



Brussels, 2.9.2014
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2014/0251 (NLE)

Proposal for a

COUNCIL DECISION

**On the position to be taken on behalf of the European Union
as regards the establishment of a list of 15 arbitrators for the Protocol on Cultural
Cooperation to the Free Trade Agreement
between the European Union and its Member States, of the one part,
and the Republic of Korea, of the other part**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Free Trade Agreement (FTA) between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part¹ has been provisionally applied since July 2011. The Protocol on Cultural Cooperation (hereafter: the Protocol), concluded by the Parties within the framework of the FTA, established a framework within which the Parties shall cooperate to facilitate exchanges in cultural activities, goods and services, including in the audio-visual sector, and to improve the conditions governing such exchanges.

By derogation from the institutional provisions of the FTA, the Trade Committee shall have no jurisdiction over the Protocol. Instead the Committee on Cultural Cooperation, established within the framework of the Protocol and comprising senior officials from within the administration of each Party, shall exercise all functions of the Trade Committee as regards the Protocol, where such functions are relevant for the purposes of implementing the Protocol. The Committee on Cultural Cooperation met for the first time on 5 December 2013 in Brussels and the Parties on that occasion shared information on their respective legal bases and cultural activities.

With the Protocol, the Parties agreed *inter alia* to establish an arbitration panel of 15 individuals who are willing and able to serve as arbitrators in case of a dispute between the Parties. Each Party must propose five individuals to serve as arbitrators. The Parties must also select five individuals who are not nationals of either Party and who shall act as chairperson to the arbitration panel.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The Member States were consulted on several occasions through the Council's Committee for Cultural Affairs (CAC) in order to identify possible arbitrators for dispute settlement under the Protocol. Following the call to CAC members on 30 July 2013 seven names were proposed for EU arbitrators.

The European Commission received the list of Korean arbitrators on 7 April 2014.

The list of non-EU non-Korean arbitrators was established following consultations with the EU Delegations to OECD and UNESCO (in Paris), and to the UN (in Geneva) as well as with the Korean Party.

The arbitrators were selected on the basis of the following criteria:

- Independence: not affiliated with the government of a Party, able to serve in an individual capacity without taking instructions from any organisation or government with regard to matters related to the dispute. Members of governments of Parties and officials of Union institutions cannot be considered as independent.

¹ OJ L 127, 14.5.2011, p.6.

- Compliance with the Code of Conduct for Members of Arbitration Panels and Mediators (Annex 14-C of the Free Trade Agreement).
- A background in international relations and/or a degree in international law.
- If possible, experience in working on cultural and audio-visual cases, ideally also in an international context.
- If possible, experience of acting as an arbitrator in matters of international trade.

3. LEGAL ELEMENTS OF THE PROPOSAL

The procedure for establishing the arbitration panel is provided for in Article *3bis* of the Protocol. The required steps have been taken, as detailed above.

As indicated in Article *3bis* (c) "the Committee on Cultural Cooperation shall (...) establish a list of 15 individuals who are willing and able to serve as arbitrators". In accordance with Article 11 of the Rules of Procedure of the Committee on Cultural Cooperation the Committee shall adopt the Decision on the establishment of the list of 15 arbitrators by agreement between the Parties (see draft below).

To do so a Council Decision is required on the position to be taken on behalf of the European Union as regards the establishment of a list of 15 arbitrators for the Protocol according to Article 6 of Council Decision 2011/265/EU.

4. BUDGETARY IMPLICATION

N/A

5. OPTIONAL ELEMENTS

N/A

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 167(3) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 23 April 2007 the Council authorised the Commission to negotiate a Free Trade Agreement with the Republic of Korea on behalf of the European Union and its Member States.
- (2) Those negotiations were concluded and the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part² ("the Agreement") was signed on 6 October 2010. The Agreement contains a Protocol on Cultural Cooperation ("the Protocol") which, according to Article 1 thereof, sets up the framework within which the Parties cooperate for facilitating exchanges regarding cultural activities, goods and services.
- (3) Pursuant to Article 15.10(5) of the Agreement, it has been in part provisionally applied by Council Decision 2011/265/EU³ ("the Decision") since 1 July 2011, pending the completion of the procedures for its conclusion. Pursuant to Article 6 of the Decision, the position to be taken by the Union in the Committee on Cultural Cooperation ("the Committee") on decisions having legal effects shall be determined by the Council acting in accordance with the Treaty.
- (4) Article 3bis of the Protocol provides that the Committee shall, promptly after its establishment, establish a list of 15 individuals who are willing and able to serve as arbitrators.

² OJ L 127, 14.5.2011, p. 6.

³ Council Decision 2011/265/EU of 16 September 2010 on the signing, on behalf of the European Union, and provisional application of the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part (OJ L 127, 14.5.2011, p. 1.)

- (5) The Union should determine the position to be taken as regards the establishment of the list of arbitrators.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken by the Union in the Committee on Cultural Cooperation, set up by the Protocol on Cultural Cooperation annexed to the Free Trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part, as regards the establishment of the list of 15 individuals to serve as arbitrators shall be based on the draft decision of the Committee on Cultural Cooperation attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

*For the Council
The President*