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INFORMATION MEMO

PROPOSAL FOR A SECOND DIRECTIVE
CONCERNING CINEMATOGRAPHY

Under the General Programmes for the removal of restrictions on freedom of establishment and freedom to supply services, the Commission has laid before the Council a proposal for a second directive concerning the film industry.

Drafting was facilitated by the Council's approval on 15 October 1963 of the first directive, which gave a definition of the nationality of films, and this is again used in the new directive.

The General Programme for the removal of restrictions on freedom to supply services specifies for the film industry a single deadline before which all restrictions on the free movement of services must be withdrawn - "by the end of the transitional period". This time-limit takes into account the complexity of film problems due to disparities between regulations governing the markets, to state subsidies, to political and cultural repercussions on cinema and to the requirements of public policy. All this is aggravated by the difficulties currently besetting the film industry, mainly owing to competition from television.

As well as removing restrictions on freedom of establishment for the opening of cinemas specializing in the exclusive screening of foreign films in the language of the country of origin, the directive will lift restrictions on the importation, screening and dubbing of films.

The elimination of all these restrictions will remedy the effects of certain national regulations which in practice make films from other Member States subject to rules and regulations even less favourable than those applying to films from non-member countries.

The new regulations proposed in the second directive are of considerable importance and make a decisive step towards the creation of a common film market.

The main points are as follows:

Article 1 determines the natural and legal persons who are beneficiaries of the directive. These are individuals having

the nationality of one of the Member States and companies incorporated in a Member State having their registered office, central management or principal place of business within the Community.

Article 1 then states the purpose of the directive:

- a) The removal of restrictions on the opening of cinemas specializing in the exclusive screening of foreign films in the language of the country of origin;
- b) The abolition of import quotas and exhibition quotas;
- c) The abolition of restrictions on the dubbing of films.

The directive makes frequent reference to films having the nationality "of one or more Member States". To avoid repeating the definition of nationality every time such reference is made, Article 2 establishes once and for all what is meant by a "film having the nationality of one or more Member States" by referring to Articles 3 and 4 of the first directive concerning cinematography, which was adopted by the Council at its session of 15 October 1963.

Article 3 defines "cinemas specializing in the exclusive screening of films in the language of the country of origin"; it includes a safeguard clause by virtue of which a Member State may apply to the Council, which must give a ruling within three months, for permission to set limits to the screening of foreign films in the language of the country of origin when this language is the same as that of the territory in which the specialized cinema is established.

The reason for this clause is obvious: where the same language is spoken in the country where the film was made and the country where the special cinema is situated, there is in fact no distinction between special cinemas and ordinary cinemas, since the language used is precisely what distinguishes one category from the other.

This clause has been introduced mainly to forestall any disequilibria arising in existing cinema circuits, particularly in Belgium and in a number of frontier areas.

Article 4 implements Article 54(3, h) of the Treaty, which is also referred to in Title VII of the General Programme for the removal of restrictions on freedom of establishment:

"It is intended that ... any aid granted by Member States liable to distort the conditions governing establishment shall be abolished not later than at the time of lifting the restrictions on freedom of establishment ..."

.../...

In order to facilitate the implementation of the directive, Article 4 gives a list of the commonest types of aid. It is obvious that there is no limit to the number of kinds of aid, and this list is not meant to be complete.

Article 5 solves the delicate problem of exhibition quotas by bringing films which Article 3 of the first directive defines as films having the nationality of one or more Member States within these quotas on the same terms as national films or the most favoured films.

Article 6 abolishes import quotas (which exist at present between Germany and France and between Germany and Italy) and provides certain safeguards for the German market in view of the special circumstances affecting the film industry in this country at the present time.

Article 7 abolishes restrictions which require that the dubbing of imported films should be done in the importing country.

This obligation had been imposed by certain countries for cultural reasons so as to protect the purity of their language and national habits of speech in general. But it was also very advantageous to companies engaging in the process, since it was they who had sole rights to the dubbing of all films screened on the national territory. Now that arrangements have been made for paid and self-employed workers to move about freely in the Community, artistic requirements can easily be satisfied since the exporting countries can have the dubbing of films done by technicians from the importing countries, so that it will be quite satisfactory from the linguistic and cultural points of view.

Considerations of national economic interest had to be set aside, since they ran counter to the fundamental principles of the Treaty on the free movement of persons, services and capital.