companies and the appointment of a tax attorney who will act on his behalf. If the producer resides outside the European Union, the fiscal representative s.he has to designate will carry out the operations. The latter must be subject to VAT and be approved by the tax department on which it depends. The national partner is responsible.

In the case of a tour of a national producer abroad, VAT is paid in the country of the organizer of the show. According to the principles of self-liquidation of VAT, if the producer and the organizer are resident in a country of the European Union and are both subject to VAT, the organizer is in charge of its declaration and its payment. The invoice is made exclusive of VAT and refers to the intra-Community VAT numbers of both parties. If the organizer resides in the country of the European Union and is not subject to VAT, it is the national producer who takes responsibility for the declaration and payment of VAT either directly or through the intermediary of a tax representative. The sale price of the invoice is calculated inclusive of VAT. If the organizer is not resident in a member country of the European Union, it is advisable to obtain information on the rates in force for this consumption tax.

In France, if the show has been represented less than 140 times, it must provide an attestation to the organizer of the show in order to benefit from a rate of VAT super reduced (2.1% in continental France , 0.9% in Corsica, 1.05% in the departments of Guadeloupe, Martinique and Réunion).