



European Communities

EUROPEAN PARLIAMENT**SESSION DOCUMENTS**

English Edition

1987-88

8 December 1987

SERIES A

DOCUMENT A 2-0246/87

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REPORT

drawn up on behalf of the Committee on Legal Affairs and
Citizens' Rights

on the proposal from the Commission of the European
Communities to the Council
(COM(86) 146 final - Doc. C 2-38/86) for a directive on
the coordination of certain provisions laid down by law,
regulation or administrative action in Member States
concerning the pursuit of broadcasting activities

Rapporteur: Mr R. BARZANTI

WG(VS1)/8768E

PE 113.272/fin.
Or. It.

EXPLANATION OF SYMBOLS APPEARING ON THE COVER PAGE OF SERIES A SESSION DOCUMENTS



= Consultation procedure requiring a single reading



= Cooperation procedure (first reading)



= Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament



= Parliamentary assent which requires the votes of the majority of the current Members of Parliament

On 5 June 1986, the Council requested the European Parliament to deliver an opinion on the proposal from the Commission on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities.

At the sitting of 11 June 1986, the proposal was referred to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Youth, Culture, Education, Information and Sport for their opinions.

On 26 June 1986, Mr Barzanti was appointed rapporteur.

The Committee on Legal Affairs and Citizens' Rights considered the proposal for a directive at its meetings of 29, 30 and 31 October 1986, 17 and 18 December 1986 and 5 and 6 February 1987.

The committee resumed its consideration of the proposal, together with the draft report, at its meetings of 26 and 27 May, 22 and 23 September, 30 September and 1 October, 20 and 21 October and 1 and 2 December 1987. At the last meeting the committee unanimously approved the Commission's proposal with the amendments attached to this report.

The committee then unanimously adopted the draft legislative resolution as a whole.

The following took part in both these votes: Lady ELLES, chairman, Mrs VAYSSADE and Mr VERDE I ALDEA, vice-chairmen; Mr BARZANTI, rapporteur; Mr ALBER, Mr DONNEZ, Mr GARCIA AMIGO, Mr GAZIS, Mr HOON, Mr JANSSEN VAN RAAY, Mr LAFUENTE LOPEZ, Mr MARQUES MENDES, Mrs MIRANDA DE LAGE, Mr PORDEA, Mr ROTHLEY, Mr SCHINZEL (deputizing for Mr Vetter) and Mr STAUFFENBERG.

The opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Youth, Culture, Education, Information and Sport are attached.

The report was tabled on 4 December 1987.

Pursuant to Rule 71(1) of the Rules of Procedure the President will set a deadline for the tabling of amendments to this report.

C O N T E N T S

	<u>Page</u>
AMENDMENTS TO THE PROPOSAL FOR A DIRECTIVE	5
A. DRAFT LEGISLATIVE RESOLUTION	31
B. EXPLANATORY STATEMENT	32

ANNEX

List of numbers of amendments which were rejected by the committee responsible but obtained at least five votes (Rule 36(6) of the Rules of Procedure)	46
- Opinion of the Committee on Economic and Monetary Affairs and Industrial Policy	47
- Opinion of the Committee on the Environment, Public Health and Consumer Protection	55
- Opinion of the Committee on Youth, Culture, Education, Information and Sport	63

The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following amendments to the Commission's proposal and draft legislative resolution together with explanatory statement:

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens'
Rights

Proposal for a Council Directive

concerning broadcasting activities

The Council of the European Communities,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 57(2) and 66,

Unchanged

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the objectives of the Community as laid down in the Treaty include an ever closer union among the peoples of Europe and closer relations between the States belonging to the Community, ensuring the economic and social progress of its countries by common action to eliminate the barriers which divide Europe, the constant improvement of the living conditions of its peoples as well as the preservation and strengthening of peace and liberty;

Unchanged

Whereas for these purposes, the Treaty provides for establishing a common market, including the abolition, as between Member States, of obstacles to freedom of movement for services, the institution of a system ensuring that competition in the common market is not distorted, and the approximation of the provisions of Member States to the extent required for the proper functioning of the common market;

Unchanged

Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the principal means to promote the above objectives of the Community which are at the same time of a political, economic, social, cultural and legal nature;

Unchanged

Whereas the attainment of the above objectives of the Community calls, almost 30 years after the establishment of the Community, for transition from the stage of the opening up of national markets for the production and distribution of

Unchanged

broadcasts to the stage of one internal market for broadcasts;

Whereas the achievement of this common market presupposes, in addition to the elimination of obstacles to the free movement of broadcasts, the adaptation and promotion of the factors of production and distribution in the Community of broadcast programmes in order to ensure that the enlarged market for broadcast programmes will operate similarly to a domestic market;

Unchanged

Whereas for this purpose or, in the words of the Treaty, in order to make it easier for persons to take up and pursue activities as self-employed persons, including the activities of producing or distributing broadcast programmes, the Treaty provides for the issuing of directives for the coordination of the provisions concerning the taking up and pursuit of such activities;

Unchanged

Amendment No. 1

Whereas one of the purposes of this directive is to ensure the efficiency of the public broadcasting system by establishing conditions of fair competition in the Common Market;

Whereas the broadcasting of commercial advertisements is a service within the meaning of the Treaty because it is provided for remuneration; whereas the liberalization of this service helps to promote trade in goods and services and has therefore to be given priority under the Treaty;

Amendment No. 2

Delete

Whereas the broadcasting of other messages is also a service within the meaning of the Treaty because this activity is normally provided for remuneration and is, by its nature, not governed by the provisions of the Treaty relating to freedom of movement for goods such as other media like videocassettes, videodiscs, records, newspapers, magazines, periodicals and books;

Amendment No. 3

Whereas the broadcasting of other messages, including advertising, is _____ a service within the meaning of the Treaty because this activity is normally provided for remuneration and is, by its nature, not governed by the provisions of the Treaty relating to freedom of movement for goods such as other media like videocassettes, videodiscs, records, newspapers, magazines, periodicals and books;

Whereas the granting by a foreign broadcasting organization or other right holder to a domestic cable operator of the authorization required by copyright or other laws to relay the foreign programmes also constitutes a service within the meaning of the Treaty because it is normally provided for remuneration;

Unchanged

Whereas the Treaty does not exclude from its scope any such service, by reason of its particular nature, such as its cultural aspects or implications, but provides for the liberalization and free movement of all services normally provided for remuneration which are therefore and without prejudice as to their cultural or other contents considered by the Treaty to be economic activities, a harmonious

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens'
Rights

development of which is one of the objectives of the Community;

Unchanged

Whereas the Treaty guarantees freedom to provide services within the Community, including broadcasts, without restrictions in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended;

Unchanged

Whereas this individual right to provide broadcasts to recipients in other Member States, including cable operators, free of restrictions is a specific Community law manifestation of the more general European human right to freedom of expression which includes freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers, enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all Member States;

Unchanged

Whereas, for this reason, freedom to provide broadcasts under Community law must be implemented, when applying the Treaty and issuing directives for the coordination of the provisions concerning the pursuit of the activities of broadcasters and cable operators, in the light of and at least to the extent guaranteed by the corresponding freedoms provided for in Article 10(1) of the European Convention on Human Rights;

Unchanged

Whereas the same parallelism must be respected when applying the Treaty and issuing directives for the coordination of provisions limiting the exercise, on the one hand, of freedom to provide broadcasts which are authorized under Article 56(1) of the Treaty or justified on grounds of general interest and, on the other hand, of the freedom to receive and impart information and ideas through broadcasts which are authorized under Article 10(2) of the European Convention on Human Rights;

Unchanged

Whereas the disparities referred to in the field of broadcast advertising have the additional effect of impeding the free movement of goods and services inasmuch as the opportunities to advertise those goods and services throughout the Community, which are an integral part of the process of marketing them, are subject to variable restrictions and prohibitions;

Unchanged

Whereas the free movement of broadcast within the Community is also impeded where the right to

Text proposed by the Commission
of the European Communities

communicate a particular programme is assigned to different persons in different Member States, allowing the assignees to rely upon their rights to prohibit the cable retransmission of a foreign broadcast in different Member States;

Whereas all such restrictions on freedom to provide broadcasting services within the Community shall be abolished under the Treaty both by applying Article 59 of the Treaty and, in so far as such restrictive rules treat broadcasting services identically whatever their origin or the nationality or place of establishment of the persons providing them and in so far as those laws are justified on grounds of general interest, by issuing directives for the coordination of the provisions concerning the pursuit of activities as self-employed persons, including activities of broadcasters and cable operators;

Whereas the purpose of this coordination is to make it easier for persons to pursue activities as self-employed persons, in particular, to make it easier for broadcasters and cable operators to pursue the transmission and the retransmission of broadcast programmes and advertisements and thus to abolish obstacles to the free movement of broadcasts and, more generally, to the free flow of information and ideas within the Community;

Whereas under the Treaty, nationals of Member States providing services from within a Member State to a person in another Member State may pursue their activities exclusively under the conditions imposed by the law of the first Member State;

Whereas for this reason, for the reason mentioned before the last recital and in order to avoid the cumulative application to the same broadcast, broadcaster or cable operator of the broadcasting law of all or several Member States, it is necessary but sufficient that all broadcasts comply with the law of the Member State in which they originate;

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Unchanged

Unchanged

Amendment No. 4

Whereas this directive lays down the minimum rules needed to guarantee freedom of transmission in broadcasting; whereas, therefore, it shall not affect the responsibility of the Member States and subdivisions thereof with regard to the organization and financing of broadcasting and the content of programmes; whereas the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community shall therefore remain unaffected;

Unchanged

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee on
Legal Affairs and Citizens' Rights

Whereas it is necessary in the common market that all broadcasts originating and intended for reception with the Community, and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of the present Directive in order to protect consumers as listeners and viewers, in particular young persons, as well as authors, producers, broadcasters and performers, advertisers and advertising agencies and the interests of the public in general:

Unchanged

Amendment No. 5

Whereas it is vital for the accuracy and source of all news and information to be checked with the utmost care prior to transmission;

Amendment No. 6

Whereas checks on respect for national law as coordinated by this Directive in the originating Member State are sufficient under Community law to ensure free circulation of broadcasts without secondary control on the same grounds in each of the receiving Member States;

Whereas the requirement that the originating Member State verify respect for national law as coordinated by this Directive is sufficient under Community law to ensure free circulation of broadcasts without secondary control on the same grounds in each of the receiving Member States;

Amendment No. 7

Whereas Member States must ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in broadcasts or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of broadcast information and of the information sector as a whole;

Whereas the present Directive is without prejudice to existing or future Community acts of harmonization which are or will be necessary, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions;

Unchanged

Whereas the coordination of national laws designed to secure and promote distribution and production of television programmes in respect of provisions that are not based upon grounds of general interest, public policy, public security or public health is not necessary since they cannot be invoked to restrict the free circulation of broadcasts within the Community;

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Whereas such coordination is nevertheless needed at the Community level to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities;

Unchanged

Whereas minimum requirements in respect of all public or private Community television programmes for audio-visual productions originating in the Community are an effective means to promote production, independent production and distribution in the above-mentioned industries and are complementary to other instruments which are already or will be proposed to favour the same objective;

Unchanged

Amendment No. 8

Whereas additional Community measures to promote the international competitiveness of European cinema and television production are needed, in view of the strength of the non-European media industry, not only in order to achieve the economic objectives of the Community but also to counteract any loss of linguistic and cultural identity;

Whereas the vulnerability of European cultural industries is not due to lack of creative talent, but to fragmented production and distribution systems and whereas it is therefore necessary to promote markets of sufficient size for television productions in the Member States to recover necessary investments not only by establishing common rules opening up national markets but also by offering productions of each kind from the Community an adequate part in television programmes of all Member States, which will at the same time promote the presence of other European cultures in the television programmes of each Member State;

Unchanged

Whereas the progressive establishment of a general preference for the distribution of television programmes of all kinds produced within the Community, and specific measures designed to promote employment and small and medium-sized enterprises within the Community's cultural industries, allows for the necessary adaptation of audio-visual production facilities to meet the increasing demand for television programmes;

Unchanged

Whereas, in particular, a preference for the first broadcast of new Community productions of a creative kind will promote actual and future employment in the industries mentioned in the preceding recitals;

Unchanged

Text proposed by the Commission
of the European Communities

Whereas, in addition, a preference for independent productions, made outside the broadcast undertaking, will stimulate new sources of television production, especially the creation of small and medium-sized enterprises and offer new opportunities and outlets to the marketing of creative talents of employment of cultural professions and workers;

Whereas the admission of advertising in cross-frontier broadcasts will create the conditions in which broadcast advertising should become lawful in all Member States thereby establishing a common market for broadcast advertising throughout the Community;

Whereas Member States should limit the volume of broadcast advertising, so that it does not detract from the function of radio and television as media for information, education, culture and entertainment and the demand for advertising in internal broadcasts of each Member State is largely met taking also into account the interests of other media;

Whereas in order to ensure that the interests of consumers as listeners and viewers of broadcasts are fully and properly protected, it is essential for broadcast advertising to be subject to a number of rules and standards, the compliance with which is checked prior to transmission;

Whereas the implementation of the free cross-frontier movement of broadcasts implies a legal framework at Community level containing certain minimum standards on advertising, but it is for the Member States to complete these provisions at the national level; and whereas the Member States must maintain the right to introduce stricter standards for domestic transmissions such as refusing to permit the broadcasting of advertisements on Sundays or public holidays;

Whereas it is necessary to ensure that consumer interests are respected, especially bearing in mind the considerable impact of advertising on listeners and viewers, and thus it is necessary, in accordance with the solution adopted in the majority of Member States, to prohibit all advertisements promoting cigarettes and tobacco products and to introduce strict rules relating to the advertisement of alcoholic products and to permit those Member States which wish to do so to prohibit completely such advertisements in their internal broadcasts;

Amendments tabled by the Commission
on Legal Affairs and Citizens' Rights

Unchanged

Amendment No. 9

Delete

Amendment No. 10

Whereas Member States should limit the volume of broadcast advertising, so that it does not detract from the function of radio and television as media for information, education, culture and entertainment and the demand for advertising in internal broadcasts of each Member State is largely met taking also into account the interests of other medias, with a view to safeguarding the pluralism of the information sector as a whole;

Amendment No. 11

Whereas in order to ensure that the interests of consumers as listeners and viewers of broadcasts are fully and properly protected, it is essential for broadcast advertising to be subject to a number of rules and standards ;

Unchanged

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens'
Rights

Whereas, more particularly, advertisements can unduly influence younger people if special standards are not laid down to prevent it;

Unchanged

Whereas because of the constant rise in the cost of audio-visual programmes sponsorship is developing greatly and playing an increasing role in the financing of programmes; whereas sponsorship should not be excluded from such financing, but it should be strictly ensured that sponsors do not exercise any improper influence on the contents of programmes and that there is no link between programmes and advertising within or around them which can be taken to suggest this;

Amendment No. 12

Whereas because of the constant rise in the cost of audio-visual programmes sponsorship is developing greatly and playing an increasing role in the financing of programmes; whereas sponsorship should not be excluded from such financing, but it should be strictly ensured that sponsors do not exercise any _____ influence on the contents of programmes and that there is no link between programmes and advertising within or around them which can be taken to suggest this;

Whereas, given the large degree of flexibility for Member States to fix the total volume of advertising time in internal broadcasts, Member States may restrict the retransmission of cross-frontier broadcast advertising exceeding 15% of each broadcast receivable each day by the public in those Member States, in order to give a certain guarantee to consumers in receiving countries and to avoid important distortions of competition between broadcasters in the Community;

Amendment No. 13

Whereas a lower limit than 15% could have the effect of excluding certain existing broadcasters in some Member States from free provision of their services within the Community;

Whereas it is vital to fix a daily limit of 15% as an effective means of harmonizing the Member States' laws;

Whereas it is accepted that the protection of the physical, mental and moral development of children and young persons is in the general interest;

Unchanged

Whereas in a common market for broadcasting, broadcasters should be subject to similar obligations in relation to the protection of children and young persons against possible harmful effects of confrontation with inappropriate audio and audio-visual material;

Unchanged

Whereas the Community, while ensuring the free movement of broadcasts, must ensure respect for copyright and related rights;

Unchanged

Whereas a preference to arrive at this result by an agreement freely entered into by the various interested parties, that is a contractual solution, is generally recognized;

Unchanged

Text proposed by the Commission
of the European Communities

Whereas a sufficiently long period for negotiation should be allowed to permit these parties to conclude such agreements respecting the interests of each of them;

Whereas, nevertheless, in the absence of an agreement and if a cable operator has manifested his desire to retransmit a certain programme coming from another Member State, the balance between these interests has to be safeguarded by a system of legal licences providing for adequate remuneration which the particular Member State will be obliged to introduce under these circumstances.

Amendments tabled by the Committee
on Legal Affairs and Citizens'
Rights

Unchanged

Amendment No. 14

Whereas, nevertheless, in the absence of an agreement and if a cable operator has manifested his desire to retransmit a certain programme coming from another Member State, the balance between these interests has to be safeguarded by the decision of an arbitration body fixing the adequate remuneration which the particular Member State will be obliged to introduce under these circumstances;

Amendment No. 15

Whereas in a common market for broadcasting, broadcasting companies should be subject to similar obligations in relation to the right to reply, to ensure that this right may be effectively exercised by anyone whose specific interests have been harmed by a statement in a radio or television broadcast;

Amendment No. 16

Whereas the Council must ensure by means of a separate decision that the Community directive takes precedence over the European Convention on broadcasting without frontiers currently being drawn up at the Council of Europe, to enable the Community, through the work of its institutions, to fulfil the task assigned to it of creating a common market in the field of broadcasting;

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens Rights

Amendment No. 17

Whereas it is vital to stress the
requirement that, in accordance with
Article 5 of the EEC Treaty, Member
States refrain from concluding international
agreements on this subject before the
Council has adopted this directive

Amendment No. 18

Whereas this directive is only an initial
step towards the necessary gradual
development of the comprehensive European
'media' policy advocated by the
European Parliament in its resolution of
10 October 1985;

CHAPTER I: GENERAL PROVISION

Article 1

1. Each Member State shall ensure that all internal broadcasts originating on its territory comply with its law applicable to broadcasts intended for the public in that Member State.

2. Without prejudice to Article 14 and the provisions of Chapter V, Member States shall not restrict the reception and retransmission on their territories of broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive.

3. This Directive shall not apply to broadcasts intended exclusively for reception in States other than Member States.

Article 1

Amendment No. 19

1. Each Member State shall ensure that all _____ broadcasts originating on its territory comply with its law applicable to broadcasts intended for the public in that Member State.

Amendment No. 20

2. Without prejudice to _____ the provisions of Chapter V, Member States shall not restrict the reception and retransmission on their territories of broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive.

Amendment No. 21

2a. In accordance with the provisions of Article 5 of the EEC Treaty, Member States shall monitor developments with a view to preventing abuses of dominant positions which might be detrimental to trade between Member States or restrict the pluralism and freedom of broadcast information and of the information sector as a whole.

Unchanged

CHAPTER II:

PROMOTION OF DISTRIBUTION AND
PRODUCTION OF TELEVISION
PROGRAMMES

Article 2

1. Member States shall ensure that internal broadcasters of television reserve at least 30% of their programming time not consisting of news, sporting events and game shows, advertising or teletext services for broadcasts of Community works within the meaning of Article 4, of which in the case of initial transmissions at least one third shall be reserved for first broadcasts in the Community

2. This percentage shall be progressively increased to reach at least 60% after the expiry of three years from the date specified in Article 22.

3. For the purposes of this Article,

- in cases of simultaneous, unaltered and unabridged retransmission, internal broadcasts from other Member States shall be regarded in their entirety as Community works;
- in cases of co-produced Community works, the first broadcast by each of the co-producers shall be considered a first broadcast in the Community;

CHAPTER II:

PROMOTION OF DISTRIBUTION AND
PRODUCTION OF TELEVISION
PROGRAMMES

Article 2

Amendment No. 22

1. Member States shall ensure that internal broadcasters reserve an adequate proportion of their programming time not consisting of news, sporting events and game shows, advertising or teletext services for broadcasts of Community works within the meaning of Article 4, of which in the case of initial transmissions at least one third shall be reserved for first broadcasts in the Community.

Amendment No. 23

2. For the purposes of applying paragraph 1, the proportion shall be considered adequate if Community works take up at least 60% of the programming time of each broadcaster. This percentage shall be achieved gradually through appropriate criteria and timetables after the expiry of three years from the date specified in Article 22. However, a proportion equal to at least 30% of the programming time of each broadcaster shall also be considered adequate in the case of television programmes distributed on a subscription basis and programmes on specific and specialized subjects whose nature and variety justify such a proportion.

3. For the purposes of applying this Article,

- in the case of simultaneous, unaltered and unabridged retransmission, _____ broadcasts from other Member States shall be regarded in their entirety as Community works;
- in cases of co-produced Community works, the first broadcast by each of the co-producers shall be considered a first broadcast in the Community;

Amendment No. 24

- in the case of co-productions by producers from Member States and producers from EFTA or Council of Europe States, the first broadcast by each of the Community co-producers shall be considered a first broadcast in the Community;

Amendment No. 25

- where the Community contribution to the total production cost of co-productions other than those specified in the preceding indent is less than 51%, the extent to which broadcasts are considered broadcasts of Community works shall be proportional to the Community contribution.

Article 3

1. Member States shall ensure that, as regards their initial transmissions, internal television broadcasters reserve at least 5% of their programming budget for Community works, within the meaning of Article 4, created by independent producers.

2. This percentage shall be progressively increased to reach at least 10% after the expiry of three years from the date specified in Article 22.

Article 3

Amendment No. 26

1. Member States shall ensure that, as regards their primary broadcasts and original programmes, television broadcasters reserve at least 5% of their programming budget for Community works, within the meaning of Article 4, created by producers who are independent of the television companies.

Amendment No. 27

2. This percentage shall be progressively increased to at least 10% after the expiry of three years from the date specified in Article 22 and should be achieved by allocating adequate time to recent works, i.e. works produced within a reasonable period (five years at most) before their transmission.

Amendment No. 28

3. For the purposes of applying this Article, co-productions by producers from Member States and producers from EFTA or Council of Europe States shall be regarded as Community works.

Text proposed by the Commission
of the European Communities

Article 4

Community works within the meaning
of this Chapter are:

(a) works made by producers from
a Member State;

(b) works made by producers from
several Member States;

(c) works made by producers from
one or several Member States
and non-Member States where
the Community proportion of
total production costs is at
least 70%.

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Amendment No. 29

4. For the purposes of applying this
Article, where the Community
contribution to the total production
cost of co-productions other than
those specified in the preceding
paragraph is less than 51%, the extent
to which they are regarded as
Community works shall be proportional
to the Community contribution.

Article 4

Community works within the meaning
of this Chapter are:

Amendment No. 30

(a) works made mainly with authors and
workers resident in one or more
Member States by producers legally
established in one or more Member
States;

Amendment No. 31

(b) works made by producers established
in one of the EFTA or Council of
Europe States that have concluded
mutual agreements with the
Community;

Amendment No. 32

(c) co-productions made by producers
established in Member States and
EFTA or Council of Europe States
without prejudice to the
provisions of Article 4a, second
paragraph;

Amendment No. 33

(d) co-productions by producers estab-
lished in Member States and non-
Member States other than EFTA and
Council of Europe States, where the
Community contribution to the total
production cost is at least 51% or
where the production of those
works is supervised by one or more
producers legally established in
Member States.

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Amendment No. 34

Article 4a

This Chapter shall not apply to local
broadcasts.

Amendment No. 35

The Community shall enter into
negotiations with States of EFTA and
the Council of Europe to formulate
regulations on a basis of reciprocity
that correspond to the provisions of
Articles 2 to 4.

Amendment No. 36

With a view to ensuring a harmonious
development of cultural resources and
the balanced development of production
and employment in line with Community
objectives, a report shall be submitted
every two years by the Commission to
Parliament on compliance with the
provisions of this Chapter and the
state of production in the different
Member States.

CHAPTER III:

Unchanged

BROADCAST ADVERTISING AND SPONSORING

Amendment No. 37

Section 1: Internal broadcasts

Delete

Article 5

Article 5

Member States shall fix the amount
of time allowed for broadcast
advertising so that:

Amendment No. 38

1. Member States shall ensure that
broadcast advertising and the maximum
amount of time allotted to it by the
companies authorized to broadcast it
are determined in such a way that:

- (a) it does not detract from the
function of radio and television
as media for information,
education, culture and
entertainment and

- (a) it does not detract from the
function of radio and television
as media for information,
education, culture and
entertainment and

Text proposed by the Commission
of the European Communities

- (b) the demand for broadcast advertising can be largely met, also taking into account the interests of other media.

Article 6

1. Without prejudice to the provisions of other Community acts, Member States shall ensure that broadcast advertising in internal broadcasts is checked prior to transmission and is broadcast only if it complies with the rules of this section.

2. Member States shall ensure that, in the case of broadcasts that do not respect these requirements, appropriate measures sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 7

1. Broadcast advertising shall be clearly recognizable as such.
2. Broadcast advertising shall be grouped in blocks and kept quite separate from the other programme material.
3. Broadcast advertising shall not interrupt coherent programme items except where the interruption does not constitute an unreasonable interference because:

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Amendment No. 39

- (b) the demand for broadcast advertising can be largely met, also taking into account the interests of other media, with a view to safeguarding the pluralism of information.

Amendment No. 40

2. At all events, television advertising shall not take up more than 15% of the total time of the broadcasts receivable by the public each day or more than 18% of each hour of broadcasting.

Amendment No. 41

3. Member States shall also ensure that television advertising does not take up an excessive amount of time at peak viewing times.

Article 6

Amendment No. 42

1. Without prejudice to the provisions of other Community acts, Member States shall ensure that, in respect of broadcasting companies under their jurisdiction, advertising _____ is broadcast only if it complies with the rules of this section.

Unchanged

Unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

- (a) the advertising is scheduled in such a way as to avoid prejudice to the integrity and value of programmes or their natural continuity;
- (b) the advertising is inserted in a natural break within the programme and
- (c) the duration and nature of the programme is such as to permit that advertising break.

Article 8

Broadcast advertising shall not:

- (a) offend against prevailing standards of decency and good taste;
- (b) contain any racial or sexual discrimination;
- (c) be offensive to religious or political beliefs;
- (d) seek to rely on fear without justifiable reason;
- (e) encourage behaviour prejudicial to health or safety.

Article 9

Broadcast advertising for cigarettes and other tobacco products shall be prohibited.

Article 10

Broadcast advertising for alcoholic beverages shall comply with the following rules:

- (a) it shall avoid anything that might prompt or encourage children and young persons to consume alcohol;
- (b) it shall not link the consumption of alcohol to physical performance or to driving;

Article 8

Amendment No 43

Broadcasting advertising shall not:

- (a) offend against prevailing standards of decency; _____
- (b) contain any discrimination on the grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) seek to rely on fear without justifiable reason;
- (e) encourage behaviour prejudicial to health or safety.

Unchanged

Article 10

Amendment No. 44

Broadcast advertising for alcoholic beverages shall comply with the following guidelines:

- (a) it should avoid anything that might prompt or encourage children and young persons to consume alcohol and prohibit the participation of children and young persons in such advertising;
- (b) it should not link the consumption of alcohol to physical performance or to driving;

Text proposed by the Commission
of the European Communities

(c) it shall not create the impression that the consumption of alcohol contributes to social or sexual success;

(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(f) it shall not place undue emphasis on the alcoholic content of beverages.

Article 11

Broadcast advertising shall further comply with the following rules for the protection of children and young persons:

(a) it shall not directly exhort children and young persons to buy a product or a service or exploit their immaturity of judgement and experience;

(b) it shall not encourage children and young persons to persuade their parents or others to purchase the goods or services being advertised;

(c) it shall not exploit the special trust children and young persons place in parents, teachers or other persons;

(d) it shall not unreasonably show children and young persons in dangerous situations.

Article 12

Undertakings shall not exert improper influence over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or programme which could reasonably be taken to suggest or imply that undertakings, for advertising

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

it should not create the impression that the consumption of alcohol contributes to social or sexual success;

it should not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it should not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(f) it should not place undue emphasis on the alcoholic content of beverages.

Unchanged

Article 12

Amendment No. 45

Member States shall allow the sponsorship of broadcast programmes. Undertakings shall not exert any de jure or de facto influence over the programme as a whole or over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or pro-

Text proposed by the Commission
of the European Communities

purposes, have influenced parts of the programme which are not an advertisement. In particular,

(a) programmes shall not refer to specific undertakings, products or services in a way not necessary for their content;

(b) programmes, which are funded or co-funded by non-broadcasters shall be identified as such; however, the identification shall be restricted to a credit at the beginning and end of the programme;

(c) programmes shall not contain any promotion equivalent to advertising, especially on behalf of those who funded or co-funded them;

(d) advertising within or around programmes shall not be allowed if there is any link in content or presentation with the programme.

Article 13

1. Member States shall remain free to prohibit or restrict broadcast advertising on Sundays and Public Holidays and to prohibit all broadcast advertising for alcoholic beverages.

2. Member States shall remain free to apply more detailed or stricter rules with regard to Articles 7, 8 and 10, 11 and 12.

Section 2: Cross-frontier television
broadcasts

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

gramme which could reasonably be taken to suggest or imply that undertakings, for advertising purposes, have influenced parts of the programme which are not an advertisement. In particular,

(a) Unchanged

(b) Unchanged

(c) Unchanged

Amendment No. 46

(d) advertising within or around programmes shall not be allowed if there is any direct link in content or presentation with the programme.

Article 13

Amendment No. 47

1. Member States shall remain free to prohibit or restrict internal broadcast advertising on Sundays and Public Holidays and to prohibit all broadcast advertising for alcoholic beverages.

Amendment No. 48

2. Member States shall remain free to apply more detailed or stricter rules to internal television broadcasts with regard to Articles 7, 8, 10, 11 and 12.

Amendment No. 49

3. Member States shall remain free not to apply Articles 5 and 6 and Article 7(2) and (3) to local and regional broadcasts.

Amendment No. 50

Delete

Article 14

Member States shall admit the reception and retransmission of advertising in cross-frontier television broadcasts which does not exceed 15% of the broadcasts receivable each day by the public in those Member States. Where a Member State allows one or several internal television broadcasters to carry advertising for more than 15% of daily broadcasting time, it shall admit comparable types of cross-frontier broadcasts, which contain amounts of advertising that do not exceed those permitted for internal television broadcasts of the same category.

CHAPTER IV:

PROTECTION OF CHILDREN
AND YOUNG PERSONS

Article 15

1. Member States shall ensure that internal broadcasts do not include programmes which might seriously harm the physical, mental or moral development of children and young persons, in particular, those that involve pornography, gratuitous violence or incitement to race hatred.

2. Member States shall ensure that internal broadcasts are checked prior to transmission and broadcast only if they comply with the requirements under paragraph 1. Member States shall further ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Amendment No. 51

Delete

CHAPTER IV:

PROTECTION OF CHILDREN
AND YOUNG PERSONS

Article 15

Amendment No. 52

1. Member States shall ensure that _____ broadcasts do not include programmes which are likely seriously to harm the physical, mental or moral development of children and young persons, in particular those that involve pornography, gratuitous violence or incitement to race hatred, not least by ensuring that programmes are broadcast at appropriate times.

Amendment No. 53

2. Member States shall ensure that _____ broadcasts are _____ broadcast only if they comply with the requirements under paragraph 1. Member States shall further ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 16

Member States shall remain free to apply to internal broadcasts more detailed or stricter rules for the protection of children and young persons.

CHAPTER V: COPYRIGHT

Article 17

Member States shall ensure that the retransmission by cable in their territory of internal broadcasts from other Member States may take place with respect for applicable copyright and related rights, in particular on the basis of contractual agreements between right-owners and cable operators. When a cable operator retransmits a broadcast before a contractual agreement has been reached or a statutory licence is applied, he shall be subject to civil and penal sanctions, provided for in the law of the Member State where the retransmission takes place, sufficient to secure compliance with the rules.

Article 18

1. Where a cable operator notifies a Member State that the simultaneous unaltered and unabridged retransmission by cable of an internal broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been so notified shall ensure, within a period of two years from the notification, that the retransmission is made possible by the application of a statutory licence. However, such a statutory licence need not be granted if, during the two year period, the obstacle to retransmission has been removed, in particular, by a contractual agreement between right owners and one or several cable operators.

Unchanged

CHAPTER V: COPYRIGHT

Article 17

Amendment No. 54

Member States shall ensure that the retransmission by cable in their territory of internal broadcasts from other Member States may take place with respect for applicable copyright and related rights, in particular on the basis of contractual agreements between right-owners and cable operators. When a cable operator retransmits a broadcast before a contractual agreement has been concluded or a decision has been taken by the arbitration body specified in Article 19, he shall be subject to civil and penal sanctions, provided for in the law of the Member State where the retransmission takes place, sufficient to secure compliance with the rules.

Article 18

Amendment No. 55

1. Where a cable operator notifies a Member State that the simultaneous, unaltered and unabridged retransmission by cable of an internal broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been so notified shall ensure, within a period of two years from the notification, that the retransmission is made possible through a decision of the arbitration body specified in Article 19. However, such a decision shall not be necessary if, during the two year period, the obstacle to retransmission has been removed, in particular, by a contractual agreement between right owners and one or several cable operators.

Text proposed by the Commission
of the European Communities

2. Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the introduction of the statutory licence, the Member State shall denounce the Agreement to the extent necessary to permit the statutory licence to be introduced in accordance with paragraph 1.

Article 19

1. The statutory licence introduced in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights.

2. In determining the remuneration, in particular all the following criteria shall be taken into account:

(a) the usual level of contractual licence fees for comparable cable transmissions;

(b) the usual level of remuneration paid for the first broadcast;

(c) the number of subscribers linked to the cable network and the level of fees paid by them;

(d) the likelihood and the extent of any impairment of other marketing opportunities, in particular the showing of films and the performance of dramatic or dramatico-musical works.

3. The remuneration may be claimed only by collecting societies.

4. In the absence of an amicable agreement, the remuneration shall be determined by the competent authority.

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Amendment No. 56

2. Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the establishment of a compulsory arbitration scheme, the Member States shall adopt appropriate procedures with a view to securing its establishment in accordance with paragraph 1.

Article 19

Amendment No. 57

1. The _____ licence granted in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights.

Unchanged

Unchanged

Amendment No. 58

4. The equitable remuneration specified in paragraph 1 shall be determined by the arbitration body.

5. The competent authority may be a court, an administrative authority or an arbitration body. It shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions. Where it is not a Court, provision shall be made for procedures whereby improper or unreasonable exercise of the competent authority's powers or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Article 20

The provisions of this chapter shall not affect the moral rights of copyright owners and equivalent personal rights of owners of related rights

Amendment No. 59

5. The Member States shall determine the composition of the arbitration body in such a way that copyright owners are adequately represented thereon. It shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions. The Member States shall make provision for procedures whereby improper or unreasonable exercise of the arbitration body's powers or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Unchanged

Amendment No. 60

CHAPTER VA: RIGHT OF REPLY

Article 20a

1. Without prejudice to other provisions adopted by the Member States under civil or criminal law, any natural or legal person whose legitimate interests and, in particular, reputation and good name have been damaged by a statement in a broadcast programme shall have a right of reply vis-à-vis the broadcasting company concerned.

2. The right to reply shall apply vis-à-vis all broadcasting undertakings that have their headquarters on Community territory.

3. The application for the right of reply shall be justified if the applicant's specific interests have been injured by an assertion in a radio or television broadcast.

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

4. The Member States shall adopt the
measures needed to establish that
right. In particular, they shall
ensure that sufficient time is allowed
for the right to be exercised
effectively by natural or legal
persons not established on their
territory.

5. The broadcasting body may reject
the reply if it constitutes a
punishable act, would render the
broadcaster liable to civil law
proceedings or offend public decency.

6. Disputes between the applicant and
the broadcasting undertaking
concerning the reply shall be referred
to the civil courts.

CHAPTER VI: FINAL PROVISIONS

CHAPTER VI: FINAL PROVISIONS

Article 21

For the purposes of this Directive:

1. 'Broadcasting' means the initial transmission or retransmission by wire or over the air, including those by satellite, in unencoded or encoded form, of radio and television programmes intended for reception by the public. Except for the purposes of Chapter V, it includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

Unchanged

2. 'Broadcast advertising' means an announcement in any form broadcast by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations. It does not include sponsored programmes.

Amendment No. 61

2. 'Broadcast advertising' means an announcement in any form broadcast by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply against payment of goods or services, including immovable property, rights and obligations. _____

Amendment No. 62

2a. 'Sponsoring' means any contribution made by a public or private undertaking not engaged in broadcasting activities or in the production of audio-visual works, to the financing of broadcast programmes with a view to promoting its image, its activities or its products by publicizing its name or trade name.

Amendment No. 63

Delete

3. 'Internal broadcasts' means initial transmissions by public or private undertakings engaged in broadcasting on the territory of a Member State, including transmissions exclusively intended for reception in other Member States. It also includes the initial retransmission by such undertakings of broadcast transmissions originating from an undertaking engaged in broadcasting on the territory of a State other than a Member State.

Amendment No. 64

Delete

4. 'Cross-frontier broadcasts' means internal transmissions that can be received directly by the public in another Member State or by way of retransmission even where they are re-transmitted by an undertaking established in the territory of that other Member State.

Amendment No. 65

4a. The Member States shall take measures to establish the concept of the 'independent producer' by providing sufficient opportunities for smaller producers and reserving the right to allow financial contributions by co-production subsidiaries of television companies.

Article 22

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than They shall forthwith inform the Commission thereof.

Unchanged

Text proposed by the Commission
of the European Communities

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields governed by this Directive.

Article 23

Before the end of the sixth year after the date given in Article 22, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on the manner in which this Directive has operated and, if necessary, make further proposals to adapt it to developments in the broadcasting field.

Article 24

This Directive is addressed to the Member States.

Amendments tabled by the Committee
on Legal Affairs and Citizens' Rights

Article 22a

Amendment No. 66

The Commission shall ensure that the rules on competition in Title I, Chapter 1, Section 1 of the EEC Treaty are applied, particularly with a view to controlling abuses of dominant positions which would restrict the pluralism and freedom of broadcast information and the information sector as a whole.

Article 23

Amendment No. 67

Before the end of the third year after the date mentioned in Article 22 and every two years thereafter, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on the manner in which this Directive has operated and, if necessary, make further proposals to adapt it to developments in the broadcasting field.

Unchanged

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament, delivered at the first reading pursuant to Article 149(2)(a) of the EEC Treaty, on the proposal from the Commission of the European Communities to the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities

The European Parliament,

- having regard to the proposal from the Commission to the Council,¹
 - having been consulted by the Council pursuant to Article 57(2) and Article 66 of the EEC Treaty (Doc. C 2-38/86),
 - considering the proposed legal basis to be appropriate,
 - having regard to the importance of the directive, which, however, will be only one of the essential components of a coherent and effective Community 'media' policy, whose objectives - as outlined by Parliament's previous resolutions on the matter - must be pursued by the Commission in a systematic and relevant way, particularly as regards the reception of broadcasts by the Member States, the promotion of a multilingual European system and the safeguarding of cultural pluralism through the prevention of monopolies in the information sector,
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinions of the Committee on Economic and Monetary Affairs and Industrial Policy, the Committee on the Environment, Public Health and Consumer Protection and the Committee on Youth, Culture, Education, Information and Sport (Doc. A 2-246/87),
 - having regard to the result of the vote on the Commission's proposal,
1. Calls on the Commission to alter its proposal pursuant to Article 149(3) of the EEC Treaty by including in it the amendments adopted by Parliament and to inform Parliament of any further changes it makes to the proposal;
 2. Calls on the Council to incorporate these amendments into the common position that will be adopted pursuant to Article 149(2)(a) of the Treaty;
 3. Calls on the Council to inform Parliament if it intends to depart from the text adopted by it;
 4. Calls on the Council to consult Parliament again if it intends to make substantial changes to the Commission's proposal;
 5. Instructs its President to forward to the Council and Commission, as Parliament's opinion, the Commission's proposal as amended by Parliament, together with this legislative resolution.

¹ OJ No. C 179, 17.7.1986

EXPLANATORY STATEMENTA. INTRODUCTION

1. Europe cannot afford to remain unresponsive to the challenges presented in overwhelmingly rapid succession by the technological revolution in the field of information - in particular in telecommunications and broadcasting.

The European Community, as a political and institutional entity, is required to cope at ever closer range with changes which are destined to have an increasingly profound effect on lifestyles, the economic order and the very nature of society in the future, which is often aptly called the 'information society'.

To restrict consideration and action to the albeit vast field of television is undoubtedly a short-sighted approach, all the more so if television is identified with the traditional method of broadcasting. Yet nowadays it is vital to analyse the trends in this sphere of production and distribution and look for suitable and realistic means of regulating it if we are to create in this fast-moving and complex transitional phase the right conditions for growth and to achieve higher degrees of technological advancement and productivity along with greater access to information.

These objectives do not automatically result from technological progress and its continuing development. They call for consistent measures to tackle the glaringly obvious imbalances and to concentrate efforts, so as to dominate international markets unopposed.

The scale of the phenomenon is so great as to require ever greater international coordination and an increasingly significant role for the Community.

A directive to coordinate certain laws, regulations and administrative provisions dealing with broadcasting is therefore only a tentative beginning, but nonetheless an essential and important starting-point for stronger and farther-reaching action.

The declared purpose of this directive is to deal only with certain aspects of planning, in particular the changes brought about by direct transmission satellites and the extension of cable networks. It may serve as a timely and useful instrument for the Community's initial involvement in a sector where Parliament has often advocated intervention.

A directive of this kind is certainly not enough to create an effective system of controls and offer an active response to the various problems now arising in connection with a process of increased 'internationalization' in broadcasting.

The launching into orbit of the German satellite TV SAT 1 by the launcher Ariane on 21 November 1987 opened up a new era for television, although later than planned, which means that legislation must be adapted as soon as possible and makes it particularly urgent for rules to be drawn up to 'govern' such a bewildering technological transformation.

It is useful to note that, five years after its first resolution on broadcasting and television in the European Community, of 12 March 1982 (OJ C 87 of 5 April 1982, p. 110), and in the light of the outcome of the Ministerial Conference in Vienna on 9 and 10 December 1986, the governmental experts of the countries of the Council of Europe began to draw up, in March 1987, a European Convention on cross-frontier broadcasting. Obviously the latter must not and cannot replace a Community directive.

The reason for this is that it would be unacceptable for a Convention containing different arrangements, some of which would not be in conformity with the EEC Treaty, to be introduced before the decision has been taken on the proposal for a Community directive in this field. The Commission's representative at the Vienna Conference informed the conference that the Community had initiated its legislative procedure, that such a convention should be complementary to a Community directive and that it should be compatible with Community law.

An analysis of the preliminary draft Convention shows that the latter will cover either matters relating to the EEC Treaty - the freedom to provide services - or areas covered by the proposal for a directive - advertising, sponsoring, programmes of European origin, protection of youth and copyright. Even a disconnection clause, such as the one provided for in the Convention and guaranteeing the primacy of the Treaty and the directive in relations between Member States, would not constitute a satisfactory solution from the point of view of the objectives of complementarity and compatibility. It would have the effect of dividing Europe whereas the objective of the 21 in drawing up a Convention was precisely to prevent such a split occurring in Europe.

Moreover, there is a serious danger that the work of the Community may be harmed - 'de facto' if not 'de jure' - by events taking place in a context outside the Community framework. The Member States may not circumvent the EEC Treaty and undermine the cooperation procedure with the European Parliament by choosing another negotiating forum. On the contrary, Member States must take all appropriate measures to ensure fulfilment of the obligations arising out of the EEC Treaty. They are required to facilitate the achievement of the Community's tasks and abstain from any measure which could jeopardize the attainment of the objectives of the EEC Treaty (see Article 5).

The Committee on Legal Affairs and Citizens' Rights is not opposed to a convention on broadcasting provided that it is complementary to and compatible with a previously adopted Community directive.

We must therefore maintain the kind of relations with the Council of Europe, and promote the continual exchange of information, which will ensure that each party works profitably with the others towards a common goal.

Although the instruments which the Community of Twelve has at its disposal may not be sufficiently incisive and suffer from the fact that the Treaties are somewhat outdated as far as the new demands of contemporary society are concerned, they have, in extremely specific and pertinent respects, a degree of relevance and effectiveness and it would be wrong not to use them.

The guidelines which should determine Community action are based on principles and aims which have often been mentioned:

- the citizen's freedom to receive and impart information, to be extended not least in a specifically European context, in accordance with the European Convention on Human Rights (Article 10), the Universal Declaration of Human Rights adopted by the UN (1948) and the Final Act of the Conference on Security and Cooperation in Europe (1975) and subsequent provisions;
- the creation, on an increasingly widespread and everyday basis, of a People's Europe, in accordance with one of the most positive and promising sections of the Adonnino report adopted by the European Council in Milan (June 1985);
- the creation of a truly unified European internal market capable of providing new opportunities for trade and consolidating the Community's role on the world scene. Television programmes and even advertising are not unimportant elements in such a market, which must develop without either sacrificing or ignoring existing and potential needs, which seem unimportant if considered in terms of mere short-term profit.

Economic considerations are inextricably linked to cultural ones. Rather than considering the boundaries between them, we should tackle the problem bearing in mind that the potential of 'television without frontiers' is not only an aspect of the policies designed to create the internal market but also an objective which will stimulate and encourage the cultural industries that characterize the new age on whose threshold we now stand.

The idea that 'television without frontiers' must be considered, at least mainly, as one of the many measures aimed at creating a single market is limiting and may give rise to distortions. Not even a well-organized market consistently geared to the interests of the general public will be enough to achieve greater and lasting freedom of information and enrich the cultural pluralism of Europe and its creative energy. For this reason, a directive of the type proposed, to be subsequently amended, completed and improved, can be considered worthwhile only if it is accompanied simultaneously by other measures such as those envisaged in the MEDIA Programme or by the revival of initiatives, such as EUROPA TV, which should not have been allowed to fail. The drawing up of multilingual European projects, the coordination of existing techniques and research and the creation of incentives for the audio-visual industry are prerequisites for a truly European dimension in television, which calls not only for rules for the harmonization of legislation but also for decisive structural and cultural measures.

This in no way implies a dictatorial attitude, with inflexible and detailed principles and criteria being laid down for the preparation of projects. Otherwise serious conflict would arise between the declared purpose of enhancing and spreading the pluralism which is inseparable from the European 'ideal' and the desire to establish uniformity in an area where restrictive, moralistic or narrow-minded patterns would be damaging.

If the market is to be a creative melting-pot, the Community must put up a determined struggle against the pathological tendencies towards multinational concentration which threaten to destroy fair competition and real variety. If the market is to be dominated by an unrestrained oligopoly, which is unfortunately already making its presence felt, we risk losing freedom of choice and a vast range of information and knowledge and being faced with a general levelling which may even lead to an irreparable diminishing of European individuality.

Gradually, and in the context of an up-to-date interpretation of the Treaties, we should ensure that the technological revolution of the 'global village' offers a real opportunity for qualitative economic growth, greater cultural interchange, enhancing the multiplicity of ideas and traditions, and the reinforcement of individual freedoms and European democracies.

From this point of view too, it is necessary to ensure that the inevitable process of market rationalization is not accompanied by the disappearance of regional or local broadcasting stations whose task is to give expression to valuable ways of life, traditions and opinions and prevent increasing standardization and insidious uncritical conformism.

The question of European television is also a question of democracy and this is one of the aspects that make it a vital topical issue.

2. The harmonization, even to the slightest degree, of rules governing broadcasting in the various States is a particularly complex undertaking because of its impact on different systems, each with its own logic, and on different situations which cannot and must not be standardized, since the jurisdiction of each Member State in this sphere cannot be challenged and the variety of individual experience and conditions must be safeguarded. Given the increase in the number of private broadcasting stations, the active role

played by national legislation and the risk of excessive concentration in both production and distribution, measures to be adopted at Community level must be assessed with extreme caution. They must not lead to inertia or to regulation for its own sake, since this would only create chaos and greater contradictions and jeopardize any hope of Europe's meeting a challenge which will affect its future and its position in the worldwide development of communications.

In most European countries there is an increasing overall tendency towards combined systems involving the coexistence of public and private sectors which have competing but not opposed roles and options and which are autonomous but not necessarily antagonistic. We are now at a 'formative' stage which makes it impossible to outline the characteristics of the process now under way, since it is not yet clear-cut.

Precisely for this reason this stage should be considered as particularly propitious for limited and flexible harmonization. It would be unrealistic to expect too much and imagine that a directive can be used to lay down rules for a possible Community broadcasting law. Nevertheless, moderate and realistic harmonization is essential from every point of view.

On the other hand, we should be wary of anybody who suggests there is a clear distinction between public and private broadcasting, one being responsible mainly for supplying information and the other for providing entertainment, and maybe even claims that advertising should be confined to 'commercial' television stations.

This kind of differentiation can lead to chronic shortage of resources and excessive dependence on the political power of State television channels, with private channels thriving since they are more competitive and aware of viewers' tastes.

In contrast with this the combined system, with the complementary elements it suggests, is more justified if advertising revenue is shared out according to flexible criteria which at least avoid dangerous discrepancies.

Without prejudice to television's strategic role as a public service in raising the quality and democratic nature of information, - which justifies the extra support provided by the television licence - the problems of the various implications of the Community dimension call for analyses and proposals which make allowance for the need for a systematic overview. Competition must not turn into a war detrimental to all parties. The public and private sectors are not required to confront each other as implacable enemies.

B. PREVIOUS WORK BY THE EUROPEAN PARLIAMENT

3. The proposal for a directive is based on a number of Community documents, in particular a series of resolutions adopted by the European Parliament, including:

- the resolution on radio and television broadcasting in the European Community, adopted on 12 March 1982 on the basis of a report (Doc. 1-1013/81) drawn up by Mr Hahn on behalf of the Committee on Youth, Culture, Education, Information and Sport¹,
- the resolution on a policy commensurate with new trends in European television, adopted on 30 March 1984 on the basis of a report (Doc. 1-1541/83) drawn up by Mr Arfé on behalf of the Committee on Youth, Culture, Education, Information and Sport²;
- the resolution on broadcast communication in the European Community, adopted on 13 April 1984 on the basis of a report (Doc. 1-1523/83) drawn up by Mr Hutton on behalf of the Committee on Youth, Culture, Education, Information and Sport³;
- the resolution on the proposal for a regulation on a Community aid scheme for non-documentary cinema and television co-productions, adopted on 8 October 1985 on the basis of the report (Doc. A 2-93/85) drawn up by Mr Fajardie, on behalf of the Committee on Youth, Culture, Education, Information and Sport⁴;
- the resolution on a framework for a European media policy based on the Commission's Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable, adopted on 10 October 1985 on the basis of a report (Doc. A 2-75/85) drawn up by Mr Hahn on behalf of the Committee on Youth, Culture, Education, Information and Sport⁵;
- the resolution on the economic aspects of the common market for broadcasting in the European Community, adopted on 10 October 1985 on the basis of a report (Doc. A 2-102/85) drawn up by Mr De Vries on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy⁶;
- the resolution on a proposal for a directive on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite television broadcasting, adopted on 22 October 1986 on the basis of a report (Doc. A 2-108/86) drawn up by Mr De Vries on behalf of the Committee on Economic and Monetary Affairs and Industrial Policy⁷.

¹ Cf. OJ No. C 87, 5.4.1982, p. 110 et seq.

² Cf. OJ No. C 117, 30.4.1984, p. 201 et seq.

³ Cf. OJ No. C 127, 14.5.1984, p. 147 et seq.

⁴ Cf. OJ No. C 288, 11.11.1985, p. 30 et seq.

⁵ Cf. OJ No. C 288, 11.11.1985, p. 113 et seq.

⁶ Cf. OJ No. C 288, 11.11.1985, p. 119 et seq.

⁷ Cf. OJ No. C 297, 24.11.1986, p. 34 et seq.

4. An examination of these resolutions - and others - shows that generally speaking Parliament recommends that the Commission should, to a certain extent, coordinate national legislation on broadcasting activities. Coordination of this kind, far from being an end in itself, is determined by the need to remove the legal obstacles to the free circulation of information across intra-Community borders which in turn is seen as an essential means to increase the integration of the peoples of the Community and strengthen their sense of belonging by creating more opportunities for the exchange of information.

The need for a certain degree of coordination between national laws on the subject is, technically speaking, determined by the special nature of televised broadcasts under Community law. As stated by the Court of Justice in various judgments⁸, which constitute an important body of Community case law on the subject, radio and television broadcasts constitute a 'service' under the terms of Chapter 3 of Title III of the Second Part (Foundations of the Community) of the EEC Treaty. The rules prohibiting discriminatory restrictions on the freedom to provide such services are thus applicable (cf. Articles 59-66 of the EEC Treaty). However, not all restrictions are prohibited since those which apply without distinction to radio and television broadcasts from outside and inside national territory are still allowed where such discrimination is justified, because of the special nature of the service represented by television broadcasting, by reasons related to the general interest or to the protection of intellectual property.

Hence in practice the freedom to transmit radio and television broadcasts across the Community's internal frontiers is still subject to restrictions which are legitimately imposed by national authorities on all broadcasts and which are therefore, in the final analysis, determined by differences between the Member States' legislation. This is why such legislation needs to be coordinated in certain sectors.

5. From the above it emerges that the European Parliament is partly responsible for prompting the Commission to submit the proposal for a directive under consideration here. Consistently bearing in mind its own past deliberations Parliament should thus view favourably the principle of a proposal for a directive to coordinate national legislation in certain sectors of broadcasting activity. It will have to consider the contents and scope of the intended coordination particularly carefully.

⁸ - The judgment in Sacchi, Case 155/73, [1974] ECR 409 et seq.
- The judgment in Rutili of 28 October 1975, Case 36/75, [1975] ECR 1219 et seq.
- The judgment in Coditel I of 18 March 1980, Case 62/79, [1980] ECR 881 et seq.
- The judgment in Debauve, Case 52/79, [1980] ECR 833 et seq.
- The judgment in Cineteca and others of 11 July 1985, Joined Cases 60 and 61/84, not yet published

In doing so, the European Parliament must bear in mind its own preparations and draw attention to their complexities, while making all feasible amendments to the Commission's proposal so as to improve it and enable it to be adopted and to come into operation as soon as possible.

The principal aims which have been repeatedly emphasized can be summarized as follows:

- (1) to promote European integration, by facilitating the reciprocal transmission and reception of programmes in the territory of the Community;
- (2) to provide incentives for a genuinely European audio-visual industry, including compulsory quotas for the broadcasting of European programmes;
- (3) to prevent the creation of monopolies and oligopolies which stand in the way of the genuine expansion of cultural pluralism and the citizen's right to freedom of information;
- (4) to guarantee a central and economically healthy role for the public broadcasting service;
- (5) to regulate the relationship between the public and private sectors in order to promote combined systems based on a dynamic balance of initiatives;
- (6) to press for the Community to take an active role, both directly and indirectly in the setting up or support of the financial instruments and the infrastructures necessary for a functional and modern market;
- (7) to divide advertising between the various media so as to prevent it from being disproportionately concentrated in the area of television to the detriment of the press and other forms of publication;
- (8) to harmonize national legislation with regard to codes of conduct for advertising and volume of advertising;
- (9) to establish rules on copyright which take into account the new dimensions and time-scale of the distribution of creative works, but do not jeopardize the fundamental principles of intellectual property and make allowance for the special nature of the film industry;
- (10) to increase, in existing bodies or new ones yet to be identified, appropriate international cooperation, with the aid of the technologies and standards essential for making Europe autonomous and competitive and facilitating systematic exchanges of experience and information.

It is essential for the Member States to coordinate, at Community level, programmes concerning the launching and use of satellites for direct television broadcasts - otherwise a chaotic competitive situation may in practice nullify the best possible intentions. Access to the satellite itself must be precisely regulated.

All in all the Community now urgently needs a directive of the kind proposed. Its purpose is to lay down a basic legal framework to start a process of liberalization which otherwise would give rise to chaos and irremediable contradictions. Of course it is in itself not sufficient to open up the prospect of 'television without frontiers' but it is a first step in the right direction, a step which is now possible but nevertheless extremely problematic.

C. THE NATURE AND SCOPE OF THE PROPOSAL FOR A DIRECTIVE

6. There is no need for a detailed description of the proposal for a directive. It is sufficient to state that the main aim of the proposal is to allow radio and television programmes originating in one Member State to be received and transmitted in all Member States.

This cultural purpose is combined with an economic one, in order to ensure that Europe is not cut off from the major changes which are now taking place in the field of television all over the world. This is why one chapter of the directive is devoted to the promotion of the distribution and production of 'Community' radio and television programmes (i.e. originating in one or more Member States).

While this directive may be legitimately considered as one of the many measures necessary for the creation of a single internal market, in view of the subject involved its cultural and economic aspects cannot be separated. The right to information will be extended and the people of Europe will as a result have greater freedom if the processes of integration, liberalization and exchange can be regulated in such a way as to ensure that a system based purely on profit and competition only does not jeopardize the quality of programmes and their more serious aims.

7. The legal basis of the proposal is to be found in Articles 57(2) and 66 of the EEC Treaty (the taking up and pursuit of activities as self-employed persons). The present version of Article 57(2) of the EEC Treaty distinguishes between various matters for which unanimity is required and others - including the provisions of this proposal for a directive - on which the Council may decide by qualified majority.

However, it should be noted that after the entry into force of the Single European Act (cf. Articles 16(1) and 6 (7)), the second and third sentences of Article 57(2) will read as follows: 'Unanimity shall be required for directives the implementation of which involves in at least one Member State amendment of the existing principles laid down by law governing the professions with respect to training and conditions of access for natural persons. In other cases the Council shall act by a qualified majority, in cooperation with the European Parliament'.

The cooperation procedure will therefore apply to the proposal for a directive on the coordination of certain provisions in Member States concerning broadcasting activities. Whilst it is gratifying that Parliament's opinion will carry more weight in the process of drawing up a directive, at the same time Parliament will be obliged to make proposals which are not only imaginative but also realistic and well-considered, in order to promote the adoption of a coherent and feasible directive.

D. CONSIDERATION OF THE PROPOSAL FOR A DIRECTIVE CHAPTER BY CHAPTER

Chapter I : General provisions

8. Article 1 contains one of the main points of the proposal for a directive: the control exercised by the State in which a television broadcast originates. A corollary of this principle is that Member States will no longer have to ascertain that broadcasts originating in another Member State conform to the rules. Paragraph 2 of the article states that Member States shall not restrict 'the reception and retransmission on their territories of broadcasts from other Member States for reasons which fall within the fields coordinated by this directive'.

The greater the number of sectors coordinated by the directive the more effective it will be in achieving its purpose, making due allowance for its limitations, which result from the legal basis and the differing attitudes both at political level and among broadcasting authorities.

Whilst being aware of these limitations and of the various attitudes, it is advisable to accept and render completely consistent the philosophy underlying the whole text - that harmonization must be the responsibility of the individual State legislative systems. This should prevent harmonization from being based on a jumble of vetoes and controls and ensure that it is rather the result of shared attitudes and desires. With this in mind, various amendments (cf. amendments 7 and 21) have been put forward urging the Member States and the Commission (within their respective spheres of competence) to be vigilant in preventing abuses of dominant positions which might be detrimental, not only to the proper conduct of the market, but also to freedom of information itself. The opponents of real freedom of information for the people of Europe are not always or necessarily outside Europe.

The aggressive and entrepreneurial spirit shown, particularly towards the end of 1987 by powerful private groups who operate unscrupulously at multinational level, often exploiting unofficial pirate broadcasters able to cover the European area, must bring about effective public action aimed at combating abnormal forms of concentration and cheap commercialism. The directive in question is not per se adequate to constitute authoritative and ongoing intervention by the Community, which has hitherto been almost non-existent as far as such crucial issues are concerned. For their part, the Member States must combine anti-trust legislation - now being considered in some countries - with a policy aimed at preventing unrestrained and dangerous processes of concentration throughout the 'media' sector.

Chapter II : Promotion of the distribution and production of television programmes

9. The compulsory quota arrangements laid down in Chapter II are intended to create adequate scope (as stated in the resolution adopted in Luxembourg in June 1983 by the first Council meeting devoted to cultural matters) for Community productions. There are three main objections to this system:

- it smacks of old-fashioned protectionism, relies on artificial barriers and aims at building up protection against competition - in other words it is a rearguard approach;
- European state television channels already allocate higher percentages to Community productions than those provided for in the directive;
- it would constitute a questionable form of interference in the programme-planning process.

10. In response to these objections, quite justifiable counter-arguments can be put forward, for example:

- a certain degree of protectionism - subject to GATT rules - may prove essential in an exceptional period such as the one now imminent, when there is going to be an enormous increase in the demand for programmes. With some justification the situation of the European audio-visual industry could be compared to that of an 'emergent industry';

- apart from the fact that commercial or private television stations are substantially different from state channels, the rules must be seen and assessed in the light of the prospect, in the not too distant future, of a massive increase in demand, which will make it considerably more difficult to maintain the present levels of quality and quantity in European programme planning;
- the rules may be used as a common point of reference for programming decisions to ensure that those responsible are autonomous in their decision-making.

11. Finally, although the quota system is not ideal, it may be considered as a temporary arrangement, to be revised if necessary.

It is essential for any measures of this kind to be accompanied by an active Community policy - not always advocated with enough conviction - of promotion and support, so as to make Community programmes and European programmes in general competitive and sound, in both cultural and economic terms, compared with productions from outside.

This kind of stimulus for Community productions, which mostly still has to be created, should not be seen as mere protectionism. Protecting and enhancing European cultural identity - in all its different facets - does not mean devotion to an outdated struggle for supremacy. Reciprocal influences between cultures and mentalities of different origins are now an everyday fact, which must be regarded with open-mindedness and interest.

With regard to the increased potential of production structures, which may result indirectly from the establishment of quotas, some amendments have been made (cf. amendments 23, 24, 25 and 28-32) to provide a clearer definition of 'Community works' and overcome the restrictions which would arise from confining it to within the borders of the Community.

We should also bear in mind that particular attention must be accorded to the most recent productions and that a production is European when it also makes substantial use of the know-how and labour of European citizens.

The intention is to sanction the exemption of local broadcasting stations from application of the chapter (cf. Amendment 33) although in order to be considered as such, these stations must not broadcast across a national frontier.

Chapter III : Broadcast advertising and sponsoring

12. The chapter on broadcast advertising and sponsoring has been widely criticized by certain of the bodies concerned and the rapporteur has noted and examined some of these criticisms.

Advertising is an essential means of providing constant resources for the objective being pursued. An attitude of distrust or prejudiced hostility would be wrong, but clear rules are essential in the interests of both the audience and the advertising message itself, in order to prevent speculation and disrespect for cultural aims and ensure that television does not become the servant of what it should command.

An unrestricted 'television without frontiers' must not become an uncontrolled advertising medium.

13. In accordance with the general structure of and basic ideas behind the proposal for a directive, whose aim is harmonization at the level of the broadcasting stations, it seemed appropriate not to divide Chapter III into two sections containing different rules for internal broadcasts and for cross-frontier broadcasts (cf. amendments 37, 50 and 51). This legislative approach, which will permit greater precision in the selection of rules to govern advertising and sponsoring, will avoid the temptation of rushing to raise quotas.

The 15% threshold for television advertising was a realistic choice, intended as a compromise between various possible solutions. It must, however, be made clear that 15% is supposed to be a ceiling, not a target figure, as this would lead to a general and undesirable trend towards raising the percentage of broadcast advertising. A mechanism, to be decided on by the Member States, must be introduced to prevent advertising from being concentrated in peak viewing hours (cf. amendments 40 and 41).

14. However, if Community rules were drawn up to regulate broadcast advertising only, this would create discrimination between broadcast advertising and other kinds of advertising.

Full allowance must be made for the need to promote a balanced distribution of resources deriving from advertising in order to ensure that all the media have a fair share and to guarantee pluralism and variety.

15. With regard to Article 6, the intention was to sanction the principle of ruling out any idea of censorship. Moreover, the terms used (cf. amendment 42 and amendment 53) are more in keeping with the directive's role as a legal instrument, which means that the national authorities retain responsibility for the form and methods used to achieve the result specified (cf. Article 189 of the EEC Treaty).

As far as broadcast advertising is concerned, due regard must in any event be given to the content of the Community directive on misleading advertising adopted on 10 December 1984⁹ and the recommendation made on the subject by the Committee of Ministers of the Council of Europe in 1984.

Amendment 49 is intended to leave Member States free to decide not to apply certain rules on broadcast advertising to some local radio and television programmes.

16. Amendments 43 and 44 are intended to give precision to the provisions of Articles 8 and 10 and to make them more in keeping with the terms of a directive, which indicates in a general manner the objective to be achieved.

17. The need for a proper definition of sponsorship was recognized and this definition has been included in Chapter VI (cf. amendment 62). Proper sponsorship may be encouraged as long as it does not amount merely to forms of advertising indistinguishable from ordinary advertising. Obviously steps must be taken to prevent thoughtless and wholesale fragmentation of programmes, especially those which by their very nature must preserve the continuity and pace given them by their authors.

⁹ Cf. OJ No. L 250, 19.9.1984, p. 17 et seq.

18. Chapter IV contains provisions aimed at protecting children and young people from the contents of programmes broadcast freely by radio and television stations throughout the Community. On the whole the committee agrees with these rules, whilst stressing that children and young people should also be protected by programmes being shown at appropriate times (cf. amendment 52).

Chapter V : Copyright

19. Chapter V on copyright is the section in the proposal for a directive which has given rise to most doubts. Whilst it seems necessary to retain this chapter, as far as the general layout of the directive is concerned, it must be admitted that the criticisms levelled against the system proposed by the Commission are justified.

The problem is that a dispute might arise between a cable operator and the holder of a copyright, who, invoking this right, will not authorize the simultaneous, unaltered and unabridged re-transmission by cable of an internal broadcast from another Member State (cf. Article 18). In this event, the Commission proposes that if no agreement is reached after two years of negotiation, the Member State must permit the re-transmission by issuing a statutory licence ensuring fair compensation for the copyright holder.

This system does not seem to provide adequate safeguards for authors' legitimate demands. In view of the nature and scale of the problem and the well-founded criticisms levelled at the system, a likely alternative solution seemed to be to leave the decision to an arbitration body whose members should include representatives of authors and thus ensure fair compensation and safeguards for all parties in the dispute. This solution, even if adopted temporarily and on an experimental basis, is undoubtedly more flexible than the one proposed by the Commission, is nearer to a contractual arrangement and may afford authors a substantial degree of protection. On the other hand, and considering the fact that the provisions of Chapter V are confined to re-transmission by cable, a policy of non-intervention in this sector would have harmful effects on holders of copyright, since it might even encourage piracy.

More than ever, systematic and comprehensive intervention by the Community is needed in the sphere of copyright, as the Commission has often pointed out.

20. In this context the film industry and the protection of its products should be given special attention. Cinema must preserve its own sphere of operation and not be swallowed up or irremediably jeopardized by the extraordinarily widespread influence of television. What should in any case be stressed is the trend towards a largely separate identity for the audio-visual industry. Over and above legislative measures, the aim should be operational coordination between television producers and film producers, whilst safeguarding the particular characteristics of cinema.

21. After Chapter V it is proposed to add a new Chapter Va allowing natural and legal persons whose legitimate interests have been damaged by a statement made in a broadcast programme to have a right of reply. This right may be exercised on certain conditions vis-à-vis broadcasting companies based in the territory of the Community.

E. CONCLUSION

22. A certain organization has said that the Commission has very little to show for all its talk of 'television without frontiers': the directive constitutes only a tiny step towards achieving the desired goal. Disappointment has also been expressed by those who expect that a directive on this subject should provide the impetus for transforming television broadcasting systems, which display to a greater or lesser extent a tendency towards a mixed system, in which the public and private sectors coexist and are regulated by the State.

On the other hand, there are those who, by attacking, as many of them do, the weakest or most questionable parts of the directive, such as the compulsory quotas or the extremely unpopular provisions on copyright, or by criticizing the grouping together of diverse subjects, seem to favour non-intervention and thus lend support to almost total lack of control.

23. In the face of these contrasting attitudes which are difficult to reconcile, there should be wide-ranging discussion of the possibilities for improving the proposal by common accord, taking due account of the restrictions deriving from the Treaties and the caution required in such a complex situation, but above all of the urgent need for an initial Community instrument to regulate on a basic level, and with the flexibility frequently advocated, a field in which a recognizable European Community presence, with its multiple identity and wealth of cultural variety, is in danger of being thwarted.

The positions of the national governments and the difficult technical comparative studies which have been carried out have revealed a disturbingly wide range of views, reservations and feelings of distrust. In these circumstances Parliament's role can only be to outline the prospects for European television helping to establish a real presence which has long been considered necessary. A serious delay has built up in this delicate area, in which joint action by the Community institutions should now bring rapid and tangible results.

ANNEX

List of numbers of amendments which were rejected by the committee responsible but obtained at least 5 votes in favour (cf. PE 113.272/Am. and PE 113.483) - see Rule 36(6) of the Rules of Procedure.

- 37
- 5 Economic Committee
- 39
- 40
- 64
- 69
- 80
- similar { 12 Economic Committee
- { 9 Youth Committee
- 102
- 103
- 104 } identical
- 105 }

O P I N I O N

(Rule 101 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy

Draftsman: Mr Gijs de VRIES

On 18 July 1986 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr Gijs de Vries draftsman.

The Committee considered the draft opinion at its meetings of 16-17 December 1986, 18-30 January 1987, 24-26 February 1987 and 17-19 March 1987 and adopted it on that latter date by a vote of 17 in favour to 12 against with 3 abstentions.

The following took part in the vote:

BEUMER (CHAIRMAN), LATAILLADE (THIRD VICE CHAIRMAN), DE VRIES (DRAFTSMAN OF THE OPINION).

ALAVANOS, ALVAREZ DE EULATE, BAILLOT, BESSE, BONACCINI, CHANTERIE, CRYER, DE FERRANTI, FALCONER, FRANZ, I. FRIEDRICH, FOURCANS, GASOLIBA I BÖHM, GRIFFITHS, HERMAN, METTEN, MÜHLEN, NIELSEN, PAPOUTSIS, PATTERSON, PEGADO LIZ, Ms QUIN, ROGALLA, SCHINZEL, SCHREIBER, STEWART-CLARK, Mrs VAN HEMELDONCK, VON BISMARCK, VON WOGAU,

Committee on Economic and Monetary Affairs and Industrial Policy

I. Explanatory comments on adopted amendments:

- Amendment 2: This amendment seeks to delete an arbitrary distinction.
- Amendments 1+3: In the Draft-Directive, the Commission incorporated Parliament's proposal - in its Resolution of October 1985 - for a quota to stimulate European audiovisual production. The quota proposed, however, met with strong criticism from certain broadcasting organisations that rejected national legal restrictions on their programming policy. The amendments proposed by the Committee on Economic and Monetary Affairs and Industrial Policy aim at establishing a compromise, the effect of which would be to free Member States from the obligation to alter their national media laws, while retaining Parliament's initial position.
- Amendment 4: This would avoid an artificial distinction between European Community and other European programmes.
- Amendment 5: These amendments emphasize that the Directive should focus on cross-frontier broadcasting.
- Amendment 6: The amendment speaks for itself.
- Amendment 7: The amendment speaks for itself.
- Amendment 8: The amendment speaks for itself.
- Amendment 9: A similar text has been proposed by the Consumer Affairs Committee.
- Amendment 10: The Draft-Directive is not restrictive enough; sponsorship should be possible, but subject to strict conditions.

- Amendment 11: A similar text has been proposed by the Consumer Affairs Committee.
- Amendment 12: The amendment seeks to enlarge on the provisions in the Draft-Directive on youth protection.
- Amendments 13, 14,15,16,17,18: These amendments deal with copyright. No other section of the Draft-Directive has encountered so much criticism as Chapter V on copyright. Having read the written submissions, and after consultations with the interested parties, the draftsmen of amendments, the draftsmen of the Consumer Affairs and Youth Committees, and the European Commission, your rapporteur proposes to modify Chapter V significantly. All references to statutory licensing must be deleted. To strike a fair balance between the interests of the right-owners, cable-operators and the public, provision should be made for an arbitration procedure, in case no contractual agreement might have been reached. A solution along these lines has been found to be acceptable, among others, to the Legal Affairs Committee of the European Broadcasting Union.

CONCLUSIONS

- II. The Committee on Economic and Monetary Affairs and Industrial Policy requests the Committee on Legal Affairs and Citizens' Rights to include in its report the following amendments to a proposal for a directive:

Amendment 1:

In Article 2 sub 1, Replace "at least 30%" by: "a proper proportion."

Amendment 2:

Article 2, Paragraph 1 Delete: "not consisting of news, sporting events and game shows, advertising or teletext services."

Amendment 3:

Replace Article 2 sub 2 by: "For the purposes of paragraph one, the proper proportion shall be deemed to have been achieved if at least 60% of each broadcaster's programming time is made up of Community works. However, at least 30% of programming time shall be considered a proper proportion for a period of three years from the date specified in Article 22."

Amendment 4:

Add new Article after existing Article 4: Article 4a "The Commission shall enter into negotiations with the EFTA countries to formulate regulations, on a basis of reciprocity, that correspond to the provisions of Articles 2 to 4"

Amendment 5:

Delete words at the beginning of Chapter III "Section 1: Internal broadcasts" and replace by words "cross-frontier television broadcasts". In consequence also delete words "in internal broadcasts" in the second line of Article 6 and the words: "Section II cross-frontier television broadcasts" located between Articles 13 and 14.

Amendment 6:

Article 5 First sentence to read as follows: "Member States shall see to it that broadcast advertising and the time allowed for it are fixed so that:".

Amendment 7:

Article 5(b) To read as follows: "taking into account the interests of other media and the demand for broadcast advertising".

Amendment 8:

Article 8(b) Add the following: "... discrimination or discrimination on the basis of nationality;".

Amendment 9:

Article 11(a) Add the following: "It shall not undermine social values by suggesting that possession or use of a product in itself gives a child a physical, social or psychological advantage over other children of the same age or that not possessing the product would produce the opposite effect."

Amendment 10:

Article 12 First sub paragraph: Delete the first sentence.

Amendment 11:

Article 14 At the end of the first sentence add: "and which does not exceed 18% per hour."

Amendment 12:

Article 15, subparagraph 1 Add a new sentence at the end of the existing text: "This shall also apply to programmes which, although not covered by the preceding sentence, might harm the physical, mental or moral development of children and young persons, except where it is ensured by selecting the time of the broadcast or any technical measures that these children and young persons normally will not see or hear these broadcasts."

Amendment 13:

Article 17 Modify as follows: replace the words "or a statutory licence is applied" by: "or arbitration has been given."

Amendment 14:

Article 18(1) Fifth line to read as follows: "...from the notification, that a decision on the granting of a licence is sought by an arbitration body. Such an arbitration decision need not be sought if, during the two-year period..." (rest unchanged)

Amendment 15:

Article 18(2) After "... and the Agreement is an obstacle" to read "to the introduction of a binding system of arbitration, the Member States shall take the necessary steps to permit its application in accordance with paragraph 1."

Amendment 16:

Article 19(1) Replace by: "The licence introduced in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights."

Amendment 17:

Article 19, sub paragraph 4 Modify as follows: "The equitable remuneration within the meaning of Article 19 sub 1 shall be determined by the arbitration body."

Amendment 18:

Article 19 sub paragraph 5, Delete the first sentence and replace it by: "The Member States shall decide on the composition of the arbitration body."

Amendment 19:

Add the following new Chapter VI (Existing Chapter VI "Final provisions" to be renumbered consequently as Chapter VII)

Right of Reply

- All natural and legal persons and associations of persons who are subjects of a Member State or have their headquarters therein shall have a right of reply. The regulation of the rights of other applicants under national law shall not be affected.

- The right of reply shall apply vis-à-vis all broadcasting undertakings that have their headquarters on Community territory.

- The application for the right of reply shall be justified if the applicant's legitimate interests and in particular the applicant's honour and reputation have been injured by an assertion in a radio or television broadcast.
- The application for the right of reply shall be submitted in writing within 30 days following the broadcast.
- The application shall specify the applicant's identity and the programme and the offending point in the programme, substantiate the claim that interests have been injured and give the text of the reply.
- The text of the reply shall be as succinct as possible and shall as a general rule not take up more than three minutes of broadcasting time. It must deal directly with the offending assertion of facts.
- The broadcasting body may reject the reply if it constitutes a punishable act, would render the broadcaster liable to civil law proceedings or offend public decency.
- If this is not the case and if the above conditions for the reply and the application are met, the broadcasting undertaking shall broadcast the reply by its own means and at its own cost.
- The reply shall be broadcast if possible in the next broadcast whose nature, time and audience corresponds to those of the offending broadcast. It must at all events be broadcast within 30 days of the application.
- The reply shall be broadcast without commentary or response.
- Disputes between the applicant and the broadcasting undertaking shall be referred to the civil courts.
- The right of reply shall in no way affect other legal consequences flowing from the offending broadcast.

III. The Committee on Economic and Monetary Affairs and Industrial Policy,

- 1) welcomes the fact that the Commission has presented a draft-Directive incorporating many of the suggestions made in Parliament's Resolutions of October 1985 (a) No. C288, 11-11-1985); believes, however, that a number of amendments are necessary as indicated above;
- 2) stresses that the draft-directive, while a cornerstone of the Community's audiovisual policy, is by no means to be regarded as the only instrument of this policy;
- 3) recalls, notably, Parliament's consistent support for the creation of multilingual European television programmes;
- 4) calls on the partners of the Europa TV Consortium, the European Commission and the relevant governments of the Member States to find solutions to the current difficulties concerning Europa TV;
- 5) calls on the Commission to renew its efforts to reach agreement in Council on its proposal for a fund to stimulate European audiovisual productions (COM(85) 174);
- 6) requests the Commission to report to Parliament on how the new Community instruments on venture capital, Eurotech capital and Eurotech insurance could be used to stimulate the European audiovisual industry;
- 7) calls on the Commission to ensure a speedy execution of its MEDIA Programme by its services and recalls its decision to draw up an own initiative report on this programme, in which its various aspects will be dealt with in depth.

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on the Environment, Public Health and Consumer Protection

Draftsman: Mr. K. COLLINS

On 19 March 1986 the Committee appointed Mr. COLLINS draftsman of the opinion.

The Committee considered the draft opinion at its meetings of 21/22/23 May, 15/16/17 September and 29/30/31 October 1986. It adopted its conclusions on 29 October by 24 votes to 2 abstentions.

The following took part in the vote: Mrs WEBER, Chairman; Mr COLLINS, Vice-chairman and rapporteur; Mrs ANDRE (deputizing for Mr NORD-MANN), Mr BOMBARD, Mr COTTRELL, Mr ELLIOTT (deputizing for Mr BARRAL AGESTA), Mr GARCIA V. (deputizing for Mrs VEIL), Mr GRAZIANI, Mrs GREDAL (deputizing for Mrs RENAU I MANEN), Mr HUGHES, Mr LAMBRIAS (deputizing for Mr ALBER), Mrs LENTZ-CORNETTE, Mrs LLORCA VILAPLANA, Mrs MAIJ-WEGGEN (deputizing for Mrs BANOTTI), Mr MERTENS, Mr MUNTINGH, Mrs PEUS (deputizing for Mr GAIBISSO), Mr V. PEREIRA, Mr ROELANTS du VIVIER, Mrs SEIBEL-EMMERLING (deputizing for Mr SCHMID), Mr SHERLOCK, Mrs SQUARCIALUPI, Mrs TONGUE, Mr VAN DER LEK, Mr VAZQUEZ FOUZ (deputizing for Mr TOGNOLI) and Mr VITTINGHOFF.

A. Background to the Commission proposal

1. The proposal is the result of a lengthy period of consultation with many interested parties on the Commission's own Green Paper "Television Without Frontiers". This was, in turn, largely a response to the call made by the EP in its resolutions of March 1982 on broadcasting in the European Community and March 1984 asking for Commission intervention to fix limits on broadcast advertising. In October 1985 it stated its Opinion on the Green Paper itself.

2. The fundamental reasons for all this activity are twofold.

(1) There is a clear and widespread concern to protect and maintain the quality and diversity of European culture in the interests of consumers, but to ensure that this is done in such a way as to retain and perhaps expand the range of television programme material available. It is popularly felt (especially in the non-English-speaking majority of the Community) that if action is not taken, then the financial attractions of cheaply available material from outside the Community will undermine the viability of the European production industry in the short to medium term and European culture itself in the long term.

(2) It is widely felt that this difficult situation is likely to be exacerbated by rapidly changing technology. The ability to broadcast across frontiers by means of satellites is likely to increase dramatically by the 1990s. This has huge financial implications. It also poses the problem of widely varying standards of control of broadcast material among Member States and how this might be dealt with through controls on advertising and programmes. The problem is how to allow consumers as free and as wide a choice of viewing as possible while maintaining both quality and an adequate level of consumer protection.

B. The Methods Proposed

1. The Proposal runs to twenty-three articles dealing with Community preference for programme material, encouragement of independent productions, programme sponsorship, advertising, protection of children and young persons and the question of copyright. There is therefore a clear consumer interest. To pursue this, the draftsman has sought comment from consumers, broadcasters, advertisers, film and television producers and many other interests (see Annex A).

2. Chapter I of the Proposal is concerned to ensure that all broadcasts originating in any of the Member States conform with the law and that they will be freely available in all other Member States. In other words, it is the Commission's intention to create a free market in broadcasting in which consumers will be able to have an unrestricted choice of broadcast material. So far as received evidence is concerned, there appears to be little objection to this aim and, indeed, in the case of radio this free availability of broadcasts (except in wartime!) has been the established rule. It must be pointed out, however, that enthusiasm for the Directive among Member States and broadcasters appears to be a little uncertain.

3. In Chapter II, Articles 2 to 4, the Commission sets out its proposals on the question of the promotion of distribution and production of television programmes. It is suggested that:

- there should be quotas of 30% rising to 60% of all programming material (with certain exceptions) devoted to Community produced works. The exclusions are news, sporting events and game shows, advertising or teletext.
- at least 5% of programme budgets should be reserved for works created by independent producers.

4. a) These proposals are of interest to the consumer because they are likely to affect the range of materials available for viewing and it is fair to say that they are among the most controversial in the whole draft Directive. In the first place, although the central aim of encouraging European production is generally agreed to be laudable, the industry itself has expressed the feeling that the fixed percentages constitute an undesirable restriction on the editorial freedom of broadcasters. This view appears to be common among all the public service broadcasters who, it seems, would prefer a more relaxed approach.

b) In addition, however, many groups have observed that the definition of Europe as being equivalent to the European Community is unfortunate in this case. Austria, Sweden and Switzerland all have thriving film and broadcasting industries whose productions are used inside the Community. Therefore, many have felt that if Community broadcasters are to have quotas applied then productions from Council of Europe countries should be treated as though they were of Community origin.

c) There also appears to be a problem about the definition of what constitutes a Community work. 70% of production costs is considered to be too high to take into account the fairly common practice of cooperation with, for example, Australian, Canadian or Austrian producers and companies. Concentration on cost alone may underrate the value of the creative input which could well be European.

d) Finally, it should be pointed out that there is a clear level of support for these proposals from producers operating outside the direct employment of the broadcasting companies and authorities. This may, however, be tempered by the absence of any substantial funding commitment on the part of the Community. Nonetheless, a good number of people have expressed doubt about the precise meaning of "independent producer" and although there is a discussion of the point in the Commission's Explanatory Memorandum (paras 56 and 57) the Directive itself should provide a more explicit reference than it does.

5. Chapter III concerns broadcast advertising and sponsorship and consist of ten articles whose basic purpose is to create a European framework of advertising control within which Member States would be free to operate. The Commission believes that it would be inadvisable (or impossible for political reasons) to have European control of advertising, while recognising that there are good reasons for observing a European minimum standard so as to maintain a reasonable equality of treatment of advertising material and a basic level of consumer satisfaction.

a) By and large, evidence from broadcasters and advertisers suggests an acceptance of this approach. Nobody wants a European Broadcasting Authority nor a European Advertising Control Agency because it is generally believed that such an approach would result in a clumsy, inflexible and unnecessarily bureaucratic intervention in a highly sensitive political and cultural area.

b) By and Large, however, BEUC has expressed concern that the standard of advertising control across Europe is extremely variable and that, in order to give consumers adequate protection, it is necessary to harmonise standards at the strictest level. The Commission's approach, it is argued, will merely undermine standards because it will permit the minimum European standards but fail to reach the strict requirements of some of the Member States.

c) In its opinion on the Green Paper, this Committee argued in favour of the approach now adopted by the Commission. There seems little reason to change, not because we do not want to press for high standards of consumer protection, but because of a realisation that the disparity among the Member States of what is thought to be decent or acceptable on the television screen is too great to allow the achievement of BEUC's demands, and it is unlikely that any Member State would be willing to cede sovereignty on such an issue.

d) Of course, it must not be assumed that advertising is a sine qua non of television and there is no requirement in the Commission's proposal for all television to carry advertising. Thus Danish television or the BBC could remain as they are at present. Denmark or Britain would, however, be unable to refuse transmissions containing advertising from outside their territory provided that such transmissions were within the European framework.

e) Apart from these points, the Proposal conforms broadly with the Opinion of this Committee so far as advertising is concerned. There are, however, six problem areas to which special attention should be paid.

- i) Whereas the EP has called for a 10% limit on advertising time, the Commission has proposed 15%, which is said to be a compromise between the consumers on the one hand and the various industrial and commercial interests on the other, many of whom oppose fixed percentages. However, the Proposal says nothing at all about the distribution throughout the day of the 15% and an amendment to the text is therefore necessary in order to prevent possible abuses of the rules.
- ii) The proposal is not clear on the distinction between "blocks" of advertising occurring at set times in a programme schedule and advertising being allowed during "natural breaks" in a programme. Both systems are in use in the Community and it would appear sensible to allow both to continue. The essential thing is that advertising should be clearly distinguished from programme material and that it should not interfere with programmes.
- iii) In line with Parliament's view on the Green Paper, the Proposal includes a total ban on the advertising of all tobacco products. In the evidence received there have been some elegant and ingenious arguments against such a ban, but, given the clear cancer-tobacco links, there seems little reason for change.
- iv) Article 10 sets out controls on alcohol advertising and again this is broadly in line with Parliament's demands. However, some have argued for a total ban on the grounds that alcohol is, like tobacco, injurious to health. The counter-argument, accepted last time, is that whereas the cancer-tobacco link is clear, it is the abuse of alcohol that causes problems, not its controlled and sensible use.

- v) There is a problem with Article 11 where the Commission text is felt by many interests to be inadequate. A reworded article dealing more comprehensively with the problem is necessary.
- vi) In Article 12 it is not clear whether the proposals deal with programmes which are themselves sponsored or with events which are sponsored and televised. A definition of sponsorship is necessary.

6. On the whole, the section on advertising is close to the EP's view of the Green Paper and is essentially an exercise in balancing consumer needs and the demands of Member States to retain control of their own systems. It is, after all, very likely that, should the Proposal have contained a suggestion of a European Advertising Control Agency or a vetting procedure, the whole thing would have foundered on the rocks of national sovereignty. It is probably better, therefore, to require Member States to have their own systems of vetting and control and leave the rest to the Courts if necessary.

7. Chapter 4 addresses the problem of the protection of children from pornography, racism or gratuitous violence, and while everyone will applaud the aims, there will no doubt be practical problems to be solved. This is an area of taste and judgement where unreasonable censorship can overlap with reasonable control. It is after all important to ensure that the dramatic quality and range of television programme material suitable for reasonable adults is also maintained.

8. Finally, Chapter V deals with the problem of copyright and, on the basis of received evidence there is virtually no agreement on the Commission's proposed solution to what is a very difficult problem. From the consumers' point of view, it is clearly best if few barriers are put in the way of those who would want to provide as wide a range of programmes as possible. However, a statutory licensing system may bring with it problems of the rights of authors and independent producers as well as of broadcasting companies, thus leaving the consumer with a possible choice between a wide range of low quality programmes or the restrictions on choice that may accompany a contractual system. There is, therefore, an arguable case for the deletion of this Chapter and an open discussion of the general problems of broadcasting copyright in the Commission's promised and long-delayed Green Paper on Copyright.

Conclusions

- 9. a) The Committee on the Environment, Public Health and Consumer Protection recognises that the Commission's Proposal for a Directive is a serious attempt to give legislative expression to the wishes of the European Parliament on the question of broadcasting across frontiers and it shares with the Commission the view that intervention is necessary now because of the increasing pace of technical change and the need to protect the consumer.
- b) It believes that it is in the consumers' interest to maintain a high quality of television industry in Europe and to complement this with a wide variety of programme material.

- c) It recognises that this may not be possible without financial encouragement to the film and television industry to produce its own material rather than buy from the USA and without recourse to advertising revenue in certain cases.
- d) It considers that public service broadcasting must be encouraged in all the Member States, recognises that no broadcasting company or authority should be compelled to use advertising as a means of raising revenue and believes that a European framework for advertising control is necessary so long as this can be administered at Member State level.
- e) Recommends therefore that:
- i) If quotas on European productions are to be applied, negotiations should take place to include the whole Council of Europe area as being of Community origin.
 - ii) In order to recognise the importance of Community creativity the 70% of production costs mentioned in Article 4c should be reduced to 50%.
 - iii) Article 7(2) should be amended to read 'Broadcast advertising shall be kept quite separate from the other programme material'.
 - iv) In Article 10 and 11, the Directive ought to be clear about what is to be meant by 'children and young persons'.
 - v) In Article 11a), the text should read:
 - a) 'it shall not directly exhort children and young persons to buy product or a service by exploiting their immaturity of judgement or inexperience; ~~it shall not undermine social values by suggesting that possession or use of a product alone will give the child a physical, social or psychological advantage over other children of the same age, or that non-possession of this product would have the opposite effect~~'.
 - vi) The Legal Committee should consider inserting a clear definition of sponsorship in Article 12. Care should be also taken to ensure that sponsors and their commercial rivals who advertise in and around sponsored programme avoid advertisement in the style and presentation of the programme, to secure the essential need for a clear separation between programmes and advertisements.
 - vii) In Article 14 it should be made clear that whereas the Commission's 15% advertising limit refers to daily broadcasting time, at no time should this ever be allowed to exceed 18% in any hour.
 - viii) In Article 15(1), the word "might" should be replaced by "are likely to". The first sentence of Article 15(2) should be deleted and a sentence added to give the broadcaster responsibility for complying with the terms of Article 15(1).

- ix) Chapter V should be deleted entirely and the Commission should be encouraged to bring forward its Green Paper on Copyright as a matter of urgency.
- x) The definition of "broadcasting" (Article 21(11)) appears to exclude teletext. However, the Explanatory Memorandum (para 99) states that the directive does apply to purely passive services such as teletext. This requires clarification. Many groups would be concerned if videotext were included.
- xi) The definition of "internal broadcasts", and "cross-frontier broadcasts" in Article 21(3) and 21(4) respectively are not sufficiently clear.
- xii) It is questionable whether certain provisions of the directive, clearly drawn up with television in mind, should apply to radio broadcasting (e.g. provisions on block-advertising, sponsorship, pornography and violence).
- xiii) Whereas the Commission has made it clear that it considers the sponsorship of broadcast programming as a distinct issue from advertising, considering the novelty of programme sponsorship in most European countries, and concerned that there is a confusion between the 3 main types of 'sponsorship' - programme sponsorship, sponsorship of events and product placement in programmes - the Committee would suggest to the Legal Affairs Committee in preparing its Opinion that it should propose a separation in the Directive between the advertising aspects and sponsorship by placing Article 12 in a separate chapter.

Evidence received from:

Action on Alcohol Abuse
Belmont European Community Law Office
Brewers' Society
British Broadcasting Corporation
British Film & Television Producers Association Ltd
Bureau Européen des Unions de Consommateurs
Cable Authority
Channel 4
Children's Research Unit
Robin Corbett, MP
European Advertising Tripartite
European Group of Television Advertising
European Institute for the Media
Independent Television Companies Association
Institute of Practitioners in Advertising
International Council on Alcohol and Addiction
Mars Corporate Services
Ogilvy & Mather
Radio Telefis Eireann
Scotch Whisky Association
Sky Channel
Tobacco Advisory Council
Video & Copyright Protection Society
Alan Williams, MP
World Federation of Advertisers

Evidence also requested from:

Consumers' Association
Mr C. Dunkley, Financial Times
Mr P. Fiddick, The Guardian
Home Office
Ms Brenda Maddox, The Economist
National Consumer Council via Consumers in the European Community Group

OPINION

(pursuant to Rule 101 of the Rules of Procedure)

Draftsman: Mr HAHN

By letter of 5 June 1986, the President of the Council of the European Communities requested the European Parliament to deliver an opinion on the proposal for a Council directive on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities (COM(86) 146 final - Doc. C 2-38/86).

At its meeting of 24 June 1986, the committee decided to deliver an opinion on the proposal for a directive referred to it on 11 June 1986 for an opinion.

At its meeting of 31 October 1986, the committee appointed Mr HAHN draftsman of the opinion.

The committee considered the draft opinion at its meetings of 30 October 1986, 26 November 1986 and 27 February 1987. On 20 May 1987, it adopted the amendments to the proposal for a Council directive and the conclusions contained therein by 13 votes to 7.

The following took part in the vote: Mrs LEMASS, chairman; Mrs SEIBEL-EMMERLING, Mr SELVA and Mr PAPAPIETRO, vice-chairmen; Mr HAHN, rapporteur; Mr BARRAL I AGESTA (deputizing for Mr Abens), Mr BAYONA AZNAR, Mr BARZANTI (deputizing for Mr Moravia), Mr CANTARERO DEL CASTILLO, Mr COIMBRA MARTINS, Mr ELLIOTT, Mrs EWING (deputizing for Mr Cassabel), Mr FAJARDIE, Mrs FONTAINE (deputizing for Mr Formigoni), Mr GERONTOPOULOS, Mr KUIJPERS (deputizing for Mr Columbu), Mrs LARIVE-GROENDENDAAL, Mr McMILLAN-SCOTT, Mr MUNCH and Mr RAMIREZ-HEREDIA.

On 10 October 1985 the European Parliament, in two motions for resolutions on the Commission's Green Paper - 'Television without Frontiers' - on the establishment of the common market for broadcasting, especially by satellite and cable (COM(84) 300 final), called on the Commission to submit without delay a draft directive on cross-frontier television. The Commission complied with this request gratifyingly quickly and forwarded the draft directive to Parliament on 6 June 1986.

1. This draft complies with the European Parliament's requests and its contents should be warmly welcomed. In the meantime, it has given rise to a heated debate within the sectors concerned in Europe, including television organizations, media lawyers, the industry and consumers and the relevant professional associations and politicians.

1.1. The committee has followed the debate very attentively and weighed up the various arguments to see whether they hold good. One of the arguments leading to the rejection of the draft directive by certain sectors is, first, the assertion that television is culture and that the European Communities have no jurisdiction in that respect. Thus the International Federation of Journalists thus, for example, states as follows: 'Cultural policy is however a matter for the Member States. They should not be hindered in that respect since the interests of the European Communities are per se of an economic and not of a cultural nature'. Those who reject the proposal have one feature in common: they want to restrict European integration within the European Communities to the economy in accordance with a narrow interpretation of the concept of economy. For this reason they reject the inclusion of any new policy fields, especially those concerning culture. They would rather keep to the non-binding recommendations of the Council of Europe.

1.2. In contrast to this, the European Parliament agrees, as it has already done in the resolutions adopted on 10 October 1985, with the legal viewpoint put forward by the Commission of the European Communities in the Green Paper entitled 'Television without Frontiers'. In 1974 the Court of Justice of the European Communities ruled in the Sacchi case that 'the transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services'.

On the basis of Articles 59 to 62 in conjunction with Article 57 of the EEC Treaty, the European Community has the right and the duty to take action in favour of cross-frontier television. It is irrelevant in this respect whether economic, social or any other subjects in connection with television are involved. As regards the harmonization of the various laws on the media in the Member States, there is a requirement which is enshrined in the EEC Treaty and to which the Court of Justice has also referred whose aim is to facilitate freedom of broadcasting within the Community.

1.3. Basically, it should be observed that common European culture is the factor uniting the Member States of the European Communities most strongly. Even if the Member States cannot be deprived of responsibility for culture in their territory, there is no doubt that there are issues and problems which call for common European rules. The 1976 action programme of the Ministers of Education indicated such tasks in the educational field. As regards research, particularly large-scale research, common European solutions are essential. In the same way, the new cross-frontier media require European solutions. For this reason at almost all summit conferences of the Heads of Government cultural tasks, for example within the context of a 'People's Europe', are mentioned as common European tasks. It was not for nothing that the fundamentally important ECSC Treaty regarded European integration as a process which begins with the economy but must also be continued into other fields. Its preamble states as follows: 'Resolved ... to create, by establishing an economic community, the basis for a broader and deeper community among peoples'.

The process of European integration has for a long time included important cultural fields without undermining the cultural independence of the Member States. The new media, which are of a cross-frontier character and at the same time political, economic and cultural phenomena, call for common European basic regulations. The essence of European culture is correctly described as 'unity in diversity'. The opening-up of the frontiers for television broadcasts from other Member States enables Europeans to discover this diversity. On the other hand, partitioning off the Member States or even their subdivisions by retaining legal restrictions deprives them of a fruitful exchange with the richness and variety of other national and linguistic cultural areas in Europe. Since the time when it has been possible to speak of a European culture, the cultural exchange has been natural and has led to creativity and vigour in European culture.

1.4. The recommendations adopted or conventions envisaged by the Council of Europe are not enough for the Community, because they are not aimed at integration of national markets in broadcasting but at cooperation between the Member States of the Council of Europe. The Council of Europe is doing no more than apply cumulatively the different legislation of several States to the same cross-frontier broadcast. The proposed directive does not establish any new frontiers but eliminates existing ones. Other Member States of the Council of Europe can be involved later on, particularly by means of an agreement on the basis of reciprocity.

2. The proposals on advertising in Chapter III are along the lines of the European Parliament's resolutions. The committee advocates, contrary to the criticisms put forward, that the rules contained in Articles 7 to 14 should be retained.

2.1. It is in favour of adhering to the proposals contained in Article 7, which encourages block advertising, since spot advertising breaks the continuity of programmes of cultural value and viewers are forced to watch the advertisements if they do not wish to miss the next part of the programme. In the case of block advertising the unity of the programme is retained and viewers are free to watch the advertising or turn it off.

2.2. The general principles laid down for broadcast advertising in Article 8, which are made more specific in Article 11 on the protection of children and young persons, should be retained despite the objections put forward by the advertising industry. The criticism that it is sufficient to harmonize solely the rules applicable specifically to broadcasting advertising is not convincing. The claim that the rules laid down in Article 11 are not specific to broadcasting is contestable. Television advertising comes right into the home and the family circle, whilst printed advertising is addressed to the reader.

2.3. In accordance with paragraph 22 of the resolution on the economic aspects of the common market for broadcasting, Article 5 of the directive merely contains a general provision on the time allowed for broadcast advertising. This corresponds to the original proposal made by the Committee on Youth and Culture which was amended in plenary sitting to 10% per hour of broadcasting time. The solution which has now been proposed is more flexible. As regards cross-frontier advertising, the Commission provides for 15% of the total broadcasting time, thus complying with the insistent demands made by the industry. The directive thus makes a distinction between the rules which each Member State adopts internally as regards advertising and the rules on cross-frontier advertising. That distinction applies, however, only to transmission by cable but is obsolete as soon as direct reception from satellites becomes possible.

2.4. Accordingly, the Commission wants to allow the Member States to adopt in their territory stricter rules than those laid down in the directive.

The objection that this might put the Member States' own industry at a competitive disadvantage and that such rules conflict with the principles of the common market is difficult to refute. On the other hand, from the viewpoint of cultural policy, there is a great deal in favour of this differential solution. For example, the prohibition on Sunday advertising is based on the varying cultural and religious traditions of the Member States and can only be maintained if Article 13 is kept in the directive.

2.5. Article 6 entrusts the rules on the prior checking of advertising to the Member State broadcasting it in each case. This prior checking is already the practice in France, Great Britain and the Netherlands and no objection of censorship is raised because the monitoring is not carried out by the State. It is left to the Member States to determine who carries out the prior checking and how. This can also be done by the broadcasting organizations themselves.

2.6. An important change vis-à-vis the Green Paper and also the European Parliament's resolution is the fact that the directive does not compel Member States which have hitherto not permitted television advertising to authorize it. The reason for this is that when cross-frontier advertising is liberalized, liberalization will naturally be accepted within those States and the same objective may well be achieved more successfully.

3.1. The European Parliament requested in its resolution that a minimum quota of programmes which are indigenous European productions should be guaranteed. In so doing it took into account the debate on the Green Paper in which inter alia the fear was repeatedly expressed, particularly by the public organizations in the EBU and also by the European Institute for the Media in Manchester, that relinquishing the existing frontiers for television in Europe, as provided for in the Green Paper, would lead to the swamping of European television programmes by productions from outside Europe and to a general lowering in the standard of programmes. For this reason the introduction of quotas for the proportion of European productions in television programmes was called for on many sides.

3.2. France and Italy have pursued this policy for a long time (government specifications lay down quotas in certain programme areas). In Great Britain, the Broadcasting Act 1981 does not lay down any specific quotas but reasonable proportions of the programme should be of British origin. In Belgium and the Netherlands the imposition of quotas is likewise being discussed or has already reached an outcome. The minister-presidents of the Federal German Laender advocated in 1984 that 'the indigenous production of programmes by the Federal Republic and Europe should be encouraged' and called for 'the input of broadcasting programmes to contain reasonable proportions of productions from the German-speaking area'. For this reason it is surprising that the quota rules now proposed in the directive are flatly rejected by some of the abovementioned advocates thereof.

3.3. The Committee on Youth and Culture is in favour of the proposed measures because they help to increase the production of European programmes and to stimulate cultural creativity in Europe. For this reason it is still of the opinion that it is justified to demand that a certain proportion of the programmes on television should be produced in Europe. It is not a matter of rejecting programmes from the USA but rather of giving cultural production in Europe, which has hitherto lagged behind because of national frontiers and the consequently relatively small markets for television programmes, the scope which they need to develop in the medium of television. This might be a measure which becomes unnecessary at a later stage.

4. The provisions laid down in Chapter III on the protection of children and young people correspond to the proposals of the European Parliament. They should be considered in conjunction with Article 11. The committee fully approves them. With regard to this area in particular, Article 15, which provides for a prior check, is very important.

5.1. During the public debate on the Green Paper, the rules on copyright in connection with the cross-frontier retransmission of programmes by cable proved to be a controversial point. In this respect, the Commission dropped the statutory licence which it had originally advocated in favour of giving precedence to contractual agreements between copyright owners and cable operators. The licence solution comes into place only in the rather unlikely case where it is impossible to reach a contractual agreement after at least two years of unsuccessful negotiations.

5.2. The question of copyright is especially sensitive from the point of view of cultural policy since authors and copyright marketing companies insist on using the principle of territoriality under the existing copyright law in order to market their goods on national markets differently from one State to another. They speak of expropriation when an attempt is made to find European solutions providing freedom of movement instead of purely national ones, although the international recognition and dissemination of their intellectual products is all-important. There is no doubt that the copyright owner is entitled to proper payment for each retransmission and that this must be guaranteed. On the other hand, writers correctly take the view that thoughts are free and no one can prevent them from overcoming obstacles. The common market, and even more the unrestricted exchange of ideas can only be attained if copyright law with regard to television is also liberalized and given a European dimension.

5.3. The committee cannot agree with the recommendation made by the Committee on the Environment, Public Health and Consumer Protection that the provisions on copyright contained in the directive should be deleted and that we should await the promised Commission Green Paper on copyright, because, according to the Commission, that Green Paper does not deal with the problem of the re-transmission of broadcasts by satellite and cable. The matter has already been discussed in depth in the 1984 Green Paper entitled 'Television without frontiers'. The European Parliament, in its two resolutions of 10 October 1985, adopted a clear standpoint on this to the effect that the issues relating to copyright should be settled by the directive without delay (paragraphs 30 and 31 or 32). This viewpoint must be adhered to, or else a major obstacle to the free cross-frontier flow of programmes would remain.

The Committee on Youth, Culture, Education, Information and Sport requests the committee responsible, the Committee on Legal Affairs and Citizens' Rights, to adopt the following

- amendments to the proposal for a Council directive in its report and
- conclusions in its motion for a resolution.

Amendments to the proposal for a Council directive

on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities (com(86) 146 final - Doc. C 2-38/86)

The Committee on Youth, Culture, Education, Information and Sport requests the Committee on Legal Affairs and Citizens' Rights to incorporate the following amendments to the proposal for a Council directive in its report:

Text proposed by the Commission of the European Communities

Amendments proposed by the Committee on Youth, Culture, Education, Information and Sport

Preamble and recitals:

unchanged

Article 1

Paragraph 1

unchanged

Paragraph 2

unchanged

Paragraph 3

unchanged

Article 2

Paragraph 1

Amendment No. 1

Paragraph 1 to read as follows:

Member States shall ensure that internal broadcasters of television reserve at least 30% of their programming time not consisting of news, sporting events and game shows, advertising or teletext services for broadcasts of Community works within the meaning of Article 4, of which in the case of initial transmissions at least one-third shall be reserved for first broadcasts in the Community.

'Member States shall ensure that internal broadcasters of television reserve an appropriate proportion of their annual programming time not consisting of news, ... of Community works and works from Member States of the Council of Europe within the meaning of Article 4, of which in the case of initial transmissions at least one-third shall be reserved for first broadcasts of works from the Community and from the Member States of the Council of Europe.'

Paragraph 2

This percentage will be progressively increased to reach at least 60% after the expiry of three years from the date specified in Article 22

Amendment No. 2

Paragraph 2 to be replaced by the following:

'An appropriate proportion shall be deemed to have been attained when it amounts to 30% and is progressively increased after the expiry of three years after the date specified in Article 22 to at least 60% of the annual broadcasting time of the programme concerned.'

Paragraph 3

unchanged

Articles 3 and 4

unchanged

CHAPTER III: BROADCAST ADVERTISING
AND SPONSORING

Amendment No. 3

Section I: Internal broadcasts

Section I and Section II

Section II: Cross-frontier
television broadcasts

In CHAPTER III delete the headings to

Article 5

Amendment No. 4

Member States shall fix the amount of time allowed for broadcast advertising so that:

Amend Article 5 as follows:

'Member States shall see to it that broadcast advertising and the time allowed for it are fixed so that:

(a) and (b)

unchanged

Article 6

Amendment No. 5

Paragraph 1

Paragraph 1 to read as follows:

Without prejudice to the provisions of other Community acts, Member States shall ensure that broadcast advertising in internal broadcasts is checked prior to transmission and is broadcast only if it complies with the rules of this section

'Without prejudice to the provisions of other Community acts, Member States shall ensure that broadcast advertising in internal broadcasts (delete seven words) is broadcast only if it complies with the rules of this section.

Paragraph 2

unchanged

Article 7

Paragraphs 1 and 2

unchanged

Paragraph 3
WG(VS1)/8768E

unchanged

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Youth, Culture, Education,
Information and Sport

60 minutes' duration may be
interrupted once if the nature of
the programme permits such an
advertising break and if

(a), (b) and (c)

unchanged

Article 8

(a)

unchanged

(b) contain any racial or sexual
discrimination

Amendment No. 6

(b) to read as follows:
'contain any racial or sexual
discrimination or discrimination on
the basis of nationality;'

Articles 9 and 10

unchanged

Article 11

(a), (b), (c) and (d)

unchanged

Article 12

Undertakings shall not exert improper influence over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or programme which could reasonably be taken to suggest or imply that undertakings, for advertising purposes, have influenced parts of the programme which are not an advertisement. In particular,

(a) - (c)

Amendment No. 7

Amend the first line of Article 12 as follows:
'Undertakings shall not exert de jure or de facto influence over the programme as a whole or parts of the programme that do not consist of advertising.'

unchanged

(d) advertising within or around programmes shall not be allowed if there is any link in content or presentation with the programme

Amendment No. 8

(d) to read as follows:
'advertising within (delete two words) programmes shall not be allowed if there is any link in content or presentation with the programme.'

Article 13

unchanged

Text proposed by the Commission
of the European Communities

Article 15

Paragraph 1

Paragraph 2

Member States shall ensure that internal broadcasts are checked prior to transmission and broadcast only if they comply with the requirements under paragraph 1. Member States shall further ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 16

Article 17

Article 18

Paragraph 1

Where a cable operator notifies a Member State that the simultaneous, unaltered and unabridged retransmission by cable of an internal broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been so notified shall ensure, within a period of two years from the notification, that the retransmission is made possible by the application of a statutory

Amendments tabled by the Committee
on Youth, Culture, Education,
Information and Sport

unchanged

Amendment No. 9

Add the following paragraph 1(a) after paragraph 1:

'1(a). This shall also apply to programmes which, although they may not be seriously likely to corrupt the young, are liable to have an adverse effect on the development of children and young people unless the broadcasting time is chosen in such a way or other technical measures are taken to ensure that these broadcasts cannot normally be viewed by children and young people.'

Amendment No. 10

Paragraph 2, first sentence, to read as follows:

'Member States shall ensure that internal broadcasts are broadcast only if they comply with the requirements under paragraph 1 and that live broadcasts which cannot be checked in advance are interrupted if there are scenes liable to corrupt young people.'

(rest unchanged)

unchanged

unchanged

Amendment No. 11

Paragraph 1 to read as follows:

'If a simultaneous, unaltered and unabridged retransmission by cable of an internal broadcast by another Member State has been prevented by the invocation of copyright or related rights, application may be made to an independent arbitration body which shall, within a period of two years from the application, provide a decision on conditions for retransmission by cable which shall

Text proposed by the Commission
of the European Communities

licence. However, such a statutory licence need not be granted if, during the two year period, the obstacle to retransmission has been removed, in particular, by a contractual agreement between right owners and one or several cable operators

Paragraph 2

Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the introduction of the statutory licence, the Member States shall denounce the Agreement to the extent necessary to permit the statutory licence to be introduced in accordance with paragraph 1.

Article 19

Paragraph 1

The statutory licence introduced in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights

Paragraphs 2 and 3

Paragraph 4

In the absence of an amicable agreement, the remuneration shall be determined by the competent authority

Amendments tabled by the Committee
on Youth, Culture, Education,
Information and Sport

be legally binding on all parties.
Member States shall ensure that such
an arbitration body is set up.'

Amendment No. 12

Paragraph 2 to read as follows:

'Where the right invoked ..., and the Agreement is an obstacle to a decision of the arbitration body, the Member States shall denounce the agreement to the extent necessary to permit the stipulated procedure to be introduced in accordance with paragraph 1.

Amendment No. 13

Paragraph 1 to read as follows:
'The decision of the arbitration body in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related right.'

unchanged

Amendment No. 14

Paragraph 4 to read as follows:
'In the absence of an amicable agreement, the remuneration shall be determined by the arbitration body.'

Paragraph 5

The competent authority may be a court, an administrative authority or an arbitration body. It shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions. Where it is not a court, provision shall be made for procedures whereby improper or unreasonable exercise of the competent authority's powers or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Article 20

Amendment No. 15

Paragraph 5 to read as follows:
'The arbitration body shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions (delete six words). Provision shall be made for procedures whereby improper or unreasonable exercise of the arbitration body's powers can be the subject of judicial review.'

unchanged

Amendment No. 16

After Article 20 add the following new CHAPTER V A:
CHAPTER V A: Right of reply

- '20(a) All natural and legal persons and associations of persons who are subjects of a Member State or have their headquarters therein shall have a right of reply. The regulation of the rights of other applicants under national law shall not be affected.
- 20(b) The right of reply shall apply vis-à-vis all broadcasting undertakings that have their headquarters on Community territory.
- 20(c) The application for the right of reply shall be justified if the applicant's legitimate interests and in particular the applicant's honour and reputation have been injured by an assertion in a radio or television broadcast.
- 20(d) The application for the right of reply shall be submitted in writing within 30 days following the broadcast.

Text proposed by the Commission
of the European Communities

Amendments tabled by the Committee
on Youth, Culture, Education,
Information and Sport

- 20(e) The application shall specify the applicant's identity and the programme and the offending point in the programme, substantiate the claim that interests have been injured and give the text of the reply.
- 20(f) The text of the reply shall be as succinct as possible and shall as a general rule not take up more than three minutes of broadcasting time. It must deal directly with the offending assertion of facts.
- 20(g) The broadcasting body may reject the reply if it constitutes a punishable act, would render the broadcaster liable to civil law proceedings or offend public decency.
- 20(h) If this is not the case and if the above conditions for the reply and the application are met, the broadcasting undertaking shall broadcast the reply by its own means and at its own cost.
- 20(i) The reply shall be broadcast if possible in the next broadcast whose nature, time and audience correspond to those of the offending broadcast. It must at all events be broadcast within 30 days of the application.
- 20(j) The reply shall be broadcast without commentary or response.
- 20(k) Disputes between the applicant and the broadcasting undertaking shall be referred to the civil courts.
- 20(l) The right of reply shall in no way affect other legal consequences flowing from the offending broadcast.'

Articles 21 to 24

unchanged

Conclusions

1. Welcomes the speedy presentation of a proposal for a directive in response to the requests which it made in its two resolutions of 10 October 1985 and sees it as a necessary Community instrument for the regulation of certain key aspects of a European media system, principally in preparation for the realization of the internal market by 1992 under the Single European Act;
2. Welcomes the clear definition of the principle of free cross-frontier broadcasting in the European Community in the proposal for a directive, thereby overcoming the problem of the cumulative application of contradictory rules of different Member States to the same programme, which makes exchanges of programmes practically impossible;
3. Confirms the legal view supported by the Commission of the European Communities in the proposal for a directive, which is based on the interpretation of the EEC Treaty by the Court of Justice of the European Community, that television is to be classified as a 'service in return for a consideration' even if by and large television comes within the cultural field;'
4. Adheres to its view that the European Community has jurisdiction not only with regard to cross-frontier television but also with regard to the coordination of the legislation of the Member States on the media by means of a directive (Articles 52 to 56 of the EEC Treaty);
5. Is convinced that the harmonization of legal provisions proposed in the directive is essential in order to overcome the existing restrictions and to facilitate freedom of broadcasting in accordance with the law of the State in which the programme is transmitted;
6. Confirms its opinion that this harmonization of legislation must be carried out by the European Community because the Council of Europe's recommendations and conventions are, by their very nature, not aimed at an internal market without internal frontiers but permitted, even for the future, the cumulative application of different provisions of several legal systems to the same programme;
7. Supports the proposals on television advertising (Chapter III) which correspond to its resolutions, particularly those relating to block advertising, prior checking of advertising spots, advertising for cigarettes and alcohol, the maximum proportion of broadcasting time allowed for advertising and the right of the Member States optionally to lay down, as regards their territory, stricter rules than those contained in the directive and thus to take into account their different cultural traditions;
8. Notes that the proposal to allow for a certain proportion of works from the Community in the broadcasting time of the television broadcasters was made by the European Parliament to take into account the diverse views expressed in the discussion on the 'Television without Frontiers' green paper, calling for support for European programme production and a restriction of the excessive influence of non-European works.
9. Proposes, however, that the area specified in Articles 2 and 4 as the area from which the proportion of production is to be taken should be extended to include the Member States of the Council of Europe;

10. Believes, however, that account must be taken of the more limited opportunities of smaller cultural communities in order to avoid a situation where only the larger cultural areas derive advantage from this directive and flood the market;
11. Emphasizes once more that the abovementioned measures will stimulate cultural creativity in the European Community, strengthen the programme industry, and promote the formation of small and medium-sized cultural undertakings in the Community;
12. Believes, however, that the time-limits laid down for this are too short and proposes, therefore, that a differential solution be found which takes account of the differing financing and capacity to produce programmes of public and private organizations;
13. Believes that many concepts and descriptions are too vague in their formulation and that this could lead to divergent interpretations by the Member States (e.g. Article 11(b), Article 12(d) and Article 21(2));
14. Agrees with the proposed provisions to protect children and young people, as special rules of this kind are necessary because television is a much more direct and forceful intrusion on the private life of the family than the press; it should however be laid down that broadcasts containing material liable to corrupt the young should only be permitted later in the evening and that live programmes, which cannot be monitored in advance, should be suspended if there are any scenes liable to corrupt the young;
15. Confirms the need to liberalize and give a European dimension to existing copyright and related property rights on broadcasts from other Community Member States with the aid of this directive in order to facilitate free re-transmission of such broadcasts by cable; this must be done both for the sake of the unrestricted exchange of ideas and culture and for the sake of the financial needs of authors;
16. Regards the proposal that this should be achieved as a rule by means of agreements as an acceptable solution; in cases where no agreement materializes within a fairly long period it does, however, consider arbitration to be the most appropriate means, rather than the statutory licence proposed by the Commission; the arbitration body must be made up in such a way as to allow no doubt about its impartiality.