

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## TELEVISION WITHOUT FRONTIERS

### GREEN PAPER ON THE ESTABLISHMENT OF THE COMMON MARKET FOR BROADCASTING, ESPECIALLY BY SATELLITE AND CABLE

(Communication from the Commission to the Council)

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INTRODUCTION

THE BRIEF FOR THE COMMUNITY

Purpose of the Green Paper

On 25 May 1983, the Commission adopted its interim report on "Realities and tendencies in European television: perspectives and options".<sup>1</sup> The report is mainly concerned with examining the scope for creating a European television channel. The Commission decided that the question of how the common market for the national television channel could be established should be dealt with separately.<sup>2</sup> Examination of this question is presented here in the form of a Green Paper. This is intended by the Commission as a preparatory document providing a basis for legislative measures (harmonization of national law) and application measures (implementation of the freedoms enshrined in the Treaty of Rome). It describes as far as possible the situation at the beginning of May 1984.

The purpose of this paper is threefold: to demonstrate the importance of broadcasting (radio and television) for European integration and, in particular, for the free democratic structure of the European Communities; to illustrate the significance of the Treaty establishing the European Economic Community (EEC Treaty) for those responsible for producing, broadcasting and re-transmitting radio and television programmes and for those receiving such programmes; and to submit for public discussion the Commission's thinking on the approximation of certain aspects of Member States' broadcasting and copyright law before formal proposals are sent to the European Parliament and to the Council.<sup>3</sup>

The Commission's action is in response to Parliament's Resolution on radio and television broadcasting in the European Community of 12 March 1982, in which Parliament "considers that outline rules should be drawn up on European radio and television broadcasting, inter alia with a view to protecting young people and establishing a code of practice for advertising at Community level".<sup>4</sup>

<sup>1</sup> It was published as document COM(83)229 final and is referred to below as the interim report.

<sup>2</sup> Interim report, p. 8, point 3 and pp. 23-24, point 32.

<sup>3</sup> Although this paper also deals with the copyright issues arising in connection with the establishment of a common market in broadcasting, it is not to be confused with the "Green Paper" on the reform of the law on copyright and related rights, announced by the Commission in its Communication to the European Parliament and to the Council entitled "Stronger Community action in the cultural sector" (Bulletin of the European Communities, Supplement 6/82, pp. 16-17).

<sup>4</sup> OJ No C 87 of 5 April 1982, p. 110, point 7.

In the report on radio and television broadcasting in the European Community drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport by Mr Wilhelm Hahn (EPP) and adopted unanimously by Parliament, some of the reasons given are: "Information is a decisive, perhaps the most decisive factor in European unification. ... European unification will only be achieved if Europeans want it. Europeans will only want it if there is such a thing as a European identity. A European identity will only develop if Europeans are adequately informed. At present, information via the mass media is controlled at national level. ... Information and economics are closely inter-related - an obvious example being advertising - and consequently the involvement of the media in European unification clearly adds a new dimension within the context of the treaties of Rome. Economic exchanges, understanding of social processes, freedom of movement and trade, vocational training and many other activities are inconceivable without information. Indeed, for some time information itself has been an important branch of the economy. ... Further difficulties arise from the legal point of view: the Geneva broadcasting conference of 1977 tried to establish the responsibilities of the existing companies at that time in a form which would be legally binding for at least 10 years"; in other words, "it made efforts to fix national borders as the compulsory limits for satellite transmissions. This move is attributable to Eastern European fears about free movement of the media and to the concern among the Western countries about unlimited competition as a result of advertising."<sup>2</sup>

The Opinion of the Political Affairs Committee, drafted by Mr Johan van Minnen (S) and likewise unanimously adopted,<sup>3</sup> includes the following: "In the eighties and nineties, therefore, broadcasting will be faced with ... far-reaching social developments. ... Those Member States ... will not escape the breaking-open of this /closed broadcasting system/. ... But if the state control is threatened this does not necessarily mean that television as such is also threatened! ... Although one may regret the advent of such an open structure, it would, in the view of the Political Affairs Committee, be incompatible with the freedom of information exchange to pursue a protectionist policy in this field. Freedom of information exchange is laid down in Article 10 of the 1950 European Convention on Human Rights and Fundamental Freedoms which states: 'everyone has a right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers'.

<sup>1</sup> European Communities, European Parliament, Working Documents 1981-1982, Doc. 1-1013/81 of 23 February 1982 (PE 73.271/fin.), pp. 8, 10 and 11.

<sup>2</sup> Hahn report, loc. cit., p. 7.

<sup>3</sup> loc. cit., pp. 21-26.

"This open information market must not mean that satellite broadcasts should be allowed to flood the Community in unlimited quantities as though they were a commercial product. ... This could be prevented only by creating tight and harmonized Community legislation on broadcasting laying down arrangements for advertising for satellites used for broadcasting. The Political Affairs Committee gives its preference to a system ...: ... i.e. advertising spots at fixed times between programmes which do not interrupt broadcasts. ... To ban advertising on satellite-broadcasts would be as unrealistic and perverse as to forbid advertisements in newspapers; the British ITV authority is evidence of the fact that a broadcasting organization run on commercial lines can very well hold its own, in terms of quality, with a state-run broadcasting organization. Freedom of expression, however, cannot be the prerogative of the highest bidder and the Commission must therefore draw up a directive ensuring that commercial interests are channelled into a direction acceptable to the Community and made subject to certain conditions. ... A European outline regulation should embody the structural guarantees necessary for independence without which a European broadcasting war will inevitably break out which may destroy the cultural values of our Community."

In a unanimously adopted Opinion drafted by Mr Hellmut Sieglerschmidt (S),<sup>1</sup> Parliament's Legal Affairs Committee similarly came out in favour of an approximation of national legislation on broadcasting. It stresses that this exercise could not be confined to the freedom to provide services in the broadcasting field, the prevention of distortions of competition, notably in respect of advertising in broadcasting, and the protection of listeners, viewers and authors. "It /Community legislation on the media/ would also have to contain at the least provisions to ensure that a variety of opinions, information and cultures are expressed and provisions for the protection of youth."<sup>2</sup> "A corresponding Council of<sub>3</sub>Europe convention would complete such legislation appropriately."<sup>3</sup>

To begin with, the Commission needed to conduct "a fundamental inquiry covering all aspects of international legislation on policy in relation to the media".<sup>4</sup> This "report on the media should contain in particular information as to the following: (a) the legislation relating to the media in the Member States, (b) the legal basis for action by the Community in this field, (c) the matters in respect of which provisions should be laid down, (d) whether a convention on the media drawn up within the Council of Europe is advisable and, if appropriate, what form it should take and (e) the legal requirements and practical facilities for the creation of a European television channel".<sup>5</sup>

<sup>1</sup> loc. cit., pp. 27-36.

<sup>2</sup> loc. cit., p. 30.

<sup>3</sup> loc. cit., p. 33.

<sup>4</sup> loc. cit., p. 34.

<sup>5</sup> loc. cit., p. 35.

This request was taken up by the Committee on Culture<sup>1</sup> and incorporated by Parliament in point 1 of its Resolution of 12 March 1982. The Commission welcomed this Resolution and announced appropriate initiatives.<sup>2</sup> Thus, on 25 May 1983, it first compiled an interim report entitled "Realities and tendencies in European television: Perspectives and options".<sup>3</sup> This report contains, first and foremost, a whole range of facts on satellite and cable television and reviews broadcasting legislation in Member States<sup>4</sup> (point 8(a) of Parliament's Motion) and the work of the Council of Europe<sup>5</sup> (point 8(d)). This Report's main political thrust is to be found in the discussion of the facilities for creating a European television channel<sup>6</sup> (point 8(e)).

The subject of this Green Paper is the opening up of intra-Community frontiers for national television programmes (freedom to provide services). This entails the step-by-step establishment of a common market for broadcasters and audiences and hence moves to secure the free flow of information, ideas, opinions the cultural activities within the Community.

In response to Parliament's request made at point 7 of its Resolution, the outline rules for European broadcasting are discussed from two angles: (i) their relationship to the EEC Treaty, and (ii) the scope for their further development under the powers it confers to approximate laws. In particular, the relevant provisions of Member States' legislation on the media are examined (abovementioned point 8(a) of Parliament's Motion) and then looked at in the light of the Treaty. The Green Paper also considers the legal basis for Community action (point 8(b)), discusses the matters requiring legislation (point 8(c)) and sets out approximation proposals (point 7 of the Resolution).

<sup>1</sup> loc. cit., p. 13, point 8.

<sup>2</sup> Statements by Mr Lorenzo Natali and Mr Karl-Heinz Narjes on 11 March 1982, OJ Annex No 1-282 of 11 February 1982, pp. 220 and 221-222.

<sup>3</sup> Doc. COM(83)229 final.

<sup>4</sup> loc. cit., pp. 161-190.

<sup>5</sup> loc. cit., pp. 81-97.

<sup>6</sup> loc. cit., pp. 23-32.

In a new Resolution, adopted on 30 March 1984, on a policy commensurate with new trends in European television, Parliament reaffirmed its previous position, calling on the Commission and the Council "to provide a reliable legal framework in which to implement the principles of the Treaty of Rome applicable to the subject /broadcasting/, particularly ... freedom to provide services".<sup>1</sup>

It also called on the Commission and the Council "to cooperate with each other and the Parliament to review national legislation to ensure that it is possible to coordinate the different systems as required. This could include ... rules for advertising" and "rules for the protection of children and young people, copyright and authors' rights".<sup>2</sup> It was necessary "to formulate rules to ensure that public broadcasting monopolies do not seek to prevent private broadcasters and programme makers from fully contributing to the future developments ...".<sup>3</sup>

In a further Resolution, also adopted on 30 March 1984, on broadcast communication in the European Community (the threat to diversity of opinion posed by the commercialization of new media),<sup>4</sup> Parliament stated that it "E. is aware that the new technologies require a reasonable degree of commercial support through advertising; F. believes that a decision must be taken at Community level regarding the limits applicable to the use of advertising by public and private television companies, so that all television companies operate on an equal footing; G. considers that, if current codes of conduct and commonly accepted standards of practice are pursued, neither an uncontrolled proliferation of new services nor a threat to quality or diversity will arise; ... 2. urges the Commission to prepare framework suggestions for transnational broadcasting which take account of the proposals currently being prepared by the Council of Europe".<sup>5,6</sup>

<sup>1</sup> Point 2 in the Resolution, OJ No C 117, 30.4.1984, p. 201 (202). See also the report drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport by Mr Gaetano Arfé (S), European Parliament Working Documents 1983-1984, doc. 1-1541/84, 16.3.1984 (PE 85.902/fin.), p. 20.

<sup>2</sup> Point 4 in the Resolution, loc. cit.

<sup>3</sup> Point 7 in the Resolution, loc. cit.

<sup>4</sup> OJ No C 117, 30.4.1984, p. 198. See also the report drawn up on behalf of the Committee on Youth, Culture, Education, Information and Sport by Mr A. H. Hutton (ED), European Parliament Working Documents 1983-1984, doc. 1-1523/83, 15.3.1984 (PE 78.983/fin.).

<sup>5</sup> The reference is to what was later adopted on 20 February 1984 as Recommendation R (84) 3 of the Committee of Ministers of the Council of Europe to its 21 member states on the principles relating to television advertising (see Conseil de l'Europe, Communiqué de presse I (84) 7 of 23.2.1984 for the text of the Recommendation). There are at present no plans for a legally binding agreement (Convention) between the member states of the Council of Europe.

<sup>6</sup> The full debate is published in European Parliament, Verbatim Report of proceedings, provisional edition, Strasbourg, 29.3.1984 - 30.3.1984, pp. 296-299, 305-315, 339-340.

EEC Treaty and cultural activities

Contrary to what is widely imagined, the EEC Treaty applies not only to economic activities but, as a rule, also to all activities carried out for remuneration, regardless of whether they take place in the economic, social, cultural (including in particular information, creative or artistic activities and entertainment), sporting or any other sphere. Thus, just as it guarantees Member States' nationals who are workers freedom of movement and those who are self-employed freedom of establishment no matter what their occupation, the Treaty guarantees free movement within the Community for whatever goods and services they supply.

Newspapers, magazines, collectors' items, records and films of all kinds as well as the showing of films benefit just as much from free movement within the Community as do food, capital goods, consumer durables and services provided by banks, insurance companies and advertising agencies. Likewise, intellectual property rights are as much subject to the EEC Treaty as industrial property rights (patents, trademarks, designs and models).

This comprehensive view of free movement for goods and services embodied in the Treaty is mirrored by the fact that the rights it confers are not the prerogative of workers in industry, the craft industries and the distributive trades but also extend to those working in the media and to bodies active in the worlds of art, entertainment and sport.

Nor is the right of establishment provided for in the EEC Treaty confined to industry, the craft industries, the distributive trades, banks and insurance companies. It is, in fact, a right to be enjoyed also by book and newspaper publishers, by film producers and distributors, by orchestra and entertainment organizers, and by press, film, theatre, opera and concert agencies, in short by all cultural undertakings and by all self-employed artists, authors, journalists, photographers and sportsmen equally. The Treaty does not exclude any sphere of activity. As a matter of principle, therefore, it grants the right of establishment to broadcasting organizations.

