

Competitiveness of audiovisual and information services: protection of minors and human dignity *I**

European Parliament legislative resolution on the proposal for a recommendation of the European Parliament and of the Council on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and information services industry (COM(2004)0341 – C6-0029/2004 – 2004/0117(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2004)0341)¹,
 - having regard to Article 251(2) and Article 157 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0029/2004),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0244/2005),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Position of the European Parliament adopted at first reading on 7 September 2005 with a view to the adoption of European Parliament and Council Recommendation 2005/.../EC on the protection of minors and human dignity and the right of reply in relation to the competitiveness of the European audiovisual and *on-line* information services industry

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157 thereof,

Having regard to the proposal from the Commission²,

Having regard to the Opinion of the European Economic and Social Committee³,

Having regard to the Opinion of the Committee of the Regions⁴,

Acting in accordance with the procedure referred to in Article 251 of the Treaty⁵,

Whereas:

- (1) *Article I-2 of the Treaty establishing a Constitution for Europe, signed on 29 October 2004, provides that one of the values on which the European Union is founded is respect for human dignity; in the Charter of Fundamental Rights of the European Union ('the Charter'), incorporated in Part II of the Treaty establishing a Constitution for Europe, the inviolability of human dignity is recognised under Article 1 (Article II-61 of the Treaty), which provides that it must be respected and protected.*
- (2) *Human dignity is inalienable; it does not admit any exclusion or limitation and it constitutes the foundation and origin of all legal instruments drawn up at national and international level to protect human rights; The European Union should gear its political action to preventing any form of violation of the principle of respect for human dignity.*
- (3) *Article I-3 of the Treaty establishing a Constitution for Europe provides that one of the European Union's objectives is to protect the rights of the child; Article 24 of the Charter (Article II-84 of the Treaty) establishes that children shall have the right to such protection and care as is necessary for their well-being and that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.*

² OJ C [...], [...], p. [...]

³ OJ C [...], [...], p. [...]

⁴ OJ C [...], [...], p. [...]

⁵ *Position of the European Parliament of 7 September 2005.*

- (4) *Legislative measures need to be enacted at European Union level for the protection of the physical, mental and moral development of minors in relation to the content of all audiovisual and information services, the adoption of measures preventing the circulation of illegal content and the protection of minors from access to adult programmes or services.*
- (5) *The inevitable development of new information and communication technologies makes it urgent for the European Community to ensure full and adequate protection for consumers' interests in this field, by adopting a directive which will, throughout its territory, on the one hand guarantee the free delivery and free provision of information services and on the other ensure that their content is legal, respects the principle of human dignity and does not impair the overall development of minors.*
- (6) Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity⁶ is the first legal instrument at Community level *which concerns questions involving the protection of minors and human dignity in relation to the content of all audiovisual and information services available to the public regardless of the form of delivery, from broadcasting to the Internet. Article 22 of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities⁷ has already specifically addressed the question of the protection of minors and human dignity in television broadcasting activities.*
- (7) *The European Community has already intervened in the field of audiovisual and information services in order to create the necessary conditions to ensure the free movement of television broadcasts and other information services, in compliance with the principles of free competition and freedom of expression and information, but it should act with greater determination in this area with the aim of setting up a legal framework and adopting measures to protect consumers from incitement to discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and combating any such discrimination.*
- (8) By Decision No 276/1999/EC⁸, the European Parliament and the Council adopted a multi-annual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (the "Safer Internet Action Plan").
- (9) *The Commission should pay special attention to this Recommendation when revising or concluding new partnership agreements or new cooperation programmes with third countries, bearing in mind the global character of producers, distributors or providers of audiovisual content and Internet access.*

⁶ OJ L 270, 7.10.1998, p. 48.

⁷ OJ L 298, 17.10.1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30.7.1997, p. 60).

⁸ OJ L 33, 6.2.1999, p. 1. Decision as last amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

- (10) Decision No 1151/2003/EC of the European Parliament and the Council⁹ extended the Safer Internet Action Plan for two years and amended its scope to include measures to encourage exchange of information and coordination with the relevant actors at national level as well as special provisions for the accession countries.
- (11) Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market¹⁰ clarifies some legal concepts and harmonises certain aspects in order to enable information society services to fully benefit from the internal market principles. A number of the provisions of Directive 2000/31/EC are also relevant to the protection of minors and human dignity, in particular Article 16(1)(e), according to which Member States and the Commission are to encourage the drawing up of codes of conduct regarding the protection of minors and human dignity.
- (12) The changing media landscape, resulting from new technologies and media innovation, makes it necessary to teach *children, parents, educators and teachers* to use the media effectively, *since prevention and greater parental control will always be the best form of protection against the dangers of the Internet*.
- (13) *On the whole, self-regulation of the audiovisual sector is proving an effective additional measure, but it is not sufficient to protect minors from messages with harmful content. The development of a European audiovisual area based on freedom of expression and respect for citizens' rights, as laid down in the Treaty establishing a Constitution for Europe, should be based on a continuous dialogue between national and European legislators, regulatory authorities, industries, associations, consumers and civil society.*
- (14) *Since the advent of digital terrestrial television will allow for parental control, which is essential if children are to be prevented from gaining access to televised content against their parents' wishes, the European Union should guide the process of transition to digital terrestrial television with the aim of achieving the earliest possible 'analogue switchoff'.*
- (15) In the public consultation concerning Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 it was suggested that *the need to adopt educational measures in relation to the media* be included among the subjects covered by Recommendation 98/560/EC.
- (16) The Commission encourages cooperation and the sharing of experience and good practices between *self- and co-regulatory* bodies, which deal with the rating or classification of audiovisual content, *regardless of the means by which it is delivered*, with a view to *enabling* all *users*, but especially parents, *educators and* teachers, to *report illegal content and* assess *the content of audiovisual and on-line information services, as well as any legal content which could harm the physical or mental development of minors*.
- (17) As suggested during the public consultation concerning Directive 97/36/EC, it is

⁹ OJ L 162, 1.7.2003, p. 1.

¹⁰ OJ L 178, 17.7.2000, p. 1.

appropriate for the right of reply to apply to all *on-line* media, *and to take into account the specific features of the medium and service concerned.*

- (18) Council resolution of 5 October 1995 on the image of women and men portrayed in advertising and the *media*¹¹ *invites* the Member States and the Commission to take adequate measures to promote a diversified and realistic picture of the skills and potential of women and men in society.
- (19) When tabling its proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services¹², the Commission noted that the portrayal of the sexes in the media and in advertising raises important questions about the protection of the dignity of men and women, but concluded that, *in the light of other fundamental rights, including the freedom and pluralism of the media, it should take stock of these questions and, if necessary, take appropriate measures.*
- (20) *Even though regulation is not an option, the media are nevertheless able to ban discrimination under codes of practice promoting voluntary self-regulation, or to enforce such a ban independently of their codes. The audiovisual and on-line information services industry should therefore be encouraged at Member State level to avoid and to combat any type of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in such media and all advertising, including new advertising techniques, without infringing freedom of expression or of the press.*
- (21) This Recommendation *covers new technological developments and complements Recommendation 98/560/EC. Its scope, on account of technological advances, includes audiovisual and on-line information services, such as newspapers, magazines and, particularly, video games, made available to the public via fixed or mobile electronic networks.*
- (22) *Nothing in this Recommendation prevents Member States from applying their constitutional provisions and other legislation and legal practices regarding free speech.*

I. RECOMMEND that the Member States, *in the interests of promoting* the development of the audiovisual and *on-line* information services industry, *take the necessary measures in their domestic law or practice to ensure better protection of minors and human dignity in all audiovisual and on-line information services*, by:

- (1) *safeguarding the exercise of a right of reply (or equivalent remedy), with due regard for their domestic and constitutional legislative provisions, and for the characteristics of each audiovisual and on-line information service,*
- (2) *in close cooperation with the industry and all relevant parties, ensuring better protection of minors, by:*

¹¹ OJ C 296, 10.11.1995, p. 15.

¹² COM(2003)0657.

- *continuing education of educators and teachers, in liaison with child protection associations, on how to use the Internet in the context of school education and on teaching methods for safe (secure) use which children must be taught,*
- *introduction of specific Internet training aimed at children from a very early age, including sessions open to parents, so as to explain to children and parents how to use the Internet and how to avoid the pitfalls and dangers,*
- *an integrated educational approach forming a permanent part of school curricula, and media literacy programmes, so as to maintain awareness of the dangers of the Internet, with particular regard to chat rooms and forums,*
- *organisation of national information campaigns aimed at citizens, involving all communications media, to alert public opinion to the dangers of the Internet and the risk of criminal penalties (information about the possibility of bringing complaints or activating parental control). Specific campaigns could be aimed at target groups such as schools, parents' associations, users, etc.,*
- *distribution of information packs on the dangers of the Internet ('How to surf the Internet safely', 'how to filter unwanted messages') and on the use of hotlines to which reports or complaints concerning harmful or illegal sites can be made,*
- *adequate measures to establish or improve the performance of telephone hotlines, so as to make it easier to lodge complaints about harmful sites and make it possible to report their existence,*
- *action to allow one of the most serious offences against children's dignity, child pornography on the Internet, to be combated effectively,*
- *publicity campaigns designed to condemn violence against minors and to help victims by offering psychological, moral and practical support,*

(3) *promoting a responsible attitude on the part of professionals, intermediaries and users of new communication media such as the Internet by:*

- *encouraging vigilance and the reporting of pages considered illegal, without prejudice to Directive 2000/31/EC,*
- *drawing up a code of conduct in cooperation with professionals and regulatory authorities at national and European level,*
- *encouraging the audiovisual and on-line information services industry, without infringing freedom of opinion or of the press, to avoid discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all audiovisual and on-line information services, and to combat such discrimination,*

(4) *promoting measures to combat all illegal activity on the Internet and make the web a much more secure medium; consideration could be given inter alia to the following measures:*

- *adopting a quality label for service providers, so that users can easily check whether or not a given provider subscribes to a code of conduct or not,*
 - *considering the inclusion in their legal systems of a system of joint or cascading liability for Internet crimes,*
 - *establishing a single telephone line for the reporting of illegal and/or suspicious activities on the web,*
- (5) *developing, by means of cooperation at European level and in close collaboration with consumer organisations, regulations to reduce food advertising specifically aimed at children and teenagers, especially for junk food and confectionery.*

II. RECOMMEND that the *audiovisual services and on-line information services industry* and *all* the parties concerned:

- (1) develop positive measures for the benefit of minors, including initiatives to facilitate *better* access *by minors* to audiovisual and *on-line* information services, *by improving their media literacy and providing for closer* cooperation between self-regulatory and *co-regulatory* bodies in the Member States *through* the exchange of best practices *by means of*:
- *the systematic provision of an effective and easy-to-use filtering system for users at the time of subscription to an access provider and developing effective filtering solutions, taking into account technological progress allowing Internet access via mobile telephones,*
 - *offering access services intended specifically for children and equipped with an automatic filtering system operated by access providers and by mobile telephone operators,*
 - *introducing incentives to provide a regularly updated description of the available sites, making it easier to classify sites using abbreviations common to all Member States in order to alert users to the possible harmful content of sites visited,*
 - *posting warning banners on all search engines drawing attention to possible dangers and to the availability of telephone hotlines,*
- (2) *examine the possibility of creating filters which would prevent information concerning child pornography or offending against human dignity from passing through the Internet,*
- (3) *develop measures to increase the use of content labelling systems for material distributed over the web, using protocols such as PICS (Platform for Internet Content Selection) and systems to filter information exchanged among users,*
- (4) *develop effective measures to avoid discrimination as defined in Article II-81 of the Treaty establishing a Constitution for Europe and to combat all such forms of*

discrimination created by false and stereotyped images of human beings, the commercial exploitation of the human body, and the trivialisation of violence and war.

III. INVITE the Commission to:

- (1) organise, in connection with the 2005-2008 multiannual Community programme on promoting safer use of the Internet and new online technologies, a European information campaign aimed at citizens, using all communications media, to alert public opinion to the dangers of the Internet and the risk of criminal penalties being incurred (information about the possibility of bringing complaints or activating parental control). Specific campaigns could be aimed at target groups such as schools, parents' associations and users,*
- (2) introduce a European freephone number providing information on existing filtering methods and intended to offset the absence in some Member States of telephone hotlines for lodging complaints with the competent authorities and report harmful sites,*
- (3) consider the introduction of a generic top level domain name reserved for continuously monitored sites committed to respecting minors and their rights, failing which they would incur criminal penalties (.KID for example),*
- (4) maintain a constructive and ongoing dialogue with content providers' organisations, consumer organisations and all parties concerned,*
- (5) facilitate and support the formation of networks by self-regulatory bodies and the exchanging of experience among them, so as to assess the effectiveness of codes of conduct and approaches based on self-regulation in order to ensure the highest possible standards of protection for minors.*

IV. RECOMMEND *that the industry, all parties concerned and the national and European authorities consider more actively the technical and legal feasibility of developing a uniform content labelling system to encourage better filtering and classification at source, regardless of the communications media used (Internet, mobile telephones) in order to improve protection for minors.*

V. RECOMMEND *that the Member States submit a report to the Commission on measures taken in application of this Recommendation two years after its adoption.*

VI. INVITE the Commission to submit to the European Parliament by 31 December 2008, on the basis of the reports submitted by the Member States, a report on the implementation and effectiveness of the measures laid down in this Recommendation, identifying any additional measures which may be necessary, including binding legislation at European level.

Done at ...,

For the European Parliament
The President

For the Council
The President

MINIMUM PRINCIPLES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF MEASURES IN DOMESTIC LAW OR PRACTICE SO AS TO ENSURE THE RIGHT OF REPLY AS REGARDS ALL AUDIOVISUAL AND ON-LINE INFORMATION SERVICES

Objective: *Adapting the right of reply to the current state of technological development, particularly in audiovisual and on-line information services in Europe, taking into account the relevant constitutional and other legislation and legal practice regarding free speech.*

- *The right of reply should protect any legal or natural person from any assertion of incorrect facts concerning that person and affecting his or her rights, and consequently the dissemination of opinions and ideas must remain outside the scope of this Recommendation;*
- *The right of reply is a particularly appropriate remedy in the on-line environment because it allows for the instant correction of contested information and it is technically easy to attach the replies from the persons affected;*
- *It is necessary to ensure that the author of or person responsible for the dissemination of the information continues to be under the obligation to allow a right of reply, in accordance with national laws;*
- *The right of reply can be ensured not only through legislation, but also through co-regulatory or self-regulatory measures;*
- *The right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been breached by the media.*
- *Member States should examine and, if necessary, introduce in their domestic law or practice, a right of reply or other equivalent remedy, which allows a rapid correction of incorrect facts in audiovisual and on-line information services in accordance with the minimum principles set out below, without prejudice to the possibility of adapting the exercise of this right (or any other equivalent remedy) to the specific nature of each type of medium.*

Scope of the right of reply

- *Any natural or legal person, irrespective of nationality or residence, should be granted a right of reply or an equivalent remedy so that they may respond to any assertion of inaccurate facts about them in audiovisual and on-line information services which affects their personal rights.*
- *The reply should be given the same prominence as was given to the contested assertion in order for it to reach the same public and with the same impact.*
- *Member States shall ensure that the effective exercise of the right of reply (or equivalent remedy) and the right of freedom of expression is not unjustifiably*

constrained. The reply must be transmitted within a reasonable time after the justification of the request and at a time and in a manner appropriate to the publication or programme to which the request refers.

- Provision should be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies *may* be subject to judicial review.