[FR] Conseil d’Etat cancels decree extending national collective agreement for cinematographic production sector

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On 24 February 2015, the Conseil d’Etat announced the cancellation of the decree extending the application of the national collective agreement for the cinematographic production sector, signed in July 2013, to the entire profession (see IRIS 2013-7/12). The agreement lays down the remuneration for workers and technicians in the cinema sector; it was originally signed in January 2012 by the employees’ trade unions and the association of independent producers (Association des Producteurs Indépendants - API), after ten years of negotiations and against a background of serious inter-professional tension. Various employers’ organisations opposed to the text had appealed to the Conseil d’Etat on the grounds that powers had been exceeded. They called for the decree extending the collective agreement to be cancelled due to the lack of representativeness of the signatory employers. Although most of the applicant parties withdrew after the producer-employers’ organisations signed a codicil in October 2013 introducing a waiver mechanism for low-budget films (see IRIS 2013-10/24), the association of producers of publicity films (Association des Producteurs de Films Publicitaires) maintained the appeal.

In its decision, the Conseil d’Etat recalled that according to the first paragraph of Article L. 2261-15 and Article L. 2261-27 of the Employment Code if a sector agreement has not been signed by at least one organisation of employers and one organisation of employees which is representative of its field of application, it cannot legally be extended. It noted that the API, the only employers’ organisation to have signed the national collective agreement for cinematographic production on 19 January 2012, included just four groups (Pathé, Gaumont, UGC and MK2) in its membership, representing a total of nine cinematographic production companies out of a total of more than 2,000, in 2011. In recent years, these four groups have accounted for the production of approximately 3.5% of films originating in France (representing just 6% of the total number of casual workers employed), and have produced neither documentaries, advertising films or shorts. Moreover, distributing films and operating cinema theatres form an essential part of their activity, and neither falls within the cinematographic production sector. As a result, on the date on which it signed the national collective agreement for the cinematographic production sector, the API could not be considered as “representative” of the field of

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application of the agreement. The fact that, subsequent to the decree at issue, a number of organisations representing employers had joined the agreement was considered to be irrelevant. The decree was therefore deemed flawed and was cancelled. The Conseil d'Etat indicated that there was no need to limit the effects of the cancellation, since the clauses in fixed-term contracts laying down the remuneration to be paid to technicians under the agreement were still applicable despite the cancellation, and that application of the equivalence scheme in the sector was the result of a later decree and not of the extended agreement.

Reacting to this cancellation, the Minister for Culture insisted on "recalling the long process of negotiation which made it possible for the social partners to reach the conclusion of an appropriate agreement structure". Since a number of representative professional organisations in the sector had joined the agreement, the Government has embarked on a new procedure for extending the agreement and its codicil. The Minister announced that the corresponding decree ought to be published sometime in March, and that the aim of the procedure was to ensure that the agreement was unquestionably valid from a legal point of view.

Conseil d'Etat, 24 février 2015 - Association des producteurs de cinéma et autres

http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-24-fevrier-2015-Association-des-producteurs-de-cinema-et-autres-Federation-Communication-Conseil-Culture-F3C

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