European Parliament/Council of the European Union: `Television without Frontiers - II' Directive Adopted

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The European Parliament and the Council of Ministers have finally adopted the new text of the "Television without Frontiers" directive, the main objective of which is to create the conditions necessary for the free movement of television broadcasts. Directive 97/36/EC, modifying Directive 89/552/EEC "Television without Frontiers" of 3 October 1989 was adopted on (the exact date will be published in the September issue of IRIS (issue No 1997-8) since at the closing date of this issue the President of the European Parliament was still to sign), at the end of two years of intensive negotiations between the EC institutions.

On 31 May 1995 the Commission presented a proposal designed to increase the legal certainty and update the wording of the "Television without Frontiers" Directive. This proposal took account of changes in the market, particularly those arising from technological developments but without extending the scope of the directive to the new on-line audio-visual services such as video-on-demand.

In relation to the 1989 directive, the other amendments mainly set out to complete and clarify various definitions, notably as regards Member States' jurisdiction over broadcasters, to introduce rules governing teleshopping and to increase protection for children.

On second reading, the European Parliament tabled amendments relating particularly to the protection of children, the introduction of the "v-chip" and, above, all the broadcasting of sporting events.

The most important innovation concerns the broadcasting of major events. The new directive lays down framework conditions in which the public may be guaranteed free access to the broadcasts of such events. Each of the Member States will be entitled to draw up a list of events which have to be broadcast unencrypted even if exclusive rights have been bought by pay-television channels. On the basis of the mutual recognition principle, they will have to ensure that the various channels respect each of these lists.

Furthermore, within one year, the Commission will have to present an in-depth study of filtering systems of the "v-chip" type enabling parents to control the programmes watched by their children. The directive defines the aspects to be covered by this study but without prejudging its conclusions.

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The new "Television without Frontiers" Directive will require legislative amendments, essentially to take account of the rapid growth of the sector and the increasing number of television stations. Member States will have eighteen months in which to put it into effect by taking the necessary internal measures.

In practical terms, the main provisions of the new directive as adopted by the European Parliament and the Council are as follows:

- Principles of jurisdiction The directive makes it clearer under which Member State's jurisdiction television broadcasters fall; this is determined mainly by where their central administration is located and where management decisions concerning programming are taken. The clause on derogations from the principle of freedom of reception has been amended. Furthermore, a definition of what constitutes a broadcaster has been introduced.

- Freedom of reception and retransmission It is confirmed that, as a general rule, the Member States must ensure freedom of reception and must not restrict the retransmission on their territories of television broadcasts from other Member States for reasons falling within the fields co-ordinated by the directive.

- Better legal redress Appropriate procedures are to be introduced by the Member States, via their own legislation, to enable third parties concerned, including nationals of other Member States, to refer to the competent legal or other authorities in order to ensure compliance with the directive.

- Events of major importance to the public (particularly sport) The Member States may each draw up a list of events which must be broadcast unencrypted even if exclusive rights have been bought by pay-television stations. On the basis of the principle of mutual recognition, they must ensure that the various stations respect each of these lists. The events concerned may be national or other, such as the Olympic Games, the World Cup or the European Football Championship. These provisions apply to contracts concluded after the publication of the directive and relate to events taking place after its entry into force.

- Measures to promote European programmes The clause requiring televisions stations "where practicable" to reserve a majority proportion of their broadcasting time for European works remains unchanged; a certain flexibility continues to be allowed for the implementation of this provision. The definition of European works has been extended to include co-productions with third countries.

- Definition of European works Productions which are not "European works" but are made under bilateral co-production agreements concluded between Member States and third countries will be treated as European works if the major portion of the costs of the production is covered by the Community co-producers and provided the production is not controlled by a producer or producers established

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outside the territory of the Member States.

- Independent productions Member States must introduce a definition of "independent producer" to facilitate application of the rule requiring 10% of transmission time or of programme budget to be reserved for independent productions.

- Film broadcasting The periods for which cinematographic works may not be broadcast on television after first being shown in cinemas have been abolished. Member States are merely required to ensure that the periods agreed between broadcasters and rights-holders are complied with.

- Television advertising The provisions concerning advertising remain virtually unchanged. The limit of 20% of any given one-hour period of broadcasting time has been altered to 20% of any given clock hour. Self-promotion is assimilated to advertising and subject to most of the same provisions. Public service messages and charity appeals are not to be included for the purposes of calculating these maximum periods.

- Teleshopping A definition of teleshopping is introduced. Teleshopping is made subject to virtually the same rules as advertising. The one-hour per day limit for teleshopping is abolished. Teleshopping channels are subject to most of the provisions of the directive. Teleshopping windows on the generalist channels have to last at least 15 minutes and be clearly identifiable. They may not number more than 8 per day and their total duration may not exceed 3 hours per day. Teleshopping must not incite minors to conclude contracts for the purchase of goods or services.

- Sponsorship Pharmaceutical companies may in future sponsor broadcasts but will still not be able to promote specific medicines or medical treatments.

- Protection of minors and public order Programmes which might seriously impair the development of minors are prohibited. Those which might simply be harmful to minors must, where they are not encrypted, be preceded by an acoustic warning or made clearly identifiable throughout their duration by means of a visual symbol. Broadcasts must not contain any incitement to hatred on grounds of race, sex, religion or nationality. Within one year, the Commission is to submit a study of the advantages and disadvantages of other measures to facilitate parents' control of broadcasts watched by their children.

- Right of reply The provisions relating to the right of reply of parties whose reputation and good name have been damaged by an assertion of incorrect facts in a television programme have been strengthened.

- Monitoring of directive A contact committee has been set up to monitor the implementation of the directive and developments in the sector and as a forum

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for the exchange of views. Chaired by the Commission and composed of representatives of the authorities of the Member States, it may be convened at the request of any of the delegations.

Directive 97/36/EC, modifying Directive 89/552/EEC "Television without Frontiers" of 3 October 1989. Unofficial co-ordinated text - as amended by Directive 97/36/EC, 30 June 1997

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