

COUNCIL DIRECTIVE of 15 October 1963 implementing in respect of the film industry the provisions of the General Programme for the abolition of restrictions on freedom to provide services (63/607/EEC)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 63 (2) thereof;

Having regard to the General Programme for the abolition of restrictions on freedom to provide services, (1) and in particular Title V C (c) thereof;

Having regard to the proposal from the Commission;

Having regard to the Opinion of the European Parliament (2);

Having regard to the Opinion of the Economic and Social Committee (3);

Whereas the movement of films among Member States comes, as regards distribution and commercial exploitation, within the provisions of the General Programme for the abolition of restrictions on freedom to provide services;

Whereas the achievement of a common market in the film industry presents a number of problems which must be solved progressively during the transitional period ; whereas the abolition of restrictions on the importation of films represents only one aspect of the overall problem posed by the film industry;

Whereas the second subparagraph of Title V C (c) of the General Programme provides, in respect of the film industry, that bilateral quotas existing between Member States at the time of the entry into force of the Treaty shall be increased by one-third in those States where the importation of exposed and developed films for distribution and commercial exploitation is restricted;

Whereas, in order to ensure that this Directive is correctly applied, it is necessary to define the term "film" and to lay down common criteria for recognition of the nationality of films of Member States;

Whereas it is necessary to consolidate such liberalisation as has already been achieved with regard to distribution, commercial exploitation and trade in respect of films other than those subject to bilateral quotas;

HAS ADOPTED THIS DIRECTIVE:

Article 1

Persons entitled to the benefit of the measures adopted in pursuance of this Directive shall be those covered by Title I of the General Programme for the abolition of restrictions on freedom to provide services.

This Directive shall apply to films which satisfy the provisions of Article 2 and which, under Articles 3 and 4, are to be regarded as having the nationality of a Member State.

Article 2

For the purposes of this Directive, "film" means any copy which conforms to the master copy of a completed cinematographic work intended for public or for private exhibition and in which subsist all rights of commercial exploitation arising under international conventions or under other international arrangements.

Films shall be classified as follows: (a) full-length films : 35-mm films equal to or exceeding 1600 m in length; (1) OJ No 2, 15.1.1962, p. 32/62. (2) OJ No 33, 4.3.1963, p. 476/63. (3) OJ No 159, 2.11.1963, p. 2667/63.

(b) short films : 35-mm films less than 1600 m in length;

(c) newsreel films : 35-mm films equal to or exceeding 200 m in average length the purpose of which is to provide regular reports and filmed accounts of current affairs and events ; newsreel films in colour may be less than 200 m in length.

Lengths for films of other widths shall be such that their running times correspond to those of the films defined in (a), (b) and (c).

Article 3

For the purposes of this Directive, a film shall be regarded as having the nationality of a Member State where it satisfies the following conditions: (a) the film must be produced by an undertaking which satisfies the provisions of Title I of the General Programme for the abolition of restrictions on freedom to provide services;

(b) studio-filming must take place in studios situated in Community territory ; if the subject of the film requires the filming of outdoor scenes in a third country, up to 30 % of the studio-filmed scenes may be shot in the territory of that third country;

(c) the original version must be recorded in the language, or in one of the languages, of the Member State in question, except for any parts of the dialogue which the screenplay requires to be in another language ; where the film is recorded in more than one version, one of those versions must be in the language, or in one of the languages, of the Member State in question;

(d) the screenplay, adaptation, dialogue and, if specially composed for the film in question, musical score must be written or composed by persons who are nationals of the Member State in question or who come within its cultural domain;

(e) the director must be a national of the Member State in question or a person who comes within its cultural domain;

(f) the majority of the executants, that is to say of the following-principal players, executive producer, director of photography, sound engineer, editor, art director and wardrobe chief-must be nationals of the Member State in question or persons who come within its cultural domain.

Participation in the activities referred to in (d), (e) and (f) by nationals of other Member States, or by persons who come within the cultural domain of any such State, shall not preclude recognition of the nationality of a film where the Member State in question accords its nationality to that film. Neither shall participation in the activities referred to in (d) and (f) by nationals of third countries who are not persons coming within the cultural domain of a Member State preclude recognition of the nationality of a film where the Member State in question accords its nationality to that film provided that such nationals do not constitute more than two-fifths of the total of the persons participating in such activities. The same shall apply if the person referred to in (e) is a national of a third country who is not a person coming within the cultural domain of a Member State, provided that all the activities referred to in (d) and not less than four-fifths of the functions referred to in (f) are performed by nationals of Member States.

Article 4

By way of derogation from the provisions of Article 3, films shall be regarded as having the nationality of a Member State if they are made by producers from Member States as co-productions or in co-operation, with producers from third countries.

Films shall be regarded as being co-productions where they are made under the terms of reciprocal international agreements.

Films shall be regarded as being in co-operation with producers from one or more third countries where they are made with such producers by producers from one or more Member States in conformity with national laws.

In the case both of co-productions and of productions made in co-operation with other producers the artistic and technical contribution of the Member State or States shall be not less than 30 %.

Films covered by this Article shall be allowed to circulate freely for the purposes of distribution and commercial exploitation among all Member States.

Article 5

Member States shall not restrict in any way the importation, distribution and commercial exploitation of: (a) short films;

(b) newsreel films, subject to the right to maintain until the end of the transitional period any existing restrictions with regard to the distribution and commercial exploitation of newsreels containing items not intended for exhibition in more than one country;

(c) full-length films of documentary value, such as films of cultural, scientific, technical or industrial subjects, or instructional or educational films for young people, or films promoting the Community ideal.

Article 6

There shall be no restriction on the importation into, distribution in or commercial exploitation in, a Member State of full-length films having the nationality of another Member State and being for exhibition in the original version, with or without sub-titles in the language or one of the languages of the State in which they are to be exhibited.

Article 7

1. Where there are quota arrangements between Member States, such Member States shall allow the importation into, distribution in and commercial exploitation in, their territories of one another's films dubbed in the language of the State in which they are to be shown on the basis of existing quotas. Such quotas shall, from the date of implementation of this Directive, amount to not less than seventy films per film year.

2. The commercial exploitation of reissued films shall be subject to agreement between the competent authorities of the Member States concerned.

3. No Member State may introduce quotas for films, irrespective of their category, from other Member States in relation to which there are no existing quota restrictions.

Article 8

Authorisations granted in accordance with the provisions of the preceding Articles shall carry with them the right to import without restriction prints, dupes and advertising material.

Article 9

Nothing in this Directive shall affect the operation of rules applicable in a Member State to the exhibition of its own films or of films treated as such.

Article 10

No tax or measure having equivalent effect the application of or exemption from which might result in discrimination shall be imposed in respect of the granting of any authorisation for the importation, distribution or commercial exploitation of any film having the nationality of a Member State.

Article 11

Nothing in this Directive shall require the authorities of importing Member States to issue authorisations for the importation into and commercial exploitation in their territories of any film which is not accompanied by a certificate issued by the exporting Member State attesting to the nationality of that film, as determined in accordance with the provisions of Articles 3 and 4.

Article 12

Member States shall adopt the measures necessary to comply with this Directive within six months of its notification and shall forthwith inform the Commission thereof.

Article 13

This Directive is addressed to the Member States.

Done at Brussels, 15 October 1963.

For the Council

The President
L. de BLOCK