DECISIONS

COUNCIL DECISION (EU) 2023/412

of 21 February 2023

as regards the extension of the period of entitlement for audiovisual 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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 ([1]), 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 Decision (EU) 2015/2169.

(2) The Protocol on Cultural Cooperation ([2]) (the 'Protocol') 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 ([3]) (the 'Free Trade Agreement'), sets up 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 exceptionally includes provisions on the entitlement for audiovisual co-productions to benefit from the respective schemes that is in principle reserved for developing countries with developing audiovisual industries.

(4) Pursuant to those provisions of the Protocol, following the initial period of 3 years, that period of entitlement is to be renewed for further successive periods of the same duration, unless a Party terminates the entitlement by giving notice in writing at least 3 months before the expiry of the initial or any subsequent period. In accordance with those provisions, the period of entitlement was last extended until 30 June 2023, no Party having terminated it. The actual effects of the Protocol in relation to audiovisual co-productions are to be assessed in due time by the Committee on Cultural Cooperation (the 'Committee') and to serve as the basis for the Union's decision on whether or not to extend the period of entitlement for a further period of 3 years until 2023.

(5) In accordance with Decision (EU) 2015/2169, the Commission is to provide notice to the Republic of Korea of the Union's intention not to extend the period of entitlement to co-production, following the procedure set out in the Protocol unless, on a proposal from the Commission, the Council agrees 4 months before the end of such period of entitlement to continue the entitlement. If the Council agrees to continue the entitlement, that procedure is to become applicable again at the end of the renewed period of entitlement.

(6) On 17 October 2019, the Union Domestic Advisory Group provided for in the Protocol was consulted on the extension of the period of entitlement, as provided for in the provisions on the entitlement for audiovisual co-productions of the Protocol.

([1]) OJ L 307, 25.11.2015, p. 2.
([2]) OJ L 127, 14.5.2011, p. 1418.
([3]) OJ L 127, 14.5.2011, p. 6.

(7) In view of the close, historical and unique relationship between the Union and the Republic of Korea, the Council agreed with the extension of 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 the Protocol.

(8) Council Decision (EU) 2020/470 ([4]) therefore extended the period of entitlement for audiovisual co-productions for a duration of 3 years, from 1 July 2020 to 30 June 2023. However, by means of a judgment of 1 March 2022 in the case *Commission* v *Council* ([5]), the Court of Justice annulled Decision (EU) 2020/470. In its judgment, the Court also maintained the effects of that Decision until the grounds for annulment established have been remedied.

(9) On 28 November 2022, the Council adopted Decision (EU) 2022/2335 ([6]), which amended Decision (EU) 2015/2169 in conformity with that judgment.

(10) In order to remove any doubt as to the commitment of the Union regarding the extension of the period of the entitlement for a duration of 3 years, from 1 July 2020 to 30 June 2023, and thus to ensure the proper implementation of the Protocol, a new decision should be adopted on the basis of Decision (EU) 2015/2169, and apply as of 1 July 2020, in conformity with that judgment.

(11) This Decision should not affect the respective competences of the Union and the Member States. In particular, it should not affect the competence of Member States to conclude co-production agreements,

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 Article 5, paragraphs (4) to (7), of the Protocol, shall be extended for a duration of 3 years, from 1 July 2020 to 30 June 2023.

Article 2

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

It shall apply from 1 July 2020.

Done at Brussels, 21 February 2023.

For the Council
The President
J. ROSWALL

([4]) Council Decision (EU) 2020/470 of 25 March 2020 as regards the extension of the period of entitlement for audiovisual 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 (OJ L 101, 1.4.2020, p. 1).

([5]) Judgment of the Court of Justice of 1 March 2022, *Commission* v *Council*, C-275/20, ECLI:EU:C:2022:142.

([6]) 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 (OJ L 309, 30.11.2022, p. 6).