European Commission: Amended proposal to amend the "Television without Frontiers" Directive

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On 7 May 1996, the European Commission amended the proposal for a revision of the 1989 "Television without Frontiers" Directive which it presented to the European Parliament and the Council on 31 May 1995. The amendments were made on the basis of the first reading in the European Parliament which resulted in a Resolution on 14 February 1996 (see: IRIS 1996-3: 6). Parliament approved the Commission's proposals subject to a number of amendments it had made. The amended proposal also takes into account the opinion of the Economic and Social Committee of 13 September 1995 (CES 972/95) and the discussions which took place in the EU's Council of Ministers on 20 November 1995.

The Commission accepted approximately half of all amendments proposed by the European Parliament. To determine the jurisdiction of a Member State over a broadcaster, the European Parliament proposed in its February Resolution to insert an article defining when a broadcaster can be deemed to be established in a certain Member State. Parliament proposed that broadcasters should be regarded as being established in a Member State of the EU in the case where (1) they have their head office in that Member State and the editorial decisions about programme schedules are taken in that Member State's territory; (2) the majority of the staff involved in the pursuit of the television broadcasting activities operates in the Member State in question; and (3) its programmes are intended at least for that Member State, notwithstanding (1) and (2). In its amended proposal, the Commission indicates that point (3) is not acceptable.

The Commission had proposed that broadcasters should reserve 10% of their transmission time that is not devoted to news, sports events, games, advertising, tele-shopping, and teletext services, for European works created by producers who are independent of broadcasters. Alternatively, Member States could oblige broadcasters to spend 10% of their programming budget on such works, without the obligation to broadcast these works. For the implementation of the Directive's provision Parliament expressed the desire to precise when a producer is independent of a broadcaster. In its amended proposal, the Commission indicates that it does not want to put a precise definition in an article of the directive since this would be inflexible. As an alternative, the Commission proposes to include guideline criteria in one of the recitals of the directive. The quota provisions in regard to the broadcasting of European works remain unchanged in comparison

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with the original proposal of the Commission.

Contrary to the wishes of the European Parliament, the Commission does not want to extend the scope of the Directive to communication services on individual demand. These new services will appear in a forthcoming Green Paper.

From the text of the amended proposal it is clear that advertising and teleshopping channels fall within the scope of the Directive although there are separate rules fort channels devoted exclusively to these services and channels providing windows for such services. Advertising for self-promotional purposes is also brought within the scope of the definition of advertising.

Under the present directive, Member States where broadcasting services are received from other Member States cannot take actions preventing the reception of these services. The amended proposal allows exceptions of this strict rule if certain conditions are fulfilled, one of the conditions being that the Member State must inform the Commission of the measures it intends to take.

Although the Commission proposes to strengthen the provisions that relate to the protection of minors, it refuses at this stage, to accept Parliament's desire to oblige broadcasters to rate all programmes that they broadcast and to encode them accordingly, and, in addition, to oblige the manufacturers of television receivers to equip their products with a technical device that can recognize these codes. The Commission sees a number of problems as regards the introduction of such legal measures and therefore opts for further research and in-depth analysis. The delay would have the advantage of being able to benefit from the U.S. and Canadian experiences in implementing their V-chip legislation.

Pending the adoption of its proposals, the Commission remains very attached to the respect by national authorities concerned of the rules listed in the present directive. Thus, following the transposition into Spanish law of Chapter V on advertising and sponsorship (law No 25 of 12 July 1994) the Commission has sent a request for information to the Spanish authorities reminding them that the transitional period established in article 13 under the Spanish law is now complete and that broadcasting bodies coming under their authority are required to respect all the provisions governing advertising breaks as laid down in Article 11 of the directive 89/552/CEE.

After the closing date of this issue of IRIS the EU Council confirmed on 11 June 1996 through a majority its political compromise on a common position which it had reached in November 1995. Sweden voted against, Belgium, Ireland and Greece abstained. IRIS will return to this next month.

Amended proposal for a European Parliament and Council Directive amending Council Directive 89/552/EEC on the coordination of certain

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provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, 7 May 1996, COM(96) 200 final.

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