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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE**

**On the implementation of Council Decision 1999/784/EC of 22 November 1999
concerning Community participation in the European Audiovisual Observatory**

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FOREWORD

1. This report refers to the implementation of Council Decision 1999/784/EC¹ concerning Community participation in the European Audiovisual Observatory. It is an intermediate report, describing the bilateral relations between the Commission and the Observatory and illustrates the main activities carried out by the latter since the Council Decision's adoption
2. Chapter II recalls the reasons for the Community participation in the Observatory and the issue of Eurostat's concomitant development of a statistical information infrastructure.
3. Chapter III of the report summarises the main features of the Observatory, recalls the main legal acts necessary for finalisation of Community membership, and provides a financial report for this Community membership.
4. Chapter IV gives an overview of the overall activity of the Observatory since end 1999 till mid 2002. The two main areas covering market/financial and legal issues are examined.
5. Chapter V analyses the dissemination of information collected and analysed by the Observatory among the main professional categories.
6. Chapter VI provides an overall assessment of Community participation with respect to the objectives pointed out in 1999 and the implementation of bilateral relations Commission - Observatory.

¹ OJ L 307, 2.12.1999, p. 61

I. INTRODUCTION

This report refers to the implementation of Council Decision 1999/784/EC² concerning Community participation in the European Audiovisual Observatory. It is an intermediate report covering both Commission's activities concerning institutional bilateral relations with the Observatory and the latter's main actions effected in respect of industry and public authorities' professional requirements since the adoption of the Council Decision.

II. COMMUNITY PARTICIPATION

The Council of Europe, by Resolution (92) 70 of its Committee of Ministers adopted on 15 December 1992, established the Observatory for an initial period of three years as a Partial Agreement of the Council of Europe. By Resolution (97) 4 of 20 March 1997, the Committee of Ministers confirmed the continuation of the Observatory for an indefinite period.

The legal basis for Community participation in the Observatory is article 157 (3) of the Treaty (ex article 130). This article of the Treaty refers to Community activity with respect to the industrial economic sector.

In accordance with the aim of its legal base, the Community's decision to fully participate in the Observatory is instrumental in providing the European audiovisual economic sector with much needed, detailed, information in areas such as marketing, finance, legal acts and jurisprudence.

The Observatory's activities have proved highly effective in dealing promptly with such information and its dissemination to public comprising operators, and notably small and medium sized enterprises.

Moreover, the Observatory's work represents an important asset for EU industry since it covers a large number of countries, including the candidate countries, as well as EEA and most other European states.

The wide scope of the information made available by the Observatory and its capacity to provide 'customised' researches, is not only essential for the industry but has also proved important for the policymakers, both at national and Community levels.

The Observatory is not the only source of statistical information on the audiovisual sector. Since 1999, Eurostat has been developing a statistical structure mainly devoted to implementing a comprehensive approach capable of delivering, at EU level, a number of harmonised statistical series useful for the development of policies and monitoring their impact, for carrying out international negotiations and for monitoring the development of "non-core" audiovisual sectors.

Observatory and Eurostat experts have regular co-ordination meetings twice a year, in order to avoid the duplication of work in the areas that fall within the remits of both institutions, notably market statistics. In addition the Observatory attends the meetings of Eurostat's Working Group on Audiovisual Statistics, and Eurostat attends the Observatory's Advisory Committee of Professional Organisations.

² OJ L 307, 2.12.1999, p. 61

As a result, Eurostat has tended to focus on developing areas where official statistics have particular strengths (such as statistics from large scale harmonised enterprises, household and work-force surveys, Balance of Payments, etc.), whilst the Observatory has done important work at the more detailed level needed by the firms in the industry (such as cinema admissions by individual film, details of the leading enterprises using published information, etc.). Moreover, the Observatory's activities have developed in a specific way to cover areas beyond the collection of statistics, as they include also collection and distribution of legal information and the delivery of information of professional interest.

III. IMPLEMENTATION OF THE COUNCIL DECISION

Article 1 of the Council Decision establishes that the Community shall be a member of the European Audiovisual Observatory, a Partial Agreement of the Council of Europe. Article 2 of the Decision establishes that the Commission shall represent the Community in its relations with the Observatory. Article 5 establishes that the Community participation will last until the end of 2004.

3.1. The formalisation of the participation

The Commission has taken part in the activity of the Observatory since its foundation and has been represented in its constituent bodies. It has always contributed to the financing of the Observatory at the same level as the largest participant countries.

At the beginning of 2000, the Commission opened negotiations with the Council of Europe and the Observatory in order to implement the Council Decision. The main points under discussion concerned the participation of the Community in the Observatory without being at the same time a member of Audiovisual Eureka, as was the case for other countries and, inter alia, to accommodate certain specific financial requirements of the Commission concerning, notably, the destination of unused funds and obligations in case of late withdrawal from the Observatory.

The Council of Europe Committee of Ministers adopted Resolution (2000) 7 on 21 September 2000 providing for amended Statute and Financial Regulation of the Observatory, revised according to the mentioned Commission requirements.

Further to the Council of Europe's Resolution, the Commission, by Decision C(2000)3308³, authorised Madame Viviane Reding, as member of the Commission in charge of audiovisual policy, to formalise Community participation in the European Audiovisual Observatory as an Agreement, in the form of an Exchange of Letters with the Secretary General of the Council of Europe. The Exchange of Letters was formalised on 16 and 22 November 2000.

A specific document called the Memorandum of Understanding (MoU) was attached to the Exchange of Letters. It is designed to establish certain specific terms of the yearly Commission commitments linked to Community participation in the Observatory. This document is updated and underwritten every year by the Commission and the Observatory.

³ Decision C(2000)3308 was not published

3.2. Community financial contributions

The Financial Statement attached to the proposal for the Council Decision indicates a total forecast for commitment and payment appropriations of 1,325,000 € over a six-year period.

As aforementioned, Community participation in the Observatory was only formalised in November 2000, about a year after the adoption of the Council Decision. In order to avoid discontinuing co-operation with the Observatory in 1999, the Commission, while awaiting the conclusion of the negotiations formalising membership in the Observatory, stipulated on 31st January 2000 a Grant Agreement with the Observatory for a total amount equal to the theoretical statutory contribution and not exceeding the sum indicated for 1999 in the Financial Statement annexed to the proposal for the Council Decision.

The provisions of such a Grant Agreement were in line with the provisions of the Commission's financial Regulation concerning grants. In particular, the amount to be paid to the Observatory was calculated as a percentage of the total actual costs incurred by the Observatory in the year of reference (1999). Such a scheme differs from the features of the Memorandum of Understanding, insofar as under the MoU the amount of the yearly financial contribution is not directly linked to actual costs incurred the same year, but is fixed, with the excess payment being deducted from the contribution of the second following year.

The application in 1999 of the financial mechanism of the Grant Agreement permitted the payment of a contribution that was 8,528 € short of the foreseen maximum amount. The Observatory has since requested the Commission pay this amount considered as a due contribution. The Commission has always contested this assessment arguing constantly that it has fulfilled all its financial obligations. At present the issue has not been settled, and the Executive Council of the Observatory recently decided to form a panel of experts to provide adequate proposals for a solution to this claim. It is necessary to recall that the same panel is required to provide proposals for another claim of the Observatory for contributions dating back to 1993. The Commission also considers that no obligation towards the Observatory exists in this case. It notes that the constitution of a panel of experts is an initiative of the Observatory that cannot result in conclusions binding on the Commission.

Commitments and payments in the years 1999 to 2002 were consistently lower than the amounts foreseen in the Commission proposal for the Council Decision. The Community's share of financing has also been consistently lower than what was indicated by the Commission.

	1999	2000	2001	2002
Foreseen commitment/payment	200,000 €	215,000 €	220,000 €	225,000 €
Actual commitment	198,184 €	200,000 €	219,945 €	219,822 €
Actual payments	189,656 €	200,000 €	219,945 €	219,822 €
Foreseen maximum participation %	12.25 %	12.25 %	12.25 %	12.25 %
Actual participation %	9.68 %	10.04 %	10.89 %	9.64 %

IV. OBSERVATORY'S ACTIVITY

According to Observatory's Statute, *"the aim of the European Audiovisual Observatory shall be to improve the transfer of information within the audiovisual industry, to promote a clearer view of the market and a greater transparency. In doing so, the Observatory shall pay particular attention to ensuring reliability, compatibility and comparability of information"*.

In order to fulfil its remit, the Observatory has developed its activity along two main axes: publication of yearly statistics concerning the market of the audiovisual sector and certain financial topics; publication of a periodical legal newsletter. Moreover, a number of publications have been released on several occasions.

4.1. Market and financial area

The objective of the Observatory's activity in the area of market and financing is to collect and to make available the information and data necessary for professionals to be able to understand the main development of the various branches of the European audiovisual markets (film, television, video, multimedia). Such information is useful for market analysts and provides guidance to enterprises, notably, SMEs, when preparing their business plans and project financing.

The overall financial resources available to the whole audiovisual industry (with detailed analysis of public financing and of consumer expenditure), the quantitative analysis of production and distribution of cinema and other audiovisual works, consumer behaviour (audience, purchase of audiovisual equipment and programmes, cinema-attendance,...), and exchanges between Europe and other regions of the world are the main subjects of Observatory analysis.

The strategy for data collection is based on a wide network of partners and information suppliers and includes also a qualitative dimension of market "intelligence". The Observatory has continued its strategy of collaboration with thematic pan-European information providers such as professional organisations, private companies managing international networks or academic bodies with networks of correspondents. When necessary, the Observatory has taken the lead in shaping networks of national sources such as the LUMIERE and the KORDA networks for information related to the film industry. Collaboration with European and national administrations that are members of the Executive Council of the Observatory provides also complementary information from various national sources. Moreover, the Observatory works in close co-operation with the professional organisation represented in its Advisory Committee.

The *Yearbook* is the Observatory's main publication. In 2002 it reached its eighth edition, comprising five volumes that will be published at different dates throughout the year. Moreover, an on-line version makes most of the information published in the "Yearbook" easily accessible for those operators needing a rapid access to information and a flexible electronic format.

A second yearly publication is "FOCUS, Trends of the Film World Market". It has been published since 1997 in collaboration with the Cannes Film Market and widely distributed to the participants during this event.

The *EUROFICTION* report is the third yearly publication of the Observatory. Its seventh edition will be published in autumn 2002. *EUROFICTION* is almost unique providing data

and trend analysis on the national TV fiction produced in the 5 major European countries (France, Germany, Italy, Spain, and the United Kingdom). Every year the report also puts forward monographs on two other European countries.

In addition to the cited publications released on a regular basis, the Observatory also publishes a wide range of reports and studies. A summary of such works for the years 1999 to 2002 is contained in annex 1.

The Observatory has developed two specialised databases, *LUMIERE* on admissions for films released in Europe and *KORDA* on the national and regional public funding schemes made available to the film and audiovisual industry in Europe. These two databases provide the Observatory with a new tool to elaborate new added-value analysis and to effectively disseminate information among professionals and the public.

Since 2000, the Observatory has also dedicated efforts to the adaptation and extension of the database *AMADEUS* (originally published by external consultant), listing the financial records of around 5 million companies in Europe, 25 000 of which are active in the audiovisual sector. The Observatory is now able to provide in-depth financial analysis of the various branches of the industry in most of the Member States.

4.2. Legal area

In order to serve the audiovisual industry with comprehensive information and comments, the Observatory has built up a wide network of legal correspondents with proven experience in specific areas. This network has a pivotal role in carrying out numerous projects by providing basic contributions that are later combined, structured and edited by the Observatory. Observatory's work is disseminated in the form of print and online publications/services and also through workshops, seminars, presentations, and in answer to specific information requests. Addressees include industry representatives (among others from professional associations, small and medium sized businesses), law firms, governmental bodies, EU institutions, regulatory authorities, administrative entities, parliamentarians (both national and European), research institutions, etc.

The *IRIS* newsletter is the Observatory's publication for legal information concerning broadcasting, film, new media/technologies, and related fields of law. It contains regular reports on international and Community issues, as well as on developments in each individual European country. It also covers some major non-European markets. Since 1999, the *IRIS* readership has been kept informed about the most relevant topical developments through 10 periodical issues per year (6 issues up to mid 2002) containing approximately 850 articles. *IRIS* is also available online.

Since January 2001, every second month *IRIS* is completed by an issue of *IRIS Plus*, a comparative and context-orientated legal overview on selected topics of particular importance. In addition, the *IRIS* newsletter includes three updates (each year in May) of the "State of Signatures and Ratifications of relevant European Conventions and other International Treaties" and (in March 2001) one overview table on national regulation of "Events of major importance to society".

Furthermore, the constant monitoring of important developments throughout Europe has resulted in the development of a comprehensive legal database. This database, which bears the working title of *IRIS Merlin*, will be offered online to the public for researching the collection

of IRIS articles and the register of related documents. The project is well advanced and it is expected to be available to the public by the end of this year.

In addition to the systematic monthly update via the *IRIS* newsletter, the legal information department of the Observatory has undertaken numerous projects on selected topics (annex 2). Two in-depth researches deserve particular attention, “Television and Media Concentration – Regulatory Models on the National and the European Level” and “Jurisdiction over Broadcasters in Europe”. Both researches are published under the *IRIS Special* series,

V. DISSEMINATION OF THE OBSERVATORY'S WORK.

It is common opinion throughout the industry that in the recent years the Observatory has significantly improved its effectiveness as a provider of comprehensive information in many areas of the audiovisual industry. This result has been achieved thanks to a consistent policy of dissemination that, in line with the source of financing, does not privilege commercial sales but largely relies on free-of-charge deliveries. The 2001 reorganisation of the Observatory's Web site (www.obs.coe.int), which also provides links towards the sites of selected sources of thematic information, contributed to its established communication and dissemination policy.

Finally, the Observatory replies on a regular basis to requests for information arising very often from small and medium sized business, but also from professional associations, research institutions, regulatory authorities, members of the Executive Council and the Advisory Committee of the Observatory, and parliamentarians (both national and European).

Observatory works are generally published in English, French and German.

5.1. Market and financial area

The several publications of the Observatory in this area have different dissemination volumes.

The statistical *Yearbook* sales are generally around the level of 700- 800 copies while more than 1000 copies are delivered free-of-charge to the members of the statutory bodies of the Observatory (Executive Council, Advisory Committee, etc.), its network of professional partners, as well as to bodies such as national libraries and MEDIA desks. In 2001, sales of the *Yearbook* declined due to its late release which, in turn, was linked to the availability of some essential data. In order to remedy such unsatisfactory tendencies, starting from 2002 the *Yearbook* has been split into five thematic publications to be released at different times as soon as essential statistical data become available.

The *Yearbook Premium Service* has between 50 and 100 commercial clients, mainly consultants and development departments of broadcasting companies.

FOCUS. The World Film Market is distributed freely to 10 000 readers, including 7 500 clients of the Cannes Film Market.

The *EUROFICTION* study has a more targeted public (20 to 30 copies sold every year) and is distributed free to around 250 members of the Observatory network.

5.2. Legal area

The sales of the several *IRIS* publications rely mainly on external distributors absorbing stocks of about 800 copies. Direct sales by the Observatory are quite modest: less than hundred subscriptions. The Observatory is actually pursuing a policy of free-of-charge dissemination, mainly on the occasion of conferences and festivals. On a regular basis, the *IRIS* newsletter is distributed to public institutions and policymakers.

The dissemination of *IRIS* special issues is carried out directly by the Observatory. *IRIS Focus* on Copyright Law in the Digital Age received a large (almost 800 copies) free-of-charge distribution in addition to more than a hundred commercial sales since 2000. The report is also freely available on the Observatory's web site.

More than 500 free copies have been distributed for each of the two *IRIS Specials* published in 2001 and spring 2002 on "Media Concentration" and on "Jurisdiction over Broadcasters", respectively. The first work was also sold to over hundred commercial customers.

Articles published under the label *IRIS plus* are distributed free-of-charge at special events and effectively helped to increase the public knowledge of this family of publications.

5.3. Internet

Almost all works and publications released by the Observatory are also available free-of-charge or on a commercial basis on the Web sites of the Observatory, the main site of which records constant public success. According to recent statistics, monthly "hits" are generally above the 11,000 threshold.

More recently, in order to give the largest possible public access to the information services of the Observatory, two specific Web sites covering marketing and financial issues have been opened in addition to the main Observatory site. While the specific "Lumiere" site devoted to film admissions statistics is around the level of 4,000 "visits" per month, the latest "Korda" site concerning financial statistics is heading towards the 800 "visits" level.

Analysis of Internet contacts show that a large spectrum of users from many countries has regularly access to the Observatory site. Some of them have entered the site from the audiovisual policy site of the European Commission, where a specific link is available.

5.4. Other dissemination activities and conferences

The Observatory considers it important for the dissemination of the results of its activity to participate actively in conferences and workshops. It also promotes and organises some professional events in co-operation with its partner institutions. In many cases specific reports are prepared by the Observatory and distributed to the participants of the events as background documents for discussion.

Moreover, the Observatory publishes around 10 press releases every year. These documents are commonly utilised by professionals and policy-makers, and in many cases are largely covered by the international press.

Annex 3. Contains a short summary of the events organised with the participation of the Observatory.

VI. CONCLUSIONS

Beyond the nature of a formal participation in a multilateral international organisation - at present, 35 countries and the European Community are full members of the Observatory, the Council of Europe and Audiovisual Eureka have observers status - the Commission and the Observatory have developed a sound professional partnership benefiting both the industry, who receive a flow of timely information enhancing transparency, and the public authorities, who can launch profitable discussions with the industry representative built on clearer views of the market.

Such results have been achieved thanks to the continuing development of a well-structured and efficient network of sources allowing the Observatory to work in close collaboration with the most competent sources of information in the various branches of the industry.

The Observatory represents a model of integration between the activities of public bodies and the private sector from several countries, which is able to provide valuable results for a large spectrum of users at reasonable cost in terms of amount financial contributions - for the participants bodies - and access to information for the industry.

Annex 1. Main Observatory reports concerning market and financing issues

"Public Aid Mechanisms for the Film and the Audiovisual Industry in Europe"; volume I: "Comparative Analysis of National Aid Mechanisms"; volume II: national monographs. This report, co-edited in 1999 by the Observatory with the French CNC, provided a complete view of public support systems in the European Union.

"Developments of digital television in the European Union". A report prepared in 1999 by the Observatory for a conference organised by the Finnish Presidency of the European Union.

"Radio and Television Systems in Europe 2000/2001". This work, an English and French translation of an original publication in German edited by the Hans-Bredow-Institut illustrate the audiovisual landscape in 33 European countries

"European Films on European Televisions". This report, prepared in collaboration with Médiamétrie and ETS in 2000, provided detailed information on the number and origin of films broadcast by the main unencrypted TV channels in Europe, as well as the rating of a sample of successful film broadcast by European TV channels.

"Economy of European TV Fiction - Market Value and Producers / Broadcasters Relations". This report, was co-financed and published by the Observatory in 2000, was realised by INA in collaboration with the Eurofiction teams and co-financed by the French CNC. This work is based on an original methodology and provides for the first time an evaluation of the economic value of TV production in Europe. An up-date of this report is currently under preparation by INA (with co-financing by the Observatory and the French CNC and DDMA).

"The Film Industry in the Russian Federation" and "The Video industry in the Russian Federation", were published in 2001. These two reports were commissioned by the Observatory from two Russian recognised consultants.

"Distribution of Third Country Films in the European Union (1996-2002)". A report prepared for the conference "The Film and Television Sector in the European Union and Third Countries" organised by the Spanish Presidency of the European Union (Madrid, 18-19 April 2002).

Various national reports on the film industry, provided by national administrations or experts have been published on the Observatory's Web site. Countries covered include Belgium, Czech Republic, Estonia, Germany, Iceland, Italy, Russian Federation, Portugal, Spain, and the United Kingdom.

A study concerning the impact of digital technologies on the distribution of films is under preparation.

Annex 2. Main Observatory reports concerning legal issues

Topic: Jurisdiction over Broadcasters in Europe (TVwF Directive, CoE Convention)

IRIS Special, published in March 2002 based on November workshop with IViR and EPRA covering: description of legal issues and existing case law.

Topic: Television and Media Concentration

IRIS Special, published in February 2001 covering: the regulatory models chosen by DE, GB, ES, IT, FR; the framework set by the European Union (through legislation and case law); US regulation; the situation in the Federation of Russia.

Topic: Convergence

In 2001, the *IRIS plus series* put a particular emphasis on issue of convergence thereby pursuing two main aspects: Applicability of regulation of traditional media (in particular broadcasting) to new media; suitability of the current organisational structure of, and power distribution among, regulatory authorities and other controlling bodies (e.g. under competition law) for converging media.

Two workshops were conducted to gather information and ideas for a total of four *IRIS plus* publications on the convergence issue (*IRIS plus* 2001-6, *IRIS plus* 2001-8, *IRIS plus* 2001-10, *IRIS plus* 2002-2)

Topic: Conditional Access

IRIS plus 2001-2 on non-discriminatory Access to Digital Access Control Services

Topic: Copyright Issues related to Electronic Distribution

IRIS Focus series (2000) presents four articles discussing: WIPO legal instruments and the European Copyright Directives; case law from different countries on who owns electronic rights; contractual and legal framework for electronic rights on the national level; various schemes for Internet distribution of audiovisual works (MP3, Napster, Scour, Gnutella).

In addition *IRIS plus* 2002-4 focused on problems related to “Movies online” (i.e., the distribution of films over the Internet)

Topic: Self-Regulation

IRIS plus 2002-6 on Co-regulation of the Media in Europe; workshop on 6 and 7 September 2002 on this issue, hosted by the European University Institute and co-organised with IViR and the EMR.

Topic: Film Making and Funding

Making and Distributing Films in Europe: The Problem of Nationality. Countries covered: Belgium, Germany, Spain, France, Italy, Netherlands, Norway, United Kingdom and on the European Level (online publication January 2000); *IRIS plus* 2001-4 on National Film Production Aid: Legislative Characteristics and Trends (on DE, FR, IT, ES, UK and some EU background)

Topic: Public Service Broadcasting

IRIS Focus 2000-6 on The Financing of Public Service Broadcasting in Selected Central and Eastern European States (BG, SK, CZ, PO, HU); research contribution for a study carried out by the Hans Bredow Institut and results published in "Der schweizerische Öffentliche Rundfunk im Netzwerk" (IPMZ Zürich 2001) and in "Der öffentliche Rundfunk im Netzwerk von Politik, Wirtschaft und Gesellschaft" (NOMOS Baden-Baden/Hamburg 2001)

Topic: Advertisement

Regulation on Advertising Aimed at Children in EU-Member States and some Neighbouring States (May 2000); the insertion of short advertisement spots during football matches (May 2002)

Topic: National Reports

Turkey: Law Relevant to the Audiovisual Sector (online publication July 2001); Russian Federation: The Russian System of Licensing of Television and Radio Broadcasting (online publication July 2001)

Mid 2002 a number of projects were under preparation including the *IRIS Merlin* database and a collection of hyperlinks to legal sources. The first is a comprehensive collection of IRIS articles, and related source references, made available to the public via Internet as a tool to carry out researches in the legal area. The latter is an organised listing of links towards sources in the legal area providing access to legislative and policy documents.

Annex 3. Workshops organised by the Observatory

Market and financial areas

"Film Information and Statistics" held within the framework of the conference "Audiovisual Policies and their Implementation in the European Union and in Turkey" organised by the Turkish Ministry of Culture (Eskisehir, 4 April 2001)

"Case studies of success in European film distribution" (organised in the framework of the European Film Forum (Strasbourg, 8-13 November 2001).

"The Film and Video industry in the Russian Federation and their relations with other European countries" (organised in the framework of the International Moscow Film Festival) (Moscow, 26 June 2002)

Legal information domain

"How to distinguish between broadcasting and new media services - Broadcasters' access to new Media markets" (Amsterdam, 16 June 2001)

"Media Supervision on the threshold of the 21st century – Structure and powers of regulatory authorities in the era of convergence" (Saarbrücken, 6 November 2001)

"Jurisdiction over Broadcasters in Europe" (Amsterdam, 24 November 2001)

"Workshop on co-regulation of the Media in Europe" (Florence, 6-7 September 2002)