EUROPEAN
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2022/0416 (NLE)

Proposal for a

COUNCIL DECISION

as regards the extension of the period of entitlement for audiovisual 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

• Reasons for and objectives of the proposal

On 1 October 2015, the Council adopted Decision (EU) 2015/2169 on the conclusion 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.

The Protocol on Cultural Cooperation[1] annexed 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[2] ('the Protocol'), sets up in Article 1 the framework within which the Parties are to cooperate for the facilitation of exchanges regarding cultural activities, goods and services, including in the audiovisual sector.

Pursuant to Article 5(8)(b) of the Protocol, following the initial period of three years the entitlement will be renewed for further successive periods of the same duration, unless a Party terminates the entitlement by giving notice in writing at least three months before the expiry of the initial or any subsequent period.

This entitlement was established for a period of three years (from 1 July 2011 until 30 June 2014). Pursuant to Article 5(8)(b) of the Protocol, "[t]he entitlement will be renewed for a duration of three years and shall thereafter be automatically renewed for further successive periods of the same duration, unless a Party terminates the entitlement by giving notice in writing at least three months before the expiry of the initial or any subsequent period."

In accordance with that provision, the entitlement was renewed three times for another three years. The first renewal ran until 30 June 2017, the second one ran until 30 June 2020, and the third runs until 30 June 2023, no Party having terminated the entitlement.

By Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual 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[3], the Council had agreed to continue the entitlement from 1 July 2020 to 30 June 2023.

Council Decision (EU) 2020/470 was adopted on the basis of Article 3(1) of Decision (EU) 2015/2169, which, at the time of the adoption of Council Decision (EU) 2020/470, provided in particular that the Commission is to provide notice to the Republic of Korea of the European Union's intention not to extend the period of the entitlement at issue unless, on a proposal from the Commission, the Council unanimously agrees four months before the end of the period of entitlement to continue the entitlement.

By judgement of 1 March 2022 in case *Commission v Council*[4], the Court of Justice annulled that decision considering that the procedure established in Article 3(1) Decision (EU) 2015/2169 did not comply with Article 218 TFEU in so far as it required the Council to vote by unanimity. The applicable voting rule for the adoption of decisions such as Council Decision (EU) 2020/470 had to be that laid down in the first subparagraph of Article 218(8)

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1 OJ L 127, 14.5.2011, p. 1418.
2 OJ L 127, 14.5.2011, p. 6.
3 OJ L 101, 1.4.2020, p. 1.
4 Judgment of the Court of Justice of 1 March 2022, *Commission v Council*, C-275/20, ECLI:EU:C:2022:142.

TFEU, namely qualified majority voting in the Council. In its judgement, the Court also maintained the effects of Decision (EU) 2020/470 until the grounds for annulment established have been remedied.

By Council Decision (EU) 2022/2335, the requirement that the Council act by unanimity for the purpose of deciding on the continuation of the entitlement in Article 3(1) of Council Decision (EU) 2015/2169 was deleted.

In order to remove any doubt as to the commitment of the European Union regarding the extension of the period of the entitlement for a duration of three years, from 1 July 2020 to 30 June 2023, and thus to ensure the proper implementation of the Protocol, a new decision should be adopted.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

In conformity with the aforementioned judgement, the legal basis for the proposed decision is Article 3(1) of Council Decision (EU) 2015/2169 as amended by Council Decision (EU) 2022/2335.

- **Choice of the instrument**

In accordance with Article 3(1) of Council Decision (EU) 2015/2169, the appropriate instrument to agree to the extension of the entitlement is a Council decision.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion 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, as amended by Council Decision (EU) 2022/2335[5], and in particular Article 3(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Protocol on Cultural Cooperation[6] annexed 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[7] ('the Protocol'), sets up in Article 1 the framework within which the Parties are to cooperate for the facilitation of exchanges regarding cultural activities, goods and services, including in the audiovisual sector.

(2) The Protocol includes provisions on the entitlement for audiovisual co-productions to benefit from the respective schemes.

(3) Pursuant to Article 5(8), point (b), of the Protocol, following the initial period of three years the entitlement will be renewed for further successive periods of the same duration, unless a Party terminates the entitlement by giving notice in writing at least three months before the expiry of the initial or any subsequent period. In accordance with that provision, the entitlement was last extended until 30 June 2023, no Party having terminated it.

(4) Council Decision (EU) 2020/470[8] extended the period of entitlement for audiovisual co-productions for a duration of three years, from 1 July 2020 to 30 June 2023. By judgement of 1 March 2022 in case *Commission v Council*[9], the Court of Justice

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5 Council Decision (EU) 2022/2335 of 28 November 2022 amending Decision (EU) 2015/2169 on the conclusion 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 309 of 30 November 2022, p6).

6 OJ L 127, 14.5.2011, p. 1418.

7 OJ L 127, 14.5.2011, p. 6.

8 Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual 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 (OJ L 101, 1.4.2020, p. 1).

9 Judgment of the Court of Justice of 1 March 2022, *Commission v Council*, C-275/20, ECLI:EU:C:2022:142.

annulled that decision. In its judgement, the Court also maintained the effects of Decision (EU) 2020/470 until the grounds for annulment established have been remedied.

(5) On 28.11.2022, the Council adopted Decision (EU) 2022/2335 amending Decision (EU) 2015/2169[10] in conformity with that judgement.

(6) In order to remove any doubt as to the commitment of the Union regarding the extension of the period of the entitlement for a duration of three years, from 1 July 2020 to 30 June 2023, and thus to ensure the proper implementation of the Protocol, a new decision should be adopted on the basis of Article 3(1) of Council Decision (EU) 2015/2169, as amended by Council Decision (EU) 2022/2335, and apply as of 1 July 2020, in conformity with that judgement,

HAS ADOPTED THIS DECISION:

Article 1

The period of entitlement for audiovisual 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(4) to (7) of the Protocol on Cultural Cooperation annexed 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, shall be extended for a duration of three years, from 1 July 2020 to 30 June 2023.

Article 2

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

It shall apply from 1 July 2020.

Done at Brussels,

For the Council
The President

[10] OJ L 307, 25.11.2015, p. 2.