

English edition

## Information and Notices

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<sup>(1)</sup> Text with EEA relevance

## I

*(Information)***COUNCIL****COUNCIL RESOLUTION****of 28 January 2002****on reinforcing cooperation in the field of civil protection training**

(2002/C 43/01)

THE COUNCIL OF THE EUROPEAN UNION,

RECALLING the resolution of the Council and the representatives of the Governments of the Member States, meeting within the Council of 31 October 1994 on strengthening Community cooperation on civil protection, and in particular the desire expressed therein that cooperation may be developed between schools and national training centres that are active in the field of civil protection <sup>(1)</sup>;

RECALLING the resolution of the Council and of the representatives of the Governments of the Member States, meeting within the Council of 26 February 2001 on strengthening the capabilities of the European Union in the field of civil protection <sup>(2)</sup> which reiterated that cooperation between schools and national training centres that are active in the field of civil protection should progress at a faster pace;

EMPHASISING that while intergovernmental initiatives putting such cooperation in place have already enabled the requirements and content of that cooperation to be identified, more concrete results are now required;

CONVINCED of the growing importance of training at every level to ensure that citizens are better protected against natural and technological hazards;

RECALLING the repeated wish of the candidate countries to be able to initiate cooperation on civil protection training with the Member States and with the Commission;

WHEREAS, in the interests of efficiency, greater synergy should be introduced between programmes and courses of training for personnel called upon to carry out emergency service inter-

ventions with a view to arriving at the establishment of common programmes;

WHEREAS the creation at Community level of a network of schools and training centres active in the field of civil protection in the Member States, laying the foundations for the subsequent creation of, for instance, a European civil protection college involving these training institutions, would speed up the introduction of the desired cooperation;

WHEREAS the recent Council decisions on civil protection, notably Council Decision 2001/722/EC, Euratom of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions <sup>(3)</sup>, provide a framework which would facilitate the creation of a network of schools and training centres active in the field of civil protection in the Member States, in particular through the creation of a pilot project entrusted with the task of establishing the said network;

WHEREAS this network of schools and training centres could also encompass a major project aiming at creating a European virtual academy for civil protection as well as a system of exchanges of experts, developed within the framework of the Community Action Programmes on civil protection;

INVITES THE COMMISSION:

(1) to look at any initiative supporting the creation of a network of schools and training centres active in the field of civil protection in the Member States over an initial three-year pilot phase, drawing particularly on experience with the relevant initiatives developed in the framework of the Community action programmes on civil protection,

<sup>(1)</sup> OJ C 313, 10.11.1994, p 1.

<sup>(2)</sup> OJ C 82, 13.3.2001, p. 1.

<sup>(3)</sup> OJ L 297, 15.11.2001, p 7.

(2) to consider the possibility of a financial support to this initiative on the basis of the financial interventions provided for educational activities by Council Decision of 9 December 1999 establishing a Community action programme in the field of civil protection<sup>(1)</sup> for the period 1 January 2000 to 31 December 2004 or by the said Council Decision establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance interventions,

(<sup>1</sup>) OJ L 327, 21.12.1999, p. 53.

(3) to involve the candidate countries in its work.

(4) to consider, on expiry of this pilot phase and in the light of the results obtained, any initiative introducing long-term cooperation on civil protection training, for instance through the creation of a European civil protection college which would institutionalise the aforementioned network.

## COUNCIL RESOLUTION

of 28 January 2002

on a common approach and specific actions in the area of network and information security

(2002/C 43/02)

THE COUNCIL OF THE EUROPEAN UNION,

RESPONDING TO

the Conclusions of the Stockholm European Council of 23 and 24 March 2001 that the Council together with the Commission will develop a comprehensive strategy on security of electronic networks including practical implementing action,

RECALLING

1. the Resolution of the Council of 30 May 2001 — eEurope Action Plan: Information and Network Security;
2. the Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions — Network and Information Security: Proposal for a European Policy Approach;
3. the Communication from the Commission to the Council and the European Parliament — eEurope 2002: Impact and priorities;
4. the eEurope 2002 Action Plan endorsed by the Feira European Council of 19 and 20 June 2000;
5. Council Recommendation 95/144/EC of 7 April 1995 on common information technology security evaluation criteria<sup>(1)</sup>;
6. the Council Recommendation of 25 June 2001 on contact points maintaining a 24-hour service for combating high-tech crime<sup>(2)</sup>;

(<sup>1</sup>) OJ L 93, 26.4.1995, p. 27.

(<sup>2</sup>) OJ C 187, 3.7.2001, p. 5.

7. the Communication from the Commission on creating a safer society by improving the security of information infrastructures and combating computer related crime;
8. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(3)</sup>;
9. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>(4)</sup>;
10. Directive 97/33/EC of the European Parliament and of the Council of 30 June 1997 on interconnection with telecommunications with regard to ensuring universal service and interoperability through application of the principles of open network provision (ONP)<sup>(5)</sup>;
11. Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector<sup>(6)</sup>;
12. Directive 98/10/EC of the European Parliament and of the Council of 26 February 1998 on the application of open network provision (ONP) to voice telephony and on universal service for telecommunications in a competitive environment<sup>(7)</sup>;

(<sup>3</sup>) OJ L 8, 12.1.2001, p. 1.

(<sup>4</sup>) OJ L 281, 23.11.1995, p. 31.

(<sup>5</sup>) OJ L 199, 26.7.1997, p. 32.

(<sup>6</sup>) OJ L 24, 30.1.1998, p. 1.

(<sup>7</sup>) OJ L 101, 1.4.1998, p. 24.

13. Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures <sup>(1)</sup>;

WHEREAS:

- (1) Networks and communication systems have become a key factor in economic and social development and their availability and integrity is crucial to essential infrastructures, as well as to most public and private services and the economy as a whole.
- (2) In the light of the increasingly important role played in the economy by electronic services, the security of networks and information systems is of growing public interest.
- (3) The security of transactions and data has become essential for the supply of electronic services, including e-commerce and online public services, and low confidence in security could slow down the widespread introduction of such services.
- (4) There is a need for individuals, businesses, administrations, and other organisations to protect their own information, data and communication systems by deploying effective security technologies, where appropriate.
- (5) The private sector, acting in a competitive market environment, and through its capacity to innovate offers a variety of solutions adapted to genuine market needs.
- (6) The complex nature of network and information security means that in developing policy measures in this field, public authorities must take into account a range of political, economic, organisational and technical aspects, and be aware of the decentralised and global character of communication networks.
- (7) Policy measures can be more effective if they are part of a European approach, respect the effective functioning of the Internal Market, build on increased cooperation between Member States and internationally, and support innovation and the ability of European enterprises to compete at global level.
- (8) A substantial body of legislation relevant to network and information security is already in place, notably as part of the Union's legal framework for telecommunications, electronic commerce and electronic signatures.

(9) There are legal requirements imposed on providers of telecommunications services to take appropriate technical and organisational measures to safeguard the security of their services; these measures shall ensure a level of security appropriate to the risk represented.

(10) The international standard ISO-15408 (Common criteria) has become a recognised system for defining security requirements for computer and network products and evaluating whether a particular product meets those requirements.

(11) The international standard ISO-17799 (Information technology — Code of practice for information security management) and similar national guidelines are becoming recognised practice for security management in private and public organisations.

(12) Internet infrastructure should permit a high degree of access to networks and services, and be managed and operated in a robust and secure manner, e.g. by the adoption of open standards and internet security protocols;

CONSIDERING, in line with Council Resolution of 30 May 2001 on the 'Europe Action Plan: Information and Network Security', that network and information security is about

- ensuring the availability of services and data,
- preventing the disruption and unauthorised interception of communications,
- confirmation that data which has been sent, received or stored are complete and unchanged,
- securing the confidentiality of data,
- protection of information systems against unauthorised access,
- protecting against attacks involving malicious software,
- securing dependable authentication;

THEREFORE ASKS THE MEMBER STATES

1. by the end of 2002 to launch or strengthen information and education campaigns to increase awareness of network and information security; to specifically target such actions at business, private users and public administrations; to develop such awareness raising actions closely with the private sector, including *inter alia* internet service providers, and to encourage private sector-led initiatives;

<sup>(1)</sup> OJ L 13, 19.1.2000, p. 12.

2. to promote best practices in information security management notably in small and medium sized enterprises based, where appropriate, on internationally recognised standards;
3. by the end of 2002 to strengthen or promote the importance of security concepts as part of computer education and training;
4. by mid 2002 to review the effectiveness of national arrangements regarding computer emergency response, which could include virus alert systems, with a view to strengthening, where necessary, their ability to prevent, detect, and react efficiently at national and international level against network and information systems disruption and attack;
5. to promote the use of the common criteria standard (ISO-15408) and to facilitate mutual recognition of related certificates;
6. by the end of 2002 to take significant steps towards effective and interoperable security solutions based on recognised standards where possible — which could include open source software — in their e-government and e-procurement activities, and towards the introduction of electronic signatures to allow those public services that require strong authentication also to be offered on-line;
7. where they choose to introduce electronic and biometrics identification systems for public or official use, to cooperate where appropriate on technological developments and to examine any possible interoperability requirements;
8. with a view to facilitating Community and international cooperation, to exchange information with each other and with the Commission on the bodies primarily responsible within their territory for network and information security matters;

WELCOMES THE INTENTION OF THE COMMISSION

1. in 2002 to facilitate an exchange of best practice regarding awareness-raising actions and to draw up an initial inventory of the various national information campaigns;
2. in 2002 to make proposals to reinforce the Community's dialogue and cooperation with international organisations and partners on network security, in particular on the impli-

cations of the increasing dependency on electronic communication networks; and in this context to propose, by the end of 2002, a strategy for a more stable and secure operation of the Internet infrastructure;

3. by the end of 2002 to propose adequate measures to promote the ISO 15408 (Common Criteria) standard, to facilitate mutual recognition of certificates, and to improve the process by which products are evaluated, i.e. by developing adequate protection profiles;
4. by the end of 2002 to prepare a report on technologies and applications of electronic and biometric authentication of identity with a view to improving the effectiveness of such systems, in particular through interoperability;
5. by mid 2002 to make proposals — after consultation with the Member States and the private sector — for the establishment of a cyber-security task force to build on national efforts to both enhance network and information security and to enhance Member States' ability, individually and collectively, to respond to major network and information security problems;
6. by the end of 2002, to explore, in collaboration with Member States, the possible options for mechanisms by which Member States and the Commission can exchange information and experience on their achievement of the objectives of this Resolution, taking into account the cross-pillar dimension of network and information security, and to explore how the private sector can be best involved in this exchange of information and experience;

WELCOMES the increased focus of European research activities on security matters;

STRESSES the need for more research activities, in particular on security mechanisms and their interoperability, network reliability and protection, advanced cryptography, privacy enhancement technologies and security in wireless communications;

CALLS UPON

- suppliers and service providers to strengthen security as an integral and essential part of their products and services;
- the European private sector suppliers and service providers and their representative groupings to participate more actively in international standardisation activities and organise themselves into appropriate fora to contribute to the objectives of this resolution.

## COMMISSION

### Euro exchange rates <sup>(1)</sup>

15 February 2002

(2002/C 43/03)

<b>1 euro</b>	=	7,4284	Danish krone
	=	9,1788	Swedish krona
	=	0,6095	Pound sterling
	=	0,8705	United States dollar
	=	1,3852	Canadian dollar
	=	115,61	Japanese yen
	=	1,4813	Swiss franc
	=	7,764	Norwegian krone
	=	87,92	Icelandic króna <sup>(2)</sup>
	=	1,6833	Australian dollar
	=	2,066	New Zealand dollar
	=	10,002	South African rand <sup>(2)</sup>

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<sup>(1)</sup> Source: reference exchange rate published by the ECB.

<sup>(2)</sup> Source: Commission.

**Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on certain legal aspects relating to cinematographic and other audiovisual works**

(2002/C 43/04)

(COM(2001) 534 final)

## 1. INTRODUCTION

Audiovisual works, and cinema in particular, play an important role in shaping European identities, both in common aspects shared across Europe and in the cultural diversity that characterises our different traditions and histories. They are an essential element for the good functioning of our democracies because of their widespread influence on society. They are also at the heart of the transformations resulting from the development of the information society: new technological developments offer new opportunities for promoting culture and heritage conservation, and to increase mutual understanding across Europe. But the multiplication of distribution channels available for distribution of audiovisual goods does not automatically lead to an increase in the creation of quality content.

The principles of the Community audiovisual policy have been expressed in the Commission's communication of December 1999 <sup>(1)</sup> and remain fully valid today. The primary purpose of regulation in the audiovisual sector is to safeguard certain public interest objectives such as pluralism, cultural and linguistic diversity and the protection of minors. At a European level, the necessary balance must be kept to guarantee subsidiarity in an area where major competences are at the national or regional level, while ensuring that European companies can fully benefit from the European dimension. The key European instruments specifically developed in this area, the Television without frontier Directive, for regulatory aspects, and the MEDIA Plus programme for support mechanisms, have as their main objective to allow European companies in this sector to benefit fully from the European single market.

Audiovisual works have unique characteristics because of their double nature: they are economic goods, offering important opportunities for the creation of wealth and employment. In 1999, the European audiovisual market <sup>(2)</sup> was estimated at EUR 58,3 billion (+ 8,7 % v 1998). They are also cultural goods which at the same time mirror and shape our societies. This is the reason why the development of this sector has never been left solely to market forces.

The advent of new technologies has not affected the renaissance of the cinema in Europe; such new technologies have been shown to offer additional income for media operators rather than substituting existing media. Total cinema admissions in Europe rose from 662 million in 1995 to 844 million in 2000 (+ 27 %) <sup>(3)</sup>. This increase would appear to be due at least in part to the growth in the number of cinema screens in Europe, in particular multiplexes (+ 22 % in 1999 v 1995) <sup>(3)</sup> as well as improved facilities at cinemas. Recent figures <sup>(4)</sup> show that TV viewing in Europe has increased in most Member States in the past year.

Amongst audiovisual works, cinematographic works have a particular prominence, because of their cost of production and cultural importance: budgets for the productions of cinema films are substantially higher than for other audiovisual content, they are more frequently the subject of international co-productions, and the duration of their exploitation life is longer, with the potential to use all distribution channels, cinemas, DVDs and videocassettes (both selling and rental), Internet downloading, and television (pay-per-view, pay-per-channel, free-to-air). Cinematographic works face strong competition from outside Europe <sup>(5)</sup>. There is little circulation of European works outside their country of origin, although there appears to be an upward trend: according to certain estimations, European non-national films reached over 10 % <sup>(6)</sup> of total attendance in 1999 from less than 8 % in 1996.

Because of the particularity of cinema, the Commission had indicated in its communication on audiovisual policy in 1999, that there was a need to examine in more detail a number of issues to clarify the legal framework of the cinema sector, including the application of State aid policy in that area. The objective of this review was to determine which measures could be taken in order to improve the circulation of these works in Europe.

<sup>(1)</sup> Principles and guidelines for the Community's audiovisual policy in the digital age, COM(1999) 657 final of 14 December 1999.

<sup>(2)</sup> European Audiovisual Observatory. Includes television, cinema, video (cassettes and DVD), but not games.

<sup>(3)</sup> European Audiovisual Observatory.

<sup>(4)</sup> European Audiovisual Observatory: the average for television viewing in Europe varies between 144 minutes per day in Austria and 239 minutes per day in Italy. The trend is positive in almost all Member States.

<sup>(5)</sup> European Audiovisual Observatory: the market share of American cinema films in Europe in 2000 was above 73 %.

<sup>(6)</sup> European Audiovisual Observatory; Lumière database; data are inclusive of international EU/extra EU co-productions.



In accordance with the principles of the White Paper on Governance (7), the Commission services organised a public consultation on the basis of a staff working document (8) in order to give all interested parties the opportunity to make their views known before the adoption of this communication by the Commission. A hearing attended by around 250 interested parties was held on 15 June. This not only provided an opportunity for the Commission to identify the central issues in respect of the issues raised in the staff working document, but also allowed the interested parties to hear and respond to each other's views.

49 written comments (9) were received from Member States, national regulatory and self-regulatory authorities, authors, artists, film and television producers and directors, cinema operators, video and DVD publishers/distributors, television broadcasters, industry associations, consumer representatives and trade unions.

This communication sets out the Commission's policy orientations and proposals building upon the consultation exercise. It sets out the principles to be applied for the application of State aid rules to the cinema sector, and identifies the next steps to be taken and the areas where further reflection is needed in order to create a favourable environment for the production and distribution of audiovisual works.

## 2. THE GENERAL ORIENTATION OF THE COMMISSION WITH REGARD TO STATE AID TO THE CINEMA SECTOR

Cinema and TV programmes are two of the most universal media of entertainment, with a powerful impact on a great number of people internationally. The current stage of development and the special characteristics of audiovisual production within the EC, mean that it is difficult for producers to obtain a sufficient level of upfront commercial backing to put together a financial package so that production projects can proceed. In these circumstances, the fostering of audiovisual production by the Member States plays a key role to ensure that their indigenous culture and creative capacity can be expressed, thereby reflecting the diversity and richness of European culture.

The Maastricht Treaty gave Community-level recognition to the utmost importance of promoting culture for the European Union and its Member States by incorporating culture amongst the Community's policies specifically referred to in the EC Treaty (see Article 151 EC). At the same time, it

(7) COM(2001) 428 of 25 July 2001.

(8) SEC(2001) 619 of 11 April 2001.

(9) Representing more than 95 % of the production industry, film directors, cinema exhibitors, rights holders, broadcasters, unions representing workers in the audiovisual sectors, video and DVD associations, film institutes and Member States. See list of comments and full text of those sent electronically without a request for confidentiality at:  
[http://europa.eu.int/comm/avpolicy/regul/cine1\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/cine1_en.htm)

included in Article 87(3)(d) EC a new specific possibility of exception to the general incompatibility principle of Article 87(1) EC for aid granted by the Member States to promote culture.

Member States implement a wide range of support measures for the audiovisual production of films and TV programmes. This support focuses on the creation and production phases of film-making and generally takes the form of subsidies or repayable advances. The rationale behind these measures is based on both cultural and industrial considerations. They have the primary cultural aim of ensuring that the national and regional cultures and creative potential are expressed in the audiovisual media of film and television. On the other hand, they aim to generate the critical mass of activity that is required to create the dynamic for the development and consolidation of the industry through the creation of soundly-based production undertakings and the development of a permanent pool of human skills and experience.

This communication does not cover the application of Articles 81 and 82 of the EC Treaty (anti-competitive practices by companies) to the audiovisual sector (10).

### 2.1. Compatibility with the EC Treaty of schemes of aid to cinema and TV production

The basic rules on State aid under the EC Treaty are as follows: Article 88(3) of the EC Treaty provides that Member States are obliged to inform the Commission of any plans to grant or alter aid before putting it into effect. Article 87(1) EC prohibits aid granted by the State or through State resources, which distorts or threatens to distort competition and trade between Member States. However, the Commission may exempt certain State aid from this prohibition. In particular, Article 87(3) EC lists certain aid types that, in view of their effects, the Commission may authorise. One of these exemptions is Article 87(3)(d) EC for aid to promote culture, where such aid does not affect competition and trading conditions to an extent contrary to the common interest.

### 2.2. Enforcement of the EC Treaty rules on State aid to cinema and TV production

In 1997, the Commission received a complaint about exclusionary effects created by the French cinema production aid scheme. This was confirmed by the Commission's assessment. The anti-competitive effects were the result of provisions making the aid conditional on the realisation of certain film-making activities in the Member State (so-called 'territorialisation').

(10) For example, practices such as block bookings or the bundling of rights, which could be incompatible with the EC Treaty.

The French authorities, at the Commission's request, modified a series of incompatible provisions of their cinema production aid scheme and on 3 June 1998 the Commission authorised their scheme. In its decision (N 3/98), the Commission set out four specific compatibility criteria (see 2(3)(b) below) to authorise aid to cinema and TV production in accordance with the 'culture derogation' contained in Article 87(3)(d) of the EC Treaty. The Commission also undertook to review the schemes in other Member States under the criteria adopted in the French decision.

The Commission launched an inquiry requesting information from all Member States about their aid schemes for the audiovisual sector. The inquiry showed that the majority of the schemes had not been notified to the Commission for prior authorisation.

### 2.3. Assessment of aid schemes to cinema and TV production

When it assesses aid schemes to cinema and TV production, the Commission must verify:

- first, whether the aid scheme respects the 'general legality' principle, i.e. the Commission must verify that the scheme does not contain clauses that would be contrary to provisions of the EC Treaty in fields other than State aid (including its fiscal provisions),'
- secondly, whether the scheme fulfils the specific compatibility criteria for aid, set out by the Commission in its 1998 decision on the French automatic aid scheme <sup>(11)</sup>.

The second condition is specific to cinema and TV production aid schemes, whereas the other is a routine test applied to all aid schemes irrespective of the sector.

#### (a) *Respect of the general legality criterion*

The Commission must verify that the eligibility conditions of the State aid schemes do not contain clauses contrary to the EC Treaty provisions in fields other than State aid. The Commission must ensure, inter alia, that the EC Treaty principles prohibiting discrimination on the grounds of nationality, freedom of establishment, free movement of goods and freedom to provide services have been respected (Articles 12, 28, 30, 39, 43, 48 and 49 EC). The Commission enforces these principles in conjunction with the application of competition rules when the provisions in breach of these principles are not detachable from the operation of the scheme.

<sup>(11)</sup> The question whether fiscal relief to producers can be qualified as aid is assessed under the principles contained in the 1998 Commission communication on the application of State aid rules to measures relating to direct business taxation (OJ C 384, 12.12.1998).

In compliance with the above principles, aid schemes must not: e.g. reserve the aid for nationals exclusively; require beneficiaries to have the status of national undertaking established under national commercial law (undertakings established in one Member State and operating in another by means of a permanent branch or agency must be eligible for aid; furthermore, the agency requirement should only be enforceable upon payment of the aid); require workers of foreign companies providing film-making services to comply with national labour standards.

Certain schemes of aid to cinema and TV production are financed by para-fiscal charges. According to the Commission's decision making policy and the Court of Justice's jurisprudence, when such schemes benefit solely national producers or do so to a higher extent than to competitors in other Member States, in order to be compatible with the Treaty, imported products may not be levied and national production may not enjoy a lower rate of taxation when exported.

When the Commission applies the State aid rules to assess the compatibility of aid schemes under the review, it addresses at the same time the problems identified by the Code of conduct group on direct business taxation (the so-called Primarolo Group) set up by the Council <sup>(12)</sup>.

#### (b) *The specific compatibility criteria for State aid to cinema and TV programme production*

The specific criteria on which basis the Commission currently assesses State aid to cinema and TV programme production under the culture derogation of Article 87(3)(d) EC were established in its decision of June 1998 on the French automatic aid scheme to film production. These specific criteria are as follows:

1. The aid is directed to a cultural product. Each Member State must ensure that the content of the aided production is cultural according to verifiable national criteria (in compliance with the application of the subsidiarity principle).
2. 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. In other words, the Commission accepted as an eligibility criteria territorialisation in terms of expenditure of up to 80 % of the production budget of an aided film or TV work.

<sup>(12)</sup> This group compiled an inventory of harmful measures that includes a certain number of State aid schemes for cinema and TV production.

3. Aid intensity must in principle be limited to 50 % of the production budget with a view to stimulating normal commercial initiatives inherent in a market economy and avoiding a bidding contest between Member States. Difficult and low budget films are excluded from this limit. The Commission considers that, under the subsidiarity principle, it is up to each Member State to establish a definition of difficult and low budget film according to national parameters.
4. Aid supplements for specific film-making activities (e.g. post-production) are not allowed in order to ensure that the aid has a neutral incentive effect and consequently that the protection/attraction of those specific activities into the Member State granting the aid is avoided.

Several considerations arise in respect of the abovementioned criteria:

The Commission considers that aid should be towards the overall budget of a specific film-making project and the producer should be free to choose the items of the budget that will be spent in other Member States. Aid schemes shaped on this basis are deemed to support the creation of an audiovisual product and not to assist the development of an industrial activity. Consequently, this aid is to be assessed under the culture derogation of Article 87(3)(d) EC rather than the industrial derogation of Article 87(3)(c). Undertakings in the film and TV programme production sector may also benefit from other aid types granted under national horizontal aid schemes authorised by the Commission under the Article 87(3)(a) and (c) EC exemptions (e.g. regional aid, aid for SMEs, R & D aid, training aid, employment aid).

The Commission accepted that Member States may require a certain part of the film production budget to be spent on their territory as an eligibility criterion for aid. This is based on the reasoning that a certain degree of territorialisation of the expenditure may be necessary to ensure the continued presence of the human skills and technical expertise required for cultural creation<sup>(13)</sup>. This should be limited to the minimum degree required to promote cultural objectives.

Furthermore, given the particular characteristics of film production, the Commission considers that the overall budget of an audiovisual production is the disbursement at risk necessary for its creation and, consequently, admits that the reference for aid calculation is that overall budget, regardless of the nature of the individual expenditure items of which it is formed. The earmarking of aid to specific individual items of a film budget could turn such aid into a national preference to the sectors providing the specific aided items, which might be incompatible.

<sup>(13)</sup> See reply to Written Question 3173-00 of Mr Veltroni (OJ C 163 E, 6.6.2001, p. 50).

Funds provided directly from EC programmes like MEDIA Plus are not State resources. Therefore, their assistance does not count for the purposes of respecting the 50 % aid ceiling. Furthermore, this assistance promotes the distribution of national films abroad and, consequently, its effects do not add up to those of national schemes focusing on national production and distribution.

Legal obligations imposed by Member States upon TV broadcasters to invest in audiovisual production do not constitute State aid, where these investments provide a reasonable compensation to broadcasters. The extent to which these legal obligations may be considered State aid as such has to be considered in view of the development of the EC Court of Justice jurisprudence after its judgement of 13.3.2001 in Case C-379/98 (PreussenElektra).

**In the Commission's view, the above criteria strike a balance between the aims of cultural creation, the development of the EC audiovisual production and the respect of the EC rules on State aid.**

#### 2.4. Review of schemes

Following its 1998 decision on the French scheme of automatic aid to film production, the Commission has reviewed the schemes in place in other Member States under the abovementioned assessment criteria. The Commission has already reviewed and approved the schemes of a series of Member States<sup>(14)</sup>. The Commission, is at present, completing discussions with the remaining Member States to bring their schemes in line with EC law. The Commission intends to complete the review by the end of 2001. The completion of the review will provide legal certainty to the sector.

The review has revealed the following key features of national State aid schemes:

- there is a great diversity of aid schemes within EC both in terms of aid type and scope,
- many of the schemes contained provisions contrary to the general legality principle,
- very few Member States impose territoriality requirements in order to qualify for aid,
- only exceptionally, Member States grant State aid levels higher than 50 % of the film costs,
- the exceptions to this latter finding normally fall under the 'difficult and low budget film' category.

<sup>(14)</sup> France, the Netherlands, Germany (and certain German *Länder*, Ireland, and Sweden: see [http://europa.eu.int/comm/competition/state\\_aid/decisions/](http://europa.eu.int/comm/competition/state_aid/decisions/))

## 2.5. Future developments

The specific compatibility criteria for aid to cinema and TV programme production, set out above, will remain valid until June 2004, the time limit set in the decisions adopted so far. Under the review, the other Member States' schemes will be authorised until the same deadline.

The Commission does not intend to alter these criteria unless they prove unable to prevent undue distortion of competition within the EC. The Commission will examine further in the light of the review the maximum level of admissible territorialisation. Territoriality requirements fragment the internal market for the provision of goods and services for audiovisual production and hinder their development. Possible distortion of competition created by aid to cinema and TV programme production would originate more from territorialisation requirements rather than from the level of aid itself. Territoriality requirements exceeding what may be judged acceptable under the necessity and proportionality criteria go beyond the strict limits of cultural promotion and aim basically at industrial objectives. Therefore, the Commission, in its decision on the French aid scheme considered that the Member States should be encouraged to reduce national preferences for an important part of the costs as to the place of expenditure.

In view of the comparatively limited geographic extension of certain languages and cultures, and given the limited circulation of those cultural products within the EC and world markets, the Commission could accept aid intensities higher than 50 % where proven to be necessary in cases other than for difficult and low budget films for these Member States.

**The Commission intends to continue the multilateral dialogue with the Member States to discuss relevant issues connected with State support to cinema and TV production. This dialogue started in the conference organised by the French National Cinema Centre in Paris in October 2000 that brought together expert officials of the Commission and representatives from the relevant Ministries and film institutes in the EU. The dialogue was pursued in a second conference organised by the Swedish Film Institute in Stockholm in June 2001.**

## 3. PROTECTION OF HERITAGE AND EXPLOITATION OF AUDIOVISUAL WORKS

A number of issues relating to protection of heritage, transparency, and effective exploitation of rights have been raised<sup>(15)</sup>: the legal deposit of audiovisual works, the creation of a European register (or the linking of national registers) and

other possible forms and use of databases with a commercial aim. These issues could have important consequences for the circulation of audiovisual works within Europe, and for the preservation of Europe's audiovisual heritage.

### 3.1. The legal deposit of audiovisual works

Different work has been done in various fora on this issue. The Council adopted a resolution on conservation and enhancement of European cinema heritage in May 2000<sup>(16)</sup>, in which it called on the Commission to take account of the specific needs of this particular form of cultural legacy, and to support and encourage a transnational study to be carried out by the Member States on the situation facing European cinema archives.

From the contributions both at the public hearing and in writing, it is clear that there is consensus on the need to preserve and to safeguard Europe's audiovisual heritage. Opinions diverged as to the best way of achieving this aim, and as to whether regulatory intervention at a European level was required or in fact desirable.

At pan-European level initiatives have been taken by professional organisations<sup>(17)</sup>, and by the Council of Europe, whose draft European Convention for the protection of the audiovisual heritage should be adopted shortly. This convention will provide for a compulsory legal deposit of 'moving image material forming part of its audiovisual heritage and having been produced or co-produced in the territory of the party concerned'.

Opinions were divided as to whether the European Union should adhere to this instrument and/or encourage the Member States to do so. A number of commentators considered that the convention offered a reasonable compromise for action in this area, making Community action unnecessary, or alternatively felt that it constituted a good starting point for a Community initiative. Others favoured a Community initiative, stating that this was still necessary despite the convention and could provide an added value in terms of the protection of heritage and the promotion of cultural diversity. It was suggested that any Community approach should focus on best practice, although certain commentators felt that self-regulation or co-regulation did not function adequately and could lead to disparities as regards the preservation of audiovisual works.

<sup>(16)</sup> 2261 Council meeting (16 May 2000) Press 154 — No 8394/2000.

<sup>(17)</sup> There are proposals from the European Federation of Film Directors (FERA) and the International Federation of Cinema Producers Associations (FIAPF) (which has proposed a 'voluntary' deposit for cinematographic works based on a model contract that they have drawn up 'General regulations concerning trust deposit of motion picture prints with film archives' (1971)).

<sup>(15)</sup> In particular in the Commission staff working document, SEC(2001) 428 of 11.4.2001.

There were conflicting views as to whether such a system should be compulsory or voluntary. A number of commentators supported obligatory legal deposit as a minimum measure. Others considered that such a requirement should not entail any additional costs for the producer and should therefore be publicly financed. The requirement should only apply to new works (older works should be the subject of voluntary deposit). Many commentators favoured a voluntary scheme with details established at Member State level and limited to national works, which could be linked to incentives.

Commentators drew a distinction between cinematographic and other works. Broadcasters considered that it would be inappropriate to make television productions part of any mandatory deposit scheme. They added that if regulatory intervention for the preservation of television productions was to be regarded as necessary, it should be on a voluntary basis, and linked to significant financial support mechanisms. Others favoured the inclusion of all audiovisual works, whilst a third group favoured focusing initially on cinematographic works, which could later be extended to other categories.

In terms of conservation, the cinemathèques stressed the need for the works deposited to be of high quality (either the original copy or one of similar quality), as well as the need to create a database of the different material supports for audiovisual works.

**The Commission notes that there is widespread support of the need to preserve audiovisual works in view of the objectives of protection of heritage and the promotion of cultural diversity. The results of the consultation show that there is a need for action to preserve our audiovisual heritage. This appears to be particularly important in respect of cinematographic works. However, there was a lack of consensus as to the type of measures that would be appropriate.**

**Thus, 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. This will be carried out by means of an inquiry addressed to the national authorities later on this year. This exercise will evaluate the role played by legislative and other measures and to further analyse the conditions that should apply. Furthermore, the Commission intends to encourage cooperation between the interested parties in this area together with the spread of 'best practice'. It notes the consensus between the parties concerned that there should not be a single European archive. Deposit should rather be organised at the national or regional level, with appropriate transparency as to the location of works. It also intends to examine further the issue of creating a database of the different material supports for audiovisual works as suggested during the consultation.**

### 3.2. The creation of a registration scheme

Differing opinions exist as to the value of a registration scheme for films and other audiovisual works. At the moment, only a minority of Member States has put in place such a register. An initiative to create an international register in the context of the World Intellectual Property Organisation (WIPO) only met with limited success.

A European initiative in this domain might encourage transparency and thereby help protect right-holders and facilitate the circulation of European productions. This could be particularly important in view of the complexity of the industry. Such a scheme should not impact on questions relating to different rules on authorship or on the use of rights in line with copyright rules, but could aim to provide certain information relating to the audiovisual works registered.

Although a number of the commentators considered the scheme unnecessary and costly, the majority supported it. There was support for creation of a national public register of films in every Member State, if certain criteria were established. This was seen by some as being an essential element of any policy to promote circulation of audiovisual works. Some went further and saw the absence of such a register (or registers) as a hindrance to exploitation of works.

There were differing opinions on the most appropriate type of action. Some were in favour of the creation of a system of mutual recognition based on individual registers in each Member State. Others felt there was a need to assess market needs before deciding on appropriate action. A number of commentators were in favour of networking national registers at a European level. This was seen as having the advantage of transparency facilitating identification, although others considered that this could be quite cumbersome as a mechanism and that it would be difficult to set up such a scheme.

There was widespread agreement as to the advantages of clear identification and the importance of metadata<sup>(18)</sup>. Public service broadcasters stated that Europe would benefit if there were well-known and well-designed systems for metadata with respect to production, delivery, classification, protection and archiving of media works. In respect of the standards they considered it important to encourage the development of a more widely distributed media registration number network, in order to ensure interoperability between media registration numbers and to reduce registration fees for the European programme maker. Certain operators supported the use of the ISAN<sup>(19)</sup> standard or another standard established by industry, whereas others were against the use of this particular standard, whilst nonetheless in favour of standardised metadata systems.

<sup>(18)</sup> Digital information about an audiovisual work intended to help the production and distribution process (also referred to as digital asset management (DAM)).

<sup>(19)</sup> Developed by the International Standards Organisation (ISO). The current version is known as IVID (international version identifier) or V-ISAN.

Some commentators suggested that it should hold details of all the contracts relating to the production and exploitation of films produced in the country, in particular the identity of the various parties, ownership and exercise of copyright, the exploitation terms in the contract, the duration of the licence and its exclusive or non-exclusive character. Commentators considered that financing should be provided at a European level or alternatively by a combination of private and public funding. Other commentators expressed concern either about the costs of such a scheme, or the possible disadvantages if the information was not accurate or up to date.

**The Commission notes that there is considerable support for the creation of public registers of films in Member States based on the argument that such a registration scheme would improve the circulation of films by assuring that the information needed is readily available, although a number of issues remain to be clarified. The Commission therefore intends to carry out a stocktaking exercise in respect of the current situation within the Member States. This will be carried out by means of an inquiry addressed to the national authorities later on this year. It will aim to evaluate the role played by legislative and other measures and to further analyse the conditions that should apply.**

### 3.3. Right-holders database

The possibility of creating a new database enabling the identification of 'rights' or 'licensing' agreements across the European Union was put forward. There was disagreement as to whether information on rights and licensing agreements was difficult to obtain. The availability of this information could have a positive effect on the circulation of films. It should be noted that the Commission is analysing the issue of management of rights, as a follow-up to its 1995 Green Paper on copyright and related rights in the information society <sup>(20)</sup>.

Opinions were divided as to whether there was a lack of transparency regarding this information. The majority stated that sufficient transparency is ensured by producers and collecting societies. It was suggested that there was work to be done in the standardised codification of rights in order that rights may be consistently represented and relevant information exchanged in a legally reliable way. A potential benefit of such a database could be to help producers and distributors to find partners in other European countries.

A large number of commentators asserted that such a database would not seem necessary to improve the circulation of audiovisual works: the view was expressed that such a database might be very slow, costly, cumbersome and unable to keep pace with constant, very rapid changes in property. This would not correspond to the flexibility needed for the efficient exploi-

tation of audiovisual works. Consequences of any mistaken or obsolete information could be considerable. The formalities might be unmanageable and the delays in registering valid rights and the related contracts could be a hindrance to freedom of movement in a very brisk market. There might even be a danger that defrauders could obtain validation for misappropriated rights to the detriment of the entitled parties. Concern was also expressed that the creation of such a database could interfere with the internationally well established rule (see Article 5(2) Berne Convention) that the enjoyment and the exercise of copyright and neighbouring rights must not be subject to any formalities. Others maintained that major differences in the relevant contract law for copyright seriously affect the competitiveness of audiovisual producers of one country as compared to such producers in another country and that such a database could play an important role in the circulation of audiovisual works by ensuring that it was possible to obtain information about audiovisual works in other countries. The database could facilitate identification of right-holders but negotiations should still take place on a contractual basis.

**The Commission has taken note of the views expressed in the consultation and in particular the lack of support for the creation of a right-holders database. It will continue to examine the issue of management of rights, which it is analysing as a follow-up to its 1995 Green Paper on copyright and related rights in the information society, with a view to evaluating the possible impact of the existing differences in national law on the internal market.**

### 3.4. The exploitation of rights

Copyright and neighbouring legislation vest rights in authors, performers, phonogram producers, broadcasters and other rightsholders to authorise or prohibit certain acts of exploitation of their works or other subject matter. In general, users acquire rights by direct individual contracts with the rightsholders concerned or their representatives.

The issue of the exploitation of rights has been raised by broadcasters who assert they have problems in exploiting some of their productions stored in their archives, which they would like to show again especially in the new online environment. They claim it to be virtually impossible to identify and to trace and negotiate with all individual programme contributors or their heirs, particularly in the case of old productions. They assert that these difficulties prevent them from exploiting their archives today. Public service broadcasters therefore asked for legislative action to facilitate their situation. The cinemathèques also stated that they were unable to use a number of works and that the public therefore lost access to its own audiovisual heritage.

<sup>(20)</sup> COM(95) 382 final.

Producers and certain private broadcasters on the other hand, felt that the matter had been settled in the context of the new Copyright Directive <sup>(21)</sup> and should not be reopened in this context.

A number of commentators considered that the creation of the databases and registers referred to above could facilitate identification. It was also suggested that the matter should be considered in the review of the Television Without Frontiers (TVWF) Directive. However, it should be noted that this directive does not cover copyright and related rights issues.

**The Commission supports cooperation between all parties in order to solve specific difficulties, which may exist in certain situations. This cooperation should in the first place aim to set up an inventory of works for which problems relating to the identification of rightsholders could exist.**

#### 4. E-CINEMA

The issue of e-cinema has been raised because of the new pan-European distribution possibilities that are being created by digital technologies. These technologies can also enable the development of local multipurpose centres in less densely populated areas <sup>(22)</sup>. The term e-cinema is used to signify electronic delivery to a cinema screen. The term d-cinema has also been used by the industry, signifying that the final image is either the result of an end-to-end digital chain or the digital projection of material originated on film and transferred to digital medium. The impact on the cost/benefit analysis for film distributors and cinema owners was also raised.

There was widespread support from commentators for an industry-led approach to the standardisation of e-cinema. Intervention by national authorities or the European Union was not felt to be necessary. A number of contributions referred to the European Digital Film Forum, recently established in Stockholm, at the initiative of the Swedish Presidency, as the appropriate body to take forward actions, and called for support of its objectives and projects.

There were calls for the Commission to support the development of e-cinema through the MEDIA Plus programme and to open its 'multiannual framework programme 2002-2006 for research, technological development and demonstration activities aimed at contributing towards the

creation of the European research area' (the sixth framework programme) to the European industries committed to developing a high standard for electronic cinema distribution.'

The pilot projects under the MEDIA programme are the way in which Council Decisions 2000/821/EC and 2001/163/EC ensure that the MEDIA Plus <sup>(23)</sup> and the MEDIA Training <sup>(24)</sup> programmes respond to rapid technological change. This reflects an expectation that the use of digital technologies will make European audiovisual works more readily accessible as a result of new ways of transporting audiovisual content and thus more widely available outside their country of origin. Competitiveness in a globalisation context will increasingly depend on the use of new technologies in the development, production and distribution stages.

However, the MEDIA programmes address themselves to the audiovisual industry and not to the research community. The Commission will ensure suitable and effective coordination with the measures undertaken in the field of new technologies and in particular, *inter alia*, with the sixth framework programme, focusing on the needs and potential of SMEs operating on the audiovisual market.

The Commission's overall objective is to strengthen, through the development and use of new technologies, the European content industry, by improving the chances of such content entering into production, by encouraging its transnational distribution and by improving the potential of professionals through appropriate continuous vocational training. The target should be to develop globally recognised, open standardised e-cinema systems, through an industry-led process. This could include the following elements: to develop suitable algorithms for the compression of film quality digital content to be exhibited; to develop technologies capable of projecting such content; to develop methods of protecting the use of content through encryption; to develop methods which will allow the billing of content consumed over a network; to develop methods for the digitisation, enhancement, restoration and conservation of content.

**The Commission considers that e-cinema offers important new opportunities for increasing the circulation of European audiovisual works. It considers that the priority in this respect is the delivery to cinema, i.e. business to business, although there may possibly be a consumer phase at a later date. The Commission welcomes the establishment of the European Digital Cinema Forum. It supports the objectives of this forum to establish European user requirements for all parts of the digital/electronic chain, and to facilitate the development of worldwide standards for e-cinema in a timely manner.**

<sup>(21)</sup> Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ L 167, 22.6.2001).

<sup>(22)</sup> For example, the Swedish Folket Hus.

<sup>(23)</sup> OJ L 13, 17.1.2001.

<sup>(24)</sup> OJ L 26, 27.1.2001.

## 5. TAX ISSUES

Certain questions arise concerning the differences that exist between various types of cultural 'goods' within the Member States and the effect of fiscal measures in force in the Member States on the production and circulation of audiovisual works. It was considered that national fiscal incentives could be an important factor in the development of co-productions, as well as the harmonisation of tax practices to avoid double liability. Producers and directors felt that the Commission should ask all Member States to facilitate the creation of specialised, national or European, banks or venture capital funds with private finances, and to encourage Member States that don't have them to introduce fiscal measures to encourage audiovisual investment. A number of commentators referred to fiscal measures (in particular 'tax shelters') that were being used to finance non-European production. Cinema exhibitors considered that the Commission should encourage Member States to lower indirect taxes on cinema seats to the same level as those imposed for other cultural products.

There was widespread agreement from the different players concerned that reduced rates of VAT or a zero rate should apply to audiovisual cultural products and services. Accordingly, a number of commentators suggested that Annex H of the Sixth VAT Directive <sup>(25)</sup> should be expanded to cover either certain parts of the sector (video and online services) or the entire sector. Certain national authorities, however, questioned the need for European action although others considered that this subject should be discussed at European level.

The procedure laid down by the Directive is for the review to be carried out on the basis of a report from the Commission. On the basis of this report, the Council shall review the scope of the reduced rates every two years. The Council, acting unanimously on a proposal from the Commission, may decide to alter the list of goods and services in Annex H. The Commission laid down its policy for VAT in the communication of 7 June 2000 <sup>(26)</sup>. In this communication, the Commission stated that it would look at the harmonisation of rates and assess the impact of their structure on the functioning of the single market. Guidelines will be established on the basis of this analysis once the evaluation of the current pilot project for labour-intensive services <sup>(27)</sup> (for which a reduced rate may be applied until December 2002) has been completed. Particular attention will be paid to the use of reduced VAT rates in the context of the Community's priorities in this sector.

<sup>(25)</sup> Sixth Council Directive 77/388/EEC of 17 May 1977, as last amended by Directive 2001/41/EC of 19 January 2001. Annex H includes a number of items of cultural interest such as books and newspapers (including their loan), and entrance fees for cultural and other events (cinema, theatre, fairs, museums etc.) and the reception of broadcasting services.

<sup>(26)</sup> A strategy to improve the operation of the VAT system within the context of the internal market, COM(2000) 348 final.

<sup>(27)</sup> Introduced by Directive 1999/85/EC of 22 October 1999.

**The Commission notes the views expressed about taxation for cultural goods and services, and in particular the request to enable those Member States who wish to do so to apply a reduced rate of VAT to all cultural goods and services without discriminating between different forms of distribution. The Commission will consider whether to respond to this request in the context of the review of Annex H of the Sixth VAT Directive, which will take place after 2002. The Commission would draw attention to the existing possibility for Member States to apply a reduced rate to cinema admissions.**

## 6. RATING

There are two interlinked issues concerning the differences in ratings given to audiovisual works within Member States for different means of distribution and between Member States for the same means of distribution. Audiovisual works are generally subject to rating of their content, indicating for which age ranges they are considered suitable.

On the issue of differences between the Member States, a certain number of commentators (notably national authorities) considered that differences were the result of cultural differences and did not affect circulation significantly and therefore should be dealt with at a national level. Others were in favour of action to address this issue, even though they acknowledged that harmonising rating systems for audiovisual works across Europe could be difficult because of varying cultural traditions and sensitivities. There was support for increased cooperation between the competent authorities and the rating bodies to reduce the disparities from one Member State to another and from one medium to another, and to develop mutual recognition. Certain commentators considered that the role of national and European public authorities could be to support cooperation between relevant authorities possibly with the development at the European level of common descriptive criteria.

In respect of the differences between different means of distributions many commentators thought that content should be treated in the same way through the different distribution outlets. There were requests for harmonised standards, as this would facilitate the circulation of European works. It was argued that judgements about the suitability of material should be made on a more consistent and coherent basis across the media, according to a set of statutory objectives and principles for content regulation. The solution could be to set up a uniform European rating standard across audiovisual media, which would benefit consumers and suppliers and therefore positively affect production and circulation of European audiovisual works.



In its report on the recommendation on the protection of minors and human dignity<sup>(28)</sup>, the Commission has stressed the need to have a coherent approach across all media. The Commission intends to continue this work and to evaluate which systems could be put in place, which would address this problem, whilst taking account of the cultural differences existing between the Member States. The Commission recognises the important cultural aspects of ratings, to be decided in accordance with the principles of subsidiarity and governance as set out in its recent White Paper<sup>(29)</sup>, but considers that further analysis should be carried out of the role played by self-regulatory schemes such as NICAM in the Netherlands.

**The Commission will encourage exchanges of experience in respect of ratings (to include self-regulation) with a view to increasing cooperation on this issue. In this respect, the Commission intends to launch a Study on the rating of films, for cinema, television, DVD and videocassette in the EEA. The study will evaluate the reasons for, and the impact of differences between the different national laws or self-regulatory measures for rating of films on their subsequent marketing. It also will analyse whether such differences in rating create potential confusion amongst the persons responsible for minors.**

#### 7. OTHER MEASURES TO IMPROVE THE CIRCULATION OF FILMS

A number of different ideas to increase the production and circulation of European audiovisual works were put forward, notably a number of commentators considered that the Commission should encourage the funding of the production sector and/or encourage Member States or other institutions to do so. It should be noted that the Commission, together with the European Investment Bank (EIB) and the European Investment Fund (EIF) launched the 'i2i-audiovisual initiative', which supplements the MEDIA Plus programme for 2001-2005 and focuses on both industrial goals of competitiveness together with the promotion of cultural diversity inherent in the promotion of the development of European audiovisual content. The Commission will continue to examine all appropriate financial measures to improve the production and circulation of European audiovisual works.

In this respect, the Commission highlights the positive approach taken in the recent communication adopted on State aid and risk capital<sup>(30)</sup>, which it will apply for the next five years. This text is in line with the commitment to risk capital set out as a wider Community objective at the Lisbon European Council, and with the Commission's general policy of promoting risk capital in the Community<sup>(31)</sup>. The Commission

<sup>(28)</sup> Evaluation report from the Commission to the European Parliament and the Council on the application of the Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity, COM(2001) 106 of 27 February 2001, [http://europa.eu.int/comm/avpolicy/regul/new\\_srv/pmhd\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/new_srv/pmhd_en.htm)

<sup>(29)</sup> See note 7.

<sup>(30)</sup> OJ C 235, 21.8.2001.

<sup>(31)</sup> Risk capital, a key to job creation in the European Union, SEC(1998) 552 final of 31 March 1998.

has approved a number of schemes launched by the Member States to create such funds. Encouraging exchanges of information and 'best practice' between the Member States and the Commission to identify the best means by which the various Member States could help the cinema sector, and to consider opportunities to develop them in every Member State. In this regard it could be useful to create transnational networks of European professionals in the film industry. Others identified a need for the Commission to define broad principles for the Member States and to address key issues such as the need for national approaches to avoid inhibiting trans-frontier production or circulation.

It was suggested that the European Commission should use its e-Learning initiative that seeks to mobilise the educational and cultural communities, in order to speed up changes in the education systems to introduce the knowledge of classic European films to Europe's young citizens.

Finally, there was support for the creation of a European Union TV channel to broadcast 'European films'.

**The Commission considers that the exchange of information and best practice is extremely important in the sector. The audiovisual production industry is extremely complex, and faces a number of both technological and market challenges. The Commission intends to create a group of experts to discuss these issues and provide an input for the Commission for the elaboration of policy in this area. This group should gather together multidisciplinary expertise. Its objective should be to provide information and ideas on the technological and market developments in the audiovisual production sector. It should not represent Member States as such but gather the experience and knowledge in all Member States.**

**The Commission will examine which action could be taken in the context of its e-Learning initiative to develop image education and the knowledge of European films to Europe's young citizens.**

**The Commission also intends to launch a study on the identification and evaluation of financial flows within the European cinema industry, based on the analysis of the financial records of a selected number of films marketed between 1996 and 2000. This study will identify and evaluate the key factors determining the economic characteristics of the cinema industry. In particular, it will analyse the different project phases of pre-production, development, production, post-production, promotion, distribution and import and export. A description of the impact that possible relations between specific investors and amount of revenues may have had on the film performances will also be carried out.**

## 8. QUESTIONS TO BE CONSIDERED IN THE 2002 REVIEW <sup>(32)</sup> OF THE TELEVISION WITHOUT FRONTIERS DIRECTIVE

### 8.1. Definitions

**The definition of a European work:** Different definitions of a European work exist at international, Community and national levels. The main issues identified were whether there is a need for an agreed definition at European level, what the level of detail of that definition should be, and whether it should be binding for the various uses envisaged. At Member State level a number of different definitions exist for 'European works'. It has been argued that the differences could create barriers to the circulation of European productions. These definitions have been adopted at Member State level both to implement the provisions of the TVWF Directive and for the application of national support schemes for audiovisual works.

There was widespread recognition that the issue of 'definitions' was important for all types of production. Many commentators stressed the need for such definitions to take account of the relevant context, notably support schemes, co-productions etc. and highlighted the links with the review of the TVWF Directive in 2002. Some felt that certain political objectives would benefit from a harmonised definition or, as an alternative, from coordination or mutual recognition of Member State definitions; this could simplify the creation of European co-productions and the combination of different (national or European) support schemes.

A number of commentators (including broadcasters and national authorities) felt that the differences in definition identified did not create difficulties for transfrontier production. Others (notably, film and television producers) considered that the existence of different definitions, as well as the different national interpretation of these definitions, hampers any attempt to clearly assess the economic development of the European production industry as a whole. Opinions were also divided as to whether a more detailed definition should be provided in Community law, with some asserting that this was not necessary whilst others called for harmonisation.

In respect of the criteria that should be adopted a number of different views were expressed. Views were divided between the merits of the widest possible definition or a stricter approach, and of cultural or economic criteria. Certain criteria such as the control of rights were the subject of disagreement. Other commentators put forward criteria such as the use of a labour-based definition, or 'cultural' elements.

**The definition of an independent producer:** A number of different definitions of an 'independent producer' and 'independent production' exist across Europe. Many Member States use the notion of independent producer to delimit the

beneficiaries of national State aid schemes. The issues of the meaning of 'independence' and the criteria to establish whether a producer is independent were raised.

There was broad agreement that it was necessary to clarify the underlying policy objectives, in particular in the light of new industry structures. Certain commentators noted a potential tension between the objectives of increasing European competitiveness and that of promoting cultural diversity within Europe. The latter goal would appear to be in line with the original aims of the TVWF Directive to stimulate the creation of new sources of TV production, notably by favouring the creation of SMEs, which will compete with the existing established producers. It would imply focusing the protection offered by the current system on SMEs, rather than extending it to larger groups linked to broadcasters. In this respect, it was also noted that the distinction between producers and broadcasters is not as clear as it used to be, as they frequently form part of vertically integrated groups and the relationship is therefore increasingly complex. Any definition should therefore include links with interests in different parts of the audiovisual value chain. There was a certain amount of support for a European definition, which could ensure that Member States used the same interpretation. The general opinion was that the issue should be considered in the review of the TVWF Directive.

The distinction between the notions of independent producer and independent production was highlighted by producers and directors. The important contribution of independent producers was stressed by a large number of commentators, in particular in view of the need to promote cultural diversity. In respect of possible criteria that could be used a number of commentators considered that the starting point should be the relevant recital in the TVWF Directive (Recital 31).

There was disagreement notably between broadcasters and producers as to whether the criteria should include a limitation on the duration of the transfer of rights from producers to broadcasters. Broadcasters considered that any intervention at the European level to introduce a time or other limit on rights ownership by broadcasters would be unjustified and contrary to the objectives of European audiovisual policy, as well as having an adverse effect on competition. Producers considered that the re-transfer of traditional rights back to the producer and the fair negotiation of new media rights can only benefit the circulation of audiovisual works, and increase the quantity and quality of European content available to new delivery platforms.

Key criteria put forward included the free choice of facilities, free choice of international distribution, majority participation link, company ownership and shareholdings. Others suggested that any definition should focus on the notion of 'independence' to retain the distinction between broadcasters and producers. A number of broadcasters (public service and commercial) considered that the current definition of 'independence from a broadcaster' should be altered to reflect developments in the sector, notably the increasing concentration and creation of media conglomerates and the presence of other platforms linked back to broadcasters.

<sup>(32)</sup> Review provided by Article 26 of the directive; see [http://europa.eu.int/comm/avpolicy/regul/regul\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/regul_en.htm)

In respect of the use of this definition for the application of Community competition rules it was suggested that consideration should be given to the question of independent production when looking at mergers and joint ventures to ensure that the sector (composed mainly of SMEs) would not be adversely affected. This should include, in particular, control of production, access to distribution channels, and the retention of rights for independents in respect of catalogues.

**The Commission considers that the debate launched in this context will provide useful input to the studies that have been launched in preparation of the review of the TVWF Directive in 2002, and intends to take this issue forward in that context. It notes that the review should pay particular attention to the objectives to be achieved, notably in respect of the need to promote cultural diversity and the role played by the definition in that respect as well as to the wide range of possible criteria to be evaluated.**

## 8.2. Questions on media chronology and online rights

This issue concerns the chronology of windows for the economic exploitation of films in Member States of the European Union, which is based on agreements between the relevant economic actors<sup>(33)</sup>. An obligation exists in Community law for Member States to ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the right-holders<sup>(34)</sup>.

There was widespread agreement from commentators that this was sufficient and that provided that the principle of media chronology was guaranteed at the European level, deadlines for film exploitation should be left to contractual arrangements between the parties involved. Certain commentators felt that to harmonise practices would be counterproductive. Others spoke up in favour of self-regulation.

The new issues in terms of defining on-line and new media rights created by the distribution of European production on-line were highlighted and comments on the implications for different actors in the value chain (bundling of rights etc) were requested. Broadcasters and producers disagreed as to the need to categorise rights, with producers considering that there was a need to categorise and to define the different groups of rights.

In general, producers considered that broadcasters already acquired new media rights at no additional cost, since these rights were not clearly defined in the contract and negotiated separately. Broadcasters agreed that negotiations for rights must recognise the range of platforms over which there is potential for exploitation, and make clear arrangements either to include or exclude those additional rights in any agreement, subject to fair payment (current practice). In addition, they considered

that intervention would curtail commercial freedom for both parties.

**The Commission considers that the consultation has confirmed that the current position under Community law remains the best solution, permitting a flexible approach to the use of rights for different media windows. It notes the concerns expressed by producers in terms of bundling of rights and intends to consider this question insofar as it is linked to the definition of an independent producer in the context of the review of the TVWF Directive in 2002.**

## 9. NEXT STEPS

The fundamental principles, which are at the heart of the Community's audiovisual policy, remain fully valid. The Community will develop this policy on the basis of existing regulatory instruments and support mechanisms, but also explore the possibility of using new instruments or initiatives to achieve these objectives. Technological and market developments must be seen in the light of the need to reinforce Europe's cultural and linguistic diversity and preserve our audiovisual heritage. In this respect, the Commission has identified a certain number of initiatives that could be taken to promote the circulation of works and will therefore launch the following actions:

### Timetable for action

Subject	Action	Completion date
Ratings	Independent study on the evaluation of rating practices	2002
Other issues	Creation of a cinema experts group	2002
Other issues	Independent study on financial flows within the European cinema industry	2002
Protection of heritage and exploitation of audiovisual works	Stocktaking, before launch of initiative	Mid-2002
Definitions of a European work and an independent producer	Review of the Television Without Frontiers Directive	End of 2002
Tax issues	Review of Sixth VAT Directive	After 2002
e-Cinema	Inclusion in MEDIA Plus and sixth framework programme	2002-2006

<sup>(33)</sup> Supplemented by legislation in Germany, France and Portugal.

<sup>(34)</sup> Article 7 of the amended TVWF Directive.

**List of Member States' authorisations of food and food ingredients which may be treated with ionising radiation**

*(According to Article 4(6) of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation)*

*(This text cancels and replaces the text published in Official Journal C 38 of 12 February 2002, page 16.)*

(2002/C 43/05)

Product	Authorised at the given maximum overall average absorbed radiation dose [kGy]				
	BE	FR	IT	NL	UK
Deep-frozen aromatic herbs		10			
Potatoes	0,15		0,15		0,2
Yams					0,2
Onions	0,15	0,075	0,15		0,2
Garlic	0,15	0,075	0,15		0,2
Shallots	0,15	0,075			0,2
Vegetables, including pulses					1
Pulses				1	
Fruit (including fungi, tomato, rhubarb)					2
Dried vegetables and fruits		1		1	
Cereals					1
Flakes and germs of cereals for milk products		10			
Flakes from cereals				1	
Rice flour		4			
Gum arabic		3		3	
Chicken meat				7	
Poultry		5			
Poultry (domestic fowls, geese, ducks, guinea fowls, pigeons, quails, and turkeys)					7
Mechanically recovered poultrymeat		5			
Offal of poultry		5			
Frozen frog legs	5	5		5	
Dehydrated blood, plasma, coagulates		10			
Fish and shellfish (including eels, crustaceans and molluscs)					3
Frozen peeled or decapitated shrimps	5	5			
Shrimps				3	
Egg white		3		3	
Casein, caseinates		6			

**Prior notification of a concentration**  
**(Case COMP/M.2680 — ECYR/Spinveste/TP)**

**Candidate case for simplified procedure**

(2002/C 43/06)

(Text with EEA relevance)

1. On 11 February 2002 the Commission received notification of a proposed concentration pursuant to Article 4 of Council Regulation (EEC) No 4064/89 <sup>(1)</sup>, as last amended by Regulation (EC) No 1310/97 <sup>(2)</sup>, by which the Portuguese undertaking Spinveste, SGPS SA (Spinveste), belonging to the Portuguese undertaking Sonae SGPS (Sonae) and the Spanish undertaking Endesa Cogeneración y Renovables SA (ECYR), belonging to the Spanish undertaking Endesa SA, acquire within the meaning of Article 3(1)(b) of the Regulation, joint control of the Portuguese undertaking TP-Sociedade Térmica Portuguesa SA (TP), presently solely controlled by ECYR, by way of capital increase and purchase of shares.
2. The business activities of the undertakings concerned are:
  - Spinveste: engineering, construction, environment and energy,
  - ECYR: co-generation and renewable energies,
  - TP: co-generation.
3. On preliminary examination, the Commission finds that the notified concentration could fall within the scope of Regulation (EEC) No 4064/89. However, the final decision on this point is reserved. Pursuant to the Commission Notice on a simplified procedure for treatment of certain concentrations under Regulation (EEC) No 4064/89 <sup>(3)</sup>, it should be noted that this case is a candidate for treatment under the procedure set out in the notice.
4. The Commission invites interested third parties to submit their possible observations on the proposed operation.

Observations must reach the Commission not later than 10 days following the date of this publication. Observations can be sent by fax (No (32-2) 296 43 01 or 296 72 44) or by post, under reference COMP/M.2680 — ECYR/Spinveste/TP, to:

European Commission,  
Directorate-General for Competition,  
Directorate B — Merger Task Force,  
J-70,  
B-1049 Brussels.

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<sup>(1)</sup> OJ L 395, 30.12.1989, p. 1; corrigendum: OJ L 257, 21.9.1990, p. 13.

<sup>(2)</sup> OJ L 180, 9.7.1997, p. 1; corrigendum: OJ L 40, 13.2.1998, p. 17.

<sup>(3)</sup> OJ C 217, 29.7.2000, p. 32.

**Non-opposition to a notified concentration****(Case COMP/M.2661 — Winterthur/Prudential Assurance)**

(2002/C 43/07)

**(Text with EEA relevance)**

On 12 December 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 301M2661. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration****(Case COMP/M.2663 — CU Vita/Risparmio Vita Assicurazioni)**

(2002/C 43/08)

**(Text with EEA relevance)**

On 20 December 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
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**Non-opposition to a notified concentration****(Case COMP/M.2675 — EDF/TXU Europe/West Burton Power Station)**

(2002/C 43/09)

**(Text with EEA relevance)**

On 20 December 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
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Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration****(Case COMP/M.2679 — EDF/TXU Europe/24 Seven)**

(2002/C 43/10)

**(Text with EEA relevance)**

On 20 December 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
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2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration****(Case COMP/M.2354 — Enichem/Polimeri)**

(2002/C 43/11)

**(Text with EEA relevance)**

On 6 April 2001 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 301M2354. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration****(Case COMP/M.2700 — PGA Motors/Jardine Motors)**

(2002/C 43/12)

**(Text with EEA relevance)**

On 25 January 2002 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 302M2700. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration**  
**(Case COMP/M.1920 — Nabisco/United Biscuits)**

(2002/C 43/13)

(Text with EEA relevance)

On 5 May 2000 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(2) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 300M1920. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration**  
**(Case COMP/M.2659 — Fortum/Birka Energi)**

(2002/C 43/14)

(Text with EEA relevance)

On 10 January 2002 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 302M2659. CELEX is the computerised documentation system of European Community law.

For more information concerning subscriptions please contact:

EUR-OP,  
Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg.  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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**Non-opposition to a notified concentration**  
**(Case COMP/M.2689 — 3I/Dansk Kapitalanlæg/Ibsen)**

(2002/C 43/15)

(Text with EEA relevance)

On 31 January 2002 the Commission decided not to oppose the above notified concentration and to declare it compatible with the common market. This decision is based on Article 6(1)(b) of Council Regulation (EEC) No 4064/89. The full text of the decision is only available in English and will be made public after it is cleared of any business secrets it may contain. It will be available:

- as a paper version through the sales offices of the Office for Official Publications of the European Communities (see list on the last page),
- in electronic form in the 'CEN' version of the CELEX database, under document No 302M2689. CELEX is the computerised documentation system of European Community law.

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Information, Marketing and Public Relations,  
2, rue Mercier,  
L-2985 Luxembourg,  
Tel. (352) 29 29 427 18, fax (352) 29 29 427 09.

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## III

(Notices)

## COMMISSION

**Projects that may benefit from a Eurostat grant during the years 2002 and 2003**

(2002/C 43/16)

The public is hereby informed of projects that may benefit from a Eurostat grant during the years 2002 and 2003.

The electronic file, which compiles the actions concerned (classified by statistical theme, unit and accompanied by a description, more detailed information as well as the name and details of the project officer) is to be found on the **EUROPA server** (<http://europa.eu.int>).

In concrete terms, you can reach the page concerned via 'Institutions', 'Commission', 'Directorates-General and services', 'Eurostat', 'Eurostat, "Other information"', 'Calls for tenders and grants' and then enter the file '**Eurostat Grants 2002-2003**'.

Please read the information accompanying this file carefully, as the difference between the category of actions reserved for the 'European Statistical System (ESS)' (*for information*) and the category of actions open for competition (*for action*) is explained.

**For the latter category only**, you are kindly requested to inform us of your interest in carrying out these (or some of these) actions by contacting the address below, referring to the relevant topic (s) and giving a description of your experience:

European Commission  
Eurostat  
Unit R-3  
BECH B4/405  
5, rue Alphonse Weicker  
L-2920 Luxembourg (Kirchberg).

Your letter of interest will automatically be taken into account and additional and more detailed information will be sent to you on preparation of the file, allowing you, if desired, to introduce a more detailed proposal to carry out the project.

At that moment, the standard grant application form should be completed so that the usual checks can be made of the selection and award criteria defined by the Commission.

It should be noted that co-financing of the project is always required. The rate for such co-financing will be determined per project and in relation to the credits available in the units but with a minimum of 10 % of the eligible costs. This rate will be announced beforehand when sending out the application forms.

**Deadline for sending in proposals of interest to participate: up until 15 march 2002 inclusive.**  
Non-respect of this delay will automatically result in refusal of your application.

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## CALL FOR PROPOSALS

(VP/2002/003)

### Budget heading B3-4003: 'Information, consultation and participation of representatives of undertakings'

(2002/C 43/17)

The budget authority has fixed the amount allocated to heading B3-4003 for 2002 at EUR 6 million.

This appropriation covers in particular funding of measures aimed at strengthening transnational cooperation between worker and employer representatives in respect of information, consultation and participation within undertakings operating in more than one Member State with priority assistance going to undertakings which are not subject to Council Directives 94/45/EC and 97/74/EC. It may also be used to fund training for representatives in transnational information, consultation and participation bodies and innovative measures concerning the prevention and resolution of conflicts in multinational undertakings particularly those relating to restructuring.

Up to a maximum of 10 % of the total appropriation is earmarked to cover participation by social partners' representatives from the applicant countries.

In connection with all measures funded under this heading, disabled persons must be afforded unrestricted access.

#### I. THE AIMS

The comment under the budget heading clearly states the purpose of the funded operations, which is to ensure, in a pragmatic manner, the conditions for fostering the development of information and consultation in undertakings, by promoting Directives 94/45/EC and 97/74/EC, Council Directive 2001/86/EC on employee involvement in a European Company and the proposal for a Council Directive establishing a general framework for improving information and consultation rights of employees in the European Community (COM(1998) 612 final).

The budget heading is intended to finance specific measures.

Promoters and the persons concerned must be representatives of workers or employers.

A number of priority objectives have been established for the 2002 financial year:

- exchange of information and experience with a view to preparing for information, consultation and participation of employees in European society,
- cooperation between worker and employer representatives to ensure correct information and consultation of employees at all levels (national and European) in an undertaking or group of undertakings,
- strengthening of transnational cooperation in the field of information and consultation between workers' representatives, between employers, and between worker and employer representatives in undertakings operating in more than one Member State and in the applicant countries,
- innovative measures relating to the management of information, consultation and participation rights, the anticipation of change and to the prevention and resolution of disputes within multinational companies in the context of the development and competitiveness strategies of the various sectors of activity and company restructuring, mergers, takeovers and relocation,
- aid for the establishing of information and consultation bodies and adoption of best practices in Community-scale undertakings and Community-scale groups of undertakings,
- production of reports on experience regarding the establishment of European Works Councils and the functioning and effectiveness of information and consultation within them.

#### II. ELIGIBLE MEASURES

Eligible types of action are:

1. **Practices, exchange of information and reports on experience in the field of information, consultation and participation within undertakings or groups of undertakings. The relationship between these information and consultation methods within the undertaking and the European sectoral dimension.**

**Promoters:** promoters may be organisations of workers' representatives, employers' associations, or technical bodies mandated by one or both parties.

Joint measures will be particularly encouraged.

## 2. Measures to prepare for employee involvement in the European Company.

### **Promoters:**

- for workers: works councils or similar body ensuring the general representation of workers; regional, national, European, sectoral or multisectoral trade union covering the undertakings concerned,
- for employers: applications may come from the management of the undertaking or group of undertakings concerned or from an employers' body which is representative at national, European, multisectoral or sectoral level,
- technical bodies mandated by one or more of these parties.

Joint measures will be particularly encouraged.

## 3. Innovative measures concerning the dissemination of information and consultation rights, the anticipation of change and the prevention and resolution of disputes particularly in connection with company restructuring, mergers, takeovers and relocation.

**Promoters:** applications may be submitted by management in undertakings or groups of undertakings, representatives of employees in the undertakings concerned, or organisations representing employers or workers at multisectoral (European, national or local) or sectoral (European, national or undertaking) level or technical bodies mandated by one or more of these parties.

Joint measures will be particularly encouraged.

**Priority will be given to innovative measures and/or measures concerning new subjects in relation to information, consultation and participation of undertakings' representatives. Promoters wishing to submit several projects under the heading are asked to provide the Commission with an overview of all the measures for which they would like to obtain funding during the current financial year.**

## III. ELIGIBILITY OF APPLICANTS

In the case of legal entities, the applicant must be properly constituted and registered.

Grants may be awarded to commercial undertakings only if the immediate objective of the project is non-commercial and certainly not to make a profit.

The applicant must submit evidence of legal and financial viability and professional integrity, as needed to complete the activity for which funding is requested.

None of the grounds for exclusion from participation in a contract must apply to the applicant (Article 29(a), (b), (e), (f) and (g) of Council Directive 92/50/EEC).

The applicant must be in a position to finance his activities. The applicant must have access to solid and adequate funding sources, so as to be able to maintain activities for the period of the project and to help finance the project where necessary.

The applicant must have the operational resources (technical, management) needed to complete the activity for which funding is requested.

## IV. PRACTICAL PROCEDURES

Only projects starting in 2002 will be considered. The final deadline for submission of applications is 13 September 2002 but applications will be examined on three occasions as indicated at 3 below.

### 1. Guide and form

A guide and form are available to promoters:

— by mail from:

European Commission  
DG EMPL/D.3 — J37-4/20  
Budget heading B3-4003  
B-1049 Brussels,

— by fax (32-2) 299 08 90,

— by e-mail: EMPL-B3-4003@cec.eu.int

— on website: [http://forum.europa.eu.int/Public/irc/empl/european\\_works\\_council/library](http://forum.europa.eu.int/Public/irc/empl/european_works_council/library)

### 2. Submission of projects

Applications must be sent in duplicate, by mail, to (the postmark will constitute proof of posting):

European Commission  
DG EMPL/D.3 — J37-4/20  
Budget heading B3-4003  
B-1049 Brussels.

In addition, applications must also be sent by electronic mail to: EMPL-B3-4003@cec.eu.int

Promoters who do not have electronic mail should enclose, with their postal application, a diskette containing a digital copy of the completed form.

### 3. Examination of applications

Applications will be examined and selected — taking account of the comment in the budget, the stipulated criteria and the priorities — by a selection committee. The selection committee will meet, within 25 working days after each deadline, to consider completed applications received by the following deadlines:

- 27 March 2002 for first selection committee,
- 31 May 2002 for second selection committee,
- 13 September 2002 for third selection committee.

**Applications not complete by the appropriate deadline will be rejected.**

### 4. Agreement governing the grant

Unsuccessful applicants will be notified by letter. Successful applicants will receive a letter together with an agreement for their acceptance and signature. The Commission will then return one of the signed copies to the applicant.

The grant will not cover the full cost of the project. The Commission reserves the right to refuse and/or limit the funding of specific elements in the budget estimate. The project promoter is also required to contribute at least 20 % of the total cost of the operation. Contributions in kind are acceptable. The payment arrangements will be set out in the agreement. The general rule is an advance of 70 % where the grant awarded is less than EUR 100 000, and 30 % where the grant exceeds EUR 100 000.

### 5. Evaluation and monitoring

A report and budget implementation details must be provided in accordance with the conditions laid down in the agreement.

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## Operation of scheduled air services

**This notice cancels and replaces that which was published in the 'Supplement to the Official Journal of the European Communities' S 29 of the 9.2.2002, 21630-2002**

**Invitation to tender issued by the Federal Republic of Germany pursuant to Article 4(1)(d) of Council Regulation (EEC) No 2408/92 for the operation of scheduled air services between Erfurt and Brussels**

(2002/C 43/18)

(Text with EEA relevance)

1. **Introduction:** Pursuant to Article 4(1)(a) of Regulation (EEC) No 2408/92 of 23 July 1992 on access for Community air carriers to intra-Community air routes, the German Government has decided to impose a public service obligation on scheduled air services between Erfurt and Brussels with effect from 17 May 2002. The details of this public service obligation were published in the 'Official Journal of the European Communities' C 42 of 15.2.2002. If, by 12 April 2002, no air carrier has submitted written proof of commencement of air services to the Thüringer Ministerium für Wirtschaft, Arbeit und Infrastruktur (Thuringia Ministry for Economic Affairs, Employment and Infrastructure) in accordance with the public service obligation imposed and without requesting compensation, Germany will, in accordance with the procedure laid down in Article 4(1)(d) of the abovementioned regulation, limit access to a single air carrier and put out the right to operate such services from 17.5.2002 to public tender.
2. **Subject of the invitation to tender:** Operation of scheduled air services between Erfurt and Brussels in accordance with the public service obligation imposed on this route, as published in the 'Official Journal of the European Communities' C 42 of 15.2.2002.
3. **Participation in the invitation to tender:** Participation is open to all carriers who hold a valid operating licence issued by a Member State in accordance with Council Regulation (EEC) No 2407/92 of 23 July 1992 on licensing of air carriers.

4. **Tender procedure:** This invitation to tender is subject to the provisions of Article 4(1)(d)-(i) of Regulation (EEC) No 2408/92.

The Thüringer Ministerium für Wirtschaft, Arbeit und Infrastruktur reserves the right to reject all offers or to start negotiations if no economically acceptable tender is received.

Tenderers are bound by their tender until the tender is awarded. The contract will be awarded only for a tender that is economically acceptable in its entirety.

5. **Tender dossier:** The full tender dossier, including the technical specifications, the terms of contract and details regarding the imposition of the public service obligation, is obtainable free of charge from:

Thüringer Ministerium für Wirtschaft, Arbeit und Infrastruktur, Referat Luftverkehr (Air Transport Section), Max-Reger-Str. 4-8, D-99096 Erfurt, fax: (49-361) 37 97 609.

6. **Financial compensation:** Tenders must explicitly state the amount of compensation required for the operation of the route for three years from the planned date of commencement of service (with an annual breakdown).

7. **Fares:** The tenders submitted must indicate the proposed fares and the conditions attached to them. The fares must be in agreement with the public service obligation published in the 'Official Journal of the European Communities' C 42 of 15.2.2002.

8. **Duration, alteration and notice of termination of contract:** The contract commences on 17 May 2002 and expires at the latest at the end of the 2005 winter flight schedule.

The contract may only be altered if the changes are in agreement with the public service obligation published in the 'Official Journal of the European Communities' C 42 of 15.2.2002. Changes to the contract must be put in writing.

The contract may be terminated by either party subject to six months' notice. This is without prejudice to the right of extraordinary termination of contract without notice for serious reasons.

9. **Failure to perform the contract/contractual penalties:** The air carrier is responsible for the proper fulfilment of its contractual obligations. In the event of failure to comply with, or incomplete performance of, the contractual obligations by the air carrier, the provider of the compensation is entitled to reduce the compensation payment proportionately. This may also apply where damage has been caused.
10. **Submission of tenders:** Tenders must be sent by registered letter, or delivered by hand with acknowledgement of receipt, to the following address:

Thüringer Ministerium für Wirtschaft, Arbeit und Infrastruktur, Referat Luftverkehr, Max-Reger-Str. 4-8, D-99096 Erfurt.

Tenders must be submitted within one month of the publication of this notice at the latest. All tenders must be submitted in quadruplicate.

11. **Validity of the invitation to tender:** The validity of this invitation to tender is subject to the condition that, by 12 April 2002, no EU carrier has applied for a licence to operate the air services concerned from 17 May 2002, in accordance with the public service obligation imposed, without receipt of any financial compensation.
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**CORRIGENDA****Corrigendum to the report on the application in the Member States of Directive 82/501/EEC of 24 June 1982  
on the major-accident hazards of certain industrial activities for the period 1997-1999**

*(Official Journal of the European Communities C 28 of 31 January 2002)*

(2002/C 43/19)

On the cover and on page 1, above the title of the report:

*for:* 'COUNCIL',

*read:* 'COMMISSION'.

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