

PROTOCOL

ON CULTURAL COOPERATION

The Parties,

After having ratified the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* adopted in Paris on 20 October 2005 (the “UNESCO Convention”), which entered into force on 18 March 2007, according to the procedure set in Article 15.10.3 (Entry into force), intending to effectively implement the UNESCO Convention and to cooperate within the framework of its implementation, building upon the principles of the Convention and developing actions in line with its provisions;

Recognising the importance of the cultural industries and the multi-faceted nature of cultural goods and services as activities of cultural, economic and social value;

Recognising that the process supported by this Agreement adds up to a global strategy aimed at promoting equitable growth and the reinforcement of economic, trade and cultural cooperation between the Parties;

Recalling that the objectives of this Protocol are complemented and supported by existing and future policy instruments managed in other frameworks, with a view to:

- (a) reinforcing the capacities and independence of the Parties’ cultural industries;
- (b) promoting local/regional cultural content;
- (c) recognising, protecting and promoting cultural diversity as a condition for a successful dialogue between cultures; and
- (d) recognising, protecting and promoting cultural heritage, as well as promoting its recognition by local populations and recognising its value as a means for expressing cultural identities;

Stressing the importance of facilitating cultural cooperation between the Parties, and for that purpose to take into account, on a case by case basis, *inter alia*, the degree of development of their cultural industries, the level and structural imbalances of cultural exchanges and the existence of schemes for the promotion of local/regional cultural content,

agree as follows:

ARTICLE 1: SCOPE, OBJECTIVES AND DEFINITIONS

1. Without prejudice to the other provisions of this Agreement, this Protocol sets up the framework within which the Parties shall cooperate for facilitating exchanges regarding cultural activities, goods and services, including *inter alia*, in the audio-visual sector.
2. The exclusion of audio-visual services from the scope of Chapter Seven (Trade in Services, Establishment and Electronic Commerce) is without prejudice to the rights and obligations derived from this Protocol. For any issue relating to the implementation of this Protocol, the Parties shall have recourse to the procedures provided under Articles 3 and 3*bis*.
3. While preserving and further developing their capacity to elaborate and implement their cultural policies, with a view to protecting and promoting cultural diversity, the Parties shall endeavor to collaborate with the aim of improving the conditions governing their exchanges of cultural activities, goods and services and redressing the structural imbalances and asymmetrical patterns which may exist in exchanges.
4. For the purposes of this Protocol:

cultural diversity, cultural content, cultural expressions, cultural activities, goods and services, and cultural industries have the same meaning as defined and used in the UNESCO Convention; and

artists and other cultural professionals and practitioners means natural persons that perform cultural activities, produce cultural goods or participate in the direct supply of cultural services.

SECTION A HORIZONTAL PROVISIONS

ARTICLE 2: CULTURAL EXCHANGES AND DIALOGUE

1. The Parties shall aim at fostering their capacities to determine and develop their cultural policies, developing their cultural industries and enhancing exchange opportunities for cultural goods and services of the Parties, including through entitlement to benefit from schemes for the promotion of local/regional cultural content.
2. The Parties shall cooperate to foster the development of a common understanding and enhanced exchange of information on cultural and audio-visual matters through a dialogue, as well as on good practices in the field of intellectual property rights protection. This dialogue will take place within the Committee on Cultural Cooperation as well as in other relevant forums as and when appropriate.

ARTICLE 3: COMMITTEE ON CULTURAL COOPERATION

1. No later than six months after this Protocol is applied, a Committee on Cultural Cooperation shall be established. The Committee on Cultural Cooperation shall comprise senior officials from within the administration of each Party who have expertise and experience in cultural matters and practices.
2. The Committee on Cultural Cooperation shall meet within the first year after this Protocol is applied, and thereafter as necessary and at least once a year, to oversee the implementation of this Protocol.
3. By derogation from the institutional provisions of Chapter Fifteen (Institutional, General and Final Provisions), the Trade Committee shall have no jurisdiction over this Protocol and the Committee on Cultural Cooperation shall exercise all functions of the Trade Committee as regards this Protocol, where such functions are relevant for the purposes of implementing this Protocol.
4. Each Party shall designate an office within its administration that shall serve as a Domestic Contact Point with the other Party for the purposes of implementing this Protocol.
5. Each Party shall establish a Domestic Advisory Group(s) on cultural cooperation, comprised of cultural and audio-visual representatives active in the fields covered by this Protocol, to be consulted on issues related to the implementation of this Protocol.
6. A Party may request consultations with the other Party in the Committee on Cultural Cooperation regarding any matter of mutual interest arising under this Protocol. The Committee on Cultural Cooperation shall thereafter promptly convene and make every attempt to arrive at a mutually satisfactory resolution of the matter. In doing so the Committee on Cultural Cooperation may seek the advice of either or both Parties' Domestic Advisory Group(s) and each Party may seek the advice of its own Domestic Advisory Group(s).

ARTICLE 3BIS: DISPUTE SETTLEMENT

Unless the Parties agree otherwise, and only in case the matter referred to in Article 3.6 of this Protocol has not been satisfactorily addressed through the consultation procedure set out therein, Chapter Fourteen (Dispute Settlement) shall apply to this Protocol subject to the following modifications:

- (a) All the references in Chapter Fourteen (Dispute Settlement) to the Trade Committee shall be understood as referring to the Committee on Cultural Cooperation;
- (b) For the purposes of Article 14.5 (Establishment of the Arbitration Panel), the Parties shall endeavour to agree on arbitrators having necessary knowledge and experience on the subject matters of this Protocol. In the event that the Parties are unable to agree on the composition of the arbitration panel, the selection by the lot, as set out in Article 14.5.3, will take place from the list established under subparagraph (c) and not from the list established under Article 14.18 (List of Arbitrators);

- (c) The Committee on Cultural Cooperation shall, promptly after its establishment, establish a list of 15 individuals who are willing and able to serve as arbitrators. Each Party shall propose five individuals to serve as arbitrators. The Parties shall also select five individuals who are not nationals of either Party and who shall act as chairperson to the arbitration panel. The Committee on Cultural Cooperation will ensure that the list is always maintained at this level. Arbitrators shall have knowledge and experience on the subject matter of this Protocol. In serving as arbitrators, they shall be independent, serve in their individual capacity and not take instructions from any organisation or government with regard to matters related to the dispute, and shall comply with Annex 14-C (Code of Conduct for Members of Arbitration Panels and Mediators);
- (d) In selecting obligations to suspend pursuant to Article 14.11.2 (Temporary Remedies in case of Non-compliance) in a dispute arising under this Protocol, the complaining Party may only suspend obligations arising from this Protocol; and
- (e) Notwithstanding Article 14.11.2, in selecting obligations to suspend in disputes other than those arising under this Protocol, the complaining Party may not suspend obligations arising from this Protocol.

ARTICLE 4: ARTISTS AND OTHER CULTURAL PROFESSIONALS AND PRACTITIONERS

1. The Parties shall endeavour to facilitate, in conformity with their respective legislation, the entry into and temporary stay in their territories of artists and other cultural professionals and practitioners from the other Party, who cannot avail themselves of commitments undertaken on the basis of Chapter Seven (Trade in Services, Establishment and Electronic Commerce) and who are either:

- (a) artists, actors, technicians and other cultural professionals and practitioners from the other Party involved in the shooting of cinematographic films or television programmes; or
- (b) artists and other cultural professionals and practitioners such as visual, plastic and performing artists and instructors, composers, authors, providers of entertainment services and other similar professionals and practitioners from the other Party involved in cultural activities such as, for example, the recording of music or contributing an active part to cultural events such as literary fairs and festivals, among other activities,

provided that they are not engaged in selling their services to the general public or in supplying their services themselves, do not on their own behalf receive any remuneration from a source located within the Party where they are staying temporarily, and are not engaged in the supply of a service in the framework of a contract concluded between a legal person who has no commercial presence in the Party where the artist or other cultural professional or practitioner is staying temporarily and a consumer in that Party.

2. The entry into, and temporary stay in territories of the Parties under paragraph 1, when allowed, shall be for a period of up to 90 days in any 12 month period.

3. The Parties shall endeavour to facilitate, in conformity with their respective legislation, the training of, and increased contacts between, artists and other cultural professionals and practitioners such as:

- (a) theatrical producers, singer groups, band and orchestra members;
- (b) authors, composers, sculptors, entertainers and other individual artists;
- (c) artists and other cultural professionals and practitioners participating in the direct supply of circus, amusement park and similar attraction services; and
- (d) artists and other cultural professionals and practitioners participating in the direct supply of ballroom or discotheque services and dance instructors.

SECTION B SECTORAL PROVISIONS

SUB-SECTION A PROVISIONS RELATED TO AUDIO-VISUAL WORKS

ARTICLE 5: AUDIO-VISUAL CO-PRODUCTIONS

1. For the purposes of this Protocol, a **co-production** means an audio-visual work produced by producers of both Korea and the EU Party into which those producers have invested in accordance with the terms of this Protocol¹.

2. The Parties shall encourage the negotiation of new and implementation of existing co-production agreements between one or several Member States of the European Union and Korea. The Parties reaffirm that the Member States of the European Union and Korea may grant financial benefits to co-produced audio-visual works as defined in relevant existing or future bilateral co-production agreements to which one or several Member States of the European Union and Korea are parties.

3. The Parties, in conformity with their respective legislation, shall facilitate co-productions between producers from the EU Party and Korea, including through entitlement for co-productions to benefit from respective schemes for the promotion of local/regional cultural content.

4. Co-produced audio-visual works shall be entitled to benefit from EU Party scheme for the promotion of local/regional cultural content referred to in paragraph 3 in the form of qualification as European works in accordance with Article 1(n)(i) of

¹ In the case of Korea, there is a recognition procedure for co-productions, conducted by the Korean Communications Commission for broadcasting programmes, and the Korean Film Council for films. This recognition procedure is limited to technical check aimed at ensuring that the co-production fulfils the criteria set in paragraph 6. Recognition will be granted to any co-production fulfilling these criteria.

Directive 89/552/EEC as amended by Directive 2007/65/EC, or by its subsequent amendments for the purposes of the requirements for the promotion of audio-visual works as provided for by Articles 4.1 and 3i.1 of Directive 89/552/EEC as amended by Directive 2007/65/EC, or by its subsequent amendments.²

5. Co-produced audio-visual works shall be entitled to benefit from Korean schemes for the promotion of local/regional cultural content referred to in paragraph 3 in the form of qualification as Korean works for the purposes of Article 40 of the *Promotion of Motion Pictures and Video Products Act* (Act No. 9676, May 21, 2009), or its subsequent amendments and of Article 71 of the *Broadcasting Act* (Act No. 9280, Dec. 31, 2008), or its subsequent amendments and Notice on Programming Ratio (Korea Communications Commission Notice No. 2008-135, Dec. 31, 2008), or its subsequent amendments.³

6. The entitlement for co-productions to benefit from the respective schemes for the promotion of local/regional cultural content referred to in paragraphs 4 and 5 shall be granted on the following conditions:

- (a) The co-produced audio-visual works are realised between undertakings which are owned and continue to be owned, whether directly or by majority participation, by a Member State of the European Union or Korea respectively and/or by nationals of a Member State of the European Union or nationals of Korea respectively;
- (b) The representative director(s) or manager(s) of the co-producing undertakings have the nationality of a Member State of the European Union and Korea respectively and can demonstrate their domicile therein;
- (c) Participation of producers from two Member States of the European Union will be necessary for each co-produced audio-visual work, other than animation works. With respect to animation works participation of producers from three Member States of the European Union will be necessary. The proportion of financial contribution of a producer or producers of each Member State of the European Union shall be no less than 10 percent;
- (d) The minimum respective financial contributions to a co-produced audio-visual work other than animation works, of the producers of the EU Party (taken together) and the producers of Korea (taken together) may not be less than 30 percent of the total production cost of the audio-visual work. With respect to animation works this contribution may not be less than 35 percent of the total production cost;
- (e) The contribution of each Party's producers (taken together) includes effective technical and artistic participation and a balance is ensured between the two Parties' contributions. In particular, in co-produced audio-visual works other than animation works the technical and artistic contribution of each Party's producers (taken together) shall not vary by more than 20 percentage points compared to their financial contribution

² Amendments of the legislation shall be without prejudice to the application of paragraph 10.

³ *Ibidem*

and cannot in any case represent more than 70 percent of the overall contribution. With respect to animation works the technical and artistic contribution of each Party's producers (taken together) shall not vary by more than 10 percentage points compared to their financial contribution and cannot in any case represent more than 65 percent of the overall contribution;

- (f) Participation of producers from third countries that have ratified the UNESCO Convention in a co-produced audio-visual work is accepted to a maximum of 20 percent, where possible, of the total production costs and/or the technical and artistic contribution to the audio-visual work.

7. The Parties reaffirm that the entitlement for co-productions to benefit from their respective schemes for the promotion of local/regional cultural content referred to in paragraphs 4 and 5 ensures reciprocal benefits, and that the co-productions fulfilling the criteria of paragraph 6 are awarded the status of European/Korean works referred to in paragraphs 4 and 5 respectively without any conditions additional to those of paragraph 6.

8. (a) The entitlement for co-productions to benefit from the respective schemes for the promotion of local/regional cultural content referred to in paragraphs 4 and 5 is established for a period of three years following the application of this Protocol. Upon advice from the Domestic Advisory Groups, six months before the expiry, the Committee on Cultural Cooperation will co-ordinate in order to assess the results of the implementation of the entitlement in terms of enhancement of cultural diversity and mutually beneficial cooperation on co-produced works.

- (b) The 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. Six months before the expiry of each renewed period, the Committee on Cultural Cooperation will conduct an assessment on similar terms as described in subparagraph (a).

- (c) Unless the Parties decide otherwise, termination of such entitlement shall not prevent the co-productions from benefiting from the respective schemes for the promotion of local/regional cultural content referred to in paragraphs 4 and 5 under the conditions of paragraph 6, if the date of the first broadcasting or projection of such co-productions in the respective territories is prior to expiry of any relevant period.

9. Throughout the duration of the entitlement for co-productions to benefit from the schemes for the promotion of local/regional content referred to in paragraphs 4 and 5, the Parties, notably through the Domestic Advisory Groups will regularly monitor the implementation of paragraph 6 and report any problem that may arise in this respect to the Committee on Cultural Cooperation. The Committee on Cultural Cooperation may review at the request of a Party, the entitlement for co-productions to benefit from the schemes for the promotion of local/regional content referred to in paragraphs 4 and 5 and/or the criteria referred to in paragraph 6.

10. With prior notice of two months, a Party may suspend the entitlement to benefit from its scheme(s) for the promotion of local/regional cultural content referred to in paragraphs 4 or 5, if the rights reserved for co-produced works under these paragraphs are adversely affected as a result of the other Party's modification of the relevant legislation referred to in these paragraphs. Before proceeding to such suspension, the notifying Party shall discuss and review with the other Party in the Committee on Cultural Cooperation the nature and impact of the legislative changes.

ARTICLE 6: OTHER AUDIO-VISUAL COOPERATION

1. The Parties strive to promote audio-visual works of the other Party through the organisation of festivals, seminars and similar initiatives.

2. The Parties shall facilitate, in addition to the dialogue referred to in Article 2.2 of this Protocol, cooperation in the area of broadcasting with an aim to promote cultural exchange through activities such as:

- (a) promoting exchange of information and views on broadcasting policy and regulatory framework between competent authorities;
- (b) encouraging cooperation and exchange between the broadcasting industries;
- (c) encouraging exchange of audio-visual works; and
- (d) encouraging visits to and participation in international broadcasting events held in the territory of the other Party.

3. The Parties shall endeavour to facilitate the use of international and regional standards in order to ensure compatibility and interoperability of audio-visual technologies, thereby contributing to strengthening cultural exchanges. They shall cooperate towards this objective.

4. The Parties shall endeavour to facilitate rental and leasing of the technical material and equipment, such as radio and television equipment, musical instruments and studio recording equipment, necessary to create and record audio-visual works.

5. The Parties shall endeavour to facilitate the digitalisation of audio-visual archives.

ARTICLE 7: TEMPORARY IMPORTATION OF MATERIAL AND EQUIPMENT FOR THE PURPOSE OF SHOOTING AUDIO-VISUAL WORKS

1. Each Party shall encourage as appropriate the promotion of its territory as a location for the purpose of shooting cinematographic films and television programmes.

2. Notwithstanding the provisions on trade in goods in this Agreement, the Parties shall, in conformity with their respective legislation, examine and allow the temporary importation of the technical material and equipment necessary to carry out the shooting of cinematographic films and television programmes by cultural professionals and practitioners from the territory of a Party into the territory of the other Party.

SUB-SECTION B
PROMOTION OF CULTURAL SECTORS OTHER THAN AUDIO-VISUAL

ARTICLE 8: PERFORMING ARTS

1. The Parties, in conformity with their respective legislation, shall facilitate through appropriate programmes increased contacts between practitioners of performing arts in areas such as professional exchanges and training including, *inter alia*, participation in auditions, development of networks and promotion of networking.
2. The Parties shall encourage joint productions in the fields of performing arts between producers of one or several Member States of the European Union and Korea.
3. The Parties shall encourage the development of international theatre technology standards and the use of theatre stage signs, including through appropriate standardisation bodies. They shall facilitate the cooperation towards this objective.

ARTICLE 9: PUBLICATIONS

The Parties, in conformity with their respective legislation, shall facilitate exchange with and dissemination of publications of the other Party through appropriate programmes in areas such as:

- (a) organisation of fairs, seminars, literary events and other similar events related to publications, including public reading mobile structures;
- (b) facilitating co-publishing and translations; and
- (c) facilitating professional exchanges and training for librarians, writers, translators, booksellers and publishers.

ARTICLE 10: PROTECTION OF CULTURAL HERITAGE SITES AND HISTORIC MONUMENTS

The Parties, in conformity with their respective legislation and without prejudice to the reservations included in their commitments in the other provisions of this Agreement, shall encourage, in the framework of appropriate programmes, exchanges of expertise and best practices regarding the protection of cultural heritage sites and historic monuments bearing in mind the UNESCO world heritage mission, including through facilitating the exchange of experts, collaboration on professional training, awareness of the local public and counselling on the protection of the historic monuments and protected spaces and on the legislation and implementation of measures related to heritage, in particular its integration into local life.