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Council of the European Union
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**TEXTS CONCERNING
CULTURE
AT EUROPEAN UNION LEVEL**

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**Council Regulation (EEC) No 3911/92
of 9 December 1992
on the export of cultural goods**

(OJ No L 395, 31.12.1992)

COUNCIL REGULATION (EEC) No 3911/92

of 9 December 1992

on the export of cultural goods

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas, in view of the completion of the internal market, rules on trade with third countries are needed for the protection of cultural goods;

Whereas, in the light of the conclusions of the Council meeting on 19 November 1990; it seems necessary to take measures in particular to ensure that exports of cultural goods are subject to uniform controls at the Community's external borders;

Whereas such a system should require the presentation of a licence issued by the competent Member State prior to the export of cultural goods covered by this Regulation; whereas this necessitates a clear definition of the scope of such measures and the procedures for their implementation; whereas the implementation of the system should be as simple and efficient as possible; whereas a Committee should be set up to assist the Commission in carrying out the responsibilities conferred on it by this Regulation;

Whereas, in view of the considerable experience of the Member States' authorities in the application of Council Regulation (EEC) No 1468/81 of 19 May 1981 on mutual assistance between the administrative authorities

of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs or agricultural matters ⁽⁴⁾, the said Regulation should be applied to this matter;

Whereas the Annex to this Regulation is aimed at making clear the categories of cultural goods which should be given particular protection in trade with third countries, but is not intended to prejudice the definition, by Member States, of national treasures within the meaning of Article 36 of the Treaty,

HAS ADOPTED THIS REGULATION:

Article 1

Without prejudice to Member States' powers under Article 36 of the Treaty, the term 'cultural goods' shall refer, for the purposes of this Regulation, to the items listed in the Annex.

TITLE 1

Export licence

Article 2

1. The export of cultural goods outside the customs territory of the Community shall be subject to the presentation of an export licence.

2. The export licence shall be issued at the request of the person concerned:

— by a competent authority of the Member State in whose territory the cultural object in question was lawfully and definitively located on 1 January 1993,

⁽¹⁾ OJ No C 53, 28. 2. 1992, p. 8.

⁽²⁾ OJ No C 176, 13. 7. 1992, p. 31.

⁽³⁾ OJ No C 223, 31. 8. 1992, p. 10.

⁽⁴⁾ OJ No L 144, 2. 6. 1981, p. 1. Regulation as amended by Regulation (EEC) No 945/87 (OJ No L 90, 2. 4. 1987, p. 3).

— or, thereafter, by a competent authority of the Member State in whose territory it is located following either lawful and definitive dispatch from another Member State, or importation from a third country, or reimportation from a third country after lawful dispatch from a Member State to that country.

However, without prejudice to paragraph 4, the Member State which is competent in accordance with the two indents in the first subparagraph may not require export licences for the cultural goods specified in the first and second indents of category A1 of the Annex where they are of limited archaeological or scientific interest, and provided that they are not the direct product of excavations, finds and archaeological sites within a Member State, and that their presence on the market is lawful.

The export licence may be refused, for the purposes of this Regulation, where the cultural goods in question are covered by legislation protecting national treasures of artistic, historical or archaeological value in the Member State concerned.

Where necessary, the authority referred to in the second indent of the first subparagraph shall enter into contact with the competent authorities of the Member State from which the cultural object in question came, and in particular the competent authorities within the meaning of Council Directive 93/.../EEC of ... on the return of cultural objects unlawfully removed from the territory of a Member State⁽¹⁾.

3. The export licence shall be valid throughout the Community.

4. Without prejudice to the provisions of this Article, direct export from the customs territory of the Community of national treasures having artistic, historic or archaeological value which are not cultural goods within the meaning of this Regulation is subject to the national law of the Member State of export.

Article 3

1. Member States shall furnish the Commission with a list of the authorities empowered to issue export licences for cultural goods.

2. The Commission shall publish a list of these authorities and any amendment to that list in the 'C' series of the *Official Journal of the European Communities*.

⁽¹⁾ Not yet adopted at the time of this publication; in accordance with Article 11 below, the present Regulation will enter into force on the third day following that of publication of the Directive in the *Official Journal of the European Communities*.

Article 4

The export licence shall be presented, in support of the export declaration, when the customs export formalities are carried out, at the customs office which is competent to accept that declaration.

Article 5

1. Member States may restrict the number of customs offices empowered to handle formalities for the export of cultural goods.

2. Member States availing themselves of the option afforded by paragraph 1 shall inform the Commission of the customs offices duly empowered.

The Commission shall publish this information in the 'C' series of the *Official Journal of the European Communities*.

TITLE 2

Administrative cooperation

Article 6

For the purposes of implementing this Regulation, the provisions of Regulation (EEC) No 1468/81, and in particular the provisions on the confidentiality of information, shall apply *mutatis mutandis*.

In addition to the cooperation provided for under the first subparagraph, Member States shall take all necessary steps to establish, in the context of their mutual relations, cooperation between the customs authorities and the competent authorities referred to in Article 4 of Directive 93/.../EEC⁽²⁾.

TITLE 3

General and final provisions

Article 7

The provisions necessary for the implementation of this Regulation, in particular those concerning the form to be used (for example, the model and technical properties) shall be adopted in accordance with the procedure laid down in Article 8 (2).

Article 8

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

⁽²⁾ See footnote to Article 2 (2).

The committee shall examine any matter concerning the implementation of this Regulation raised by its chairman either on his own initiative or at the request of a representative of a Member State.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 9

Each Member State shall determine the penalties to be applied for infringement of the provisions of this Regulation. The penalties shall be sufficient to promote compliance with those provisions.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9 December 1992.

Article 10

Each Member State shall inform the Commission of the measures taken pursuant to this Regulation.

The Commission shall pass on this information to the other Member States.

Every three years the Commission shall present a report to the European Parliament, the Council and the Economic and Social Committee on the implementation of this Regulation.

The Council shall review the effectiveness of the Regulation after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.

In any event, the Council, acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex, on the basis of economic and monetary indicators in the Community.

Article 11

This Regulation shall enter into force on the third day following that of publication in the *Official Journal of the European Communities* of Directive 93/.../EEC⁽¹⁾.

For the Council
The President
W. WALDEGRAVE

⁽¹⁾ The Directive on the return of cultural objects unlawfully removed from the territory of a Member State, already referred to in Articles 2 (2) and 6, has not yet been adopted at the time of this publication.

ANNEX

CATEGORIES OF CULTURAL OBJECTS COVERED BY ARTICLE 1

| | |
|--|--|
| A. 1. Archaeological objects more than 100 years old which are the products of: | |
| — excavations and finds on land or under water | 9705 00 00 |
| — archaeological sites | 9706 00 00 |
| — archaeological collections | |
| 2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, of an age exceeding 100 years | 9705 00 00 9706 00 00 |
| 3. Pictures and paintings executed entirely by hand, on any medium and in any material ⁽¹⁾ | 9701 |
| 4. Mosaics other than those in categories 1 or 2 and drawings executed entirely by hand, on any medium and in any material ⁽¹⁾ | 6914 9701 |
| 5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters ⁽¹⁾ | Chapter 49 9702 00 00 8442 50 99 |
| 6. Original sculptures or statuary and copies produced by the same process as the original ⁽¹⁾ , other than those in category 1 | 9703 00 00 |
| 7. Photographs, films and negatives thereof ⁽¹⁾ | 3704 3705 3706 4911 91 80 |
| 8. Incunabula and manuscripts, including maps and musical scores, singly or in collections ⁽¹⁾ | 9702 00 00 9706 00 00 4901 10 00 4901 99 00 4904 00 00 4905 91 00 4905 99 00 4906 00 00 |
| 9. Books more than 100 years old, singly or in collections | 9705 00 00 9706 00 00 |
| 10. Printed maps more than 200 years old | 9706 00 00 |
| 11. Archives, and any elements thereof, of any kind or any medium which are more than 50 years old | 3704 3705 3706 4901 4906 9705 00 00 9706 00 00 |
| 12. (a) Collections ⁽²⁾ and specimens from zoological, botanical, mineralogical or anatomical collections; | 9705 00 00 |
| (b) Collections ⁽²⁾ of historical, palaeontological, ethnographic or numismatic interest | 9705 00 00 |
| 13. Means of transport more than 75 years old | 9705 00 00 Chapters 86—89 |

⁽¹⁾ Which are more than 50 years old and do not belong to their originators.

⁽²⁾ As defined by the Court of Justice in its judgment in Case 252/84, as follows: 'Collectors' pieces within the meaning of heading No 97.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.'

14. Any other antique items not included in categories A.1 to A.13

(a) between 50 and 100 years old:

| | |
|--|------------|
| — toys, games | Chapter 95 |
| — glassware | 7013 |
| — articles of goldsmiths' or silversmiths' wares | 7114 |
| — furniture | Chapter 94 |
| — optical, photographic or cinematographic apparatus | Chapter 90 |
| — musical instruments | Chapter 92 |
| — clocks and watches and parts thereof | Chapter 91 |
| — articles of wood | Chapter 44 |
| — pottery | Chapter 69 |
| — tapestries | 5805 00 00 |
| — carpets | Chapter 57 |
| — wallpaper | 4814 |
| — arms | Chapter 93 |

(b) more than 100 years old 9706 00 00

The cultural objects in categories A.1 to A.14 are covered by this Regulation only if their value corresponds to, or exceeds, the financial thresholds under B.

B. Financial thresholds applicable to certain categories under A (in ecus)

Value: 0 (Zero)

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 8 (Incunabula and manuscripts)
- 11 (Archives)

15 000

- 4 (Mosaics and drawings)
- 5 (Engravings)
- 7 (Photographs)
- 10 (Printed maps)

50 000

- 6 (Statuary)
- 9 (Books)
- 12 (Collections)
- 13 (Means of transport)
- 14 (Any other object)

150 000

- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when an application for an export licence is submitted. The financial value is that of the cultural object in the Member State referred to in Article 2 (2) of the Regulation.

The date for the conversion of values expressed in ecus in the Annex into national currencies shall be 1 January 1993.

**Information concerning the entry into force
of Council Regulation (EEC) No 3911/92
of 9 December 1992
on the export of cultural goods**

(OJ No L 74, 27.3.1993)

**Information concerning the entry into force of Council Regulation (EEC) No 3911/92
of 9 December 1992 on the export of cultural goods⁽¹⁾**

The reference to the Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State in Articles 2 (2), 6 and 11 of the abovementioned Regulation should read as follows : 93/7/EEC⁽²⁾.

Article 11 of Regulation (EEC) No 3911/92 provides for its entry into force on the third day following that of publication in the *Official Journal of the European Communities* of Directive 93/7/EEC.

⁽¹⁾ OJ No L 395, 31.12.1992, p. 1 (set out on pages 169 to 173 of the basic volume).

⁽²⁾ See page 19 of this supplement.

Council Directive 93/7/EEC
of 15 March 1993
on the return of cultural objects unlawfully removed
from the territory of a Member State

(OJ No L 74, 27.3.1993)

COUNCIL DIRECTIVE 93/7/EEC

of 15 March 1993

on the return of cultural objects unlawfully removed from the territory of a Member State

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

In cooperation with the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Article 8a of the Treaty provides for the establishment, not later than 1 January 1993, of the internal market, which is to comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaty;

Whereas, under the terms and within the limits of Article 36 of the Treaty, Member States will, after 1992, retain the right to define their national treasures and to take the necessary measures to protect them in this area without internal frontiers;

Whereas arrangements should therefore be introduced enabling Member States to secure the return to their territory of cultural objects which are classified as national treasures within the meaning of the said Article 36 and have been removed from their territory in breach of the abovementioned national measures or of Council Regulation (EEC) No 3911/92 of 9 December 1992 on the

export of cultural goods ⁽⁴⁾; whereas the implementation of these arrangements should be as simple and efficient as possible; whereas, to facilitate cooperation with regard to return, the scope of the arrangements should be confined to items belonging to common categories of cultural object; whereas the Annex to this Directive is consequently not intended to define objects which rank as 'national treasures' within the meaning of the said Article 36, but merely categories of object which may be classified as such and may accordingly be covered by the return procedure introduced by this Directive;

Whereas cultural objects classified as national treasures and forming an integral part of public collections or inventories of ecclesiastical institutions but which do not fall within these common categories should also be covered by this Directive;

Whereas administrative cooperation should be established between Member States as regards their national treasures, in close liaison with their cooperation in the field of stolen works of art and involving in particular the recording, with Interpol and other qualified bodies issuing similar lists, of lost, stolen or illegally removed cultural objects forming part of their national treasures and their public collections;

Whereas the procedure introduced by this Directive is a first step in establishing cooperation between Member States in this field in the context of the internal market; whereas the aim is mutual recognition of the relevant national laws; whereas provision should therefore be made, in particular, for the Commission to be assisted by an advisory committee;

Whereas Regulation (EEC) No 3911/92 introduces, together with this Directive, a Community system to protect Member States' cultural goods; whereas the date by which

⁽¹⁾ OJ No C 53, 28. 2. 1992, p. 11, and
OJ No C 172, 8. 7. 1992, p. 7.

⁽²⁾ OJ No C 176, 13. 7. 1992, p. 129 and
OJ No C 72, 15. 3. 1993.

⁽³⁾ OJ No C 223, 31. 8. 1992, p. 10.

⁽⁴⁾ OJ No L 395, 31. 12. 1992, p. 1.

Member States have to comply with this Directive has to be as close as possible to the date of entry into force of that Regulation; whereas, having regard to the nature of their legal systems and the scope of the changes to their legislation necessary to implement this Directive, some Member States will need a longer period,

HAS ADOPTED THIS DIRECTIVE :

Article 1

For the purposes of this Directive :

1. 'Cultural object' shall mean an object which :

— is classified, before or after its unlawful removal from the territory of a Member State, among the 'national treasures possessing artistic, historic or archaeological value' under national legislation or administrative procedures within the meaning of Article 36 of the Treaty,

and

— belongs to one of the categories listed in the Annex or does not belong to one of these categories but forms an integral part of :

— public collections listed in the inventories of museums, archives or libraries' conservation collection.

For the purposes of this Directive, 'public collections' shall mean collections which are the property of a Member State, local or regional authority within a Member State or an institution situated in the territory of a Member State and defined as public in accordance with the legislation of that Member State, such institution being the property of, or significantly financed by, that Member State or a local or regional authority ;

— the inventories of ecclesiastical institutions.

2. 'Unlawfully removed from the territory of a Member State' shall mean :

— removed from the territory of a Member State in breach of its rules on the protection of national treasures or in breach of Regulation (EEC) No 3911/92, or

— not returned at the end of a period of lawful temporary removal or any breach of another condition governing such temporary removal.

3. 'Requesting Member State' shall mean the Member State from whose territory the cultural object has been unlawfully removed.

4. 'Requested Member State' shall mean the Member State in whose territory a cultural object unlawfully removed from the territory of another Member State is located.

5. 'Return' shall mean the physical return of the cultural object to the territory of the requesting Member State.

6. 'Possessor' shall mean the person physically holding the cultural object on his own account.

7. 'Holder' shall mean the person physically holding the cultural object for third parties.

Article 2

Cultural objects which have been unlawfully removed from the territory of a Member State shall be returned in accordance with the procedure and in the circumstances provided for in this Directive.

Article 3

Each Member State shall appoint one or more central authorities to carry out the tasks provided for in this Directive.

Member States shall inform the Commission of all the central authorities they appoint pursuant to this Article.

The Commission shall publish a list of these central authorities and any changes concerning them in the C series of the *Official Journal of the European Communities*.

Article 4

Member States' central authorities shall cooperate and promote consultation between the Member States' competent national authorities. The latter shall in particular :

1. upon application by the requesting Member State, seek a specified cultural object which has been unlawfully removed from its territory, identifying the possessor and/or holder. The application must include all information needed to facilitate this search, with particular reference to the actual or presumed location of the object ;

2. notify the Member States concerned, where a cultural object is found in their own territory and there are reasonable grounds for believing that it has been unlawfully removed from the territory of another Member State ;

3. enable the competent authorities of the requesting Member State to check that the object in question is a cultural object, provided that the check is made within 2 months of the notification provided for in paragraph 2. If it is not made within the stipulated period, paragraphs 4 and 5 shall cease to apply ;

4. take any necessary measures, in cooperation with the Member State concerned, for the physical preservation of the cultural object ;

5. prevent, by the necessary interim measures, any action to evade the return procedure ;

6. act as intermediary between the possessor and/or holder and the requesting Member State with regard to return. To this end, the competent authorities of the requested Member States may, without prejudice to Article 5, first facilitate the implementation of an arbitration procedure, in accordance with the national legislation of the requested State and provided that the requesting State and the possessor or holder give their formal approval.

Article 5

The requesting Member State may initiate, before the competent court in the requested Member State, proceedings against the possessor or, failing him, the holder, with the aim of securing the return of a cultural object which has been unlawfully removed from its territory.

Proceedings may be brought only where the document initiating them is accompanied by:

- a document describing the object covered by the request and stating that it is a cultural object,
- a declaration by the competent authorities of the requesting Member State that the cultural object has been unlawfully removed from its territory.

Article 6

The central authority of the requesting Member State shall forthwith inform the central authority of the requested Member State that proceedings have been initiated with the aim of securing the return of the object in question.

The central authority of the requested Member State shall forthwith inform the central authorities of the other Member States.

Article 7

1. Member States shall lay down in their legislation that the return proceedings provided for in this Directive may not be brought more than one year after the requesting Member State became aware of the location of the cultural object and of the identity of its possessor or holder.

Such proceedings may, at all events, not be brought more than 30 years after the object was unlawfully removed from the territory of the requesting Member State. However, in the case of objects forming part of public collections, referred to in Article 1 (1), and ecclesiastical goods in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of 75 years, except in Member States where proceedings are not subject to a time-limit or in the case of bilateral agreements between Member States laying down a period exceeding 75 years.

2. Return proceedings may not be brought if removal from the national territory of the requesting Member State

is no longer unlawful at the time when they are to be initiated.

Article 8

Save as otherwise provided in Articles 7 and 13, the competent court shall order the return of the cultural object in question where it is found to be a cultural object within the meaning of Article 1 (1) and to have been removed unlawfully from national territory.

Article 9

Where return of the object is ordered, the competent court in the requested States shall award the possessor such compensation as it deems fair according to the circumstances of the case, provided that it is satisfied that the possessor exercised due care and attention in acquiring the object.

The burden of proof shall be governed by the legislation of the requested Member State.

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by that means.

The requesting Member State shall pay such compensation upon return of the object.

Article 10

Expenses incurred in implementing a decision ordering the return of a cultural object shall be borne by the requesting Member State. The same applies to the costs of the measures referred to in Article 4 (4).

Article 11

Payment of the fair compensation and of the expenses referred to in Articles 9 and 10 respectively shall be without prejudice to the requesting Member State's right to take action with a view to recovering those amounts from the persons responsible for the unlawful removal of the cultural object from its territory.

Article 12

Ownership of the cultural object after return shall be governed by that law of the requesting Member State.

Article 13

This Directive shall apply only to cultural objects unlawfully removed from the territory of a Member State on or after 1 January 1993.

Article 14

1. Each Member State may extend its obligation to return cultural objects to cover categories of objects other than those listed in the Annex.

2. Each Member State may apply the arrangements provided for by this Directive to requests for the return of cultural objects unlawfully removed from the territory of other Member States prior to 1 January 1993.

Article 15

This Directive shall be without prejudice to any civil or criminal proceedings that may be brought, under the national laws of the Member States, by the requesting Member State and/or the owner of a cultural object that has been stolen.

Article 16

1. Member States shall send the Commission every three years, and for the first time in February 1996, a report on the application of this Directive.
2. The Commission shall send the European Parliament, the Council and the Economic and Social Committee, every three years, a report reviewing the application of this Directive.
3. The Council shall review the effectiveness of this Directive after a period of application of three years and, acting on a proposal from the Commission, make any necessary adaptations.
4. In any event, the Council acting on a proposal from the Commission, shall examine every three years and, where appropriate, update the amounts indicated in the Annex, on the basis of economic and monetary indicators in the Community.

Article 17

The Commission shall be assisted by the Committee set up by Article 8 of Regulation (EEC) No 3911/92.

The Committee shall examine any question arising from the application of the Annex to this Directive which may be tabled by the chairman either on his own initiative or at the request of the representative of a Member State.

Article 18

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within nine months of its adoption, except as far as the Kingdom of Belgium, the Federal Republic of Germany and the Kingdom of the Netherlands are concerned, which must conform to this Directive at the latest twelve months from the date of its adoption. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 19

This Directive is addressed to the Member States.

Done at Brussels, 15 March 1993.

For the Council

The President

M. JELVED

ANNEX

Categories referred to in the second indent of Article 1 (1) to which objects classified as 'national treasures' within the meaning of Article 36 of the Treaty must belong in order to qualify for return under this Directive

- A. 1. Archaeological objects more than 100 years old which are the products of:
- land or underwater excavations and finds,
 - archaeological sites,
 - archaeological collections.
2. Elements forming an integral part of artistic, historical or religious monuments which have been dismembered, more than 100 years old.
3. Pictures and paintings executed entirely by hand, on any medium and in any material⁽¹⁾.
4. Mosaics other than those in category 1 or category 2 and drawings executed entirely by hand, on any medium and in any material⁽¹⁾.
5. Original engravings, prints, serigraphs and lithographs with their respective plates and original posters⁽¹⁾.
6. Original sculptures or statuary and copies produced by the same process as the original⁽¹⁾ other than those in category 1.
7. Photographs, films and negatives thereof⁽¹⁾.
8. Incunabula and manuscripts, including maps and musical scores, singly or in collections⁽¹⁾.
9. Books more than 100 years old, singly or in collections.
10. Printed maps more than 200 years old.
11. Archives and any elements thereof, of any kind, on any medium, comprising elements more than 50 years old.
12. (a) Collections⁽²⁾ and specimens from zoological, botanical, mineralogical or anatomical collections;
(b) Collections⁽²⁾ of historical, palaeontological, ethnographic or numismatic interest.
13. Means of transport more than 75 years old.
14. Any other antique item not included in categories A 1 to A 13, more than 50 years old.

The cultural objects in categories A 1 to A 14 are covered by this Directive only if their value corresponds to, or exceeds, the financial thresholds under B.

B. Financial thresholds applicable to certain categories under A (in ecus)

VALUE: 0 (Zero)

- 1 (Archaeological objects)
- 2 (Dismembered monuments)
- 8 (Incunabula and manuscripts)
- 11 (Archives)

15 000

- 4 (Mosaics and drawings)
- 5 (Engravings)
- 7 (Photographs)
- 10 (Printed maps)

⁽¹⁾ Which are more than fifty years old and do not belong to their originators.

⁽²⁾ As defined by the Court of Justice in its Judgment in Case 252/84, as follows:

'Collectors' pieces within the meaning of Heading No 99.05 of the Common Customs Tariff are articles which possess the requisite characteristics for inclusion in a collection, that is to say, articles which are relatively rare, are not normally used for their original purpose, are the subject of special transactions outside the normal trade in similar utility articles and are of high value.'

50 000

- 6 (Statuary)
- 9 (Books)
- 12 (Collections)
- 13 (Means of transport)
- 14 (Any other item)

150 000

- 3 (Pictures)

The assessment of whether or not the conditions relating to financial value are fulfilled must be made when return is requested. The financial value is that of the object in the requested Member State.

The date for the conversion of the values expressed in ecus in the Annex into national currencies shall be 1 January 1993.

**Resolution of the Council and the Ministers for Culture
meeting within the Council
of 17 May 1993
on the promotion of the translation of contemporary European
dramatic works**

(OJ No C 160, 12.6.1993)

RESOLUTION OF THE COUNCIL AND THE MINISTERS FOR CULTURE MEETING
WITHIN THE COUNCIL

of 17 May 1993

on the Promotion of the Translation of contemporary European dramatic works

(93/C 160/01)

THE COUNCIL AND THE MINISTERS FOR CULTURE
MEETING WITHIN THE COUNCIL,

Recognizing, as part of the improvement of the dissemination of the culture of the European peoples, the need for wider circulation of contemporary dramatic works within the European Community, so as to enable decision makers in theatres and the broadcasting sector to present a more varied repertoire of drama from the Member States to the public of the other Member States,

Noting that potential producers of dramatic works may need to read these works in their own language before taking a decision on production, particularly when the original language of the work is a lesser spoken language in Europe,

Recalling the importance attached to the promotion of translation of dramatic works in the Ministers' Resolution of 7 June 1991 on the development of the theatre in Europe (1),

AGREE to promote the translation of contemporary dramatic works by playwrights of the Member States which have been successful in their country of origin; this should be organized within the pilot scheme for the translation of contemporary literary works established by their Resolution of 9 November 1987 (2), as an addition to it,

INVITE the Commission to assess any necessary steps for putting into practice such a scheme on the translation of dramatic works, including proposals for appropriate financing, and to propose an appropriate number of translations, into at least two languages, each year; the whole to be evaluated within the review of the main scheme for the translation of contemporary literary works, due at the end of 1994. They invite the Commission, in so doing, to take account of the ideas contained in a separate Presidency proposal to promote translation of dramatic works.

(1) OJ No C 188, 19. 7. 1991.

(2) OJ No C 309, 19. 11. 1987.

**Council Decision
of 22 July 1993
on an Action Plan for the introduction of
advanced television services in Europe**

(OJ No L 196, 5.8.1993)

COUNCIL DECISION

of 22 July 1993

on an action plan for the introduction of advanced television services in Europe

(93/424/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas the Community, through Decisions 89/337/EEC ⁽⁴⁾ and 89/630/EEC ⁽⁵⁾, recognized the strategic importance of high definition television (HDTV) for the European consumer electronics industry and for the European television and film industries and established the strategy framework for the introduction of European HDTV;

Whereas the objectives of the strategy for the introduction of HDTV in Europe are an integral part of the Community audio-visual policy; whereas they must take into account other objectives of this policy within the perspective of the development of Europe's audio-visual capacity, which comprise structural objectives such as the development of the independent production sector or the development of production in countries or regions with more limited audio-visual capacity;

⁽¹⁾ OJ No C 139, 2. 6. 1992, p. 4.

⁽²⁾ OJ No C 337, 21. 12. 1992, p. 93.

⁽³⁾ OJ No C 332, 16. 12. 1992, p. 39.

⁽⁴⁾ OJ No L 142, 25. 5. 1989, p. 1.

⁽⁵⁾ OJ No L 363, 13. 12. 1989, p. 30.

Whereas the action plan should ensure that the whole territory of the Community is satisfactorily covered by advanced services;

Whereas financial incentives are initially required to ensure the accelerated development of the advanced television service market in conformity with the strategy indicated above, by contributing to the reduction of the additional start-up costs involved;

Whereas the action plan should be solely directed at promoting the 16:9 format (625 or 1 250 lines), irrespective of the European television standard used and irrespective of the broadcasting mode (terrestrial, satellite or cable);

Whereas the action plan should facilitate the uptake of all technologies, including fully digital technology;

Whereas it is appropriate to set targets for the impact of Community funding on the early market development of advanced television services;

Whereas a programme lasting four years is called for;

Whereas an amount of ECU 405 million is estimated as necessary to achieve the objective of the action plan;

Whereas the funding of this amount should come from Community funds and from other sources, with the Community contribution amounting to ECU 228 million;

Whereas those economic operators who co-finance the action plan shall be given due recognition under Community R&D and standardization activities, always in accordance with the general rules for participation in these activities;

Whereas, in relation to the Community funding, it is necessary to hold in reserve an amount of ECU 68 million for the markets not being fully served in the early stages of the implementation of the action plan;

Whereas it is appropriate to specify certain basic principles which must underlie the implementation of the action plan, including criteria to be used in the selection of projects;

Whereas the Treaty does not provide, for the action concerned, powers other than those of Article 235,

HAS DECIDED AS FOLLOWS:

Article 1

An action plan to ensure the accelerated development of the market for advanced television services in the 16:9 format and using 625 or 1 250 scanning lines is hereby adopted for a period beginning on the date on which this Decision is adopted and ending on 30 June 1997.

The objectives which the action plan must achieve during the abovementioned period shall be as follows:

- (i) a critical mass of advanced television services in the 16:9 format;
- (ii) a sufficient and increasing volume of programming in the 16:9 format, with high technical quality both in picture and sound and of such a nature as to facilitate optimum audience ratings, such programming to the broadcast in the abovementioned services.

Community funding, together with funds from other sources, will be directed toward the achievement of these objectives by means of financial incentives covering parts of the additional cost incurred by broadcasters and programme makers in the provision of the abovementioned services.

The implementation procedures for the action plan are set out in the Annex, which forms an integral part of this Decision.

The action plan will contribute to market penetration by receiver equipment in the 16:9 format. However, no funding will be devoted to support manufacturers of receiver equipment for consumers.

Article 2

1. The programme shall cover the period from the date on which this Decision is adopted to 30 June 1997.
2. The funds estimated to be required for the achievement of the objectives of the action plan amount to ECU 405 million.

3. This sum shall be made up of Community funds and of funds from other sources. The Community funding shall amount to ECU 228 million.

4. In relation to the Community funds, the budgetary authority shall determine the appropriations available for each financial year with reference to the principles of sound management referred to in Article 2 of the Financial Regulation applicable to the general budget of the European Communities.

5. Within the indicated amount of Community funds referred to in paragraph 3, a quantity of ECU 68 million shall be placed in reserve and shall not be allocated before 1 January 1995. This amount should ensure implementation of the provisions of paragraphs 5.2 (ii) and 5.4 of the Annex.

6. No Community funding shall be committed to a project until the level of financing from other sources required in paragraphs 5.1 (i), 5.3 and 5.4 of the Annex has been committed to that project.

7. Funds shall be available to facilitate the uptake of all the technologies mentioned in paragraph 5.1 (iv) of the Annex, including fully digital technology.

Article 3

1. The Commission shall be responsible for implementing the action plan. The Commission shall be assisted by a committee of an advisory nature composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 4

1. Notwithstanding Article 3, the following procedure shall apply in implementing those points of the Annex that concern the breakdown of the relevant budgetary expenditure and the assessment of projects and actions provided for in the Annex of a total value of above ECU 1 million, with the exception of those covered under Article 5.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 5

1. Notwithstanding Articles 3 and 4, the following procedure shall apply in implementing the review and possible revision of the figures contained in Tables I and II of paragraph 4 (vi) of the Annex.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States

within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, upon expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission, save where the Council has decided against the said measures by a simple majority.

Article 6

An annual report shall be submitted by the Commission to the European Parliament, the Council and the Economic and Social Committee, on progress in implementing the action plan and the allocation of Community funds.

A final report, in the same terms, will be submitted to the abovementioned institutions at the conclusion of the action plan.

Article 7

As television technologies and markets are developing rapidly, the Commission will keep these developments and related market changes under review and, where required, propose any necessary changes to the Council concerning the implementation of this action plan.

Done at Brussels, 22 July 1993.

For the Council

The President

M. OFFECIERS-VAN DE WIELE

IMPLEMENTATION PROCEDURES FOR THE ACTION PLAN

1. OBJECTIVE

In order to contribute to market penetration by receiver equipment in the 16:9 format, the objective of the action plan is to ensure the accelerated development on the market for advanced television services in Europe in the 16:9 format using 625 or 1250 scanning lines.

2. APPROACH ADOPTED

Accelerated development of the market for advanced television services requires all the elements necessary to bring those services into consumers' or viewers' homes to be in place. Television is a complicated medium, encompassing and merging many technical and creative functions, with both cultural and commercial outcomes. Its functions are controlled by different sectors within the audio-visual, telecommunications or electronics industries. Their endeavours form a service chain stretching from origination to the receiver in the home.

The approach for accelerating the development of the market for advanced television services must therefore have a service focus.

3. TARGETS TO BE ACHIEVED

In the context of the objective stated in paragraph 1, it is appropriate to set indicative targets for the impact of the Community funding which will be used to accelerate the market development, as follows:

the achievement during the life of the action plan of:

- (i) a critical mass of advanced television services in the 16:9 format;
- (ii) a sufficient and increasing volume of programming in the 16:9 format and with high technical quality both in picture and sound and of such a nature as to facilitate an optimum audience rating, such programming to be broadcast in the abovementioned services.

4. THE FUNDING APPROACH TO BE ADOPTED

- (i) The action plan will fund part of the additional costs of introducing wide-screen television services. The necessary financial resources involved will be drawn from Community funds and from other sources including: own funds, national funds, equipment makers, satellite operators and others with an interest in the business.

Before being eligible for Community funds, each project must secure a firm commitment of funds from one or more of the other sources indicated above. This prior commitment of funds will be seen as an essential validation of the value of the project. The combined funding system is intended to ensure a market-oriented approach and the Community dimension simultaneously.

- (ii) Funding will go to broadcasters providing wide-screen television services who satisfy the criteria set out in paragraph 5.1, and to programme producers who make programmes for such services according to the criteria set out in paragraph 5.3.
- (iii) Depending on circumstances, the additional costs incurred by a broadcaster in providing a 16:9 service, as against a 4:3 service may have a variety of sources, such as: the capital costs associated with upgrading studios from 4:3 to 16:9; the capital costs associated with broadcasting 16:9 as against 4:3 services; the current costs of making individual 16:9 programmes over those for making 4:3 programmes.
- (iv) Notwithstanding the origin of additional costs of broadcasters, the mechanism for calculating the contribution from Community funds to broadcasters who provide widescreen services will be based on the number of hours per year the broadcast in the 16:9 format.
- (v) The Community contribution per hour to such services shall consist of two elements: one relating to the costs of broadcasting and the other to the costs of programme production.

Broadcasters will receive a flat rate payment towards the broadcasting cost of each hour of the 16:9/625 line or 1250 line HDTV service transmitted, in accordance with Table I in subparagraph (vi). In relation to programme making, the Community will make a further flat rate payment towards programme production costs. This will vary by programme type, as set out in Table II in subparagraph (vi). Both broadcasters and independent producers will qualify for programme production payments, depending upon which is the source of a particular programme.

- (vi) The numbers in Tables I and II will be used for the first call for proposals referred to in paragraph 5. They will be reviewed and, if necessary, revised in the light of experience by the Commission according to the procedure provided for under Article 5 of the Decision, including the desirability of funding 16/9 video studio production through support for the capital costs incurred.

TABLE I(*)

Broadcasting costs

| | Flat rate (ecus per hour) |
|-------------------------|------------------------------|
| First 50 hours | 6 000 |
| From the 50 first hours | 2 500 |

(*) The actual amount to be paid will be 50 % or 80 % of the figures given above, depending on whether early starting or later starting markets are involved (see paragraphs 5.1 (i), 5.3 and 5.4).

TABLE II(*)

Programme making costs

| Programme type | Flat rate (ecus per hour) |
|--|------------------------------|
| Programmes remastered from existing material, suitable for broadcasting in 16:9 and in 625 lines | 3 000 |
| Programmes remastered from existing material, suitable for broadcasting in 16:9 and in 1 250 lines | 5 000 |
| Super 16 mm and 16/9 video production | 12 000 |
| 35 mm and HD - video (1 250 lines) production | 25 000 |

(*) The actual amount to be paid will be 50 % or 80 % of the figures given above, depending on whether early starting or later starting markets are involved (see paragraphs 5.1 (i), 5.3 and 5.4).

- (vii) Programme producers, who are independent of the broadcasters providing the services, but who provide programmes to such a broadcaster for inclusion in a wide-screen service, shall receive Community funds at the level per hour and per category of programme indicated in Table II of subparagraph (vi).
- (viii) In relation to programme making in 1 250 lines, the facilities of the EEIG Vision 1250, which in its earlier years has developed substantial experience in assisting broadcasters in 1250/50 production, will be made available for the purposes of implementing the action plan. In addition, other such facilities may be used by broadcasters and producers.

5. PRINCIPLES AND CRITERIA FOR IMPLEMENTATION

The Commission will implement the action plan through annual calls for proposals covering projects for services. These shall be organized on the basis of first a combined call for transmission (in accordance with the criteria set out in paragraphs 5.1 and 5.2) and programme production (in accordance with the criteria set out in paragraphs 5.2 and 5.3) followed by two further calls later within the 12 month period for programme production only. As an indicative figure, at least 50 % of the funds shall be allocated to programme production. These calls for proposals will be organized and evaluated according to the procedure provided for under Article 3 or Article 4 of the Decision as appropriate.

Preference will be given for projects where the matching funds come from the economic actors.

5.1. Criteria relating to the quality of the project

Each project must satisfy the following criteria :

- (i) before being eligible for Community funds, it must have received a firm commitment of funds from other sources for 50 % of the costs falling within the scope of the action plan. At least 50 % of the non-Community funding must come from the economic operators. Having met these requirements, the project would then become eligible for Community funding in respect of the remainder of such costs ;
- (ii) it must be submitted by a recognized service provider having a proven track record in the field of television service provision and having the necessary financial strength required for the new venture or by a group of organizations led by such a service provider ;
- (iii) it must propose to provide a service involving at least 50 hours of broadcasting per year in the 16 : 9 format and using 625 or 1 250 scanning lines ;
- (iv) it must be based on transmission systems of high quality featuring the 16 : 9 format including, *inter alia*, MAC/HDMAC, further developments of existing European TV standards such as PALPLUS and fully digital technology standardized by the appropriate European standards bodies ;
- (v) it must propose to provide a service targeted towards a sufficiently large market in order to contribute to the development of the broader market for advanced television services ;
- (vi) it must comply with Community competition rules.

In addition to the above, the following criteria, while not essential, would be an advantage :

- (vii) the project proposes to provide a transfrontier and/or multilingual service ;
- (viii) it facilitates optimal audience ratings.

5.2. Criteria relating to spread and balance

The set of projects funded under this action plan must satisfy the following criteria :

- (i) it must show a fair spread of projects between the entities to avoid undue concentration or the creation of monopolies or cartels ;
- (ii) it must have a wide distribution across Member States' markets in order to ensure the Community dimension taking account of the specific situation of Member States with a low production capacity or whose language covers a limited area ;
- (iii) it must involve, to a reasonable degree, programme producers independent of the broadcasters participating in the projects.

5.3. Criteria for programme support

Criteria for selection of projects under this procedure will be reviewed on an annual basis according to the procedure provided for under Article 4 of the Decision.

The Commission will inform the committee of the projects selected under this procedure.

Both in-house production by broadcasters and external production are within the scope of the action plan.

Community support for programme production and conversion will be closely linked to the 16 : 9 services, but will be able to benefit the whole sector.

To qualify for Community support on a programme-by-programme basis, producers of new programmes, and rights holders of certain existing programmes exploitable in 16 : 9 but requiring re-mastering, must have an agreement to broadcast from at least one of the broadcasters based in the Community who undertakes to broadcast the programme in 16 : 9. The technical quality of these programmes must be such as to allow their exploitation in 16 : 9 format in standard also in the medium term.

Before being eligible for Community funding, the project must have received a firm commitment of the funds from other sources for 50 % of the costs falling within the scope of the action plan. At least 50 % of non-Community funding must come from the economic operators. Having met these requirements, the project would then become eligible for Community funding in respect of the remainder of such costs.

Support will be based on the ceilings identified in Table II in paragraph 4 (vi).

(i) Criteria for supporting the technical upgrading of new long-life ('stock') programmes

New programmes supported must be of sufficient technical quality and have an order for their effective transmission in 16:9 from at least one of the broadcasters based in the Community. They must be of European origin.

Priority will be awarded for programmes produced by producers independent of the broadcasters.

(ii) Criteria for supporting the re-mastering of existing programmes

The basic condition is that the first transmission is in 16:9 in the framework of a service support under the action plan. Priority will be awarded to programmes of European origin.

(iii) The Commission may present proposals to the committee, which shall act according to the procedure provided for under Article 3 or Article 4 of the Decision as appropriate, for a common multi-lingual re-mastering scheme.

5.4. Timing considerations

Sufficient Community funding will be held in reserve in order to ensure that Member States' markets that are not fully served in the early stages of the implementation of the action plan can be served towards the end of the period.

In order to serve these markets, a quantity of ECU 68 million is held in reserve for allocation after 1 January 1995. In this category, before being eligible for Community funds, the broadcaster and programme producer must have received a firm commitment of funds from other sources for 20 % of the support falling within the scope of the action plan. The criteria set out in paragraphs 5.1 and 5.3, relating to the 50 % of the non-Community funding having to come from the economic operators, shall not apply in this case.

**Council Resolution
of 22 July 1993
on the development of technology and standards
in the field of advanced television services**

(OJ No C 209, 3.8.1993)

COUNCIL RESOLUTION

of 22 July 1993

on the development of technology and standards in the field of advanced television services

(93/C 209/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Whereas the Community, through Decision 89/337/EEC (*), Decision 89/630/EEC (**) and Directive 92/38/EEC (***), recognized the strategic importance of high-definition television (HDTV) for the European consumer electronics industry and for the European television and film industries and established the strategy framework for the introduction of European HDTV;

Whereas the Council, through this resolution, has agreed upon the framework for an action plan for the introduction of advanced television services in Europe having the objective of accelerating the development of the market for advanced television services in the widescreen 16:9 format;

Whereas it is necessary to bring forward the review of Directive 92/38/EEC to ensure its coherence with current market and technological realities;

Whereas digital technology will be important for future television systems;

Whereas it is important that Europe have a coherent global approach to the development of technology and standards for new digital television systems;

Having reached agreement on the framework for an action plan as contained in the Annex hereto,

CONSIDERS THAT:

1. An action plan for the introduction of advanced television services in Europe should be accompanied by additional measures to ensure the coherence of Community policy for advanced television.

(*) OJ No L 142, 25. 5. 1989, p. 1.

(**) OJ No L 363, 13. 12. 1989, p. 30.

(***) OJ No L 137, 20. 5. 1992, p. 17.

2. One of these measures is a revision of Directive 92/38/EEC on standards for television broadcasting as provided for in the text, in order to adapt it to the current market and technological realities.

3. Digital technology is essential for future television systems. It is important that the Community develop a coherent global approach to the development of technology and standards for new digital television systems,

INVITES THE COMMISSION:

1. To propose to the Council, before 1 October 1993, a revision of Directive 92/38/EEC reflecting the need for a flexible and workable regulatory framework which responds to the needs of the market and to technological developments. In this respect, the proposals could take account of the following issues, *inter alia*:

(i) the possible need to expand the scope to allow other standards, in addition to D2-MAC, to be used for the broadcast of not completely digital 625 line television services in the 16:9 format;

(ii) the possible need to expand the scope to cover standards for terrestrial transmission and cable distribution;

(iii) the possible need to limit the number of different standards as far as possible;

(iv) the possible need for a European non-proprietary encryption/conditional access system serving a number of competing service providers;

(v) the possible requirement that all new television transmission and encryption systems to be used in the Community should be standardized by the competent European standardization bodies;

- (vi) the possible need to change other Articles of the Directive to ensure consistency following any changes introduced under the above provisions.
2. To bring forward to the Council before 1 October 1993 a communication and possible proposal on digital television containing the following elements, *inter alia*:
- (i) mechanisms for achieving early agreement on a common Community perspective on the development and needs of the market for digital television systems which can inform and guide the standardization of such systems, including the feasibility of a single (family of) digital television standard(s) and matching encryption system(s);
 - (ii) a timetable for the development, system specification, system implementation, evaluation and subsequent standardization;
 - (iii) Community funding of the above activities, if required.
- HEREBY ADOPTS the Framework Agreement for an action plan for the introduction of advanced television services in Europe set out in the Annex;
- INSTRUCTS the Permanent Representatives Committee to ensure that the detailed text of the action plan takes account of the principles contained in the Framework Agreement;
- AGREES, that the text of the action plan will be adopted by the Council before the end of July 1993.

ANNEX

Framework Agreement for an action plan for the introduction of advanced television services in Europe

1. The plan is directed solely at promoting the 16:9 format (625 or 1 250 lines), irrespective of the European television standard used, and irrespective of the broadcasting mode (terrestrial, satellite or cable).
2. The Community funds shall cover only part of the difference in costs between production/broadcasting in the customary 4:3 format and in the 16:9 format; the Community funds shall generally cover up to only 50 % of the extra costs. The remaining 50 % is to be provided from other sources. The Council attaches great importance to the involvement of the economic operators in the financing and agrees that the funding provided by them shall be at least 50 % of the non-Community funding.

Such economic operators shall be afforded due recognition under Community R&D and standardization activities, always in accordance with the general rules for participation in these actions.
3. The support is allocated on a yearly 'first-come-first-served' basis with preference for projects where the matching funds stem from the economic operators.
4. 30 % of the Community funding will be reserved for markets not being fully serviced in the early stages of the implementation of the action plan. These funds could cover up to 80 % of the extra costs, while the remaining 20 % is to be provided from other sources.
5. The action plan should be as simple as possible and based on transparent, fair and unbureaucratic mechanisms.
6. The funds shall be allocated to broadcasters or producers based in the Community on the basis of hours produced and transmitted in the 16:9 format, with a maximum support of x ECU per hour. The support will depend on the actual costs of the type of programme and its technical quality, with special emphasis on programmes produced in Europe. New productions will thus receive the highest level of support. Only broadcasters transmitting more than 50 hours of 16:9 services per year will receive funding.
7. Community funding is fixed at ECU 160 million. The funding will be given only provided applicants have demonstrated that other sources have already committed themselves to providing the remaining 50 %. In addition to the ECU 160 million, ECU 68 million are held in reserve until 1 January 1995 for markets not being serviced in the early stages of the implementation of the action plan. The ECU 68 million will have to be matched by ECU 17 million from other sources.
8. The action plan shall cover a period of four years expiring at the end of June 1997.
9. Emphasis will be given to creating a considerable spread in the markets serviced by the action plan, with due recognition of the need to achieve the critical mass and facilitating the uptake of all technologies, including fully digital technology.

**Council Resolution
of 5 November 1993
on the first century of the cinema**

(OJ No C 85, 22.3.1994)

COUNCIL RESOLUTION
of 5 November 1993
on the first century of the cinema

(94/C 85/02)

THE COUNCIL,

Aware of the place which the cinema has occupied for a hundred years in our common cultural heritage and the importance of its influence on the development of other means of expression and communication both in the arts and in the media,

Aware of the fundamental role as a witness to the history of humankind which the cinema has played throughout that period,

Recognizes the importance of the cultural, technical and economic exchanges to which it has given rise in Europe,

Whereas the centenary of the invention of cinematography will be celebrated in the next few years,

AGREES, with a view to celebrating the centenary of cinema to:

- intensify action to restore films from the European heritage in the context of greater cooperation between Member States' archives, notably in the

framework of the MEDIA programme (Lumière project),

- encourage the dissemination of this heritage in European festivals and cinemas as part of initiatives to highlight the importance of this heritage for the future of European cinema,
- promote awareness of the artistic movements in European cinema, its pioneers and its schools, in the interests of continuing dialogue with contemporary film-makers,

CALLS ON the Commission to participate in this campaign, in particular in liaison with the Council of Europe, by:

- continuing and expanding its activities to commemorate this centenary, particularly as part of its action in support of film festivals,
- helping to give maximum publicity to action taken in all Member States.

**Council conclusions
of 17 June 1994
on drawing up a Community action plan
in the field of cultural heritage**

(OJ No C 235, 23.8.1994)

COUNCIL CONCLUSIONS

of 17 June 1994

on drawing up a Community Action Plan in the field of cultural heritage

(94/C 235/01)

The Council points out that Article 128 of the Treaty establishing the European Community selected cultural heritage as a priority field of action for the Community. It also points to the conclusions of the Council and of the Ministers of 12 November 1992 on the guidelines for Community cultural action, in which they indicated their interest in both movable and fixed heritage.

It noted the series of consultation meetings organized by the Commission, at which experts from the Member States, the European Parliament and the Council of Europe, as well as other competent international organizations have been able to contribute to the drawing up of a communication on cultural heritage.

It noted with interest the outcome of the various meetings of experts and considered that the various aspects of the cultural heritage should be combined in one global action, highlighting the importance of:

- taking into account the cultural dimension of other Community policies and programmes,
- increasing the awareness of all those concerned, especially at local level,
- mobility for professionals, the exchange of experience and information,
- European networks and establishments devoted to conservation, training, and research in the field of cultural heritage and cooperation with third countries and the international organizations concerned.

More specific actions were envisaged, especially in the following areas:

- conservation and safeguarding of cultural heritage of European significance,
- circulation of information,
- training,
- increasing public awareness,
- taking cultural heritage into account in regional development and job creation,
- tourism and environment,
- research,
- mass media and new technologies.

Such actions could be of practical application in specific areas of cultural heritage, such as archives and sub-aquatic heritage, on which experts have already held meetings.

On these bases, the Council invites the Commission to continue its work and to submit to it, at the earliest opportunity, a communication on cultural heritage, together with a proposal for specific actions with due regard for the procedures provided for in Article 128 of the Treaty.

**Council conclusions
of 17 June 1994
concerning children and culture**

(OJ No C 235, 23.8.1994)

COUNCIL CONCLUSIONS
of 17 June 1994
concerning children and culture
(94/C 235/02)

THE COUNCIL,

Considering the emphasis given in the conclusions of the Council and the Ministers for Cultural Affairs, meeting within the Council, of 12 November 1992 to the regular examination of issues influencing the cultural field;

Considering the principle of having regard to cultural aspects in Community action under other provisions of the Treaty, as laid down in Article 128 (4) of the Treaty establishing the European Community;

Considering that culture is present from kindergarten to university level, in all of the European countries' educational systems in various ways and with various choices, reflecting the specific features of those systems as well as the cultural diversity that forms one of the foundations of Europe;

Whereas children's encounter with culture from a very early age permits the blossoming of characteristic qualities of childhood such as curiosity, spontaneity and inventiveness; whereas such an encounter as well as the promotion of children's artistic and cultural awareness may be particularly beneficial for the harmonious development of their personality; whereas energies usually absorbed by the passive acceptance of messages from a 'culture of pictures' could as a result be channelled in more creative directions;

Considering that cultural awareness and artistic education also serve to consolidate equality and social responsibility and to provide better opportunities for children and adolescents, beginning from their formative years and leading towards their social integration;

Recognizing that, given the role played by school in children's everyday life, their contact with culture will take place largely within the educational system, but considering that only an all-round approach to children's life will ensure them real access to culture;

Considering that the quest for a European dimension, both in the existing curriculum and in the exchanges of experience that might be organized, would be a way of bringing out more clearly Europe's common cultural heritage.

EXPRESSES its satisfaction that a debate on children and culture has begun within the European Union,

VOICES its wish to see that debate continue at European level,

CALLS UPON the Commission to give the matter further consideration and bear this aspect in mind in the context of the communication on cultural action which it has undertaken to submit to the Council,

POINTS TO the value of exchanging experience and information in this field, to enable appropriate activities to be devised.

**Council conclusions
of 17 June 1994
concerning greater cooperation in the field of archives**

(OJ No C 235, 23.8.1994)

COUNCIL CONCLUSIONS

of 17 June 1994

concerning greater cooperation in the field of archives

(94/C 235/03)

The Council considers that archives constitute a significant part of the cultural heritage of European significance referred to in Article 128 of the Treaty establishing the European Community. The exploitation of archives can contribute to achieving the aim, also provided for in Article 128, of improvement of the knowledge of the culture and history of the European peoples.

It notes with interest the report on archives forwarded by the Commission and prepared by a group of experts further to its resolution of 14 November 1991 on arrangements concerning archives. Further to that report, it agrees on the importance of greater cooperation between the Member States and at Community level in the field of archives.

The Council calls upon the Commission to include archives in the communication which it has undertaken to make on the Community's cultural heritage and notes with interest among the actions contemplated in the report those relating to the following points:

- organizing a multidisciplinary forum to be held in the framework of the Community on the problems of the management, storage, conservation and retrieval of machine-readable data, inviting public adminis-

trations and national archives services, as well as representatives of industry and of research, to take part in the forum,

- stimulating, in conjunction with the Member States, exchanges of students and archivists via Community action programmes in the field of education and vocational training, or by other means,
- preparing and encouraging the publication in all the official languages of the Community of a practical guide to the procedures and other provisions in force in the Member States and in the Institutions for user-access to their archives,
- preparing and encouraging the publication of appropriate technical publications intended to disseminate research carried out and any research findings concerning the preservation and restoration of archives documents and material,
- using different technologies, encourage the publication of information with regard to archives material.

The Commission could obtain the technical assistance of the Member States in examining these points and use the expertise existing in non-governmental organizations such as the International Council on Archives.

**Conclusions of the Council
of 21 June 1994
on cultural and artistic aspects of education**

(OJ No C 229, 18.8.1994)

CONCLUSIONS OF THE COUNCIL

of 21 June 1994

on cultural and artistic aspects of education

(94/C 229/01)

The Ministers of Education welcome the initiative of the Presidency in placing before them, as well as before the Ministers of Culture, the topic of cultural and artistic aspects of education. They note with interest the results of the joint Presidency/Commission seminar on this subject in April 1994.

The initiative of the Presidency is opportune, as the recently ratified Treaty on European Union gives impetus to cooperation between Member States both on education and on culture, and in regard to the former lays emphasis on the achievement of quality education.

Such education requires a cultural input: even at a time when job prospects are naturally a prime concern of schoolchildren and students, the function of education as a preparation for wider aspects of life as well as for providing a stepping-stone to employment is self-evident. Introduction to cultural themes and initiation in creative or performing arts can contribute greatly to the harmonious development of the individual within society.

In this connection the Ministers note with interest the 'contemporary educational and cultural concepts' put forward by the Presidency, which are attached to these conclusions.

At Community level particular attention has been given since the adoption of an action programme in the field of education in 1976, now reinforced by provisions of the Treaty, to the European dimension in education.

This includes an input, at school as well as in higher education, into strengthening awareness of the culture and history of the European peoples. Moreover the role of the European Community in regard to the education of children of migrant workers brings a particular challenge in regard to the study of other cultures. It is clear that openness towards the culture of other peoples presupposes a good grounding in the culture of one's own country and region, as well as an awareness of common values.

In the proposed new Community education programme, Socrates, appropriate emphasis can be given to cultural and artistic aspects of education. The importance of collaboration with the Council of Europe and other European bodies interested in cultural aspects of education is emphasized.

The Council notes with interest a current Commission pilot initiative to bring a specific European dimension into post-secondary level schools of art, dance, theatre, audio-visual media, design and music, which because of their status may not have been adequately covered by existing education and training programmes.

The Council invites the Commission to give appropriate emphasis to cultural and artistic aspects of education and to encourage the establishment of innovatory pilot projects and exchanges of experience involving cultural matters within the Socrates programme. It agrees to return to the subject on the basis of a review in three years' time.

ANNEX

Contemporary educational and cultural concepts

put forward by the Presidency

Educational and cultural concepts are closely linked, the note of culture in the educational system implies a search for pleasure through learning, a pedagogical approach founded on the exploitation of the natural curiosity of children and also an effort to improve communication at all levels.

Artistic disciplines are not reserved to particularly gifted individuals but can be considered as a means of expressing a profound need for relations and exchange of ideas between people.

Given the existence of modern techniques for assimilating rapidly a large amount of information, the emphasis in education should be not on quantity but on quality, not on the accumulation of knowledge but on the acquisition of methods. The cultural input into education in this connection should arouse the interest of all children.

The need for such a cultural input is all the greater in an era where television dominates the information and entertainment scene. It has to be backed up by methods of demystifying the mass media and allowing a more critical attitude towards their messages. Through awareness of traditional art forms and familiarization with newer media (photography, sound recordings, cinema, radio, television, video, etc.), young people should be able to acquire an overall cultural awareness which will make them more demanding and discriminating.

At the same time the existence of human cruelty in the world today, including that which can appear in modern societies highly developed from the technical point of view, has an effect on children, and calls for emphasis on types of education which bring out sensitiveness towards social and humanitarian problems. Cultural education makes a key contribution towards achieving respect for minority cultures and recognition of the existence of differences within society.

An education system laying appropriate emphasis on cultural aspects can have a profound effect on society. Cultural education must be addressed to all children, including the less gifted, disadvantaged persons or those with specific needs, because art gives individuals and people in general the opportunity to explore their personality, to express themselves, to communicate and create.

**Conclusions of the Council
of 10 November 1994
on the Commission communication concerning
European Community action in support of culture**

(OJ No C 348, 9.12.1994)

CONCLUSIONS OF THE COUNCIL

of 10 November 1994

on the Commission communication concerning European Community action in support of culture

(94/C 348/01)

1. The Council has taken note with interest of the Commission communication on Article 128 of the EC Treaty 'European Community action in support of culture' and welcomes the fact that the Commission thereby enables the Council, the European Parliament and the Committee of the Regions to discuss its analysis of Article 128 and of the resulting priorities. The communication sets forth preliminary ideas and suggestions for where emphasis should be placed in the cultural action of the Community. In this connection the Council recalls its conclusions of 12 November 1992 ⁽¹⁾ on guidelines for cultural action, as well as recent conclusions on more specific aspects, such as the conclusions of 17 June 1994 ⁽²⁾ on drawing up a Community action plan in the field of cultural heritage.
2. Article 128 of the EC Treaty states that 'the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'. In support of these principles Community action is aimed at encouraging cooperation between Member States and supporting and supplementing their action in defined areas; it should provide clearly recognizable European added value in relation to national action. The Article states that the Community and the Member States should foster cooperation with third countries, and the Council considers that priority should be given to those with which the Community has agreements specifying cultural cooperation. It further mentions promotion of cooperation with the competent international organizations in the sphere of culture, in particular the Council of Europe. The Commission is invited to report regularly to the Council concerning cultural cooperation by the Community with third countries and with international organizations.
3. In observance of Article 128 (4) which requires the Community to take cultural aspects into account in its action under other provisions of the Treaty, the review of such measures should take place at the earliest possible stage of their preparation. In this connection the Council welcomes the Commission's intention to submit within one year a report on the cultural dimension of the main Community actions concerned and to keep the Ministers of Culture informed in an appropriate manner. Ministers of Culture should regularly consider these issues, and procedures in this respect should be decided by the Council in connection with the Commission report.
4. The Council emphasizes that action in the cultural field should be based particularly on the following criteria: transparency and ongoing consultation; facilitating access to the programmes; provision for thorough evaluation; overall balance between programmes set up in accordance with established priorities and funds available; modalities of cooperation with third countries.
5. Without prejudice to possible future comments, the Council would like to stress the following specific points:
 - (a) Subsidiarity and complementarity should be pursued in the cultural field. These principles involve close cooperation between the Commission and the Member States, which should bring about greater quality and efficiency both in the preparation and in the implementation of cultural action.
 - (b) Without prejudice to the Annex of the communication, particular attention should be given to the

⁽¹⁾ OJ No C 336, 19. 12. 1992.

⁽²⁾ OJ No C 235, 23. 8. 1994.

audiovisual sector, especially with respect to the cultural dimension of the audiovisual media.

- (c) Proposals for new actions should entail re-examination of existing priorities and activities, so that such new proposals can be given due weight.
 - (d) Support to networks should concentrate on concrete artistic and cultural projects to be carried out by them, with a view to improving innovation and dialogue.
 - (e) The Council assumes that the Commission will retain its current practice in regard to public aid to promote culture and heritage conservation Article 92 (3) (d).
- _____
- 6. The Council again emphasizes that cultural measures at European level must be organized with a view to maximum efficiency in the context of the financial perspectives.
 - 7. Pending the consideration of the Commission proposals for Community action from 1996, and taking into account the need to avoid any interruption in Community cultural action which has already begun, the Council invites the Commission to continue its activities in 1995 on an interim basis, without prejudicing decisions regarding the content of future actions.

**Council Resolution
of 4 April 1995
on culture and the multimedia**

(OJ No C 247, 23.9.1995)

DRAFT RESOLUTION
of 4 April 1995
on culture and the multimedia

(95/C 247/01)

THE COUNCIL OF THE EUROPEAN UNION,

Considering that the main objectives of the European Union in the field of culture are to help to improve the knowledge and dissemination of the culture and history of the European peoples, safeguard and preserve the cultural heritage of importance to Europe and encourage cultural exchanges and artistic creation;

Whereas the emergence of the information society is likely to increase citizen's access to information and to constitute an exceptional opportunity for development of a programming industry the content of which will take account of the cultural and linguistic richness and diversity of Europe;

Considering that the multimedia are also capable of attracting new audiences, thereby making culture available to a wider public;

Considering that the multimedia play a major part in supporting multidisciplinary scientific research in the field of the movable and immovable cultural heritage such as monuments, landmarks, museums, libraries and archives;

Noting that, in order to implement the above objectives, encourage the development of a European market and use these new opportunities and technologies to maximum advantage, the main participants (libraries, museums, cataloguing departments, etc.) need to prepare and cooperate and consideration needs to be given to the possible adaptation of legal and technical rules;

Having noted that several points were raised during preliminary expert discussions, particularly at a meeting in Cannes on 13 and 14 January, for example:

— the promotion of the European cultural diversity and of multilingualism,

- the demand for high-quality products and the development of new forms of expression,
- the need to make standards and formats for facilitating data exchanges compatible,
- the institution of mechanisms to promote networking and the creation of European products,
- the need for types of training appropriate to the multimedia which combine the learning of techniques with a mastery of content,
- support for dissemination and promotion.

Noting the results of the G7 meeting of 25 and 26 February 1995 concerning the information society and especially the recommendations made concerning pilot projects for museums and libraries;

Noting with satisfaction the measures currently under way at Community level, notably in connection with research directed at the development of the information market,

AGREES that the Member States and the Community have a major role to play as catalysts in developing the creation, production and distribution of high-quality cultural multimedia works;

EXPRESSES its resolve to encourage the circulation and exchange of information between cultural institutions on the basis of common cultural and scientific interests, through the networking of these institutions;

AGREES on the urgent need to implement measures to sustain the emergence and development of a cultural multimedia market, with due regard for Europe's linguistic and cultural diversity;

UNDERLINES the importance of establishing high-quality training courses to enable the creation of works suited to the whole range of uses and users;

PROPOSES that attention be devoted to the drafting of good-practice guides and of model contracts which may be used by cultural institutions wishing to exploit their collections;

CALLS FOR the establishment of appropriate international standards, on the basis of the work already initiated by ISO;

NOTES the Commission's intention to examine the possibilities for supporting the development of the electronic-publishing industry in its cultural applications, taking account of existing financial instruments and available means capable of supporting market supply;

INVITES the Commission to:

- present before the Council meeting during the second half of the year a report on the situation of the cultural multimedia market, on the Community

measures already underway in this area, particularly as regards technical standards, and on training for the new multimedia professions,

- form as rapidly as possible an Expert Working Group whose members would be appointed on the basis of proposals by Member States to examine, *inter alia*, within a year, the technical (standardized descriptive tools and multilingual lexicons) and legal conditions governing co-production and the networking of cultural institutions operating in the same area, including procedures for exercising and protecting intellectual-property rights. The Cultural Affairs Committee will be informed of this work,
- study the opportunities for promoting cultural institutions' access to present and future measures and programmes likely to concern them in the context of common policies, in particular those serving to develop the information society.

**Council Resolution
of 4 April 1995
concerning coopération with the associated countries
of Central and Eastern Europe in the cultural domain**

(OJ No C 247, 23.9.1995)

COUNCIL RESOLUTION

of 4 April 1995

concerning cooperation with the associated countries of Central and Eastern Europe in the cultural domain

(95/C 247/02)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas the Europe agreements establish an association between the European Community and its Member States and currently associated countries of Central and Eastern Europe, namely, Poland, Hungary, the Czech Republic, the Slovak Republic, Bulgaria and Romania (associated CCEE);

Whereas the conclusions adopted at the European Council meetings in Copenhagen in June 1993 and Essen in December 1994 affirmed that these countries were potential members of the European Union;

Whereas the participation of the associated CCEE in Community programmes of relevance to them is of major importance for their integration into the Union and for their future accession;

Whereas the promotion of cultural exchanges and the enhancement of the cultural heritage in Central and Eastern Europe are a major opportunity for the whole of Europe;

Whereas the establishment of a uniform, open and active audiovisual market of 600 million potential consumers is a major challenge for the Union which its partners in the associated CCEE expect it to meet;

Whereas structured relations with the associated CCEE must address all issues of common interest and therefore the cultural and audiovisual fields;

TAKES NOTE of the participation of the associated CCEEs in specific Community activities in the cultural sphere (cultural events, heritage, books and reading) and in projects under the reform process already initiated by the associated countries concerned;

STRESSES the importance in this context not only of bilateral cooperation at all levels (public and private, national, regional, local) but also — as a complement to it — of Community cooperation with the countries in question;

EMPHASIZES in this context the benefit of exchanging of information and of utilizing the results of the questionnaire on bilateral and Community cooperation activities and programmes;

REAFFIRMS its belief that Community programmes should be opened to the associated CCEE in the run-up to accession;

EMPHASIZES the major role of the Phare programme in establishing a framework conducive to adjustment to the market economy and the necessity in that context of taking account of the interests of the culture and audiovisual industries in the light of the priorities expressed by the partner countries;

STRESSES that the Union must accentuate the cultural dimension of cooperation in its dialogue with each of the associated CCEE;

NOTES the importance which the associated CCEE attach to the initiation of cooperation in three particular areas:

1. the development of a legal, administrative and management environment conducive to the expansion of cultural and audiovisual activities and exchanges in those countries;
2. the establishment of effective distribution channels within culture industries such as publishing, records and film;
3. the conservation, restoration and enhancement of the cultural heritage;

INVITES the Commission, as a complement to the specific activities of Member States and on the basis of a permanent dialogue with the associated CCEE, to:

- give sufficient prominence to the restructuring of the culture and audiovisual industries and distribution channels in the associated CCEE where such activities are regarded as a priority by those countries, so as to bring, in an appropriate form, the cultural dimension more to the fore in the activities supported by the Phare programme,
- prepare at the earliest opportunity and on the basis of the Association Agreements the practical measures for participation by the associated CCEE in cultural and audiovisual activities with a view to maximizing the benefit they obtain from such activities within the framework of existing structures,
- give consideration in this context, and within the existing programmes, to possible activities which are likely to reflect the priorities expressed by the partner countries in the context of the three areas defined above,
- inform the Council and the Ministers for Culture in good time of the preparatory positions for the meetings of the Association Councils and of the outcome of those meetings with regard to the question of financial participation by the associated CCEE and the European Union in Community activities in the cultural sphere,
- instigate, in conjunction with the EBRD and the EIB, a study of the financial arrangements which might be used within existing structures for funding projects for the culture industry, particularly in connection with the distribution of audiovisual products and books and the enhancement of the cultural heritage, and to report back to the Council on the matter,
- take due account of the principles and considerations set out in this resolution, particularly when the Association Councils examine the opening of Community programmes.

**Council conclusions
of 12 June 1995
on linguistic diversity and multilingualism
in the European Union**

(7839/95 presse 174)

COUNCIL CONCLUSIONS
ON LINGUISTIC DIVERSITY AND MULTILINGUALISM
IN THE EUROPEAN UNION

1. The Council affirms the importance for the Union of its linguistic diversity, which is an essential aspect of the European dimension and identity and of the common cultural heritage.
2. It underlines the implications, be they democratic, cultural, social or economic, of such diversity. Linguistic diversity is also a source of employment and occupation and a factor of integration. It is an asset for the Union's influence in the outside world, since most European Union languages are used in a large number of non-member States.
3. The Council considers that the development of the information society offers new opportunities and presents new challenges for multilingualism and linguistic diversity.
4. Linguistic diversity is a component of the national and regional diversity of the cultures of the Member States referred to in Article 128 of the Treaty, and the Community must take it into account in its action under other provisions of the Treaty, including Articles 126 and 127, which cover education, vocational training and youth.
5. The Council emphasizes that linguistic diversity must be preserved and multilingualism promoted in the Union, with equal respect for the languages of the Union and with due regard to the principle of subsidiarity.

6. From the citizen's point of view, support for an integrated Europe will require an assurance that the languages of the Union will be taken into consideration and will require equal access to information, in conformity with Member States' internal law and with Community law.
7. In this context, the Council welcomes the Council Resolution of 31 March 1995 on improving and diversifying language learning and teaching within the education systems of the European Union and the adoption of the SOCRATES, LEONÁRDO and YOUTH FOR EUROPE programmes.
8. It also takes note of the Commission's intension of submitting a communication on the language aspects of the information society, drawn up in response to the request by the Corfu European Council, which it will examine without delay.
9. The Council stresses the importance of taking the language dimension into account in the Union's external relations, particularly in the framework of Union programmes involving third countries.
10. The Council invites the Commission to take linguistic diversity and multilingualism into account in preparing Community actions or policies, and in implementing them.

11. The Council asks the Commission to make an inventory of the Community's policies and activities which take linguistic diversity and multilingualism into account, and to assess those policies and activities. It invites the Commission to report back within a year.
12. The Council asks the Commission to set up a working party of representatives of the Member States, appointed by the Member States, with responsibility for monitoring, without prejudice to the activities of the existing Committees and in liaison with them, whether linguistic diversity is being taken into account and multilingualism promoted in the Union's policies and activities, with due respect for Member States' national policies.
13. The Council would also reiterate the importance it attaches to the equality of the official languages and working languages of the Union's institutions, namely, Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish and Swedish, in accordance with Regulation No 1/58, as amended, determining the languages to be used by the institutions of the Union.

The following sentence should be added to paragraph 13 :

"The Council recalls the particular status of Irish under Article S of the Treaty on European Union and the Treaty of Accession of Denmark, Ireland and the United Kingdom."

**Council Decision
of 10 July 1995
on the implementation of a programme
encouraging the development and distribution of
European audiovisual works
(Media II – Development and distribution) (1996-2000)**

(OJ No L 321, 30.12.1995)

COUNCIL DECISION

of 10 July 1995

on the implementation of a programme encouraging the development and distribution of European audiovisual works (Media II — Development and distribution) (1996-2000)

(95/563/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

- (1) Whereas the European Council meeting in Brussels on 10 and 11 December 1993 took note of the White Paper 'Growth, competitiveness and employment' as the reference point for action by the European Union and its Member States; whereas the White Paper supports an industrial development approach based on global competitiveness, as the key to growth and employment; and states, in particular in Chapter 5-C, the economic importance of the audiovisual industry;
- (2) Whereas the European Council meeting in Corfu on 24 and 25 June 1994, took note of the report by the 'Bangemann Group' entitled 'Europe and the global information society — recommendations to the European Council', in particular acknowledging the strategic importance of the audiovisual programme industry in terms of content;

⁽¹⁾ OJ No C 108, 29. 4. 1995, p. 8.

⁽²⁾ OJ No C 166, 3. 7. 1995, p. 191.

⁽³⁾ OJ No C 256, 2. 10. 1995, p. 24.

- (3) Whereas the 'Industry/Telecommunications' Council, of 28 September 1994, issued a favourable opinion on the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan'; whereas it emphasized the need to improve the competitiveness of the European audiovisual industry;
- (4) Whereas the Council took formal note, on 17 June 1994 of the Green Paper on 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union';
- (5) Whereas the Commission consulted the people in the industry on the options put forward in the Green Paper, in particular by holding the 'European Audiovisual Conference' in Brussels from 30 June to 2 July 1994; whereas the consultation process revealed a strong desire for an enhanced programme of support for the European audiovisual industry, in particular in the area of development and distribution;
- (6) Whereas the European Parliament, in its resolution of 6 May 1994 ⁽⁴⁾, examined the problems of the audiovisual industry, following Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁵⁾ (the 'Television Without Frontiers' Directive), in preparation for the European audiovisual conference 'and took the view that the priorities established *inter alia* during the discussions on amendments to the Media

⁽⁴⁾ OJ No C 205, 25. 7. 1994, p. 561.

⁽⁵⁾ OJ No L 298, 17. 10. 1989, p. 23.

- programme, namely financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks';
- (7) Whereas on 14 September 1994 the Economic and Social Committee issued its opinion on the Green Paper, stating that European-level programmes such as Media could have a positive influence on the development of programme structures and means of production in Europe;
- (8) Whereas the Commission has implemented an action programme to encourage the development of the European audiovisual industry (Media) (1991—1995), adopted by Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995) ⁽¹⁾, including, in particular, measures to support the development and distribution of European audiovisual works;
- (9) Whereas the Council, at its meeting of 5 November 1993, after taking note of the Commission Communication of 23 July 1993 on the Media programme mid-term evaluation report, took the view that it would be appropriate to examine suitable measures for launching a Media II programme after 1995;
- (10) Whereas the European Council meeting in Essen on 9 and 10 December 1994 called on the Commission to present proposals for a new Media programme;
- (11) Whereas Article 128 (4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty; whereas participation in the Programme should reflect European cultural diversity;
- (12) Whereas there is a need to take into account the cultural aspects of the audiovisual sector;
- (13) Whereas experience from the Media Programme has shown that action is needed both before and after production; whereas an environment favourable to the taking of initiatives by companies, in particular small and medium-sized businesses and their development, should be fostered and cooperation between distributors/broadcasters and producers should be encouraged;
- (14) Whereas the emergence of a European audiovisual market requires the development of 'European works', which means works from Member States of the European Union as defined in Article 6 of Directive 89/552/EEC;
- (15) Whereas the competitiveness of the audiovisual programme industry requires utilization of new technologies at the programme development stage;
- (16) Whereas there is a need for improvement in the circulation prospects of European cinematographic works on the market, in particular the European market; whereas cooperation between distributors, cinema owners and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (17) Whereas there is a need for improvement in the television broadcasting prospects of European works on the market, in particular the European market; whereas cooperation between broadcasters and producers should be encouraged and support should be given to concerted action to promote common programming measures at European level;
- (18) Whereas promotion and access to the market of European independent production should be facilitated;
- (19) Whereas there is a need to improve enhancement of the European audiovisual heritage and to meet the requirements of the programme market in this area;
- (20) Whereas support for development and distribution should take account of structural objectives such as developing potential where audiovisual production capacity is low, as in small countries or regions with less widely spoken languages and/or developing the independent production industry, in particular small and medium-sized businesses;
- (21) Whereas a reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
- (22) Whereas, in accordance with the principle of subsidiarity, action taken by the Community should support and supplement action taken by the relevant authorities in the Member States;
- (23) Whereas it is necessary to continue and step up the process of opening up the Media programme to participation by the associated countries of Central and Eastern Europe (CCEE), in accordance with the conditions resulting from the Additional Protocols to the Association Agreements concerning participation Community programmes concluded or to be concluded with these countries, and to participation by Cyprus, Malta and those EFTA States which are parties to the EEA Agreement on the basis of additional appropriations, in accordance with procedures to be agreed on with these countries; whereas the programme should

⁽¹⁾ OJ No L 380, 31. 12. 1990, p. 37.

also be opened up to cooperation with other third countries which have concluded Agreements containing audiovisual clauses; whereas the details of such participation or cooperation should be decided on at the appropriate time by the parties concerned;

- (24) Whereas Community support should be granted on the basis of prior appraisal, monitoring, and subsequent evaluation,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision establishes a programme to promote the development and, within the Union and outside it, the distribution of European audiovisual works (hereinafter referred to as 'the Programme'), to run for a period from 1 January 1996 until 31 December 2000, for the purpose of strengthening the European audiovisual industry.

Article 2

The aims of the Programme are as follows:

1. As regards development:

- to promote, by providing financial and technical assistance, the development of production projects submitted by companies which include the enhancement of the audiovisual heritage and are aimed, in particular, at the European market, to encourage an environment favourable to initiative and to the development of the companies and to encourage networking among them,
- to promote the development of production projects which include the enhancement of the audiovisual heritage that make use of new techniques of creation and animation, to support an environment favourable to initiative and development by companies and to encourage networking among them.

2. As regards distribution:

- to strengthen the European distribution sector in the field of cinema and video by favouring the networking of European distributors and encouraging them to invest in the production of European cinema films,
- to favour wider transnational distribution of European films by way of stimulation measures concerning their distribution and their exhibition in cinemas, and to encourage the networking of operators,
- to promote the circulation, in the European Union and outside it, of European television programmes

capable of appealing to a European and world audience and to encourage independent European producers and European broadcasters to cooperate in the production of such programmes,

- to actively support linguistic diversity of audiovisual and cinema works,
- to facilitate the promotion of independent European production and its access to the market by the implementation of promotion services and actions.

The aims of the programme must work towards:

- an increase in the competitiveness of the audiovisual industry notably in the European market, by supporting the development of projects which have a true distribution potential,
- respect for European linguistic and cultural diversity,
- enhancing the European audiovisual heritage,
- the development of potential in countries or regions with a low capacity for audiovisual production and/or a restricted geographical and linguistic area,
- the development of an independent production and distribution sector especially of small and medium-sized enterprises.

Article 3

Beneficiaries of Community support, as laid down in Article 2, must provide a significant proportion of the funding. Community funding shall not exceed 50% of the cost of operations.

The financial reference amount for implementation of the programme for the period referred to in Article 1 shall be ECU 265 million.

The annual appropriations shall be authorized by the budgetary authority in accordance with the current financial perspective.

Without prejudice to the agreements and conventions to which the Community is a contracting party, the businesses benefitting from the programme must be in the possession and continue to be in the possession, whether directly, or by majority participation, of the Member States and/or of nationals from Member States.

Article 4

Financial support under the Programme may be granted in the form of loans, repayable advances, or subsidies, as defined in the Annex. The repayments under the

Programme, together with the repayments from operations under the Media programme (1991/95), will be allocated to the requirements of the Media II programme.

Article 5

1. The Commission shall be responsible for the implementation of the Programme, in accordance with the arrangements laid down in the Annex.

In the performance of this task, it shall be assisted by a committee composed of two representatives from each Member State and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee, for its opinion, a draft of the measures to be taken concerning:

- arrangements for the implementation of the actions provided for in the Annex,
- the content of calls for proposals, the definition of criteria and procedures for the approval and selection of projects, as well as the final choice of intermediary organizations,
- questions concerning the annual internal distribution of finances within the programme, including among the actions established in the distribution sector,
- arrangements for monitoring and evaluating the operations.

Furthermore, the representative of the Commission shall also submit, for its opinion, the examination of all community allocations which are higher than ECU 300 000 per year as regards development and higher than ECU 500 000 per year as regards distribution. This threshold can be reviewed by the Committee in the light of experience.

3. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

4. The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall

be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided upon for a period of two months,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

4. The Commission may consult the Committee on any other question concerning the implementation of the programme.

The Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

The Commission representative shall keep the Committee informed in good time and on a regular basis of the financial allocation agreed in the framework of the programme (amounts, duration, internal distribution of finances, beneficiaries).

Article 6

The programme shall be open to the participation of the associated countries of Central and Eastern Europe (CCEE) in accordance with the conditions laid down in the additional protocols to the Association Agreements on participation in Community programmes concluded or to be concluded with those countries.

This programme shall be open to the participation of Cyprus, Malta and EFTA countries members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as applied to EFTA States, in accordance with procedures to be agreed with these countries.

It shall also be open to cooperation with other non-member countries which have concluded agreements containing audiovisual clauses.

The arrangements for this participation or cooperation will be fixed at the appropriate time between the parties concerned.

Article 7

1. The Commission shall ensure that actions under this Decision are subject to prior appraisal, monitoring and subsequent evaluation.

2. The selected beneficiaries shall submit an annual report to the Commission.

3. After the completion of projects, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

4. After two years and six months of implementation of the programme and within the six months that follow this period, the Commission, after having brought the matter before the Committee in accordance with the procedure laid down in Article 5 (2) and (3), shall present to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the results which were obtained, accompanied if need be by appropriate proposals.

Within the framework of this report, the Commission shall evaluate the comparative results of the systems

established in points 1.2.1.(a) and (b) of the Annex, with regard to the objectives of the programme. It shall submit to the Committee, in accordance with the procedure laid down in Article 5 (2) and (3) of this Decision, appropriate proposals as to the respective proportion for each of the two systems and as to the implementation arrangements for the continuation of the programme.

5. When the programme has run its full term, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the implementation and results of the programme.

Done at Brussels, 10 July 1995.

For the Council
The President
P. SOLBES MIRA

1. ACTIONS TO BE TAKEN

The proposed actions shall cover the following:

1.1. In the development sector

Improving development opportunities (preproduction) for drama, documentaries and animation and with a view to access to the European and world market:

- by supporting the development of drama, documentaries and animation (cinema and television) presented by businesses which are aimed at a European and world audience through the provision of assistance (planning and/or financial support) for writing techniques (workshops, a screenplay team etc.) for the establishment of the financial arrangements and the business plan; by encouraging a favourable environment for initiative and development by companies that have development project packages with in particular, European market potential and by encouraging their networking,
- by encouraging a favourable environment for initiative and development by companies in the sector of new technology and animation which present development projects aimed, in particular, at the European market, and by promoting their networking.

1.2. In the distribution sector

1.2.1. *Video and cinema distribution*

To meet the aims referred to in Article 2 (2), the following action lines shall be implemented:

- (a) a system of subsidy, repayable, for cinema distributors and video publishers of European films.

The aims of this system shall be:

- to favour the networking of all European distributors and publishers having common marketing strategies, in particular, on the European market,
- to particularly encourage distributors to invest in adequate promotion and distribution costs for European films whatever their production budget may be,
- to encourage video publishing and distribution of European works,
- to actively support linguistic diversity of European works (dubbing, subtitling and multilingual production);

- (b) A system of subsidy for European distributors proportionate to cinema attendance for European films outside their national territory up to an upper limit fixed per film and graded according to each country.

The subsidy generated in this way can only be used by distributors to be invested:

- in the production of European films which have a distribution potential, in particular, on the European market,
- in the meeting of editorial costs (taking of copies, dubbing and subtitling), promotion and advertising costs.

During the first year of application of the programme the Commission shall prepare a report assessing the possible arrangements, the cost and impact of the system referred to under (b), which it shall present to the Committee in accordance with the procedure laid down in Article 5 (2) for the purpose of determining the conditions for operational implementation of the system which will be of an experimental nature for two years.

Within the framework of the report provided for in Article 7 (4) the Commission shall evaluate the compared results of the systems referred to under (a) and (b) in the light of the objectives of the programme. It shall present to the Committee in accordance with the procedure laid down under Article 5 (2) appropriate proposals as regards the respective share for each of the systems and the arrangements for applying them to the rest of the programme, while ensuring the preservation of an adequate balance between the two systems.

The criteria for choosing the beneficiaries can include ones aiming to distinguish between projects according to their budget category.

A special subsidy shall be granted to films which are of interest for the enhancement of European cultural diversity.

- (c) A system of support, for example in the form of guaranteed receipts, is also intended to encourage exhibitors to put forward a significant showing of European films in commercial first appearance cinemas for a minimum period of exhibition time.

1.2.2. *Television broadcasting*

- encouraging independent producers to produce works (fiction, documentary and animation) involving the participation of at least two broadcasters from several Member States belonging particularly to different linguistic zones and encouraging the broadcasting of such works,
- actively supporting linguistic diversity of these works (dubbing, subtitling and multilingual production).

The criteria for selecting the beneficiaries may include provisions to distinguish projects according to their budget category.

Particular support shall be granted to audiovisual works presenting an interest for the enhancement of European cultural diversity.

1.2.3. *Promotion and access to the market*

Improving access for independent producers and distributors to the European and world market through promotion, assistance and bringing enterprises together at commercial events (markets, fairs, festivals and other fora for meetings), organized at European and world level.

2. IMPLEMENTATION PROCEDURE

2.1. Approach

In implementing the Programme, the Commission will work closely with the Member States. It will also consult the partners involved.

The Commission will ensure that there is a good geographical spread among the professionals participating in the programme and that Europe's cultural diversity is reflected, paying particular attention to the specific need of countries which have a low production capacity and/or which are linguistically or geographically restricted as well as to the development of the independent production and distribution sector and in particular the SME.

2.2. Funding

2.2.1. *Community contribution*

Community funding shall not exceed 50 % of the costs of the actions proposed and shall be granted in the form of repayable advances, loans or subsidies. The remainder will be provided in particular by the partners from the industry.

Community support for linguistic diversity in production will be granted in the form of subsidies.

2.2.2. *Appraisal, monitoring and evaluation*

Before approving an application for support, the Commission shall appraise it thoroughly to assess its conformity with this Decision and the conditions laid out in points 2 and 3 of this Annex.

Without prejudice to Article 3 of this Decision, Community support shall not exceed the minimum considered necessary for a project.

Applications for Community support should provide, where appropriate:

- a financial plan listing all the components of the funding of the projects, including the financial support requested from the Commission,

- a provisional timetable of work,
- any other relevant information requested by the Commission.

2.2.3. *Financial provisions and financial control*

The Commission shall determine the arrangements for commitments and payments for actions taken under this Decision in conformity with the relevant rules of the financial regulation.

2.3. *Implementation*

The Commission shall implement the programme in accordance with the procedure set out in Article 5 of the decision.

- 2.3.1. In implementing the programme, in particular the technical selection of projects, monitoring and evaluation of projects benefitting from the programme's funding and actions for networking, the Commission will ensure that it obtains the expertise of acknowledged specialists in the field of the development and distribution of cinema and television works.

To this end, it can if necessary involve intermediary organizations which, on the basis of their professional expertise, will provide technical assistance and will formulate proposals for the choice of the beneficiaries, without prejudice to other selection methods. These organizations will be chosen after calls for proposals and following the procedure described in Article 5 (2).

The Commission shall make the final selection of projects benefitting from the Programme's funding, in the context of the dispositions of Article 5 (2).

- 2.3.2. Furthermore, the Commission and the Member States shall organize the mutual exchange of information useful in the implementation of the programme and take the necessary steps, particularly by continuing the activities of the Media desks, to ensure the promotion of the programme, and encourage the greatest possible participation of professionals in its actions and ensure permanent contacts with the different support institutions of the Member States, for the purpose of achieving complementarity between the actions of this programme and national support measures.

**Council Decision
of 22 December 1995
on the implementation of a training programme
for professionals in the European audiovisual programme industry
(Media II – Training)**

(OJ No L 321, 30.12.1995)

COUNCIL DECISION

of 22 December 1995

on the implementation of a training programme for professionals in the European audiovisual programme industry (Media II — Training)

(95/564/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 127 (4) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189c of the Treaty ⁽³⁾,

1. Whereas the European Council meeting in Brussels on 10 and 11 December 1993 took note of the White Paper 'Growth, competitiveness and employment' as reference point for action by the European Union and its Member States; whereas the White Paper supports an industrial development approach based on global competitiveness, as the key to growth and employment, and states, in particular in Chapter 7, the need to adapt vocational skills in line with industrial and technological developments;
2. Whereas the European Council meeting in Corfu on 24 and 25 June 1994 took note of the report by the 'Bangemann Group' entitled 'Europe and the Global Information Society — Recommendations to the European Council', in particular acknowledging the strategic importance of the audiovisual programme industry in terms of content;
3. Whereas the 'Industry/Telecommunications' Council of 28 September 1994 issued a favourable opinion on the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan'; whereas it emphasized the need to improve the competitiveness of the European audiovisual industry;
4. Whereas the Council took formal note of the Commission's communication of 1 September 1994

entitled 'An industrial competitiveness policy for the European Union' which showed the close correlation between the development prospects of technologies, products, programmes (in particular audiovisual programmes) and the associated services and networks and recalled the need to raise the training standards of human resources in order to make European industry competitive;

5. Whereas the Council took formal note on 17 June 1994 of the Green Paper 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union';
6. Whereas the Commission consulted the people in the industry on the options put forward in the Green Paper, in particular by holding the 'European Audiovisual Conference' in Brussels from 30 June to 2 July 1994; whereas the consultation process revealed a strong desire for an enhanced programme of support for the European audiovisual industry, in particular in the area of training;
7. Whereas the European Parliament, in its resolution of 6 May 1994 ⁽⁴⁾, examined the problems of the audiovisual industry, following Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽⁵⁾ (the 'television without frontiers' Directive), in preparation for the European audiovisual conference, 'and took the view that the priorities established *inter alia* during the discussions on amendments to the Media programme, namely the financing mechanisms, pre-production, distribution and training, were the best means of establishing coherent, stable European networks';
8. Whereas on 14 September 1994 the Economic and Social Committee issued its opinion on the Green Paper, stating that European-level programmes such as Media could have a positive influence on the development of programme structures and means of production in Europe;
9. Whereas the Commission implemented an action programme to encourage the development of the

⁽¹⁾ OJ No C 108, 29. 4. 1995, p. 4.

⁽²⁾ OJ No C 256, 2. 10. 1995, p. 24.

⁽³⁾ Opinion of the European Parliament of 16 June 1995 (OJ No C 166, 3. 7. 1995, p. 200), Council common position of 10 July 1995 (OJ No C 281, 25. 10. 1995, p. 1) and Decision of the European Parliament of 15 November 1995 (not yet published in the Official Journal).

⁽⁴⁾ OJ No C 205, 25. 7. 1994, p. 561.

⁽⁵⁾ OJ No L 298, 17. 10. 1989, p. 23.

- European audiovisual industry (Media) (1991 to 1995), adopted by Council Decision 90/685/EEC of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (Media) (1991 to 1995)⁽¹⁾, including, in particular, training measures to upgrade the vocational skills of people working in the audiovisual programme industry;
10. Whereas the Council, at its meeting of 5 November 1993, after taking note of the Commission's communication of 23 July 1993 on the Media programme mid-term evaluation report, took the view that it would be appropriate to examine suitable measures for launching a Media II programme after 1995;
 11. Whereas the European Council meeting in Essen on 9 and 10 December 1994 called on the Commission to present proposals for a new Media programme;
 12. Whereas at its meeting of 6 December 1994 the Council adopted Decision 94/819/EC⁽²⁾ setting up the 'Leonardo da Vinci' action programme for the implementation of a European Community vocational training policy; whereas Article 8 (1) of the said Decision requires the Commission to ensure overall consistency between that programme and other Community measures in the field of training;
 13. Whereas there should be proper coordination with vocational training actions undertaken pursuant to the objectives of the Structural Funds;
 14. Whereas pursuant to Article 128 (4) of the Treaty the Community shall take cultural aspects into account in its action under other provisions of the Treaty; whereas it is necessary to ensure that participation in this programme reflects European cultural diversity;
 15. Whereas there is a need to take into account the cultural aspects of the audiovisual sector;
 16. Whereas the emergence of a European audiovisual market requires vocational skills adapted to the new dimension of the market, particularly as regards economic and commercial management of the industry and utilization of new technology at all stages of programme design, development, production and transmission;
 17. Whereas people in the industry should be provided with vocational skills that enable them to take full advantage of the, in particular, European dimension of the audiovisual programme market and they should be encouraged to develop projects which meet the demands of that market;
 18. Whereas there should be an improvement in the exploitation of the European audiovisual heritage and a response to the needs of the market for programmes in the field;
 19. Whereas the initial training of professionals must incorporate the indispensable economic and technological components; whereas the speed of change in these areas makes continuous training especially necessary;
 20. Whereas networking between vocational training centres should be encouraged so as to facilitate the transfer of know-how and the development of training modules at European level;
 21. Whereas support for vocational training must take account of structural objectives such as developing the potential for creation and production in countries or regions where audiovisual production capacity is low and/or where the geographical and linguistic area is restricted and/or developing the independent production sector, in particular small and medium-sized enterprises (SMEs);
 22. Whereas equal opportunities constitute a fundamental principle in the policies of the European Union which must be taken into account in implementing this programme;
 23. Whereas a reference amount, within the meaning of point 2 of the declaration by the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the entire duration of this programme, without thereby affecting the powers of the budgetary authority as they are defined by the Treaty;
 24. Whereas, in accordance with the principle of subsidiarity, action taken by the Community should support and supplement action taken by the relevant authorities in the Member States;
 25. Whereas the measures provided for under this programme are all aimed at cross-border cooperation which will enhance the value of action taken in the Member States or by those responsible for training, in accordance with the principle of subsidiarity referred to above;
 26. Whereas it is appropriate to follow up and intensify the opening up of the Media programme to the participation of the associated countries of central and eastern Europe (CCEE) in accordance with the conditions laid down in the additional protocols to the association agreements on participation in Community programmes concluded or to be concluded with those countries and to the participation of Cyprus, Malta and the EFTA States members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as those applied to the EFTA countries, under procedures to be agreed on with those

⁽¹⁾ OJ No L 380, 31. 12. 1990, p. 37.

⁽²⁾ OJ No L 340, 29. 12. 1994, p. 8.

countries; whereas, moreover, this programme should be open to cooperation with other third countries which have concluded agreements with audiovisual clauses; whereas the details of such participation or cooperation should be determined at the appropriate time between the parties concerned;

27. Whereas it is desirable to coordinate the activities laid down by the programme with those deployed by international organizations, such as the Council of Europe;
28. Whereas Community support should be granted on the basis of prior appraisal, monitoring and subsequent evaluation,

HAS DECIDED AS FOLLOWS:

Article 1

This Decision establishes a vocational training programme (hereinafter referred to as 'the programme') to run from 1 January 1996 to 31 December 2000. This programme, which supports and supplements action taken by Member States in full recognition of the responsibility of those States for the content and organization of vocational training programmes and cultural diversity of the countries and regions, excluding any harmonization of the laws and regulations of the Member States, has the purpose of providing professionals in the European audiovisual industry with the skills they need to exploit the European dimension of the market to the full and make use of new technology.

Article 2

In the context of Article 1, the aims of the programme are:

1. to meet the needs of the industry and bolster its competitiveness by improving initial and particularly continuing training for audiovisual professionals in order to provide them with the know-how and skills they need in order to take account of the European market and other markets, notably in the field of:
 - economic and commercial management, including legal aspects,
 - utilization and development of new technologies for the production of audiovisual programmes with high commercial and artistic added value, supplementing training in the audiovisual professions,
 - screenplay techniques.

This aim will take account of the transnational dimension through supporting the development of businesses and projects (new programmes or

enhancement of the audiovisual heritage) as well as of common entrepreneurial practices;

2. to encourage cooperation and exchange of know-how by networking between partners involved in training: training institutions, the professional sector and businesses and by developing teacher training.

In carrying out the objectives mentioned in points 1 and 2 of the first paragraph, particular attention shall be paid to the specific needs of countries or regions with a low production capacity and/or a restricted linguistic and geographical area, as well as the development of an independent European production and distribution sector and especially of small and medium-sized enterprises (SMEs).

Article 3

Recipients of Community support involved in implementing the measures laid down in the Annex must provide a significant proportion of the funding (at least 50%). In duly justified exceptional cases this percentage may be reduced to as low as 25%.

Community funding shall be determined in relation to the cost and nature of each measure envisaged.

The financial reference amount for implementing the programme for the period referred to in Article 1 shall be ECU 45 million.

The annual appropriations shall be authorized by the budgetary authority in accordance with the current financial perspective.

Article 4

1. The Commission shall be responsible for the implementation of the programme, in accordance with the arrangements laid down in the Annex.

In the performance of this task, it shall be assisted by a committee composed of two representatives from each Member State and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee, for its opinion, a draft of the measure to be taken concerning:

- the arrangements for the implementation of the actions provided for in the Annex,
- the content of calls for proposals, the definition of criteria and procedures for the approval and selection of projects and the final choice of intermediary organizations,

- questions concerning the annual internal distribution of finances within the programme,
- arrangements for monitoring and evaluating the operations.

Furthermore, the representative of the Commission shall also submit, for its opinion, the examination of all Community allocations of more than ECU 200 000 per year; this threshold can be reviewed by the Committee in the light of experience.

3. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- the Commission shall defer application of the measures which it has decided upon for a period of two months,
- the Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous subparagraph.

4. The Commission may consult the Committee on any other question concerning the implementation of the programme.

The Committee shall deliver its opinion within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

The Commission representative shall keep the Committee informed in good time and on a regular basis of the financial allocation agreed in the framework of the programme (amounts, duration, internal distribution of finances, beneficiaries).

Article 5

The programme shall be open to the participation of the associated countries of central and eastern Europe

(CCEE) in accordance with the conditions laid down in additional protocols to the association agreements on participation in Community programmes concluded or to be concluded with those countries.

This programme shall be open to the participation of Cyprus, Malta and EFTA countries members of the EEA Agreement on the basis of additional appropriations in accordance with the same rules as applied to EFTA States, in accordance with procedures to be agreed with those countries.

It shall also be open to cooperation with other non-member countries which have concluded agreements containing audiovisual clauses.

The arrangements for this participation or cooperation will be fixed at the appropriate time between the parties concerned.

Article 6

1. The Commission shall ensure that actions under this Decision are subject to prior appraisal, monitoring and subsequent evaluation.

2. The selected beneficiaries shall submit an annual report to the Commission.

3. After the completion of projects, the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

4. After two years and six months of implementation of the programme and within the six months that follow this period, the Commission, after having brought the matter before the Committee in accordance with the procedure laid down in Article 4 (2) and (3), shall present to the European Parliament, the Council and the Economic and Social Committee an evaluation report on the results which were obtained, accompanied if need be by appropriate proposals.

This report shall in particular show the added value created on the basis of the financial support provided by the Community and the socio-economic aspect.

5. When the programme has run its full term, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report of the implementation and results of the programme.

Done at Brussels, 22 December 1995.

For the Council

The President

L. ATIENZA SERNA

1. ACTIONS TO BE TAKEN

The programme is intended, in supporting and supplementing the actions undertaken by Member States, to help people in the industry adapt to the, in particular, European dimension of the market by promoting vocational training in the field of economic and commercial management, including legal aspects, and new technologies (including the protection and enhancement of the European film and audiovisual heritage).

The actions will cover initial training and, in particular, continuing professional training.

1.1. Training in economic and commercial management

This aims to develop the ability of people in the industry to conceptualize and exploit the European dimension in the development, production, distribution and broadcasting of audiovisual programmes.

The actions will consist in:

- promoting the elaboration and updating of training modules on management to supplement the actions undertaken by Member States,
- encouraging incorporation of the training modules into training actions taken by training institutions, the professional sector and businesses,
- networking of training programmes, facilitating exchanges of students/professionals by providing grants and organizing work-experience placements in companies in other Member States and contributing to teacher training, in particular distance learning, encouraging exchanges and partnerships between countries and regions with a low production capacity and/or a restricted linguistic and geographical area.

1.2. Training on new technologies

The training aims to develop the ability of people in the industry to use advanced creative techniques, such as animation, computer graphics, multimedia and interactive technologies.

The actions will consist in:

- promoting the definition and updating of training modules on new audiovisual technologies, to supplement measures taken by the Member States,
- encouraging incorporation of the training modules into training actions taken by training institutions, the professional sector and businesses,
- networking of training measures, facilitating exchanges of teachers and students/professionals by providing grants and organizing work-experience placements in companies in other Member States and contributing to teacher training and especially distance learning, encouraging exchanges and partnerships between countries and regions with a low production capacity and/or a restricted linguistic and geographical area.

2. IMPLEMENTATION PROCEDURE

2.1. Approach

In implementing the programme, the Commission will work closely with the Member States. It will also consult the partners concerned. It will ensure that the professionals participating in the programme reflect a balanced representation of Europe's cultural diversity.

It will encourage cooperation between training institutions, the professional sector and business and module designers from the start of the process.

It will facilitate the placement of trainees, especially those from countries and regions with a low production capacity and/or restricted linguistic and geographical area.

2.2. Community funding

Community funds are intended to support the efforts of the national partners to supplement existing training courses with modules on management and new technologies.

Community funding of up to 50 % (which may be increased up to 75 % in duly justified exceptional cases) of total training costs will be within a framework of joint funding with public and/or private partners.

The procedure laid down in Article 4 shall be applied to determine:

- allocation of funds for each type of action listed in points 1.1 and 1.2 of this Annex, and
- the Community contribution towards the costs of individual projects, selected following calls for proposals.

Module designers and training centres adopting them will be selected by calls for tender.

2.3. Implementation

The Commission shall implement the programme in conformity with Article 4.

- 2.3.1. In implementing the programme, in particular the technical selection of projects, monitoring and evaluation of projects benefiting from the programme's funding, the Commission will ensure that it obtains the expertise of acknowledged specialists from the audiovisual sector in the field of professional training.

To this end, it can if necessary involve intermediary organizations which, on the basis of their professional expertise, will provide technical assistance and will formulate proposals for the choice of the beneficiaries, without prejudice to other selection methods. These organizations will be chosen after calls for proposals and following the procedure described in Article 4 (2).

The Commission shall make the final selection of beneficiaries from the programme's funding, in the context of the dispositions of Article 4 (2).

Furthermore, the Commission and the Member States shall organize the mutual exchange of information useful in the implementation of the programme and take the necessary steps, particularly by continuing the activities of the Media desks, to ensure the promotion of the programme and encourage the greatest possible participation of professionals in its actions and ensure permanent contacts with the different support institutions of the Member States for the purpose of achieving complementarity between the actions under this programme and national support measures.

**Council Resolution
of 20 November 1995
on the promotion of statistics on culture and economic growth**

(OJ No C 327, 7.12.1995)

COUNCIL RESOLUTION

of 20 November 1995

on the promotion of statistics on culture and economic growth

(95/C 327/01)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas culture has an intrinsic value which should not be measured primarily by its economic utility but basically by qualitative criteria in the conviction that its value is not diminished by estimating its potential economic dimension;

Whereas, pursuant to Article 128 (1) of the EU Treaty, 'the Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore';

Whereas paragraph 4 of the same Article states that 'the Community shall take cultural aspects into account in its action under other provisions of this Treaty';

Whereas Community action in the area of culture, as in other areas, must be based on a precise awareness of the actual situation depending on reliable data derived from systems capable of producing comparable statistics;

Whereas, moreover, it could be important to have satisfactory statistics at Community level if Article 128 (4) is to be implemented properly;

Whereas account should be taken of the studies carried out in several Member States and of the findings of the meeting of heads of statistical offices and national culture administrations held in Paris on 8 and 9 June 1995, as well as of the outcome of the follow-up meeting which took place in Madrid on 13 and 14 October 1995;

Whereas the process launched by the Belgian Presidency in 1993 on the economic aspects and job-creating role of culture, which was taken up by the French and Spanish Presidencies, culminated in the presentation to the Council of documents concerning figures in culture and its links with economic growth;

Whereas, in the context of the emergence of the new information society, characterized by an accelerated process of technological change and the shift to a world-wide economy, the cultural dimension is of increasing importance, both qualitatively and quantitatively (its intrinsic economic value and the spin-off in other sectors such as training, employment, infrastructures, communications, tourism);

Whereas culture has an influence on both the overall development of society and its cohesion, as well as on cooperation with third countries,

AGREES to continue work on establishing comparable statistical indicators and the possible alignment of cultural statistics;

NOTES that the measures defined in this resolution should in particular promote the voluntary exchange of information and statistics between Member States on the basis of the existing statistical data;

INVITES the Commission, in close cooperation with the Member States and within the framework of the statistical systems that exist at national and Community level, to ensure that better use is made of existing statistical resources and that work on compiling comparable cultural statistics within the European Union proceeds smoothly. In that context, the Council invites the Commission to study more specifically the relationship between culture and the economy, and in particular the importance of the cultural sector in other economic areas (employment, growth, new technologies applied to culture, mobilization of public and private resources in the cultural sector, etc). The Council invites the Commission to report to it from time to time on the outcome of its work.

Decision No 719/96/EC
of the European Parliament and of the Council
of 29 March 1996
establishing a programme to support artistic and
cultural activities having a European dimension
(Kaleidoscope)

(OJ No L 99, 20.4.1996)

DECISION No 719/96/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 29 March 1996

establishing a programme to support artistic and cultural activities having a European dimension (Kaleidoscope)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 128 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Committee of the Regions ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾, having regard to the joint text approved on 31 January 1996 by the Conciliation Committee,

- (1) Whereas, in reality, the most tangible and influential aspect of Europe as a whole is not merely its geographical, political, economic and social features but also its culture; whereas the perception of Europe in the world is largely determined by the position and strength of its cultural values;
- (2) Whereas the Treaty confers on the Community responsibility for contributing to the flowering of the cultures of the Member States by improving the knowledge and dissemination of the culture and history of the European peoples and by encouraging cultural exchanges and artistic and literary creation;
- (3) Whereas cultural diversity, as expressed at national and regional level, must be preserved and the works of European artists and creators which are a mani-

⁽¹⁾ OJ No C 324, 22. 11. 1994, p. 5 and OJ No C 278, 24. 10. 1995, p. 9.

⁽²⁾ Opinion delivered on 21 April 1995 (not yet published in the Official Journal).

⁽³⁾ Opinion of the European Parliament of 7 April 1995 (OJ No C 109, 1. 5. 1995, p. 281), Common Position of the Council of 10 July 1995 (OJ No C 281, 25. 10. 1995, p. 10), and Decision of the European Parliament of 15 November 1995 (OJ No C 323, 4. 12. 1995, p. 31). Decision of the European Parliament of 14 March 1996 (OJ No C 96, 1. 4. 1996) and Decision of the Council of 14 March 1996.

festation of the richness of the many identities of the Member States must be promoted; whereas creators and professionals should accordingly be involved more closely in the implementation of Community actions in the cultural field;

- (4) Whereas it is also important to encourage all citizens, from a diversity of social and regional backgrounds, including the least-favoured, and especially young people, to become more involved in culture by promoting greater access to culture and the arts for the various European audiences and helping to increase mutual knowledge and respect and to promote the idea of citizenship of the European Union;
- (5) Whereas, with due regard for the principle of subsidiarity as defined in Article 3b of the Treaty, cooperation through networks would seem to be one of the best ways of breaking down barriers and helping both professionals and volunteers in the cultural sector to cooperate more closely on the ground, thereby paving the way for a greater number of higher quality exchanges and helping artists improve their professional skills;
- (6) Whereas, within the framework of the actions under this programme, possibilities should be made available to operators from different regions in Europe to cooperate on transnational artistic projects which will strengthen their links while respecting cultural diversity;
- (7) Whereas Community action in support of artistic and cultural events with a European dimension and European cooperation measures with wide scope and an innovative or exemplary nature promote the spread of different cultures whilst bringing artists and creators closer to the European public, and can also create added value at a socio-economic level by encouraging operational synergies and partnership;
- (8) Whereas support in the sphere of the arts and culture can boost economic activity and employment;

- (9) Whereas, in the Solemn Declaration on European Union signed in Stuttgart on 19 June 1983, the Heads of State and Government called for more extensive contacts between writers and artists in the Member States and a wider dissemination of their works both inside and outside the Community;
- (10) Whereas the European Parliament adopted a resolution on the formation of a European Community Youth Orchestra ⁽¹⁾ and a European Community Baroque Orchestra was created during the European Year of Music in 1985; whereas the European Parliament also adopted resolutions on the teaching and promotion of music in the European Community ⁽²⁾ and the promotion of the theatre and music in the European Community ⁽³⁾;
- (11) Whereas the Ministers responsible for Cultural Affairs meeting within the Council on 13 June 1985 adopted a resolution concerning the annual event 'European city of culture' ⁽⁴⁾ to help bring the peoples of the Member States closer together, and the European Parliament adopted a resolution on European cities of culture ⁽⁵⁾; whereas the Commission has announced the presentation in the immediate future of a proposal for a decision based on Article 128 of the Treaty containing a programme regarding the 'European city of culture' from the year 2001; whereas, also, the Community's financial contributions for the years 1999 and 2000 could be covered by the programme succeeding the present programme;
- (12) Whereas, in the conclusions of the Ministers for Culture meeting within the Council on 18 May 1990 ⁽⁶⁾, it was decided to create a 'European cultural month' to take place each year in one city in a European country basing itself on the principles of democracy, pluralism and the rule of law;
- (13) Whereas, in their resolution of 7 June 1991 ⁽⁷⁾, the Ministers for Culture meeting within the Council expressed 'their determination to encourage the theatre in Europe and to enhance its European dimension';
- (14) Whereas the resolution of the Council and the Ministers for Culture meeting within the Council of 14 November 1991 on European cultural networks ⁽⁸⁾ stresses the important role of networks of cultural organizations in cultural cooperation within Europe;
- (15) Whereas in its communication of 29 April 1992 on 'New prospects for Community cultural action', the Commission states that the arts sector, and particularly the performing and visual arts, should be supported by means of transnational networks and measures to encourage creation; whereas the Council, in the conclusions of the Ministers for Culture meeting within the Council of 12 November 1992 on guidelines for Community cultural action ⁽⁹⁾, encouraged this approach;
- (16) Whereas in its resolution on the Commission communication on new prospects for Community cultural action ⁽¹⁰⁾ and in its resolution on Community policy in the field of culture ⁽¹¹⁾ the European Parliament stressed the importance of cultural networks and of stepping up support for music, theatre, dance and the visual arts;
- (17) Whereas the European Parliament ⁽¹²⁾ and the Council ⁽¹³⁾, have adopted various Resolutions on cultural cooperation with third countries and the relevant international organizations in the cultural sector;
- (18) Whereas it is desirable to carry out Community cultural action with third countries inside and outside Europe and to undertake European cultural cooperation with the Council of Europe and other relevant international organizations (e.g. Unesco);
- (19) Whereas this Decision lays down, for the entire duration of this programme, a financial framework constituting the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, for the budgetary authority during the annual budgetary procedure;
- (20) Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty,

HAVE DECIDED AS FOLLOWS:

Article 1

This Decision establishes the action programme 'Kaleidoscope' set out in the Annex, hereinafter referred to as 'this programme', for the period 1 January 1996 to 31 December 1998.

⁽¹⁾ OJ No C 79, 5. 4. 1976, p. 8.

⁽²⁾ OJ No C 68, 14. 3. 1988, p. 46.

⁽³⁾ OJ No C 305, 25. 11. 1991, p. 518.

⁽⁴⁾ OJ No C 153, 22. 6. 1985, p. 2.

⁽⁵⁾ OJ No C 324, 24. 12. 1990, p. 350.

⁽⁶⁾ OJ No C 162, 3. 7. 1990, p. 1.

⁽⁷⁾ OJ No C 188, 19. 7. 1991, p. 3.

⁽⁸⁾ OJ No C 314, 5. 12. 1991, p. 1.

⁽⁹⁾ OJ No C 336, 19. 12. 1992, p. 1.

⁽¹⁰⁾ OJ No C 42, 15. 2. 1993, p. 173.

⁽¹¹⁾ OJ No C 44, 14. 2. 1994, p. 184.

⁽¹²⁾ OJ No C 267, 14. 10. 1991, p. 45, and OJ No C 255, 20. 9. 1996, p. 51.

⁽¹³⁾ Resolution of 4 April 1995 (OJ No C 247, 23. 9. 1995, p. 2).

This programme is intended, by means of cooperation, to encourage artistic and cultural creation and to promote knowledge and dissemination of the culture and cultural life of the European peoples.

Article 2

This programme shall encourage cooperation at European level between Member States in the field of culture. It shall support and supplement their action in accordance with the principle of subsidiarity by contributing to the flowering of their cultures while respecting their national and regional diversity.

To that end, and in accordance with the general objective set out in Article 1, the following shall be the specific objectives of this programme, based on the development of transnational cooperation:

- (a) encouragement of activities of artistic creation with a European dimension which are organized in partnership between artists from various Member States, thus enabling the number and quality of exchanges to be increased and a good overall representation of all forms of artistic expression covered by this programme to be ensured;
- (b) support for innovative cultural projects by European partners which are conducive to promoting the European dimension, stimulate the development of cultural activities at national and regional level and provide a genuine cultural added value;
- (c) assist in the improvement of the professional skills of artists and other cultural operators, in particular by supporting cultural projects which include the improvement of professional skills as part of their organization, and by stepping up exchanges of experiences, thus facilitating greater cooperation between artists from various Member States;
- (d) contribute to the mutual knowledge of European cultures by making it easier for different European audiences to have access to and participate in the culture and arts of other Member States and by facilitating intercultural dialogue.

Article 3

The actions described in the Annex shall be carried out in pursuit of the objectives set out in Article 2. They shall be implemented in accordance with the procedure laid down in Article 5.

Article 4

1. This programme shall be open to participation by the associated countries of central and eastern Europe

(ACCEE) in accordance with the conditions laid down in the Additional Protocols to the Association Agreements on participation in Community programmes concluded or to be concluded with those countries. This programme shall be open to participation by Cyprus and Malta and to cooperation with other third countries which have concluded association or cooperation agreements containing cultural clauses, on the basis of additional appropriations to be provided according to procedures to be agreed with those countries. Some general rules for such participation are provided for in Action 3 in the Annex.

2. The Community and the Member States shall promote cooperation with the Council of Europe and with other relevant international organizations in the cultural sector (e.g. Unesco), by ensuring, with due regard for the individual identity and autonomy of each institution and organization, that the instruments adopted are complementary.

Article 5

1. The Commission shall implement this programme in accordance with this Decision.
2. The Commission shall be assisted by a Committee consisting of two representatives per Member State which shall be chaired by the Commission representative. Members of the Committee may be assisted by experts or advisers.
3. The Commission representative shall submit to the Committee draft measures concerning:
 - priorities and general guidelines for the measures described in the Annex and the relevant annual work programme,
 - the general balance between all the Actions,
 - the selection rules and criteria for the various types of project described in the Annex (Actions 1, 2, 3 and 5),
 - the financial support to be provided by the Community (amounts, duration, distribution and beneficiaries),
 - the detailed procedures for monitoring and evaluating this programme and the conclusions of the assessment reports laid down in Article 8 and any other measure readjusting this programme arising therefrom.

The Committee shall deliver its opinion on the draft measures referred to in the previous subparagraph within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority provided for in Article 148 (2) of

the Treaty for the adoption of decisions which the Council is required to take on a proposal from the Commission. When the Committee votes, the votes of the representatives of the Member States shall be weighted in accordance with the aforementioned Article. The Chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event:

- (a) the Commission may defer application of the measures it has decided upon for a period of two months from the date of such communication;
- (b) the Council, acting by a qualified majority, may take a different decision within the time limit laid down in indent (a).

4. The Commission may also consult the Committee on any other matter concerning the implementation of this programme not covered by paragraph 3.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 6

1. The financial framework for the implementation of this programme for the period referred to in Article 1 shall be ECU 26,5 million.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 7

The Commission shall seek to ensure, in collaboration with the Member States, that the Actions provided for in this programme and other cultural programmes, on the

one hand, and those provided for by the Community action programmes, in particular concerning education, such as 'Socrates' ⁽¹⁾, and vocational training, such as 'Leonardo da Vinci' ⁽²⁾, on the other hand, are complementary.

Article 8

Two years after the programme has been brought into operation, and within the six months following that period, the Commission, after having consulted the Committee, shall present to the European Parliament and the Council a detailed assessment report on the results achieved accompanied, where necessary, by appropriate proposals, including proposals for the continuation of the programme and the relevant arrangements so as to enable the European Parliament and the Council to take a decision before the end of the period covered by this programme. This report will highlight the added value created, particularly of a cultural nature, and the socio-economic consequences brought about by the financial support granted by the Community.

In the light of the assessment report provided for in the previous paragraph and the proposals to be made by the Commission, the European Parliament and the Council will consider the possibility of adopting a new programme, worked out and developed taking full account of the fruitful experience gained from this programme.

In this context they will be able to take, where appropriate, any suitable measure to avoid interruption of the programme.

Article 9

This programme, containing practical information on procedure, the closing dates for submission of applications and the documents which must accompany applications, shall be published each year in the 'C' series of the *Official Journal of the European Communities*.

Article 10

This Decision shall enter into force on 1 January 1996.

Done at Brussels, 29 March 1996.

For the European Parliament

The President

K. HÄNSCH

For the Council

The President

T. TREU

(1) OJ No L 87, 20. 4. 1995, p. 10.

(2) OJ No L 340, 29. 12. 1994, p. 8.

ANNEX

KALEIDOSCOPE PROGRAMME

To promote awareness and dissemination of the culture of the peoples of Europe, particularly in the fields of the performing arts, visual arts and applied arts, the Community intends to support artistic and cultural projects carried out in partnership, or by means of networks, and large-scale European cooperation projects.

To this end, the Community is organizing this programme, which includes the following measures:

Action 1 — Support for events and cultural projects carried out in partnership or through networks

1. This programme is open to cultural and artistic projects jointly organized by cultural networks or by cultural partners from at least three Member States, and involving creative or performing artists or others active in the cultural sector from at least three Member States.

Particular attention will be given to networks which promote access to culture for people from a diversity of social and regional backgrounds.

Such projects should either involve creative work intended for public display or dissemination in Europe or help to promote greater cultural exchanges and access to culture by the public.

2. (a) Cultural cooperation projects shall cover any artistic or cultural event involving creative work intended for public display or dissemination in Europe. The areas chosen are as follows: the performing arts (for example, dance, music, theatre and opera), visual arts (for example, painting, sculpture, carving, engraving, architecture, photography and design), multimedia, as a form of artistic expression, and applied arts.
(b) Consideration shall also be given to projects intended to promote the spread of culture and access to culture by the public, organized by cultural networks or others involved in culture from at least three Member States, and involving creative or performing artists or others involved in the cultural sector from at least three Member States.
3. Projects submitted under this programme must be of European interest, of high quality and innovatory or exemplary in nature. Additional encouragement will be given to projects, the organization of which includes training periods or courses for improving professional skills in the arts or culture for the benefit, in particular, of young people.
4. Community funding shall not cover:
 - cultural actions or events covered by other Community programmes (cinema and television, cultural heritage and literary translation),
 - cultural cooperation projects concerning regions of the same Member State or of a purely national or bilateral nature,
 - the production of material and publications for commercial purposes; nevertheless, consideration shall be given to monographs, collections, reviews, records, CDs, videos, CD-Is and CD-ROMs when forming an integral part of a project,
 - investment or operating costs of the cultural organizations which do not form an integral part of the project in question.
5. Generally speaking, support for a cultural project may not be repeated, and may in no event be continued for more than two consecutive years. The possibility of renewing Community support will be assessed by independent experts nominated by the Commission acting on a proposal from the Member States on the basis of the activity report for the project submitted by the organizers. Independent experts may recommend changes to the project.

6. Projects must have a balanced financing plan setting out the financial requirements for their implementation, it being understood that administrative costs must not exceed 20 % of the Community financing of the project. Financial assistance for a project under the action may not exceed 25 % of the total cost of the project in question and in no circumstances may it exceed ECU 50 000. In the case of projects involving training periods or courses for improving professional skills or projects intended to promote the dissemination of, or public access to, culture, additional Community assistance may be granted up to 50 % of the cost under this heading but it may not exceed ECU 20 000 in total. As regards projects for improvement of professional skills only, Community assistance may cover up to 50 % of the total cost, up to a maximum of ECU 50 000.

Projects involving a Community contribution of less than ECU 5 000 shall not, in principle, be eligible under this programme.

7. Projects shall be the subject of an individual application to the Community. The application shall include:
 - a detailed description of the actions,
 - a detailed estimated budget for these actions.
8. The resources to be committed to this action shall be not less than 60 % of the overall budget allocated to this programme.

Action 2 — Large-scale European cooperation actions

1. This action involves significant large-scale quality projects having a European dimension and major cultural and socio-economic impact.

Under this action the programme is open to the same type of cultural and artistic projects and under the same conditions as those described in Action 1, but subject to the following further conditions:

- projects must be jointly organized by cultural networks or by cultural partners from more than three Member States, and must involve creative or performing artists or others active in the cultural sector from more than three Member States,
 - projects may last no longer than three years. Extension from year to year depends on an assessment of the actions carried out in the previous year to allow an evaluation of both the cultural quality and the socio-economic impact of the results obtained,
 - Community support for a project under this Action may exceed ECU 50 000, but may not exceed 25 % of the total cost of the project.
2. However, in the context of projects under this Action, particular attention could be paid to some existing large-scale significant European actions (in particular, the European Community Youth Orchestra and the European Community Baroque Orchestra) for which Community support could exceed 25 % of the total cost of the project, without prejudice to a regular assessment of such actions in accordance with Article 8.
 3. Cultural events organized to mark Europe Day on 9 May shall be considered eligible for support under this Action, subject to the criteria set out in paragraph 1. However, by way of derogation from these criteria, such events must be organized by persons active in the cultural field from at least three Member States.

Action 3 — Involvement of third countries

1. The third countries referred to in Article 4 shall participate in the programme in accordance with the conditions set out in that Article. Participation or cooperation shall take account of the following objectives:
 - the promotion of mutual knowledge of artistic and cultural creation,
 - the promotion of actions for the exchange and improvement of professional skills of creative or performing artists.
2. Artistic and cultural cooperation projects involving, in both organization and participation in the event, partners from at least one third country and two Member States shall be eligible.

Action 4 — European city of culture and European cultural month

The Community shall provide assistance each year to the European city of culture and to the city designated to organize the European cultural month.

Action 5 — Specific measures

- A. 1. To bring about an improvement in cultural cooperation between professionals in the cultural sector from a diversity of regional and social backgrounds and between local, regional, national and European authorities, assistance could be granted in limited individual cases to projects involving meetings organized at European level or to studies and research directly linked to the development of Community cultural action.
 2. Such meetings and studies would not be directly linked to cultural projects and events supported under this programme (Actions 1 and 2).
 3. Applications must offer the financial guarantees required to carry them out. The Community contribution under this action cannot in any circumstances exceed 50 % of the total cost of the meeting or the study nor exceed ECU 50 000.
- B. The Commission will take the necessary measures to ensure publicity and the dissemination of information on this programme so that cultural operators and networks are informed and made aware of actions relevant to them.
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**Council Decision
of 20 May 1996
adopting a Multiannual Community Programme
to stimulate the development of a European multimedia content industry
and to encourage the use of multimedia content
in the emerging information society
(INFO 2000)**

(OJ No L 129, 30.5.1996)

COUNCIL DECISION

of 20 May 1996

adopting a multiannual Community programme to stimulate the development of a European multimedia content industry and to encourage the use of multimedia content in the emerging information society (INFO 2000)

(96/339/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 (3) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Having regard to the Committee of the Regions ⁽⁴⁾,

(1) Whereas the European content industry can make a significant contribution to the stimulation of growth, to the strengthening of competitiveness and to the development of employment in the Community, as indicated in the White Paper on 'Growth, competitiveness, employment — the challenges and ways forward into the 21st century';

(2) Whereas the European Council at Brussels on 10 and 11 December 1993 decided, on the basis of that White Paper, to implement an action plan, consisting of concrete measures at both Community and Member State level, notably with respect

to information infrastructures and new applications, for which new content is required;

(3) Whereas the European Council at Corfu on 24 and 25 June 1994 took note of the Recommendations of the High Level Group on the information society as presented in the report 'Europe and the global information society' and underlined the fact that the Community and Member States have an important role to play in bringing about the information society by giving political impetus, by creating a clear and stable regulatory and legal framework and by setting an example in areas which come under their aegis;

(4) Whereas the Commission's action plan 'Europe's Way to the Information Society — an Action Plan' recognizes the importance of content and stipulates that the Commission will propose ways to stimulate the creation of favourable conditions for content providers to adapt their skills and products to the new multimedia environment and to stimulate increased usage of new information services;

(5) Whereas the Council on 28 September 1994 underlined the particular urgency of the need to enhance the global competitiveness of the European content industry, taking account of the cultural diversity and of the impact of these products on society;

(6) Whereas the European Council at Essen on 9 and 10 December 1994 underlined the importance of content in bringing about the information society;

⁽¹⁾ OJ No C 250, 26. 9. 1995, p. 4.

⁽²⁾ OJ No C 117, 22. 4. 1996.

⁽³⁾ OJ No C 82, 19. 3. 1996, p. 36.

⁽⁴⁾ OJ No C 129, 2. 5. 1996, p. 39.

- (7) Whereas the Council Resolution of 4 April 1995 on Culture and Multimedia⁽¹⁾ underlined the importance of multimedia for facilitating the development of the content industry and improving access of citizens to cultural heritage, as well as the catalyzing role of Member States and the Community in the creation, production and distribution of high quality cultural multimedia works;
- (8) Whereas the three long-term strategic objectives of the Community's content policy shall be to facilitate the development of the European content industry, to optimize the contribution of new information services to growth, competitiveness and employment in Europe, and to maximize the contribution of advanced information services to the provisional, social and cultural development of the citizens of Europe;
- (9) Whereas there are numerous barriers to the development of a European multimedia content industry and market, which are hindering the transition towards an information society;
- (10) Whereas the Community needs to build on the strong competitive position it has in some content sectors and whereas its competitive position needs to be strengthened in other content sectors;
- (11) Whereas the needs of users of information services, particularly in small and medium-sized enterprises (SMEs) and in the less-favoured regions of the Community, merit special attention;
- (12) Whereas provision should be made for measures to encourage the participation of SMEs in this programme;
- (13) Whereas the different rates of development in the provision and use of information services in the Member States deserve of special consideration, having regard to the internal cohesion of the Community and the risks associated with a two-tier information society;
- (14) Whereas Community actions undertaken concerning the content of information should respect the Union's multilingual character and encourage initiatives to adapt the content of multimedia information in the languages of the Member States;
- (15) Whereas policy actions under this programme aiming at strengthening the position of the European content industry will be complementary to other content actions, particularly those related to the audiovisual sector⁽²⁾, including cinema and television;
- (16) Whereas any content policy actions must be complementary to other ongoing national and Community initiatives, as outlined notably in the Commission's action plan 'Europe's Way to the Information Society — an Action Plan', and shall be performed in synergy with Community research programmes (programmes concerned with advanced technology, technology, advanced communications services and telematics) and with Community education training⁽³⁾, cultural and SME actions and initiatives, and with the Structural Funds;
- (17) Whereas complementarity and synergy with related Community initiatives and programmes must be ensured by the Commission through appropriate coordination mechanisms;
- (18) Whereas progress of this programme should be continuously and systematically monitored with a view to adapting it, where appropriate, to developments in the multimedia content market; whereas in due course there should be an independent assessment of the progress of the programme so as to provide the background information needed in order to determine the objectives for subsequent content policy actions; whereas at the end of this programme there should be a final assessment of results obtained compared with the objectives set out in this Decision;
- (19) Whereas the actions in this programme will not in any way prejudice the competition rules of the Community;
- (20) Whereas the actions in this programme relating to the exploitation of Europe's public sector information will be implemented in compliance with the provisions of Article 128 of the Treaty and need to address public sector information collections in domains such as business and legal information collections, copyright and patent deposit systems, educational and training bodies, libraries, museums, historical archives, and architectural and industrial objects; whereas these actions will not in any way

⁽¹⁾ OJ No C 247, 23. 9. 1995, p. 1.

⁽²⁾ Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe (OJ No L 196, 5. 8. 1993, p. 48); Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ No L 298, 17. 10. 1989, p. 23).

⁽³⁾ Council Decision 94/819/EC of 6 December 1994 establishing an action programme for the implementation of a European Community vocational training policy (OJ No L 340, 29. 12. 1994, p. 8).

prejudice confidential information held by the public sector, for example which concerns matters of national security, defence, public security or the prevention, investigation, detection and prosecution of criminal offences;

- (21) Whereas it may be appropriate to engage in international cooperation activities with international organizations and third countries for the purpose of implementing this programme;
- (22) Whereas it is necessary to fix the duration of the programme;
- (23) Whereas a financial reference amount, within the meaning of point 2 of the Declaration of the European Parliament, the Council and the Commission of 6 March 1995, is included in this Decision for the whole duration of the programme, without thereby affecting the powers of the budgetary authority as they are defined in the Treaty,

HAS ADOPTED THIS DECISION:

Article 1

A programme (INFO 2 000) is hereby adopted with the following objectives:

- creating favourable conditions for the development of the European multimedia content industry,
- stimulating demand for, and use of, multimedia content,
- contributing to the professional, social and cultural development of the citizens of Europe,
- promoting the exchange of knowledge between users and suppliers of multimedia products and knowledge infrastructure.

For the purposes of this Decision, multimedia content is defined as combinations of data, text, sound, graphics, animation, still and moving images, stored in digital form and interactively accessible.

The programme objectives will focus on the print and electronic publishing segments of the content industry and its contribution of information services to the promotion of growth, competitiveness and employment in Europe, while recognizing also the contribution of the audiovisual segments of the content industry towards the development of the European multimedia content industry.

Article 2

In order to attain the objectives referred to in Article 1, the following actions shall be undertaken under the guidance of the Commission, in accordance with the action lines set out in Annex I and the means for implementing the programme set out in Annex III:

- stimulating demand and raising awareness,
- exploiting Europe's public sector information,
- triggering European multimedia potential,
- support actions.

Article 3

The programme shall cover a period of four years from 1 January 1996 to 31 December 1999.

The financial reference amount for the implementation of the current programme for the period from 1 January 1996 to 31 December 1999 amounts to ECU 65 million.

The annual appropriations shall be authorized by the Budgetary Authority within the limits of the financial perspective.

An indicative breakdown of expenditure is given in Annex II.

Article 4

1. The Commission shall be responsible for the implementation of the programme.

The Commission shall be assisted by a Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The procedure laid down in Article 5 shall apply to:

- the adoption of the work programme,
- breakdown of the budgetary expenditure,
- the criteria and content of calls for proposals,
- the assessment of the projects proposed under calls for proposals for Community funding and the estimated amount of the Community contribution for each project where this is equal to or more than ECU 200 000,
- the measures for programme evaluation,
- any departure from the normally applied rules set out in Annex III,
- participation in any project by legal entities from third countries and international organizations.

3. Where, pursuant to the fourth indent of paragraph 2, the amount of the Community contribution is less than ECU 200 000, the Commission shall inform the Committee of the projects and of the outcome of their assessment.

4. The Commission shall regularly inform the Committee of progress with the implementation of the programme as a whole.

Article 5

The representative of the Commission shall submit to the committee a draft of measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according

to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of three months from the date of referral to the Council, the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 6

1. In order to ensure that Community aid is used efficiently, the Commission shall ensure that actions under this Decision are subject to effective prior appraisal, monitoring and subsequent evaluation.

2. During implementation of projects and after their completion the Commission shall evaluate the manner in which they have been carried out and the impact of their implementation in order to assess whether the original objectives have been achieved.

3. The selected beneficiaries shall submit an annual report to the Commission.

4. At the end of three years and at the end of the programme, the Commission shall submit to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions, once the committee referred to in Article 5 has examined it, an evaluation report on the results obtained in implementing the action lines referred to in Article 2. The Commission may present, on the basis of those results, proposals for adjusting the orientation of the programme.

Article 7

Participation in this programme may be open, in accordance with the procedure laid down in Article 5 without financial support by the Community from this programme, to legal entities established in third countries and to international organizations, where such participation contributes effectively to the implementation of the programme and taking into account the principle of mutual benefit.

Article 8

This Decision is addressed to the Member States.

Done at Brussels, 20 May 1996.

For the Council

The President

P. BERSANI

ACTION LINES FOR INFO 2000

ACTION LINE 1: Stimulating demand and raising awareness

Lack of awareness of the potential of the new multimedia information products and services is one of the major factors constraining demand. This action line contributes to redressing that situation by adding a European dimension to awareness and user-group activities taking place at the national or regional level. Specific attention will be given to favouring demand development in less-favoured and peripheral regions of the Community.

1.1. *Creating new markets by raising awareness at the European level with specific user groups*

Under the IMPACT programme a network of organizations in the Member States has been created that have a responsibility for conducting awareness and information campaigns in relation to new information services. In different Member States this role is performed by different organizations like chambers of commerce, professional organizations or public bodies. By working in a European network these organizations are able to add a European dimension to their activities.

Under INFO 2000 this successful formula will be continued and extended. The involvement of the Community in the network as a catalyst and a coordinator adds value to the individual activities and puts these activities in a clear European context. Apart from financial support for specific activities with a European dimension the Commission will encourage the exchange of know-how and experience, the use of common communication and information facilities, and cooperation between the various organizations in joint projects.

The organizations in the network will perform the following tasks:

- provide access to information collections and catalogues across the Community,
- demonstrate and facilitate access to the European information highways,
- advise users on the possible sources for satisfying their multimedia content needs, both nationally and internationally,
- stimulate coordinated European awareness campaigns at the national or regional level.

The main target groups for the actions will be small and medium-sized companies (SMEs) and libraries. The actual selection of specific target groups will be left to the national and regional organizations concerned, since they are closest to the target groups.

Following a call for proposals a total of approximately 30 organizations will be selected to participate in the network. Selection criteria will include knowledge of the local information market, affinity with the target groups foreseen and readiness to work in a European network. Actions which aim to stimulate women's interests in new information services are encouraged.

The network will cooperate with other relevant national organizations. It will liaise closely with other Community supported bodies and networks that have a complementary mission, such as the Information Society Project Office (ISPO), the European Information Centres (EICs), the Business Cooperation Network (BC-NET), the Value Relay Centres and the University Enterprise Training Partnerships (UETPs). Organizations from these networks could be selected in the call for proposals. Efforts will be made to avoid parallel or overlapping networks. Synergy and spin-offs will be sought with other awareness activities performed under the Fourth Framework Research Programme such as the 'Advanced Communication Technologies and Services' and 'Telematics Applications Programmes.'

1.2. *Encouraging clusters of pan-European users*

A flourishing demand side is important for the development of a healthy market for advanced information products and services such as multimedia. In view of the rapid changes taking place in the information market, regular dialogue between suppliers and users can smooth the transition process. In general the supply side tends to be better organized than the user side, both at the national and at the European level. In two of the three sectors that compose the multimedia industry — information technology and telecommunications — the user side is increasingly organizing itself both at the national and at the European level.

In the third sector of the multimedia industry — the content industry — the demand side is much less organized and is fragmented. Historically, the relationship between the content providers and the users has been indirect, i.e. through intermediaries. However, under the influence of the new communication networks this situation is changing. The need to develop direct relations between suppliers and users is increasingly being felt in the content sector also. At the national level, professional organizations and industry sector organizations are beginning to address the issue. However, for a successful development of the European multimedia content market it is important that groupings of users also emerge at the European level.

The actions foreseen under INFO 2000 aim to stimulate this process by providing incentives for cooperation and exchange of experience between national user groups, thereby encouraging the emergence of European groupings. Specific measures will be tailored to address key user problems, for example quality assurance and questions of liability. The network of awareness organizations will be used to analyze the situation in individual Member States and will play a catalytic role in bringing about pan-European user groups.

ACTION LINE 2: Exploiting Europe's public sector information

The public sector collects and produces vast amounts of information, much of which is of interest to individuals and businesses, and which can be the raw material for value-added information services produced by the content industry. Official statistical services either at regional, national or European level are an example.

Three sets of actions will be particularly helpful in supporting this public sector role and in exploiting its potential at European level without prejudice to the competence of the relevant Member States authorities for the application of cultural programmes:

- developing policies to access and exploit public sector information,
- linking directories of European public sector information,
- making use of content resources in the public sector.

Particular attention will be given to improving access from the peripheral regions of the Community.

This action line does not intend to foster harmonization of European culture.

2.1. Developing policies to access and exploit European public sector information

In the Member States, rules for access to public sector information are very different or in some cases do not exist at all. As the transition to the information society progresses, this situation could become a barrier to full participation by individuals and businesses across Europe and may become the cause of unevenly distributed opportunities. Therefore, initiatives need to be taken at the European level to develop policies which facilitate access to and exploitation of public sector held information, in particular as regards information resources of European interest.

The Commission will produce, in close collaboration with Member States and market actors, a Green Paper analyzing the situation in the different Member States, the relative position of the Community in a global context and the various possibilities for convergence of national approaches. To lay the foundations for this Green Paper, studies comparing national situations will be undertaken and exchanges of national experience will be encouraged.

2.2. Linking directories of European public sector information

In a number of Member States practical initiatives are being taken to improve access to public sector information. In the European information society it must be ensured that the relevant public sector information becomes more easily accessible to all European individuals and businesses that may have an interest in such information.

The Commission will support initiatives to produce directories of European public sector information to a common format, so that they can be interlinked and easily accessed from any point in Europe.

Following a call for proposals, pilot projects for the production of information directories that incorporate the above characteristics will be supported. These pilot projects may address the transnational interconnection of existing national or regional information directories as well as the collaborative production of new directories. Pilot projects based on public/private partnerships and applying multilingual solutions will be particularly encouraged.

2.3. *Making use of content resources in the public sector*

Europe is blessed with a rich stock of what might be called 'information collections' under public sector control. These information collections need to be exploited if Europe is to build on these cultural and economic assets commercially and if Europe is to realize the potential of advanced technologies in support of public sector services. They are central to the Community's strength in the global information society and their commercial and strategic potential has already been underlined by a series of deals transferring control over some of them to private companies, not all of which have been European.

Most of these information collections are still in analogue form but they are increasingly being digitized. The INFO 2000 programme aims at mobilizing these digital collections for exploitation in cooperation between public and private sector.

To this end the Commission will support the creation of European inventories of digital information collections and stimulate their interconnection across the Community. This involves defining a common standard format for such inventories as well as linking them with intellectual property rights trading systems. Support for the creation of inventories and their linking with intellectual property rights trading systems will be provided on the basis of calls for proposals. Related standards and specifications will be developed through studies and through task groups composed of the actors involved.

ACTION LINE 3: Triggering European multimedia potential

The transition from 'scribe to screen' is rapidly and fundamentally changing the structure of the content industry and the roles of the different players within it. Internationalization and multimedia are key words in this respect. Content itself and new ways of creating, packaging, distributing and marketing it are increasingly becoming the key drivers behind these changes.

Coping with these changes and exploiting the opportunities that emerge is primarily the responsibility of the industries concerned. However, apart from a limited number of large corporations that operate on a global scale, the present day content sector in Europe is mainly made up of SMEs. These have difficulty in dealing with a rapidly developing international multimedia market and the speed with which the changes take place. In addition the initial cost of producing high quality multimedia titles is high and the European market fragmented through cultural and linguistic barriers. The critical mass needed to recoup initial investments is therefore much more difficult to reach.

This puts European multimedia publishers, traditionally used to operating in a national or regional setting, at a disadvantage compared with their competitors from other parts of the world. Exploitation of the single market potential will become vital for global competitiveness.

This central action line aims at mitigating these comparative disadvantages for European producers in the emerging multimedia market by:

- catalyzing high quality European multimedia content,
- favouring a practical approach to trading multimedia rights,
- developing and exchanging best business practice.

3.1. *Catalyzing high quality European multimedia content*

The production of high quality European multimedia content will be stimulated in four strategic areas: economic exploitation of Europe's cultural heritage, business services for firms in particular for SMEs, geographic information, and scientific, technical and medical information. Under the IMPACT programme pilot actions in these areas have illustrated the problems connected with a pan-European approach and have laid the foundations for further actions under INFO 2000.

Multilingual interactive multimedia products can build on the wealth of available European content, while overcoming language barriers and other limitations of national and regional markets. Apart from the economic benefits, strong European business activity in this area is likely to contribute to the safeguarding of cultural identity and linguistic diversity. It will also increase the public's understanding of European cultural diversity across the Member States and regions.

In the areas indicated above — European cultural heritage, business services for firms in particular for SMEs, geographic information, and scientific, technical and medical information — calls for proposals will be launched to provide support to the initial and pre-commercial phases of pan-European multimedia content developments. The support given should help the companies concerned overcome the specific barriers with respect to multilingual and multicultural (re)use of content and to transnational cooperation. These initial phases would include product definition, partner identification, cross-licensing negotiation, planning of cooperative distribution etc., up to and including the production of a prototype.

Support will be given to projects that demonstrate the feasibility of a trans-European multilingual and multicultural approach, contain a risk element, exert a strong catalytic effect on the market and imply substantial user involvement. Special add-on incentives can be provided to encourage participation by SMEs and organizations from less favoured and peripheral regions and from less spoken languages.

The calls for proposals will be coordinated closely with the Community programmes Raphaël and the Integrated Programme in favour of SMEs and the craft sector, as well as with the sectoral policy actions in the areas of Trade, Tourism and Social Economics.

3.2. *Trading multimedia intellectual property rights*

Historically, the management of rights is organized by sector (text, sound, image, video etc.) and by country. With the dawning of the multimedia age this situation is increasingly becoming a barrier to the development of multimedia content markets, as the time and effort that has to be spent on identifying and acquiring the different rights increases steeply with the number of data types involved and the number of countries where right holders are located. SMEs and new media start-ups suffer most from the present system as they may wish to re-use existing material.

The development of pan-European multimedia content often requires input from various Member States. Effective and efficient mechanisms for trading multimedia rights at the European level are therefore essential for the development of the European multimedia content industry.

A call for proposals will be launched inviting proposals for pilot projects that lay the foundations for cross-border trading of multimedia rights electronically. In addition, studies will be launched to determine how different intellectual property rights trading systems for multimedia in Europe can work together. As an aid to SMEs practical tools will be developed on best practices to acquire, exploit and protect multimedia rights. The actions will build on the relevant research and technological development activities under the Fourth Framework Programme.

Although the difficulty of reaching consensus should not be underestimated, in the longer term, harmonization and rationalization of legal requirements may be necessary.

ACTION LINE 4: Support actions

The programme support actions aim at amplifying the effects of the core actions of the programme by addressing a number of horizontal issues relevant for the programme as a whole.

4.1. *Observing and analyzing the multimedia content market*

At regular intervals senior experts from the content industry, from user communities and from Member States will be convened to monitor, analyze and discuss the impact of multimedia on the content industry and on the different actors in the information value chain. When organizing these meetings modern multimedia information and communication facilities will be used where possible.

The composition of the meetings will reflect the various segments of content creation, distribution and use within the Community, as well as the many regulatory aspects (e.g. personal data protection) affecting the content dimension. They will thus serve as a focus for discussion, exchange of experience and cooperation between the various sectors of the content industry, between European and national policy-makers, and between the supply and user sides of the content market.

The meetings will focus on:

- long-term scenarios, updated whenever justified by major international developments in markets, technologies, industries and policies,
- key issues of common interest to market actors from different sectors and from different Member States, such as legal aspects and quality assurance,
- obstacles to market development and recommendations to the industries, administrations and users to overcome them,
- the execution of INFO 2000, making recommendations on orientations and priorities.

Studies will be carried out to monitor changes in the European and global content markets and provide in-depth analysis of key issues.

4.2. *Spreading the use of multimedia content standards*

Standards for the structuring and presentation of information, and standards for content encoding, including terminology, are essential in order to facilitate the exchange of documents and publications, and to enable the exploitation, access, maintenance and re-use of content.

The work started in this domain under the Impact programme will be continued and extended. Actions will be supported that raise awareness of and stimulate the use of existing content standards through workshops and electronic forums and by publishing reports on paper and electronically.

4.3. *Encouraging skills development at European level*

In order to stimulate skills development, the relevant European associations will be encouraged to develop and implement measures to equip the European content providers with the necessary skills to enter the age of multimedia and interactivity. Actions to be supported will normally be based on a three-staged approach:

- identification of the most urgent training needs,
- development of pilot courses to test the effectiveness and efficiency of the proposed actions,
- launching of the activities in the relevant parts of the content industry and in the educational and training systems.

INFO 2000 will help support the achievement of the first two steps. The third step would fall within the remit of programmes like Socrates and Leonardo, thus achieving important multiplier effects. The Commission shall ensure that Community actions are consistent and complementary.

The content industry will be extensively consulted in order to identify urgent needs and key areas. Representatives of universities and vocational training establishments will be closely associated with these initiatives. The role of the Community will mainly consist of stimulating, coordinating and enabling this process.

4.4. *Developing and exchanging best practice*

Actions will be supported that aim at developing and exchanging best business practice in the multimedia content industry at the European level. Such actions will include descriptions of business processes and models relevant to the content industry, such as procedures for intellectual property acquisition and content asset valuation and management, and exchange of experiences with multimedia consumer panels to test and evaluate multimedia products and services.

These activities will be implemented by means of a combination of studies, workshops, seminars and publications. The relevant organizations in the European content industry will be closely involved.

ANNEX II

INDICATIVE BREAKDOWN OF EXPENDITURE

| | |
|--|--------------------|
| 1. Stimulating demand and raising awareness | 22-32 % |
| 2. Exploiting Europe's public sector information | 18-23 % |
| 3. Triggering European multimedia potential | 45-57 % |
| 4. Support actions | 3-8 % |
| | <i>Total</i> 100 % |

This breakdown does not exclude the fact that a project could relate to several activities.

THE MEANS FOR IMPLEMENTING INFO 2000

1. The Commission will implement the programme in accordance with the technical content specified in Annex I.
2. The programme will be executed through indirect action and wherever possible on a shared-cost basis. The Community's financial contribution should not exceed the minimum considered necessary for a project, and shall be granted, in principle, only if the project meets financial obstacles which cannot otherwise be overcome. In addition, the Community's financial contribution shall not normally exceed 50 % of the cost of the project, except in duly justified exceptional cases, taking into account in particular participation by SMEs and less-favoured regions, with progressively lower participation the nearer the project is to the market place.
3. The selection of shared-cost projects will normally be based on the usual procedure of calls for proposals published in the *Official Journal of the European Communities*. The content of the calls for proposals will be defined in close consultation with the relevant experts and according to the procedure referred to in Article 5 of the Decision. The main criterion for supporting projects through calls for proposals will be their potential contribution to achieving the objectives of the programme. Implementation procedures will accommodate the interests of all kinds of market operators and facilitate their participation in the programme.
4. Applications for Community support should provide, where appropriate, a financial plan listing all the components of the funding of the projects, including the financial support requested from the Community, and any other requests for or grants of support from other sources.
5. The Commission may also implement a more flexible funding scheme than the call for proposals in order to provide incentives for the creation of partnerships, in particular involving SMEs and organizations in less favoured regions, or for other exploratory activities in different segments of the multimedia content market. This scheme might be operated on a permanent basis.
6. The Commission will make provision for considering in exceptional cases unsolicited project proposals which involve a particularly promising and significant multimedia market development, a highly innovative approach or an exceptional technology or methodology, and which cannot be submitted within the normal call for proposals procedure. The objective of avoiding market distortion will be maintained.
7. The detailed arrangements for the procedures referred to under points 5 and 6 will be implemented through the Regulatory Committee procedure (type IIIa)(¹) and in accordance with the Commission's financial regulations. They will be published in the *Official Journal of the European Communities*.
8. Projects fully financed by the Commission within the framework of study and services contracts will be implemented through calls for tenders in accordance with the financial provisions in force. Transparency will be achieved by publishing the work programme and circulating it to trade associations and other interested bodies.
9. For the implementation of the programme the Commission will also undertake preparatory, accompanying and support activities designed to achieve the general objectives of the programme and the specific aims of each action line. This includes activities such as: studies and consultancy in support of this programme; preliminary actions in preparation of future activities; measures aimed at facilitating participation in the programme as well as facilitating access to the results produced under the programme; publications and activities for the dissemination, promotion and exploitation of results; analysis of possible socio-economic consequences associated with the programme; and support activities such as observation and analysis of the multimedia content market, spreading the use of multimedia content standards, and encouraging skills development at European level.

In implementing activities under Action Line 1, the central support and administrative activities shall not exceed 35 % of the total spending compared to spending on decentralized activities.
10. All projects receiving financial support under the INFO 2000 programme will be required to display an acknowledgement of the support received on the products.

(¹) Council Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission (OJ No L 197, 18. 7. 1987, p. 33).

**Council Resolution
of 25 July 1996
on access to culture for all**

(OJ No C 242, 21.8.1996)

COUNCIL RESOLUTION

of 25 July 1996

on access to culture for all

(96/C 242/01)

THE COUNCIL OF THE EUROPEAN UNION,

Whereas access to culture for citizens in an operational or user capacity is an essential condition for full participation in society,

Aware that, in accordance with the principle of subsidiarity, promotion of wider access to culture within the Member States is the principal responsibility of the Member States,

Emphasizing that all cultures, in their diversity, must also be taken into account and respected,

Aware that geographical, physical, educational, social or economic obstacles may make it more difficult for many citizens to gain access to culture and may increase the incidence of exclusion, particularly among the less-favoured groups of the population,

Noting that knowledge of the conditions of access to culture should be improved and the obstacles thereto identified in order to improve participation in culture by all citizens,

Recognizing the advantages of exchanging information and experience relating to Community programmes,

Bearing in mind that action should be taken to ensure that access to culture is made easier for all citizens,

AGREES to encourage cooperation with the Council of Europe and Unesco, particularly through the interchange of experience in the area of access to culture,

CALLS UPON the Commission to:

- carry out a Europe-wide survey to ascertain more clearly the facts about access to culture and the needs felt by citizens, and, in particular, young people and those experiencing different forms of exclusion; this survey will be based on existing experience and statistics. It will help to target more accurately measures concerning access to culture for citizens within Community programmes,
- submit to the Council, by the end of 1997, the outcome of that survey in the form of a report on access to culture for all.

**Council Resolution
of 25 July 1996
on electronic publishing and libraries**

(OJ No C 242, 21.8.1996)

COUNCIL RESOLUTION
of 25 July 1996
on electronic publishing and libraries
(96/C 242/02)

THE COUNCIL OF THE EUROPEAN UNION,

Aware of the influence exerted by technological changes and developments on the world of learning and knowledge,

Bearing in mind that libraries represent one of the main bases for present-day innovation and progress and that there is a need to enhance the wealth of resources and the heritage they encompass, particularly by means of new systems and digital networks,

Whereas, in order for full advantage to be taken of Europe's wealth of cultural resources in the information society, libraries will have an increasingly active role to play in society, as a prime interface between the world of knowledge and the world of new technology,

Whereas the dissemination of electronic documents over networks should enable libraries to step up their action in the service of readier access to knowledge and culture,

Bearing in mind that, as part of an overall strategy to promote reading, the rapid expansion of electronic publishing should also be coupled with promotion of printed books,

Aware that the use of new electronic services and products depends on a solution to many legal and technical issues and that greater Europe-wide cooperation between interested parties is essential for that purpose,

Whereas work is under way within the European institutions, as well as in the Group of seven most industrialized countries, on the information society and in particular on electronic libraries,

Whereas it is necessary to respect cultural and linguistic diversity throughout the Community,

Having regard to the Council Resolution of 4 April 1995 on culture and the multimedia⁽¹⁾,

Having regard to the final document emerging from the meeting of Directors-General for books and libraries, held in Rome on 22 and 23 March 1996,

CALLS UPON the Commission to:

- look into, with the help of experts from the Member States in the group set up following the Resolution of 4 April 1995 on culture and the multimedia, the various legal, technical and cultural aspects of electronic documents, from their creation to their utilization, as well as the fresh cultural and social challenges to be met by libraries, especially public libraries, in the new economic and technological environment, with particular emphasis on innovation and development of technical standards. The group will make a compilation of existing national, Community and international trial schemes and programmes, which it may use as a basis for any further work,
- submit a progress report on work to the Council by the end of June 1997.

⁽¹⁾ OJ No C 247, 23. 9. 1995, p. 1.

**Council Regulation (EC) No 2469/96
of 16 December 1996
amending the Annex to Regulation (EEC) No 3911/92
on the export of cultural goods**

(OJ No L 335, 24.12.1996)

**Corrigendum to Council Regulation (EEC) No 3911/92 of 9 December 1992
on the export of cultural goods
(OJ No L 267, 19.10.1996)(d,en,p only)**

COUNCIL REGULATION (EC) No 2469/96
of 16 December 1996
amending the Annex to Regulation (EEC) No 3911/92 on the export of cultural
goods

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 113 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas according to different artistic traditions within the Community water-colour, gouache and pastel pictures are variously regarded as being either paintings or drawings; whereas category 4 of the Annex to Regulation No 3911/92 ⁽⁴⁾ includes drawings executed entirely by hand on any medium in any material and category 3 includes pictures and paintings executed entirely by hand on any medium in any material; whereas the financial thresholds which apply to these two categories are different; whereas in the internal market this could lead to serious differences of treatment for water-colour, gouache and pastel pictures depending upon the Member State in which they are situated; whereas it is necessary to decide for the purposes of the application of the Regulation into which category they shall fall to ensure that the financial thresholds applied shall be the same throughout the Community;

Whereas experience shows that the prices realized by water-colour, gouache and pastel pictures tend to be rather higher than those realized by drawings and much lower than those fetched by paintings in oil or tempera; whereas accordingly it is expedient to place water-colour, gouache and pastel pictures into a new separate category with a threshold of ECU 30 000 which would ensure that works of major significance would require an export

licence while there would not be the creation of any undue administrative load placed upon the licensing authorities,

HAS ADOPTED THIS REGULATION:

Article 1

The Annex to Regulation (EEC) No 3911/92 shall be amended as follows:

1. in heading A:

(a) point 3 shall be replaced by:

'3. Pictures and paintings, other than those included in category 3A or 4, executed entirely by hand in any medium and on any material ⁽¹⁾;

(b) the following point shall be inserted:

'3A. Water-colours, gouaches and pastels executed entirely by hand on any material ⁽¹⁾;

(c) point 4 shall be replaced by the following:

'4. Mosaics in any material executed entirely by hand, other than those falling in categories 1 or 2, and drawings in any medium executed entirely by hand on any material ⁽¹⁾.'

2. in heading B, the following category shall be inserted:

'30 000

— 3A. (Water colours, gouaches and pastels)'

Article 2

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall be applicable six months after the date of publication.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16 December 1996.

For the Council

The President

D. HIGGINS

⁽¹⁾ OJ No C 6, 11. 1. 1996, p. 14.

⁽²⁾ OJ No C 166, 10. 6. 1996, p. 39.

⁽³⁾ OJ No C 97, 1. 4. 1996, p. 28.

⁽⁴⁾ OJ No L 395, 31. 12. 1992, p. 1.

CORRIGENDA

Corrigendum to Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods

(Official Journal of the European Communities No L 395 of 31 December 1992)

Page 2, Article 2 (2), second subparagraph, third line:

for: '... may not require export licences ...',

read: '... are authorized not to require export licences ...'.

**Council Decision
of 20 January 1997
on the integration of cultural aspects
into Community actions**

(OJ No C 36, 5.2.1997)

COUNCIL RESOLUTION

of 20 January 1997

on the integration of cultural aspects into Community actions

(97/C 36/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Preamble to the Treaty on European Union, which marks a new stage in the process of creating an ever closer union among the peoples of Europe,

Whereas Article 128 of the Treaty establishing the European Community, and in particular paragraph 4 thereof, states that the Community shall take cultural aspects into account in its action under other provisions of the Treaty;

Whereas Article 3b of the Treaty states that, in areas which do not fall within its exclusive competence, the Community shall take action in accordance with the principle of subsidiarity;

Whereas on 12 November 1992 the Council and the Ministers of Culture meeting within the Council concluded that it should become standard practice on a case by case basis to take account of cultural aspects of actions under provisions of the Treaty other than cultural ones at the earliest possible stage of preparation of any new action or policy and that they should regularly consider those issues under other provisions of the Treaty affecting culture which are under examination in Council;

Whereas, on 25 July 1996, the Council concluded that access for citizens to culture in an operational or user capacity is an essential condition for full participation in society and that geographical, physical, educational, social and economic obstacles in all countries may make it difficult for many citizens to gain access to culture and may increase the incidence of exclusion, particularly among the less-favoured groups of the population,

WELCOMES the first Report by the Commission on the consideration of cultural aspects in European Community action, which states that it constitutes a partial account and that although considerable means are devoted to cultural activities or activities with a cultural dimension, the operations implemented rarely correspond to specific Community objectives in the cultural field;

CONSIDERS that the Report represents a valuable first step in determining the areas in which other provisions of the Treaty and actions arising from them have an impact on, and benefit, the cultural sector and demonstrates the need for further work to ensure that the objectives and obligations of Article 128 are met;

NOTES with interest that a number of Community interventions under the structural funds directly concern the cultural field (historic and artistic heritage, traditional crafts, etc.);

AFFIRMS that cultural aspects in Community actions shall, within the scope of the Treaty, be taken into account based on the following principles:

- culture forms an integral part of Community action and contributes to the objectives of the Community through enhancement of citizenship and personal and human development,
- culture must be accorded recognition in its own right in line with other activities requiring horizontal coordination in the decision-making procedures of the Community,
- access to culture and the affirmation and expression of cultural identity are essential conditions for the full participation of citizens in society,
- the implementation of actions with a cultural dimension should contribute to the flowering of the cultures of the Member States while respecting their national and regional diversity and at the same time bring the common cultural heritage to the fore, thereby:
 - bringing Europe closer to its citizens,
 - continuing the process of creating an ever closer union among the peoples of Europe,
 - strengthening the sense of citizenship of the Union;

such implementation can also contribute to a reduction of disparities between levels of development of the various regions, greater economic and social cohesion, improvement of employment opportunities for workers in the internal market, elim-

ination of exclusion and enrichment of the quality of life of its citizens,

- differing procedures and practices in relation to cultural action in Member States shall be respected in the decision-making structures of the Community,
- the integration of cultural aspects should be achieved with transparency and coordination;

CONSIDERS that to achieve its goals in the cultural field, as set out in Article 128, and to implement other Treaty provisions referring to culture, the Community must have careful regard to the impact of other policies on culture and should regularly assess action in the areas identified in the Commission's First Report:

- the single market, including issues relating to the free movement of persons, goods, services and capital,
- the Community's internal policies,
- audiovisual and telecommunications policies, including issues relating to the information society and the content provider industries,
- Community external relations;

AGREES to take into account cultural aspects in the structural funds for the purpose of strengthening the economic and social cohesion of the Community and promoting its overall harmonious development within the current Community legal framework;

AGREES to establish effective and coherent procedures by which the impact of other Community policies in the field of culture can be reviewed at all appropriate levels. These procedures shall be aimed, in particular, at creating a flow of information on the cultural aspects of existing and proposed Community actions;

WELCOMES the Commission's intention to:

- establish its own enhanced and effective procedures to ensure better coordination of its actions in accordance with cultural objectives, drawing on experience in the fields of environment and of health,

- develop appropriate procedures for assessing, at the outset of the development of policies under other provisions of the Treaty, what proposals are likely to have an impact on culture and identify these in its annual work programme and ensure that such proposals take into account cultural principles set out in this Resolution;

INVITES the Commission to:

- continue and improve the supply of good quality information to Member States in order to facilitate their own coordination at national level,
- report annually to the Council on how cultural aspects have been taken into account in the Community's actions under other provisions of the Treaty, and as required in respect of priority cultural objectives identified from time to time by the Council and by itself,
- undertake a detailed assessment of the economic impact, in particular the employment impact, of cultural activity in the Union,
- take into consideration, in respect of its action, the views expressed by the Council regarding cultural aspects;

UNDERTAKES

- to assess the extent to which the principles set out both in the conclusions adopted on 12 November 1992, referred to above, and in this Resolution have been observed,
- to review regularly the operation, effectiveness and relevance of the procedures adopted for assessing the observance of these principles,
- to consider any measures that may be necessary for their improvement, and
- to develop and present ideas on how to promote further and improve the integration of cultural aspects into Community actions, including drawing up further guidance if this should prove necessary.

Directive 96/100/EC
of the European Parliament and of the Council
of 17 December 1997
amending the Annex to Directive 93/7/EEC on the return
of cultural objects unlawfully removed from
the territory of a Member State

(OJ No L 60, 1.3.1997)

DIRECTIVE 96/100/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 17 February 1997

amending the Annex to Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 100a thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty ⁽³⁾,

Whereas according to different artistic traditions within the Community water-colour, gouache and pastel pictures are variously regarded as being either paintings or drawings; whereas Category 4 of the Annex to Directive No 93/7/EEC ⁽⁴⁾ includes drawings executed entirely by hand on any medium in any material, and Category 3 includes pictures and paintings executed entirely by hand on any medium in any material; whereas the financial thresholds which apply to these two categories are different; whereas in the internal market this could lead to serious differences of treatment for water-colour, gouache and pastel pictures depending upon the Member State in which they are situated; whereas it is necessary to decide for the purposes of the application of the Directive into which category they shall fall to ensure that the financial thresholds applied shall be the same throughout the Community;

Whereas experience shows that the prices realized by water-colour, gouache and pastel pictures tend to be rather higher than those realized by drawings and much lower than those fetched by paintings in oil or tempore; whereas accordingly it is expedient to place water-colour, gouache and pastel pictures into a new separate category with a threshold of ECU 30 000 which would ensure that

⁽¹⁾ OJ No C 6, 11. 1. 1996, p. 15.

⁽²⁾ OJ No C 97, 1. 4. 1996, p. 28.

⁽³⁾ Opinion of the European Parliament of 21 May 1996 (OJ No C 166, 10. 6. 1996, p. 38), Council Common Position of 8 July 1996 (OJ No C 264, 11. 9. 1996, p. 66) and Decision of the European Parliament of 13 November 1996 (OJ No C 362, 2. 12. 1996). Council Decision of 20 December 1996.

⁽⁴⁾ OJ No L 74, 27. 3. 1993, p. 74.

works of major significance unlawfully removed from the territory of a Member State can be returned,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The Annex to Directive No 93/7/EEC shall be amended as follows:

1 in heading A:

(a) point 3 shall be replaced by:

'3. Pictures and paintings, other than those included in Category 3A or 4, executed entirely by hand on any material and in any medium ⁽¹⁾;

(b) the following point shall be inserted:

'3A. Water-colours, gouaches and pastels executed entirely by hand on any material ⁽¹⁾;

(c) point 4 shall be replaced by the following:

'4. Mosaics in any material executed entirely by hand, other than those falling in Categories 1 or 2, and drawings in any medium executed entirely by hand on any material ⁽¹⁾;

2 in heading B:

The following Category shall be inserted:

'30 000

— 3A. (Water colours, gouaches and pastels)'

Article 2

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive within six months of the date of its publication in the *Official Journal of the European Communities*. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

Article 3

This Directive is addressed to the Member States.

Done at Brussels, 17 February 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

G. ZALM

**Resolution of the Council and of the Representatives of the Governments
of the Member States, meeting within the Council,
of 17 February 1997
on illegal and harmful content on the Internet**

(OJ No C 70, 6.3.1997)

RESOLUTION OF THE COUNCIL AND OF THE REPRESENTATIVES OF THE
GOVERNMENTS OF THE MEMBER STATES, MEETING WITHIN THE COUNCIL

of 17 February 1997

on illegal and harmful content on the Internet

(97/C 70/01)

THE COUNCIL OF THE EUROPEAN UNION AND THE
REPRESENTATIVES OF THE GOVERNMENTS OF THE
MEMBER STATES, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European
Community,

Having regard to the request to the Commission
following the informal meeting of Ministers of Telecom-
munications and Ministers of Culture and Audiovisual
Affairs held in Bologna on 24 April 1996 to produce a
summary of problems posed by the rapid development of
Internet, and to assess, in particular, the desirability of
Community or international regulation,

Having regard to the informal meeting of Ministers of
Justice and Home Affairs on 26 and 27 September 1996
in Dublin which discussed further cooperation between
Member States to combat trade in human beings and
sexual abuse of children, and stressed the importance of
three action projects,

Having regard to the conclusions on paedophilia and the
Internet of the Council held on 27 September 1996,
which agreed to the extension of the Working Party
established following the Bologna meeting to represen-
tatives of Ministers of Telecommunications as well as to
access and service providers, content industries and users
with a view to presenting concrete proposals/possible
measures taking account also of United Kingdom
measures to combat the illegal use of Internet or similar
networks, in time for the Council of 28 November,

Having regard to the proposal for a charter for inter-
national cooperation on the Internet placed before the
OECD by France,

Having regard to the session of the Council of 8
October, at which the need for further analysis of the

issues underlying development of information society
policy internationally and the need for coordination
between initiatives relating to the subject was recognized,
and the German proposal to host an international
conference dedicated to this end to be prepared in close
cooperation with the Commission and Member States
was welcomed,

Having regard to the declaration of the Council and of
the Ministers for education meeting within the Council
of 20 December 1996 on protection of children and
countering paedophilia⁽¹⁾,

Having regard to the Commission's undertaking to
submit to the Dublin European Council in December
1996 an updated version of the 'Europe's way to the
information society' action plan in order to clarify the
coherence of the various steps undertaken,

Noting the recent communication from the Commission
to the European Parliament, the Council, the Economic
and Social Committee and the Committee of the Regions
on illegal and harmful content on the Internet, and the
Commission Green Paper on the protection of minors
and human dignity in audiovisual and information
services, both of which will have to be considered in
greater detail,

Recalling the positive benefits offered by the Internet in
particular in education, by empowering citizens,
lowering the barriers to the creation and distribution of
content and offering wide access to even richer sources
of digital information,

Recalling the need to combat illegal use of the technical
possibilities of Internet in particular for offences against
children,

(¹) OJ No C 7, 10. 1. 1997, p. 12.

1. WELCOME the report of the Commission Working Party on illegal and harmful content on the Internet and undertake to consider the proposals in that report taking into account further discussions on the Commission communication on illegal and harmful content on the Internet and on the Green Paper on the protection of minors and human dignity in audio-visual and information services;
2. TAKE INTO ACCOUNT the work accomplished in the field of justice and home affairs;
3. SUGGEST that special attention continue to be paid by the Commission and Member States to coordination of the efforts of groups working in all the relevant fields;
4. INVITE the Member States to start with the following measures:

encourage and facilitate self-regulatory systems including representative bodies for Internet service providers and users, effective codes of conduct and possibly hot-line reporting mechanisms available to the public;

encourage the provision to users of filtering mechanisms and the setting up of rating systems; for example the PICS (platform for internet content selection) standard launched by the international World-Wide-Web consortium with Community support should be promoted;

participate actively in the International Ministerial Conference to be hosted by Germany and encourage attendance by representatives of the actors concerned;

5. REQUEST the Commission, as far as Community competences are concerned, to:

ensure the follow-up and the coherence of work on the measures suggested in the abovementioned report, taking into account other relevant work in this field and to reconvene the Working Party as necessary to monitor progress and take further initiatives if appropriate;

foster coordination at Community level of self-regulatory and representative bodies;

promote and facilitate the exchange of information on best practice in this area;

foster research into technical issues, in particular filtering, rating, tracing and privacy-enhancing, taking into account Europe's cultural and linguistic diversity;

consider further the question of legal liability for Internet content;

6. RECOMMEND that the Commission, in the framework of Community competences, and Member States take all necessary steps to enhance the effectiveness of the measures referred to in this resolution through international cooperation building on the results of the International Ministerial Conference and in discussions in other international forums.

**Council Conclusions
of 17 February 1997
on the Green Paper on the protection of minors and
human dignity in the audiovisual and information services**

(OJ No C 70, 6.3.1997)

COUNCIL CONCLUSIONS

of 17 February 1997

on the Green Paper on the protection of minors and human dignity in the audiovisual and information services

(97/C 70/03)

After a presentation by the Commission and an exchange of views, the Council welcomes the Green Paper on 'the protection of minors and human dignity in the audiovisual and information services'.

The Council noted the specific importance of these matters linked to the content of the new audiovisual services. It takes note of the complementarity between this Green Paper and the Commission communication on 'illegal and harmful content on the Internet' in accordance with the resolution of the Council and of the representatives of the Governments of the Member States meeting within the Council adopted on 28 November 1996 which notes the need for consideration of both documents in greater detail. The Council also takes note of the timetable presented by the Commission, involving in-depth consultation of interested parties, on the basis of their observations on the Green Paper in the first half of 1997. It requests the Commission, insofar as Community competence is concerned, to follow up work on the Green Paper between now and the next meeting of the Council (audiovisual/culture), including proposing further initiatives if appropriate.

Directive 97/36/EC
of the European Parliament and of the Council
of 30 June 1997
amending Council Directive 89/552/EEC on the coordination of
certain provisions laid down by law, regulation or administrative action
in Member States concerning the pursuit of television broadcasting activities

(OJ No L 202, 30.7.1997)

DIRECTIVE 97/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 30 June 1997

amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the Economic and Social Committee (2),

Acting in accordance with the procedure laid down in Article 189b of the Treaty (3) in the light of the joint text approved by the Conciliation Committee on 16 April 1997,

- (1) Whereas Council Directive 89/552/EEC (4) constitutes the legal framework for television broadcasting in the internal market;
- (2) Whereas Article 26 of Directive 89/552/EEC states that the Commission shall, not later than the end of the fifth year after the date of adoption of the Directive, submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of the Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting;
- (3) Whereas the application of Directive 89/552/EEC and the report on its application have revealed the need to clarify certain definitions or obligations on Member States under this Directive;
- (4) Whereas the Commission, in its communication of 19 July 1994 entitled 'Europe's way to the information society: an action plan', underlined the im-

portance of a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission;

- (5) Whereas the Council welcomed this action plan at its meeting of 28 September 1994 and stressed the need to improve the competitiveness of the European audiovisual industry;
- (6) Whereas the Commission has submitted a Green Paper on the Protection of Minors and Human Dignity in audiovisual and information services and has undertaken to submit a Green Paper focusing on developing the cultural aspects of these new services;
- (7) Whereas any legislative framework concerning new audiovisual services must be compatible with the primary objective of this Directive which is to create the legal framework for the free movement of services;
- (8) Whereas it is essential that the Member States should take action with regard to services comparable to television broadcasting in order to prevent any breach of the fundamental principles which must govern information and the emergence of wide disparities as regards free movement and competition;
- (9) Whereas the Heads of State and Government meeting at the European Council in Essen on 9 and 10 December 1994 called on the Commission to present a proposal for a revision of Directive 89/552/EEC before their next meeting;
- (10) Whereas the application of Directive 89/552/EEC has revealed the need to clarify the concept of jurisdiction as applied specifically to the audiovisual sector; whereas, in view of the case law of the Court of Justice of the European Communities, the establishment criterion should be made the principal criterion determining the jurisdiction of a particular Member State;

(1) OJ No C 185, 19. 7. 1995, p. 4 and

OJ No C 221, 30. 7. 1996, p. 10.

(2) OJ No C 301, 13. 11. 1995, p. 35.

(3) Opinion of the European Parliament of 14 February 1996 (OJ No C 65, 4. 3. 1996, p. 113). Council Common Position of 18 July 1996 (OJ No C 264, 11. 9. 1996, p. 52) and Decision of the European Parliament of 12 November 1996 (OJ No C 362, 2. 12. 1996, p. 56). Decision of the European Parliament of 10 June 1997 and Decision of the Council of 19 June 1997.

(4) OJ No L 298, 17. 10. 1989, p. 23. Directive as amended by the 1994 Act of Accession.

- (11) Whereas the concept of establishment, according to the criteria laid down by the Court of Justice in its judgment of 25 July 1991 in the *Factortame* case⁽¹⁾, involves the actual pursuit of an economic activity through a fixed establishment for an indefinite period;
- (12) Whereas the establishment of a television broadcasting organization may be determined by a series of practical criteria such as the location of the head office of the provider of services, the place where decisions on programming policy are usually taken, the place where the programme to be broadcast to the public is finally mixed and processed, and the place where a significant proportion of the workforce required for the pursuit of the television broadcasting activity is located;
- (13) Whereas the fixing of a series of practical criteria is designed to determine by an exhaustive procedure that one Member State and one only has jurisdiction over a broadcaster in connection with the provision of the services which this Directive addresses; nevertheless, taking into account the case law of the Court of Justice and so as to avoid cases where there is a vacuum of jurisdiction it is appropriate to refer to the criterion of establishment within the meaning of Articles 52 and following of the Treaty establishing the European Community as the final criterion determining the jurisdiction of a Member State;
- (14) Whereas the Court of Justice has constantly held⁽²⁾ that a Member State retains the right to take measures against a television broadcasting organization that is established in another Member State but directs all or most of its activity to the territory of the first Member State if the choice of establishment was made with a view to evading the legislation that would have applied to the organization had it been established on the territory of the first Member State;
- (15) Whereas Article F(2) of the Treaty on European Union stipulates that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as general principles of Community law; whereas any measure aimed at restricting the reception and/or suspending the retransmission of television broadcasts taken under Article 2a of Directive 89/552/EEC as amended by this Directive must be compatible with such principles;
- (16) Whereas it is necessary to ensure the effective application of the provisions of Directive 89/552/EEC as amended by this Directive throughout the Community in order to preserve free and fair competition between firms in the same industry;
- (17) Whereas directly affected third parties, including nationals of other Member States, must be able to assert their rights, according to national law, before competent judicial or other authorities of the Member State with jurisdiction over the television broadcasting organization that may be failing to comply with the national provisions arising out of the application of Directive 89/552/EEC as amended by this Directive;
- (18) Whereas it is essential that Member States should be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of national or non-national events of major importance for society, such as the Olympic games, the football World Cup and European football championship; whereas to this end Member States retain the right to take measures compatible with Community law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events;
- (19) Whereas it is necessary to make arrangements within a Community framework, in order to avoid potential legal uncertainty and market distortions and to reconcile free circulation of television services with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest;
- (20) Whereas, in particular, it is appropriate to lay down in this Directive provisions concerning the exercise by broadcasters of exclusive broadcasting rights that they may have purchased to events considered to be of major importance for society in a Member State other than that having jurisdiction over the broadcasters, and whereas, in order to avoid speculative rights purchases with a view to circumvention of national measures, it is necessary to apply these provisions to contracts entered into after the publication of this Directive and concerning events which take place after the date of implementation, and whereas, when contracts that predate the publication of this Directive are renewed, they are considered to be new contracts;

⁽¹⁾ Case C-221/89, *Queen v. Secretary of State for Transport, ex parte Factortame Ltd. and Others*, (1991) ECR I-3905, paragraph 20.

⁽²⁾ See, in particular, the judgments in Case 33/74, *Van Binsbergen v. Bestuur van de Bedrijfsvereniging*, (1974) ECR 1299 and in Case C-23/93, *TV 10 SA v. Commissariaat voor de Media*, (1994) ECR I-4795.

- (21) Whereas events of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the European Union or in a given Member State or in an important component part of a given Member State and are organized in advance by an event organizer who is legally entitled to sell the rights pertaining to that event;
- (22) Whereas, for the purposes of this Directive, 'free television' means broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in each Member State (such as licence fee and/or the basic tier subscription fee to a cable network);
- (23) Whereas Member States are free to take whatever measures they deem appropriate with regard to broadcasts which come from third countries and which do not satisfy the conditions laid down in Article 2 of Directive 89/552/EEC as amended by this Directive, provided they comply with Community law and the international obligations of the Community;
- (24) Whereas in order to eliminate the obstacles arising from differences in national legislation on the promotion of European works, Directive 89/552/EEC as amended by this Directive contains provisions aimed at harmonizing such legislation; whereas those provisions which, in general, seek to liberalize trade must contain clauses harmonizing the conditions of competition;
- (25) Whereas, moreover, Article 128 (4) of the Treaty establishing the European Community requires the Community to take cultural aspects into account in its action under other provisions of the Treaty;
- (26) Whereas the Green Paper on 'Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union', adopted by the Commission on 7 April 1994, puts forward inter alia measures to promote European works in order to further the development of the sector; whereas the Media II programme, which seeks to promote training, development and distribution in the audiovisual sector, is also designed to enable the production of European works to be developed; whereas the Commission has proposed that production of European works should also be promoted by a Community mechanism such as a Guarantee Fund;
- (27) Whereas broadcasting organizations, programme makers, producers, authors and other experts should be encouraged to develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to an international audience;
- (28) Whereas, in addition to the considerations cited above, it is necessary to create conditions for improving the competitiveness of the programme industry; whereas the communications on the application of Articles 4 and 5 of Directive 89/552/EEC, adopted by the Commission on 3 March 1994 and 15 July 1996 pursuant to Article 4 (3) of that Directive, draw the conclusion that measures to promote European works can contribute to such an improvement but that they need to take account of developments in the field of television broadcasting;
- (29) Whereas channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5; whereas, nevertheless, where such a language or languages represent a substantial part but not all of the channel's transmission time, the provisions of Articles 4 and 5 should not apply to that part of transmission time;
- (30) Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, a progressive system for achieving this objective is required;
- (31) Whereas, with a view to promoting the production of European works, it is essential that the Community, taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union, should promote independent producers; whereas Member States, in defining the notion of 'independent producer', should take appropriate account of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights;
- (32) Whereas the question of specific time scales for each type of television showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned;
- (33) Whereas advertising for medicinal products for human use is subject to the provisions of Directive 92/28/EEC (1);

(1) O.J. No L 113, 30. 4. 1992, p. 13.

- (34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from these, or to public service announcements and charity appeals broadcast free of charge, is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;
- (35) Whereas, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;
- (36) Whereas in view of the development of teleshopping, an economically important activity for operators as a whole and a genuine outlet for goods and services within the Community, it is essential to modify the rules on transmission time and to ensure a high level of consumer protection by putting in place appropriate standards regulating the form and content of such broadcasts;
- (37) Whereas it is important for the competent national authorities, in monitoring the implementation of the relevant provisions, to be able to distinguish, as regards channels not exclusively devoted to teleshopping, between transmission time devoted to teleshopping spots, advertising spots and other forms of advertising on the one hand and, on the other, transmission time devoted to teleshopping windows; whereas it is therefore necessary and sufficient that each window be clearly identified by optical and acoustic means at least at the beginning and the end of the window;
- (38) Whereas Directive 89/552/EEC as amended by this Directive applies to channels exclusively devoted to teleshopping or self-promotion, without conventional programme elements such as news, sports, films, documentaries and drama, solely for the purposes of these Directives and without prejudice to the inclusion of such channels in the scope of other Community instruments;
- (39) Whereas it is necessary to make clear that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels; whereas, in particular, trailers consisting of extracts from programmes should be treated as programmes; whereas self-promotion is a new and relatively unknown phenomenon and provisions concerning it may therefore be particularly subject to review in future examinations of this Directive;
- (40) Whereas it is necessary to clarify the rules for the protection of the physical, mental and moral development of minors; whereas the establishment of a clear distinction between programmes that are subject to an absolute ban and those that may be authorized subject to the use of appropriate technical means should satisfy concern about the public interest expressed by Member States and the Community;
- (41) Whereas none of the provisions of this Directive that concern the protection of minors and public order requires that the measures in question must necessarily be implemented through the prior control of television broadcasts;
- (42) Whereas an investigation by the Commission, in liaison with the competent Member State authorities, of the possible advantages and drawbacks of further measures to facilitate the control exercised by parents or guardians over the programmes that minors may watch shall consider, *inter alia*, the desirability of:
- the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes,
 - the setting up of appropriate rating systems,
 - encouraging family viewing policies and other educational and awareness measures,
 - taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations,
- with a view to presenting, if necessary before the deadline laid down in Article 26, appropriate proposals for legislative or other measures;
- (43) Whereas it is appropriate to amend Directive 89/552/EEC to allow natural or legal persons whose activities include the manufacture or the sale of medicinal products and medical treatment available only on prescription to sponsor television programmes, provided that such sponsorship does not circumvent the prohibition of television advertising for medicinal products and medical treatment available only on prescription;

(44) Whereas the approach in Directive 89/552/EEC and this Directive has been adopted to achieve the essential harmonization necessary and sufficient to ensure the free movement of television broadcasts in the Community; whereas Member States remain free to apply to broadcasters under their jurisdiction more detailed or stricter rules in the fields coordinated by this Directive, including, *inter alia*, rules concerning the achievement of language policy goals, protection of the public interest in terms of television's role as a provider of information, education, culture and entertainment, the need to safeguard pluralism in the information industry and the media, and the protection of competition with a view to avoiding the abuse of dominant positions and/or the establishment or strengthening of dominant positions by mergers, agreements, acquisitions or similar initiatives; whereas such rules must be compatible with Community law;

(45) Whereas the objective of supporting audiovisual production in Europe can be pursued within the Member States in the framework of the organization of their broadcasting services, *inter alia*, through the definition of a public interest mission for certain broadcasting organizations, including the obligation to contribute substantially to investment in European production;

(46) Whereas Article B of the Treaty on European Union states that one of the objectives the Union shall set itself is to maintain in full the 'acquis communautaire'.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/552/EEC is hereby amended as follows:

1. in Article 1:

(a) the following new point (b) shall be inserted:

'(b) "broadcaster" means the natural or legal person who has editorial responsibility for the composition of schedules of television programmes within the meaning of (a) and who transmits them or has them transmitted by third parties.'

(b) the former point (b) shall become point (c) and shall read as follows:

'(c) "television advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment.'

(c) the former points (c) and (d) shall become points (d) and (e);

(d) the following point shall be added:

'(f) "teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment.'

2. Article 2 shall be replaced by the following:

Article 2

1. Each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.

2. For the purposes of this Directive the broadcasters under the jurisdiction of a Member State are:

— those established in that Member State in accordance with paragraph 3;

— those to whom paragraph 4 applies.

3. For the purposes of this Directive, a broadcaster shall be deemed to be established in a Member State in the following cases:

(a) the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State;

(b) if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those

Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State.

4. Broadcasters to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

- (a) they use a frequency granted by that Member State;
- (b) although they do not use a frequency granted by a Member State they do use a satellite capacity appertaining to that Member State;
- (c) although they use neither a frequency granted by a Member State nor a satellite capacity appertaining to a Member State they do use a satellite up-link situated in that Member State.

5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the broadcaster is established within the meaning of Articles 52 and following of the Treaty establishing the European Community.

6. This Directive shall not apply to broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States;

3. the following Article shall be inserted:

Article 2a

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of television broadcasts from other Member States for

reasons which fall within the fields coordinated by this Directive.

2. Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:

- (a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22 (1) or (2) and/or Article 22a;
- (b) during the previous 12 months, the broadcaster has infringed the provision(s) referred to in (a) on at least two prior occasions;
- (c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;
- (d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.

The Commission shall, within two months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.

3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned;

4. Article 3 shall be replaced by the following:

Article 3

1. Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.

2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that television broadcasters under their jurisdiction effectively comply with the provisions of this Directive.

3. The measures shall include the appropriate procedures for third parties directly affected, including nationals of other Member States, to apply to the competent judicial or other authorities to seek effective compliance according to national provisions.

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.
2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the *Official Journal of the European Communities* and at least once a year the consolidated list of the measures taken by Member States.
3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with the preceding paragraphs via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.;
5. in Article 4 (1), the words 'and teletext services' shall be replaced by the words 'teletext services and teleshopping';
6. in Article 5, the words 'and teletext services' shall be replaced by the words 'teletext services and teleshopping';

7. Article 6 shall be amended as follows:

- (a) paragraph 1 (a) shall be replaced by the following:
'(a) works originating from Member States;'
 - (b) in paragraph 1, the following subparagraph shall be added:
'Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned;'
 - (c) paragraph 3 shall be replaced by the following:
'3. The works referred to in paragraph 1 (c) are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.';
 - (d) paragraph 4 shall become paragraph 5 and the following paragraph shall be inserted:
'4. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States.';
 - (e) in the new paragraph 5, the words 'paragraph 1' shall be replaced by the words 'paragraphs 1 and 4';
8. Article 7 shall be replaced by the following:
'Article 7
Member States shall ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rights holders.';
9. Article 8 shall be deleted;
10. Article 9 shall be replaced by the following:
'Article 9
This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.';
11. the title of Chapter IV shall be replaced by the following:
'Television advertising, sponsorship and teleshopping'.

12. Article 10 shall be replaced by the following:

Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.
2. Isolated advertising and teleshopping spots shall remain the exception.
3. Advertising and teleshopping shall not use subliminal techniques.
4. Surreptitious advertising and teleshopping shall be prohibited.;

13. Article 11 shall be replaced by the following:

Article 11

1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.
3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.
4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.
5. Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping.

If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.;

14. in Article 12, the introductory words shall be replaced by the following:

'Television advertising and teleshopping shall not.;

15. Article 13 shall be replaced by the following:

Article 13

All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.;

16. in Article 14, the present text shall become paragraph 1 and the following paragraph shall be added:

'2. Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (*), as well as teleshopping for medical treatment, shall be prohibited.

(*) OJ No 22, 9. 2. 1965, p. 369. Directive as last amended by Directive 93/39/EEC (OJ No L 214, 24. 8. 1993, p. 22).;

17. in Article 15, the introductory words shall be replaced by the following:

'Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria.;

18. in Article 16, the present text shall become paragraph 1 and the following paragraph shall be added:

'2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.;

19. Article 17 shall be amended as follows:

(a) paragraph 2 shall be replaced by the following:

'2. Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.;

(b) paragraph 3 shall become paragraph 4 and the following paragraph shall be inserted:

'3. Sponsorship of television programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the broadcaster falls.;

20. Article 18 shall be replaced by the following:

'Article 18

1. The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning of Article 18a, shall not exceed 20 % of the daily transmission time. The transmission time for advertising spots shall not exceed 15 % of the daily transmission time.

2. The proportion of advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.

3. For the purposes of this Article, advertising does not include:

— announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;

— public service announcements and charity appeals broadcast free of charge.';

21. the following Article shall be inserted:

'Article 18a

1. Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

2. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.';

22. Article 19 shall be replaced by the following:

'Article 19

Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to teleshopping. Advertising on such channels shall be allowed within the daily limits established by Article 18 (1). Article 18 (2) shall not apply.';

23. the following Article shall be inserted:

'Article 19a

Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to self-promotion. Other forms of advertising on such channels shall be allowed within the limits established by Article 18 (1) and (2). This provision in particular shall be subject to review in accordance with Article 26.';

24. Article 20 shall be replaced by the following:

'Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11 (2) to (5) and Articles 18 and 18a in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.';

25. Article 21 shall be deleted.

26. the title of Chapter V shall be replaced by the following:

'Protection of minors and public order';

27. Article 22 shall be replaced by the following:

'Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.';

28. the following Article shall be inserted:

'Article 22a

Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.';

29. the following Article shall be inserted:

'Article 22b

1. The Commission shall attach particular importance to application of this Chapter in the report provided for in Article 26.

2. The Commission shall within one year from the date of publication of this Directive, in liaison with the competent Member State authorities, carry out an

investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch. This study shall consider, *inter alia*, the desirability of:

- the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes;
- the setting up of appropriate rating systems,
- encouraging family viewing policies and other educational and awareness measures,
- taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations.;

30. Article 23 (1) shall be replaced by the following:

'1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.;

31. after Article 23, the following new Chapter VIa shall be inserted:

'CHAPTER VIa

Contact committee

Article 23a

1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of this committee shall be:

(a) to facilitate effective implementation of this Directive through regular consultation on any

practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;

(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;

(c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;

(d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;

(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding television broadcasting services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;

(f) to examine any development arising in the sector on which an exchange of views appears useful.;

32. the following Article shall be inserted:

'Article 25a

A further review as provided for in Article 4 (4) shall take place before 30 June 2002. It shall take account of an independent study on the impact of the measures in question at both Community and national level.;

33. Article 26 shall be replaced by the following:

'Article 26

Not later than 31 December 2000, and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting, in particular in the light of recent technological developments.'

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1998. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the date of its publication in the *Official Journal of the European Communities*.

Article 4

This Directive is addressed to the Member States.

Done at Luxembourg, 30 June 1997.

For the Parliament
The President
J.M. GIL-ROBLES

For the Council
The President
A. NUIS

COMMISSION DECLARATION

Article 23a(1)
(Contact Committee)

The Commission undertakes, at its own responsibility, to inform the European Parliament's competent committee of the outcome of the meetings of the Contact Committee. It will provide that information in good time and in an appropriate manner.

**Council Decision
of 22 September 1997
on cross-border fixed book prices in
European linguistic areas**

(OJ No C 305, 7.10.1997)

COUNCIL DECISION

of 22 September 1997

on cross-border fixed book prices in European linguistic areas

(97/C 305/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 thereof,

RECOGNIZING the dual character of books as the bearers of cultural values and as merchandise; strongly emphasizing the importance of a balanced assessment of the cultural and economic aspects of books,

ACKNOWLEDGING the importance attached by a number of Member States to fixed book prices as a means of maintaining and promoting the diversity and broad accessibility of books, in the consumer's cultural interest, and that the national authorities of those Member States have accepted the restriction of competition entailed by fixed book prices on the grounds of general cultural importance,

POINTING OUT that in some Member States national price fixing systems are being applied,

CONSIDERING that some Member States intend to authorize or draw up complementary cross-border fixed book-price regulations together with another Member State within a homogeneous linguistic area, being of the opinion that such regulations should be possible provided that the fixed price is limited to that linguistic area and to editions published in the language concerned,

NOTING that the Commission of the European Communities has to date felt obliged to consider some of

the cross-border fixed price systems submitted to it as being incompatible with Article 85 (1) or Article 30 of the Treaty and has declared that in those cases the evidence produced in support of exemption within the meaning of 85 (3) was not sufficient,

CONSIDERING that the inclusion in the Treaty of Article 128 (4) has created a new situation, the consequences of which must be clarified with respect to the application of Community competition rules to cross-border fixed book prices,

ASKS the Commission:

- to study the significance of Article 128 (4) for the implementation of those Articles of the Treaty that may concern cross-border fixed book prices, and to indicate, if appropriate, the ways to enable fixed book-price regulations/agreements within homogeneous linguistic areas to be applied,
- to submit the conclusions of the study to the Council.

Done at Brussels, 22 September 1997.

For the Council

The President

F. BODEN

**Council Decision
of 22 September 1997
regarding the future of European cultural action**

(OJ No C 305, 7.10.1997)

COUNCIL DECISION
of 22 September 1997
regarding the future of European cultural action
(97/C 305/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community and in particular Article 152 thereof,

Acknowledging the importance of cultural action for further development of the Community,

Considering that Article 128 of the Treaty explicitly provides the Community with a cultural dimension,

Taking into consideration guiding principles of the Treaty, such as those enshrined in Article 3b,

Taking into account the Council resolution of 20 January 1997 on the integration of cultural aspects in Community action⁽¹⁾, in particular:

I.

The reference to the conclusions of the Council and the Ministers for Culture meeting within the Council of 12 November 1992 on guidelines for Community cultural action, whereby:

- the relationship between cultural and other domains should be made more visible,
- the options provided thereto in Article 128 (4) of the Treaty should be utilized more effectively,
- a better balance must be created between the cultural, economic and other dimensions of the policy of the Community, so that these dimensions supplement and support each other;

II.

Considering that various cultural activities of the European Community fall within different cultural (sub)programmes,

⁽¹⁾ OJ C 36, 5. 2. 1997, p. 4.

Noting that in addition to those programmes, the Community supports cultural activities in a variety of ways,

Indicating that the establishment of up-to-date overviews regarding cultural action in the Community is essential with a view to coordinating the support of the cultural sector,

In view of the experiences which the Community has acquired in supporting the cultural sector,

Considering that the existing cultural programmes will be concluded in the years ahead,

Considering that since it is essential that the views of the Member States are taken into consideration in the Commission's proposal, it might be appropriate for the Commission, in a way it deems suitable, to consult them on their views on European cultural cooperation,

REQUESTS that the Commission conduct a study into the possibility of setting up a guiding, comprehensive and transparent approach for cultural action within the Community in order to implement Article 128 of the Treaty, and that it table proposals on the future of the European cultural action, including, *inter alia*, the establishment of a single instrument for programming and financing aimed at the implementation of Article 128, while the audiovisual sector already disposes of its own instruments, taking into account the aforesaid considerations and a further evaluation of relevant (sub)programmes, by 1 May 1998 at the latest.

Done at Brussels, 22 September 1997.

For the Council

The President

F. BODEN

Decision No 2085/97
of the European Parliament and of the Council
of 6 October 1997
establishing a programme of support, including translation,
in the field of books and reading (Ariane)

(OJ No L 291, 24.10.1997)

DECISION No 2085/97/EC OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL

of 6 October 1997

establishing a programme of support, including translation, in the field of books
and reading (Ariane)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 128 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Committee of the
Regions ⁽²⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽³⁾ in the light of the joint text
approved by the Conciliation Committee on 28 May
1997,

(1) Whereas, in the age of the information society, books
and reading are still one of the most suitable
methods of disseminating knowledge, and the
complementary relationship between books and
audiovisual technology, and multimedia, must be
taken into account;

(2) Whereas any Community programme in the field of
books needs to take account of their dual function as
economic and cultural objects;

(3) Whereas reading as a leisure pursuit of particular
importance can be encouraged by Community
programmes, in particular in the field of education
and culture;

(4) Whereas it is important to distinguish, in the book
production chain, between creation, publishing,
translation and dissemination; whereas this
programme (Ariane) may be viewed as a significant
cultural measure to promote books;

(5) Whereas the Treaty entrusts the Community with
the task of:

— contributing to the flowering of the cultures of
the Member States, while respecting their
national and regional diversity,

— encouraging cooperation between Member States
and, if necessary, supporting and supplementing
their action, particularly as regards artistic and
literary creation,

⁽¹⁾ OJ C 324, 22. 11. 1994, p. 11 and

OJ C 279, 25. 10. 1995, p. 7.

⁽²⁾ OJ C 100, 2. 4. 1996, p. 35.

⁽³⁾ Opinion of the European Parliament of 7 April 1995 (OJ C
109, 1. 5. 1995, p. 289), Council Common Position of 27 June
1996 (OJ C 264, 11. 9. 1996, p. 34) and Decision of the Euro-
pean Parliament of 22 October 1996 (OJ C 347, 18. 11. 1996,
p. 25). Decision of the European Parliament of 17 July 1997.
Council Decision of 24 July 1997.

— fostering cooperation with third countries and
the competent international organizations in the
sphere of culture, in particular the Council of
Europe;

(6) Whereas the promotion of translation and support
for targeted initiatives carried out in partnership,
particularly between specialist operators in the Euro-
pean books and reading sector, contribute to:

— knowledge and dissemination of the culture and
history of the European peoples,

— maintaining the diversity of literary creation and
the literary heritage expressed in the various
national and regional languages,

— intercultural exchanges and exchanges of
know-how

and whereas such promotion favours the access of
citizens — including less-favoured ones — to
culture;

(7) Whereas it is necessary to contribute towards en-
couraging high-quality translation and promotion of
literary works within the Community, in particular
through improvement of the skills of literary trans-
lators as well as of other professionals in the book
sector, particularly those who are responsible for the
promotion of access by the European citizen to such
works;

(8) Whereas European literary and translation prizes
may contribute to the dissemination of literary works
of high merit;

(9) Whereas the Community institutions have recog-
nized the importance of knowledge and dissemina-
tion of literary works, by means of translation in
particular, as is apparent from:

— the European Parliament Resolution of 10 July
1987 on the Commission communication to the
Council on the European dimension with regard
to books ⁽⁴⁾,

— the Resolution of the Council and of the Minis-
ters responsible for Cultural Affairs meeting
within the Council of 9 November 1987 on the
promotion of translation of important works of
European culture ⁽⁵⁾,

⁽⁴⁾ OJ C 246, 14. 9. 1987, p. 136.

⁽⁵⁾ OJ C 309, 19. 11. 1987, p. 3.

- the Resolution of the Council and of the Ministers responsible for Cultural Affairs meeting within the Council of 18 May 1989 concerning the promotion of books and reading⁽¹⁾,
- the Commission communication of 3 August 1989: Books and reading: A cultural challenge for Europe,
- the conclusions of the Ministers of Culture, meeting within the Council, of 12 November 1992 on guidelines for Community cultural action⁽²⁾,
- the European Parliament Resolution of 21 January 1993 on promoting books and reading in Europe⁽³⁾,
- the Resolution of the Council and of the Ministers of Culture, meeting within the Council, of 17 May 1993 on the promotion of the translation of contemporary European dramatic works⁽⁴⁾;

- (10) Having regard to the outcome of the European campaign to promote awareness of books and reading (1993-1994) organized by the Community and the Council of Europe;
- (11) Whereas the Commission communication of 27 July 1994 on 'European Community action in support of culture', which makes books and reading a priority area, sets out the framework for incentive measures to support and complement the efforts of Member States, while respecting the principle of subsidiarity;
- (12) Whereas it is important to implement Community cultural projects with third countries within and outside Europe, and to implement European cultural cooperation with the Council of Europe and other relevant international bodies, such as the United Nations Educational, Scientific and Cultural Organization (Unesco);
- (13) Whereas this Decision lays down, for the entire duration of this programme, a financial framework constituting the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and the Commission of 6 March 1995, for the budgetary authority during the annual budgetary procedure;
- (14) Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty⁽⁵⁾,

⁽¹⁾ OJ C 183, 20. 7. 1989, p. 1.

⁽²⁾ OJ C 336, 19. 12. 1992, p. 1.

⁽³⁾ OJ C 42, 15. 2. 1993, p. 182.

⁽⁴⁾ OJ C 160, 12. 6. 1993, p. 1.

⁽⁵⁾ OJ C 102, 4. 4. 1996, p. 1.

HAVE DECIDED AS FOLLOWS:

Article 1

This Decision establishes the Ariane action programme set out in the Annex, hereinafter referred to as 'this programme', for the period 1 January 1997 to 31 December 1998, intended to increase the knowledge and dissemination of literary works and the history of the European peoples as well as access by the European citizen thereto, notably through support for the translation of literary works, plays and reference works, through support for cooperation projects on books and reading carried out in partnership, as well as through the improvement of the skills of professionals working in this field.

Article 2

This programme shall encourage cooperation at European level between Member States in the field of culture. It shall support and supplement their action in accordance with the principle of subsidiarity by contributing to the flowering of their cultures while respecting their national and regional diversity.

To this end, the aims of this programme shall be as follows:

(a) to encourage, by means of translation:

- a wider dissemination of 20th-century literary works of merit which are representative of the culture of the Member State from which they come and which illustrate, in particular, trends in contemporary European literature in the second half of the century; in this respect, priority will be given to translations of works in less widely used languages of the European Union or translations into such languages,

- the dissemination of contemporary dramatic works in order to present to the European public a varied repertory which is representative of the cultures of the Member States,

- the dissemination of reference works to improve the knowledge of the culture and history of the European peoples, in particular in the areas referred to in Article 128 (2) and (4) of the Treaty;

(b) to encourage, through support for cooperation projects carried out in partnership:

- exchanges of experience and know-how on themes of common interest in the book sector between professionals at European level,

- the development of partnership initiatives which aim to facilitate access to data relevant to the dissemination of books, and the promotion of, and access by the citizen to, reading;

- (c) to encourage high-quality translation and promotion of works by providing Community support for the improvement of the skills of literary translators, as well as of other professionals in the book sector, and particularly those responsible for improving access by the citizen;
- (d) to accompany and supplement the efforts referred to in (a), (b) and (c) by providing support for innovative study and research projects submitted by networks and professional organizations.

Article 3

The Actions described in the Annex shall be carried out in pursuit of the objectives set out in Article 2. They shall be implemented in accordance with the procedure laid down in Article 5.

Article 4

1. This programme shall be open to participation by the associated countries of central and eastern Europe (ACCEE) in accordance with the conditions laid down in the Additional Protocols to the Association Agreements on participation in Community programmes concluded, or to be concluded, with those countries. This programme shall be open to participation by Cyprus and Malta and to cooperation with other third countries which have concluded association or cooperation agreements containing cultural clauses, on the basis of additional appropriations to be provided according to procedures to be agreed with those countries. Some general rules for such participation are provided for in Action 6 in the Annex.

2. The Community and the Member States shall promote cooperation with the Council of Europe, and with other relevant international organizations in the cultural sector (e.g. Unesco), by ensuring, with due regard for the individual identity and autonomy of each institution and organization, that the instruments adopted are complementary.

Article 5

1. The Commission shall implement this programme in accordance with this Decision.

2. The Commission shall be assisted by a Committee composed of two representatives per Member State and chaired by the Commission representative. Members of the Committee may be assisted by experts or advisers.

3. The representative of the Commission shall submit to the Committee draft measures concerning:

- the priorities and general guidelines for the measures described in the Annex and the annual programme resulting therefrom,

- the general balance between all the Actions,
- the selection rules and criteria for the various types of project described in the Annex (Actions 1, 2, 3, 4 and 6),
- the financial support to be provided by the Community (amounts, duration, distribution and beneficiaries),
- the detailed procedures for monitoring and evaluating this programme, together with the conclusions of the assessment report provided for in Article 8 and any other measure readjusting this programme arising from the assessment report.

The Committee shall deliver its opinion on the draft measures referred to in the first subparagraph within a time limit which the Chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith.

In that event:

- (a) the Commission may defer application of the measures which it has decided for a period of two months from the date of such communication;
- (b) the Council, acting by a qualified majority, may take a different decision within the time limit referred to in (a).

4. The Commission may consult the Committee on any other matter concerning the implementation of this programme not covered by paragraph 3.

The representative of the Commission shall submit to the Committee a draft of the measures to be taken.

The Committee shall deliver its opinion on this draft within a time limit which the Chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 6

1. The financial framework for the implementation of this programme for the period referred to in Article 1 shall be ECU 7 million.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

Article 7

The Commission, in collaboration with the Member States, shall seek to ensure that the Actions provided for in this programme and the other cultural programmes such as Kaleidoscope⁽¹⁾ and Raphael, on the one hand, and the Community action programmes, in particular concerning education, such as Socrates⁽²⁾, and training, such as Leonardo da Vinci⁽³⁾, on the other, are complementary.

Article 8

One year after this programme has been in operation, and within the six months following that period, the Commission, after having consulted the Committee, shall present to the European Parliament and the Council a detailed assessment report on the results achieved, accompanied, where necessary, by appropriate proposals, including proposals for the continuation of the programme and the relevant arrangements so as to enable the European Parliament and the Council to take a decision before the end of the period covered by this programme. This report will highlight the added value created, particularly of a cultural nature, including reference to the impact on the dissemination of literature in the less widely-used languages, and the socio-economic consequences brought about by the financial support granted by the Community. The

report is intended to assess, both qualitatively and quantitatively, the extent to which the programme has achieved the objectives referred to in Article 2.

In the light of the assessment report provided for in the previous subparagraph and of the proposals to be made by the Commission, the European Parliament and the Council will consider the possibility of adopting a new programme, worked out and developed taking full account of the fruitful experience gained from this programme.

In this context they will be able to take, where appropriate, any suitable measure to avoid interruption of this programme.

Article 9

This programme, containing practical information on procedure, liaison offices designated by the Member States to provide technical assistance to cultural projects, the closing dates for submission of applications and the documents which must accompany applications, shall be published each year in the 'C' series of the *Official Journal of the European Communities*.

Article 10

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Done at Brussels, 6 October 1997.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

J. POOS

⁽¹⁾ OJ L 99, 20. 4. 1996, p. 20.

⁽²⁾ OJ L 87, 20. 4. 1995, p. 10.

⁽³⁾ OJ L 340, 29. 12. 1994, p. 8.

ANNEX

ARIANE PROGRAMME

Measures pursuant to this programme are designed to increase the knowledge and dissemination of literary works and the history of the European peoples as well as access by the European citizen thereto, notably through support for the translation of literary works, plays and reference works, through support for cooperation projects on books and reading carried out in partnership, as well as through the improvement of the skills of professionals working in this field.

ACTION 1

Translation grants

1. Grants for the translation of works of 20th-century literature of considerable merit to ensure wider dissemination through publication.
 - (a) Grants are provided for the translation of works of 20th-century literature of considerable merit (novels, short stories, essays, literary histories, biographies, plays, poetry) which are representative of the culture of the Member State from which they come and which illustrate, in particular, trends in contemporary European literature in the second half of the century and are likely to appeal to a broad European audience.
 - (b)
 - (i) In order to qualify, works must already have been translated and published in two European Union languages (in addition to the original language). The grant is to subsidize translation into at least one other European Union language, with priority being given to translations into less widely used European Union languages.
 - (ii) In order to give priority to the less widely-used languages of the European Union, works written in these languages may nevertheless be eligible for a translation grant without having been previously translated into other languages of the European Union. Grants are intended to support translation into another European Union language. These provisions also apply to works:
 - written in a widely known language, put published in a small Member State,
 - written in other languages of the Member States.
 - (c) Priority should be given to applications from small independent publishing houses.
 - (d) Grant applications must be sent to the Commission by one or more publishers from a Member State. The application submitted by the publisher(s) must include the agreement of the translator(s). The grant may cover up to 100 % of the translator's fee negotiated according to the usual market practice. The publisher must undertake to give clear prominence to the translator's name and the Community contribution.

The publishers must certify that they hold any rights to the publication and/or translation of the work which is the subject of the application and that, without Community support, they would not have formed a commercial judgment in favour of publishing the translated work in question.
 - (e) The works will be selected twice a year.

2. Grants for the translation of plays with a view to wider dissemination through public performance.

Grants are awarded for the translation into two European Union languages of plays that have already been performed on stage or broadcast in the audiovisual media and have already received some critical and popular acclaim.

Priority will be given to recent 20th-century works.

The works nominated for translation must be supported by specific plans for their public performance.

The initial application must be submitted by managers, directors or producers from a Member State with a view to staging a public performance of the play. The application must be made simultaneously to the Commission and to the liaison offices designated by the Member States, which must issue an opinion on whether or not the works nominated qualify as priorities.

The final selection of works to be translated will be made on the basis above all of the quality of the works nominated for translation. As concerns the choice of the languages of translation, the competent body will ensure balance between the translations into widely known languages and those into less well-known languages to increase the chances of the works reaching a large and diverse audience.

The subsidy will take the form of a translation grant of up to ECU 3 500, subject to annual revision. The grant in no way affects any royalties that might be due to the authors or translators in connection with the performance, dissemination or publication of the translated work.

The liaison offices will act as the depositaries of the translations completed with the Community's assistance and shall ensure that those interested from a professional standpoint are fully briefed. They may pass the translations only to persons who have obtained the agreement of the rights-holders in accordance with existing national rules or to bodies which have obtained such agreement.

3. Grants for the translation of reference works and studies with a view to wider dissemination of information in the cultural sector.

Grants for the translation of reference works and studies in two European Union languages are intended to:

- improve the knowledge and dissemination of the culture and history of the European peoples,
- facilitate the exchange of information and pooling of experience, thereby fostering cooperation between Member States in the areas referred to in Article 128 of the Treaty, and in particular the areas to which the Community has accorded priority in its cultural policy.

However, given the huge field which this project seeks to cover, grants for the translation of reference works (history, history of art, human sciences, social sciences, etc.) will, at least initially, be organized in the form of an experimental and selective action.

Grants will also be given for the translation of studies and reports dealing with the practices and systems which exist in other Member States in the cultural domain, making it possible to highlight problems of common interest falling in particular within the scope of Article 128 (2) and (4) of the Treaty.

The grant application must be accompanied by the information needed to establish the substantial contribution that the work or study to be translated would make to knowledge of the area in question, an indication of the target languages and the written agreement of the author and translator.

Nominations will be made to the Commission directly or by the competent authorities of the Member States. The works may be translated into as many languages as deemed necessary.

The Community contribution, supplied after the written agreement of the translator has been obtained, may be made in one of two ways, depending on the origin of the work:

- if the work nominated for translation was presented by a publisher, acting through the intermediary of the Member State, with a view to placing it on the European market, Community aid will be provided on terms similar to those laid down for grants to translations of works of contemporary literature (point 1);
- if the work nominated for translation through the intermediary of the Member State is not intended for commercial exploitation (e.g. it is to be translated on behalf of a university, research centre or specialist institute, etc.), Community aid will be provided in the form of a grant to help the translators carry out their work on terms similar to those set out for translation of plays (point 2).

The Commission will distribute an annual list with details of the works translated in accordance with the provisions of points 1, 2 and 3.

The resources to be committed to this action will amount to 50 % of the overall budget allocated to this programme. The exact breakdown between the six Actions making up this programme will be determined in accordance with the procedures laid down in Article 5 (4).

ACTION 2

Support for cooperation projects carried out in partnership which aim to improve the promotion of, and access by the citizen to, books and reading

Support may be given to cooperation projects involving partners from at least three Member States, which must be presented by networks, associations or organizations of professionals (e.g. authors, translators, libraries, small and medium-sized publishing houses, bookshops), non-profit-making foundations working in the field of books, or regional (or local) groups which have developed specific actions or programmes in this field.

Cooperation projects of operators other than those specified in the first subparagraph are not eligible for support in the context of this Action.

Eligible cooperation projects concern any initiative which involves a partnership between the operators mentioned in the first subparagraph (meetings, symposia, events, pilot schemes for cooperation or exchanges) and which aim in particular to promote:

- (a) mutual knowledge of, and access to, the literature or history of the European people;

(b) development of partnership initiatives which aim to facilitate:

- access to data relevant to the dissemination of books, for example, by creating a database containing details of books available on the market, of publishing houses and their specialist fields, with a view to supporting the co-production and co-publication of European works,
- the promotion of books,
- their translation, including the possible setting up of a semantics database (listing semantic difficulties and peculiarities) to help technical and literary translators,
- access by the citizen to reading;

(c) exchange of experience and know-how on themes of common interest between professionals at European level.

Partnership projects submitted in the context of this Action must be of European interest and of an innovative or exemplary nature. They must demonstrate that Community support for the project will provide real added value.

Extra support will be given to projects which include measures to disseminate the results obtained.

Community funding shall not cover:

- actions or events which are covered by other Community programmes (in the fields of cinema and television (MEDIA II)⁽¹⁾), cultural heritage (Raphael) and artistic and cultural activities (Kaleidoscope),
- cultural cooperation projects from different regions within the same Member State or which are of a purely national or bilateral culture,
- the production of material and publications for commercial purposes; nevertheless, consideration shall be given to monographs, collections, reviews, records, CDs, videos, CD-Is and CD-ROMs forming an integral part of a project,
- investment or operating costs of the cultural organizations which do not form an integral part of the project in question.

The case for renewal of Community support from year to year will be assessed by independent experts, nominated by the Commission acting on a proposal from the Member States, on the basis of the activity report for the project submitted by the organizers. The independent experts may recommend changes to the project.

Projects must have a balanced financial plan indicating the financial requirements for the realization of the actions presented. The financial contribution towards a project in the context of this Action may not as a general rule exceed 25 % of the total cost of the project and in no case may it exceed ECU 50 000. In the case of projects which include elements intended to further the dissemination of the results to the public or professionals, a further Community contribution may be awarded, up to 50 % of the costs corresponding to this element, but not exceeding a maximum of ECU 20 000.

Projects involving a Community contribution of less than ECU 5 000 shall not, in principle, be eligible under this programme in the context of this Action.

Projects shall be the subject of an individual application to the Community. The application shall include:

- a detailed description of the actions to be carried out, describing in particular the added value at the Community level,
- a detailed estimated budget for these actions.

ACTION 3

Improvement of the skills of professionals working towards the knowledge and dissemination of European literature

The Community will complement the efforts of the competent authorities of the Member States by providing specific support for the improvement of the skills of professionals, particularly literary translators, with a view to contributing to the improvement of the quality of translation of works, as well as other professionals in the field of books and reading covered by Action 2, with a view to contributing to the promotion of, and access by the citizen to, the different cultures of the Member States.

⁽¹⁾ OJ L 321, 30. 12. 1995, p. 25.

Community support will be provided in the form of grants and allowances to cover the costs of travel and training courses to improve skills.

Grants and other forms of Community aid provided for under this action will be awarded for educational projects presented by networks, organizations, associations, foundations, specialized colleges and institutes (particularly, for example, library networks, translation colleges, etc.) after consulting the competent authorities of the Member States.

ACTION 4

Support measures

A. Specific measures

1. To bring about an improvement in cultural cooperation in the field of books and reading, assistance could be granted in limited individual cases to projects involving meetings organized at European level or to studies and research in the field covered by this programme, provided that such meetings and studies have not received any Community support under the programme.
2. Applications must offer the financial guarantees required to carry them out. The Community contribution under this Action may not in any circumstances exceed 50 % of the total cost of the meeting or the study nor exceed ECU 50 000.

B. The Commission, in collaboration with the liaison offices, will take the necessary measures to ensure publicity and the dissemination of information on this programme so that cultural operators and networks are informed of actions relevant to them and are made aware accordingly.

ACTION 5

Aristeion Prizes, synergy with translation grants

The Community makes an annual contribution for the Aristeion Prizes (European literature prize and European translation prize).

The six months nominated for the European literature prize are automatically eligible for a grant towards the cost of their translation into at least two additional languages, on similar terms to those applying to literary works (Action 1, 1 (a)), provided an application to this effect is submitted directly to the Commission by a publisher.

ACTION 6

Participation by third countries

The third countries referred to in Article 4 shall participate in this programme in accordance with the conditions set out in that Article. Participation or cooperation shall take into account the following objectives:

- wider dissemination of the literature of the Member States throughout the third countries concerned and better knowledge of the literature of the third countries concerned within the Member States,
- promotion of schemes for improving the professional skills of professionals working towards mutual knowledge and the dissemination of European literature, notably literary translators and translators of the works under Action 1, points 2 and 3, and other professionals in the field of books and reading,
- improvement of synergies to foster projects submitted by professional organizations of authors and translators, libraries, small and medium-sized publishing companies, bookshops and non-profit-making associations and foundations concerned with books and literature.

Commission Statement

Re Article 5 (Committee procedure)

In compliance with interinstitutional procedures and agreements, the Commission will inform the Committee of the Ariane Decision, as regards the financial support to be supplied by the Community, of all projects which it intends to finance under this Decision.

European Parliament Statement

Re Article 5 (committee procedure)

The European Parliament, while noting that Article 5 (3) of the Ariane programme does not allow the Committee to take a decision on the selection of individual projects, is not opposed to the Committee being informed of all the projects which the Commission intends to finance.

The Parliament wishes to receive the same information from the Commission.

Decision No 2228/97/EC
of the European Parliament and of the Council
of 13 October 1997
establishing a Community action programme in the field of
cultural heritage (the Raphael programme)

(OJ No L 305, 8.11.1997)

DECISION No 2228/97/EC OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL

of 13 October 1997

establishing a Community action programme in the field of cultural heritage
(the Raphael programme)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
Community, and in particular Article 128 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the Economic and Social
Committee ⁽²⁾,

Having regard to the opinion of the Committee of the
Regions ⁽³⁾,

Acting in accordance with the procedure laid down in
Article 189b of the Treaty ⁽⁴⁾, in the light of the joint text
approved by the Conciliation Committee on 2 July 1997,

- (1) Whereas in reality, the most tangible and influential aspect of Europe as a whole is not merely its geographical, political, economic and social features but also its culture;
- (2) Whereas, pursuant to Title IX of the Treaty, which is devoted specifically to culture, the Community is to contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore;
- (3) Whereas Article 128 of the Treaty identifies cultural heritage as a specific field of action and whereas that cultural heritage is the expression of national and regional identities and the links between peoples; whereas it must be preserved and made more easily accessible to members of the public (including those who face particular problems of access) in order to contribute to greater mutual understanding and respect;
- (4) Whereas Community action can contribute to better preservation of the cultural heritage by promoting the exchange of experiences and expertise and encouraging operational synergies and partnership;

⁽¹⁾ OJ C 265, 12. 9. 1996, p. 4.

⁽²⁾ OJ C 256, 2. 10. 1995, p. 38.

⁽³⁾ OJ C 100, 2. 4. 1996, p. 119.

⁽⁴⁾ Opinion of the European Parliament of 12 October 1995 (OJ C 287, 30. 10. 1995, p. 161), Council common position of 8 July 1996 (OJ C 264, 11. 9. 1996, p. 69), Decision of the European Parliament of 22 October 1996 (OJ C 347, 18. 11. 1996, p. 29), Decision of the European Parliament of 16 September 1997 (OJ C 304, 6. 10. 1997) and Council Decision of 24 July 1997.

(5) Whereas, because of its socioeconomic dimension, the preservation of the cultural heritage is an element in a design for society and can contribute significantly to job creation, the promotion of cultural tourism, to regional development and to improving the quality of life and the day-to-day environment of ordinary people; whereas contemporary creative work can play an important role in this respect;

(6) Whereas culture is an important area for action in the context of the information society, as highlighted in the Commission communication entitled 'Europe's way to the information society: an action plan';

(7) Whereas research must be carried out at Community level on the preservation of the cultural heritage; whereas Community action in research, technological development and demonstration is undertaken in accordance with the technological research and development framework programme ⁽⁵⁾, which could be of benefit to this programme;

(8) Whereas the Commission has gained experience through the activities undertaken to date in particular in the field of architectural heritage and the results of the consultations it has held with all the parties concerned;

(9) Whereas the European Parliament attaches importance to Community action in favour of heritage, and in particular to training, research, raising the awareness of young people and adolescents, cooperation with non-member countries and the Council of Europe and links with other Community policies, particularly as regards training and regional development ⁽⁶⁾;

⁽⁵⁾ Decision No 1110/94/EC of the European Parliament and of the Council of 26 April 1994 concerning the fourth framework programme of the European Community activities in the field of research and technological development and demonstration (1994 to 1998) (OJ L 126, 18. 5. 1994, p. 1).

⁽⁶⁾ European Parliament resolution on measures to protect the European cultural heritage (OJ C 62, 30. 5. 1974, p. 5). European Parliament resolution on the protection of the architectural and archaeological heritage (OJ C 267, 11. 10. 1982, p. 25). European Parliament resolution on the conservation of the Community's architectural and archaeological heritage (OJ C 309, 5. 12. 1988, p. 423). European Parliament resolution on preserving the architectural heritage and protecting cultural assets (OJ C 72, 15. 3. 1993, p. 160).

- (10) Whereas the European Parliament has adopted resolutions on the contribution of the Community to work on restoring outstanding examples of architectural heritage⁽¹⁾;
- (11) Whereas the Council has expressed an interest in closer cooperation in the areas of architectural heritage, works of art, artefacts and archives, in particular as regards the exchange of knowledge, documentation and training and in view of the important role of networks of cultural organizations in cultural cooperation in Europe⁽²⁾;
- (12) Whereas, in its communication 'New prospects for Community cultural action' of 29 April 1992, the Commission states that Community action should be extended to the movable heritage and steps taken to promote dialogue and cooperation between those involved and encourage the dissemination of experiences and specialized information; whereas the European Parliament and the Council have encouraged this approach⁽³⁾;
- (13) Whereas the European institutions have stressed the importance of integrating the different aspects of
- cultural heritage in a coherent Community action⁽⁴⁾ which takes account of the richness and diversity of the movable and non-moveable heritage and supports the work of the numerous parties involved;
- (14) Whereas it remains necessary to communicate to as wide a public as possible, by means of general information, the importance of protecting the cultural heritage;
- (15) Whereas Community action should take account of the changing nature of the definition of heritage and include all types of heritage by encouraging multidisciplinary approaches;
- (16) Whereas the Commission has organized consultations with all interested parties, particularly the departments in the Member States, the professionals, non-governmental organisations, foundations and associations, with a view to preparing an action programme in the field of cultural heritage;
- (17) Whereas there are numerous links between the cultural heritage in the Community and that in third countries; therefore, this field is ideally suited to developing forms of cooperation with third countries and with the Council of Europe and other competent international organizations in the cultural heritage sector such as Unesco, in accordance with the requirements of the Treaty and the conclusions and resolutions cited above;

(¹) European Parliament resolution on economic aid to Mount Athos (monastery region) (OJ C 144, 15. 6. 1981, p. 92).
European Parliament resolution on the participation of Community financial instruments in the restoration of the historic centre of the city of Palermo (OJ C 187, 18. 7. 1988, p. 160).
European Parliament resolution on aid for the reconstruction of the Chiado district of Lisbon (OJ C 262, 10. 10. 1988, p. 110).

European Parliament resolution on the conservation of the Community's architectural and archaeological heritage (OJ C 309, 5. 12. 1988, p. 423).
European Parliament resolution on the fire at the Gran Teatro del Liceo (Barcelona) (OJ C 61, 28. 2. 1994, p. 184).

(²) Resolution of the Ministers responsible for Cultural Affairs meeting within the Council of 13 November 1986 on the protection of Europe's architectural heritage (OJ C 320, 13. 12. 1986, p. 1).

Resolution of the Ministers with responsibility for Cultural Affairs meeting within the Council of 13 November 1986 on the conservation of works of art and artefacts (OJ C 320, 13. 12. 1986, p. 3).

Resolution of the Council and the Ministers of Culture meeting within the Council of 14 November 1991 on arrangements concerning archives (OJ C 314, 5. 12. 1991, p. 2).
Council conclusions of 17 June 1994 concerning greater cooperation in the field of archives (OJ C 235, 23. 8. 1994, p. 3).
Resolution of the Council and the Ministers of Culture meeting within the Council of 14 November 1991 on European cultural networks (OJ C 314, 5. 12. 1991, p. 1).

(³) European Parliament resolution on the Commission communication entitled 'New prospects for Community cultural action' (OJ C 42, 15. 2. 1993, p. 173).

European Parliament resolution on Community policy in the field of culture (OJ C 44, 14. 2. 1994, p. 184).
Conclusions of the Council and Ministers of Culture meeting within the Council of 12 November 1992 on guidelines for Community cultural action (OJ C 336, 19. 12. 1992, p. 1).

(18) Whereas the conclusions of the Copenhagen European Council of 21 to 23 June 1993 call for Community programmes to be opened up to the countries of Central and Eastern Europe that are party to association agreements; whereas the Community has signed cooperation agreements that include a section on culture with certain third countries;

(19) Whereas this Decision lays down, for the entire duration of the programme, a financial framework constituting the principal point of reference, within the meaning of point 1 of the Declaration by the European Parliament, the Council and Commission of 6 March 1995, for the budgetary authority during the annual budgetary procedure;

(20) Whereas measures within the meaning of this programme will also take account of the complementary nature of measures which may be taken pursuant to other Community policies;

(⁴) European Parliament resolution on preserving the architectural heritage and protecting cultural assets (OJ C 72, 15. 3. 1993, p. 160).
Council conclusions of 17 June 1994 on drawing up a Community action plan in the field of cultural heritage (OJ C 235, 23. 8. 1994, p. 1).

- (21) Whereas the implementation of this programme relies on close cooperation with the national authorities, with a view to ensuring that Community action supports and supplements activities at national level in confirming respect for the principle of subsidiarity, as it is defined by Article 3b of the Treaty;
- (22) Whereas, in the light of experience, it might prove necessary to amend the thresholds laid down for the Community financial contribution for the various types of project provided for at Annex (Actions I, II, and III);
- (23) Whereas a *modus vivendi* was concluded on 20 December 1994 between the European Parliament, the Council and the Commission concerning the implementing measures for acts adopted in accordance with the procedure laid down in Article 189b of the Treaty⁽¹⁾,

HAVE DECIDED AS FOLLOWS:

Article 1

This Decision establishes the Community action programme in the field of cultural heritage, the Raphael programme, set out at Annex, hereinafter referred to as 'the programme', for the period from 1 January 1997 to 31 December 2000.

The aim of the programme is to support and supplement, through cooperation, the action taken by the Member States in the field of cultural heritage of European importance.

Article 2

Without prejudice to the powers of the Member States to define cultural heritage, for the purposes of the scope of the programme:

- 'cultural heritage' shall mean movable and immovable heritage (museums and collections, libraries and archives including photographic, cinematographic and sound archives), archaeological and underwater heritage, architectural heritage, assemblages and sites and cultural landscapes (assemblages of cultural and natural objects),
- 'preservation' shall mean all activities contributing to better knowledge, management, conservation, restoration, presentation and accessibility of cultural heritage.

Article 3

The programme shall encourage cooperation at European level between Member States in the field of cultural her-

itage. It shall support and supplement their action in accordance with the principle of subsidiarity by contributing to the flowering of their cultures, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

To that end and in accordance with the general aim set out in the second subparagraph of Article 1, the following are the specific objectives of the programme based on the development of transnational cooperation:

- (a) to encourage the conservation and restoration of aspects of the cultural heritage which are of European importance, helping to develop and promote them;
- (b) to encourage the development of transnational cooperation between institutions and/or operators in the cultural heritage field, in order to contribute to the pooling of skills and the development of best practice in the preservation of the cultural heritage;
- (c) to improve access to the cultural heritage in its European dimension and encourage the active participation of the general public, in particular children, young people, the underprivileged and those living in the outlying and rural areas of the Community, in the safeguarding and development of the European cultural heritage;
- (d) to encourage transnational cooperation in developing new technologies for application in the various heritage categories and disciplines and in preserving traditional cultural heritage trades and techniques;
- (e) to have account taken of the heritage dimension in other Community programmes and policies;
- (f) to encourage cooperation with third countries and the relevant international organizations.

Article 4

In order to achieve the objectives set out in the second subparagraph of Article 3, the projects developed pursuant to the programme will have to have a European dimension and offer added-value compared with actions carried out in the Member States and meet the following criteria:

- contribute to the promotion of the cultural heritage, including the provision of information on it,
- present interest at Community level because of their exemplary, innovative or informative nature,
- deal with problems posed by the preservation of the cultural heritage and contribute to the development of the best preservation practices,
- be likely to produce a multiplier effect in cultural, educative or socioeconomic terms.

⁽¹⁾ OJ C 102, 4. 4. 1996, p. 1.

Article 5

The actions described at Annex shall be carried out in pursuit of the objectives set out in the second subparagraph of Article 3. They shall be implemented in accordance with the procedure laid down in Article 7.

Article 6

1. The programme shall be open to participation by the associated countries of Central and Eastern Europe in accordance with the conditions laid down in the additional Protocols to the Association Agreements on participation in Community programmes concluded, or to be concluded, with those countries. The programme shall be open to participation by Cyprus and Malta and to cooperation with other third countries which have concluded association or cooperation agreements containing cultural clauses, on the basis of additional appropriations to be provided according to procedures to be agreed with those countries.

2. The Community and the Member States shall promote cooperation with the Council of Europe and with other relevant international organizations in the cultural heritage sector (e.g. Unesco), while ensuring that the instruments adopted are complementary and respect the individual identity and autonomy of each institution and organization and that resources are put to the best possible use.

Article 7

1. The Commission shall implement this programme in accordance with this Decision.

2. The Commission shall be assisted by a committee composed of two representatives per Member State and chaired by the Commission representative. Members of the Committee may be assisted by experts or advisers.

3. The representative of the Commission shall submit to the committee draft measures concerning:

- the priorities and general guidelines for the measures described at Annex and the annual programme resulting therefrom,
- the general balance between all the Actions,
- the selection rules and criteria for the various types of project described at Annex (Actions I, II, III, and IV),
- the financial support to be provided by the Community (amounts, duration, distribution and beneficiaries),
- the detailed procedures for monitoring and evaluating this programme; together with the conclusions of the assessment report provided for in Article 11 and any other measure readjusting this programme arising from the assessment report.

The committee shall deliver its opinion on the draft measures referred to in the first subparagraph within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be de-

livered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith.

In that event:

- (a) the Commission may defer application of the measures which it has decided for a period of two months from the date of such communication;
- (b) the Council, acting by a qualified majority, may take a different decision within the time limit referred to at (a).

4. The Commission may consult the committee on any other matter concerning the implementation of this programme not covered by paragraph 3.

The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on this draft within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which its opinion has been taken into account.

Article 8

1. The financial framework for the implementation of the programme shall be ECU 30 million, not apportioned to individual years, for the period referred to at Article 1.

2. The annual appropriations shall be authorized by the budgetary authority within the limits of the financial perspective.

3. The financial framework mentioned in paragraph 1 will be subject to reexamination before the end of the second year, on a proposal from the Commission, in the light of the budgetary situation and the results obtained in the first phase of the programme.

Article 9

The Commission shall seek to ensure, if necessary in collaboration with the Member States, that the actions provided for in the programme and the other cultural programmes, and in programmes within the meaning of other provisions of the Treaty with cultural-heritage aspects, are coherent and complementary; it shall also assess the overall effect of these programmes on the heritage.

Article 10

1. After the programme has been in operation for two years and six months, and within six months of the end of that period, the Commission, after having consulted the committee, shall present a detailed evaluation report on the results achieved to the European Parliament and the Council, accompanied, where necessary, by appropriate proposals. This report is intended to assess, both qualitatively and quantitatively, the extent to which the programme has achieved the objectives listed at Article 3.
2. After the programme has been carried out, the Commission shall submit to the European Parliament, the Council and the Committee of the Regions a qualitative and quantitative report on the implementation and achievements of the programme in the light of the objectives referred to at paragraph 1.

Article 11

The programme, together with practical information, for each of the actions or measures, as regards the procedure, the closing dates for the submission of applications and

the documents which must accompany applications, shall be published each year in the 'C' series of the *Official Journal of the European Communities*.

The Commission shall give priority to publicity and the dissemination of information on the programme so as to ensure that all cultural operators and networks are informed about and aware of the actions which concern them.

All projects receiving financial support under the programme shall be required to display the European Union emblem and mention the source of the funding.

Done at Brussels, 13 October 1997.

For the European Parliament
The President
J.M. GIL-ROBLES

For the Council
The President
R. GOEBBELS

ANNEX

COMMUNITY ACTION PROGRAMME IN THE FIELD OF CULTURAL HERITAGE (RAPHAEL PROGRAMME)

The aim of the Raphael programme is to support actions at European level in all categories of movable and immovable cultural heritage, in compliance with the principle of subsidiarity.

ACTION I

Conservation, safeguarding and development of the European cultural heritage through European cooperation

- The aim of this action is to contribute to the conservation, safeguarding and development of the European cultural heritage, particularly if under threat, by encouraging the development and pooling of the best practices with a view to creating an environment conducive to the preservation and restoration of the cultural heritage,
- This action will involve the following measures.
 1. Support for projects for the conservation and safeguarding of the cultural heritage which qualify as 'European heritage laboratories' by virtue of the interest or exemplary value of their content. The projects must be submitted by the competent authorities in the Member States and must relate to works, monuments or sites of exceptional historic, architectural or artistic importance, and especially those where operations of particular complexity from the scientific and/or technical point of view are required for their conservation.

The 'laboratories', which may be granted Community support under the programme for four years, should particularly associate with their operation a multidisciplinary European team bringing together the most eminent specialists, with a view to studying extremely difficult conservation problems and developing appropriate approaches, methods and/or techniques, ensuring added-value in each project. Those in charge of projects will be expected to ensure that experience acquired in the course of projects is adequately disseminated.

2. Support for projects for the conservation and safeguarding of the European cultural heritage in connection with common themes to be determined by the Commission after submission to the committee referred to at Article 7 of the Decision, bearing in mind problem areas relating to the different categories of the cultural heritage. The projects, which should be submitted by the person(s) in charge of the property concerned, may last a maximum of three years. Priority will be given to projects having exemplary value and a multiplier effect in cultural, technical and socioeconomic terms and/or in terms of access to heritage. Those in charge of projects will be expected to ensure that experience acquired in the management and/or preservation problems involved is adequately disseminated among professionals.

Community support is intended to contribute to the added-European value of the projects carried out within the framework of this action and to the creation of conditions for the development of European know-how.

Projects must have a balanced financing plan setting out the financial requirements of the action for which administrative costs must not exceed 12 % of the Community financing of the project.

Community financial assistance for a project under this action may not exceed 50 % of the total cost of the project in question and, in the case of projects under paragraph 2, may not exceed ECU 250 000.

Projects shall be the subject of individual applications to the European Community. Each application shall include:

- a detailed description of the actions. An opinion on the technical conformity of the project must be established by the competent authorities in the Member States and reach the Commission within the time limit for the submission of projects. If the opinion is not available within a deadline to be fixed, the procedure for selection of the project will go ahead,
- a detailed estimated budget for these actions.

The resources to be committed to this action shall amount to approximately 50 % of the overall budget allocated to the programme.

ACTION II

Cooperation for the exchange of experiences and the development of techniques applied to heritage

- The aim of this action is to encourage the strengthening of transnational cooperation for the pooling of skills and development of best practice through networks and partnerships and through the mobility of professionals between heritage-sector institutions and/or operators. Particular attention will be given to the development of new technologies applied to different cultural-heritage disciplines and to the preservation of traditional heritage trades and techniques.

Depending on the theme they deal with, networks will be able to bring together public and/or private institutions and/or operators in the heritage field and, if necessary, other public and/or private institutions, research centres and companies with a special interest.

Special attention shall be paid to networks which encourage access to the cultural heritage for the most disadvantaged sections of the population,

- The action will involve the following measures:

1. *Innovation and new technologies*

- 1.1. Support for projects intended to identify research requirements, to be developed at Community level, in the heritage field, to circulate research work to heritage professionals and develop practical applications for the use of professionals working in the field. These measures will be implemented as far as possible in synergy with the framework research programme. Any subsequent research action will be carried out within the RTD framework programme in accordance with its provisions.
- 1.2. Support for projects for the application to different heritage disciplines of new technologies and services (restoration and preservation techniques; audiovisual and multimedia products, advanced information and communications services, etc.).

2. *Mobility and training of professionals*

- 2.1. Support for projects for exchange of professionals in the various heritage categories and disciplines, enabling them to work for a maximum of 12 months in an equivalent professional environment in another Member State.

Community support will be directed towards organizing exchanges and contributing to additional costs incurred, such as travel and accommodation.

- 2.2. Support for projects of a transnational nature intended to encourage further training of heritage professionals in the new technologies and advanced information and communication services applied to the cultural heritage sector as well as for those intended to develop and preserve the techniques of traditional heritage trades.

3. *Exchanges of experience and information*

- 3.1. Support for exchanges of experience through conducting studies, surveys and working meetings, as well as through seminars, in the following fields in particular:

- development of technical recommendations (standards) for the improvement of usage and practices in the management and/or conservation of the cultural heritage,
- identification of risk factors concerning cultural objects and study of systems of periodic inspection of their state of conservation,
- preventive protection of cultural objects, works and monuments against disaster and study of conditions for their conservation,
- qualifications of professionals in heritage-preservation trades,
- documentation of cultural objects,
- conditions for the loan of works for temporary exhibitions,
- repercussions on the cultural-heritage sector of other Community policies.

- 3.2. Support for projects between cultural-heritage institutions, using electronic communication technology (on-line, CD-ROM, CD-I, etc.) for the collection/exchange and dissemination of specialized information, in the following fields in particular:

- Member States' cultural-heritage legislation,
- lists and inventories of the cultural heritage,
- inventories, by discipline, of further training courses,
- integrated databases for the cataloguing and description of cultural objects,
- statistics and indicators on the cultural heritage,
- lists and directories of innovative projects in the cultural heritage field,
- practices and systems used in the preservation, restoration, management and dissemination of the cultural heritage in the Member States,
- practical guides, manuals and information bulletins on the cultural heritage.

Applications, which will be submitted by the institutions and/or operators concerned, must offer the financial guarantees required to carry them out. The Community contribution under the action cannot in any circumstances exceed 50 % of the total cost of the project, nor can it exceed ECU 50 000, except in the case of projects under 1.2 and 2.2, for which the Community contribution may be up to ECU 150 000; and 2.1 and 3.1 (fourth indent), for which the Community contribution may be up to ECU 100 000.

ACTION III

Public access to, participation in and awareness of the cultural heritage

- The aim of this action is to improve public access to the cultural heritage by encouraging projects to raise awareness that have a European dimension and by promoting the use of advanced information and communications technologies and services,
- The action will involve the following measures:
 1. Support for transnational cooperation projects between cultural-heritage institutions and/or operators using multimedia systems and products or other forms of communication to present heritage in its European dimension and in particular to offer the public access to the whole range of works of art of similar and/or complementary styles kept by other European cultural bodies.
 2. Support for events to raise public awareness of the cultural heritage held at European level.
 3. Support for multilingual presentations concerning heritage in museums, monuments, sites, libraries, archives, etc. aimed at people throughout the European Union. Projects might relate to presentational material, brochures, exhibition panels, electronic guide systems, audiovisual or multimedia products, etc.
 4. Support for transnational cooperation projects bringing together institutions and/or operators from at least three Member States of the Community with the aim of increasing the public's awareness of the cultural heritage, such as exhibitions, teaching programmes, transnational cultural itineraries, etc.

Applications, which will be submitted by the institutions and/or operators concerned, must offer the financial guarantees required to carry them out. The Community contribution under this action cannot in any circumstances exceed 50 % of the total cost of the project, nor can it exceed ECU 50 000, except in the case of projects under 1 and 3, for which the Community contribution may be up to ECU 150 000.

ACTION IV

Cooperation with third countries and international organizations

- The aim of this action is to develop projects with third countries and create synergies with activities undertaken by other international organizations, in particular the Council of Europe and Unesco,
- The action will involve the following measures:
 1. Support for cooperation with third countries in the fields covered by actions I, II and III.
Details of the arrangements for participation of third countries are set out in Article 6.
 2. Support for projects in synergy with the international organizations working in the field of cultural heritage and in particular the Council of Europe and Unesco. The procedures for this synergy will be decided on an individual basis between the Community and the international organization concerned, in accordance with the arrangements provided for in Article 7 (3).

Commission statement

Re Article 5 (committee procedure)

In compliance with interinstitutional procedures and agreements, the Commission will inform the committee of the Raphael Decision, as regards the financial support to be supplied by the Community, of all projects which it intends to finance within the meaning of this Decision.

European Parliament Statement

Re Article 5 (committee procedure)

The European Parliament, while noting that Article 7(3) of the Raphael programme does not allow the Committee to take a decision on the selection of individual projects, is not opposed to the committee being informed of all the projects which the Commission intends to finance.

The Parliament wishes to receive the same information from the Commission.

Commission statement

Having regard to the Council Decision of 30 June 1997 on the future of cultural cooperation in Europe and the European Parliament's calls for a framework instrument on culture to be set up, the Commission, without prejudice to its right of initiative, confirms its intention to present a proposal for a comprehensive programme as soon as possible in order to ensure the continuity and further development of the Community's cultural operations.

The Commission will be entering into broad-based consultations with all the parties concerned and to this end will organize meetings with the European institutions and the relevant organizations.

**Council Conclusions
of 15 December 1997
on Music in Europe**

(OJ No C 1, 3.1.1998)

COUNCIL CONCLUSIONS

of 18 December 1997

on Music in Europe

(98/C 1/04)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Council resolution of 16 September 1996 on the integration of cultural aspects into Community actions,

Having regard to the final document from the 'Music for Europe, Europe for Music' meeting held in Ennis (Ireland) on 18 and 19 October 1996 and the proceedings which followed therefrom,

Having regard to the Council Decision of 30 June 1997 regarding the future of European cultural action, inviting the Commission to table proposals for the establishment of a single instrument for programming and financing,

- (1) Considering that music is a fundamental part of the cultures and history of our countries and constitutes one of the most important and omnipresent modes of individual and collective artistic expression in our everyday lives;
- (2) recalling the infinite richness of the European musical heritage and the richness of contemporary new works distinguished by their diversity, vitality and constant ability to go on developing and regenerating themselves perpetually on contact with other cultures;
- (3) aware that the musical creation process is based on a cycle which ranges from composition to dissemination of the work to the public and that music, as a means of artistic and cultural expression, cannot be separated from its eminently social role nor from the importance of the economic sector it reflects, which in Europe covers an infinite range of talents, know-how and professions and thus constitutes a source of employment to be taken into account, in particular in the case of young people;
- (4) aware that it is important to ensure that the public can have access, throughout the territory of the Member States, to repertoires and to musical performances, in all their diversity and richness, and that European music in the world is highlighted;

(5) aware that better access to repertoires will make it possible to develop, among the younger generation, an interest in and taste for music, and to promote the dissemination of different musical cultures;

(6) valuing the action already undertaken by the Council of Europe in the music field and recalling that the Community and the Member States foster cooperation with that organization and with other relevant international organizations in the sphere of culture in accordance with Article 128 (3) of the Treaty establishing the European Community, by ensuring that the instruments adopted are complementary, with due regard for the individual identity and autonomy of each institution and organization;

(7) recalling that, since the programme of support for cultural cooperation activities in the Union, Kaleidoscope, expires in 1998, it is important to prepare means of cooperation to be developed in the future and, without prejudice to the positions which may be adopted, to consider in detail the needs and topics of priority interest in the various sectors covered by the programme,

WELCOMES the study 'Music in Europe' produced by the European Music Office, offering for the first time a comprehensive approach at European level to all the sectors involved in the music creation cycle;

EXPRESSES its determination to promote the European music sector, in particular by encouraging the emergence of an environment conducive to the circulation, exchange and dissemination of repertoires, performances and artists in Europe and in the world;

AGREES on the need to consider in more detail, in the context of Article 128 of the Treaty establishing the European Community and in compliance with the subsidiarity principle, the work done in the Union together with the relevant authorities of the Member States and with professionals, to deepen knowledge of the needs of the European music sector in all its facets,

INVITES the Commission:

to submit to it, in the framework of the Council Decision of 22 September 1997 regarding the future of European cultural action, proposals for the music sector designed to supplement the action of Member States by measures in particular in the following fields:

- improved access to music for a wider public, with particular attention being given to musical education from a very young age, by supporting innovative and exemplary projects highlighting the essential, integrating role of music in society,
- disseminating and composing music, promoting exchanges, especially of young creative and performing artists, and supporting the circulation of

repertoires, performers and musical productions (live performances),

- enhanced skills for artists and other music professionals, especially in the framework of the new possibilities afforded to musical creation by the new information technologies, and vocational guidance in the music sector,
- the possibility, within the existing structures and within the limits of available financial resources, of improving the mutual information of the Member States on musical knowledge through, for example, a strengthening of existing networks, or by creating a monitoring centre or a European information and documentation centre.

ANNEX I

Articles mentioning culture in the Treaty
establishing the European Community
(3, 36, 92 and 128)

Article 3

For the purposes set out in Article 2, the activities of the Community shall include, as provided for in this Treaty and in accordance with the timetable set out therein:

(a) - (o)

(p) a contribution to education and training of quality and to the flowering of the cultures of the Member States,

(q) - (t)

Article 36

(*)

The provisions of Articles 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.

(*) These Articles prohibit the application between Member States of quantitative restrictions on imports and all measures having equivalent effect.

Article 92

1. Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market.

2. The following shall be compatible with the common market:

(a) – (c) ...

3. The following may be considered to be compatible with the common market:

(a) – (c) ...

(d) aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest;

(e) ...

Article 128

1. The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

2. Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting and supplementing their action in the following areas:

— improvement of the knowledge and dissemination of the culture and history of the European peoples;

— conservation and safeguarding of cultural heritage of European significance;

— non-commercial cultural exchanges;

— artistic and literary creation, including in the audiovisual sector.

3. The Community and the Member States shall foster cooperation with third countries and the competent international organizations in the sphere of culture, in particular the Council of Europe.

4. The Community shall take cultural aspects into account in its action under other provisions of this Treaty.

5. In order to contribute to the achievement of the objectives referred to in this Article, the Council:

— acting in accordance with the procedure referred to in Article 189b and after consulting the Committee of the Regions, shall adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States. The Council shall act unanimously throughout the procedure referred to in Article 189b;

— acting unanimously on a proposal from the Commission, shall adopt recommendations.

ANNEX II

**Directive 92/100/EEC
of 19 November 1992
on rental right and lending right and on certain rights
related to copyright in the field of intellectual property**

(OJ No L 346, 27.11.1992)

COUNCIL DIRECTIVE 92/100/EEC

of 19 November 1992

on rental right and lending right and on certain rights related to copyright in
the field of intellectual property

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas differences exist in the legal protection provided by the laws and practices of the Member States for copyright works and subject matter of related rights protection as regards rental and lending; whereas such differences are sources of barriers to trade and distortions of competition which impede the achievement and proper functioning of the internal market;

Whereas such differences in legal protection could well become greater as Member States adopt new and different legislation or as national case-law interpreting such legislation develops differently;

Whereas such differences should therefore be eliminated in accordance with the objective of introducing an area without internal frontiers as set out in Article 8a of the

(1) OJ No C 53, 28. 2. 1991, p. 35 and

OJ No C 128, 20. 5. 1992, p. 8.

(2) OJ No C 67, 16. 3. 1992, p. 92 and Decision of 28 October 1992 (not yet published in the Official Journal).

(3) OJ No C 269, 14. 10. 1991, p. 54.

Treaty so as to institute, pursuant to Article 1 (f) of the Treaty, a system ensuring that competition in the common market is not distorted;

Whereas rental and lending of copyright works and the subject matter of related rights protection is playing an increasingly important role in particular for authors, performers and producers of phonograms and films; whereas piracy is becoming an increasing threat;

Whereas the adequate protection of copyright works and subject matter of related rights protection by rental and lending rights as well as the protection of the subject matter of related rights protection by the fixation right, reproduction right, distribution right, right to broadcast and communication to the public can accordingly be considered as being of fundamental importance for the Community's economic and cultural development;

Whereas copyright and related rights protection must adapt to new economic developments such as new forms of exploitation;

Whereas the creative and artistic work of authors and performers necessitates an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky; whereas the possibility for securing that income and recouping that investment can only effectively be guaranteed through adequate legal protection of the rightholders concerned;

Whereas these creative, artistic and entrepreneurial activities are, to a large extent, activities of self-employed persons; whereas the pursuit of such activities must be made easier by providing a harmonized legal protection within the Community;

Whereas, to the extent that these activities principally constitute services, their provision must equally be facilitated by the establishment in the Community of a harmonized legal framework;

Whereas the legislation of the Member States should be approximated in such a way so as not to conflict with the international conventions on which many Member States' copyright and related rights laws are based;

Whereas the Community's legal framework on the rental right and lending right and on certain rights related to copyright can be limited to establishing that Member States provide rights with respect to rental and lending for certain groups of rightholders and further to establishing the rights of fixation, reproduction, distribution, broadcasting and communication to the public for certain groups of rightholders in the field of related rights protection;

Whereas it is necessary to define the concepts of rental and lending for the purposes of this Directive;

Whereas it is desirable, with a view to clarity, to exclude from rental and lending within the meaning of this Directive certain forms of making available, as for instance making available phonograms or films (cinematographic or audiovisual works or moving images, whether or not accompanied by sound) for the purpose of public performance or broadcasting, making available for the purpose of exhibition, or making available for on-the-spot reference use; whereas lending within the meaning of this Directive does not include making available between establishments which are accessible to the public;

Whereas, where lending by an establishment accessible to the public gives rise to a payment the amount of which does not go beyond what is necessary to cover the operating costs of the establishment, there is no direct or indirect economic or commercial advantage within the meaning of this Directive;

Whereas it is necessary to introduce arrangements ensuring that an unwaivable equitable remuneration is obtained by authors and performers who must retain the possibility to entrust the administration of this right to collecting societies representing them;

Whereas the equitable remuneration may be paid on the basis of one or several payments any time on or after the conclusion of the contract;

Whereas the equitable remuneration must take account of the importance of the contribution of the authors and performers concerned to the phonogram or film;

Whereas it is also necessary to protect the rights at least of authors as regards public lending by providing for specific arrangements; whereas, however, any measures based on Article 5 of this Directive have to comply with Community law, in particular with Article 7 of the Treaty;

Whereas the provisions of Chapter II do not prevent Member States from extending the presumption set out in Article 2 (5) to the exclusive rights included in that chapter; whereas furthermore the provisions of Chapter II do not prevent Member States from providing for a rebuttable presumption of the authorization of exploitation in respect of the exclusive rights of performers provided for in those articles, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (hereinafter referred to as the Rome Convention);

Whereas Member States may provide for more far-reaching protection for owners of rights related to copyright than that required by Article 8 of this Directive;

Whereas the harmonized rental and lending rights and the harmonized protection in the field of rights related to copyright should not be exercised in a way which constitutes a disguised restriction on trade between Member States or in a way which is contrary to the rule of media exploitation chronology, as recognized in the judgment handed down in *Société Cinéthèque v. FNCF* (*).

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

RENTAL AND LENDING RIGHT

Article 1

Object of harmonization

1. In accordance with the provisions of this Chapter, Member States shall provide, subject to Article 5, a right to authorize or prohibit the rental and lending of originals and copies of copyright works, and other subject matter as set out in Article 2 (1).

(*) Cases 60/84 and 61/84, ECR 1985, p. 2605.

2. For the purposes of this Directive, 'rental' means making available for use, for a limited period of time and for direct or indirect economic or commercial advantage.

3. For the purposes of this Directive, 'lending' means making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage, when it is made through establishments which are accessible to the public.

4. The rights referred to in paragraph 1 shall not be exhausted by any sale or other act of distribution of originals and copies of copyright works and other subject matter as set out in Article 2 (1).

Article 2

Rightholders and subject matter of rental and lending right

1. The exclusive right to authorize or prohibit rental and lending shall belong:

- to the author in respect of the original and copies of his work,
- to the performer in respect of fixations of his performance,
- to the phonogram producer in respect of his phonograms, and
- to the producer of the first fixation of a film in respect of the original and copies of his film. For the purposes of this Directive, the term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

2. For the purposes of this Directive the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

3. This Directive does not cover rental and lending rights in relation to buildings and to works of applied art.

4. The rights referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

5. Without prejudice to paragraph 7, when a contract concerning film production is concluded, individually or collectively, by performers with a film producer, the performer covered by this contract shall be presumed, subject to contractual clauses to the contrary, to have transferred his rental right, subject to Article 4.

6. Member States may provide for a similar presumption as set out in paragraph 5 with respect to authors.

7. Member States may provide that the signing of a contract concluded between a performer and a film

producer concerning the production of a film has the effect of authorizing rental, provided that such contract provides for an equitable remuneration within the meaning of Article 4. Member States may also provide that this paragraph shall apply *mutatis mutandis* to the rights included in Chapter II.

Article 3

Rental of computer programs

This Directive shall be without prejudice to Article 4 (c) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs⁽¹⁾.

Article 4

Unwaivable right to equitable remuneration

1. Where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental.

2. The right to obtain an equitable remuneration for rental cannot be waived by authors or performers.

3. The administration of this right to obtain an equitable remuneration may be entrusted to collecting societies representing authors or performers.

4. Member States may regulate whether and to what extent administration by collecting societies of the right to obtain an equitable remuneration may be imposed, as well as the question from whom this remuneration may be claimed or collected.

Article 5

Derogation from the exclusive public lending right

1. Member States may derogate from the exclusive right provided for in Article 1 in respect of public lending, provided that at least authors obtain a remuneration for such lending. Member States shall be free to determine this remuneration taking account of their cultural promotion objectives.

2. When Member States do not apply the exclusive lending right provided for in Article 1 as regards phonograms, films and computer programs, they shall introduce, at least for authors, a remuneration.

⁽¹⁾ OJ No L 122, 17. 5. 1991, p. 42.

3. Member States may exempt certain categories of establishments from the payment of the remuneration referred to in paragraphs 1 and 2.

4. The Commission, in cooperation with the Member States, shall draw up before 1 July 1997 a report on public lending in the Community. It shall forward this report to the European Parliament and to the Council.

CHAPTER II

RIGHTS RELATED TO COPYRIGHT

Article 6

Fixation right

1. Member States shall provide for performers the exclusive right to authorize or prohibit the fixation of their performances.

2. Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the fixation of their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite.

3. A cable distributor shall not have the right provided for in paragraph 2 where it merely retransmits by cable the broadcasts of broadcasting organizations.

Article 7

Reproduction right

1. Member States shall provide the exclusive right to authorize or prohibit the direct or indirect reproduction :

- for performers, of fixations of their performances,
- for phonogram producers, of their phonograms,
- for producers of the first fixations of films, in respect of the original and copies of their films, and
- for broadcasting organizations, of fixations of their broadcasts, as set out in Article 6 (2).

2. The reproduction right referred to in paragraph 1 may be transferred, assigned or subject to the granting of contractual licences.

Article 8

Broadcasting and communication to the public

1. Member States shall provide for performers the exclusive right to authorize or prohibit the broadcasting by wireless means and the communication to the public

of their performances, except where the performance is itself already a broadcast performance or is made from a fixation.

2. Member States shall provide a right in order to ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public, and to ensure that this remuneration is shared between the relevant performers and phonogram producers. Member States may, in the absence of agreement between the performers and phonogram producers, lay down the conditions as to the sharing of this remuneration between them.

3. Member States shall provide for broadcasting organizations the exclusive right to authorize or prohibit the rebroadcasting of their broadcasts by wireless means, as well as the communication to the public of their broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

Article 9

Distribution right

1. Member States shall provide

- for performers, in respect of fixations of their performances,
- for phonogram producers, in respect of their phonograms,
- for producers of the first fixations of films, in respect of the original and copies of their films,
- for broadcasting organizations, in respect of fixations of their broadcast as set out in Article 6 (2).

the exclusive right to make available these objects, including copies thereof, to the public by sale or otherwise, hereafter referred to as the 'distribution right'.

2. The distribution right shall not be exhausted within the Community in respect of an object as referred to in paragraph 1, except where the first sale in the Community of that object is made by the rightholder or with his consent.

3. The distribution right shall be without prejudice to the specific provisions of Chapter I, in particular Article 1 (4).

4. The distribution right may be transferred, assigned or subject to the granting of contractual licences.

Limitations to rights

1. Member States may provide for limitations to the rights referred to in Chapter II in respect of:

- (a) private use;
- (b) use of short excerpts in connection with the reporting of current events;
- (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
- (d) use solely for the purposes of teaching or scientific research.

2. Irrespective of paragraph 1, any Member State may provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms, broadcasting organizations and of producers of the first fixations of films, as it provides for in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome Convention.

3. Paragraph 1 (a) shall be without prejudice to any existing or future legislation on remuneration for reproduction for private use.

CHAPTER III

DURATION

Article 11

Duration of authors' rights

Without prejudice to further harmonization, the authors' rights referred to in this Directive shall not expire before the end of the term provided by the Berne Convention for the Protection of Literary and Artistic Works.

Article 12

Duration of related rights

Without prejudice to further harmonization, the rights referred to in this Directive of performers, phonogram producers and broadcasting organizations shall not expire before the end of the respective terms provided by the Rome Convention. The rights referred to in this Directive for producers of the first fixations of films shall not expire before the end of a period of 20 years computed from the end of the year in which the fixation was made.

COMMON PROVISIONS

Article 13

Application in time

1. This Directive shall apply in respect of all copyright works, performances, phonograms, broadcasts and first fixations of films referred to in this Directive which are, on 1 July 1994, still protected by the legislation of the Member States in the field of copyright and related rights or meet the criteria for protection under the provisions of this Directive on that date.

2. This Directive shall apply without prejudice to any acts of exploitation performed before 1 July 1994.

3. Member States may provide that the rightholders are deemed to have given their authorization to the rental or lending of an object referred to in Article 2 (1) which is proven to have been made available to third parties for this purpose or to have been acquired before 1 July 1994. However, in particular where such an object is a digital recording, Member States may provide that rightholders shall have a right to obtain an adequate remuneration for the rental or lending of that object.

4. Member States need not apply the provisions of Article 2 (2) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which the Article 2 (2) shall apply, provided that that date is no later than 1 July 1997.

6. This Directive shall, without prejudice to paragraph 3 and subject to paragraphs 8 and 9, not affect any contracts concluded before the date of its adoption.

7. Member States may provide, subject to the provisions of paragraphs 8 and 9, that when rightholders who acquire new rights under the national provisions adopted in implementation of this Directive have, before 1 July 1994, given their consent for exploitation, they shall be presumed to have transferred the new exclusive rights.

8. Member States may determine the date as from which the unwaivable right to an equitable remuneration referred to in Article 4 exists, provided that that date is no later than 1 July 1997.

9. For contracts concluded before 1 July 1994, the unwaivable right to an equitable remuneration provided for in Article 4 shall apply only where authors or performers or those representing them have submitted a request to that effect before 1 January 1997. In the absence of agreement between rightholders concerning the level of remuneration, Member States may fix the level of equitable remuneration.

Article 14

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

Article 15

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1994. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official pub-

lication. The methods of making such a reference shall be laid down by the Member States

2. Member States shall communicate to the Commission the main provisions of domestic law which they adopt in the field covered by this Directive.

Article 16

This Directive is addressed to the Member States.

Done at Brussels, 19 November 1992.

For the Council

The President

E. LEIGH

**Directive 93/83/EEC
of 27 September 1993
on the coordination of certain rules concerning copyright and
rights related to copyright applicable to satellite broadcasting
and cable retransmission**

(OJ No L 248, 6.10.1993)

COUNCIL DIRECTIVE 93/83/EEC

of 27 September 1993

on the coordination of certain rules concerning copyright and rights related to
copyright applicable to satellite broadcasting and cable retransmission

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2) and 66 thereof,

Having regard to the proposal from the Commission (1),

In cooperation with the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

(1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe;

(2) Whereas, to that end, the Treaty provides for the establishment of a common market and an area without internal frontiers; whereas measures to achieve this include the abolition of obstacles to the free movement of services and the institution of a system ensuring that competition in the common market is not distorted; whereas, to that end, the Council may adopt directives for the coordination of the provisions laid down by law, regulation or

administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons;

(3) Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the most important ways of pursuing these Community objectives, which are at the same time political, economic, social, cultural and legal;

(4) Whereas the Council has already adopted Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (4), which makes provision for the promotion of the distribution and production of European television programmes and for advertising and sponsorship, the protection of minors and the right of reply;

(5) Whereas, however, the achievement of these objectives in respect of cross-border satellite broadcasting and the cable retransmission of programmes from other Member States is currently still obstructed by a series of differences between national rules of copyright and some degree of legal uncertainty; whereas this means that holders of rights are exposed to the threat of seeing their works exploited without payment of remuneration or that the individual holders of exclusive rights in various Member States block the exploitation of their rights; whereas the legal uncertainty in particular constitutes a direct obstacle in the free circulation of programmes within the Community;

(1) OJ No C 255, 1. 10. 1991, p. 3 and
OJ No C 25, 28. 1. 1993, p. 43.
(2) OJ No C 305, 23. 11. 1992, p. 129 and
OJ No C 255, 20. 9. 1993.
(3) OJ No C 98, 21. 4. 1992, p. 44.

(4) OJ No L 298, 17. 10. 1989, p. 23.

- (6) Whereas a distinction is currently drawn for copyright purposes between communication to the public by direct satellite and communication to the public by communications satellite; whereas, since individual reception is possible and affordable nowadays with both types of satellite, there is no longer any justification for this differing legal treatment;
- (7) Whereas the free broadcasting of programmes is further impeded by the current legal uncertainty over whether broadcasting by a satellite whose signals can be received directly affects the rights in the country of transmission only or in all countries of reception together; whereas, since communications satellites and direct satellites are treated alike for copyright purposes, this legal uncertainty now affects almost all programmes broadcast in the Community by satellite;
- (8) Whereas, furthermore, legal certainty, which is a prerequisite for the free movement of broadcasts within the Community, is missing where programmes transmitted across frontiers are fed into and retransmitted through cable networks;
- (9) Whereas the development of the acquisition of rights on a contractual basis by authorization is already making a vigorous contribution to the creation of the desired European audiovisual area; whereas the continuation of such contractual agreements should be ensured and their smooth application in practice should be promoted wherever possible;
- (10) Whereas at present cable operators in particular cannot be sure that they have actually acquired all the programme rights covered by such an agreement;
- (11) Whereas, lastly, parties in different Member States are not all similarly bound by obligations which prevent them from refusing without valid reason to negotiate on the acquisition of the rights necessary for cable distribution or allowing such negotiations to fail;
- (12) Whereas the legal framework for the creation of a single audiovisual area laid down in Directive 89/552/EEC must, therefore, be supplemented with reference to copyright;
- (13) Whereas, therefore, an end should be put to the differences of treatment of the transmission of programmes by communications satellite which exist in the Member States, so that the vital distinction throughout the Community becomes whether works and other protected subject matter are communicated to the public; whereas this will also ensure equal treatment of the suppliers of cross-border broadcasts, regardless of whether they use a direct broadcasting satellite or a communications satellite;
- (14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting should be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition should at the same time specify where the act of communication takes place; whereas such a definition is necessary to avoid the cumulative application of several national laws to one single act of broadcasting; whereas communication to the public by satellite occurs only when, and in the Member State where, the programme-carrying signals are introduced under the control and responsibility of the broadcasting organization into an uninterrupted chain of communication leading to the satellite and down towards the earth; whereas normal technical procedures relating to the programme-carrying signals should not be considered as interruptions to the chain of broadcasting;
- (15) Whereas the acquisition on a contractual basis of exclusive broadcasting rights should comply with any legislation on copyright and rights related to copyright in the Member State in which communication to the public by satellite occurs;
- (16) Whereas the principle of contractual freedom on which this Directive is based will make it possible to continue limiting the exploitation of these rights, especially as far as certain technical means of transmission or certain language versions are concerned;
- (17) Whereas, in arriving at the amount of the payment to be made for the rights acquired, the parties should take account of all aspects of the broadcast, such as the actual audience, the potential audience and the language version;
- (18) Whereas the application of the country-of-origin principle contained in this Directive could pose a problem with regard to existing contracts; whereas this Directive should provide for a period of five years for existing contracts to be adapted, where necessary, in the light of the Directive; whereas the said country-of-origin principle should not, therefore, apply to existing contracts which expire before

1 January 2000 ; whereas if by that date parties still have an interest in the contract, the same parties should be entitled to renegotiate the conditions of the contract ;

- (19) Whereas existing international co-production agreements must be interpreted in the light of the economic purpose and scope envisaged by the parties upon signature ; whereas in the past international co-production agreements have often not expressly and specifically addressed communication to the public by satellite within the meaning of this Directive a particular form of exploitation ; whereas the underlying philosophy of many existing international co-production agreements is that the rights in the co-production are exercised separately and independently by each co-producer, by dividing the exploitation rights between them along territorial lines ; whereas, as a general rule, in the situation where a communication to the public by satellite authorized by one co-producer would prejudice the value of the exploitation rights of another co-producer, the interpretation of such an existing agreement would normally suggest that the latter co-producer would have to give his consent to the authorization, by the former co-producer, of the communication to the public by satellite ; whereas the language exclusivity of the latter co-producer will be prejudiced where the language version or versions of the communication to the public, including where the version is dubbed or subtitled, coincide(s) with the language or the languages widely understood in the territory allotted by the agreement to the latter co-producer ; whereas the notion of exclusivity should be understood in a wider sense where the communication to the public by satellite concerns a work which consists merely of images and contains no dialogue or subtitles ; whereas a clear rule is necessary in cases where the international co-production agreement does not expressly regulate the division of rights in the specific case of communication to the public by satellite within the meaning of this Directive ;
- (20) Whereas communications to the public by satellite from non-member countries will under certain conditions be deemed to occur within a Member State of the Community ;
- (21) Whereas it is necessary to ensure that protection for authors, performers, producers of phonograms and broadcasting organizations is accorded in all Member States and that this protection is not subject to a statutory licence system ; whereas only in this way is it possible to ensure that any difference in the level of protection within the common market will not create distortions of competition ;
- (22) Whereas the advent of new technologies is likely to have an impact on both the quality and the quan-

tity of the exploitation of works and other subject matter ;

- (23) Whereas in the light of these developments the level of protection granted pursuant to this Directive to all rightholders in the areas covered by this Directive should remain under consideration ;
- (24) Whereas the harmonization of legislation envisaged in this Directive entails the harmonization of the provisions ensuring a high level of protection of authors, performers, phonogram producers and broadcasting organizations ; whereas this harmonization should not allow a broadcasting organization to take advantage of differences in levels of protection by relocating activities, to the detriment of audiovisual productions ;
- (25) Whereas the protection provided for rights related to copyright should be aligned on that contained in Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property () for the purposes of communication to the public by satellite ; whereas, in particular, this will ensure that performers and phonogram producers are guaranteed an appropriate remuneration for the communication to the public by satellite of their performances or phonograms ;
- (26) Whereas the provisions of Article 4 do not prevent Member States from extending the presumption set out in Article 2 (5) of Directive 92/100/EEC to the exclusive rights referred to in Article 4 ; whereas, furthermore, the provisions of Article 4 do not prevent Member States from providing for a rebuttable presumption of the authorization of exploitation in respect of the exclusive rights of performers referred to in that Article, in so far as such presumption is compatible with the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations ;
- (27) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and, as the case may be, rights related to copyright ; whereas the cable operator must, therefore, obtain the authorization from every holder of rights in each part of the programme retransmitted ; whereas, pursuant to this Directive, the authorizations should be granted contractually unless a temporary exception is provided for in the case of existing legal licence schemes ;

() OJ No L 346, 27 11 1992, p. 61

- (28) Whereas, in order to ensure that the smooth operation of contractual arrangements is not called into question by the intervention of outsiders holding rights in individual parts of the programme, provision should be made, through the obligation to have recourse to a collecting society, for the exclusive collective exercise of the authorization right to the extent that this is required by the special features of cable retransmission; whereas the authorization right as such remains intact and only the exercise of this right is regulated to some extent, so that the right to authorize a cable retransmission can still be assigned; whereas this Directive does not affect the exercise of moral rights;
- (29) Whereas the exemption provided for in Article 10 should not limit the choice of holders of rights to transfer their rights to a collecting society and thereby have a direct share in the remuneration paid by the cable distributor for cable retransmission;
- (30) Whereas contractual arrangements regarding the authorization of cable retransmission should be promoted by additional measures; whereas a party seeking the conclusion of a general contract should, for its part, be obliged to submit collective proposals for an agreement; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task is to assist negotiations and who may submit proposals; whereas any such proposals and any opposition thereto should be served on the parties concerned in accordance with the applicable rules concerning the service of legal documents, in particular as set out in existing international conventions; whereas, finally, it is necessary to ensure that the negotiations are not blocked without valid justification or that individual holders are not prevented without valid justification from taking part in the negotiations; whereas none of these measures for the promotion of the acquisition of rights calls into question the contractual nature of the acquisition of cable retransmission rights;
- (31) Whereas for a transitional period Member States should be allowed to retain existing bodies with jurisdiction in their territory over cases where the right to retransmit a programme by cable to the public has been unreasonably refused or offered on unreasonable terms by a broadcasting organization; whereas it is understood that the right of parties concerned to be heard by the body should be guaranteed and that the existence of the body should not prevent the parties concerned from having normal access to the courts;
- (32) Whereas, however, Community rules are not needed to deal with all of those matters, the effects of which perhaps with some commercially insignificant exceptions, are felt only inside the borders of a single Member State;
- (33) Whereas minimum rules should be laid down in order to establish and guarantee free and uninterrupted cross-border broadcasting by satellite and simultaneous, unaltered cable retransmission of programmes broadcast from other Member States, on an essentially contractual basis;
- (34) Whereas this Directive should not prejudice further harmonization in the field of copyright and rights related to copyright and the collective administration of such rights, whereas the possibility for Member States to regulate the activities of collecting societies should not prejudice the freedom of contractual negotiation of the rights provided for in this Directive, on the understanding that such negotiation takes place within the framework of general or specific national rules with regard to competition law or the prevention of abuse of monopolies;
- (35) Whereas it should, therefore, be for the Member States to supplement the general provisions needed to achieve the objectives of this Directive by taking legislative and administrative measures in their domestic law, provided that these do not run counter to the objectives of this Directive and are compatible with Community law;
- (36) Whereas this Directive does not affect the applicability of the competition rules in Articles 85 and 86 of the Treaty.

HAS ADOPTED THIS DIRECTIVE

CHAPTER I

DEFINITIONS

Article 1

Definitions

1. For the purpose of this Directive, 'satellite' means any satellite operating on frequency bands which, under telecommunications law, are reserved for the broadcast of signals for reception by the public or which are reserved

for closed, point-to-point communication. In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the first case.

2. (a) For the purpose of this Directive, 'communication to the public by satellite' means the act of introducing, under the control and responsibility of the broadcasting organization, the programme-carrying signals intended for reception by the public into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(b) The act of communication to the public by satellite occurs solely in the Member State where, under the control and responsibility of the broadcasting organization, the programme-carrying signals are introduced into an uninterrupted chain of communication leading to the satellite and down towards the earth.

(c) If the programme-carrying signals are encrypted, then there is communication to the public by satellite on condition that the means for decrypting the broadcast are provided to the public by the broadcasting organization or with its consent.

(d) Where an act of communication to the public by satellite occurs in a non-Community State which does not provide the level of protection provided for under Chapter II,

(i) if the programme-carrying signals are transmitted to the satellite from an uplink situation situated in a Member State, that act of communication to the public by satellite shall be deemed to have occurred in that Member State and the rights provided for under Chapter II shall be exercisable against the person operating the uplink station; or

(ii) if there is no use of an uplink station situated in a Member State but a broadcasting organization established in a Member State has commissioned the act of communication to the public by satellite, that act shall be deemed to have occurred in the Member State in which the broadcasting organization has its principal establishment in the Community and the rights provided for under Chapter II shall be exercisable against the broadcasting organization.

3. For the purposes of this Directive, 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission by a cable or microwave system for reception by the public of an initial transmission from another Member State, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public.

4. For the purposes of this Directive 'collecting society' means any organization which manages or administers copyright or rights related to copyright as its sole purpose or as one of its main purposes.

5. For the purposes of this Directive, the principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States may provide for others to be considered as its co-authors.

CHAPTER II

BROADCASTING OF PROGRAMMES BY SATELLITE

Article 2

Broadcasting right

Member States shall provide an exclusive right for the author to authorize the communication to the public by satellite of copyright works, subject to the provisions set out in this chapter.

Article 3

Acquisition of broadcasting rights

1. Member States shall ensure that the authorization referred to in Article 2 may be acquired only by agreement.

2. A Member State may provide that a collective agreement between a collecting society and a broadcasting organization concerning a given category of works may be extended to rightholders of the same category who are not represented by the collecting society, provided that:

— the communication to the public by satellite simulcasts a terrestrial broadcast by the same broadcaster, and

— the unrepresented rightholder shall, at any time, have the possibility of excluding the extension of the collective agreement to his works and of exercising his rights either individually or collectively.

3. Paragraph 2 shall not apply to cinematographic works, including works created by a process analogous to cinematography.

4. Where the law of a Member State provides for the extension of a collective agreement in accordance with the provisions of paragraph 2, that Member States shall inform the Commission which broadcasting organizations are entitled to avail themselves of that law. The Commission shall publish this information in the *Official Journal of the European Communities* (C series).

Article 4

Rights of performers, phonogram producers and broadcasting organizations

1. For the purposes of communication to the public by satellite, the rights of performers, phonogram producers and broadcasting organizations shall be protected in accordance with the provisions of Articles 6, 7, 8 and 10 of Directive 92/100/EEC.
2. For the purposes of paragraph 1, 'broadcasting by wireless means' in Directive 92/100/EEC shall be understood as including communication to the public by satellite.
3. With regard to the exercise of the rights referred to in paragraph 1, Articles 2 (2) and 12 of Directive 92/100/EEC shall apply.

Article 5

Relation between copyright and related rights

Protection of copyright-related rights under this Directive shall leave intact and shall in no way affect the protection of copyright.

Article 6

Minimum protection

1. Member States may provide for more far-reaching protection for holders of rights related to copyright than that required by Article 8 of Directive 92/100/EEC.
2. In applying paragraph 1 Member States shall observe the definitions contained in Article 1 (1) and (2).

Article 7

Transitional provisions

1. With regard to the application in time of the rights referred to in Article 4 (1) of this Directive, Article 13 (1), (2), (6) and (7) of Directive 92/100/EEC shall apply. Article 13 (4) and (5) of Directive 92/100/EEC shall apply *mutatis mutandis*.
2. Agreements concerning the exploitation of works and other protected subject matter which are in force on the date mentioned in Article 14 (1) shall be subject to the provisions of Articles 1 (2), 2 and 3 as from 1 January 2000 if they expire after that date.
3. When an international co-production agreement concluded before the date mentioned in Article 14 (1) between a co-producer from a Member State and one or more co-producers from other Member States or third countries expressly provides for a system of division of

exploitation rights between the co-producers by geographical areas for all means of communication to the public, without distinguishing the arrangement applicable to communication to the public by satellite from the provisions applicable to the other means of communication, and where communication to the public by satellite of the co-production would prejudice the exclusivity, in particular the language exclusivity, of one of the co-producers or his assignees in a given territory, the authorization by one of the co-producers or his assignees for a communication to the public by satellite shall require the prior consent of the holder of that exclusivity, whether co-producer or assignee.

CHAPTER III

CABLE RETRANSMISSION

Article 8

Cable retransmission right

1. Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and related rights are observed and that such retransmission takes place on the basis of individual or collective contractual agreements between copyright owners, holders of related rights and cable operators.
2. Notwithstanding paragraph 1, Member States may retain until 31 December 1997 such statutory licence systems which are in operation or expressly provided for by national law on 31 July 1991.

Article 9

Exercise of the cable retransmission right

1. Member States shall ensure that the right of copyright owners and holders or related rights to grant or refuse authorization to a cable operator for a cable retransmission may be exercised only through a collecting society.
2. Where a rightholder has not transferred the management of his rights to a collecting society, the collecting society which manages rights of the same category shall be deemed to be mandated to manage his rights. Where more than one collecting society manages rights of that category, the rightholder shall be free to choose which of those collecting societies is deemed to be mandated to manage his rights. A rightholder referred to in this paragraph shall have the same rights and obligations resulting from the agreement between the cable operator and the collecting society which is deemed to be mandated to manage his rights as the rightholders who have mandated that collecting society and he shall be able to claim those

rights within a period, to be fixed by the Member State concerned, which shall not be shorter than three years from the date of the cable retransmission which includes his work or other protected subject matter.

3. A Member State may provide that, when a right-holder authorizes the initial transmission within its territory of a work or other protected subject matter, he shall be deemed to have agreed not to exercise his cable retransmission rights on an individual basis but to exercise them in accordance with the provisions of this Directive.

Article 10

Exercise of the cable retransmission right by broadcasting organizations

Member States shall ensure that Article 9 does not apply to the rights exercised by a broadcasting organization in respect of its own transmission, irrespective of whether the rights concerned are its own or have been transferred to it by other copyright owners and/or holders of related rights.

Article 11

Mediators

1. Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, Member States shall ensure that either party may call upon the assistance of one or more mediators.

2. The task of the mediators shall be to provide assistance with negotiation. They may also submit proposals to the parties.

3. It shall be assumed that all the parties accept a proposal as referred to in paragraph 2 if none of them expresses its opposition within a period of three months. Notice of the proposal and of any opposition thereto shall be served on the parties concerned in accordance with the applicable rules concerning the service of legal documents.

4. The mediators shall be so selected that their independence and impartiality are beyond reasonable doubt.

Article 12

Prevention of the abuse of negotiating positions

1. Member States shall ensure by means of civil or administrative law, as appropriate, that the parties enter and conduct negotiations regarding authorization for cable retransmission in good faith and do not prevent or hinder negotiation without valid justification.

2. A Member State which, on the date mentioned in Article 14 (1), has a body with jurisdiction in its territory over cases where the right to retransmit a programme by cable to the public in that Member State has been unreasonably refused or offered on unreasonable terms by a broadcasting organization may retain that body.

3. Paragraph 2 shall apply for a transitional period of eight years from the date mentioned in Article 14 (1).

CHAPTER IV

GENERAL PROVISIONS

Article 13

Collective administration of rights

This Directive shall be without prejudice to the regulation of the activities of collecting societies by the Member States.

Article 14

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 1 January 1995. They shall immediately inform the Commission thereof.

When Member States adopt these measures, the latter shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

3. Not later than 1 January 2000, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the audio and audiovisual sector.

Article 15

This Directive is addressed to the Member States.

Done at Brussels, 27 September 1993.

For the Council

The President

R. URBAIN

**Directive 93/98/EEC
of 29 October 1993
harmonizing the term of protection copyright and
certain related rights**

(OJ No L 290, 24.11.1993)

COUNCIL DIRECTIVE 93/98/EEC

of 29 October 1993

harmonizing the term of protection of copyright and certain related rights

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57 (2), 66 and 100a thereof,

Having regard to the proposal from the Commission (*),

In cooperation with the European Parliament (**),

Having regard to the opinion of the Economic and Social Committee (***),

(1) Whereas the Berne Convention for the protection of literary and artistic works and the International Convention for the protection of performers, producers of phonograms and broadcasting organizations (Rome Convention) lay down only minimum terms of protection of the rights they refer to, leaving the Contracting States free to grant longer terms; whereas certain Member States have exercised this entitlement; whereas in addition certain Member States have not become party to the Rome Convention;

(2) Whereas there are consequently differences between the national laws governing the terms of protection of copyright and related rights, which are liable to impede the free movement of goods and freedom to provide services, and to distort competition in the common market; whereas therefore with a view to the smooth operation of the internal market, the laws of the Member States should be harmonized so as to make terms of protection identical throughout the Community;

(3) Whereas harmonization must cover not only the terms of protection as such, but also certain implementing arrangements such as the date from which each term of protection is calculated;

(4) Whereas the provisions of this Directive do not affect the application by the Member States of the

provisions of Article 14a (2) (b), (c) and (d) and (3) of the Berne Convention;

(5) Whereas the minimum term of protection laid down by the Berne Convention, namely the life of the author and 50 years after his death, was intended to provide protection for the author and the first two generations of his descendants; whereas the average lifespan in the Community has grown longer, to the point where this term is no longer sufficient to cover two generations;

(6) Whereas certain Member States have granted a term longer than 50 years after the death of the author in order to offset the effects of the world wars on the exploitation of authors' works;

(7) Whereas for the protection of related rights certain Member States have introduced a term of 50 years after lawful publication or lawful communication to the public;

(8) Whereas under the Community position adopted for the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT) the term of protection for producers of phonograms should be 50 years after first publication;

(9) Whereas due regard for established rights is one of the general principles of law protected by the Community legal order; whereas, therefore, a harmonization of the terms of protection of copyright and related rights cannot have the effect of reducing the protection currently enjoyed by rightholders in the Community; whereas in order to keep the effects of transitional measures to a minimum and to allow the internal market to operate in practice, the harmonization of the term of protection should take place on a long term basis;

(10) Whereas in its communication of 17 January 1991 'Follow-up to the Green Paper — Working programme of the Commission in the field of copyright and neighbouring rights' the Commission stresses the need to harmonize copyright and neighbouring rights at a high level of protection since these rights are fundamental to intellectual creation and stresses that their protection ensures the maintenance and development of creativity in

(*) OJ No C 92, 11. 4. 1992, p. 6 and OJ No C 27, 30. 1. 1993, p. 7.

(**) OJ No C 337, 21. 12. 1992, p. 205 and Decision of 27 October 1993 (not yet published in the Official Journal).

(***) OJ No C 287, 4. 11. 1992, p. 53.

the interest of authors, cultural industries, consumers and society as a whole;

whereas these Articles should accordingly be repealed;

- (11) Whereas in order to establish a high level of protection which at the same time meets the requirements of the internal market and the need to establish a legal environment conducive to the harmonious development of literary and artistic creation in the Community, the term of protection for copyright should be harmonized at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running;
- (12) Whereas collections are protected according to Article 2 (5) of the Berne Convention when, by reason of the selection and arrangement of their content, they constitute intellectual creations; whereas those works are protected as such, without prejudice to the copyright in each of the works forming part of such collections, whereas in consequence specific terms of protection may apply to works included in collections;
- (13) Whereas in all cases where one or more physical persons are identified as authors the term of protection should be calculated after their death; whereas the question of authorship in the whole or a part of a work is a question of fact which the national courts may have to decide;
- (14) Whereas terms of protection should be calculated from the first day of January of the year following the relevant event, as they are in the Berne and Rome Conventions;
- (15) Whereas Article 1 of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (*) provides that Member States are to protect computer programs, by copyright, as literary works within the meaning of the Berne Convention; whereas this Directive harmonizes the term of protection of literary works in the Community; whereas Article 8 of Directive 91/250/EEC, which merely makes provisional arrangements governing the term of protection of computer programs, should accordingly be repealed;
- (16) Whereas Articles 11 and 12 of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (**) make provision for minimum terms of protection only, subject to any further harmonization; whereas this Directive provides such further harmonization;
- (17) Whereas the protection of photographs in the Member States is the subject of varying regimes; whereas in order to achieve a sufficient harmonization of the term of protection of photographic works, in particular of those which, due to their artistic or professional character, are of importance within the internal market, it is necessary to define the level of originality required in this Directive; whereas a photographic work within the meaning of the Berne Convention is to be considered original if it is the author's own intellectual creation reflecting his personality, no other criteria such as merit or purpose being taken into account; whereas the protection of other photographs should be left to national law;
- (18) Whereas, in order to avoid differences in the term of protection as regards related rights it is necessary to provide the same starting point for the calculation of the term throughout the Community; whereas the performance, fixation, transmission, lawful publication, and lawful communication to the public, that is to say the means of making a subject of a related right perceptible in all appropriate ways to persons in general, should be taken into account for the calculation of the term of protection regardless of the country where this performance, fixation, transmission, lawful publication, or lawful communication to the public takes place;
- (19) Whereas the rights of broadcasting organizations in their broadcasts, whether these broadcasts are transmitted by wire or over the air, including by cable or satellite, should not be perpetual; whereas it is therefore necessary to have the term of protection running from the first transmission of a particular broadcast only; whereas this provision is understood to avoid a new term running in cases where a broadcast is identical to a previous one;
- (20) Whereas the Member States should remain free to maintain or introduce other rights related to copyright in particular in relation to the protection of critical and scientific publications; whereas, in order to ensure transparency at Community level, it is however necessary for Member States which introduce new related rights to notify the Commission;
- (21) Whereas it is useful to make clear that the harmonization brought about by this Directive does not apply to moral rights;
- (22) Whereas, for works whose country of origin within the meaning of the Berne Convention is a third country and whose author is not a Community national, comparison of terms of protection should

(*) OJ No L 122, 17. 5. 1991, p. 42.

(**) OJ No L 346, 27. 11. 1992, p. 61.

be applied, provided that the term accorded in the Community does not exceed the term laid down in this Directive;

- (23) Whereas where a rightholder who is not a Community national qualifies for protection under an international agreement the term of protection of related rights should be the same as that laid down in this Directive, except that it should not exceed that fixed in the country of which the rightholder is a national;
- (24) Whereas comparison of terms should not result in Member States being brought into conflict with their international obligations;
- (25) Whereas, for the smooth functioning of the internal market this Directive should be applied as from 1 July 1995;
- (26) Whereas Member States should remain free to adopt provisions on the interpretation, adaptation and further execution of contracts on the exploitation of protected works and other subject matter which were concluded before the extension of the term of protection resulting from this Directive;
- (27) Whereas respect of acquired rights and legitimate expectations is part of the Community legal order; whereas Member States may provide in particular that in certain circumstances the copyright and related rights which are revived pursuant to this Directive may not give rise to payments by persons who undertook in good faith the exploitation of the works at the time when such works lay within the public domain,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Duration of authors' rights

1. The rights of an author of a literary or artistic work within the meaning of Article 2 of the Berne Convention shall run for the life of the author and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public.
2. In the case of a work of joint authorship the term referred to in paragraph 1 shall be calculated from the death of the last surviving author.
3. In the case of anonymous or pseudonymous works, the term of protection shall run for seventy years after the work is lawfully made available to the public. However, when the pseudonym adopted by the author leaves no doubt as to his identity, or if the author

discloses his identity during the period referred to in the first sentence, the term of protection applicable shall be that laid down in paragraph 1.

4. Where a Member State provides for particular provisions on copyright in respect of collective works or for a legal person to be designated as the rightholder, the term of protection shall be calculated according to the provisions of paragraph 3, except if the natural persons who have created the work as such are identified as such in the versions of the work which are made available to the public. This paragraph is without prejudice to the rights of identified authors whose identifiable contributions are included in such works, to which contributions paragraph 1 or 2 shall apply.

5. Where a work is published in volumes, parts, instalments, issues or episodes and the term of protection runs from the time when the work was lawfully made available to the public, the term of protection shall run for each such item separately.

6. In the case of works for which the term of protection is not calculated from the death of the author or authors and which have not been lawfully made available to the public within seventy years from their creation, the protection shall terminate.

Article 2

Cinematographic or audiovisual works

1. The principal director of a cinematographic or audiovisual work shall be considered as its author or one of its authors. Member States shall be free to designate other co-authors.
2. The term of protection of cinematographic or audiovisual works shall expire 70 years after the death of the last of the following persons to survive, whether or not these persons are designated as co-authors: the principal director, the author of the screenplay, the author of the dialogue and the composer of music specifically created for use in the cinematographic or audiovisual work.

Article 3

Duration of related rights

1. The rights of performers shall expire 50 years after the date of the performance. However, if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.
2. The rights of producers of phonograms shall expire 50 years after the fixation is made. However, if the

phonogram is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier.

3. The rights of producers of the first fixation of a film shall expire 50 years after the fixation is made. However, if the film is lawfully published or lawfully communicated to the public during this period, the rights shall expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. The term 'film' shall designate a cinematographic or audiovisual work or moving images, whether or not accompanied by sound.

4. The rights of broadcasting organizations shall expire 50 years after the first transmission of a broadcast, whether this broadcast is transmitted by wire or over the air, including by cable or satellite.

Article 4

Protection of previously unpublished works

Any person who, after the expiry of copyright protection, for the first time lawfully publishes or lawfully communicates to the public a previously unpublished work, shall benefit from a protection equivalent to the economic rights of the author. The term of protection of such rights shall be 25 years from the time when the work was first lawfully published or lawfully communicated to the public.

Article 5

Critical and scientific publications

Member States may protect critical and scientific publications of works which have come into the public domain. The maximum term of protection of such rights shall be 30 years from the time when the publication was first lawfully published.

Article 6

Protection of photographs

Photographs which are original in the sense that they are the author's own intellectual creation shall be protected in accordance with Article 1. No other criteria shall be applied to determine their eligibility for protection. Member States may provide for the protection of other photographs.

Article 7

Protection *vis-à-vis* third countries

1. Where the country of origin of a work, within the meaning of the Berne Convention, is a third country,

and the author of the work is not a Community national, the term of protection granted by the Member States shall expire on the date of expiry of the protection granted in the country of origin of the work, but may not exceed the term laid down in Article 1.

2. The terms of protection laid down in Article 3 shall also apply in the case of rightholders who are not Community nationals, provided Member States grant them protection. However, without prejudice to the international obligations of the Member States, the term of protection granted by Member States shall expire no later than the date of expiry of the protection granted in the country of which the rightholder is a national and may not exceed the term laid down in Article 3.

3. Member States which, at the date of adoption of this Directive, in particular pursuant to their international obligations, granted a longer term of protection than that which would result from the provisions, referred to in paragraphs 1 and 2 may maintain this protection until the conclusion of international agreements on the term of protection by copyright or related rights.

Article 8

Calculation of terms

The terms laid down in this Directive are calculated from the first day of January of the year following the event which gives rise to them.

Article 9

Moral rights

This Directive shall be without prejudice to the provisions of the Member States regulating moral rights.

Article 10

Application in time

1. Where a term of protection, which is longer than the corresponding term provided for by this Directive, is already running in a Member State on the date referred to in Article 13 (1), this Directive shall not have the effect of shortening that term of protection in that Member State.

2. The terms of protection provided for in this Directive shall apply to all works and subject matter which are protected in at least one Member State, on the date referred to in Article 13 (1), pursuant to national provisions on copyright or related rights or which meet the criteria for protection under Directive 92/100/EEC.

3. This Directive shall be without prejudice to any acts of exploitation performed before the date referred to

in Article 13 (1). Member States shall adopt the necessary provisions to protect in particular acquired rights of third parties.

4. Member States need not apply the provisions of Article 2 (1) to cinematographic or audiovisual works created before 1 July 1994.

5. Member States may determine the date as from which Article 2 (1) shall apply, provided that date is no later than 1 July 1997.

Article 11

Technical adaptation

1. Article 8 of Directive 91/250/EEC is hereby repealed.

2. Articles 11 and 12 of Directive 92/100/EEC are hereby repealed.

Article 12

Notification procedure

Member States shall immediately notify the Commission of any governmental plan to grant new related rights, including the basic reasons for their introduction and the term of protection envisaged.

Article 13

General provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1 to 11 of this Directive before 1 July 1995.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The methods of making such a reference shall be laid down by the Member States.

Member States shall communicate to the Commission the texts of the provisions of national law which they adopt in the field governed by this Directive.

2. Member States shall apply Article 12 from the date of notification of this Directive.

Article 14

This Directive is addressed to the Member States.

Done at Brussels, 29 October 1993.

For the Council

The President

R. URBAIN

ANNEX III

**Council Resolution
of 21 November 1996
on new policy-priorities regarding the information society**

(OJ No C 376, 12.12.1996)

COUNCIL RESOLUTION
of 21 November 1996
on new policy-priorities regarding the information society
(96/C 376/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Council resolution of 18 November 1991 on electronics, information and communications technologies ⁽¹⁾,

Having regard to the Council conclusions on the information society of 28 September 1994,

Having regard to the Council resolution of 21 November 1994 on the strengthening of the competitiveness of Community industry ⁽²⁾,

Having regard to the Council resolution of 22 December 1994 on the principles and timetable for the liberalization of telecommunications infrastructures ⁽³⁾,

Having regard to the Council conclusions of 7 April 1995 on industrial competitiveness,

Having regard to the Council resolution of 27 November 1995 on the industrial aspects for the European Union in the development of the information society ⁽⁴⁾,

Having regard to the conclusions of the Presidency at the European Councils held in Corfu, Cannes, Madrid and Florence,

Having regard to the Commission's White Paper of December 1993 on growth, competitiveness and employment,

Having regard to the Commission's communication of 19 July 1994 entitled 'Europe's way to the information society. An action plan',

Having regard to the Commission's communication of September 1994 on an industrial competitiveness policy for the European Union,

Taking note of the Commission proposals on a Directive on regulatory transparency in the internal market for information society services,

Taking note of the Commission communication 'The information society: From Corfu to Dublin — The new emerging priorities', the Commission communication 'The implications of the information society for European Union policies — Preparing the next steps', the Green Paper 'Living and working in the information society: People first', and the Communication 'Standardization and the global information society',

Taking note of the communication from the Commission on services of general interest in Europe,

Whereas initiatives taken in the context of the information society must make allowance for policies framed in adjacent areas, in particular audiovisual and cultural affairs, and without prejudice to national measures implemented in accordance with Community law in such areas;

Whereas the process of economic globalization is increasing competitive pressure and will require greater flexibility and efficiency, while at the same time opening new market opportunities which can help to increase economic growth and employment;

Whereas the rapid and coherent development of the information society is essential to Europe's competitiveness and employment;

Whereas liberalization of telecommunications markets, within the agreed timetable, will stimulate private and public investment necessary for the development of the information society in Europe;

⁽¹⁾ OJ No C 325, 14. 12. 1991, p. 2.

⁽²⁾ OJ No C 343, 6. 12. 1994, p. 1.

⁽³⁾ OJ No C 379, 31. 12. 1994, p. 4.

⁽⁴⁾ OJ No C 341, 19. 12. 1995, p. 5.

Whereas the principles of the internal market should apply to the emerging information society services so that internationally competitive structures can develop on the European market;

Whereas the information society is making possible a profound economic and social transformation which is spreading to all spheres of human activity;

Whereas the information society can support the promotion of high level employment and the raising of living standards and quality of life in the Community;

Whereas the information society and the use of new technologies should contribute to the effective protection and exercise of fundamental rights and freedoms of citizens and consumers;

Whereas however the distribution of illegal material adversely affecting public order and morality may damage confidence in and acceptance of the new information society;

Whereas the use of emerging technologies can contribute to improving regional cohesion in Europe in a cost effective way;

Whereas the economic, social and cultural strengths of the European Union must be linked together in the creation of new opportunities for all citizens;

Whereas education and training, based on the principles of lifelong learning, for and via the information society will be vital in providing people with the skills needed in their professional and private lives;

Whereas there is a need for a revised and updated action plan;

Whereas the information society results from the technological convergence of the audiovisual, computing and telecommunications sectors;

Whereas it will be necessary for all competent Council compositions to consider, and to adopt as soon as possible, the necessary regulatory and legal measures,

I

1. WELCOMES the initiative of the Commission in presenting a number of reflection documents and proposals to further develop the policy framework of the information society;
2. NOTES that good progress has been made in the implementation of the action plan 'Europe's way to the information society' by:

(a) the adoption of measures for full liberalization of telecommunications markets;

(b) the successful implementation of three specific research programmes in information and communications technologies and telematic application developments under the fourth framework programme;

(c) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁽¹⁾, the common position on the specific draft directive on the protection of privacy and personal data in the telecommunications sector and the adoption of Directive 96/9/EC of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases⁽²⁾;

(d) the adoption of TEN-ISDN guidelines as a major step towards establishing a comprehensive framework for TEN-Telecoms;

(e) the adoption of INFO 2000 to support the European multimedia content industry;

(f) the implementation of a substantial number of information society projects in the fields of industrial applications, standardization, regional policy and international cooperation;

(g) the launch of specific actions to improve public awareness of the information society;

(h) increased international cooperation, including the implementation of G7 pilot actions, and in particular cooperation with Central and East European States, Mediterranean countries and the developing world;

3. RECOGNIZES

(a) the challenge posed by global competition, the changing business environment in the information society, and the crucial importance of information and communication technologies for the competitiveness of European industry and thus for the creation of new employment;

⁽¹⁾ OJ No L 281, 23. 11. 1995, p. 31.

⁽²⁾ OJ No L 77, 27. 3. 1996, p. 20.

- (b) the market and employment opportunities offered by the information society for the European economy — for example in the areas of electronic commerce and multimedia content;
- (c) the need for all interested parties to take into account social and societal aspects of the information society and to respect the major importance of its human dimension;
- (d) the need for common principles for the provision and financing of universal services, considering that the concept of universal service must evolve to keep pace with advances in technology, market development and changes in user demands;
- (e) the need for a favourable legal and regulatory framework for all European companies, in particular for a better environment for technology-oriented small and medium-sized enterprises (SMEs);
- (f) the need for the Community institutions to improve information and communications systems in order to facilitate better management of its business;
- (g) the need for efficient and price competitive trans-European generic services for communications and exchange of data;
- (h) the importance of education and culture for developing better understanding of the information society;
- (i) the importance of technical harmonization for the development of the global information society;

4. STRESSES with the Commission

- (a) that rapid adoption and effective implementation of the regulatory framework necessary for the liberalization of the telecom sector throughout the Community is crucial for ensuring the development of competition for the benefit of all users;
- (b) that a strong and competitive European information and communication technology (ICT) industry is essential for the full exploitation of the benefits of the information society;
- (c) that European competition policy must preserve competition in the Community and enable European companies to succeed in international markets;

- (d) that the proper functioning of the internal market must be improved; that given the increasing share of services in the economy, the provision and free circulation of services — especially new ones — is of particular importance;
- (e) the need to accelerate the adoption of formal standards at both European and global level, and to ensure the open and transparent character of technical specifications in order to avoid abuse of dominant market positions;
- (f) the importance of the successful completion by 15 February 1997 of the World Trade Organization negotiations on basic telecommunications services;
- (g) the importance of the successful completion of current work within World Intellectual Property Organization (WIPO) on new international agreements concerning the protection of copyrights and related rights in the information society.

5. EMPHASIZES

- (a) the importance of speedy take-up of information and communication technologies by all operators;
- (b) the crucial role of research and development in the ICT sectors in view of the ability of European industry to compete and innovate;
- (c) the need to constantly improve and adjust skills to meet changing work requirements;
- (d) the importance of encouraging the emergence of new forms of employment;
- (e) the necessity of promoting the use of ICT for sustainable development in production, distribution and consumption;
- (f) the need to exploit the potential of the information society for enhancing cultural, linguistic or other diversity;
- (g) the need to make the benefits of the information society accessible to every European citizen regardless of location or any reasons of exclusion;
- (h) the importance of protecting fundamental rights and freedoms as well as users' and consumer rights in the information society;

6. SUPPORTS

- (a) the intention of the Commission to demonstrate the use of communication in its administrative operations, for example in the management of European research programmes;
- (b) the efforts of the Member States and the Commission to promote seamless communication between public authorities across the European Union while respecting national legislation, in particular when the security of Member States is concerned;

7. NOTES with interest the first orientation document of the Commission regarding the fifth framework programme and welcomes the proposal to give information society related research a central role;

8. NOTES with interest — given the importance of education and training for business competitiveness — the presentation by the Commission of the action plan 'Learning in the information society' requested by the European Council in Florence this year;

9. STRESSES the importance of an appropriate and consistent legal framework for the information society at European and at an international level;

10. STRESSES the importance of adequate coordination between the relevant regulatory authorities, particularly in the fields of licensing, frequency allocation and numbering;

11. STRESSES the need to fully take into account the cohesion dimension, in particular by helping the less-favoured regions to effectively participate in the information society;

II

THE COUNCIL URGES MEMBER STATES TO

- 12. ENCOURAGE the start-up, growth and development of innovative companies and SMEs in the area of ICT;
- 13. IMPROVE public services, for example in education, culture, health care, transport, administration and

access to public information, through accelerated use of information society tools and partnerships between the public and private sector while ensuring citizen's confidence in the use of these new tools with regard to their fundamental rights and freedoms, and in particular the right to the protection of personal data;

14. ENSURE the consistent and effective transposition of the telecommunications reform package within the agreed time scales;

III

THE COUNCIL REQUESTS MEMBER STATES AND THE COMMISSION, WITHIN THEIR RESPECTIVE COMPETENCES, TO

15. LOOK into the problem of the distribution of illegal material adversely affecting public order and morality over electronic networks;

16. PREPARE consistent measures to ensure integrity and authenticity of electronically transmitted documents;

17. PROMOTE negotiations on the Information Technology Agreement with a view to future multilateral agreements;

18. SECURE close cooperation and coordination between the different programmes and activities in the area of ICT;

19. BETTER COORDINATE their respective initiatives on the information society in order to maximize the potential benefits, and requests the Commission to report on these initiatives on a regular basis to promote complementarity between activities;

IV

THE COUNCIL CALLS ON THE COMMISSION TO

- 20. FOLLOW UP, as appropriate, the consultation already under way on the Green Papers 'Living and working in the information society', 'New audio-visual services', 'Copyright and related rights in the information society', 'The legal protection of encrypted services' and 'Commercial communications in the internal market';

21. ANALYSE potential barriers to the development of new information society services, in particular electronic commerce;
22. ANALYSE the impact of information and communications technologies on the competitiveness of industry sectors and submit proposals for a European initiative to stimulate the use of ICT, in particular for SMEs;
23. INTENSIFY international cooperation, in particular to assist the accession countries in their preparation for the information society and to improve communication with other regions, in order to promote the global information society;
24. REPORT to Council on the competitive position of the ICT industry and the state of implementation of the resolution of 18 November 1991 on electronics, information and communication technologies;

V

THE COUNCIL CALLS ON INDUSTRY TO

25. RECOGNIZE its responsibility to
 - upgrade the skills of management and employees in the use of ICT,
 - exploit the potential of ICT in enhancing competitiveness,
 - create and promote new information society services and products as well as stimulate timely production of suitable and market-driven standards and specifications;
26. ACTIVELY PARTICIPATE in the development of information society policies at national and European level while being attentive to the social and societal aspects of the information society;
27. ESTABLISH and market cost-effective trans-European generic services for exchange of data;

VI

THE COUNCIL

28. INVITES the Commission and the Member States to examine appropriate actions, including in accordance with existing regional policy instruments, to ensure that the opportunities offered by the information society can be grasped by individuals and firms;
29. CONSIDERS there is a need to improve transparency of national and Community initiatives, including the regulatory framework, for the development of information society services;
30. URGES the Member States and the Commission to make sustained efforts to increase public awareness and understanding of, and participation in the information society;
31. INVITES the Community institutions in cooperation with Member States, to establish, within a reasonable timescale, an integrated system for the management of interinstitutional communications;
32. RECOGNIZES the need for further analysis of the issues underlying development of information society policy internationally with a view to reaching a common understanding on means and conditions governing the use of global information networks and stresses the need for coordination between initiatives relating to the subjects, both in the Community framework and in other international forums;
33. WELCOMES the German proposal to host an international conference dedicated to this end that will be prepared in close cooperation with the Commission and the Member States;
34. WELCOMES the intention of the Commission to present a revised and updated action plan 'Europe's way to the information society' before the end of this year.

Council of the European Union

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BELGIQUE/BELGIË

Jean De Lannoy
Avenue du Roi 202/Koningslaan 202
B-1190 Bruxelles/Brussel
Tél. (32-2) 538 43 08
Fax (32-2) 538 08 41
E-mail: jean.de.lannoy@infoboard.be
URL: http://www.jean-de-lannoy.be

La librairie européenne/De Europese Boekhandel
Rue de la Loi 244/Wetstraat 244
B-1040 Bruxelles/Brussel
Tél. (32-2) 295 26 39
Fax (32-2) 735 08 60
E-mail: mail@libeurop.be
URL: http://www.libeurop.be

Moniteur belge/Beigisch Staatsblad
Rue de Louvain 40-42/Leuvenseweg 40-42
B-1000 Bruxelles/Brussel
Tél. (32-2) 552 22 11
Fax (32-2) 511 01 84

DANMARK

J. H. Schultz Information A/S
Herstedvang 10-12
DK-2620 Albertslund
Tlf. (45) 43 63 23 00
Fax (45) 43 63 19 69
E-mail: schultz@schultz.dk
URL: http://www.schultz.dk

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Fax (352) 49 98 88-444
E-mail: mpk@pt.lu
URL: http://www.mpk.lu

NEDERLAND

SDU Servicecentrum Uitgevers
Christoffel Plantijnstraat 2
Postbus 20014
2500 EA Den Haag
Tel. (31-70) 378 98 80
Fax (31-70) 378 97 83
E-mail: sdu@sdu.nl
URL: http://www.sdu.nl

ÖSTERREICH

Manz'sche Verlags- und Unverlätatabuchhandlung GmbH
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