

II

(Acts whose publication is not obligatory)

COUNCIL

COUNCIL DECISION

of 10 July 1995

on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II — Development and distribution) (1996-2000)

(95/563/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas the European Council meeting in Brussels on 10 and 11 December 1993 took note of the White Paper 'Growth, competitiveness and employment' as the reference point for action by the European Union and its Member States; whereas the White Paper supports an industrial development approach based on global competitiveness, as the key to growth and employment; and states, in particular in Chapter 5-C, the economic importance of the audiovisual industry;
- (2) Whereas the European Council meeting in Corfu on 24 and 25 June 1994, took note of the report by the 'Bangemann Group' entitled 'Europe and the global information society — recommendations to the European Council', in particular acknowledging the strategic importance of the audiovisual programme industry in terms of content;

(3) Whereas the 'Industry/Telecommunications' Council, of 28 September 1994, issued a favourable opinion on the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan'; whereas it emphasized the need to improve the competitiveness of the European audiovisual industry;

(4) Whereas the Council took formal note, on 17 June 1994 of the Green Paper on 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union';

(5) Whereas the Commission consulted the people in the industry on the options put forward in the Green Paper, in particular by holding the 'European Audiovisual Conference' in Brussels from 30 June to 2 July 1994; whereas the consultation process revealed a strong desire for an enhanced programme of support for the European audiovisual industry, in particular in the area of development and distribution;

(6) Whereas the European Parliament, in its resolution of 6 May 1994 ⁽⁴⁾, examined the problems of the audiovisual industry, following Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁵⁾ (the 'Television Without Frontiers' Directive), in preparation for the European audiovisual conference 'and took the view that the priorities established *inter alia* during the discussions on amendments to the Media

⁽¹⁾ OJ No C 108, 29. 4. 1995, p. 8.

⁽²⁾ OJ No C 166, 3. 7. 1995, p. 191.

⁽³⁾ OJ No C 256, 2. 10. 1995, p. 24.

⁽⁴⁾ OJ No C 205, 25. 7. 1994, p. 561.

⁽⁵⁾ OJ No L 298, 17. 10. 1989, p. 23.

- programme, namely financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks’;
- (7) Whereas on 14 September 1994 the Economic and Social Committee issued its opinion on the Green Paper, stating that European-level programmes such as Media could have a positive influence on the development of programme structures and means of production in Europe;
- (8) Whereas the Commission has implemented an action programme to encourage the development of the European audiovisual industry (Media) (1991—1995), adopted by Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995)⁽¹⁾, including, in particular, measures to support the development and distribution of European audiovisual works;
- (9) Whereas the Council, at its meeting of 5 November 1993, after taking note of the Commission Communication of 23 July 1993 on the Media programme mid-term evaluation report, took the view that it would be appropriate to examine suitable measures for launching a Media II programme after 1995;
- (10) Whereas the European Council meeting in Essen on 9 and 10 December 1994 called on the Commission to present proposals for a new Media programme;
- (11) Whereas Article 128 (4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty; whereas participation in the Programme should reflect European cultural diversity;
- (12) Whereas there is a need to take into account the cultural aspects of the audiovisual sector;
- (13) Whereas experience from the Media Programme has shown that action is needed both before and after production; whereas an environment favourable to the taking of initiatives by companies, in particular small and medium-sized businesses and their development, should be fostered and cooperation between distributors/broadcasters and producers should be encouraged;
- (14) Whereas the emergence of a European audiovisual market requires the development of ‘European works’, which means works from Member States of the European Union as defined in Article 6 of Directive 89/552/EEC;
- (15) Whereas the competitiveness of the audiovisual programme industry requires utilization of new technologies at the programme development stage;
- (16) Whereas there is a need for improvement in the circulation prospects of European cinematographic works on the market, in particular the European market; whereas cooperation between distributors, cinema owners and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (17) Whereas there is a need for improvement in the television broadcasting prospects of European works on the market, in particular the European market; whereas cooperation between broadcasters and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (18) Whereas promotion and access to the market of European independent production should be facilitated;
- (19) Whereas there is a need to improve enhancement of the European audiovisual heritage and to meet the requirements of the programme market in this area;
- (20) Whereas support for development and distribution should take account of structural objectives such as developing potential where audiovisual production capacity is low, as in small countries or regions with less widely spoken languages and/or developing the independent production industry, in particular small and medium-sized businesses;
- (21) Whereas a reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (22) Whereas, in accordance with the principle of subsidiarity, action taken by the Community should support and supplement action taken by the relevant authorities in the Member States;
- (23) Whereas it is necessary to continue and step up the process of opening up the Media programme to participation by the associated countries of Central and Eastern Europe (CCEE), in accordance with the conditions resulting from the Additional Protocols to the Association Agreements concerning participation Community programmes concluded or to be concluded with these countries, and to participation by Cyprus, Malta and those EFTA States which are parties to the EEA Agreement on the basis of additional appropriations, in accordance with procedures to be agreed on with these countries; whereas the programme should

⁽¹⁾ OJ No L 380, 31. 12. 1990, p. 37.

also be opened up to cooperation with other third countries which have concluded Agreements containing audiovisual clauses; whereas the details of such participation or cooperation should be decided on at the appropriate time by the parties concerned;

- (24) Whereas Community support should be granted on the basis of prior appraisal, monitoring, and subsequent evaluation,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision establishes a programme to promote the development and, within the Union and outside it, the distribution of European audiovisual works (hereinafter referred to as 'the Programme'), to run for a period from 1 January 1996 until 31 December 2000, for the purpose of strengthening the European audiovisual industry.

Article 2

The aims of the Programme are as follows:

1. As regards development:

- to promote, by providing financial and technical assistance, the development of production projects submitted by companies which include the enhancement of the audiovisual heritage and are aimed, in particular, at the European market, to encourage an environment favourable to initiative and to the development of the companies and to encourage networking among them,
- to promote the development of production projects which include the enhancement of the audiovisual heritage that make use of new techniques of creation and animation, to support an environment favourable to initiative and development by companies and to encourage networking among them.

2. As regards distribution:

- to strengthen the European distribution sector in the field of cinema and video by favouring the networking of European distributors and encouraging them to invest in the production of European cinema films,
- to favour wider transnational distribution of European films by way of stimulation measures concerning their distribution and their exhibition in cinemas, and to encourage the networking of operators,
- to promote the circulation, in the European Union and outside it, of European television programmes

capable of appealing to a European and world audience and to encourage independent European producers and European broadcasters to cooperate in the production of such programmes,

- to actively support linguistic diversity of audiovisual and cinema works,
- to facilitate the promotion of independent European production and its access to the market by the implementation of promotion services and actions.

The aims of the programme must work towards:

- an increase in the competitiveness of the audiovisual industry notably in the European market, by supporting the development of projects which have a true distribution potential,
- respect for European linguistic and cultural diversity,
- enhancing the European audiovisual heritage,
- the development of potential in countries or regions with a low capacity for audiovisual production and/or a restricted geographical and linguistic area,
- the development of an independent production and distribution sector especially of small and medium-sized enterprises.

Article 3

Beneficiaries of Community support, as laid down in Article 2, must provide a significant proportion of the funding. Community funding shall not exceed 50% of the cost of operations.

The financial reference amount for implementation of the programme for the period referred to in Article 1 shall be ECU 265 million.

The annual appropriations shall be authorized by the budgetary authority in accordance with the current financial perspective.

Without prejudice to the agreements and conventions to which the Community is a contracting party, the businesses benefitting from the programme must be in the possession and continue to be in the possession, whether directly, or by majority participation, of the Member States and/or of nationals from Member States.

Article 4

Financial support under the Programme may be granted in the form of loans, repayable advances, or subsidies, as defined in the Annex. The repayments under the

Programme, together with the repayments from operations under the Media programme (1991/95), will be allocated to the requirements of the Media II programme.

Article 5

1. The Commission shall be responsible for the implementation of the Programme, in accordance with the arrangements laid down in the Annex.

In the performance of this task, it shall be assisted by a committee composed of two representatives from each Member State and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee, for its opinion, a draft of the measures to be taken concerning:

- arrangements for the implementation of the actions provided for in the Annex,
- the content of calls for proposals, the definition of criteria and procedures for the approval and selection of projects, as well as the final choice of intermediary organizations,
- questions concerning the annual internal distribution of finances within the programme, including among the actions established in the distribution sector,
- arrangements for monitoring and evaluating the operations.

Furthermore, the representative of the Commission shall also submit, for its opinion, the examination of all community allocations which are higher than ECU 300 000 per year as regards development and higher than ECU 500 000 per year as regards distribution. This threshold can be reviewed by the Committee in the light of experience.

3. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall

be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided upon for a period of two months,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

4. The Commission may consult the Committee on any other question concerning the implementation of the programme.

The Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

The Commission representative shall keep the Committee informed in good time and on a regular basis of the financial allocation agreed in the framework of the programme (amounts, duration, internal distribution of finances, beneficiaries).

Article 6

The programme shall be open to the participation of the associated countries of Central and Eastern Europe (CCEE) in accordance with the conditions laid down in the additional protocols to the Association Agreements on participation in Community programmes concluded or to be concluded with those countries.

This programme shall be open to the participation of Cyprus, Malta and EFTA countries members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as applied to EFTA States, in accordance with procedures to be agreed with these countries.

It shall also be open to cooperation with other non-member countries which have concluded agreements containing audiovisual clauses.

The arrangements for this participation or cooperation will be fixed at the appropriate time between the parties concerned.

Article 7

1. The Commission shall ensure that actions under this Decision are subject to prior appraisal, monitoring and subsequent evaluation.

2. The selected beneficiaries shall submit an annual report to the Commission.

3. After the completion of projects, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

4. After two years and six months of implementation of the programme and within the six months that follow this period, the Commission, after having brought the matter before the Committee in accordance with the procedure laid down in Article 5 (2) and (3), shall present to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the results which were obtained, accompanied if need be by appropriate proposals.

Within the framework of this report, the Commission shall evaluate the comparative results of the systems

established in points 1.2.1.(a) and (b) of the Annex, with regard to the objectives of the programme. It shall submit to the Committee, in accordance with the procedure laid down in Article 5 (2) and (3) of this Decision, appropriate proposals as to the respective proportion for each of the two systems and as to the implementation arrangements for the continuation of the programme.

5. When the programme has run its full term, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation and results of the programme.

Done at Brussels, 10 July 1995.

For the Council

The President

P. SOLBES MIRA

ANNEX

1. ACTIONS TO BE TAKEN

The proposed actions shall cover the following:

1.1. In the development sector

Improving development opportunities (preproduction) for drama, documentaries and animation and with a view to access to the European and world market:

- by supporting the development of drama, documentaries and animation (cinema and television) presented by businesses which are aimed at a European and world audience through the provision of assistance (planning and/or financial support) for writing techniques (workshops, a screenplay team etc.) for the establishment of the financial arrangements and the business plan; by encouraging a favourable environment for initiative and development by companies that have development project packages with in particular, European market potential and by encouraging their networking,
- by encouraging a favourable environment for initiative and development by companies in the sector of new technology and animation which present development projects aimed, in particular, at the European market, and by promoting their networking.

1.2. In the distribution sector**1.2.1. Video and cinema distribution**

To meet the aims referred to in Article 2 (2), the following action lines shall be implemented:

- (a) a system of subsidy, repayable, for cinema distributors and video publishers of European films.

The aims of this system shall be:

- to favour the networking of all European distributors and publishers having common marketing strategies, in particular, on the European market,
- to particularly encourage distributors to invest in adequate promotion and distribution costs for European films whatever their production budget may be,
- to encourage video publishing and distribution of European works,
- to actively support linguistic diversity of European works (dubbing, subtitling and multilingual production);

- (b) A system of subsidy for European distributors proportionate to cinema attendance for European films outside their national territory up to an upper limit fixed per film and graded according to each country.

The subsidy generated in this way can only be used by distributors to be invested:

- in the production of European films which have a distribution potential, in particular, on the European market,
- in the meeting of editorial costs (taking of copies, dubbing and subtitling), promotion and advertising costs.

During the first year of application of the programme the Commission shall prepare a report assessing the possible arrangements, the cost and impact of the system referred to under (b), which it shall present to the Committee in accordance with the procedure laid down in Article 5 (2) for the purpose of determining the conditions for operational implementation of the system which will be of an experimental nature for two years.

Within the framework of the report provided for in Article 7 (4) the Commission shall evaluate the compared results of the systems referred to under (a) and (b) in the light of the objectives of the programme. It shall present to the Committee in accordance with the procedure laid down under Article 5 (2) appropriate proposals as regards the respective share for each of the systems and the arrangements for applying them to the rest of the programme, while ensuring the preservation of an adequate balance between the two systems.

The criteria for choosing the beneficiaries can include ones aiming to distinguish between projects according to their budget category.

A special subsidy shall be granted to films which are of interest for the enhancement of European cultural diversity.

- (c) A system of support, for example in the form of guaranteed receipts, is also intended to encourage exhibitors to put forward a significant showing of European films in commercial first appearance cinemas for a minimum period of exhibition time.

1.2.2. *Television broadcasting*

- encouraging independent producers to produce works (fiction, documentary and animation) involving the participation of at least two broadcasters from several Member States belonging particularly to different linguistic zones and encouraging the broadcasting of such works,
- actively supporting linguistic diversity of these works (dubbing, subtitling and multilingual production).

The criteria for selecting the beneficiaries may include provisions to distinguish projects according to their budget category.

Particular support shall be granted to audiovisual works presenting an interest for the enhancement of European cultural diversity.

1.2.3. *Promotion and access to the market*

Improving access for independent producers and distributors to the European and world market through promotion, assistance and bringing enterprises together at commercial events (markets, fairs, festivals and other fora for meetings), organized at European and world level.

2. **IMPLEMENTATION PROCEDURE**

2.1. **Approach**

In implementing the Programme, the Commission will work closely with the Member States. It will also consult the partners involved.

The Commission will ensure that there is a good geographical spread among the professionals participating in the programme and that Europe's cultural diversity is reflected, paying particular attention to the specific need of countries which have a low production capacity and/or which are linguistically or geographically restricted as well as to the development of the independent production and distribution sector and in particular the SME.

2.2. **Funding**

2.2.1. *Community contribution*

Community funding shall not exceed 50 % of the costs of the actions proposed and shall be granted in the form of repayable advances, loans or subsidies. The remainder will be provided in particular by the partners from the industry.

Community support for linguistic diversity in production will be granted in the form of subsidies.

2.2.2. *Appraisal, monitoring and evaluation*

Before approving an application for support, the Commission shall appraise it thoroughly to assess its conformity with this Decision and the conditions laid out in points 2 and 3 of this Annex.

Without prejudice to Article 3 of this Decision, Community support shall not exceed the minimum considered necessary for a project.

Applications for Community support should provide, where appropriate:

- a financial plan listing all the components of the funding of the projects, including the financial support requested from the Commission,

- a provisional timetable of work,
- any other relevant information requested by the Commission.

2.2.3. *Financial provisions and financial control*

The Commission shall determine the arrangements for commitments and payments for actions taken under this Decision in conformity with the relevant rules of the financial regulation.

2.3. **Implementation**

The Commission shall implement the programme in accordance with the procedure set out in Article 5 of the decision.

- 2.3.1. In implementing the programme, in particular the technical selection of projects, monitoring and evaluation of projects benefitting from the programme's funding and actions for networking, the Commission will ensure that it obtains the expertise of acknowledged specialists in the field of the development and distribution of cinema and television works.

To this end, it can if necessary involve intermediary organizations which, on the basis of their professional expertise, will provide technical assistance and will formulate proposals for the choice of the beneficiaries, without prejudice to other selection methods. These organizations will be chosen after calls for proposals and following the procedure described in Article 5 (2).

The Commission shall make the final selection of projects benefitting from the Programme's funding, in the context of the dispositions of Article 5 (2).

- 2.3.2. Furthermore, the Commission and the Member States shall organize the mutual exchange of information useful in the implementation of the programme and take the necessary steps, particularly by continuing the activities of the Media desks, to ensure the promotion of the programme, and encourage the greatest possible participation of professionals in its actions and ensure permanent contacts with the different support institutions of the Member States, for the purpose of achieving complementarity between the actions of this programme and national support measures.
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