# European Commission: Fifth Report on Application of TWF Directive

**IRIS 2006-2:1/35**

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The European Commission adopted its Fifth Report on the application of the "Television without Frontiers" (TWF) Directive on 10 February 2006. The Commission is required to adopt such bi-annual reports under Article 26, TWF Directive. The period covered by the Fifth Report is 2003 and 2004, a period during which the European Union's (EU) membership expanded from 15 to 25 Member States.

After documenting relevant developments in the television market in Europe and noting that new Member States had to notify their legislation transposing the TWF Directive into national law, the Report embarks on a discussion of the application of the Directive's substantive provisions. It notes the central question raised by the Mediakabel case, i.e., whether near-video-on-demand services are within the scope of the TWF Directive (judgment was pending in the case in 2004, but see IRIS 2005-7: 4). It discusses jurisdictional questions obtaining in the RTL 4 and RTL 5 dispute (see IRIS 2003-8: 12); the proscription of Extasi TV for violation of Article 22, TWF Directive (see IRIS 2005-3: 12); instances in which dialogue was used to try to resolve other jurisdictional disagreements and the prohibition of Al Manar by the French authorities (see IRIS 2004-4: 10, IRIS 2004-9: 11, IRIS 2005-1: 12 and IRIS 2005-2: 12).

An update is given on events of major importance for society (Article 3a, TWF Directive) and on the promotion of distribution and production of European works (Articles 4 and 5, TWF Directive). In respect of the latter, the information provided is in large part gleaned from the Commission's Sixth Communication on the application of Articles 4 and 5 (see IRIS 2004-8: 3). The overview of the implementation of the rules on advertising (Articles 10-20, TWF Directive) mentions the Commission's Interpretive Communication dealing with, inter alia, split-screen, interactive and virtual advertising (see IRIS 2004-6: 4). It also details the finding by the European Court of Justice that indirect television advertising of alcoholic beverages on hoardings in stadia visible during the retransmission of sporting events "does not constitute a separate broadcast announcement in order to promote goods or services within the meaning of the Directive" (p. 8 of Report) (see IRIS 2004-9: 3). An update on the Commission's monitoring of the Directive's rules on advertising is also provided. The assessment of the protection of minors, human dignity and public order (Articles 2a, 22 and 22a, TWF Directive) was

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generally positive and the rationale behind the proposal for a new European Parliament Recommendation to bolster existing protection in these areas (see IRIS 2004-6: 5) was explained by the need “to keep up with the challenges posed by technological developments” (p. 9 of Report).

Also scanned in the Report is the topic of coordination between national authorities and the Commission, in particular the work of the Contact Committee and of the High Level Group of Regulatory Authorities. Information about the launch of the review of the Directive; EU enlargement, and cooperation with the Council of Europe is also provided.

The Report concludes that the Directive “continues to function successfully in ensuring the freedom to provide television services in the European Union”. It states that the “fundamental objectives of public interest that the Directive aims to safeguard in establishing a minimum harmonisation in the internal market remain valid” and claims that the Report “confirms the validity of the common European approach to audiovisual matters” (p. 11 of Report). It also reiterates the need to review the current EU regulatory framework in light of market and technological developments and announces the Commission’s intention to draft a proposal for the revision of the TWF Directive at the end of 2005.

***Fifth Report from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 89/552/EEC “Television without Frontiers”, COM(2006) 49 final, 10 February 2006***

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