REPORT

on the application of Articles 4 and 5 of Directive 89/552/EEC (the “TV without Frontiers” Directive), as amended by Directive 97/36/EC, for the period 2001-2002
(2004/2236(INI))

Committee on Culture and Education

Rapporteur: Henri Weber
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION


The European Parliament,

– having regard to the results of the public consultation held by the Commission on the application of Articles 4 and 5,


– having regard to the Council of Europe’s 1989 European Convention on Transfrontier Television,

– having regard to the Commission Communication on the future of European regulatory audiovisual policy (COM(2003)784),

– having regard to the Commission communication on principles and guidelines for the Community’s audiovisual policy in the digital age (COM(1999)0657),

– having regard to Articles 151 and 157 of the EC Treaty, the Charter of Fundamental Rights of the EU and the Amsterdam Protocol (public radio broadcasting systems),

– having regard to its resolution of 4 September 2003 on Television without Frontiers\(^3\),

– 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)\(^4\),

– having regard to its resolution of 2 July 2002 on the on the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works\(^5\),

– having regard to its position of 12 February 2004 on the proposal for a European Parliament and Council decision modifying Council Decision 2000/821/EC of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works\(^6\),

– having regard to its resolution of 26 September 2002 on an EU action plan for the

\(^1\) OJ L 298, 17.10.1989, p. 23.
\(^3\) OJ C 76E , 25.3.2004, p. 453.
\(^6\) OJ C 97E, 22.4.2004, p. 603.
successful introduction of digital television in Europe\(^1\),

– having regard to Rule 45 of its Rules of Procedure,

– having regard to the report of the Committee on Culture and Education (A6-0202/2005),

A. whereas the Lisbon strategy seeks to reinforce the innovative capacity of European industry and to make the EU the most competitive and dynamic knowledge-based economy in the world,

B. whereas the audiovisual sector is characterised both by technological innovation and by its social, economic and cultural impact,

C. whereas one of the EU’s priorities is to defend the specific nature of cultural assets, including those in the audiovisual sector, within the World Trade Organisation (WTO); whereas the Commission regrettably failed to act in accordance with that principle by proposing to incorporate the audiovisual sector into the scope of the directive on services in the Internal Market,

D. whereas the movement of European works and the works of independent producers is essential in order to promote cultural diversity, freedom of expression and pluralism,

E. whereas Directive 89/552/EEC, which arose in the context of the Single Market, must take more account of the aspirations relating to a Community area of law, citizenship and political Union,

F. whereas that Directive is also obsolete in the light of the rapid development of new technology, which will soon result in unlimited supply in the context of the European audiovisual landscape, making it necessary to adapt the rules of Directive 89/552/EEC to technological developments,

G. whereas it is the responsibility of the Member States and their national competent authorities to apply the Directive, but whereas the Commission plays an essential evaluating and supervisory role, in which the European Parliament, the national parliaments, the national regulatory authorities and public opinion must all be involved,

H. whereas Directive 89/552/EEC, a flexible framework which has permitted the application of rules by the Member States and self-regulation by the audiovisual industry, plays an important role in establishing a minimum framework,

I. concerned to note that certain provisions in the Directive (on quotas, advertising, etc.) are inadequately applied and observed in certain Member States due to a lack of appropriate supervision,

J. whereas the growth in the number and diversity of the services on offer must go hand in hand with access for all,

\(^1\) OJ C 273E, 14.11.2003, p. 311.
Application of Articles 4 and 5 of the Directive

1. Notes that the Commission Communication on the future of European regulatory audiovisual policy stresses positive results, and that the indicators in all but a few cases show a rise in the programming of European works; notes that the broadcasting quotas for European works and works of independent producers have been broadly complied with; notes that the Commission considers that the objectives of the Directive have been achieved; encourages Member States, however, to strengthen their efforts with regard to broadcasting of European and independent programmes;

2. Regrets the fact that over the reference period analysed in the Commission's 6th report on the implementation of Articles 4 and 5, the proportion of independent productions has declined by 3.48% over four years (page 7 of the report);

3. Notes that major discrepancies among methods of implementing and interpreting the provisions of Directive 89/552/EC render it impossible to give an accurate picture of the situation, as the conclusions of independent audits have shown; recommends that the Commission establish and forward to the Member States a standardised grid making it possible to obtain comparable results; stresses the urgency of analysing the results from the new Member States; proposes that this standardised grid also include data on services to assist disabled people;

4. Stresses that a more consistent indicator to measure compliance with Article 5 would be to establish the 10% quota by value (and not by qualifying hours), thus removing the inconsistencies observed among the Member States on what counts as qualifying hours;

5. Regrets that some Member States have still not yet provided all the information requested, particularly as regards satellite and/or cable TV channels, which are often left out of national reports; considers that the Commission has a responsibility to ensure that the Member States comply with their obligations and that it should do more than just stress that the notification requirement applies to all television programmes under the competence of a Member State; and calls on the Commission and the competent national authorities to impose clear sanctions in the event of persistent failure to comply with the relevant provisions or with its obligation to forward information;

6. Regrets that in certain Member States the application of quotas is calculated by broadcaster and not by channel, which is an infringement of the principles of the Directive, such abuse being particularly serious in Member States in which the concentration of broadcasters is high;

7. Calls for the discretion which the Member States are permitted in applying Article 4 to at least be compensated for by the communication of public, precise and transparent indicators;

8. Believes that the differing interpretations by the Member States of the concepts of ‘European work’ and ‘independent producer’ could be avoided if the Commission, in the context of the review of the directive, gave a more precise definition of the terms ‘independent producer’, ‘European work’ and ‘specialist channel’; considers also that this would offer greater legal certainty in the application of the directive;
9. Notes that most of the quotas for “European works” are filled by national works and supports voluntary initiatives for further quotas for European works from other countries;

10. Stresses the importance of strengthening the Media programme, pointing out that the objective behind its inception and its renewal is, and should continue to be, support for independent productions and for small and medium-sized enterprises;

11. Stresses the importance of stepping up this Media programme as an essential European audiovisual policy instrument for professional training and support for the distribution, broadcasting and movement of cinematographic works; encourages the Member States to open up their educational systems to a knowledge of the European film heritage, of the languages, cultures, tastes, histories and experiences of the peoples of Europe;

12. Recalls the importance, for the movement of European works, of European co-productions and common marketing strategies; notes that our audiovisual space is being exploited better by American producers than by the Europeans themselves – even though Europeans are more productive in terms of documentaries and fiction – owing to the lack of an integrated and globalised European industry; considers that the imbalance in the movement of audiovisual works jeopardises cultural diversity;

13. Considers that, to enable the European audiovisual industry to compete with the United States industry, European efforts should be geared much more towards promotion;

14. Draws the Commission’s attention to the fact that, given the way in which production groups have attacked the European markets, it seems essential to encourage aid for solely European content and to develop such content by establishing a link with sources of finance;

15. Recalls the importance of giving the greatest possible number of European citizens access in as many languages as possible to pan-European channels such as Arte and Euronews; calls on the Commission and the Member States to support information about, and the broadcasting, of European cultural events at European level, by also providing formats accessible to disabled people (i.e. with audio- description, subtitling and sign language);

16. Stresses the priority of qualitative analysis methods as regards the cultural content of European audiovisual production and recalls the importance of the RTD Framework Programme;

**Review of the Directive**

17. Stresses that the audiovisual sector contributes to technological innovation, economic growth and job creation; considers it also to be an important instrument for the functioning of the Single Market; believes that it is also of vital importance to the functioning of democracy, provided there is a diversity of input and opinions, pluralism and cultural diversity; considers that, precisely in order to maintain these democratic values, and the freedom of expression and opinion, measures are needed to regulate the protection of the right to one's own image;
18. Believes that the European audiovisual model must be founded on a balance between a strong and independent public service sector and a dynamic commercial sector, both of which are directly and indirectly creators of jobs; considers it essential, in the interests of the vitality and quality of creative work, that this model continue, for which a legislative framework is required to ensure that Europeans’ rights are respected;

19. Stresses that universal public access to quality and diversified content is becoming ever more crucial in this context of technological change and increased concentration in an increasingly competitive and globalised environment; considers that public broadcasting services are essential to forming opinion in a democratic manner and permitting people to experience and familiarise themselves with cultural diversity, and that such services must have equal opportunities of priority access to the market, including in the new media;

20. Considers that a review of Directive 89/552/EEC is necessary in order to face up to structural changes; considers that this review must not call into question the fundamental principles of the existing directive – free movement of European broadcasts, free access to exceptional events, promotion of European works and recent independent productions, protection of minors and public order, protection of consumers, right of reply – but rather must adapt them to the new challenges without losing sight of the requirements of quality and of the economic vitality of the sector;

21. Recommends that a safeguard clause should be included to explicitly establish respect for Member States’ competence in the fields of culture and the media;

22. Considers that the revision of Directive 89/552/EEC should safeguard the development of new technologies and new services, with the aim of ensuring that the European economy grows in accordance with the Lisbon strategy;

23. Notes that the Commission has for some years been carrying out a public consultation exercise towards a new directive which it intends to submit at the end of 2005; notes that the British Presidency of the Council will be holding a conference in Liverpool on the review of the directive; calls for Parliament to be fully involved in each stage of this exercise;

24. Feares that, on such an important subject, the debate and the consultations will give priority to economic considerations and inter-governmental transactions; realises that the market alone will not resolve the problems and that the institutions must respond to the concerns of Europeans about the cultural content of television;

25. Calls on the Commission to seek to ensure that independent producers are able to retain their production rights and make it easier for them to safeguard their intellectual property rights so as to increase their ability to attract private investment;

26. Is concerned at the pressure to reduce regulation in this sector and recalls that the Directive establishes minimum standards which have not always succeeded in preventing a drop in the quality of programmes;

27. Notes the role of advertising in the funding of certain general-interest TV channels and its effect on programming; notes that despite this there remain in some countries serious
shortcomings in the application of articles governing supervision of the duration of advertising, making it difficult to maintain a clear distinction between advertising and the content of the actual broadcast thereby detracting from the cultural integrity of the works;

28. Underlines the need to define clearly the content of, and rules on, advertising, in particular that relating to alcohol, which has a particularly harmful effect on children and vulnerable people; recalls that protection of minors must continue to be a priority objective of audiovisual policy and a fundamental principle which ought to be extended to all audiovisual services made available to the public;

29. Stresses that the review of the directive must make it possible to assert legal obligations and a firm political will to make a strict separation between editorial and artistic content on the one hand and commercial promotion on the other;

30. Calls for the new Directive to impose on Member States and their competent authorities more effective mechanisms to ensure observance and monitoring of legislation and application of the penalties provided for, particularly as regards quotas and advertising;

31. Notes that digitalisation and interactivity represent opportunities for the industry and for consumers, but that more choice does not necessarily mean either better quality or greater quantity of European works; notes the risk of a “two-speed” audiovisual sector emerging;

32. Points out that new forms of television have emerged, for example television via ADSL networks, television via Internet and television via mobile phone; considers that, in order to avoid any distortion of competition between the different forms of television available today, the application of Directive 89/552/EEC in respect of these new forms of television should be clarified as part of the review process;

33. Notes that extending the scope of Directive 89/552/EEC should not affect the strengthening of the European model founded on freedom of movement, quality, public service, the general interest and respect for European values;

34. Stresses the need for European legislation which as far as possible is independent of audiovisual technology; calls for such legislation to make clear that public service providers make use of all new technology and new media forms, such as the Internet and WAP services, without thereby coming into conflict with the rules of the Internal Market;

35. Welcomes, in the light of technological developments (such as increasing convergence and the move to digital), the Commission’s announcement, in its connection with revision of the directive, of a proposal to extend its scope to cover all services based on the principle of a differing levels of regulation;

36. Considers that, in order to ensure cultural diversity, measures should be laid down to promote European works for new services, such as video on demand;

37. Stresses the urgent need, in view of digital technology, to make radical changes to the approach taken hitherto in Community legislation, based on a distinction between content and ‘infrastructure’;
38. Stresses the need to reinforce control of non-EU channels under the jurisdiction of a Member State in accordance with Article 2 of Directive 89/552/EEC which broadcast programmes inciting racial and religious hatred, and to improve coordination between Member States in this area;

39. Calls for particular attention to be given to access to programmes for persons with visual or hearing disabilities; proposes that Member States submit data each year to the Commission on the percentage of total programme output carrying services to assist disabled people (i.e. subtitling, audio-description and sign language) on both their public and private channels and develop national action plans to increase the availability of such services and make them easier to access on TV equipment;

40. Stresses the importance of the national regulators’ working party and calls for the European Parliament to be involved in this as an observer;

41. Proposes the holding of a European Audiovisual and Media Year, involving the Institutions, political parties, civil society and the audiovisual sector, with a view to drawing up a “European Innovation Pact” guaranteeing a balance between competitiveness, quality, culture and pluralism;

**Pluralism and concentration**

42. Is alarmed at the tendency towards (vertical and horizontal) concentration of the media in Europe, which poses a threat to democracy and a risk to cultural diversity and could accentuate tendencies towards the extreme commercialisation of the audiovisual sector and the hegemony of certain national products over those with narrower linguistic areas and smaller production; invites the Commission to take into account previously existing studies on media concentration and media ownership, particularly in view of the recent enlargement;

43. Stresses that particular care should be paid, in the interest of guaranteeing pluralism of opinion and variety of broadcasting services, to ensuring, when drafting rules on the switch to digital at Community or national level, that the majority of newly opened up digital broadcasting services do not come into the possession or under the determining influence of large, capital-rich, multinational media groups—particularly those with interests outside the EU;

44. Stresses that competition and competition law are not enough to ensure media pluralism; considers that pluralism is based on respect for and promotion of diversity of points of view in all the media, through the recognition of editorial independence, both in the public and the commercial sectors, and through the authority and independence of the regulatory authorities;

45. Is concerned at the concentration of advertising in some Member States;

46. Stresses that the fragmentation of the European audiovisual markets into national markets does not reduce the risks of media concentration at European level, and that a violation of the freedom of expression and respect for pluralism and diversity as a result of media concentration in a Member State also constitutes a risk factor for the institutional order
and Community democracy;

47. Calls on the Member States, both old and new, experiencing rapid development of the sector, to examine and reinforce if necessary, national rules or measures to restrict concentration of media ownership and to respect the independence of the regulatory authorities; considers that the Commission’s role in monitoring, exchanging information and comparing legislation should be stepped up; reminds the Commission of its request to draw up a Green Paper on the degree of media concentration in Europe, which would allow a broad debate on the subject to be opened, and of its wish that, in the context of Directive 89/552/EEC an agreement should be included on diversification of ownership and control of communications media;

48. Points out that, since the cultural diversity, freedom and pluralism of the media remain the most important elements of the European audiovisual model, these three values are essential prerequisites for cultural exchange and democracy; considers that the revised Directive 89/552/EEC should consequently include provisions to safeguard and protect freedom of expression by and the pluralism of the media;

49. Instructs its President to forward this resolution to the Council and Commission.
EXPLANATORY STATEMENT

1. Communication from the Commission on the application of Articles 4 and 5 of the 'Television Without Frontiers' Directive

Article 4(3) of the TWF Directive provides for Articles 4 and 5 of the Directive to be the subject of a specific report. Under these two articles, concerning promotion of the distribution and production of television programmes, broadcasters are required, where possible, to reserve a majority proportion of their programming time for European works, and 10% of their transmission time – or 10% of their programming budget – for European works created by producers who are independent of broadcasters. The Commission makes sure that Articles 4 and 5 are applied and helps Member States to comply with their monitoring responsibilities.

In this sixth report, the Commission presents its opinion on the statistical statements submitted by the EU-15 for the reference period 2001-2002. The next application report will also include the 10 new Member States.

On the application of Article 4, the Commission's findings were quite positive. With a few exceptions, the indicators point to a strong increase in the scheduling of European works compared with the previous period. The Commission considers the Directive's objectives to have been achieved.

As for Article 5, the average figures for broadcasting of European works created by independent producers remain above the minimum proportion of 10%, despite falling for the first time.

Although the Commission expressed its satisfaction with the results, a detailed analysis reveals a mixed picture

- While the objectives of Articles 4 and 5 have been achieved, substantial differences in the methods of applying and interpreting the provisions make it impossible to reflect the situation with any accuracy. The rapporteur suggests that a standardised grid should be drawn up and submitted to Member States to allow more consistent results to be obtained.

- Member States' latitude in applying Article 4 ('where practicable and by appropriate means') should at least be compensated for by a satisfactory communication on precise, transparent and objective public indicators.

- Certain Member States have still failed to provide full and comprehensive information, particularly with regard to satellite and/or cable television channels, which were frequently omitted from national reports.

- The rapporteur also emphasises the need for better monitoring and use of the reports as part of an overall evaluation of the Directive.

- Detailed analysis reveals that a majority of the quotas are filled by national works. While this is positive as far as the Directive is concerned, it is not sufficient for creating a European
audiovisual space, which has yet to take shape.

- On this point, it would be a good idea to specify the meaning of certain terms, such as 'independent producer' and 'European work'.

- European co-productions and joint marketing strategies need to be developed for the circulation and broadcasting of European works. While a European audiovisual space may well exist for the American market, it does not exist for the Europeans themselves, even though they are the most productive in terms of documentaries and fiction. This has less to do with language and cultural barriers than with the fact that the European industry is neither integrated nor global.

- The rapporteur also notes the importance of obtaining information on application of the Directive in the new Member States.

2. Articles 4 and 5 fit in a wider context

In economic terms, the 1980s were characterised by the end of public broadcasting monopolies and the growing strength of private television stations.

In political and legal terms, the Council of Europe underlined the social and cultural importance of television (education, access to culture, free formation of opinions, democracy, promotion of rights and equality) in its 1989 Convention on Transfrontier Television. At the same time, the Court of Justice progressively acknowledged European competence on the question of transfrontier television, which it considers to be an economic 'service'.

The TWF Directive arose in the context of creating the single market, which facilitated freedom of establishment and the promotion of cultural diversity based on common provisions, measures to protect human dignity, consumers, minors and the right of reply.

The 1990s saw the emergence of pay-TV and the development of new technologies (cable and satellite transmission, convergence of technologies, digital TV).

Politically, the Community is creating an area of law, citizenship and political union. The Amsterdam Protocol restated the importance of broadcasting services as a response to social, democratic and cultural needs.

Since then, the Charter of Fundamental Rights and the draft Constitution for Europe have underlined the importance of the role played by public and private audiovisual provision, without conferring new competences on the Union.

Initially in 2001, and then again in 2003, Parliament stressed the importance of revising the Directive in order to respond to the changes taking place. For a number of months the Commission has been conducting a public dialogue and consultation on the drafting of a new Directive. It intends to present its proposed revision at the end of 2005.

The situation today

The revision needs to reconcile two apparently contradictory aspects that might appear to be in conflict: boosting European competitiveness in a global audiovisual market and
maintaining programme quality and access.

The European audiovisual model is based on a creative balance between two pillars: a strong and independent public service in the majority of countries and a dynamic commercial sector. These two sectors are strong generators of employment, both directly and indirectly. This model is indispensable to maintaining the vitality and quality of audiovisual production and to improving the circulation of European works, but it requires a framework.

The rapporteur believes we must not shy away from a wide-ranging revision of the Directive if we want to make Articles 4 and 5 more effective, particularly as regards the creation and circulation of European works.

Parliament must play a central role here because of the very great risk that, on a subject of such importance for Europe's citizens, the debate and consultation process will otherwise be dominated by the television industry and that the final decisions will lean towards economic considerations and intergovernmental transactions.

Parliament represents the voice of civil society and citizens, of parents' and consumers' associations. Democracy and transparency must be at the heart of our choices.

There are legitimate questions that need to be openly debated. The answers cannot come only from experts. Political representatives and consumers of images, in other words all of us, must also contribute.

A hearing of the Committee on Culture and Education on 13 September 2005, one week ahead of the Liverpool Conference organised by the British presidency, will focus on the Directive and all these questions.

That meeting needs to be a strategic forum on European television. We have to present a comprehensive document to the European Council; a thoughtful and ambitious political signal with strong proposals for quality broadcasting that will ensure pluralism and democracy.

3. Revision of the TWF Directive

The rapporteur considers the work carried out by Parliament during earlier legislative periods, especially the own-initiative reports of Mrs Hieronymi and Mr Perry, to be of particular interest.

Among other things, they mentioned the following points, which remain topical and relevant today:

- The Directive needs to be revised in order to take account of technological developments and structural changes in the audiovisual market. The revision of the Directive, or the Content Framework Package, should be based on the essential principles which underlie the current Directive (free movement of European television programmes, free access to events of major importance, 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).
- In this digital age, regulation of the audiovisual sector must take account of the synergies and interactions between traditional television and the new systems for transmitting images and sound.

- As mentioned above, there have been serious shortcomings in certain European countries concerning application of the articles of the Directive on advertising control.

- Particular attention needs to be given to the question of programme access for the disabled.

- The role of the Media (Plus) programme in supporting the production of European works should be enhanced.

4. **The rapporteur's observations:**

- The television industry, advertising and certain Member States are exerting strong, combined pressure for a reduction of regulation on audiovisual services. The standards laid down by the Directive are minimal as it is, and still they have not managed to prevent a slide towards commercialism in certain Member States, often at the expense of programme quality.

- Expanding the Directive's scope to include new forms of television must not be allowed to jeopardise the fragile and hard-won status quo on the current provisions, even if it means anticipating what the audiovisual landscape will be like in 2010, which is the earliest the new Directive will take effect.

- The new Directive should take into account all the new forms of television while constantly seeking to strike a balance between too much and too little legislation. 'Too little' would be if the legislation in force on 'traditional' TV could be circumvented, in the absence of enforceable regulation, while there would be too much legislation if it hindered the technological and economic development of these new forms. Consequently, a suitable approach may be to consider phased legislation, following a strict classification of the new media. We also need to consider the validity of the approach pursued to date in Community legislation, which has been based on differentiating between content and 'infrastructure'.

- Public access to high-quality content is becoming even more important in the context of technological change. Consequently, it is vital for public services to be able to carry out their tasks, as recognised in the Treaties, not least with regard to the new media.

- Digital 'literacy': the increasing range and diversity of services must be matched by the possibility for everyone to use them. This is a vitally important aspect and one which is related to the issue of citizens' rights.

- We must also consider the question of media concentration. The two previous reports called on the Commission to consider monitoring media concentration as one of its main tasks in the audiovisual field, in view of the trend towards concentration of media ownership, both 'horizontally' and vertically'; in the absence of such monitoring and without a strengthening of national anti-trust rules, this development risks undermining media diversity, freedom of expression and free access to information.
• The rapporteur suggests relaunching the idea of a Public Audiovisual Service Charter.

• The rapporteur suggests organising a European Year of Television with the aim of drafting a European Audiovisual Pact to ensure a balance between competition, innovation, quality, culture and plurality.
## PROCEDURE

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<td>Rule 45</td>
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<td><strong>Rapporteur(s)</strong></td>
<td>Henri Weber</td>
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