

2001PC0047

Opinion of the Commission pursuant to article 251(2), third subparagraph, point c) of the EC Treaty, on the European Parliament's amendments to the Council's common position regarding the proposal for a directive of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art amending the proposal of the Commission pursuant to article 250(2) of the EC Treaty /* COM/2001/0047 final - COD 1996/0085 */

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1. History

The Commission's proposal was adopted on 13 March 1996 and forwarded to the Council on 25 April 1996 [1]. (COM (1996)97 final - 1996/0085/COD)

[1] OJ C 178, 21.6.1996, p. 16

The Economic and Social Committee delivered its opinion on 18 December 1996 [2].

[2] OJ C 75, 10.3.1997, p. 17

The European Parliament delivered its opinion in first reading under the codecision procedure at the plenary session of 9 April 1997 [3].

[3] OJ C 132, 28.04.1997, p. 88

Following the European Parliament's opinion, the Commission adopted an amended proposal on 12 March 1998 (COM(1998)78 final) [4].

[4] OJ C 125, 23.4.1998, p. 8

On 19 June 2000, the Council unanimously adopted a common position with which the Commission was not able to agree. In its communication of 15 September 2000 to the European Parliament, the Commission set out its opinion on this common position [5].

[5] SEC(2000) 1516 final

On 13 December 2000, the European Parliament adopted, in second reading, 13 amendments to the Council's common position. One purely linguistic amendment was not put to the vote.

In this opinion, the Commission sets out its views on the amendments adopted by the European Parliament, in accordance with Article 251(2)(c) of the EC Treaty.

2. Subject of the proposal

The aim of the proposal is to put in place a harmonised legal framework in respect of the resale right so as to ensure the proper functioning of the market in works of modern and contemporary art within the European Union.

The resale right is the right of the author of an original work of art or, after his death, of his heirs or other persons entitled under him, to receive a percentage of the price of a work if it is resold. The aim is to redress the balance between the economic situation of authors of graphic and plastic works and that of other creative artists.

This right is recognised in the legislation of eleven of the fifteen Member States and is applied in eight of them in very different ways in terms of the works covered by the resale right, the transactions giving rise to payment and the applicable rates. The proposal is therefore aimed at eliminating the distortions of competition in the market in modern and contemporary art in the Community by generalising and harmonising the resale right.

3. The Commission's opinion on Parliament's amendments

Summary

The Commission accepts Amendments 1, 2, 3, 5, 11, 12, 13, 14 and 15

The Commission accepts the first paragraph of Amendment 6, which sets the threshold for the application of the resale right at EUR 1 000, but rejects the second paragraph, which makes this threshold compulsory.

The Commission accepts Amendment 9 in the form of a recital rather than an article.

The Commission rejects Amendments 4, 8 and 10.

3.1. Parliament's amendments in second reading

3.1.1. Amendments accepted by the Commission

- a) Amendment 1, modifying Recital 7, which calls on the Commission to enter into negotiations with a view to making Article 14ter of the Berne Convention compulsory because of the growing international dimension of the art market.
- b) Amendment 2, introducing a new Recital 7a explaining the need for transitional provisions, in order to maintain the competitiveness of the European market.
- c) The part of Amendment 6 that modifies Article 3(1) in order to bring the threshold for the application of the Directive to EUR 1 000, as provided for in the original and amended proposals from the Commission, rather than the EUR 4 000 as proposed in the common position.
- d) Amendment 11, reducing to 2 years the transitional period of 10 years proposed by the Council in Article 8(2) and (3) of the common position.
- e) Amendment 12, modifying Article 9 on the right to collect information in order to make the date of the transaction, rather than 1 January of the following year, the reference date for the three years during which the beneficiaries of the resale right are entitled to request information. As regards the persons responsible for providing the information, the Parliament bases itself on Article 1(2) which is also acceptable to the Commission.
- f) Amendment 14, modifying Article 11(1) in order to include the ceiling among the issues to be reviewed when the Directive is revised. The Parliament calls on the Commission to submit proposals for an increase in or the abolition of the ceiling, as appropriate.
- g) Amendment 15, reducing to 2 years the deadline for implementation of the Directive stipulated in Article 12(1), which the Council had changed to 5 years in its common position.

h) Amendments 3 and 13, which will improve the wording of Recital 20 and Article 10 respectively without altering the content.

i) Amendment 9 on collecting societies in the form of a recital rather than an article. The Commission proposes inserting this amendment into Recital 27 of the common position as follows:

"The Member States are responsible for regulating the exercise of the resale right, particularly with regard to the way this is managed. In this respect management by a collecting society is one possibility. Member States should ensure that national collecting societies operate in a democratically transparent and efficient manner. However, Member States ... (unchanged)

3.1.2. Amendments or parts of amendments not accepted by the Commission

a) That part of Amendment 6 modifying the second paragraph of Article 3 so as to make the threshold of EUR 1 000 compulsory, and Amendment 4, which modifies Recital 21 in the same way. The Commission considers, as it pointed out in the explanatory memorandum to its initial proposal, that any disparity in the internal market resulting from application of the resale right below EUR 1000 in some Member States is not, in view of the small value of the works in question, likely to have a substantial effect on intra-Community trade. On the other hand, the disappearance of national resale rights below the Community threshold would put artists in a worse position than they were in before harmonisation, without justification on grounds of internal market considerations.

b) Amendment 8 modifying Article 6(1) so as to specify the persons entitled to inherit the resale right. The Commission is of the view that this amendment introduces a distinction between rightholders that is not in keeping with the property nature of the resale right. The Commission is also reluctant to deal with the question of inheritance rights, which is a matter for the individual Member States, insofar as there are no internal market considerations that would justify it. A similar amendment was rejected in first reading.

c) Amendment 10, under which the Commission would be obliged to publish each year a list of third countries that apply the resale right under Article 7(2). Drawing up and maintaining a list of this kind would give rise to practical problems disproportionate to the usefulness of the list. The Commission can, therefore, only undertake to publish such a list for information purposes, as already proposed in the common position.

3.2. Amended proposal

In accordance with Article 250(2) of the Treaty, the Commission amends its proposal accordingly.