



Brussels, 13.1.2023  
COM(2023) 23 final

2023/0006 (NLE)

Proposal for a

**COUNCIL DECISION**

**on the extension of the entitlement for co-productions as provided for in Article 5 of the Protocol on Cultural Cooperation to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

On the 1 October 2015, the Council adopted Decision (EU) 2015/2169 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part.

The Protocol on Cultural Cooperation<sup>1</sup> annexed to the Free Trade Agreement between the European Union and its Member States, of one part, and the Republic of Korea, of the other part ('the Protocol'), sets up in Article 1 the framework within which the Parties are to cooperate for the facilitation of exchanges regarding cultural activities, goods and services, including in the audiovisual sector.

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

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

It is now proposed that the Council agrees to the continuation of the entitlement for another three years. EU-Republic of Korea co-productions are potentially mutually beneficial both economically and culturally. The audiovisual entitlement can create additional opportunities for all Member States, including those who have so far been unable to develop co-productions bilaterally.

- **Consistency with existing policy provisions in the policy area**

The Creative Europe MEDIA sub-programme supports the development and distribution of European audiovisual works from participating European countries. Beneficiaries from third countries may participate under certain schemes if certain conditions are met.

Certain schemes help create an environment conducive to co-productions, notably the Market Access and Training schemes which fund markets, networking meetings and workshops, including with Korea. In addition, the co-development and TV Programming schemes help European and international co-production partners, including from Korea, to cooperate.

- **Consistency with other Union policies**

The Protocol on Cultural Cooperation was concluded by the EU and Korea in 2015 as part of the Free Trade Agreement. Specifically, it was seen as an instrument to promote the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention of 2005 on the Protection and Promotion of the Diversity of Cultural Expressions.

The existing entitlement foresees co-productions supported by groupings of national schemes and funds for audio-visual productions. The entitlement also allows the co-produced works to

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<sup>1</sup> The Protocol on Cultural Cooperation, OJ 2011 L 127, p. 1418.

qualify as European works under the definition of European works referred to in Article 1 (n) (iii) of the Audiovisual Media Service Directive (AVMSD).

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

### **• Legal basis**

The Court of Justice with its judgment of 1 March 2022 in Case C-275/20 - Commission v Council (Accord avec la République de Corée)<sup>2</sup> clarified that the legal basis for the proposed decision should be Article 3(1) of Council Decision (EU) 2015/2169 as amended by Council Decision (EU) 2022/2335, which provides for a decision by qualified majority.

### **• Subsidiarity**

The renewal of the entitlement will represent an opportunity for the European audiovisual industry to maintain its presence and further gain market shares, experience and knowledge in the Korean market, which is growing fast.

Whilst some Member States have successfully undertaken audiovisual co-productions on a bilateral basis, many others still have not and therefore the entitlement at EU level has the potential to allow for participation by a wider number of countries.

The European Commission has limited competences regarding production of films whereas this is the role of national film funds, including as regards international co-productions. Therefore, more engagement of the national film funds will be necessary in order to implement the Protocol in practice.

### **• Proportionality**

Studies and data from the European Audiovisual Observatory have shown that co-productions lead to higher audiences. In 2021 European films in Korea made up 23% of the films on release, but only 5% of cinema admissions. The gap between the cinema releases and the admissions shows that there is a big unexploited potential and better collaboration could help tap into this potential. The co-production entitlement could create more opportunities for the European audiovisual industry in terms of export and promotion to Korea and a gateway to Asia. Therefore implementation of the coproduction entitlement would help build market share in one of the top 10 markets by box office (USD 500 million, 61 million admissions). However, the presence of Korean films in the EU is quite limited. Between 2017 and 2021, Korean films accounted for 0.6% of films on release and 0.5% of admissions in the EU.

The lack of EU-Republic of Korea co-productions under the audiovisual entitlement since it was first agreed seems due in particular to a continued lack of concrete information about the incentives available for co-productions in EU Member States and the Republic of Korea. This was lately exacerbated by the effects of the Covid-19 pandemic. Therefore, targeted measures should now be taken (covering access to funding, training and network building), both at European and national level. The previous realisation of co-productions between Member States and the Republic of Korea outside of the audiovisual entitlement, which were interrupted by the Covid-19 pandemic, shows there is the capacity and potential to do more.

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<sup>2</sup> Case C-275/20 - Commission v Council (Accord avec la République de Corée), EU:C:2022:142.

- **Choice of the instrument**

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

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

Not applicable

- **Stakeholder consultations**

The Protocol foresees that each Party shall establish a Domestic Advisory Group (DAG), comprised of their respective cultural and audio-visual representatives active in the fields covered by this Protocol. On the EU side, the DAG met in December 2022 in order to evaluate the results of the implementation of the entitlement in terms of enhancement of cultural diversity and mutually beneficial cooperation on co-produced works.

Useful exchanges were held on a number of issues. Stakeholders acknowledged the lack of EU-Korea audio-visual co-productions under the conditions mentioned in the Protocol and there were some calls to evaluate the reasons why the entitlement has not worked so far. The discussion highlighted how the Covid-19 pandemic, the lack of awareness and the strict requirements were possible contributing factors. Some stakeholders remain unconvinced about the institutional basis for the entitlement, as audiovisual should not be part of trade agreements.

Moreover, the discussion highlighted how the overall cultural Protocol was contributing successfully to developing cultural relations in line with the UNESCO Convention of 2005 and the importance of further strengthening EU-Republic of Korea cultural relations. Concerns were raised about a potential lack of reciprocity of the Republic of Korea regarding the quotas for national productions on online video on demand services. However, given the lack of EU- Korea co-productions so far the potential risks are low. The Commission concluded that a renewal of the entitlement could provide an opportunity to adapt the entitlement to address concerns and facilitate implementation of the Protocol?.

- **Collection and use of expertise**

Studies and data from the European Audiovisual Observatory have shown that overall co-productions lead to higher international audiences. In 2021 European films in Korea made up 23% of the films on release, but only 5% of cinema admissions. The gap between the cinema releases and the admissions shows that there is a big unexploited potential and better collaboration could help tap into it. The Cultural Cooperation Committee set up by the Protocol reviewed factors possibly affecting the implementation of the audiovisual entitlement, including the Covid-19 pandemic, the lack of awareness about opportunities and requirements for co-productions.

- **Impact assessment**

Not applicable.

- **Regulatory fitness and simplification**

Not applicable.

- **Fundamental rights**

Not applicable.

#### **4. BUDGETARY IMPLICATIONS**

None.

#### **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will continuously monitor the implementation of the audiovisual co-production entitlement, drawing on data from the European Audiovisual Observatory and from industry, in particular as regards the animation sector.

Once a year the Cultural Cooperation Committee set up by the Protocol will meet to monitor progress and discuss challenges and opportunities.

- **Explanatory documents (for directives)**

Not applicable.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 renews the duration of the audiovisual entitlement from 1 July 2023 to 30 June 2026 and during this period allows EU-Korea co-productions to benefit from the schemes of the respective parties.

Article 2 provides that the Decision shall enter into force on the date of adoption. This is necessary due to time constraints related to the obligation for the EU to notify the Republic of Korea three months in advance if the EU intends not to renew the entitlement.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Council Decision (EU) 2015/2169 of 1 October 2015 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as amended by Council Decision (EU) 2022/2335<sup>3</sup>, and in particular Article 3(1) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) On 1 October 2015, the Council adopted the Decision of 2015/2169 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part.

(2) The Protocol on Cultural Cooperation annexed to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part ('the Protocol'), sets up in Article 1 the framework within which the Parties are to cooperate for the facilitation of exchanges regarding cultural activities, goods and services, including in the audiovisual sector.

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

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

(5) In accordance with Article 3(1) of Decision (EU) 2015/2169, the Commission is to provide notice to Republic of Korea of the Union's intention not to extend the period of entitlement to co-production pursuant to Article 5 of the Protocol following the procedure set out in Article 5(8) of the Protocol unless, on a proposal from the Commission, the Council agrees four months before the end of such period of entitlement to continue the entitlement. If

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<sup>3</sup> Council Decision (EU) 2022/2335 of 28 November 2022 amending Decision (EU) 2015/2169 on the conclusion of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part.

the Council agrees to continue the entitlement, that procedure is to become applicable again at the end of the renewed period of entitlement.

(6) The Domestic Advisory Group provided for in Article 3(5) of the Protocol has been consulted on the extension of the period of entitlement, as provided for in Article 5(8) of the Protocol.

(7) On 7 December the Committee on Cultural Cooperation assessed the results of the implementation of the entitlement in terms of enhancement of cultural diversity and mutually beneficial cooperation on co-produced works as provided for by Article 5(8), point (a) of the Protocol.

(8) The Council agrees to continue the entitlement as EU- Republic of Korea co-productions are potentially mutually beneficial both economically and culturally. The audiovisual entitlement can create additional opportunities for all Member States, including those who have so far been unable to develop co-productions bilaterally.

(9) This Decision should not affect the respective competences of the Union and the Member States.

HAS ADOPTED THIS DECISION:

#### *Article 1*

The period of entitlement for audiovisual co-productions to benefit from the respective schemes of the Parties for the promotion of local/regional cultural content, as provided for in paragraphs 4 to 7 of Article 5 of the Protocol, shall be extended for a duration of three years, from 1 July 2023 to 30 June 2026.

#### *Article 2*

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

Done at Brussels,

*For the Council  
The President*