European Commission: “Distribution” Section of French Tax on Television Services Validated

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Amélie Blocman
Légipresse

On 21 November 2013, the European Commission validated the arrangements for the “distribution” section of the French tax on television services (“TST-D”), which finances almost 40% of the annual budget of the National Centre of the Cinema and the moving image (*Centre National du Cinéma et de l’Image Animée* - CNC). Introduced in 2007 and codified in Articles L. 115-6 et seq. of the Cinema and Moving Image Code, the tax is a contribution made by television editors and distributors, including telecom operators, in favour of audiovisual creation. Its tax base was extended in the 2012 Finance Act to include the operator’s entire turnover from subscriptions, not merely the part corresponding to television. This was done to counteract the practice of certain operators, which consisted of isolating television services within their triple-play subscriptions in order to substantially reduce their taxable base. The reform had been suspended, however, because of a disagreement between France and the European Commission. Further to the judgment delivered by the Court of Justice of the European Union on 27 June 2013, in which it found that the tax on electronic communications operators did not contradict Community principles (see IRIS 2013-7/3), the modernisation of the arrangements for the tax on television services will be able to enter into force at last. As soon as the reform is applied in the 2014 budget year, it will make it possible to take into account all the modes of accessing television services, including via the Internet. “This is an important step forward in favour of cinematographic and audiovisual creation, validating the fundamental elements of the cultural exception by bringing them up to date. This principle of the parties upstream of works being shown that benefit from them having to contribute to their financing is thus adapted to the digital era”, said the Minister of Culture Aurélie Filippetti in a press release. By a quirk of timing, the channel TF1 raised a priority question on constitutionality in an appeal before the administrative court claiming the repayment of EUR 1.9 million paid in 2011 in tax by editors and distributors of television services. On 6 November 2013, the Conseil d’État sent TF1’s priority question on constitutionality to the Constitutional Council, which found that Article L. 115-6 c) of the Cinema Code was contrary to the principle of equality with regard to the payment of taxes (Article 13 of the 1789 Declaration of the Rights of Man and of the Citizen). It remains to be seen whether the Constitutional Council will declare the provision unconstitutional, which might then alter the economy of the tax. The Council has three months to issue its decision.

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http://www.culturecommunication.gouv.fr/Espace-Presse/Communiques-de-presse/Aurelie-Filippetti-ministre-de-la-Culture-et-de-la-Communication-se-rejouit-de-la-validation-du-dispositif-de-taxe-sur-les-services-de-television-distribution

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