



EUROPEAN COMMISSION

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Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the proposal for a Regulation of the European Parliament and of the Council on establishing the Creative Europe Programme {COM(2011) 785 final}, and apologises for the delay in replying.

The Commission welcomes the positive Opinion of the Bundesrat on the proposed increased budget for the Creative Europe programme, its overall objective of simplifying the implementation and management of the programme and making it more flexible. Regarding the main points raised in the Bundesrat's Opinion the Commission would like to clarify and comment as follows:

1. Creative Europe Programme in the legal form of a Regulation

The Bundesrat questions the choice of a Regulation as legal instrument to establish the Creative Europe Programme, maintaining that, due to subsidiarity and proportionality, cultural policy issues should be adopted on the basis of a decision.

The Treaty provisions which the Creative Europe programme is based on (Article 166, 167 and 173 of the Treaty on the Functioning of the European Union) do not set any legal constraints as to the form of the act. It is true that these articles explicitly exclude any harmonisation of the Member States' laws and regulations. However those provisions do not prescribe the form of the act that should be adopted. Thus the use of a regulation is not prohibited as such, including for the adoption of a financial framework. This approach was already followed in the public health field, which after the Lisbon Treaty is governed by Article 168(5) TFEU.

Moreover, a Regulation is the appropriate choice in order to ensure, without any doubt, its general and direct application. This choice also stems from a smart regulation perspective. Even if the Creative Europe programme is adopted under the form of a general decision the Court of Justice of the European Union would recognise and protect possible third party rights as it would do in the case of a Regulation. Therefore, the fact that the Programme takes the form of a Regulation does not change the situation in regards to the subsidiarity and the proportionality principle. The Commission welcomes the fact that the Legal Service of the Council supports this choice.

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2. Budget allocation

In the explanatory memorandum of the proposal for the Creative Europe Programme as well as the Communication COM(2011) 786 final: Creative Europe: A new framework programme for the cultural and creative sectors, that accompanies the programme proposal, the Commission stated that it will dedicate 15% of the proposed budget to the cross-sectorial strand, 30 % to the Culture Strand and 55% to the MEDIA Strand providing for adequate budget allocation for the different parts of the programme.

3. Intrinsic value of culture

The Commission has noted the Bundesrat's concern about a possibly unduly economic orientation of the programme.

The essence of the proposal is the dual character of all cultural goods: the intrinsic value of culture on one side and the economic benefit on the other without one side being dominant. Therefore, Creative Europe is based on two equally important general objectives, namely the safeguarding and the promotion of cultural and linguistic diversity and the strengthening of the competitiveness of the cultural and creative sectors. It is the overall aim of the programme to contribute to the delivery of the Europe 2020 strategy and to reap the cultural, social as well as the economic benefits of all cultural creative sectors. To this end, cultural and creative operators have to be enabled to work transnationally, to take advantage of digitisation and to address the challenges of globalisation. Transnational cooperation, creation of networks and fostering the distribution of non national works and artists will give access for all citizens to the richness of European culture. It will at the same time contribute to the "flowering of cultures" (Article 167 TFEU) as well as to the competitiveness of cultural and creative operators by establishing a shared space for cultural goods and services. The Creative Europe programme will provide cultural and creative operators with the know-how and competences needed for transnational cooperation, and the use of digital technology, as well as fostering mobility.

The dual base of the programme will also be taken into account during the evaluation of the programme. The evaluation will cover quantitative results measured by SMART indicators but it will also include a qualitative analysis of the impact of the programme.

4. Financial Facility

The financial facility proposed by the Commission aims to facilitate access to finance for SMEs in the cultural and creative sectors. It has been designed on the basis of a wide public and expert consultation. The consultations showed that banks are too reluctant and often inexperienced to correctly assess the risk for cultural and creative projects and identified this as the main obstacle to access to finance. Therefore the proposed facility would not only provide guarantees for loans and lower the financial risk for banks, but would also provide for capacity building in the banking sector in order to establish expertise in this field throughout Europe.

The Commission considers that for projects that can create revenue it is more efficient to support them through a financial facility, as this will allow to multiply the effect of the EU funds and to achieve a much larger impact for the final recipients than if financial support were provided directly (through direct grants for example). However, the

Commission is aware that some cultural operators will not be reached through the facility and these will therefore continue to be supported by grants. It is foreseen to keep a suitable and effective balance between grants and financial instruments also in the future.

5. Merged Committee and information points

The Commission aims for a simplified and efficient implementation and management of the programme. For that reason it has proposed to bring together the current Culture and MEDIA Programme Committees as well as the Cultural Contact Points and MEDIA Desks. This merger will create synergies between the different strands, make access more transparent and accessible for applicants and improve management. For the same reason, the Commission also proposed a lighter comitology procedure which would help to shorten and simplify the award decision and reduce the time between call for proposal and signing of contracts. The latter has been a strong request of beneficiaries and Member States.

I hope that this reply addresses the issues raised in the Bundesrat's Opinion and I am looking forward to continuing our political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*