5. The Role of Small Firms and the Self-Employed

Small and medium-sized firms and the self-employed, particularly the crafts sector, play an important role in the labour market in all EC Member States. Their contribution to countries' national product is still extraordinarily high. Above all they play a special role in the training of young people and shoulder the main vocational training burden in many Member States. The ESC is currently preparing an own-initiative Opinion on the role of small and medium-sized enterprises (SMEs) in which their importance as employers and their role in vocational training will be thoroughly examined.

6. Environmental Protection and Labour Market Policy

Environmental protection is today in the minds of all sections of the population. Environmental compatibility and consumer friendliness are today an integral part of a product's quality. Industries active in environmental protection are sectors of innovation with progressive technology in all countries of the Community. They are helping more and more to create new jobs and, above all, jobs with a future.

Another important sector for the labour market is waste recycling, which the ESC thinks should be given greater attention. Nor should one overlook the growing importance of sectors dealing with energy-saving.


The Chairman
of the Economic and Social Committee

Michael GEUENICH

Opinion on the proposal for a Council Directive harmonizing the term of protection of copyright and certain related rights (1)

(92/C 287/14)

On 23 March 1992 the Council decided to consult the Economic and Social Committee, under Article 100A of the Treaty establishing the European Economic Community, on the abovementioned proposal.

The Section for Industry, Commerce, Crafts and Services, which was responsible for preparing the Committee's work on the subject, adopted its Opinion on 10 June 1992. The Rapporteur was Mr Pardon.

At its 298th Plenary Session (meeting of 1 July 1992), the Economic and Social Committee adopted by a majority, with 17 dissenting votes and 6 abstentions, the following Opinion.

1. General comments

1.1. The aim of the proposed Directive — to harmonize the term of protection of copyright and certain related rights — reflects the concern voiced by the Committee on many occasions.

1.1.1. For instance, in its Opinion (2) of 25 January 1989 on the Green Paper on Copyright and the challenge of technology — Copyright issues requiring immediate action, the Committee regretted (point 2.6) the 'lack of uniformity in the content of copyright and the term of copyright'. It called (point 3.1.2.3) for an urgent study of the term of copyright: formulae must be found 'for


bringing about harmonization of the protection periods for the various categories of works and other products; which is increasingly necessary if the internal market of the Community is to operate at optimum efficiency.

1.1.2. The Committee therefore welcomes the Commission’s proposal.

1.2. The Commission justifies the need to undertake such harmonization primarily on the following grounds: the proposed harmonization and reinforcement of copyright protection will

— be conducive to innovation and creation within this sphere;

— help dismantle barriers within the EC and solve problems connected with free movement of goods;

— check distortion of competition and be a practical contribution towards furthering the right of establishment and free provision of services;

— ensure greater legal certainty and facilitate management of the relevant intellectual property rights;

— promote effective action to curb piracy and unlawful imports from non-EC countries;

— be a key factor in boosting investment in the cultural, scientific and creative spheres within the Community.

1.3. The Council Resolution of 14 May 1992, which aims to improve protection of copyright and related rights, has the Committee’s full approval.

1.3.1. Like the Council, the Committee takes the view that technological developments have facilitated exploitation of works on an international scale; hence it is important to consolidate protection of copyright and related rights at national, Community and international levels.

1.3.2. In view of the degree of protection their provisions ensure for literary and artistic works and the rights of performers, producers of phonograms and broadcasting organizations, the Berne Convention for the Protection of Literary and Artistic Works, as revised by the Paris Act of 24 July 1971 (Paris Act of the Berne Convention), and the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations of 26 October 1961 (Rome Convention) have enlisted wide international accept-

ance and the number of signatory states is still expanding. It is vital that all Member States accede.

1.3.3. Confronted with the problem of piracy, it is in the interests of Community rights holders protected by these instruments that the minimum level of protection ensured should be guaranteed in as many non-EC countries as possible, without prejudice to the more detailed provisions of bilateral or multilateral agreements. It is desirable that non-EC countries should become party to these instruments.

1.3.4. With this in mind, the Committee welcomes the Member States’ undertaking to accede to the Paris Act of the Berne Convention and to the Rome Convention by 1 January 1995, if they have not already done so, and to ensure effective compliance under their national legal systems.

1.3.5. The Committee considers that it is in the interests of Community holders of copyright and related rights that non-EC countries should ratify or accede to the Paris Act of the Berne Convention and the Rome Convention.

1.3.6. The Committee joins with the Council in calling on the Commission, when negotiating agreements between the Community and non-EC countries, to place particular emphasis on the ratification of, or accession to, these instruments by the non-EC countries concerned as well as on effective compliance with their provisions.

2. Specific comments

2.1. The term of protection varies from one Member State to another.

2.1.1. In the case of copyright, ten of the Twelve have opted for the minimum 50 years’ period provided for in the Berne Convention, while three apply special wartime extensions. However, France grants 70 years’ protection post mortem auctoris for ‘musical compositions with or without words’.

2.1.2. All works are protected for 70 years p.m.a. in Germany and for 60 years p.m.a. in Spain.

2.1.3. The trend in draft legislation and international agreements is to extend the term of protection; in future copyright protection is to be 70 years p.m.a. in Belgium and Greece. The work of the World Intellectual Property Organization is following the same lines.
2.1.4. The term of protection of related rights differs substantially from country to country (0, 20, 25, 30, 40 and 50 years). Here again draft legislation tends to favour an extension (50 years in Belgium, Netherlands and Greece).

2.2. The Commission is proposing that copyright should be protected throughout the author's life and for 70 years after his death, irrespective of the date when the work is lawfully made available to the public (1).

2.2.1. The Commission motivates this proposal mainly on the following grounds:

— harmonization must not compromise rights acquired under existing national laws; as two Member States apply a term of protection lasting 70 years p.m.a. in one case and 60 years p.m.a. in the other, and in other Member States this 50 years' period is extended in certain circumstances, Community harmonization should be aligned on this 70 years' term to avoid recourse to lengthy transition periods which would delay the effective attainment of the internal market accordingly;

— the purpose of posthumous protection is to enable the author, and two generations of his direct descendants, to benefit legitimately from the fruits of his creation; in view of increased life expectation, the minimum duration of 50 years p.m.a. provided for in the Berne Convention should be extended;

— a long term of Community protection provides a high level of protection for authors and their rightholders and plays a key part in strengthening copyright protection;

— such a term of protection is a sine qua non in certain sectors where the publication or creation of works necessitates substantial investments with lengthy amortization periods.

2.2.2. The Committee, while taking into consideration the reasoning contained in point 2.2.1 with which the Commission justifies its proposals, has nevertheless considered the following arguments:

— the present world situation in which 90% of the Bern Convention's signatory States have opted for a duration of 50 years, underlines the necessity for harmonization at a world, and not just at Community level, if barriers are not to be created for third countries;

— the advantages of ever greater protection of the consumer and the facilitation of access to our literary heritage at affordable prices, especially in the developing world, would not be assisted by the unilateral extension of the duration of protection by the Community;

— in case of harmonization at a level of 50 years, the safeguarding of acquired rights in Member States with protection rights of more than 50 years is not a serious problem as the example of Spain, which has already introduced an analogous reduction, clearly demonstrates;

— an extension of the period of protection, with the subsequent increase in the patrimony under protection, could result not in a reduction but indeed in an increase in the phenomenon of piracy.

2.3. In specific cases where the term of protection only starts to run after the author's death, the criterion determining the start of this period is the date when the work is lawfully made available to the public.

2.3.1. Related rights of performers run for 50 years from the first publication of the fixation of the performance or, if there has been no such publication, from the first dissemination of the performance.

2.3.2. Related rights of producers of phonograms run for 50 years from the first publication of the phonogram.

2.3.3. Related rights of producers of the first fixations of cinematographic works and of sequences of moving images expire 50 years after the first publication.

2.3.4. Related rights of broadcasting organizations run for 50 years from the first transmission of a broadcast.

2.3.5. As in the case of copyright, the harmonization proposed for related rights cannot compromise rights acquired under existing national laws.

3. Conclusions

3.1. In the Committee's view, it is essential that protection of copyright and related rights, in particular the term of protection, should be harmonized throughout the Community.

3.1.1. The Commission must endeavour to ensure that non-EC countries respect these rights.

3.2. The Commission's proposal for a term of protection of 70 years after the death of the author

(1) Article 1 (1) of the proposed Directive. For specific cases, see Article 1 (2) to (6).
is consistent with the current law of only one Member State. The majority of Member States have no longer than 50 years after the death of the author. Further a Community agreement on 50 years may be a more useful base to facilitate international agreement on the term of protection. In these circumstances the Council should give serious consideration to adoption of 50 years after the death of the author rather than 70 years.

3.2.1. Whatever differences of opinion may exist on this point, the Committee would stress that the crux of the matter is that this term of protection should be exactly the same in all Member States.

Done at Brussels, 1 July 1992.

The Chairman
of the Economic and Social Committee

Michael GEUENICH