In any event, the Commission would point out that the Czech Republic has not been granted a transitional period in respect of the application of Council Directive 96/53/EC of 25 July 1996 (\(^{(*)}\)), as amended by Directive 2002/73/EC of the European Parliament and of the Council of 18 February 2002 (\(^{(**)}\)), laying down for certain road vehicles the maximum authorised dimensions in international traffic. This Directive will be fully applicable as soon as the Czech Republic joins the Union.


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(2004/C 84/E/1030)

**WRITTEN QUESTION E-1033/04**

by Ilda Figueiredo (GUE/NGL) to the Commission

(5 April 2004)

Subject: Safeguarding the public lending right in Portuguese libraries

A petition on the Internet reveals that on 16 January 2004 the Commission decided to formally request information from Portugal, Spain, France, Italy, Ireland and Luxembourg regarding their national implementation of the public lending right, the commercial rental right and certain rights related to copyright in the sphere of intellectual property.

This means that there may be a charge for borrowing books and other documents in Portuguese libraries — whether public, school, university or other libraries.

In a country such as Portugal, in which economic problems and the fact that reading is not yet a well-established habit make access to knowledge and culture difficult for broad sections of the population, a measure of this kind would be disastrous, jeopardising the current campaign to promote reading, and would be a retrograde step as regards making the Portuguese better qualified to tackle successfully the challenge of the ‘knowledge society’.

The Commission:

1. Can it confirm this information? If so, what steps will it take to guarantee European citizens free and unrestricted access to knowledge, the expression of ideas, culture and information?

2. What measures does it envisage to ensure that the current arrangements for the benefit of libraries, archives, museums and similar entities, which are at present exempt under the law on intellectual property, are maintained on exactly the same terms in Portuguese legislation, in accordance with the legal framework created by Directive 92/100/EEC (\(^{(1)}\)) on rental right and lending right and on certain rights related to copyright in the field of intellectual property?

\(^{(1)}\) OJ L 346, 27.11.1992, p. 61.

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**Answer given by Mr Bolkestein on behalf of the Commission**

(30 April 2004)


The aims of the concept of the public lending right given in the directive (\(^{(1)}\)) are to help create a genuine single market in goods and services protected by intellectual property and to take account of the different traditions of the Member States in the field of public lending. To this end, Article 5 of the directive lays down that Member States may derogate from the exclusive right in respect of public lending, provided that at least authors obtain a remuneration for such lending. In addition, Member States may also exempt certain categories of lending establishments from all lending rights.
It is therefore possible to strike a balance between the fair and necessary remuneration of those who create products and the widest possible access to culture and knowledge via public lending. This point was reiterated by the Internal Market Commissioner on 16 September 2002 (1) when the report on the application of the public lending right in the Member States was published (2):

The challenge is to ... maintain good public access to cultural products while making sure that those who create them get equitable remuneration which allows them to keep on working and giving us pleasure.

In order to attain this balance and ensure that the directive is properly applied, the Commission has indeed instituted infringement proceedings under Article 226 of the EC Treaty against Member States which have not — or have incorrectly — transposed Articles 1 and 5 of Directive 92/100/EEC (and which have, for example, exempted all categories of public lending establishments from the lending right (3)), as this is clearly damaging to the smooth operation of the single market and to its rightholders. It is the responsibility of the Commission, as guardian of the Treaties, to ensure that primary and secondary Community legislation is applied fully and correctly in all Member States.

In addition, the Commission would like to point out that it is not responsible for laying down or deciding upon the system set up at national level to ensure that the aforementioned directive is transposed. This responsibility lies with the Member States, which do, moreover, have a wide margin of flexibility in implementing the public lending right (5).

The Commission is, however, required to ensure that the public lending right, as harmonised by Community legislation, is applied effectively in all Member States.

(2) See press release IP/02/1303.
(3) Above-mentioned Communication, see footnote No 1.

(2004/C 84 E/1031)

WRITTEN QUESTION E-1034/04
by Ilda Figueiredo (GUE/NGL) to the Commission

(5 April 2004)

Subject: Irregularities in competitions organised by the Commission

There have been complaints regarding the way in which competitions organised by the Commission have been conducted to the detriment of Portuguese candidates. One recent case involves the competition published in Official Journal (1), in which the Portuguese lawyer José Manuel Barbosa Gonçalves of Viana do Castelo was a candidate. He has already submitted a complaint to the Court of First Instance of the European Communities. It seems that the selection board made serious mistakes, as regards the list of final answers, some of which were withdrawn because the questions had been withdrawn, and the deadline for appeals, as well as inaccuracies, contradictions and translation errors and obvious mistakes in the notice of competition.

We cannot run the risk of having a preponderance of candidates of a few select nationalities in the European institutions protected by means of dubious criteria.

Can the Commission therefore say what steps have been taken to ensure that all candidates benefit from the same conditions of impartiality and independence, ensuring that their competence is assessed on the basis of objective criteria?