

Proposed second directive concerning cinematography

**(Submitted by the Commission to the Council on 7 February
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EXECUTIVE SECRETARIAT OF THE COMMISSION
OF THE EUROPEAN ECONOMIC COMMUNITY

Proposed second directive concerning cinematography

(Submitted by the Commission to the Council on 7 February 1964)

The Council of the European Economic Community,

Having regard to the Treaty establishing the European Economic Community and in particular Article 54 paragraphs 2 and 3 h and Article 63 paragraph 2 thereof;

Having regard to the General Programme for the lifting of restrictions on freedom of establishment and in particular Title IV-A thereof (1);

Having regard to the General Programme for the lifting of restrictions on freedom to supply service and in particular Title V-C-c thereof (2);

Having regard to the first directive concerning cinematography, adopted by the Council on 15 October 1963 (3);

Having regard to the proposal of the Commission;

Having regard to the opinion of the European Parliament;

Having regard to the opinion of the Economic and Social Committee;

Whereas, in accordance with Title IV-A of the General Programme for the lifting of restrictions on freedom of establishment, the restrictions on the opening of cinemas specializing in the exclusive exhibition of foreign films in the language of the country of origin must be lifted by the end of the second year of the second stage of the transitional period;

Whereas, in accordance with Title V-C-c paragraph 2 of the General Programme for the lifting of restrictions on freedom to supply services, the problems arising from the realization of a common film market must be gradually solved by the end of the transitional period; whereas in order to achieve this it is necessary, now that part of the transitional period has already elapsed, to lift certain restrictions that still remain after the adoption of the Council directive of 15 October 1963;

(1) Official gazette of the European Communities, No. 2, 15 January 1962, p. 36/62.

(2) *Ibid.*, No. 2, 15 January 1962, p. 32/62.

(3) *Ibid.*, No. 159, 2 November 1963, p. 2661/63.

and whereas those among these restrictions which concern the import and the programming of films considerably restrict exchanges within the Community and must, in view of the similarity of their effect on the exchange of films, be lifted simultaneously;

Whereas the dubbing of films can be effected satisfactorily in the exporting country and the provision that films having the nationality of a Member State must be dubbed in the country of exhibition is therefore no longer justified;

Whereas the conditions of establishment must not be distorted as the result of aid given by the Member State of which a person benefiting under this directive is a national,

Has made the present directive:

Article 1

In accordance with the following provisions Member States shall abolish, for the benefit of the natural or legal persons listed in Title I of the General Programmes for the lifting of restrictions on freedom of establishment and on freedom to supply services such restrictions or discriminations in the field of cinematography as concern:

- a) The opening of cinemas which specialize in the exclusive exhibition of foreign films in the language of the country of origin;
- b) Import quotas and screen quotas;
- c) The dubbing of films.

The restrictions to be lifted are those referred to under Title III of the General Programmes.

Article 2

For the application of this directive any film shall be recognized as having the nationality of one or more Member States if it has been produced according to the provisions of Articles 3 and 4 of the first directive concerning cinematography passed by the Council on 15 October 1963.

Article 3

Specialized cinemas are those which exclusively exhibit foreign films in the language of the country of origin, except when the majority of cinemas of the state concerned exhibit foreign films in the language of the country of origin.

On a proposal of the Commission and on application from the Member State concerned, the Council may by qualified majority authorize that state to place limits on the exhibition of foreign films in the language of the

country of origin if this language is also the language of the district in which the specialized cinema is located. The Council shall take a decision within three months of the filing of the application.

Article 4

The opening of a specialized cinema must not lead to the granting by another Member State of direct or indirect aid, whether financial or other, which would distort the conditions of establishment.

In particular no such aid will be granted for:

- i) the construction, reconstructing or modernization of cinemas;
- ii) the execution of work related to health, safety, or technical improvements;
- iii) the purchase of equipment;
- iv) the booking of feature-length films;
- v) covering risks or operational losses.

Any form of aid available in the Member State concerned for the opening of a specialized cinema must be granted, without discrimination, to owners who are nationals of other Member States of the Community.

The treatment accorded to nationals of Member States who are covered by this directive shall in no case be less favourable than that to which the nationals and enterprises of third countries are entitled.

Article 5

Member States which, on the day of publication of this directive, impose on cinemas a minimum number of screening days for native films per calendar year shall, not later than 31 December 1966, accept as part of this quota films of the nationality of one or more Member States under the same conditions as those applied to native films or most favoured films.

Member States which, on the day of publication of this directive, do not impose any screen quotas may introduce such quotas provided that they also apply to films having the nationality of other Member States.

Article 6

Quotas for the import of films having the nationality of one or more Member States shall be abolished not later than 31 December 1966.

The Federal Republic of Germany, however, shall retain the right during the transitional period to restrict the import of those films

having the nationality of one or more Member States for which its national censorship authority granted the release certificate more than three years before application for import was made to the competent authorities.

The abolition of quotas carries with it the right to unlimited import of positive prints, dupes and publicity material.

Article 7

Regulations requiring that films must be dubbed in the importing country shall be cancelled not later than 31 December 1966 for films having the nationality of one or more Member States.

Article 8

The Member States shall put into effect, within six months of the publication of this directive, any measures needed to comply with its provisions and shall inform the Commission forthwith of the action taken.

Article 9

The present directive is addressed to all Member States.

N.B.: In accordance with Article 191 of the Treaty, directives take effect upon notification to their addressees.

Explanatory Memorandum

1. Basis of the proposal

The General Programme for the removal of restrictions on freedom of establishment, adopted by the Council of Ministers on 18 December 1961, ⁽¹⁾ provides that before the end of the second year of the second stage restrictions shall be lifted on the opening of cinemas which exclusively exhibit foreign films in the language of the country of origin (see Schedule 1 of the General Programmes for the removal of restrictions on freedom of establishment, under ex 841).

The staff of the Commission have long been at work on the draft of a directive for the application of these provisions in the General Programme. At the same time however, steps were being taken in the European Parliament, in the Economic and Social Committee and within the Council in connection with the adoption of the first directive concerning cinematography; this was finally passed by the Council at its meeting on 15 October 1963. ⁽²⁾ From the discussions

in these bodies the Commission gained valuable hints on the lines to be followed in its endeavour to set up a common film market, and these led it to re-examine and extend the contents of the original draft.

At the time of the adoption of the General Programmes the Council had recommended that the lifting of the restrictions on freedom of establishment and on freedom to supply services should if possible be simultaneous, in order to avoid the problems that would arise if there were an area of uncertainty between the right of establishment and the supply of services.

The Council had also recognized the complexity of the problems of the film trade arising from differences in market regulations, from state intervention in production, from politico-cultural influences on the cinema and from the requirements of public policy. All these problems were made more acute by the economic situation of the film today, a situation due mainly to the competition of television.

Taking into account the complexity of the problem, the General Programme for the removal of restrictions on freedom to supply services has, in the sphere of cinematography, specified only one date by which all restrictions on freedom to supply services must have been lifted: "before the end of the transitional period".

At its plenary meeting of 8 February 1963, the European Parliament recommended that the entire film problem be solved during the course of the transitional period, and the Economic and Social Committee recommended, at its plenary meetings of 30 and 31 January in Paris and 27, 28 and 29 March 1963 in Brussels, that all questions relating to the creation of the common film market be solved during the transitional period and with the least possible delay.

All this means, on the strictly legal plane because of the provisions in the General Programmes, as well as on the political plane as a result of the recommendations made by the two highest advisory bodies of the Community, that the Commission is free to decide the sequence and the stages in which the film problem is to be solved, but that, no matter what the order of priority, the common film market must be realized as quickly as possible and at latest, by the end of the transitional period.

Furthermore, at the session of the Permanent Representatives on 17 December 1963, the representative of the Commission, for the purpose of removing the last obstacles to the adoption of the first directive, gave an assurance that the Commission's staff would

⁽¹⁾ Official gazette of the European Communities, No. 2, 15 January 1962, p. 36/62.

⁽²⁾ *Ibid.*, No. 159, 2 November 1963, p. 2661/63.

prepare as quickly as possible the draft of a directive on the complete elimination of screen quotas and import quotas.

The Commission's staff has accordingly re-examined the draft in order to include provisions concerning the further measures of liberalization.

The revised draft removes not only the restrictions on freedom of establishment for the opening of cinemas which exclusively exhibit foreign films in the language of the country of origin, but also the restrictions on the import, exhibition and dubbing of films.

The lifting of all these restrictions makes it possible to correct the effects of certain provisions at present applied in the Member States which in effect treat films from third countries more favourably than films from other Member States.

2. *Analysis of the proposed directive*

The regulatory character of the second directive concerning cinematography is of considerable importance and, as already mentioned, constitutes a decisive step towards the creation of a common film market:

Article 1

Article 1 defines the natural and legal persons to whom the directive applies. In accordance with the practice that has been established for quite some time, the persons to benefit under the provisions of the directive are defined by reference to the provisions of Title I of the General Programmes.

These are not only the natural persons who have the nationality of one of the Member States, but also any company which has been set up in conformity with the legislation of a Member State and which has its registered office, its central administration or its head office within the Community.

Article 1 at once goes on to name the purpose of the directive, namely:

- a) Lifting of restrictions on the opening of cinemas which specialize in the exclusive exhibition of foreign films in the language of the country of origin;
- b) Lifting of the import quotas and the screen quotas;
- c) Lifting of the restrictions on the dubbing of films.

To determine the restrictions to be lifted, Article 1 refers to the provisions of Title III of the General Programmes: this method of referring to Title III of the General Programmes has meanwhile also become an established practice.

Title III of the General Programmes includes, without prejudice to the exceptions and special provisions laid down in the Treaty, a very long but not exhaustive enumeration of existing restrictions.

Article 1 refers to this enumeration, requiring the restrictions therein to be lifted wherever this is necessary for admission to the activities concerned and to the pursuit thereof.

Article 2

The directive contains frequent reference to films which have the nationality of one or more Member States. To avoid a repetition of the definition of nationality whenever reference is made to it, Article 2 defines once and for all what is to be understood by films which have the nationality of one or more Member States by referring to Articles 3 and 4 of the first directive concerning cinematography passed by the Council at its meeting on 15 October 1963 (1).

Article 3

Article 3 specifies what is to be understood by cinemas which specialize in the exclusive exhibition of films in the language of the country of origin and contains an escape clause on the basis of which the Member States can file an application with the Council of Ministers for an authorization to restrict the exhibition of foreign films in the original language when this language is identical with the language of the territory in which the specialized cinema is situated; the Council must reach a decision within three months of the date of application.

The justification for such a clause is self-evident: when the language of the country of origin of the film is the same as that of the territory in which the cinema is situated, there is no longer a difference between specialized cinemas and normal cinemas, for it is precisely the difference in language which distinguishes the one from the other.

This clause was introduced mainly to avoid the risk of an imbalance in the bookings of existing cinemas, above all in Belgium and in some frontier districts.

The lifting of restrictions on freedom of establishment for specialized cinemas is not a problem of particular importance, from the economic point of view, for the specialized cinemas constitute only a very small percentage of the cinemas in EEC countries.

It must however be emphasized that the problem is important culturally, because, it is

(1) Official gazette of the European Communities, No. 159, 2 November 1963, p. 2661/63.

precisely the films of greatest artistic merit that the more educated classes generally prefer to see in their original version.

The lifting of the restrictions on the opening of specialized cinemas applies to any cinemas which may be opened in a Member State by nationals of the other States; it is therefore intended to apply both in respect of cinemas which exhibit films having the nationality of another Member State and in respect of cinemas which exhibit films having the nationality of a non-member country.

Article 4

Article 4 puts into effect the provisions of Article 54, paragraph 3 h, of the Treaty; these have been retained in Title VII of the General Programme for the lifting of restrictions on freedom of establishment:

“Any aid granted by Member States which could distort the conditions governing establishment shall be abolished not later than at the time of lifting the restrictions on freedom of establishment”.

To facilitate the application of this directive, Article 4 contains an enumeration, which is not exhaustive, of the most frequent forms of aid. But obviously there is no limit to the number of forms in which aid could be given.

Article 5

Article 5 solves the delicate problem of screen quotas by admitting under these quotas, subject to the same conditions as national or most favoured films, any films which, according to Article 3 of the first directive, have the nationality of one or more Member States.

Screen quotas are also termed screening time quotas, but the Commission's staff has decided to retain the terminology of Article 4 of the General Agreement on Tariffs and Trade in order to encourage the use of a terminology common to all international organizations.

Article 6

Article 6 solves a further problem which had already given rise to considerable differences of opinion during the discussion of the first directive, both in the Economic and Social Committee and in the European Parliament.

It lifts import quotas (such quotas exist at present between Germany and France and between Germany and Italy) and contains

certain guarantees for the German market which take into account the special situation in which the film industry of that country at present finds itself.

The safeguard clause which brings these guarantees into play allows the Federal Republic of Germany, during the transitional period, to restrict the import of films having the nationality of one or more Member States, where these films were granted a release certificate prior to a certain date; this is intended to protect the market against a possible inundation with old films which, having redeemed their costs in other markets, could be distributed at very low rates and thus upset the already precarious balance of the German market.

In accordance with what was agreed upon the Council's Working Party on economic questions during the discussion of the first directive (see Council paper No. 1083/63 (C.E. 40) of 24 July 1963), the term “dupes” in the last paragraph of the Article is to be taken to mean all the material necessary for the commercial exploitation of a film.

Article 7

Article 7 lifts the restrictions which require the dubbing of films in the importing country.

The obligation to dub films in their national territory had been imposed by certain countries for cultural reasons, so as to protect the purity of the language and the national modes of expression in general. This however was also of considerable benefit to the local technical industries, as it gave them the exclusive right to dub all films exhibited within the national territory. The cultural requirements can easily be fulfilled once there is freedom of movement of employees and self-employed persons, as the exporting countries can in fact have their films dubbed by specialists from the importing countries and thus ensure a perfect dubbing, both from the linguistic and cultural point of view.

The economic considerations referred to above could no longer be accepted as valid, since they run counter to the basic principles of the Treaty relating to freedom of movement of persons, services and capital.

Articles 8 and 9

These are the usual articles appearing in all directives; they concern the time allowed for putting the directive into effect and the ruling about notification.