


Procedure file

Basic information		
COS - Procedure on a strategy paper (historic)	2002/2035(COS)	Procedure completed
Cinema, audiovisual sector: legal aspects relating to production and distribution of works		
Subject		
3.30.01 Audiovisual industry and services		
4.45.08 Cultural and artistic activities, books and reading, arts		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CULT Culture, Youth, Education, Media and Sport		12/12/2001
		V/ALE VANDER TAELEN Luckas	
	Committee for opinion	Rapporteur for opinion	Appointed
	ECON Economic and Monetary Affairs	The committee decided not to give an opinion.	
	JURI Legal Affairs and Internal Market		19/02/2002
		PPE-DE GARGANI Giuseppe	
	ITRE Industry, External Trade, Research, Energy	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Culture	2381	05/11/2001
European Commission	Commission DG	Commissioner	
	Education, Youth, Sport and Culture		

Key events			
26/09/2001	Non-legislative basic document published	COM(2001)0534	Summary
05/11/2001	Resolution/conclusions adopted by Council		
27/02/2002	Committee referral announced in Parliament		
04/06/2002	Vote in committee		Summary
04/06/2002	Committee report tabled for plenary	A5-0222/2002	
01/07/2002	Debate in Parliament		
02/07/2002	Decision by Parliament	T5-0347/2002	Summary

02/07/2002	End of procedure in Parliament		
12/11/2003	Final act published in Official Journal		

Technical information

Procedure reference	2002/2035(COS)
Procedure type	COS - Procedure on a strategy paper (historic)
Procedure subtype	Commission strategy paper
Legal basis	Rules of Procedure EP 142
Stage reached in procedure	Procedure completed
Committee dossier	CULT/5/15934

Documentation gateway

Non-legislative basic document	COM(2001)0534 OJ C 043 16.02.2002, p. 0006-0017	26/09/2001	EC	Summary
Committee of the Regions: opinion	CDR0387/2001 OJ C 192 12.08.2002, p. 0015	13/03/2002	CofR	
Committee report tabled for plenary, single reading	A5-0222/2002	04/06/2002	EP	
Text adopted by Parliament, single reading	T5-0347/2002 OJ C 271 12.11.2003, p. 0030-0176 E	02/07/2002	EP	Summary

Cinema, audiovisual sector: legal aspects relating to production and distribution of works

PURPOSE: A comprehensive overview of legal aspects relating to audio-visual work. **CONTENT:** There are currently two key EU instruments governing audio-visual work. They are the television without frontier Directive and the Media Plus Programme. Their main objective is to allow European companies to fully benefit from the European single market in this sector. In addition to these instruments articles governing state aid and competition, as laid out in the EC Treaties, largely dictate financial consideration for the audio-visual industry. The audio-visual sector comprises two dimensions. On the one hand it is a huge source of economic activity and wealth creation in the EU. In 1999 the European audio-visual market had an estimated worth of EUR 58.3 billion. On the other hand European audio-visual work encourages, reflects and promotes European heritage and culture. This duality offers the audio-visual sector special consideration vis-à-vis European regulatory and legal provisions. The first part of this Communication examines the general orientation of the EU's policy regarding state aid to the cinema sector. Under this heading the report notes that the Treaty of Maastricht recognises the unique positioning of culture within the European context and hence awards it an article (Article 151). Similarly, the articles governing state aid and competition allow for derogation's to promote culture. A large section of this Communication is devoted to examining the current EU position on how to combine these legal aspects and in particular the compatibility with the EC Treaty of aid schemes to cinema and television production. The basic rules governing state aid prohibit state grants which threaten to distort competition and trade between member states. Article 87 (3) d) offers an exemption for aid which promotes culture, where such aid does not affect competition and trading conditions to an extent contrary to the common interest. In 1997 the Commission was forced to examine the interpretation of this article in greater detail following a complaint about exclusionary effects created by the French cinema production aid scheme. The Commission's findings on this case form the benchmark for future policy. The Commission's conclusions mark the boundaries between what the specific compatibility criteria for state aid to cinema and TV production should be. They are: - The aid is directed to a cultural product. - The producer must be free to spend at least 20% of the film budget in other member states without suffering any reduction in the aid provided for under the scheme. - Aid intensity must in principle be limited to 50% of the production budget. - Aid supplements for specific filmmaking activities (e.g. post-production) are not allowed. In the Commission's view the above criteria strike a balance between the aims of cultural creation, the development of the EC audio-visual production and respect for EC rules on state aid. These findings will remain valid until June 2004, the time limit set in the decisions adopted so far. In terms of reviewing state aid schemes the Commission has set up a method to examine in detail the varying forms of state aid in the audio-visual sector. In its findings, the Commission concludes that a) There is a great diversity of aid schemes within the EC both in terms of aid type and scope; b) Many of the schemes contain provisions contrary to the general legality principle; c) Very few member states impose territoriality requirements in order to qualify for aid. d) Only exceptionally, will Member States grant aid levels higher than 50% of the film costs; e) The exception to this latter finding normally fall under the "difficult and low budget film" category. The Commission will continue a multilateral dialogue with the member states on this matter. Other aspects covered by this Communication include: - Protection of heritage and exploitation of audio-visual works. (Before putting forward a possible proposal the Commission intends to carry out a stocktaking exercise in respect of the current situation within the member states.) - The creation of a registration scheme (Again the Commission will undertake a stocktaking exercise prior to presenting a proposal) - The creation of a right-holder's database. (This will be examined within the context of the Green Paper on Copyright and Related Rights) - The exploitation of rights. (The Commission urges more co-operation between interested parties) - E-Cinema. (The Commission welcomes the establishment of the European Digital Cinema Forum) - Tax issues. (On the matter of VAT exemption the Commission suggest

it may respond to this within the context of the review of Annex H of the 6th VAT Directive, to take place after 2002.) - Rating. (The Commission will prepare a study) - 2002 review of the television without frontiers Directive. (Under the new review the Commission is going to examine the definition of a "European work" and "independent producer". It will also examine questions on media chronology and on-line rights.)?

Cinema, audiovisual sector: legal aspects relating to production and distribution of works

The committee adopted the report by Luckas VANDER TAELEN (Greens/EFA, B) on the Commission communication. The report repeated many of the points made in the resolution adopted by Parliament on 13 November 2001. Pointing to the dual nature of the sector (industrial and cultural), the committee again stressed the importance of the Commission's position on state aid for the audiovisual sector, called for tax reductions and other specifically adapted financial instruments, highlighted the importance of safeguarding the European cinematographic heritage and spoke of the challenge which digital film posed for the future of the sector. This should be borne in mind, it said, when the Television without Frontiers Directive was being reviewed. MEPs therefore urged the Commission to do everything possible to ensure that audiovisual works could move freely within the internal market by 2005 and wanted to see initiatives taken on the basis of the EP's resolution of 13 November 2001. They expressed support for the Commission's moves to make the criteria used when examining aid to the audiovisual sector in the Member States more transparent, but regretted the fact that certain parts of its communication of September 2001 remained vague or were incomplete. The committee also pointed out that there was no real competition between the EU national audiovisual industries and that the EU market was dominated by the United States industry. Despite the divided opinions of those in the profession on the feasibility of such a scheme at Community level, the committee stressed the need for compulsory legal deposit of works by the Member States and called on the public support funds for the audiovisual sector, as a transitional measure, to make it compulsory for their beneficiaries to deposit copies of any of their works which had received state aid through those funds. It also urged the Commission and the Council to create an instrument to cofinance work to digitise archives, through a specific measure, for instance, in the next version of the MEDIA programme, based on a MEDIA Plus pilot project. The Commission was also asked to encourage the Member States to foster the creation of financial institutions specialising in the audiovisual sector, and to facilitate the creation of a risk capital fund, so as to be better able to respond to the i2i audiovisual initiative by the EIB and the Commission. ?

Cinema, audiovisual sector: legal aspects relating to production and distribution of works

The European Parliament adopted a resolution drafted by Luckas VANDER TAELEN (Greens/EFA, Belgium) on the Commission communication. (Please refer to the document dated 04/06/02.) Parliament felt that, in order to revive production, there needs to be some prospect of a system that provides better incentives and public funding for the private sector, and more tax concessions for television and film producers. Such a scheme will stimulate the growth of smaller businesses and encourage genuine competition. It expressed its disappointment that the Commission did not encourage Member States to introduce tax incentives to attract investment in film. A re-examination of the issue of State aid should lead to increased flexibility rather than a stricter application of the aid rules of EU competition law. Parliament went on to state the importance of reducing VAT rates applicable to audiovisual cultural products and services, in the review of the Sixth VAT Directive, by analogy with the reduced rates applied to other cultural sectors. On the question of the review of the Television without Frontiers Directive, members hoped that general rules could be laid down on new audio-visual services, together with a method for regulating media ownership, which will provide a better guarantee of cultural pluralism. ?