[PL] Position on the Revision of the TWF Directive

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Małgorzata Pęk
National Broadcasting Council of Poland

On 6 July 2004 the National Broadcasting Council adopted its standpoint referring to the future of the European regulatory audiovisual policy in the light of the European Commission´s Communication on this topic (COM(2003)784 final). Subsequently, this position was sent to the Minister of Culture. Based on this proposal the European Committee of the Council of Ministers adopted the standpoint of Poland on 30 July 2004. Later this year the document adopted by the European Committee of Council of Ministers, which reflects mainly the NBC proposal, was submitted to the European Commission. The document as it was primarily adopted by the National Broadcasting Council, stressed that through the implementation of the Television without Frontiers (TWF) Directive (89/552/EEC, amended by 97/36/EC) some key aims could be fully realized, including those referring to freedom of information, but also many other important topics like e.g. cultural diversity. This document contains specific remarks on six general themes indicated by the Commission within the consultation process. Following the debate on the process of the revision of the TWF Directive, three topics were identified as particularly important: jurisdiction, support for cinematographic and other audiovisual creative works and the material scope of regulation of the future directive. Referring to this last point it has been underlined that the popularity of streaming media on the Internet, as well as other information society services enabling access to editorial and audiovisual content, that may have impact on forming viewers' opinions similar to television deserve a careful analysis. In this context different forms of possible regulation should also be examined, including graduated regulation, co-regulation and self-regulation. Regarding the issue of territorial jurisdiction it was observed that implementing the country of origin principle has created a system giving a considerable level of legal security concerning jurisdiction over program services having transfrontier character. However, it seems that some terms deserve intensified re-examination. Those notions which were regarded as being not sufficiently precise include: "head office", "editorial decisions on programme schedules", "significant part of the workforce" and "stable and effective link with the economy of that Member State". It was observed that providing clear, coherent interpretation of these terms may be useful. A more difficult issue connected with jurisdiction provisions concerns the delocalized channels. Choosing the place of establishment in another Member State while directing all or most of the broadcasting activity at the territory of the other, "receiving" Member State with a view to evading the legislation that would have applied there could be considered as an abuse of the freedom to choose the

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country of establishment. That problem should be carefully discussed. As one of possible solutions a closer co-operation between regulatory authorities from the country of transmission and the country of reception was suggested. Such co-operation could aim at providing the licenses granted in the country of establishment adequate measures that would prevent circumvention of the law of the country of reception in the spirit of the ECJ judgement in the van Binsbergen case. The promotion of European works as envisaged by Arts. 4 and 6 TWF Directive was considered adequate and useful. However, Art. 5 TWF Directive does not seem to protect sufficiently the legitimate interests of independent producers. This may affect the competitiveness of the European sector of independent audiovisual producers and reduce the extent of its development. More coherent implementation of the criteria for the definition of "independent producer" as described at recital 31 of the preamble to the directive 97/36/EC appears advisable.

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`Poland's standpoint with regard to the future of the European audiovisial policy in the light of the Communication issued by the European Commission on this matter', adopted by the Polish Radio and Television Council [KRRiT] at its session of 6 July 2004

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