



Brussels, 18.2.2014
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2014/0041 (NLE)

Proposal for a

COUNCIL DECISION

**On the position to be taken on behalf of the European Union
as regards the extension of the entitlement to co-productions as provided for in Article 5
of the Protocol on Cultural Cooperation to the Free Trade Agreement
between the European Union and its Member States, of the one part,
and the Republic of Korea, of the other part**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Free Trade Agreement (FTA) between the European Union and its Member States and South Korea¹ has been provisionally applied since July 2011. The Protocol on Cultural Cooperation (hereafter: the Protocol), concluded by the Parties within the framework of the FTA, established a framework within which the Parties shall cooperate to facilitate exchanges in cultural activities, goods and services, including in the audio-visual sector, and to improve the conditions governing such exchanges.

By derogation from the institutional provisions of the FTA, the Trade Committee shall have no jurisdiction over the Protocol. Instead the Committee on Cultural Cooperation, established within the framework of the Protocol and comprising senior officials from within the administration of each Party, shall exercise all functions of the Trade Committee as regards the Protocol, where such functions are relevant for the purposes of implementing the Protocol. The Committee on Cultural Cooperation met for the first time on 5 December 2013 in Brussels and the Parties on that occasion shared information on their respective legal bases and cultural activities.

With the Protocol, the Parties, in conformity with their respective legislation, agreed *inter alia* to grant an entitlement for audio-visual co-productions between producers from the EU party and Korea to benefit from their respective schemes for the promotion of local/regional cultural content according to certain specific conditions. Such co-productions can be considered European works within the EU and Korean works within Korea, as long as they respect the conditions stipulated in Article 5 of the Protocol (see points 8(a) to (c) in particular). This entitlement was established for a period of three years (from 1 July 2011 until 30 June 2014) and it is now proposed that this entitlement be renewed for another three years.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Protocol foresaw that each Party establish a Domestic Advisory Group (DAG), comprised of cultural and audio-visual representatives active in the fields covered by this Protocol. The EU DAG met on 25 September 2013 in Brussels in order to evaluate the results of the implementation of the entitlement in terms of enhancement of cultural diversity and mutually beneficial cooperation on co-produced works.

The DAG noted the lack of EU-Korea audio-visual co-productions under the conditions mentioned in the Protocol, agreed that the Protocol has nonetheless the potential of being a useful tool, and recommended that the entitlement for EU-Korean co-productions be extended for three more years. The DAG also concluded that there is a need to promote the Protocol at industry, state and EU level if the entitlement is to be properly exploited.

The entitlement to audio-visual co-productions was discussed with the EU Member States at a meeting of the Cultural Affairs Committee of the Council of the European Union on 31 October 2013. It is following the consultation of the Member States and

¹ OJ L 127, 14.5.2011, p.6.

in light of the opinion of the DAG that the Commission is now proposing that the entitlement be extended for another three-year period.

3. LEGAL ELEMENTS OF THE PROPOSAL

The procedure for renewing the entitlement is provided for in Article 5 of the Protocol. The required steps have been taken, as detailed above.

Article 5(8) of the Protocol stipulates that if it is decided that the entitlement should be renewed, it can be extended for another three year period and, thereafter, it will be automatically renewed for further successive periods of the same duration unless a Party terminates the entitlement by giving notice in writing of at least three months before the expiry of the period. Co-productions which predate any such termination can still benefit from the respective schemes for the promotion of local/regional cultural content.

According to article 4.1 of Council Decision 2011/265/EU a Council Decision is required for this proposed renewal of the entitlement to be enacted.

4. BUDGETARY IMPLICATION N/A
5. OPTIONAL ELEMENTS N/A

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 167(3) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to negotiate a Free Trade Agreement with the Republic of Korea on behalf of the European Union and its Member States.
- (2) Those negotiations were concluded and the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part² ("the Agreement") was signed on 6 October 2010. The Agreement contains a Protocol on Cultural Cooperation ("the Protocol") which, according to Article 1 thereof, sets up the framework within which the Parties cooperate for facilitating exchanges regarding cultural activities, goods and services, including *inter alia*, in the audio-visual sector.
- (3) Pursuant to Article 15.10(5) of the Agreement, it has been in part provisionally applied by Council Decision 2011/265/EU³ ("the Decision") since 1 July 2011, subject to its conclusion at a later date.
- (4) Pursuant to Article 3 of the Decision, Article 5 of the Protocol has been provisionally applied with the exception of paragraph (2).
- (5) In accordance with Article 4(1) of the Decision, the Commission is to provide notice in writing to Korea of the Union's intention not to extend the period of entitlement to audio-visual co-production pursuant to Article 5 of the Protocol following the procedure set out in Article 5(8) thereof unless, on a proposal from the Commission, the Council agrees four months before the end of such period of entitlement to continue the entitlement. If the Council agrees to continue the entitlement, that obligation to provide notice is to become applicable again at the end of the renewed

² OJ L 127, 14.5.2011, p. 6.

³ Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14.5.2011, p. 1.)

period of entitlement. For the specific purposes of deciding on the continuation of the period of entitlement, the Council is to act by unanimity.

- (6) The Domestic Advisory Group provided for in Article 3(5) of the Protocol has given a favorable opinion on the extension of the period of entitlement, as provided for in Article 5(8) of the Protocol.
- (7) This Decision should not affect the respective competences of the Union and the Member States.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union in the Committee on Cultural Cooperation shall be to agree to renewal of the entitlement for audio-visual co-productions to benefit from the respective schemes of the Parties for the promotion of local/regional cultural content as provided for in Article 5 for a duration of three years, from 1 July 2014 to 30 June 2017.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*