



EUROPEAN COMMISSION

Brussels, 07/04/2009
C/2009/2649

Dear Mr. Sobotka ,

The European Commission thanks the Czech Senate for its interest in the recent proposal to extend the term of protection that applies to sound recordings and performances [COM(2008)464].

The aim of the proposal is indeed to increase the income that performers derive from their recorded performances, especially when the latter are sold as part of a phonogram or when these performances are played on the radio, television or in other places where the public gathers. The principal objective is to protect all of these income streams for performers for a longer period in time and to open up some of these income streams (sales revenue) to such performers who previously did not participate in those streams.

In this respect our analysis of the matter reveals that a term extension for performers only would be less remunerative for this group. The following reasons are relevant: if only the performers' term was extended, most sales activities would cease. Producers are vital for keeping up the marketing of older recordings, both offline and online. If sales revenue were lost, the only revenue available to performers in the extended period is revenue created through performances on the radio, television and in public places. This revenue stream should not be neglected but it is inferior to the 20% participation in sales revenue that the current Commission proposal envisages.

While we agree with the Senate that the contractual situation of performers needs to be improved, it should not be neglected that laws can never fully alter the uneven bargaining power that especially young performers are faced with at the beginning of their career. While it might have been attractive to stipulate that performers should be able to renegotiate contracts in the extended term, the 20% revenue participation provides them with immediate and tangible gain while the option to renegotiate is just an option which most likely will only be employed successfully by a few rich and famous performers.

Mr. Přemysl Sobotka
President of the Senate
of the Parliament of the Czech Republic

The impact assessment is balanced and presents all aspects of a term extension and its impact – both positive and negative - on all relevant stakeholders. It is also the first document that empirically analyses the difference in treatment between two comparable groups in the creative community: authors, a group that enjoys a term of protection covering their life plus seventy years and performers whose term ends after 50 years.

Finally, the Commission is closely following the situation of the audiovisual performer as well. If this issue were to be addressed it would best be done in a separate initiative and through a separate impact assessment: the situation of the audiovisual performer fundamentally differs from that of the phonogram performers.

Yours sincerely

*Margot WALLSTRÖM
Vice-President of the European Commission*