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2022/0257 (NLE)

Proposal for a

# COUNCIL DECISION

**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**

# EXPLANATORY MEMORANDUM

## • Reasons for and objectives of the proposal

On 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.[1]

The Protocol on Cultural Cooperation[2] 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 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.

The Protocol includes provisions on an entitlement to audiovisual co-productions to benefit from the respective schemes.

Pursuant to Article 5(8)(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 Article 3(1) of Decision (EU) 2015/2169 as it stands, 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 pursuant to Article 5 of the Protocol following the procedure set out in Article 5(8)(b) of the Protocol unless, on a proposal from the Commission, the Council unanimously agrees four months before the end of the period of entitlement to continue the entitlement.

By judgement of 1 March 2022 in case *Commission v Council*[4], the Court of Justice decided that the procedure established in Article 3(1) of Council Decision (EU) 2015/2169 does not comply with Article 218 TFEU in so far as it requires the Council to vote by unanimity. The applicable voting rule for the adoption of decisions as those envisaged by Article 3(1) of Council Decision (EU) 2015/2169 had to be that laid down in the first subparagraph of Article 218(8) TFEU, namely qualified majority voting in the Council.

It is therefore required to delete the requirement that the Council act by unanimity for the purpose of deciding on the continuation of the entitlement.

## 2. LEGAL BASIS

## • Legal basis

The proposal amends Council Decision (EU) 2015/2169 and should therefore be adopted on the same legal basis, namely Articles 91, 100(2), 167(3) and 207 in conjunction with 218(6)(a)(v) of the Treaty on the Functioning of the European Union (TFEU), the Council acting by qualified majority after obtaining the consent of the Parliament.

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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.
4 Judgment of the Court of Justice of 1 March 2022, *Commission v Council*, C-275/20, ECLI:EU:C:2022:142.

- **Choice of the instrument**

The proposal amends Council Decision (EU) 2015/2169.

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# COUNCIL DECISION

## 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 OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91, Article 100(2), Article 167(3) and Article 207 in conjunction with Article 218(6), point (a)(v) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

(1) On 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[5].

(2) The Protocol on Cultural Cooperation[6] 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[7] ('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 an entitlement to 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.

(5) In accordance with Article 3(1) of Decision (EU) 2015/2169, the Commission is to provide notice to 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), point (b), of the Protocol unless, on a proposal from the Commission, the Council unanimously agrees four months before the end of the period of entitlement to continue the entitlement.

(6) By judgement of 1 March 2022 in case *Commission v Council*[8], the Court of Justice decided that the procedure established in Article 3(1) of Decision (EU) 2015/2169

5 OJ L 307, 25.11.2015, p. 2.
6 OJ L 127, 14.5.2011, p. 1418.
7 OJ L 127, 14.5.2011, p. 6.
8 Judgment of the Court of Justice of 1 March 2022, *Commission v Council*, C-275/20, ECLI:EU:C:2022:142.

does not comply with Article 218 TFEU in so far as it requires the Council to vote by unanimity. The applicable voting rule for the adoption of decisions as those envisaged by Article 3(1) of Decision (EU) 2015/2169 had to be that laid down in Article 218(8), first subparagraph, TFEU, namely qualified majority voting in the Council.

(7) Therefore, the requirement that the Council act by unanimity for the purpose of deciding on the continuation of the entitlement should be deleted.

(8) In accordance with Article 266 TFEU, in order to implement the judgement expeditiously, this Decision should enter into force on the day of its adoption,

HAS ADOPTED THIS DECISION:

*Article 1*

In Article 3(1) of Decision (EU) 2015/2169, the third sentence is deleted.

*Article 2*

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

Done at Brussels,

*For the Council*
*The President*