

# EUROPEAN PARLIAMENT

1999



2004

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*Committee on Culture, Youth, Education, the Media and Sport*

**PROVISIONAL  
2003/2033(INI)**

5 May 2003

## **DRAFT REPORT**

on the application of Directive 89/552/EEC "Television without Frontiers"  
(2003/2033(INI))

Committee on Culture, Youth, Education, the Media and Sport

Rapporteur: Roy Perry



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## PROCEDURAL PAGE

At the sitting of 13 March 2003 the President of Parliament announced that the Committee on Culture, Youth, Education, the Media and Sport had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on television without frontiers and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy and Committee on Legal Affairs and the Internal Market had been asked for their opinions.

The Committee on Culture, Youth, Education, the Media and Sport had appointed Roy Perry rapporteur at its meeting of 21 January 2003.

The committee considered the draft report at its meeting of .

At the latter/last meeting it adopted the motion for a resolution by ... votes to ..., with ... abstention(s)/unanimously.

The following were present for the vote: ... chairman/acting chairman; ... and ..., vice-chairman/vice-chairmen; ..., rapporteur; ..., ... (for ...), ... (for ... pursuant to Rule 153(2)), ... and ... .

The opinion of the Legal Affairs and the Internal Market is attached. The Committee on the Environment, Public Health and Consumer Policy decided on 19 February 2003 not to deliver an opinion, as did the Committee on Industry, External Trade, Research and Energy on 18 March 2003.

The report was tabled on .

## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the application of Directive 89/552/EEC "Television without Frontiers" (2003/2033(INI))

*The European Parliament,*

- having regard to the report from the Commission (COM (2002) 778 - C5-0069/2003),
  - having regard to Directive 97/36/EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities,
  - having regard to its resolution of 6 September 2000 on the Communication from the Commission 'Principles and guidelines for the Community's audiovisual policy in the digital age' (COM (1999) 657 - C5-0144/2000),
  - having regards to its resolution of ... on the evaluation report from the Commission to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 concerning the protection of minors and human dignity (COM(2001) 106 – 2001/2087(COS)),
  - having regard to its resolution of 4 October 2001 on the third report of the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 89/552/EEC 'Television without Frontiers' (COM(2001) 9 - C5-0190/2001 - 2001/2086 (COS)),
  - having regard to the report of the Committee on Culture , Youth, Education, the Media and Sport and the opinion of the Committee on Legal Affairs and the Internal Market (A5- ...),
- A. whereas, in the Commission's judgement, the 'Television without Frontiers' Directive is generally being applied satisfactorily, the free movement of television broadcasting services within the Community having essentially been ensured,
- B. whereas application of the Directive is the responsibility of the relevant national authorities, and whereas the dialogue between Community bodies and national institutions provided for in the Directive has been fruitful,
- C. whereas the audiovisual sector is of fundamental importance for democracy, freedom of expression and cultural pluralism, and contributes to technological innovation, economic growth, the creation of jobs and the functioning of the single market,
- D. whereas the current Directive was adopted before the advent of world-wide broadcasting systems such as the Internet and the possibility of content being broadcast by different technological platforms,

- E. whereas there is substantial and growing interaction between television broadcasting and new information society services, and whereas, therefore, a flexible approach to regulation is necessary,
- F. whereas there is evidence of growing concentration of ownership and control in television broadcasting,

*General remarks*

- 1. Welcomes the transposition of the amended Directive into national law in all of the current Member States and the alignment of national law in the accession states with Community law in the audiovisual field;
- 2. Notes the Commission's conclusion that the Directive has provided a flexible, but adequate, framework for regulation by the Member States and self-regulation by the audiovisual industry;
- 3. Notes the role that the audiovisual sector will play in realising the objective set out at the Lisbon summit of making Europe the most dynamic, knowledge-based economic area in the world; further, notes the importance of the audiovisual sector in supporting democracy, freedom of expression, and cultural pluralism;
- 4. Welcomes the Commission's commitment to consult as widely as possible about the future of the audiovisual sector in Europe and about the need to revise the Directive to take account of recent technological changes and shifts in the structure of the market for audiovisual products;

*The scope of the Directive*

- 5. Notes that an element of legal uncertainty has now arisen as a consequence of the difficulty in interpreting how the Directive should be applied to split screen, interactive services and virtual advertising;
- 6. Welcomes the Commission's intention to provide, by the end of 2003, interpretations of how the current Directive might be applied to such forms of advertising;
- 7. Reiterates, nevertheless, its belief that a thorough revision of the Directive is necessary to take account of technological developments and changes in the structure of the audiovisual market;
- 8. Believes that the definition of audiovisual content must be expanded to take account of media convergence; further, believes that the principles underlying the Directive, and, indeed, those underlying the Community's audiovisual policy, should be set down in a Content Framework Package, which would provide an overarching framework for the audiovisual sector;

9. Believes that such a Content Framework Package should consolidate Community law in the audiovisual field, bringing together revised versions of the 'Television without Frontiers' Directive, the e-Commerce Directive and the Directive concerning copyright related to satellite broadcasting and cable retransmission;

*Principles underlying the Directive*

10. Urges that a revision of the Directive or a Content Framework Package be based on the principles which underlie the current Directive (free movement of European television programmes, the promotion of European and recently-produced independent works, protection of minors and public order, protection of consumers through clear identification and transparency in advertising, and the right of reply);
11. Believes that, to these fundamental principles, must be added a commitment to protect media diversity and to maintain freedom of expression and the right to free access to information;
12. Underlines that the degree of regulation of content must be appropriate to the medium and must be enforced as closely as possible to the activities being regulated;
13. Considers that the practice which has evolved in the practical implementation of the Directive's provisions on protection of minors is a good example of the right balance between framework regulation at Community level, national regulation by the responsible authorities in the Member States, and co- and self-regulation by the industry;
14. Considers that, as far as advertising and consumer protection is concerned, regulation of applications of the new technologies requires a more flexible and less prescriptive approach towards advertising, which should emphasise and build on the interest broadcasters themselves have in maintaining high-quality programming;
15. Urges the Commission to support the establishment of a working group of national regulators for the exchange of best practice in self- and co-regulation in the area of advertising and consumer protection;

*Cultural diversity and European awareness*

16. Notes that quotas for the broadcast of European works, and for recent works by independent producers, have broadly been met;
17. Considers that many of the increasing number of specialist TV channels would not be able to meet the quota provisions set out in Articles 4 and 5 of the Directive; believes, therefore, that the qualification that these quotas be adhered to 'where practicable', should be maintained;
18. Believes that television helps shape the way in which children see the world; invites the Commission to encourage broadcasters to draw as fully as possible on high-quality European works in their programmes aimed at children;

19. Invites the Commission to take steps to encourage broadcasters to make channels which have a pan-European dimension (such as ARTE and EURONEWS) as widely available as possible and to encourage Europe-wide broadcasts of major European cultural events (such as the Austrian New Year's Concert);

#### *Access*

20. Urges the Commission to continue to promote interoperability, so that full access to digital television may be available as widely as possible.
21. Notes that the absence of a harmonised right to access newsworthy events could restrict the free movement of independent media (especially news agencies services); invites the Commission to consider whether measures should be introduced at Community level concerning short extracts of events covered by exclusive rights;
22. Notes that levels of sub-titling and sign language interpretation for those with hearing difficulties, and of audiovisual description for the visually impaired, vary quite widely from Member State to Member State; recalls the Commission's commitment to Parliament in June 2002 to raise this issue in the present report; notes that the Commission has not done so: once again calls on the Commission to address the problem of improving access to the broadcast media for those suffering from sensory impairment;
23. Notes that the rights trading market operates largely within national boundaries or linguistic areas and that this commonly makes it impossible lawfully to access protected satellite TV channels originating from another Member State; welcomes the Commission's commitment to address this problem in its review of the Directive concerning copyright related to satellite broadcasting and cable retransmission;

#### *Media concentration*

24. Reiterates its conviction that pluralism in broadcasting is an important safeguard of democracy and pluralism in society;
25. Expresses its concern that growing concentration of ownership or control of broadcasting and other media, whether 'horizontal' or 'vertical', may subvert pluralism and democracy;
26. Believes that a commitment to diversity of ownership and/or control of broadcasting, and of broadcasting and other media, should be incorporated in any future Directive;
27. Calls on the Commission to monitor levels of media concentration in Europe and to report its conclusions to the Parliament.

## EXPLANATORY STATEMENT

### THE DIRECTIVE

1. The 'Television without Frontiers' Directive (adopted in 1989 but substantially revised in 1997) is the cornerstone of the European Community's audiovisual policy.

- Its main objective is to promote the free movement of European television programmes within the internal market.
- It is based on the principle of regulation in the country of origin. This means that, except in very limited circumstances (such as broadcasts which may be harmful to minors), a Member State may not create obstacles to the reception or retransmission of broadcasts originating elsewhere in the European Community.
- It also seeks to safeguard important public interest objectives such as cultural diversity and the right of reply, and to promote the development of the European audiovisual industry.

### THE COMMISSION REPORT

2. The Commission report concludes that the Directive has now been satisfactorily transposed into national law by all Member States. It functions well as a means of ensuring the freedom to provide TV services in the Community. Independent national regulatory authorities have been set up and most Member States have allocated adequate resources to these to ensure the effective implementation of the Directive. A separate report on Articles 4 and 5 shows that, generally speaking, channels are meeting the targets it set for broadcasting European works and the work of independent producers.

3. **Work programme:** The Commission is also required to propose changes to the Directive necessary to keep it in line with 'developments in the field of television broadcasting, in particular in the light of recent technological developments'. It has annexed to its report a work programme, which is to prepare the way for possible future legislation. This is essentially a reviewing and consultative exercise:

**Early 2003:** the Commission will launch an independent study of the impact of Community and national measures to promote the production and distribution of European works. This study may be accompanied by ad hoc complementary studies.

**April-June 2003:** the Commission will organise a series of hearings of interested parties on: events listing; cultural diversity; European competitiveness; protection of public goods in TV advertising, sponsorship and teleshopping; protection of minors and public order; the right to reply; practical issues relating to the application of the Directive; and - a new issue, not covered by the Directive - access to short extracts of events subject to exclusive rights.

**July 2003:** deadline for submission of written comments.

**July-September 2003:** adoption of an assessment report on the implementation of the 1998 Recommendation on the protection of minors and human dignity.

**Late 2003/early 2004:** Adoption of a Communication on the results of public consultations and possible proposals.

## RAPPORTEUR'S REMARKS

4. The importance of the audiovisual sector scarcely needs underlining. It will play a leading role in attaining the goal set out by the Lisbon summit of making Europe the world's leading knowledge-based economic area, and is an important source of employment. But it also has a wider significance. 98% of households in the EU have a TV set and the audiovisual sector is of fundamental importance for democracy, freedom of expression and cultural pluralism.

5. We should welcome the fact that all Member States have now transposed the Directive into national law and that the accession countries have aligned their legislation with the body of Community law in the audiovisual area. The Commission is satisfied, overall, with the application of the Directive's provisions on quotas, advertising, and protection of minors: it has provided a flexible, but adequate, framework for self-regulation by the industry and regulation by Member States.

6. We should also welcome the Commission's commitment to consult as widely as possible, with broadcasters, advertisers, consumers, national regulators, policy makers and other interested parties. This consultation process is already late: the Commission originally announced that it would launch this early in 2002, with a view to presenting its proposals for a revision of the Directive by the end of 2002. The Commission should now seize the opportunity to frame a fundamental revision of the Directive and consolidation of Community law in this area.

### *The scope of the Directive*

7. Technological progress has been rapid and the structure of the audiovisual market has changed dramatically: for example, in 1989, when the Directive was adopted, there were only 50 TV channels in Europe whereas today there are more than 2 000. But equally dramatic has been - as the Parliament's resolution on the Commission's third report on the application of the Directive noted - the advent of new audiovisual services. There is now an element of legal uncertainty about the interpretation of the Directive when applied to some of the applications of new audiovisual services, such as split screen, interactive services and virtual advertising.

8. The Commission hopes to provide (by the end of 2003) guidance about how the provisions of the current Directive might be interpreted to cover these new forms of advertising. But such fine-tuning can only be a stop-gap: what is needed is a fundamental revision of the Directive to take account of technological developments, their application, and changes in the structure of the audiovisual market. Finally, the complexity of Community law in the audiovisual field - in addition to the 'TV Without Frontiers' Directive, broadcasters and regulators must also take account of the Directives on e-Commerce and on copyright related to satellite broadcasting and cable retransmission - is itself beginning to create uncertainty. Consolidation of Community law in the form of a Content Framework Package would provide an overarching framework for the audiovisual sector.

### *Principles and their application*

9. The fundamental principle which lies behind the Directive is the promotion of the free movement of European television programmes within the single market. In addition, however, the Directive also embodies a commitment to promoting European audiovisual works, ensuring the protection of minors and public order, protecting consumers through clear identification and transparency in advertising, and the right of reply. All of these principles should continue to inform the Community's audiovisual policy. In addition, however, account must now be taken of a worrying trend towards concentration of media ownership, in both 'horizontal' (a number of broadcasters being owned or controlled by a single proprietor) and 'vertical' (single ownership across media) forms. Such a development potentially threatens diversity in the media, freedom of expression and free access to information. The Commission should regard monitoring of media concentration as one of its central tasks in the audiovisual field.

10. The Commission has itself already proposed that regulation of content must be enforced as closely as possible to the activities being regulated; and the need for flexibility, in order to respond effectively in a rapidly-changing sector, underlines that this is the right approach. Most of the Member States had tried and tested systems of co- and self-regulation in place before the Directive was adopted and what might be called 'supervised self-regulation' is clearly the way forward. The practice which has evolved in implementing the Directive's provisions on protection of minors is a good example of the right balance between framework regulation at Community level to maintain the single market, national regulation and self-regulation by the industry.

11. Similarly, as far as advertising is concerned, a heavy-handed approach is to be avoided: regulation in the context of new technologies requires a less prescriptive and more flexible approach than that adopted in the current Directive. Intelligent broadcasters know that the association of their 'brand name' with high-quality and responsible broadcasting is an invaluable asset: they have no interest in irresponsible advertising. The Commission should recognise this and work with the grain of broadcasters' own interests. One of the most important jobs that the Commission can do is to encourage the spread of best practice. It should establish a working group of national regulators to share best practice in self- and co-regulation in advertising and consumer protection.

### *Cultural diversity and European awareness*

12. By and large, the quotas set by the Directive for European works and for recent works by independent producers have been met. It is likely, however, that many of the growing number of specialist channels will be unable to meet these: the current qualification - that 'where practicable' broadcasters should aim to meet these quotas - should be maintained. One area in which the Commission might take the initiative is in encouraging broadcasters to draw as fully as possible on the range of high-quality European work in its broadcasting aimed at children.

13. The role of the Media Plus programme in supporting the production of European works should be noted. A sense of European awareness might be further promoted by wider public access to channels such as ARTE and EURONEWS which have a pan-European

content. Similarly, the Commission could help promote awareness and understanding of the diversity of European culture by encouraging Europe-wide broadcasts of major European cultural events (such as the Austrian New Year's Concert). The Commission should encourage broadcasters to make such channels and events as widely available as possible.

#### *Access*

14. To achieve full access to digital television, the Commission must continue to promote interoperability. National standards bodies must adapt their standards as the technologies develop.

15. Finally, the Commission should consider three technical issues: there may prove to be no easy solutions to these, but they should at least be addressed.

- At present, the absence of a harmonised right to access newsworthy events restricts the free movement of independent media (especially news agencies services): the Commission should seek to facilitate access to short extracts of events covered by exclusive rights.
- 2003 is the European Year of People with Disabilities. The Commission should also seek to promote sub-titling and sign language interpretation for those with hearing difficulties and audiovisual description for the visually impaired.
- The rights trading market operates largely within national and linguistic borders, which has given rise to a grey market. Europeans living away from their country of origin, who wish to continue watching broadcasts from their home country, are resorting to piracy to do so. To achieve true frontier-free television the Commission must tackle this problem. In the context of its review of the Directive on copyright related to satellite broadcasting and cable retransmission, the Commission should address the impossibility of lawfully accessing protected satellite TV channels originating from other Member States.