

# DOCUMENTATION PACK

## INTERNATIONAL FEDERATION OF ACTORS (FIA)

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The purpose of this document is to provide a summary of the *acquis communautaire* relevant to the sectors in which performers' organisations are involved, as well as information on the relevant European funding programmes and the methodology for applying for financial support at EU level. Please note that this is a support document for a first seminar organized in the framework of the project "Strengthening the structure and functioning of performers' organisations: tools to enable their integration in the European Social Dialogue in the audiovisual and live performance field".

The information included in this document is the one available at the time of its drafting. All opinions and comments reflected in the document are those of its author.

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## CHAPTER I BASIC INFORMATION ON EUROPEAN LAW AND INSTITUTIONS

This chapter includes a brief presentation of EU legislative acts and general information on the EU institutions. It is meant to clarify the differences between the various EU acts and explain the role of each institution in the decision-making process at European level.

- **EU law** is composed of three different - but interdependent - types of legislation:
1. **Primary legislation** is agreed by direct negotiation between Member State governments and includes in particular the *Treaties* and other agreements having similar status.
  2. **Secondary legislation** includes:
    - **Regulations**: acts directly applicable and binding in all EU Member States without the need for any national implementing legislation;
    - **Directives**: acts that bind Member States as to the objectives to be achieved within a certain time limit, while leaving the national authorities the choice of form and means to be used when incorporating the Community objectives into their domestic legal systems. In particular, Member States can take account of special domestic circumstances when implementing EU rules. The directive does not supersede the laws of the Member States but places the Member States under an obligation to adapt their national law in line with EU rules.
    - **Decisions**: acts binding in all their aspects for those to whom they are addressed. Decisions do not require national implementing legislation. They may be addressed to any or all Member States, to enterprises or to individuals.
    - **Recommendations** and **opinions**: non-binding acts. They enable the EU institutions to express a view to Member States, and in some cases to individual citizens, which is not binding and does not place any legal obligation on the addressees.
    - Alongside the legal acts provided for in the Treaties (mentioned above), the Community institutions have a variety of other forms of action for shaping the Community legal order: *resolutions, declarations* and *action programmes, Communications, Green papers* and *White papers*<sup>1</sup>.
  3. **Case-law** - including judgments of the European Court of Justice (ECJ) and of the European Court of First Instance.

The above mentioned legal acts, together with the case law of the ECJ form the so-called *acquis communautaire*, a concept widely used at EU level and designating the whole legal framework adopted since the creation of the European Communities in the '50s until now. The new Member States of the EU had to implement the *acquis* into their national law, as a prerequisite of their accession to the EU.

For detailed information on the evolution of the European integration and the successive Treaties, please refer to a document published by the European Commission and entitled "Europe in 12 lessons"<sup>2</sup>.

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<sup>1</sup> A Green Paper is a document designed to stimulate public discussion. A White Paper is a document presenting a detailed and well-argued policy for discussion and political decision.

<sup>2</sup> [http://europa.eu.int/comm/publications/booklets/eu\\_glance/22/en.pdf](http://europa.eu.int/comm/publications/booklets/eu_glance/22/en.pdf)

- The Institutions of the European Union are the following:

The **European Parliament**<sup>3</sup> represents the EU's citizens and is directly elected by them.

The **Council of the European Union**<sup>4</sup> represents the individual member states.

The **European Commission**<sup>5</sup> represents and upholds the interests of the EU. It proposes legislation, policies and programmes of action and it is responsible for implementing the decisions of the European Parliament and the Council. The Commission's staff is organised into departments, known as "Directorates-General" (DGs), each responsible for a particular policy area.

Two other institutions have a vital part to play at European level: the **Court of Justice**<sup>6</sup> upholds the rule of European law, and the **Court of Auditors**<sup>7</sup> checks the financing of the Union's activities. In addition to its institutions, the EU has also a number of other bodies such as advisory bodies<sup>8</sup>, decentralised agencies<sup>9</sup> etc.

## CHAPTER II EUROPEAN LEGISLATION WITH IMPACT ON THE SECTORS REPRESENTED BY FIA

FIA's activities are directly concerned by the actions and initiatives deployed by the EU in the audiovisual<sup>10</sup>, social<sup>11</sup>, cultural<sup>12</sup> and intellectual property<sup>13</sup> fields and the legislation adopted in these policy areas. Other policy areas may also have a certain influence on FIA's area of work, such as the competition policy<sup>14</sup>. This chapter is meant to present the most important legal acts forming the *acquis communautaire* relevant to FIA's activities.

### Section I - AUDIOVISUAL

An important number of FIA's members work in television and cinema. Two major EU legal acts that implement the EU audiovisual policy and have an impact on our members' work are the Television Without Frontiers Directive and the Communication on certain legal aspects relating to cinematographic and other audiovisual works.

#### 1. Communication on Certain legal aspects relating to cinematographic and other audiovisual works

##### Background:

In November 2001, the European Parliament adopted a **Resolution** calling for an improved circulation of European films within the EU and the candidate countries, underlying the main obstacles and the areas where the Commission should take further action.

Based on this Resolution, at the end of 2001, the Commission adopted a **Communication on certain legal aspects relating to cinematographic and other audiovisual works**<sup>15</sup>, addressing various issues, among which the most

<sup>3</sup> [http://www.europarl.eu.int/home/default\\_en.htm](http://www.europarl.eu.int/home/default_en.htm)

<sup>4</sup> [http://ue.eu.int/cms3\\_fo/showPage.ASP?lang=en](http://ue.eu.int/cms3_fo/showPage.ASP?lang=en)

<sup>5</sup> [http://europa.eu.int/comm/index\\_en.htm](http://europa.eu.int/comm/index_en.htm)

<sup>6</sup> <http://www.curia.eu.int/en/transitpage.htm>

<sup>7</sup> [http://www.eca.eu.int/index\\_en.htm](http://www.eca.eu.int/index_en.htm)

<sup>8</sup> The European Economic and Social Committee, the Committee of Regions etc

<http://www.esc.eu.int/pages/en/home.asp>

<sup>9</sup> [http://europa.eu.int/institutions/eca/index\\_en.htm](http://europa.eu.int/institutions/eca/index_en.htm)

<sup>10</sup> [http://europa.eu.int/comm/avpolicy/intro/intro\\_en.htm](http://europa.eu.int/comm/avpolicy/intro/intro_en.htm),

<sup>11</sup> [http://europa.eu.int/comm/employment\\_social/index\\_en.html](http://europa.eu.int/comm/employment_social/index_en.html)

<sup>12</sup> [http://europa.eu.int/comm/culture/portal/about\\_en.htm](http://europa.eu.int/comm/culture/portal/about_en.htm)

<sup>13</sup> [http://europa.eu.int/comm/internal\\_market/copyright/index\\_en.htm](http://europa.eu.int/comm/internal_market/copyright/index_en.htm)

<sup>14</sup> [http://europa.eu.int/comm/competition/index\\_en.html](http://europa.eu.int/comm/competition/index_en.html)

[http://europa.eu.int/comm/avpolicy/legis/key\\_doc/legispdffiles/cincom\\_en.pdf](http://europa.eu.int/comm/avpolicy/legis/key_doc/legispdffiles/cincom_en.pdf)

important are: the state aids for the audiovisual sector; the taxation and rating of audiovisual works; the preservation of cinema heritage and the definitions of European work and of independent producer.

Further on, in 2002, the European Commission created *Experts Groups* aiming to bring together expertise on various issues deriving from this Communication and to gather opinions as to the further steps to be taken for the promotion of the audiovisual sector within the EU. Within these groups, EuroFIA is represented by two of our affiliates from the SFA (Syndicat français des artistes-interpètes) and the DSF (Dansk Skuespillerforbund), as well as by the Secretariat. Three meetings of these Experts groups were already organized: in September 2002, January 2004 and October 2004. Details about the discussions developed within the Experts groups will be provided during the seminar organized on 19-20 February 2005.

### Recent developments

- Consultation on state aids to the audiovisual sector<sup>16</sup>:

At the beginning of 2004, the Commission started a broad consultation on the possible revision of the criteria for state aid for the audiovisual sector and in particular of the principle of *territoriality*. The Communication mentioned above had laid four specific criteria to make state aid systems compatible with competition rules. One of these criteria allowed for a maximum of 80% of the total production budget to be spent in the country where the aid was made available (so called *territoriality* of the aid). This meant that 80% of this budget could be spent on the national territory and that the producer could only spend 20% outside the territory of the state that granted the aid.

Following this consultation, DG Education and Culture released a *Communication on the future of European Cinema*<sup>17</sup>, by which the Commission extends the state aid regime to the audiovisual sector until June 2007. The EU Commission admitted that territoriality clauses may be justified under certain circumstances and within the limits set in the Communication, in order to ensure the continued presence of human skills and technical expertise required for cultural creation. It also acknowledged that the film sector in Europe is under pressure and that state aid is highly needed.

- Consultation on the digital archiving:

The last meeting of the experts' group (October 2004) addressed the issue of digital archiving, the long-term preservation and restoration of films and the development of a common standard for the exchange of information by electronic means. The meeting followed the proposal for a *European Commission Recommendation*<sup>18</sup>, which called for improvements in the activities of cataloguing, preservation and restoration related to film production and distribution.

### Next steps:

- State aid: The European Commission will conduct a cultural and economic impact study on the existing national aid schemes during the next three years, in order to analyse the impact of these aids and decide on the best way to regulate this issue at EU level.
- Digital archiving: The European Commission intends to give the CEN (European Centre for Standardisation – *Centre européen de normalisation*) a *standardisation mandate* for the adoption of a European standard for film archiving based on existing industrial processes and the projects being developed or initiated by specialists in cinematographic and audiovisual archives and market operators.

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<sup>16</sup> You can find the EuroFIA position, as well as the Common declaration presented by a number of organizations in response to the Commission's proposals, in annex.1

<sup>17</sup> [http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004\\_0171en01.pdf](http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0171en01.pdf)

<sup>18</sup> [http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004\\_0171en01.pdf](http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0171en01.pdf)

## 2. Television without Frontiers Directive

### Background:

The *Television without Frontiers* directive<sup>19</sup> regulates the free movement of television broadcasting services in the EU and provides for the Community **coordination** of national legislation in areas such as: the law applicable to television broadcasts; the promotion of the production and distribution of European works, television advertising, etc. It rests on two basic principles: the free movement of European television programmes within the internal market and the requirement that television channels, where practicable, reserve over half of their broadcasting time for European works ("broadcasting quotas"). For a summary of the Directive please visit the SCAD Plus website<sup>20</sup>:

Details about the implementation of the Directive in general, or specifically of the provisions on quotas in the 15 Member States can be found in the reports of the European Commission<sup>21</sup>.

- FIA has since long taken a strong position in favour of maintaining, and possibly increasing the quotas for European works and for the works of independent producers. We have called, along with other interested parties, for a clearer definition of "European works". You can find the EuroFIA position in Annex 1 to this Documentation Pack.

### Recent developments

#### Revision of the Television without Frontiers Directive :

In 2002 the Commission launched the review of the TVWF directive, through its fourth report relating to the application of the directive<sup>22</sup>. A public consultation was launched addressing 6 specific themes and two series of public hearings were organised in 2004. All contributions received within this public consultation (including EuroFIA's position) can be found on DG Education and Culture website<sup>23</sup>.

One of the issues that focused a major part of the discussions during the hearings organised throughout 2004 was advertising. Related to this issue, the Commission's aim was to examine whether an adaptation of existing regulatory measures is necessary in the light of the technological developments recorded in the advertising industry. Title IV (Rules on advertising, sponsorship and tele-shopping) was thoroughly debated, with strong voices being expressed in favour of liberalisation of advertising and elimination of time limits (Art. 11 and Art. 18) currently included in the Directive.

As a result of the consultation process the Commission published the Communication on the future of European regulatory audiovisual policy<sup>24</sup>, which included a timetable of future actions: in the *short-term*, the Commission believes that more legal certainty could be provided by an *Interpretative Communication on television advertising* and that no revision of the Directive is required for the moment. In the *medium term*, the Commission thinks that a number of issues need further thought and discussion, which could lead to amendments of the TVWF Directive at a later stage. The Commission has consequently created 3 focus groups<sup>25</sup> to host experts' exchanges of views on the issues still open to debate<sup>26</sup> and has also outsourced a series of independent studies<sup>27</sup>.

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<sup>19</sup> [http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en\\_1989L0552\\_do\\_001.pdf](http://europa.eu.int/eur-lex/en/consleg/pdf/1989/en_1989L0552_do_001.pdf)

<sup>20</sup> <http://europa.eu.int/scadplus/leg/en/lvb/l24101.htm>

<sup>21</sup> [http://europa.eu.int/comm/avpolicy/regul/twf/art45/art45-intro\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/twf/art45/art45-intro_en.htm)

<sup>22</sup> [http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002\\_778final\\_en.pdf](http://europa.eu.int/comm/avpolicy/regul/twf/applica/comm2002_778final_en.pdf) (The review process is presented in Annex 1 of this Report)

<sup>23</sup> <http://europa.eu.int/comm/avpolicy/regul/review-tw2003/contribution.htm> .

<sup>24</sup> [http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003\\_0784en01.pdf](http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0784en01.pdf)

<sup>25</sup> on regulation of audiovisual content, advertising and the right to information

<sup>26</sup> [http://europa.eu.int/comm/avpolicy/regul/focus\\_groups\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/focus_groups_en.htm)

<sup>27</sup> [http://europa.eu.int/comm/avpolicy/stat/studi\\_en.htm](http://europa.eu.int/comm/avpolicy/stat/studi_en.htm) - (on the impact of advertising regulation, the impact of measures concerning the promotion of the distribution and production of TV programmes and on co-regulation in the media)

The interpretative Communication mentioned above was published in April 2004<sup>28</sup> and explains the way in which the Directive applies to the new advertising techniques.<sup>29</sup>

- In its position paper, FIA has explicitly taken a stand **against** the elimination of the current rules on advertising, as they are enshrined in title IV of the Directive, with a special emphasis on article 11. Furthermore, FIA has taken a firm position **against** the use of **new advertising techniques** during feature films.
  - ❑ For the implementation of the Directive in the old 15 Member States and a comprehensive outline of the case-law of the ECJ in the broadcasting sector please visit the "audiovisual policy" website of the European Commission.<sup>30</sup>

#### Next steps:

The European Commission will continue to gather information through the focus groups and the outsourced studies, in order to decide whether a revision of the directive is necessary. The 5<sup>th</sup> report on the application of the Directive will be issued in 2005.

- ❑ **NB:** Among the legal acts mentioned in this section, the Television Without Frontiers Directive is the only binding instrument. Despite their non-binding nature, the other acts referred to have their own importance: the Communications mentioned show the directions that the European Commission intends to take in its future actions and the European Parliament Resolutions can be a strong incentive for future legal initiatives.

## Section II - INTELLECTUAL PROPERTY

Performers' economic and moral rights are the recognition of their creative work and of their contribution to culture in general. Copyright and related rights provide an incentive for the creation of and investment in new works.

At EU level, a number of Directives have achieved significant harmonisation of the national **substantive copyright law**, aiming to reduce barriers to trade and to adjust the framework to new forms of exploitation. Common ground was also recently achieved in the field of **enforcement** of rights, i.e. on access to justice, sanctions and remedies regarding infringements, etc. Lately, it appeared necessary that complementary measures on the **management and licensing** of these rights should be adopted.

**Substantive copyright law, enforcement** of rights and **management and licensing** of rights are the 3 pillars of EU copyright law. Eight Directives have been adopted and form what we may call the *acquis communautaire* in the field of copyright and neighbouring rights.

#### Background:

Six Directives harmonised the national copyright laws of the EU Member States in the following fields: the legal protection of computer programs (1991)<sup>31</sup>, rental rights, lending rights and the main neighbouring rights (1992),<sup>32</sup>

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<sup>28</sup> [http://europa.eu.int/comm/avpolicy/legis/key\\_doc/legispdffiles/1450\\_en.pdf](http://europa.eu.int/comm/avpolicy/legis/key_doc/legispdffiles/1450_en.pdf)

<sup>29</sup> For your information, please also see the Study by Bird & Bird and Carat Crystal available at the following address: [http://europa.eu.int/comm/avpolicy/stat/bird\\_bird/pub\\_rapportfinal\\_en.pdf](http://europa.eu.int/comm/avpolicy/stat/bird_bird/pub_rapportfinal_en.pdf)

<sup>30</sup> [http://europa.eu.int/comm/avpolicy/regul/twf/implement/natimple\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/twf/implement/natimple_en.htm)  
[http://europa.eu.int/comm/avpolicy/legis/key\\_doc/caselaw\\_en.htm](http://europa.eu.int/comm/avpolicy/legis/key_doc/caselaw_en.htm)

<sup>31</sup> Council Directive 91/250/EEC on the legal protection of computer programs

<sup>32</sup> Council Directive 92/100/EEC on rental right and lending right and on certain rights related to copyright in the field of intellectual property

satellite broadcasting and cable retransmission (1993)<sup>33</sup>, the duration of protection of authors' rights and neighbouring rights (1993)<sup>34</sup>, the legal protection of databases (1996)<sup>35</sup>, the authors' resale right<sup>36</sup>.

For a detailed summary of two of the Directives with most impact on the sectors represented by FIA (the Directive on Rental and public lending and the Cable and Satellite Directive), please visit the [SCAD Plus website](#)<sup>37</sup>.

The six above-mentioned Directives address rather sectoral issues, as they apply only to certain categories of works (software, databases) or rights (rental rights), they focus on a particular situation (satellite broadcasting, cable retransmission) or address a particular feature of protection (duration).

A 7<sup>th</sup> Directive, the Directive on copyright and related rights in the Information Society<sup>38</sup> (the *InfoSoc Directive*) harmonises several essential rights of authors and of four groups of neighbouring rightholders, the limitations and exceptions thereto, the protection of technological measures and of rights management information. This Directive has the most horizontal impact of all EU Directives on copyright.

#### Main provisions of the InfoSoc Directive:

The Directive recognizes the following exclusive rights for performers: Reproduction right (art.2); Right of communication to public and right of making available (art. 3(1) ; (art.3 (2) Distribution right (art. 4) and EU exhaustion with possibility for Member States to stipulate international exhaustion.

It includes a detailed and exhaustive list of exceptions to the reproduction right and the right of public communication: 5 exceptions to the reproduction right and 15 exceptions to the rights of reproduction and communication to public. Thus, EU member states will not be able to create exceptions other than those included in the list. (art. 5) . The Directive also requires member states to implement legislation that protects against the circumvention of anti-copying protection and against the manufacture, importation and distribution of devices designed to circumvent such protection. (art. 6)

The Directive requires member states to provide for fair compensation in 3 cases: 1) reprography by photographic, photocopying or similar techniques; 2) reproduction for private use and non-commercial purposes and 3) reproduction of broadcasts made by a limited number of social institutions (such as hospitals or prisons). Member states can decide, in accordance with their own legal traditions and practices, whether compensation will be awarded in the form of payment obligations (such as levies on copy shops and on sales of blank tapes and equipment) or other. As of this writing, most EU member states levy taxes on blank recording media and equipment to provide fair compensation to composers, authors, performers, whose works have been copied without authorization.

For a complete summary, please visit: <http://europa.eu.int/scadplus/leg/en/lvb/l26053.htm>.

These 7 directives address the substantive copyright law, 1<sup>st</sup> pillar of copyright law.

Recently the 8<sup>th</sup> directive was adopted and addressed the enforcement pillar, the 2<sup>nd</sup> pillar of copyright law<sup>39</sup>. The Directive includes procedures covering evidence and the protection of evidence and provisional measures such as injunctions and seizure. There will be a right of information allowing judges to order certain persons to reveal the names and addresses of those involved in distributing the illegal goods or services, along with details of the quantities and prices involved. A right to damages is included at art. 13.

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<sup>33</sup> Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

<sup>34</sup> Council Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights

<sup>35</sup> Directive 96/9/EC of the European Parliament and of the Council on the legal protection of databases

<sup>36</sup> Directive 2001/84/EC of the European Parliament and of the Council on the resale right for the benefit of the author of an original work of art

<sup>37</sup> <http://europa.eu.int/scadplus/leg/en/lvb/l26030.htm>

<http://europa.eu.int/scadplus/leg/en/lvb/l26031.htm>

<sup>38</sup> Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society

<sup>39</sup> Directive 2004/48/EC of the European Parliament and of the Council on the enforcement of intellectual property right

You can find the 8 above-mentioned directives on the website of DG Internal Market<sup>40</sup>.

### Recent developments

- Communication on management of rights

Besides the rules on rights and exceptions and the rules on enforcement of rights, the management and licensing of intellectual property rights, both individual and collective, has to be operational for the Internal Market to function properly. Rights' management represents the 3d pillar of copyright protection.

In the beginning of 2004, the Plenary of the European Parliament adopted the Resolution on a Community framework for collecting societies in the field of copyright<sup>41</sup>.

In April 2004, the European Commission published a Communication on "Management of Copyright and Related Rights in the Internal Market"<sup>42</sup>. The text of the Communication includes some of the main points addressed in the European Parliament's Resolution, and follows some of the proposals put forward by the latter. Chapter III of this Communication touches upon collective rights management. The Commission indicated that a legislative initiative in this field is required and launched a consultation exercise focusing on the components of possible legislation on collective rights management <sup>43</sup>.

- Revision of the *acquis communautaire* on copyright and neighbouring rights

In the second half of 2004 the Commission launched a consultation on the review of EU copyright and neighbouring rights law<sup>44</sup>. In the Commission's opinion, this review is aimed at updating the legislative framework in the field of copyright and related rights, increasing its consistency and simplifying its provisions. The Commission does not envisage a revolutionary change and will rather limit itself to a "fine-tuning" of some of the Directives that form the *acquis communautaire* adopted in the field of copyright and related rights between 1991 and 1996. The Commission considers the possibility of adopting measures to increase the consistency of these Directives with the InfoSoc Directive.

- You can find EuroFIA's position in Annex 1. You can also find all position papers sent within this consultation exercise on the DG Internal Market web-site<sup>45</sup>.

### Next steps:

In relation to the 3d pillar of copyright law, the Management of copyright, the Commission intends to propose a legislative instrument – possibly a directive – on certain aspects of collective management and good governance of collecting societies. This would be the first EU binding instrument regulating the issue of collective management of copyright and neighbouring rights at EU level.

- **NB:** FIA is greatly involved in the protection and promotion of performers' economic and moral rights. We believe that shortcomings still exist in the EU legislation, especially regarding the harmonization of moral rights and the recognition of some economic rights for performers, which are not yet adequately protected, such as the right to equitable remuneration for public lending and for communication to the public of audiovisual fixations.

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<sup>40</sup> [http://europa.eu.int/comm/internal\\_market/copyright/documents/documents\\_en.htm#directives](http://europa.eu.int/comm/internal_market/copyright/documents/documents_en.htm#directives)

<sup>41</sup> <http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=TITRE&APP=PV2&LANGUE=EN&TYPEF=TITRE&YEAR=04&Find=collective+management&FILE=BIBLIO&PLAGE=1>

<sup>42</sup> [http://www.europa.eu.int/comm/internal\\_market/en/intprop/docs/index.htm](http://www.europa.eu.int/comm/internal_market/en/intprop/docs/index.htm)

<sup>43</sup> The results of this consultation (including EuroFIA's position) can be found at:

[http://europa.eu.int/comm/internal\\_market/copyright/management/contributions\\_en.htm](http://europa.eu.int/comm/internal_market/copyright/management/contributions_en.htm)

<sup>44</sup> [http://europa.eu.int/comm/internal\\_market/copyright/docs/review/sec-2004-995\\_en.pdf](http://europa.eu.int/comm/internal_market/copyright/docs/review/sec-2004-995_en.pdf)

<sup>45</sup> [http://forum.europa.eu.int/Public/irc/market/market\\_consultations/library?l=/copyright\\_neighbouring/legislation\\_copyright&vm=detailed&sb=Title](http://forum.europa.eu.int/Public/irc/market/market_consultations/library?l=/copyright_neighbouring/legislation_copyright&vm=detailed&sb=Title)

## Section III - SOCIAL

The EU employment and social policy reflects the conviction that free competition between companies in order to improve productivity and growth should be balanced by the respect of minimum social standards throughout Europe and the recognition of basic rights of workers to decent work and payment conditions.

This chapter includes information on the social dialogue committees to which FIA takes part, as well as on the most recent legislation relevant to the social field. It also includes a summary of all studies completed with the support of the European Commission.

### 1. Social dialogue Committees

Social dialogue is an essential component of the European model of society and development, with high-quality social protection, investment in education and reforms designed to improve dynamism in the economy. The social partners represent the interests and problems of the world of work and they are entitled to conduct autonomous dialogue, which may culminate in collective agreements on all the issues they cover.

Autonomous dialogue between European organisations was launched in 1985 and the Maastricht Treaty formalised the social partners' participation in the preparation of Community law. Today's European social dialogue covers these two essential functions: consultation and negotiation.

Article 138 of the Treaty provides for a compulsory two-stage consultation procedure: before presenting proposals in the social policy field, the Commission is required to consult the social partners on the possible *direction* of Community action; on completion of that first stage, if the Commission considers that Community action is desirable, it has to consult the social partners on the *actual content* of the envisaged proposal.

Sectoral social dialogue committees were established in 1998 and since then 27 committees have been set up at the joint request of the social partners in various sectors (Please consult the list available in Annex 2 of the **Commission Communication on social dialogue**<sup>46</sup>).

In the above-mentioned Communication, the Commission underlines that negotiations between the **European social partners** (trade unions' and employers' representative associations at EU level) are the most suitable way forward on questions related to modernisation.

Euro-MEI, FIM and FIA form the European Arts and Entertainment Alliance (EAEA), representing hundreds of thousands of cultural and media workers at the international and regional level. The EAEA is recognised as the industry federation for media, entertainment and arts by the ETUC (European Trade Unions Confederation) and as social partner at EU level, within the Social Dialogue Committees for Live performance and Audiovisual. These Committees discuss EU social and labour issues and are consulted on EU legislation as provided by the EU Treaty. As member of the EAEA, FIA is actively involved in both Social Dialogue Committees.

- Social dialogue Committee on Live Performance

The Social Dialogue Committee on Live Performance is one of the 27 sectoral committees currently functioning at EU level. It was created in 1999 by the EAEA representing the trade unions and Pearle\* (Performing Arts Employers Associations League Europe) representing the employers and has since acquired a growing importance and expended its activities to take into consideration the priorities set by the Lisbon agenda<sup>47</sup>.

The agenda of this Committee included issues such as health and safety, social security, training, mobility of workers in the live performance field, etc.

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<sup>46</sup> [http://europa.eu.int/comm/employment\\_social/news/2002/jul/socdial\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/jul/socdial_en.pdf)

<sup>47</sup> [http://europa.eu.int/comm/lisbon\\_strategy/intro\\_en.html](http://europa.eu.int/comm/lisbon_strategy/intro_en.html)

As from the 1<sup>st</sup> May 2004 FIA's affiliates in the 10 enlargement countries are invited to the meetings of the Social Dialogue Committees and will thus have the opportunity of sharing their experience and contributing to the strengthening of this Committee.

Among the most important achievements of the Committee on Live Performance are the projects jointly completed by the EAEA and Pearle\* with the support of the European Commission, which are succinctly presented in a separate section below.

- Social Dialogue Committee on Audiovisual

The first official meeting of the Social Dialogue Committee on Audiovisual took place on the 8<sup>th</sup> of September 2003. The social partners involved in this Social Dialogue Committee are:

- on the workers' side: FIA, FIM, Euro-MEI, within the EAEA, and IFJ (the International Federation of Journalists)
- on the employers' side: EBU<sup>48</sup>, CEPI<sup>49</sup>, AER<sup>50</sup>, ACT<sup>51</sup>, FIAPF<sup>52</sup>

The two social partners have agreed on the following working agenda for the years to come:

- ✓ European legislation in the audiovisual sector.
- ✓ Training (with an emphasis on new technologies)
- ✓ Enlargement
- ✓ Equal Opportunities – the position of women in the media sector
- ✓ Health and safety (best practices existing in this field).

## 2. Projects completed with the support of the European Commission

### 1. *Study related to various regimes of employment and social protection of cultural workers in Europe (2001)*

A comparative study carried out by the European Trade Union Confederation (ETUC) and the European Arts and Entertainment Alliance (EAEA) regarding the employment and social protection scheme of cultural workers within the member states of the European Union was completed in 2001 with the support of the DG Employment and Social Affairs.

The conclusions of the study showed that there is a preponderant and overall feeling of insecurity in the live performance field, except in those countries where legislation provides specific reinforced protection or in those countries where very representative unions can obtain such protection via collective agreements. It was particularly worrying to note that the notion of self-employed worker can be imposed on workers despite the existence of a relation of subordination, when the result of such a status is to significantly decrease the level of social protection. The study pointed that a European approach to these issues would need to be based on better information regarding the current status of workers in the live performance field.

### 2. *Status of Workers in the Media, Arts and Entertainment Sector in 5 Applicant Countries (2003)*

In 2003, as a follow-up to the study carried out in 2001, the EAEA completed a study focused on the employment regimes and the social protection of workers in entertainment and media in five of the ten (at the time) EU candidate countries, i.e. the Czech Republic, Hungary, Poland, Slovakia and Slovenia. This project was based on a survey and

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<sup>48</sup> European Broadcasting Union

<sup>49</sup> European Coordination of Independent Producers

<sup>50</sup> Association européenne des radios

<sup>51</sup> Association of Commercial Television

<sup>52</sup> Fédération internationale des associations de producteurs de film

on a number of interviews in each of the 5 candidate countries. A final conference took place in Prague on the 24-25 of May 2003 and gathered all members of FIA, FIM and Euro-MEI in the 5 candidate countries as well as representatives of the three Federations and of their respective affiliates in the EU countries. The study revealed a great difference between the candidate countries in relation to the social status of "entertainment workers" and showed the benefits of an increased co-ordination of the EU social legislation in the cultural sector. It also stressed the need to include accession countries in any possible "harmonisation from the above" of the status of workers in our sector.

### ***3. The implementation of European Social Directives in the sector of Live Performance and the Media (2003)***

This study aimed at evaluating the implementation of EU Social Directives in the live performance and the audiovisual sector in the EU Member States (except Luxembourg) and at assessing any possible shortcomings in the national implementing legislation in relation to the entertainment sector. The study was drafted on the basis of data available at the European level, and on national seminars organised with unions' representatives from the sector and specialists within each Member State.

The conclusions of this study emphasised the inadequacies of the EU social directives' provisions – or of the national transposition measures - in relation to our sector. They pointed to a major lack of effective implementation of the social directives: generally, the directives are not adapted to the profile of the entertainment and media sector, given they had initially been conceived to protect those working under *employee* status. The study showed that in order to achieve an effective implementation of the Social Directives in the sector, efficient sector-specific monitoring mechanisms of the rules relating to labour law and health and safety at work are needed.

### ***4. Towards Enlargement of the European Social Dialogue in the Performing Arts Sector (2004)***

This project aimed at assessing the impact of the EU enlargement on the European social dialogue in the live performance sector and at providing a policy for the development of a sectoral social dialogue practice within each accession country and the integration of these new social partners into the European social dialogue committee on the live performance sector.

The main aim of the project was to identify potential social partners in the 10 enlargement countries, as well as in Bulgaria, Romania and Turkey and to provide information on the functioning of social dialogue in other countries and at EU level.

A survey on social dialogue in candidate countries was carried out by an outside expert, whose tasks were to identify existing potential social partners in the accession countries and to assess social dialogue structures. A conference was organised in Tallinn and served as a platform for exchanging experience regarding national cultural and social policies and the functioning of social dialogue structures at national and EU level.

The general conclusions of the study showed that public authorities in the enlargement and candidate countries need to be informed more properly about the necessary legal steps that have to be taken in order to set up employers' organisations and recognise them officially as "social partners" in the live performance sector. It was also pointed that there is an urgent need to develop concrete strategies to help trade unions and employers' organisations in Central and Eastern Europe financially in order to allow them to function properly.

## Recent developments:

### Social dialogue Committee on Live performance

The study recently completed by the EAEA and Pearle\* with the support of the European Commission (above mentioned) showed that the establishment of partnerships between workers' and employers' organisations from the EU-15 and from the new EU Member States and candidate countries is highly necessary. For this reason, EAEA and Pearle\* decided to propose a new capacity building project to follow-up on the previous project on the "Enlargement of social dialogue in the performing arts".

The first objective of this project is to complete the work initiated through our previous study, which included the identification of social partners' structures in the enlarged EU. The aim of the current project is therefore to help defining their competences and achieving their recognition at national level, as well as raise awareness among local authorities in these countries about the need for social dialogue and for organising and representing workers/employers in our sector.

The second objective of this project is to allow an exchange of best practices on the dynamics of collective bargaining, the labour and social regulations of the EU Member States, the main elements of a collective agreement etc. This will serve the purpose of achieving a more harmonised relationship between the workers', respectively the employers' organisations in the old, the new Member States and the candidate countries, through training visits of affiliates from the new Member States and the candidate countries organised within sister organisations in the old Member states.

This project will be presented under the budget line dedicated to "Industrial relations" in March 2005 and is aimed at supporting the European Social Dialogue. If accepted by the European Commission, it will start in June 2005 and run until October 2006.

### Social dialogue Committee on Audiovisual

The social partners in this Committee have decided to present a joint project in April 2005, under the budget line dedicated to "Industrial relations". This project would follow the model of the previous project on the "Enlargement of social dialogue in the performing arts" organised within the Social dialogue Committee on Live performance (above mentioned). In a first phase, the project would entail a study –an analysis regarding enlargement aspects and training issues. A conference would complete the study and offer an arena for in-depth exchange of experience and views amongst social partners. The study should help mapping out the state of the industrial relations in the 10 new member States and the 4 candidate countries (Romania, Bulgaria, Turkey, Croatia) in the audiovisual sector. The study is expected to provide information on how the sector is structured, who are the social dialogue partners, the type of collective agreements signed so far, current/future negotiations and other.

## 3. Legislation

- Communication on social dialogue

The recently published *Communication* from the Commission entitled *Partnership for change in an enlarged Europe -enhancing the contribution of European social dialogue*<sup>53</sup> follows up on the *Commission Communication on social dialogue*<sup>54</sup>, published in 2002. The Communication aims at improving the quality of Social dialogue in Europe through better transparency on outcomes and better support to social partners. In the context of enlargement, the Commission stresses the importance of reinforcing social dialogue structures in the New

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<sup>53</sup> [http://europa.eu.int/comm/employment\\_social/news/2004/aug/com\\_final\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2004/aug/com_final_en.pdf)

<sup>54</sup> [http://europa.eu.int/comm/employment\\_social/news/2002/jul/socdialog\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2002/jul/socdialog_en.pdf)

Member States as well as of developing further efforts to strengthen the capacities of social partners from those countries.

- Directive on Services in the Internal Market

In May 2003, the EU Commission published a Green Paper on the scope of Community action in the area of Services of General Interest (SGI), providing a number of elements for a possible common definition of services of general economic interest, and looked at how SGI are organized and financed. In its Green Paper, the Commission acknowledged that SGI are a key element of the European model of society. They increase the quality of life for all citizens and overcome social exclusion and isolation. In the Member States, SGI have various definitions, reflecting diverse, economic, cultural and political realities.

Following the publication of the Green Paper, a large consultation was held, the conclusions of which are to be found in a report published in March 2004<sup>55</sup>. The debate raised questions with regard to the scope of a possible Community action; the principles that could be included in a possible framework directive on SGI and the added value of such an instrument .

In its Resolution of January 2004 on the Green Paper<sup>56</sup>, the European Parliament called for a specific initiative concerning the safeguarding of services of general interest.

On January 13, 2004, the EU Commission tabled a proposal for a directive on *Services in the Internal Market*<sup>57</sup>. It aims at liberalizing services in the Internal Market by requiring Member States to eliminate all administrative requirements that can allegedly dissuade businesses from offering their services across borders or from opening premises in other Member States. Many interested parties, among which the trade unions believed that this proposal is incomplete without the simultaneous discussion of a framework directive on SGI, clearly untying “ordinary” services from those pertaining to general interest. To palliate to this, the Commission redrafted the Green Paper into a White paper on SGI, published in April 2004.

#### Main provisions of the draft directive on “Services in the Internal Market”

##### Definitions (art. 4§1)

The services covered by the directive include all services of general economic interest (SIEG). The directive does not define those services. The Member States will have to identify them and determine whether certain activities are economic or whether they are excluded from the scope of the Directive (e.g. education)

##### Single points of contact (« one stop shop ») (art. 5 et 6)

Member States are expected to simplify the procedures for the access to - and the exercise of - a service by setting up “one stop shops” for service providers and consumers.

##### The country of origin principle (art. 16)

Service providers are only subject to the national provisions of their Member State of origin.

##### Exceptional derogations (art. 19)

Member States can exceptionally take derogatory measures from the country of origin principle. These measures, taken in respect of providers established in another Member state, must be justified by the safety of services and the protection of public order, notably aspects related to the protection of minors.

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<sup>55</sup> [http://europa.eu.int/comm/secretariat\\_general/services\\_general\\_interest/docs/comm\\_2004\\_0326\\_en01.pdf](http://europa.eu.int/comm/secretariat_general/services_general_interest/docs/comm_2004_0326_en01.pdf)

<sup>56</sup> <http://www3.europarl.eu.int/omk/omnsapir.so/pv2?PRG=TITRE&APP=PV2&LANGUE=EN&TYPEF=TITRE&YEAR=04&Find=Green+paper+on+services&FILE=BIBLIO&PLAGE=1>

<sup>57</sup> [http://www.europa.eu.int/eur-lex/en/com/pdf/2004/com2004\\_0002en03.pdf](http://www.europa.eu.int/eur-lex/en/com/pdf/2004/com2004_0002en03.pdf)

- The most controversial point in the draft directive is the *country of origin* principle. In particular, there is a risk that this principle would encourage service providers to move their headquarters to the EU Member States with the lowest tax rates and social requirements.

#### Recent developments:

- In November 2004 the Committee on Internal Market and Consumer protection of the European Parliament (IMCO) organised a public hearing on the Directive on Services in the Internal market. Interesting presentations were made on the interaction of the proposed Directive with the public service (White Paper on SGI etc.), on the question of the audiovisual services and not least, on the controversial "country of origin" principle<sup>58</sup>.

At the hearing it became clear that stakeholders from industry, trade unions, consumer organisations and social NGOs are deeply divided over the Commission's proposed text.

!! All along the process of negotiation on the proposal, the Commission published a series of documents including answers to frequently asked questions, detailed examples of how the Directive will impact on various sectors, as well as other information<sup>59</sup>.

#### Next steps:

The adoption of the directive requires a qualified majority in the Council of Ministers and co-decision in the European Parliament. The draft Services Directive is currently being discussed in the Parliament's Internal Market Committee. Rapporteur Evelyn Gebhardt (PSE, Germany) recently presented a working document<sup>60</sup> and aims at presenting a report for the first hearing in the European Parliament plenary before the summer break. The rapporteur from the Employment Committee, Ms Ann Van Lancker has also presented a working document<sup>61</sup>.

- The EAEA, expressed a strong concern with regard to the draft European directive on Services in the Internal Market<sup>62</sup>. The EAEA believes that the extension of this regulation to include the entertainment and media sectors would cause damaging consequences, in particular for the audiovisual sector and for the social status of cultural workers and performers, including their contractual relationships with agents.

- Working time Directive

The Working Time Directive<sup>63</sup> laid down minimum requirements covering certain aspects of the organisation of working time connected with workers' health and safety.

#### Recent developments:

Beginning of 2004 the European Commission published a *Communication concerning the re-exam of Directive 93/104 on certain aspects of the organisation of working time*<sup>64</sup> and called on all interested parties to contribute to a consultation on working time. The current revision exercise aims to take into consideration the recent case-law of European Court of Justice as well as a better definition of concepts related to working time (reference period, opt out provisions, time on call)

The consultation mainly focused on the *opt-out* option inscribed in Article 18(1)(b)(i)) of the Directive, as well as on the definition and calculation of working time.

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<sup>58</sup> All the written interventions are available on the following website:

[http://www.europarl.eu.int/hearings/20041111/imco/contributions\\_en.htm](http://www.europarl.eu.int/hearings/20041111/imco/contributions_en.htm)

<sup>59</sup> [http://europa.eu.int/comm/internal\\_market/en/services/services/index.htm](http://europa.eu.int/comm/internal_market/en/services/services/index.htm)

<sup>60</sup> [http://www.europarl.eu.int/meetdocs/2004\\_2009/documents/DT/551/551156/551156en.pdf](http://www.europarl.eu.int/meetdocs/2004_2009/documents/DT/551/551156/551156en.pdf)

<sup>61</sup> [http://www.europarl.eu.int/meetdocs/2004\\_2009/documents/DT/552/552592/552592en.pdf](http://www.europarl.eu.int/meetdocs/2004_2009/documents/DT/552/552592/552592en.pdf) (only EN)

<sup>62</sup> You can find the EAEA position paper in Annex 1 to the Documentation Pack.

<sup>64</sup> [http://europa.eu.int/comm/employment\\_social/labour Law/docs/workingtime\\_communication\\_en.pdf](http://europa.eu.int/comm/employment_social/labour Law/docs/workingtime_communication_en.pdf)

Article 18(1)(b)(i) allows a Member State to make provision in its national legislation for the possibility for a worker to work, on average, more than 48 hours per week, provided that the conditions laid down in the various indents of this provision are complied with. These conditions include principally 1) that the worker has given his individual agreement and 2) the keeping of records. The characteristic element in Article 18(1)(b)(i) is that the decision not to be covered by maximum weekly working time should be taken by the worker himself. The worker may not be pressured into signing the agreement and may not suffer harm if he decides not to sign.

A second phase of consultation on the Working Time Directive was launched in May 2004. The current draft of the Directive<sup>65</sup> -as amended after the second phase of consultation- sets out new provisions on:

On-call time: The former Directive only referred to resting periods and working time. The future directive defines a new category of time spent on call at the disposal of the employer and when the presence of the employee is required at the work place. The inactive share of the on-call time is not considered as working time.

Reference period for calculating the working week : The standard reference period over which the average working week is calculated remains 4 months. The limitation is therefore 48 h per week calculated on a four-month basis. The future directive extends the possibility to lengthen the period of calculation up to 12 months to both social partners through collective agreement and Members States through legislation.

Opt out clause : The new provisions regarding the *opt-out* present stricter criteria to use this clause. The consent of the employee cannot be given at the same time as the contract of employment is signed, nor can it be given during the probation period (to avoid any pressure on the employee); it has to be done in writing, it is valid for a maximum of 1 year renewable; it is limited to 65 hours a week as a maximum; the employers ought to keep records of the number of hours actually worked and make these records available for verification.

#### Next steps:

The Commission seems in favour of a 'flexible opt out', ie opting out with the agreement of the individual subject to collective agreements (where possible). In the European Parliament, the Rapporteur Cercas Alonso (ES, PES) outlined his position on the proposed amendments in a working document, where he stated that the main aim is to guarantee the health and safety of workers. He acknowledged that a compromise will be necessary between the demands of the Member States, those of the social partners and the political positions in the European Parliament..

#### UNESCO observatory on the status of the artist

Following the 1980 Recommendation concerning the Status of the Artist and the decisions of a World Congress celebrated in 1997, UNESCO established the *World Observatory on the Status of the Artist*<sup>66</sup>, aiming to provide a practical database for artists and other cultural workers. The Observatory has gathered information on employment regimes, statutes, legislation and social benefit systems for artists in 52 different countries around the world, to which FIA's affiliates have also contributed.

#### Section IV - CULTURE / LIVE PERFORMANCE

EU legislation in the cultural field touches upon various aspects of performers' work such as their mobility, their training, the recognition of their professional titles etc. The documents presented below are relevant to the live performance sector, which represents a large sphere of activity within FIA, encompassing professions in the field of dance, theatre, variety circus and other. Many of FIA's member unions were founded in the live theatre and consider live performance as an indispensable expression of national culture.

<sup>65</sup> [http://europa.eu.int/comm/employment\\_social/news/2004/sep/working\\_time\\_directive\\_proposal\\_en.pdf](http://europa.eu.int/comm/employment_social/news/2004/sep/working_time_directive_proposal_en.pdf)

<sup>66</sup> [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=8084&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=8084&URL_DO=DO_TOPIC&URL_SECTION=201.html)

## 1. Legislation

- EP Report on the dynamics of theatre<sup>67</sup>:

The European Parliament *Report on the dynamics of theatre* underlines the need for Community action on a variety of points: vocational training for performers, technicians and others working in the performing arts; promotion of public information and awareness-raising measures in respect of the performing arts; coordination of social and tax laws applicable to those working in the performing arts; establishment of tax measures to encourage mobility of performers and those working in the cultural field; establishment of European programmes for continuing training for performers and technicians, etc. This report mentioned one of FIA's previous initiatives – *the Dance Passport* - aimed at improving the mobility of dancers and the coordination between performers' organizations in Europe.

- EP Resolution on Cultural Industries

In July 2003 the European Parliament published the text of a report that includes a motion for a **Resolution on Cultural Industries**<sup>68</sup>. The report calls, amongst other things, for a more precise definition of *cultural industries* and for a European map of cultural industries, as well as for more support to these industries and for an increased mobility of persons and circulation of works in the cultural sector.

Of most interest for our sector, at Point 17 (l), p.12 of the report, the European Parliament calls on the Commission to develop a European legal framework with a view to creating an all- embracing "status of the artist" intended to afford appropriate social protection, and which would include legislation regarding copyright.

Within the consultation exercise organised before the adoption of this report, FIA has clearly expressed its views as to the shape of a future European framework for cultural industries<sup>69</sup>. FIA pointed out that the problems the performing arts have to face are not necessarily the same as those the audiovisual or the feature film industries have to tackle, and insisted that any future European framework for cultural industries should take these specificities into consideration.

FIA also underlined that technology in audiovisual and film will certainly develop at a fast pace and that this is likely to offer new opportunities to performers, at least in a first stage.

The real prospects for growth in all the sectors - including in live performance, which is not usually affected by new technologies - will only take place if proper policies are put into place (at national and European level), which could bring about an increase in the public funding for the arts, the acknowledgment of the status of the artist and the coordination of social protection systems in Europe, as well as an appropriate fiscal policy that meets the intermittent nature of performers' work.

### Recent developments :

- The Commission has recently published a *Communication on "Making citizenship Work: fostering European culture and diversity through programs for Youth, Culture, Audiovisual and Civic Participation"*<sup>70</sup>.

The Communication follows an independent evaluation of the Culture 2000 Programme carried out throughout 2003. As a result of this evaluation, as expressed in the above-mentioned Communication, the Commission intends to propose a programme in the field of culture, which would take into account the extraordinary diversity of cultural cooperation in Europe, characterized by thousands of players of various sizes. The programme will focus on the

<sup>67</sup> [http://www.fim-musicians.com/eng/pdf/6\\_1.pdf](http://www.fim-musicians.com/eng/pdf/6_1.pdf)

<sup>68</sup> <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//NONSGML+REPORT+A5-2003-0276+0+DOC+PDF+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y>

<sup>69</sup> You can find FIA's position paper in the Annex 1 to the documentation pack

<sup>70</sup> [http://europa.eu.int/comm/dgs/education\\_culture/comcitizen\\_en.pdf](http://europa.eu.int/comm/dgs/education_culture/comcitizen_en.pdf)

three main objectives identified by the Parliament, the Council and the cultural sector itself, namely: the **transnational mobility of people** working in the cultural sector; the **transnational circulation of works** of art (including immaterial works, such as music); the **intercultural dialogue**.

- A Conference on the mobility of artists took place in Rotterdam in October 2004 and encompassed an informal meeting of national Cultural Contact Points. It resulted in a number of recommendations for greater mobility in the cultural sector, which were further included in a report<sup>71</sup> presented to the Dutch Ministry of Culture. The report makes recommendations in four key areas: mobility, taxation for artists, social security and the proposed Culture 2007 programme.

## CHAPTER III EUROPEAN PROGRAMS PROVIDING FINANCIAL SUPPORT

This chapter intends to present the European funding programmes relevant to FIA's area of activity. This item will also include information on the methodology for applying for financial support at EU level: the contents of a call for proposals, the basic components of a grant application form and the drafting of a budget. A model grant application form and an example of a call for proposals are provided in Annex 2 of the Documentation Pack. Additional details will be presented during the seminar organised on 19-20 February.

### Section I – European funding programmes relevant to FIA

European funding programs support a variety of activities and are addressed to a large range of beneficiaries. These programs are managed by the European Commission's Directorates General and are assigned specific budget lines. The financial support is usually granted through a well-defined procedure, which allows interested parties to submit projects in line with the descriptions of the Commission's explicit aims. In this section you will find a brief outline of EU funding programmes relevant to FIA's main areas of action.

#### 1. Culture 2000

Culture 2000 is a Community programme established for seven years (2000-2006) with a total budget of 236,5 million euro, which provides grants to **cultural cooperation projects** with a European dimension in all artistic and cultural fields (performing arts, plastic and visual arts, literature, heritage, cultural history, etc.). Activities supported by this programme include festivals, master classes, exhibitions, new productions, tours, translations and conferences. So far, participants from the 25 EU Member States, the three countries of the European Economic Area (- Iceland, Liechtenstein and Norway) and the candidate countries Bulgaria and Romania have taken part in this Programme.

In July 2004 the Commission adopted proposals for the next generation of EU programmes in education, training, culture, youth and the audiovisual sector, which would run from 2007 to 2013. The four programmes proposed are: "Integrated action program in lifelong learning"; "Youth in action"; **Culture 2007**; "MEDIA 2007". The aim is to have the new programmes approved by the Council of Ministers and the European Parliament before the end of 2005.

**Culture 2007**<sup>72</sup> takes over from the current Culture 2000 programme and extends it. It has a proposed budget of € 408 million and three objectives: transnational mobility for everyone working in the cultural sector in the EU; transnational circulation of works of art and cultural/artistic products; intercultural dialogue.

Cultural contact points<sup>73</sup> have been established in the Member States and in most of the other countries taking part in the programme. They are responsible for promoting the programme, facilitating the participation of as many cultural professionals as possible, ensuring an exchange of information with national cultural institutions.

<sup>71</sup> [http://www.sicasica.nl/pdf/conclusions\\_and\\_recommendations\\_conference\\_artists\\_onthe\\_move.pdf](http://www.sicasica.nl/pdf/conclusions_and_recommendations_conference_artists_onthe_move.pdf)

<sup>72</sup> [http://europa.eu.int/comm/dqs/education\\_culture/newprog/index\\_en.html](http://europa.eu.int/comm/dqs/education_culture/newprog/index_en.html)

## 2. MEDIA programme<sup>74</sup>

Community support measures in favour of the European audiovisual industry currently take the form of the MEDIA Plus and MEDIA Training Programmes, due to end in 2006. **MEDIA 2007** is a single programme, which will replace the two current ones.

The MEDIA programme does not provide support for audiovisual production as such, which remains the responsibility of Member States, but is involved in the support of development, distribution and promotion of audiovisual works, as well as training of professionals. Another objective of the MEDIA programme is to promote the circulation of European works in countries other than the country of origin, in order to give Europeans the opportunity to appreciate the diversity of the cultures they share.

A proposal to extend the MEDIA Programmes was approved by the Council of Ministers in April 2004. The budget allocated for MEDIA Training (2001-2006) is 59.4 M€ and that for MEDIA Plus is 453.6 M€.

The proposal for a new program to support the European audiovisual sector (MEDIA 2007) was adopted by the Commission in July 2004. **MEDIA 2007** follows on from the current MEDIA Plus and MEDIA Training programmes. It has a proposed budget of € 1.055 billion and aims at: Preserving and promoting Europe's cultural diversity and cinematic/audiovisual heritage; ensuring public access to this heritage and encouraging dialogue between cultures; increasing the circulation of European films and other audiovisual productions inside and outside the EU.

DG Education and Culture has recently published a very comprehensive **Guide on Training Projects for professionals of the audiovisual industry in Europe<sup>75</sup>**, supported by the MEDIA PLUS Programme. This Guide regroups all existing information on current training projects in various fields.

## 3. DG Employment and Social Affairs budget lines supporting social dialogue

- The grants from DG Employment and Social Affairs can be found at the following address: [http://europa.eu.int/comm/employment\\_social/calls/tender\\_en.cfm](http://europa.eu.int/comm/employment_social/calls/tender_en.cfm). Interesting information on previous grants, and accepted projects is also provided.

As you can see from the Commission's website <sup>76</sup>, various budget lines are allocated to various objectives, such as: transnational co-operation and exchange projects to combat social exclusion, awareness raising for the employment strategy, Pilot projects on actions to mainstream disability policies etc.

The budget lines most interesting for our activities are the following: Budget heading 04.03.03.01 : "Industrial relations and social dialogue" and Budget heading 04.03.03.02 : "Information and training measures for workers organisations". Through these budget lines, the Commission allocates financial support for initiatives to promote and improve social dialogue, activities related to training of workers etc. Obviously, these are not the only budget lines we could use in order to receive financial support, but they are the most adequate to the activities we promote within EAEA.

- The [European Social Fund<sup>77</sup>](#) (ESF) is the financial tool for supporting implementation of the employment strategy. It finances the so-called "Objective 3" projects, involving modernising systems of education, training and employment. This component includes training projects for young people or the unemployed, some of which relate to activities such as arts and crafts.

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<sup>73</sup> [http://europa.eu.int/comm/culture/eac/culture2000/contacts/national\\_pts\\_en.html](http://europa.eu.int/comm/culture/eac/culture2000/contacts/national_pts_en.html)

<sup>74</sup> [http://europa.eu.int/comm/avpolicy/media/index\\_en.html](http://europa.eu.int/comm/avpolicy/media/index_en.html)

<sup>75</sup> <http://europa.eu.int/comm/avpolicy/media/pdf/files/formcat04.pdf>

<sup>76</sup> [http://europa.eu.int/comm/employment\\_social/calls/proposal\\_2004\\_en.cfm](http://europa.eu.int/comm/employment_social/calls/proposal_2004_en.cfm)

<sup>77</sup> [http://europa.eu.int/comm/employment\\_social/esf2000/index-en.htm](http://europa.eu.int/comm/employment_social/esf2000/index-en.htm)

- DG Employment and Social Affairs also implements the **Equal** initiative<sup>78</sup>, whose mission is to promote projects focused on fighting discrimination and exclusion based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation. EQUAL is implemented in and between Member States and is funded through the European Social Fund.

#### 4. Other

- DG Education and Culture, apart from the Culture 2000 and the MEDIA program also implements the Socrates and Leonardo da Vinci (educational exchanges, respectively vocational training) programmes, as well as the eLearning and the Town Twining programmes<sup>79</sup>.
- The European Culture portal recently created provides further information on available programs supporting various fields of interest for all the sectors represented by FIA: cinema and audiovisual<sup>80</sup>, dance<sup>81</sup>, music<sup>82</sup>, theatre<sup>83</sup>.
- DG Enlargement implements the PHARE and the TEMPUS programmes<sup>84</sup>.
- The European Development Fund<sup>85</sup> finances projects for the development of cultural heritage, local cultural initiatives, training in the arts, film productions, film distribution, studies, festivals and other cultural events. The EDF resources are not part of the Community budget but come from the budgets of the EU Member States.
- To implement the EU's regional policy, **the Structural Funds**<sup>86</sup> have been allocated a budget of EUR 195 billion for the period 2000-2006. They encourage the development of disadvantaged regions and promote social and human development. The Structural Funds cover the bulk of the EU's expenditure on cultural activities, as the cultural sector acts as a source of employment and a driving force behind local development. Funding is awarded on the basis of operational programmes adopted by the Commission in response to proposals from the Member States
- DG Information Society supervises the implementation of the *Sixth Framework Programme for Research and Development*<sup>87</sup>, which has seven thematic programmes, including the programme *Information Society Technologies* with a budget of EUR 3.6 billion. The IST programme covers technologies to promote learning about and access to cultural heritage.
- T.A.I.E.X.<sup>88</sup> is the Technical Assistance and Information Exchange unit of Directorate-General Enlargement of the European Commission. In operation since 1996, TAIEX provides short-term technical assistance in the field of approximation, application and enforcement of legislation.
- The European Cultural Foundation (ECF) is a pan-European cultural foundation promoting artistic and cultural activities in Europe and across its borders.<sup>89</sup>
  - For a comprehensive and always updated list of European funding opportunities please refer to the Welcome Europe website<sup>90</sup>. In order to access it, you first need to register with an identification name and a password.

<sup>78</sup> [http://europa.eu.int/comm/employment\\_social/equal/index\\_en.cfm](http://europa.eu.int/comm/employment_social/equal/index_en.cfm)

<sup>79</sup> [http://europa.eu.int/comm/culture/portal/funding/eac\\_en.htm](http://europa.eu.int/comm/culture/portal/funding/eac_en.htm)

<sup>80</sup> [http://europa.eu.int/comm/culture/portal/activities/cinema/cine\\_en.htm](http://europa.eu.int/comm/culture/portal/activities/cinema/cine_en.htm)

<sup>81</sup> [http://europa.eu.int/comm/culture/portal/activities/dance/dance\\_en.htm](http://europa.eu.int/comm/culture/portal/activities/dance/dance_en.htm)

<sup>82</sup> [http://europa.eu.int/comm/culture/portal/activities/music/music\\_en.htm](http://europa.eu.int/comm/culture/portal/activities/music/music_en.htm)

<sup>83</sup> [http://europa.eu.int/comm/culture/portal/activities/theatre/theat\\_en.htm](http://europa.eu.int/comm/culture/portal/activities/theatre/theat_en.htm)

<sup>84</sup> [http://europa.eu.int/comm/culture/portal/funding/elarg\\_en.htm](http://europa.eu.int/comm/culture/portal/funding/elarg_en.htm)

<sup>85</sup> [http://www.europa.eu.int/comm/development/body/publications/descript/pub1\\_4\\_en.cfm](http://www.europa.eu.int/comm/development/body/publications/descript/pub1_4_en.cfm)

<sup>86</sup> [http://europa.eu.int/comm/regional\\_policy/funds/prord/sf\\_en.htm](http://europa.eu.int/comm/regional_policy/funds/prord/sf_en.htm)

<sup>87</sup> [http://europa.eu.int/comm/culture/portal/funding/infso\\_en.htm](http://europa.eu.int/comm/culture/portal/funding/infso_en.htm)

<sup>88</sup> <http://taiex.cec.eu.int/>

<sup>89</sup> <http://www.eurocult.org>

<sup>90</sup> <http://www.welcomeurope.com>

## Section II - Methodology for application for funding

### 1. The Call for proposals

EU funding programmes aim at promoting cooperation between actors from different member states in fields such as education, health, culture, employment, training and other areas related to EU policies. They are financed through the EU general budget and are managed by the European Commission's Directorates general. EU financial support is often granted to projects that are selected on the basis of an annual Call for Proposals. The amount of money granted depends on the budget line or the call for proposal in question.

It is of major importance to carefully read the call for proposals in order to fully understand the conditions set by the European Commission. Above all, it is essential to ensure that you are **eligible** to present a project and that your project matches the objectives of the budget line.

Very often, even after having carefully read the call for proposals, you may still have doubts about certain points. In this case you should contact the person responsible with that specific call for proposals at the European Commission (depending on the call for proposals, you may have to address one or another of the Commission's DGs. The name of the person responsible is usually indicated in the call for proposals). Make sure you have compiled all your questions before you call them, as they may receive hundreds of applications related to one call for proposals and may not be in a position to answer everybody's questions!

As you can see in the model call for proposals provided in Annex 2, the first page always informs you about the DG responsible, the budget line, the title of the call and the reference number of the call, which you will have to use in all future correspondence with the Commission.

Further, the objectives of the call are presented, as well as the submission dates and details about the co-financing rates. You have to bear in mind that the funding will almost never cover the whole budget required for your project. Depending on the budget line, the Commission will cover 50, 60, 70, 80, sometimes 90% of the total expenditure, the rest has to be covered (*co funded*) by your organisation, *the applicant*.

The principle of co-funding means that your organisation must combine the funding provided by the Commission with other financial means. The funding of your project will thus be a combination of your own resources, funds from other partners in the project, funds deriving from partnerships with private or public authorities (cultural associations, local councils) etc and the grant received from the European Commission.

The co-funding is one of the most difficult criteria to comply with in the process of application for funding. Therefore, before presenting a proposal, you have to make sure you can commit to bring your own contribution (10, 20, 30 or 40% of the total budget) required to carry out your project.

It is precisely for this reason that it is easier for larger organisations, such as FIA, to present a proposal on behalf of its members. However, projects completed as partnerships among a number of national affiliates may prove very practical and easier to manage, as they may choose to focus on a specific common problem, identified in a given regional area.

The call for proposals gives precise details about the eligibility of the applicants. You should read the criteria for eligibility carefully and not hesitate to ask questions, as the first condition to apply for EU funding within a given budget line is to be eligible. Useful information about the practical procedures (where to send the application, etc) and remarks on the budget form are also included in the call for proposals.

## 2. The Grant Application form

Once you are sure to comply with all conditions set in the call for proposals, you may start filling in the application form. You have to bear in mind that for each call for proposals there is a certain limited budget and a limited number of projects will be accepted, sometimes 50 times less than the number of projects presented! Your application has therefore to be carefully written and well argued, and must be accompanied by all administrative documents required. The drafting of the application form and the compilation of all necessary administrative documents may take a while, so make sure you start to work on the application form at least 1 month before the deadline specified in the call for proposals. This does not mean, of course, that for one month, you will exclusively work on this application form, but you might be compelled to devote an important part of your working time to it!

The application form includes 2 parts:

1. **The descriptive part**, includes details about the project coordinator, the partners in the project, a full description of the project and the frequent points on which the Commission needs information: the objectives of the proposed project, a clear timetable, the results expected, the innovative value of your project, the multiplier effect, etc. Each of these elements is very important and should be clearly identified and presented in the application form. In Annex 2 of the Documentation pack you are provided a model grant application form. Bear in mind that each application form is different, depending on the call for proposals under which you are applying for funding, but the main sections generally remain the same.
2. **The budget**: remember that the first time you will draft the budget for a project you may have a lot of questions and points on which you will need clarification. The European Commission's rules related to the drafting of a budget have to be strictly complied with. Most of the time, once you have read the information in the call for proposals you should be able to fill in the budget with no real problem. However, in case you still have doubts, draw a list with all the questions you have concerning the budget before you call the person responsible at the Commission. Modifying the budget during the implementation of the project is possible, but has to be well argued and announced beforehand.

An explanation of each section of the budget will be delivered during the seminar organised on 19-20 February. Until then, please consult the budget included in the grant application form provided in Annex 2. This can be used as a model for your future applications, as it contains the standard cost for certain items, such as interpretation, translation, etc. Of course, depending on the country where the project is organised, these costs may slightly differ. However, certain costs, such as those for travel and accommodation are standard costs recommended by the Commission and should be respected as such.

- **NB:** Please regularly check the updates on the EU funding programmes and take into consideration the deadlines set in each call for proposals. If you endeavour to present a project proposal and you need help, you can ask for the support of FIA's Secretariat in the drafting of the grant application form, or for any other matter related to an application for EU funding.

For an interesting and thorough outline of EU funding, please consult the presentation made at the EMSP (European Member States Platform) central and eastern development seminar (April 2004) on "Tips and hints on EU funding".<sup>91</sup>

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<sup>91</sup> [http://www.ms-in-europe.org/Recent\\_events/CEED/Rose%20Nthiwa%20PP%20Slides.ppt](http://www.ms-in-europe.org/Recent_events/CEED/Rose%20Nthiwa%20PP%20Slides.ppt)