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**REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN
PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE
AND THE COMMITTEE OF THE REGIONS**

**On the implementation of Council Decision 1999/784/EC of 22 November 1999 as
amended by Decision 2239/2004/EC of the EP and the Council concerning Community
participation in the European Audiovisual Observatory**

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TABLE OF CONTENTS

Foreword	3
I. Introduction	4
II. Community participation	4
III. Implementation of the Council Decision	5
3.1. Formalising participation	5
3.2. Community financial contributions	6
IV. The Observatory's activity	7
4.1. Market and financial area	7
4.2. Legal area	7
4.3. European Platform of Regulatory Authorities (EPRA)	8
V. Dissemination of the Observatory's work	8
5.1. Market and financial area	8
5.2. Legal area	9
5.3. Internet	9
5.4. Other dissemination activities and conferences	10
VI. Conclusions	10

FOREWORD

1. This report covers the implementation of Council Decision 1999/784/EC¹, as amended by Decision 2239/2004/EC² of the European Parliament and the Council, concerning Community participation in the European Audiovisual Observatory. It is the final report foreseen under article 4 of the Council Decision. It describes the bilateral relations between the Commission and the Observatory and illustrates the main activities carried out by the latter since 1999.
2. Chapter II recalls the reasons for the Community participation in the Observatory.
3. Chapter III of the report summarises the main legal acts concerning Community membership and provides a succinct financial report.
4. Chapter IV gives an overview of the overall activity of the Observatory since end 1999 up until mid-2006. The main areas examined are market/financial and legal issues.
5. Chapter V assesses the dissemination of information collected and analysed by the Observatory among the main professional categories.
6. Chapter VI provides an overall assessment of Community participation with respect to the objectives established in 1999 and the implementation of bilateral relations between the Commission and the Observatory.

¹ OJ L 307, 2.12.1999, p. 61

² OJ L 390, 31.12.2004, p.1

I. INTRODUCTION

This report addresses the implementation of Council Decision 1999/784/EC concerning Community participation in the European Audiovisual Observatory. It covers both the Commission's bilateral relations with the Observatory and the latter's main activities in response to the information requirements of industry and public authorities. The report covers the period from end 1999, the adoption of the Council Decision, to November 2006.

II. COMMUNITY PARTICIPATION

In December 1992, the Council of Europe established the Observatory for an initial period of three years³, and in March 1997 confirmed the continuation of the Observatory for an indefinite period⁴.

The legal basis for Community participation in the Observatory is Article 157 (3) of the Treaty (ex Article 130). This refers to Community activity to help industrial sectors to adjust to structural change, to encourage the development of undertakings, especially SMEs, to encourage co-operation between companies, and to foster better exploitation of R&D and innovation policies.

In line with these objectives, the Community's decision to participate fully in the Observatory has been instrumental in providing the European audiovisual industry with much needed, detailed, information in areas such as marketing, finance, legal rules and practice.

The Observatory has proved highly effective in dealing promptly with information requests and the public dissemination of such data, notably in response to small and medium sized enterprises.

Moreover, the Observatory's work represents an important asset for EU industry since it covers a large number of countries, including the candidate countries, as well as EEA and most of the other European states. As of mid 2006 the Observatory had 37 members: 36 countries⁵ and the Community.

The wide scope of the information made available by the Observatory and its capacity to provide 'customised' research, is not only essential for the industry but has also proved important for policymakers, both at national and Community levels.

The Observatory is not the only source of statistical information on the audiovisual sector. In particular, starting in 1999⁶, Eurostat has been developing statistical information at EU level. The Observatory and Eurostat experts had regular meetings in order to avoid duplication of work in the areas that fall within the remits of both institutions, notably market statistics.

³ Resolution (92) 70 of the Committee of Ministers adopted on 15 December 1992

⁴ Resolution (97) 4 of the Committee of Ministers adopted on 20 March 1997

⁵ Members of the Observatory are the 25 Community Member States and Albania, Bulgaria, Croatia, Iceland, Liechtenstein, Norway, Romania, Russian Federation, Switzerland, The former Yugoslav Republic of Macedonia and Turkey.

⁶ Report from the Commission to the European Parliament and the Council on audiovisual statistics. COM(2004) 504 final of 16.7.2004.

III. IMPLEMENTATION OF THE COUNCIL DECISION

Article 1 of the Council Decision establishes that the Community shall be a member of the European Audiovisual Observatory, a Partial Agreement of the Council of Europe. Article 2 of the Decision establishes that the Commission shall represent the Community in its relations with the Observatory. Article 5 originally provided that Community participation would last until the end of 2004, but this was amended by Decision 2239/2004/EC of the European Parliament and the Council, which extended the participation to end 2006.

3.1. Formalising participation

At the beginning of 2000, the Commission opened negotiations with the Council of Europe and the Observatory in order to implement the Council Decision. The main points under discussion concerned the modalities of Community participation in the Observatory. Two issues needed to be resolved. First, the Community is not a member of Audiovisual Eureka, as was the case for all other members. Second, the membership needed to accommodate certain specific financial requirements of the Commission concerning, notably, the destination of unused funds and obligations in case of withdrawal from the Observatory.

In order to accommodate the Commission requirements, the Council of Europe amended the Statute and Financial Regulation of the Observatory in September 2000.⁷

Further to the Council of Europe's Resolution, the Commission authorised⁸ Mrs Viviane Reding, as member of the Commission in charge of audiovisual policy, to formalise Community participation in the European Audiovisual Observatory as an Agreement, in the form of an Exchange of Letters with the Secretary General of the Council of Europe.

The Exchange of Letters in November 2000 contained a review clause for the period after 2004, given that Council Decision 1999/784/EC was only valid until 31 December 2004. Therefore, to cover the years 2005 and 2006, the Commission again formally authorised⁹ Mrs Reding to formalise Community participation in the European Audiovisual Observatory for a further two year period. The Agreement took the form of another Exchange of Letters with the Council of Europe in July and September 2005. A review clause was again included for the period beyond the validity of Decision 2239/2004/EC, i.e. 31 December 2006.

A "Memorandum of Understanding" (MoU) was attached to both Exchanges of Letters. It established certain specific terms for the yearly Commission financial commitments. The two subsequent versions of the document were updated and endorsed annually by the Commission and the Observatory.

⁷ Resolution (2000) 7 of the Committee of Ministers adopted on 21 September 2000

⁸ Decision C(2000) 3308, 15.11.2000, unpublished

⁹ Decision C(2005) 1989, 05.07.2005, unpublished

3.2. Community financial contributions

The Financial Statement attached to the proposal for Decision 1999/784/EC foresaw total commitment and payment appropriations for € 1,325,000 over a six-year period with a maximum yearly amount of € 235,000 in 2004. The Financial Statement of Decision 2239/2004/EC extended the 2004 ceiling for the years 2005 and 2006.

Owing to lengthy negotiations, formalisation of Community membership could only take place in November 2000, about a year after the adoption of the Council Decision. Therefore, in order to avoid interrupting co-operation with the Observatory during that period, on 31st January 2000 the Commission concluded a Grant Agreement with the Observatory for a total amount equal to the theoretical statutory contribution and not exceeding the sum indicated for 1999 in the Financial Statement annexed to the proposal for the Council Decision.

The provisions of this Grant Agreement were in line with the provisions of the Commission's financial Regulation concerning grants. Such a scheme differs from the features of the Memorandum of Understanding, insofar as under the MoU the amount of the yearly financial contribution is not directly linked to actual costs incurred the same year, but is fixed, with the excess payment being deducted from the following year's contribution.

Application of the financial mechanism of the Grant Agreement entailed the payment of a contribution that was € 8,528 short of the maximum amount foreseen. The Observatory requested the Commission to pay the full amount. The Commission always contested this request, arguing that it had fulfilled all its financial obligations under the Grant Agreement. After an analysis carried out by a panel of experts, on November 2002, the Executive Council of the Observatory decided unanimously to waive this claim against the Commission.

Thanks to the development of the Observatory's supplementary revenues, in addition to the members' contributions, commitments and payments in the years 1999 to 2006 were consistently lower in both nominal and percentage terms than the amounts foreseen in the Commission proposals for the Decisions of 1999 and 2004.

Values: €	1999	2000	2001	2002	2003	2004	2005	2006
Maximum commitments	200,000	215,000	220,000	225,000	230,000	235,000	235,000	235,000
Actual commitments	198,184	200,000	219,945	219,822	220,080	221,154	232,150	234,999
Actual payments	189,656	200,000	219,945	219,822	220,079	221,154	232,150	234,999
Maximum participation	12.25 %	12.25 %	12.25 %	12.25 %	12.25 %	12.25 %	12.25 %	12.25 %
Actual participation	9.68 %	10.04 %	10.89 %	9.66 %	9.81%	9.68 %	8.96 %	9.52 %

IV. THE OBSERVATORY'S ACTIVITY

According to Observatory's Statute, *"The aim of the European Audiovisual Observatory shall be to improve the transfer of information within the audiovisual industry, to promote a clearer view of the market and a greater transparency. In doing so, the Observatory shall pay particular attention to ensuring reliability, compatibility and comparability of information"*.

In order to fulfil its remit, the Observatory has developed its activities along two main axes: publication of yearly statistics concerning audiovisual markets and publication of periodical legal newsletters. Moreover, a number of *ad hoc* studies and publications have been released on various occasions.

4.1. Market and financial area

The Observatory has focused on the collection and analysis of statistical and economic information on the various segments of the audiovisual market, the financial situation of companies involved in audiovisual activities, and on public subsidies for films and audiovisual works. Particular attention has been paid to the challenges raised by the emergence of new technologies and to the need to enhance transparency across European audiovisual markets.

Publications such as the Yearbook, FOCUS and several *ad hoc* reports have provided a wide range of information with the view of supporting the work of many operators, professional categories and public administrations. Moreover, free on-line services have been launched, providing more detailed useful information, in particular for SMEs: the LUMIERE database on film admissions, the KORDA database on public funding, the PERSKY directory providing systematic lists of links to the websites of thousands of television channels and sources of information on the television national markets.

In order to implement these tasks, the Observatory has worked with various specialised networks of "data providers" including national film agencies, professional organisations, national statistics institutes, trade magazine and market research companies.

4.2. Legal area

The topics addressed by the Observatory include the digitisation of the media and electronic communications, convergence and globalisation and how these will affect areas such as human rights and economic freedoms, cultural goals and heritage, copyright law, criminal law, commercial law, advertising, consumer protection, free access to information, state support and EU aid programmes, tax schemes, transparency, education, etc..

In order to serve the overall audiovisual industry as well as legislators and public administrators in the member countries with comprehensive up-to-date information and analysis, the Observatory built up a network of national correspondents and academic institutions. Moreover, it kept regular contacts with legislators, regulatory authorities and other supranational organisations. Special attention was paid to the creation of an external network assuring adequate translation skills (including the training of proof-readers). Audiovisual law is a critical issue for an area of diverse cultures and multiple languages.

4.3 European Platform of Regulatory Authorities (EPRA)

Since the beginning of 2006, the Observatory has hosted the secretariat of EPRA. A specific agreement with this body was signed on 30 November 2005 after approval by the Observatory's Executive Council in June 2005. The expenses for the EPRA secretariat are recorded in the Observatory's budget but are wholly funded by EPRA itself.

V. DISSEMINATION OF THE OBSERVATORY'S WORK.

Three groups of actors are the main targets for the products and services of the Observatory:

- the core industry (film, broadcasting, video/DVD and multimedia) as well as neighbouring segments (eg. telecommunication),
- the service sector of the core industry (consultants, lawyers, financial services, specialised press, etc.),
- national, European and international policy-makers, authorities and the public service sector in general (ministries, broadcasting authorities, public funding bodies, international organisations, etc).

The Observatory is bound by its Statute to charge users for its services but is also required, as a public service institution, to provide comprehensive free-of-charge services to its members and target groups .

5.1. Market and financial area

The *Yearbook* is the main statistical publication of the Observatory; it has been published yearly since 1994. During the period 2002-2005, the Yearbook was made of 5 volumes. (1. Economy of the Radio and Television Industry in Europe; 2. Household Audiovisual equipment – Transmission – Television Audience; 3. Film and Home Video; 4. Multimedia and New technologies; 5. Television Channels – Programme Production and Distribution). In 2006 it was published in 3 volumes (1. Television landscapes in 36 European countries; 2. Development of television in Europe; 3. Film and video).

The *Yearbook* is also available in electronic format on a subscription basis. This formula allows users to have access to information before the printed release of the Yearbook, with the additional possibility of accessing the information in Excel format.

FOCUS – Trends of the World Film Market is published every year in May on the occasion of the Cannes Film Market. This publication provides an up-to-date analysis covering developments not only in Europe but also other parts of the world. It is now widely recognised as a reliable and user-friendly information tool.

Moreover, *ad-hoc* reports are published by the Observatory on specific topics. They are released either as printed publications, or made available on-line. Some are written directly by the experts and analysts of the Observatory; others are commissioned from external experts.

5.2. Legal area

Since 1999, the Observatory steadily increased the legal information collected, processed and disseminated through different publications branded under the "Iris" name.

The "IRIS newsletter", launched in 1995, is published 10 times a year. It is also available online. More than 3600 articles concerning laws, judgments, administrative decisions and policy documents have been published over the years. The newsletter covers activities from 56 different countries and all major supranational organisations.

"IRIS plus" began publication in 2001. It is a thematic supplement attached to every second edition of "IRIS newsletters". It focuses on topical issues of international significance and compares how issues are treated under the laws of different countries. Issues covered by "IRIS plus" range from copyright through state film funding, convergence, classical broadcasting to new media and to Human Rights.

"IRIS Specials" are major publications between 50 and 150 pages supplying detailed information about applicable legal frameworks (European and national legislation) as well as examples of regulatory models. On many occasions, for comparison purposes, IRIS Specials also supplied information on the United States regulatory structure. "IRIS Specials" started in 1999 as a legal guide for audiovisual media in Europe. Eight more have followed since. Recent IRIS Specials include a work on "Implementing the Regulation of Transfrontier Audiovisual Media Services", which was released end-2006.

5.3. Internet

The Observatory maintains two economic and financial databases and an on-line directory freely available on its website.

Since 1996 the LUMIERE database provides detailed information on the yearly film admissions of all films with a commercial release in any of the 27 European countries it covers. More than 15 000 films are included in LUMIERE. This database offers powerful tools for statistical analysis (market shares, analysis by genre, etc.) making it an effective source of information for professionals.

The KORDA database provides for comprehensive information on about 600 support schemes provided by more than 200 public funding bodies in Europe. A search tool allows the user to identify specific support programme schemes according the country, the genre and the production phase.

The PERSKY directory provides a systematic linkage to the website of all TV channels existing in the 36 Members State of the Observatory, as well as links to broadcasting regulatory authorities, sources of information and national reports.

Since 2003, the Observatory offers free-of-charge access to a legal database named "IRIS Merlin" containing almost 4,000 articles, and more than 4,200 referenced documents (laws, decrees, court cases, etc.). IRIS Merlin, which has a specific search and filtering function, is not only compiled with articles from "IRIS newsletter" but also includes articles especially written for the database (eg. the collection of co-production agreements, published in 2005).

Also available on the Observatory's Web portal are a number of legal articles such as country reports (e.g. on Russia, Turkey and Switzerland) or on other special topics, as well as

overview tables on the state of signature and ratification of European conventions, together with other international treaties and national lists concerning events of major importance to society.

5.4. Other dissemination activities and conferences

The Observatory co-organised eleven workshops in the legal area during the past seven years. The latest one took place in November 2006, focusing on "*The Future of Broadband Video*". Each workshop has been the subject of specific coverage by an IRIS publication. Moreover, the Observatory contributes regularly to conferences, workshops and similar events organised by other institutions, the EU Member States and the Cannes Film Market.

In 2003, the Observatory for the multiple purpose of contacting the members of the various networks, the international press and current and potential customers set up a contact database named "Oriol".

VI. CONCLUSIONS

The positive assessment of the Community/Observatory relations expressed in the Commission 2002 Interim Report¹⁰ on the Community participation in the Observatory can be surely re-affirmed. The success of publications and databases such as the Yearbook, Iris and Lumière have elevated the Observatory to a position where it is seen as a key source for economic and legal information among market actors in the various segments of the audiovisual industry as well as by public authorities, both at national and Community levels.

In addition to the publications released on a regular basis and the on-line databases, the Observatory has been able to release accurate analyses that it would be difficult to procure at such reasonable prices, either for industry or, given the amount of the membership fee, for the participating public bodies.

The capacity of the Observatory to establish and maintain effective networks of scientific partners is among the most valuable assets of this institution and has proved essential for continuing provision of the highly diversified inputs for the Observatory's economic and legal analysis over the years. The Observatory, in turn, has provided the audiovisual sector and, in particular, the small and medium operators with comprehensive instruments that provide a clearer view of the markets and of the legal/regulatory framework.

In order to continue to support the Observatory's activities, the Commission has proposed that the Community participation in the Observatory will continue up to 2013 within the framework of the new Media 2007 programme.¹¹

¹⁰ COM(2002) 619 final

¹¹ COM(2004) 470 final