[DE] European Commission Finds Cable Occupation Regulations Contrary to Community Law

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As early as 1995 the European Commission spoke out against the procedure introduced by the Federal Republic of Germany, as it felt that foreign television organisers were being prevented from retransmitting their channels by the regulations operative in a number of Federal Länder on the occupation of space available on broad-band cable. The Commission held this to be an infringement of the freedom to provide services contained in Article 59 of the EC Treaty in that the reference to specific characteristics constituted camouflaged discrimination.

In January 1996 the Federal Government then responded to the complaint with the opinion that the purpose of the disputed requirements - particularly in the context of the duties allocated to the legislator by the Federal Constitutional Court - was to ensure an overall offer providing for the plurality of opinion in broadcasting. While the priority given to domestic channels was connected with the guarantee of the formation of a free, individual, public opinion and plurality of opinion, it was also linked to the core area of the cultural and social function of broadcasting. Provided such connections took account of the organisation of German-language channels or reporting on political, economic, social and cultural affairs in the Federal Länder, there was no infringement of the basic freedom contained in the Treaty. Even as regards regulations, which included among the legally specified organisers - and thus given priority for broadcasting - those which were authorised to broadcast out of one of the Länder because that was its place of origin, the Treaty was not being infringed as this provision could also be applied to organisers based in another of the Federal Länder, so there was no connection with specific nationality.

DG XV (the Directorate-General for the Internal Market) however holds the view that in the case of the characteristic of a "German-language channel" there is no obvious connection between the language used in the medium and the possible contribution to the plurality of opinion, but that in nearly all the Federal Länder concerned up to nine public-sector channels were being retransmitted, enjoying priority and making a considerable contribution to the plurality of opinion. Although the Commission acknowledges in principle the aim pursued in its recognition of the importance of the general interest, it rejects the relative nature of the measure.

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Moreover, the Commission holds the view that making licensing in the Federal Länder dependent on the operator having its headquarters, main administrative offices, most of its editorial offices and its technical department and studios there could have the result of obliging foreign operators to comply with the relevant local legislation as well as the provisions applicable in the Member State to which they belong. This would mean - observing the criteria referred to in connection with the re-drafting of Article 2 of the revised "Television without Frontiers" Directive (Directive 97/36/EC) - that they would need to set up a subsidiary, thereby negating the freedom to provide services.

The Federal Government now has until mid-April to adopt its position on the questions raised.

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