

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0209/2000

18 July 2000

REPORT

on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions 'Principles and guidelines for the Community's audiovisual policy in the digital age'
(COM(1999) 657 – C5-0144/2000 – 2000/2087(COS))

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

Rapporteur: Walter Veltroni

Draftsman*: Antonio Tajani, Committee on Legal Affairs and the Internal Market

Hughes procedure *

CONTENTS

	Page
PROCEDURAL PAGE	4
MOTION FOR A RESOLUTION.....	5
EXPLANATORY STATEMENT	13
OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS	17
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET*	20

* Hughes procedure

PROCEDURAL PAGE

By letter of 17 December 1999, the Commission forwarded to Parliament a communication on the principles and guidelines for the Community's audiovisual policy in the digital age (COM(1999) 657 – 2000/2087(COS)).

At the sitting of 17 March 2000 the President of Parliament announced that she had referred the communication to the Committee on Culture, Youth, Education, the Media and Sport as the committee responsible and the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Industry, External Trade, Research and Energy and the Committee on Legal Affairs and the Internal Market for their opinions (C5-0144/2000).

At the sitting of 16 June 2000 the President of Parliament announced that the communication would be examined by the Committee on Culture, Youth, Education, the Media and Sport and the Committee on Legal Affairs and the Internal Market under the Hughes procedure.

The Committee on Culture, Youth, Education, the Media and Sport had appointed Walter Veltroni rapporteur at its meeting of 22 February 2000.

It considered the Commission communication and the draft report at its meetings of 5 June and 12/13 July 2000.

At the last meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Giuseppe Gargani, chairman; Vasco Graça Moura, Ulpu Iivari and Giorgio Ruffolo, vice-chairmen; Valter Veltroni, rapporteur; Alexandros Alavanos, Ole Andreasen, Roberta Angelilli, Pedro Aparicio Sánchez, Per-Arne Arvidsson, Christine de Veyrac, Raina A. Mercedes Echerer, Carlo Fatuzzo, Enrico Ferri, Francesco Fiori, Geneviève Fraisse, Lissy Gröner, Cristina Gutiérrez Cortines, Ruth Hieronymi, Karin Junker, Lucio Manisco, Maria Martens, Mario Mauro, Pietro-Paolo Mennea, Raimon Obiols I Germa, Jens Dyhr Okking, Doris Pack, Roy Perry, Christa Prets, Fernando Ries, Martine Roure, The Earl of Stockton, Kathleen Van Brempt, Luckas Vander Taelen, Eurig Wyn, Teresa Zabell Lucas, Sabine Zissener and Myrsini Zorba.

The opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs and the Internal Market are attached; the Committee on the Environment, Public Health and Consumer Policy and the Committee on Industry, External Trade, Research and Energy decided on 3 April 2000 and 19 April 2000, respectively, not to deliver an opinion.

The report was tabled on 18 July 2000.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

MOTION FOR A RESOLUTION

European Parliament resolution on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions 'Principles and guidelines for the Community's audiovisual policy in the digital age (COM(1999) 657 – C5-0144/2000 – 2000/2087(COS))

The European Parliament,

- having regard to the Commission communication (COM(1999) 657 – C5-0144/2000¹),
 - having regard to Articles 157 and 151 of the Treaty and the Protocol on the system of public broadcasting in the Member States annexed to the Treaty of Amsterdam,
 - having regard to the Council Conclusions of 27 September 1999 concerning the results of the public consultation on the Convergence Green Paper (in particular the aspects relating to the media and the audiovisual sector)²,
 - having regard to the Council Conclusions of 16 May 2000 on the principles and guidelines for audiovisual policy,
 - having regard to Rule 47(1) of its Rules of Procedure,
 - having regard to the report of the Committee on Culture, Youth, Education, the Media and Sport and the opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs and the Internal Market (A5-0209/2000),
- A. whereas the issues relating to the audiovisual sector have already been comprehensively addressed and discussed over the last few years, at the Birmingham Conference in 1998, following on from the consultation on the Convergence Green Paper (COM(1999) 623)³, and alongside the revision of the directives on telecommunications,
- B. whereas the audiovisual sector, in addition to being one of the most important sources of new jobs, will continue to play a fundamental role in upholding democracy, freedom of thought and pluralism, as well as safeguarding and promoting cultural and linguistic diversity in Europe; whereas it is more important to promote European content than to protect it artificially in a global context which makes this impossible,
- C. whereas, in view of the development of digital technology, the existing Community rules governing the audiovisual sector should swiftly be amended in order to achieve the correct balance between the application of the basic principles which are currently in force and the technological and market changes which are taking place,
- D. whereas vigilance will be needed to ensure that the regulatory separation between infrastructure and content takes place in such a way that the technological and market

¹ OJ C.../Not yet published in the Official Journal

² OJ C 283, 6.10.1999, p. 1

³ OJ C.../Not yet published in the Official Journal

aspects do not predominate to such an extent that they post a threat to pluralism and cultural diversity,

- E. whereas European rules relating to the audiovisual sector do not cover global dissemination systems such as the Internet, nor do they cover the transmission of the same or similar content by means of different technological platforms,
- F. whereas the public must be guaranteed access to audiovisual services in accordance with the criteria of universality, affordability and non-discrimination,
- G. whereas the introduction of a European forum on content might create worthwhile synergies between the Commission, the relevant national authorities, operators and users,
- H. whereas competition policy must be able to constitute an appropriate, effective instrument for preventing the emergence of dominant positions, as regards both the concentration of media ownership in the new digital environment and the safeguarding of pluralism, but must not lead to a situation where the development of a competitive and varied supply of European audiovisual content is frustrated by restrictions on state aid to such productions,
- I. whereas coordination between the Commission and the relevant national authorities seems to be particularly desirable in the audiovisual sector,
- J. whereas, as stated in the Protocol annexed to the Treaty of Amsterdam, public service broadcasting plays a central part in safeguarding pluralism, and whereas, however, it is for the Member States to determine how public service broadcasting is funded; whereas the legitimate functions of public service broadcasting should include not only experimental work and research but also the potentially unrestricted use of new technical resources and forms of marketing in order to give public service broadcasting the prospect of competing on the market on an equal footing,
- K. whereas rules on content in respect of programme and supply responsibility should apply equally to public service and private or commercial operators,
- L. whereas the Member States are gradually preparing the instruments for the move to digital terrestrial television,
- M. whereas the specific characteristics of the medium of radio must be safeguarded and the move to digital broadcasting must be facilitated,
- N. whereas the European film industry is in need of massive funding and a marketing and distribution structure capable of meeting the challenge of the global market and supporting cultural diversity; whereas the Media programme is a useful, but inadequate, instrument for the hoped-for growth of the European audiovisual sector and in particular independent art cinema,
- O. whereas compliance with the principle of separation between advertising and artistic, editorial or entertainment content must be assured in the new multimedia environment,

- P. whereas copyright, the effectiveness of which is in jeopardy in the digital environment, must be protected; whereas respect for intellectual property is a source of vitality in the audiovisual and cinematographic sector and the proposal for a directive on copyright and associated rights in the information society must therefore be speedily adopted, both to protect created works and to ensure that they are accessible and can circulate freely,
- Q. whereas, on the international scene, the distinction between medium and content must be safeguarded, so as to avoid the latter being equated in every respect with any other service which may be sold on line; whereas the local dimension and cultural diversity are key elements in international negotiations on audiovisual services,
1. Calls on the Commission to take account of the following points:
- a) endorses, in general terms, the Commission's guidelines for audiovisual policy in the digital age and notes that the timetable for action covering the next five years does not include any major innovations by comparison with what is envisaged in current legislation;

Revision of the 'Television without Frontiers' Directive

- b) calls on the Commission to ensure that, in order to take account of technological developments and of the services offered by digitalisation, the work leading up to the revision of Directive 89/552/EEC⁴ should nonetheless enable the formal revision thereof to be implemented in the course of 2002;
- c) calls on the Commission to ensure that, as part of the revision of the legislation on audiovisual services, a core of key principles for all audiovisual services, irrespective of the method of transmission to users, is identified, or that directives (or, at least, specific regulatory instruments) are drawn up for the purpose of laying down general rules for each type of audiovisual service, irrespective of transmission or broadcasting technique;
- d) considers that the data-collection and assessment criteria and methods used for the purpose of drawing up reports on the application of Articles 4 and 5 of Directive 89/552/EEC must be standardised so that comparable, accurate and objective analyses can be produced;
- e) considers it important, furthermore, for Directive 89/552/EEC to be made more incisive and effective as regards independent production and the circulation of European works and for the directive to stipulate that private and public television broadcasters, irrespective of their method of transmission, must allocate a proportion of their annual net income to investment in production and to the acquisition of European audiovisual programmes, including films, works aimed at minorities and ones made by independent producers, in order to give the public a greater feeling of European culture;

⁴ OJ L 298, 17.10.1989, p. 23.

- f) calls on the Commission, the Council and the Member States to ensure that the rules governing the new digital services offered via convergent networks reaffirm the specific nature of audiovisual services by comparison with all the services of the information society;
- g) agrees with the Commission's aim of providing operators in the audiovisual sector with a clear and predictable policy environment; takes the view that the introduction of digital technologies in the audiovisual sector will call for adjustment of the regulatory framework, in which priority should be given to a differentiated and flexible approach, on the basis of existing law; when introducing new provisions or adjusting existing ones, their impact on employment and growth needs bearing in mind;

The principles to be safeguarded and the regulatory arrangements for the new digital services

- h) endorses the principle of separate legislation for transmission and content, and reiterates the principle that, in the information society, users should effectively be guaranteed the right of access to networks under infrastructure regulation in accordance with the criteria of universality and affordability, and access to their content under content regulation in accordance with criteria of universality, affordability, non-discrimination and transparency;
- i) maintains that regulation must be confined to what is strictly essential and must be applied only where competition is inadequate; such regulation must always be minimal, clear, simple, predictable and consistent and in the Member States the market must be left to operate in accordance with the competition rules;
- j) reiterates that some specific technical aspects concerning consumer access to content (electronic programme guides and conditional access, and any technical system interposed between access to the medium and choice of content, including both television and interactive services) require appropriate rules for ensuring pluralism and cultural and linguistic diversity and for protecting users' freedom of choice;
- k) calls on the Commission to recognise the importance of universal service as a means of preventing social exclusion by ensuring that consumers have affordable access to communications services;
- l) reaffirms that the protection of minors and human dignity in audiovisual and information services is essential in order to promote harmonious personal development and ensure an appropriate social balance, as well as being essential in order to create the climate of trust needed in a sector where the number of programmes on offer is increasingly large;
- m) calls on the Commission, the Member States, public broadcasting services, private broadcasters and all major operators in the audiovisual sector to step up experiments with systems for filtering programmes and other methods of parental control for the protection of minors and, if applicable, to create the appropriate legal framework in the Member States;

- n) approves the use of self-regulation in the rules on audiovisual content, but such rules should be taken to be a set of principles, preferably accompanied by shared codes of conduct, laid down by the relevant national and Community authorities;
- o) supports the principle espoused by the European Commission that the allocation of scarce spectrum should aim for optimum efficiency whilst stressing that the approach to broadcast spectrum cannot be considered in isolation from other public policy objectives which public service broadcasters are required to meet;
- p) notes the conclusions of the Lisbon seminar on digital terrestrial television and the activities relating to digital video broadcasting (DVB), and calls on the Council and the Member States to take steps in order to achieve a gradual and agreed move to digital television, in particular digital terrestrial television;
- q) calls on the Commission and the Member States to take the lead in organising an appropriate European consultative forum to discuss aspects relating to the content of audiovisual and multimedia material (cinema, television, Internet, video games, webcasting, DVD, UMTS telephone, etc.) and related social and economic aspects;

Competition and the audiovisual market

- r) calls on the Commission and the relevant national authorities to ensure, with a view to safeguarding pluralism, that measures are taken to prevent the emergence and maintenance of dominant positions in the audiovisual sector;
- s) calls, therefore, on the Commission to assess carefully whether it would be advisable to put forward appropriate initiatives on media ownership in the new digital environment, with particular reference to vertical mergers;
- t) calls on the Commission to ensure Europe-wide coordination between the national regulatory authorities and the audiovisual sector regulators; calls on the Commission to promote the creation of a European body to safeguard Europe-wide transparency in all areas of the audiovisual and multimedia market and to counter market concentrations which may pose a threat to pluralism,
- u) calls on the Commission to take into account the cultural uniqueness and the weak economic position of the European audiovisual sector when defining its competition policy for this sector and to ensure that there are strong European groups capable of competing worldwide;

Functions of public service broadcasting

- v) considers that the provisions of the Protocol annexed to the Treaty of Amsterdam concerning the role of public service broadcasting in safeguarding pluralism are of fundamental importance; reiterates that it is for the Member States to define the tasks of public service broadcasting and to determine how public service broadcasting is funded in accordance with Protocol 32 to the Treaty of Amsterdam;

- w) stresses that public service and private broadcasting must play an innovative role at the forefront of the digital audiovisual industry;
- x) invites the Member States, the relevant national authorities and those responsible for managing public service broadcasting to provide such broadcasting free to air, ensuring universal transmission and access and to provide legal guarantees for it through must-carry rules; stresses, in this connection, the crucial role of public digital terrestrial television and the need to make this platform as attractive as possible in the run-up to analogue switchover, through increasing capacity and improving coverage;

Other initiatives concerning the audiovisual sector and related sectors

- y) calls on the Commission and the Member States to take steps to safeguard the balanced development of the digital audiovisual sector and the European music and digital broadcasting sectors;
- z) calls on the Commission to embark on a study of the socio-economic impact of radio in Europe, focusing in particular on the role of local broadcasters, and to promote a move to the use of the DAB standard;
- aa) calls on the Commission to propose further initiatives to develop cyber-cinema and to promote the simultaneous distribution of European cinematographic works in the Member States, on the basis of the experience acquired in connection with the Media Training and Media Plus programmes;
- bb) calls on the Commission to take steps to encourage additional financing for European cinema, including the establishment of a guarantee fund; welcomes, in this connection, the call made at the Lisbon Summit for the EIB to support European audiovisual production;
- cc) calls on the Commission, the Council and the Member States, each within its own field of competence, to recognise and promote high-quality content, not least with tax measures;
- dd) calls on the Commission to conduct a thorough examination of the advantages and possibilities of enacting an appropriate tool, e.g. a film directive, in order to strengthen support mechanisms for the film sector in the various Member States and to improve the way in which they are coordinated, with a view to creating a genuine internal European market for films;
- ee) agrees with the Commission that it is necessary to amend the legislation on advertising in connection with the innovation brought about by digitalisation, particularly with regard to interactivity;
- ff) calls on the Commission and the Council to ensure that, in reforming the legislation on advertising, the principle of demarcating between advertising and editorial content is safeguarded;

- gg) calls on the Commission and the Council to promote the creation of and access to works, and also the circulation thereof, in the digital environment, whilst at the same time ensuring that intellectual property rights are adequately protected by means of a strengthening of the directive on copyright and associated rights in the information society, a need which has become even more apparent as a result of the fact that the Internet, in its various forms, is one of the main new media for the dissemination of audiovisual works;

The international scene

- hh) hopes that the Community, in developing audiovisual policy, will take account of the international dimension in relation to globalisation, and of the local dimension in order to promote cultural diversity, and will ensure that the scale of the broadcasting medium does not determine the type of content, to the detriment of pluralism;
 - ii) calls on the Commission to ensure that, in international negotiations, the Community's position continues to uphold the distinction between regulating the medium and regulating content, so as to avoid the risk of audiovisual services being included among those which follow the rules of the networks and/or electronic commerce;
 - jj) stresses the importance of the European dual system of broadcasting in which general public service broadcasters, of which the public service remits are freely defined by Member States, can continue to develop further in the information society and to coexist with commercial broadcasters, and reiterates that this European model has to be safeguarded in future WTO negotiations;
 - kk) calls on the Commission as a matter of urgency to create, by means of an appropriate audiovisual policy, an environment which favours entrepreneurial talent and investment in order to secure a presence for the audiovisual industry in the global economy, whilst promoting cultural diversity;
 - ll) calls on the Council and the Commission to ensure that the Community and its Member States retain the ability to determine and to transpose their policy in the cultural and audiovisual sector so as to guarantee cultural diversity.
2. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The particular focus on the audiovisual sector which the Commission presents in its communication can be endorsed in general terms.

It must be stressed that the question of regulating the sector is closely linked to the wider and more general debate about the technological revolution of the past few decades, in terms of both the emergence of digital technology and the development of network infrastructures, and also to the debate about convergence.

It is, indeed, the possibility of various media networks managing the same services, but 'translated' into digital form, which is the factor unifying the two sectors, technically speaking. This phenomenon is shown particularly clearly by the example of the Internet and of the changes which are on the horizon for this medium, too: it will exploit broadband opportunities, will enable the quality of service provided to be improved by making it possible to determine a guaranteed frequency and will also make multicasting possible. It should also be borne in mind that broadband will also make it possible to access services from mobile phones, as a result of third-generation, UMTS cellular telephony and the multiplicity of terminals for accessing the same services (TV, mobile phones, PCs).

This will all have a direct impact on content, affecting both how content is transmitted and how it is created. In the first case, there will be a tendency to develop services using maximum bandwidth (and hence a general trend towards a demand for, and supply of, multimedia services, and a tendency to shift charging from the network to the content); in the second, new ways of creating content will probably be developed. This points to the possibility of new creative challenges and also to the risk of consequences which will undermine the effectiveness of the protection of individual rights (e.g. the risks of improper use of images of other people, invasions of privacy, etc.), and of the rights of authors, as traditionally understood.

Given the assumption of convergence, the basic conclusions drawn by the Commission, which can be endorsed, may be summarised as follows:

1. the need to regulate media networks on the basis of new, common criteria;
2. the need to regulate networks separately from the services that they carry.

It is essential not to abandon this approach when legislation or some active sectoral measure is planned. It provides the very basis for the classic principles governing the protection and regulation of the audiovisual sector: 1. maximum protection for those producing audiovisual works, and hence the possibility of providing better protection for intellectual ownership rights, copyright and related ownership rights; 2. maximum protection for users, who will be covered by various safeguards depending on the different services that they use; 3. the possibility of targeting intervention to provide strategic support for services of general interest; 4. protection of pluralism.

It is obvious, and fulfils the classic criterion of good sense, that the greater the number of individuals receiving material, the more that material must be regulated *ex ante*, to safeguard the public interest.

Convergence also entails a special focus on the question of access, with regard to the two aspects of the 'active' possibility of using infrastructure networks as a vehicle for content, on the one hand, and as a 'passive' source of content, on the other. In both cases digitalisation will provide opportunities which have yet to be explored, and will undoubtedly boost the supply of content, and hence potential pluralism.

Such increased access means that more content will be available on the networks, and that audiovisual output will eventually boost economic growth.

One possible risk is that of market fragmentation and of the tendency for content to follow the expansion of infrastructure, frequently to the detriment of the specific characteristics of local or 'minority culture' output.

From the user's point of view, access means the technical and economic opportunity to use the transmission networks to benefit from the services that they carry.

Consequently, the Community's audiovisual policy in the digital age of convergence cannot but be conscious of the need to safeguard a 'universal service' (including access to content) which is taken to mean non-discrimination and affordable access to services.

Right of access, in turn, means the possibility of choosing freely between the audiovisual services on offer. Accordingly, there is a need for the applications which act as a filter between the network and/or content operator and the user (conditional access, electronic programme guides) to be particularly transparent.

It is well known that pluralism is threatened by concentration of control. Accordingly, it is hoped that anti-trust legislation will be vigorously applied at all the relevant institutional levels and in every situation in which the mere existence of dominant positions would prejudice the interests of everyone, both European citizens and others, in receiving pluralist information.

The risk of concentration in the sectors which produce content is a real one in a Europe in which the American audiovisual industry already exercises a substantial hegemony. The Community act, using the means already at its disposal (competition law) and future means (directive on media ownership), to safeguard the vital principle of pluralism, and to protect and safeguard the development of its internal diversity vis-à-vis the rest of the global audiovisual market.

Freedom for the user also means being able to distinguish between editorial content and advertising. Advertising, too, as a source of funding for the audiovisual industry and as a creative expression of that industry, will undergo far-reaching changes. The Commission document highlights the prospects for such changes. The relevant legislation must be reviewed swiftly so as to lay down general, but worthwhile, principles designed to protect users, primarily from the blurring of different types of content, but also from certain interactive material which bursts the bounds of simple electronic commerce (one case might

be an interactive TV programme in which it is possible to buy a product by clicking on its image). The same cautious approach must be used with regard to the protection of minors. In this connection it seems worthwhile to continue supporting experiments with parental control systems, which appear to be the most adaptable and functional systems for the digital environment in which they have to operate.

Self-regulation, if it is used to govern certain aspects of audiovisual services (the protection of minors being one of these), should in any case comply with general principles and/or principles shared by homogeneous groups of operators.

In the digital environment public service broadcasting is irreplaceable as a guarantor of pluralism.

Public service broadcasting, through its 'internal pluralism', will have to go even further in ensuring high-quality services for a broad public, many of whom will continue to use the television at home and reception by aerial to obtain day-to-day information.

For this reason, digital terrestrial television and the conversion of broadcasting for reception by aerial must remain an objective of public interest, on the basis of policy regarding content. The corollary of this principle is the need for public service broadcasting to be guaranteed free frequencies for free-to-air digital transmission. Generally speaking, the use of frequencies for digital terrestrial television must always meet the criterion of making the best use of scarce resources in the public interest.

It must be reiterated that it remains a matter for the Member States to determine how public service broadcasting is to be organised and managed, while ensuring compliance with obligations regarding transparency.

It is also hoped that a proportion of public service broadcasting resources will be reserved for funding the production of European audiovisual output.

In the digital environment audio and video content (combining what is known as multimedia) will undoubtedly be the content most sought after by the market, by comparison with other types of content. However, the special nature of the radio sector must not be forgotten: according to some estimates, it employs 300 000 people and is also converting to digital technology, with the trend being towards use of the DAB standard. The Community must acquire more in-depth knowledge of this sector, which constitutes a major factor promoting pluralism, partly as a result of its local roots.

Another issue is that of European cinema: through vocational retraining and use of convergence networks and technology, digitalisation can play a decisive part in launching new European distribution systems with the aim of creating a genuine European film area. It therefore seems worthwhile to relaunch the idea of experimenting with cyber-cinema.

Further investment on the production side will then be needed, over and above that already provided for through Media (in addition to investment allocated e.g. from other programmes for innovation relating to the information society, EIB funds or an ad hoc guarantee fund), to develop an industry which will compete with the American industry and to achieve the goal of encouraging minority national industries, as well. Multilingualism, which remains one of

Europe's great riches, could benefit substantially from the use of digital systems (e.g. subtitling on DVDs in several languages).

Another aspect which is worth highlighting is that of copyright, which might otherwise disappear, since technology is making it possible to produce an infinite number of copies at extremely low cost.

The aim, however, must be to strike a balance between the legitimate claims of those who transmit audiovisual services, and those who produce them, above all on the basis of the use of multimedia archives.

A far-sighted policy on audiovisual services and content cannot ignore the need to encourage vocational training in this sector.

Last but not least, the Community must find legal and/or political instruments for safeguarding its audiovisual output in the context of WTO negotiations, since digitalisation might provide irrevocable encouragement for the strongest markets to expand even more swiftly via electronic networks.

26 May 2000

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

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

on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions - Principles and guidelines for the Community's audiovisual policy in the digital age

(COM(1999) 657 – C5-0144/2000 – 2000/2087(COS))

Draftsman: Michel Rocard

PROCEDURE

The Committee on Employment and Social Affairs appointed Michel Rocard draftsman at its meeting of 28 March 2000.

It considered the draft opinion at its meeting of 23 May 2000.

At the latter meeting it adopted the amendments below unopposed, with 1 abstention.

The following were present for the vote: Michel Rocard, chairman and draftsman; Marie-Thérèse Hermange, Winfried Menrad and José Ribeiro e Castro, vice-chairmen; Sylviane H. Ainardi, Jan Andersson, Philip Rodway Bushill-Matthews, Alejandro Cercas Alonso, Elisa Maria Damião, Proinsias De Rossa, Harald Ettl, Jillian Evans, Carlo Fatuzzo, Ilda Figueiredo, Marie-Hélène Gillig, Anne-Karin Glase, Richard Howitt (for Ioannis Koukiadis), Stephen Hughes, Anne Elisabet Jensen (for Luciana Sbarbati), Karin Jöns, Piia-Noora Kauppi (for Rodi Kratsa), Jean Lambert, Elizabeth Lynne, Thomas Mann, Mario Mantovani, Claude Moraes, Bartho Pronk, Fernando Reis, Gabriele Stauner (for Miet Smet), Ilkka Suominen, Helle Thorning-Schmidt, Ieke van den Burg and Barbara Weiler.

SHORT JUSTIFICATION

Considerable changes are taking place in the audiovisual sector with the introduction of digital technologies. They are very likely to create the need for sector-specific adjustments, not only to the surrounding regulatory framework but also the various mechanisms for support in the Member States and at Community level.

The purpose of the Commission communication is to help increase the predictability of future Community measures for operators in the sector, by setting out the Commission's priorities for the next five years and the aims and objectives for Community audiovisual policy in the medium term. The Commission goes into practical details of market regulation (access to networks and contents, the role of public broadcasting, copyright, protection of young people, advertising and sponsoring). It also discusses the development of Community support instruments and the international dimension of Community audiovisual policy. The main aspects of significance from the social and employment policy point of view are as follows.

Economic growth and employment

The audiovisual sector has the potential to create hundreds of thousands of highly skilled jobs in Europe. A study produced for the Commission in 1997 suggests that the industry's turnover will grow by 70 % by the year 2005. This growth could result in the creation of up to 350 000 highly skilled jobs⁵. The industry's growth potential resides chiefly in the development of innovative services using digital technology, which are largely unregulated at present. Future provisions must be designed in such a way to combine the aims of general interest with an environment that encourages competition and growth.

Democracy

The production of high-quality content will require substantial investment in the near future. Increasing competition for quality content, in increasingly fragmented markets, holds the danger that substantial content will be obtained from providers that only serve small market sectors. In the Information Society, access to information of general interest forms the basis for the individual's social cooperation. In view of the growing integration of various information and communications technologies, the access to audiovisual content is becoming a social issue of great sensitivity. What is ultimately at stake is the need to prevent the division of society into 'well informed' and 'poorly informed' strata.

For this reason provisions to protect the public interest must continue to apply when adjusting the regulatory framework. In the domain of cable networks, for instance, the operators can already be required to disseminate certain television channels. The 'Television without Frontiers' Directive gives Member States the option of ensuring that results of substantial social importance are broadcast via freely accessible TV stations. But in view of the convergence of the media, telecommunications and information technology fields, specific measures such as these are unlikely to be enough. Rather what is needed is the creation of a general framework for access to the services of the information society. This can be done via the definition of 'universal service', which is taken to mean a core element of services that the operator is required to provide as part of a (privatised) service of general interest⁶.

⁵ Norcontel: 'Economic Implications of new Communication Technologies on the Audiovisual Markets' http://europa.eu.int/comm/dg10/avpolicy/key_doc/new_comm/index.html.

⁶ See Commission Communication *Services of general interest in Europe*, COM(1996) 443.

When it comes to protecting the general interest, public radio and television broadcasting takes on especial significance. Protocol 9 annexed to the Treaty of Amsterdam makes provision for giving public radio broadcasting in the Member States special priority, and as such is an expression of this recognition. Change in the audiovisual sector must not be used as a pretext for diluting the present provisions on public broadcasting.

CONCLUSIONS

The Committee on Employment and Social Affairs calls on the Committee on Culture, Youth, Education, the Media and Sport, as the committee responsible, to incorporate the following points in its draft resolution:

1. Takes the view that the introduction of digital technologies in the audiovisual sector will call for adjustment of the regulatory framework, in which priority should be given to a differentiated and flexible approach, on the basis of existing law; when introducing new provisions or adjusting existing ones, their impact on employment and growth needs bearing in mind;
2. Takes the view that the equitable and affordable access of all members of society to general information must be maintained, in order to prevent any division of society into 'well-informed' and 'poorly informed' citizens; accordingly calls for efforts:
 - to ensure that change in the audiovisual sector is not used as a pretext to dilute the present regulatory framework for the public broadcasting system;
 - to define a basic body of commitments to apply to private service-providers, in order to safeguard public access to services of general economic interest in the media, telecommunications and electronic service sectors in future (universal service).

12 July 2000

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

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

on the Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions 'Principles and guidelines for the Community's audiovisual policy in the digital age'

(COM(1999) 657 – C5-0144/2000 – 2000/2087(COS))

Draftsman: Antonio Tajani

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Antonio Tajani draftsman at its meeting of 18 April 2000.

It considered the draft opinion at its meetings of 19 June and 11 July 2000.

At the last meeting it adopted the following conclusions by 29 votes to 1, with 1 abstention.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Willi Rothley and Rainer Wieland, vice-chairmen; Antonio Tajani, draftsman; Luis Berenguer Fuster, Andre Brie (for Alain Krivine pursuant to Rule 153(2)), Carlos Candal, Raina A. Mercedes Echerer, Francesco Fiori (for Hans-Peter Mayer pursuant to Rule 153(2)), Janelly Fourtou, Gerhard Hager, Heidi Anneli Hautala, The Lord Inglewood, Othmar Karas (for Bert Doorn pursuant to Rule 153(2)), Margot Keßler (for Evelyne Gebhardt pursuant to Rule 153(2)), Ole Krarup, Kurt Lechner, Klaus-Heiner Lehne, Donald Neil MacCormick, Arlene McCarthy, Luis Marinho, Mario Walter Mauro (for Malcolm Harbour pursuant to Rule 153(2)), Manuel Medina Ortega, Elena Ornella Paciotti, Carlos Ripoll i Martínez Bedoya, Francesco Enrico Speroni, Astrid Thors, Feleknas Uca, Guido Viceconte, Theresa Villiers, Diana Paulette Wallis, Joachim Wuermeling, Christos Zacharakis, Stefano Zappalà, François Zimeray and Jürgen Zimmerling.

SHORT JUSTIFICATION

1. General principles

1.1 The centrality of the audiovisual sector

The legislative framework must be capable of maximising its growth potential, contrary to the proposals of those who would like to limit the entrepreneurial capacity of European operators, with pointless and dangerous restrictions on their development capacity.

In this context firms must have a central and decisive role, whilst certainty of the legislative framework is becoming the *sine qua non* for the success of the new European economy.

1.2 Freedom of expression and free movement of services

Freedom of expression and information, as guaranteed by Article 10 of the European Convention on Human Rights and Fundamental Freedoms, are achieved by the free flow of information via the radio and television broadcasting system. For this purpose the freedom to provide services, governed by Community legislation and interpreted in the case law of the Court of Justice, constitutes an important step towards guaranteeing and encouraging the free movement of television services, in the broad sense.

1.3 Coherence and technological neutrality in an age of convergence

Technological convergence is changing the boundaries of sectors which were hitherto separate, making it possible for the same service to be conveyed to the end user by means of different technological platforms.

It is therefore essential that identical services should be regulated by the same rules, regardless of the means by which they are transmitted.

1.4 The rights of minors and human dignity

The protection of minors and human dignity in audiovisual and information services is of paramount importance and its effective implementation is essential in order to create the climate of trust required to fulfil the sector's development potential. A climate of trust will help to eliminate obstacles to the development and full competitiveness of European industry.

As regards content, it is still essential to ensure full compliance with the fundamental and indispensable principles inherent in safeguarding human dignity and protecting minors.

2. Switch-off – experimentation of new channels

The period of transition from the analogue system to the digital system must be able to encourage the user's loyalty by offering an innovative range of programmes, not merely a repetition of the same sort of programmes that are already available.

A period of trying out new audiovisual products on the channels made available for digital transmission, possibly only in certain geographical areas, will enable operators and users to

achieve the same objective: gradual migration to new digital distribution systems, with due regard for the substantial financial burdens which the switch-off of the analogue system will entail for the user, whilst at the same time envisaging support measures for innovation.

3. The principle of proportionality

Legislative intervention must be reduced to a minimum and not overstep the limits of what is needed to achieve the desired objective, especially when the sector to be regulated is that of digital applications. An inflexible legislative approach, as stressed in the Green Paper on Convergence, is in danger of equipping the market with rules which would soon prove to be obsolete and inadequate, thereby damaging European production.

4. Separation of regulations on transmission and on content

The regulation of infrastructure must be kept separate from the regulation of actual audiovisual content.

In fact, technological ‘neutrality’ is a necessary requirement for legislative intervention in the age of convergence.

In this context the new legislative framework to regulate the content of television programmes in the digital age must not perpetuate the disparities in treatment which have allowed telecommunications operators to build up a competitive advantage compared with audiovisual content producers.

5. Recognition of the public service role and the need for transparency in its funding

The system of funding adopted by the Member States must comply with the principle of proportionality and must not influence market conditions and competition in the Community in a way contrary to the interests of society.

As maintained in the report of the High Level Group on audiovisual policy⁷, two fundamental criteria to be applied in drawing up provisions for funding are proportionality and transparency. Transparency implies that the Member States should define a clear public service mission, that financial transparency should be guaranteed and that, if public service operators carry on purely commercial activities, separate accounts should be kept⁸. The operator must have a system of cost accounting sufficiently sophisticated to make it possible to calculate costs (including fixed costs) and the relevant revenue.

The State may offer compensation for the execution of public service obligations. Such compensation must make allowance for the costs incurred and revenue generated by the service. Transparency will make it possible to prevent any disguised State aid.

Finally, it should be stressed that the public service must not necessarily be provided by public undertakings. The separation of accounts will enable the State to allow the public

⁷ ‘The digital era: European audiovisual policy’, July 1998, p. 26.

⁸ Cf. draft Commission directive amending Commission Directive 80/723/EEC on the transparency of financial relations between Member States and public undertakings (SEC(1999)404, OJ C 377, 29 December 1999).

service to be carried out even by private firms, envisaging absorption of the higher costs incurred by this mission.

6. Self-regulation: a complementary process

Instruments such as codes of conduct and self-discipline agreed between operators in the sector and organisations of users may ensure that legal provisions are more effective.

The theory of self-regulation is confirmed by the idea that it can control the boundaries between electronic and audiovisual communication, in that it is in the obvious interests of service providers to respect it.

This will save the market in this period of exponential growth and may offer users a simple means of tackling awkward situations.

This applies in particular to the regulation of the relationship between TV and minors in the sphere of both advertising and programme content.

7. The 'Television without Frontiers' Directive⁹

In order to avoid unjustified discrimination in treatment between television operators in different European countries, it is essential that legislation should be transposed at national level in full compliance with the principles sanctioned in the Directive, without restrictive interpretations at national level which may penalise operators working in that country and adversely affect the scope of European harmonisation and the internal market in the sector.

Unjustified disparities in treatment when legislation is being transposed in the Member States could hinder the process of transposing the 'TV without Frontiers' Directive in the applicant countries.

8. Protection of minors

In the digital age, when hundreds of channels are available, filtering or blocking mechanisms can play an essential role in excluding harmful audiovisual material in programmes for minors and in on-line services.

In this case too, it would seem more effective to have codes of conduct and self-regulation to accompany the general safeguard principles laid down in the framework legislation. The best solution would be favourable convergence leading to practical codes comparable with one another and containing at least a minimum of internationally accepted requirements, together with graduated assessment systems capable of taking account of the different levels of cultural acceptance in the individual Member States.

⁹ Directives 89/552/EEC and 97/36/EC.

9. Principles for drawing up regulatory support instruments

In order to promote the production and distribution of quality content, the Commission, the Council of Ministers and the Member States, each in its own sphere of competence, should promote systems as alternatives to those currently in force, the effectiveness of which is not guaranteed, such as tax incentive mechanisms for production.

10. Multilateral trade negotiations

The approach in the Millennium Round negotiations must be in favour of liberalisation. What the audiovisual industry needs is not production and distribution quotas, but the formulation of marketing strategies for achieving worldwide distribution of its products.

CONCLUSIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Culture, Youth, Education, the Media and Sport, as the committee responsible, to incorporate the following points in its motion for a resolution:

The European Parliament,

1. Agrees with the Commission's aim of providing operators in the audiovisual sector with a clear and predictable policy environment;
2. Backs the Commission's initiative to bring infringement proceedings against Member States which have not correctly transposed the 'Television without Frontiers' Directive;
3. Stresses that the legislative framework should include self-regulation codes which are organised in a transparent and accountable manner, in consultation with the relevant national and Community authorities;
4. Considers that public service and commercial broadcasters must bear central responsibility and play a decisive role in the development of the information society and that hence their growth potential must be maximised;
5. Calls on the Commission and the Member States to make provision for a period of experimentation and gradual migration to new digital distribution systems, whilst respecting the considerable economic burdens which the switch-off of the analogue system will entail for the user;
6. Maintains the need to keep the regulation of infrastructure separate from the regulation of content, since technological neutrality is a necessary prerequisite for legislative intervention in the area of convergence although, in the context of access to content, account has to be taken of the interrelationship between the two;

7. Considers that the regulatory framework must include the need to ensure universal access to public service content, which could be achieved through the use of 'must carry' rules on the key networks and guarantees for public service content through other key distribution networks and facilities. Public service content should be both accessible and visible;
8. Considers it a matter of priority to re-establish equality of treatment between the telecommunications industry and the audiovisual content industry, which has been altered by the process of simplification and liberalisation under way in the telecommunications sector;
9. Reaffirms that the protection of minors and human dignity in audiovisual and information services is essential in order to promote harmonious personal development and ensure an appropriate social balance, as well as being essential in order to create the climate of trust needed in a sector where the number of programmes on offer is increasingly large;
10. Calls on the Member States and the Commission to cooperate with industry and civil society with a view to adapting and complementing current systems for protecting minors from harmful audiovisual content, taking account of ongoing technical, social and market developments;
11. Considers that the public service obligations may be imposed, at the discretion of Member States, on either public or private operators;
12. Calls on the Commission, the Council and the Member States, each within its own field of competence, to recognise and promote high-quality content, not least with tax measures.