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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)

Part Five

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PART FIVE

FREEDOM TO PROVIDE SERVICES

A. Free movement in broadcasting

I. "Services" (Paragraphs 1 and 2 of Article 60)

The EEC Treaty does not just cover goods but also services. It devotes a whole chapter, Chapter 3, to "Services", from Article 59 to 66 of Part Two of the Treaty entitled "Foundations of the Community".

Paragraph 1 of Article 60 of the Treaty defines the concept of "services" as follows: "services shall be considered to be "services" within the meaning of the Treaty where they are normally provided for remuneration, in so far as they are not governed by the provisions relating to freedom of movement of goods, capital and persons".

Two questions have to be answered in the light of this definition: is broadcasting a good or a service? If it is a service, is it a service provided for remuneration?

1. Good or service?

In the Sacchi case, the latter argued[1] that a television signal was a good, both as a form of energy (similar to electrical energy) and as the product of intellectual activity (intangible asset). It had monetary value and could be the object of trade. Transmission of advertisements was an accessory to the broadcast products and promoted their marketing.

However a broadcast is not a material, tangible asset but a set of activities. As a result it is not a product but the provision of services. It also does not comprise any transaction or movement involving goods.

The Court came to the same conclusion:[2] "In the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services." For this reason, after having accepted that the service was remunerated, the Court rules that:[3] "The transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services. However,

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[1] 155/73 [1974] 409, at 421 to 425.
[2] Sacchi at 428, ground 6.
[3] Sacchi at 432, operative part, para. 1.

trade in material, sound recordings, films, apparatus and other products used for the diffusion of television signals is subject to the rules relating to freedom of movement for goods."

In the Debauve case, the Court confirmed its opinion and added:[1] "There is no reason to treat the transmission of such signals /¯television broadcasts_7 by cable television any differently."

The same is true for the transmission of television signals via satellite. It is not the means of transmission which is important, but its aim which is to provide a service.

2. Service for remuneration

Paragraph 1 of Article 60 defines services as follows: "Services shall be considered to be "services" within the meaning of this Treaty where they are normally provided for remuneration". Paragraph 2 goes on to clarify this as follows: "Services" shall in particular include: (a) activities of an industrial character, (b) activities of a commercial character, (c) activities of craftsmen, (d) activities of the professions." These four types of activity are therefore examples of services which are normally provided for remuneration.

It follows from the word "in particular" that there are activities other than those of an industrial or commercial character, provided by craftsmen or by the professions which are normally for remuneration and that the EEC Treaty also wishes to include them. The Danish, Dutch, English, French and Italian versions of paragraph 2 stress this fact by adding to the term "in particular" the following verbs "omfatter", "omvatten", "include", "comprennent", and "comprendono", whereas the German version using the verb "gelten" is open to several interpretations. The broad or main concept is therefore that "services are normally provided for remuneration". The Treaty thereby wishes to include all activities performed on an independent basis for remuneration regardless of whether or not they are considered for the purposes of the law of one or more Member States and/or Community law as of an industrial or commercial character, provided by craftsmen or the professions.

One can therefore disregard whether and to what extent broadcasting should be viewed as an activity of an industrial or commercial character and/or as an activity of the professions. However, the express inclusion of the latter type of activity has a dual significance. Firstly, that this type of activity should also be viewed as a service performed for remuneration, in which the aim is indeed to obtain income but not however to make the largest possible profit. The concept of remuneration does not necessarily also include the notion of profit or any like intention.

Secondly, the emphasizing of the activities of the professions shows that the EEC Treaty does not just want to cover economic activities but also independent activities of all types of professions, which notably means those in the health, legal counselling, education, arts and science, the press and broadcasting spheres. This also includes journalism and cultural activities. Therefore, persons exercising these activities should enjoy freedom to provide their services (together with the freedom of establishment or, if they are employed, freedom of movement).

[1] Case 52/79 /¯1980_7 833, at 855, ground 8.

Pursuant to paragraph 1 of Article 60 the sphere to which the services performed belong - whether for all broadcasts or a specific broadcast - is unimportant, as is the purpose for which they are provided. As for paragraph 2 of Article 52, it is unimportant whether this purpose or field is of a commercial, social, cultural or other character or whether it covers all these areas, whether the content of a broadcast is informative, editorial, educative, entertaining or for advertising purposes. The only decisive factor is whether broadcasting activity is normally provided as a service for remuneration.

A service is provided for remuneration when it is paid for. According to paragraph 1 of Article 60 it is of no significance whether the recipient of the service pays the provider of the service directly, or indirectly through a third party or whether a third party pays for the service and in return receives a further service for that payment. There is no need for there to be any legal relationship between the provider and recipient of the service. Even in economic terms there is no need for a relationship of service and counter-service to exist between them.

Paragraph 1 of Article 60 does not deal with what form the payment should take, i.e. in fulfilment of a contract, as a contribution by a member of an association, as a fee, as a levy assimilated to a tax, as a transfer from public funds corresponding to the levies or fees raised on the recipients of the service. Remuneration can therefore in this sense be public in character, based on public law, or private and based on private law. It may be provided for a private, profit-making service or activity or for one that is public and based on public law.

Finally, according to the provisions of paragraph 1 of Article 60, it is sufficient for the service to be "normally" provided for remuneration. Therefore, exceptions, such as the exemption or non-coverage of specific categories of recipients of the service or lump sum payment of the remuneration, do not in any way affect the inclusion of services under the requirement for free movement.

In order to ascertain whether broadcasting is provided for remuneration within the meaning of paragraph 1 of Article 60, reference must be made to national provisions. The following is a summary of those provisions, further details may be found in Part Four.

In Luxembourg and, with respect to the IBA, in the United Kingdom, broadcasting is first and foremost paid for with the proceeds from the granting of broadcasting time to the advertising industry (Part Four, A and E). In the Netherlands, approximately 75% of broadcasts are provided in return for broadcasting fees levied by the State and contributions by members of private associations and organizations and approximately 25% are financed by advertising revenue (C). In Italy, RAI broadcasts are mainly provided in return for subscription fees levied by the organization itself and in addition paid for with revenue from the granting of airtime for advertising. Cable broadcasting is similarly provided for remuneration (B). In Greece, ERT 1 provides its broadcasts mainly in return for fees and the company is also financed, for approximately 20%, by revenue from advertising (K). The German "Land" broadcasting authorities' primary means of remuneration is the levying of broadcasting fees on their audience. Their second means of financing their broadcasting activities is via advertising (more than 30% for ARD, and approximately 40% for ZDF, see H above).

In Denmark, DR's broadcasts are provided in return for a tax levied on the use of radio and television sets (I). The BBC's television programmes in Britain are paid for with funds from the national

budget. These funds correspond to the countervalue of the fees collected by the Post Office from owners of television sets in order to license their use (E). In Ireland, approximately 50% of the RTE's broadcasts are financed in a similar way as the BBC's and the other 50% from advertising revenue. Cable television is also provided for remuneration (F). In France less than 50% of television broadcasting is paid for by the transfer and dividing up of the funds obtained from the tax levied by the State on owners of television sets for the right to use them and more than 50% is financed from television advertising (G). In Belgium, 90% of broadcasting is provided in return for funds from the budgets of the three linguistic communities, the source for which is the fees levied by a State administration (RTT) on the receiving apparatus. The remaining 10% comes from the various commercial activities of the broadcasting authorities. Cable broadcasts are provided in return for subscription fees (D).

This all goes to show that television programmes are remunerated in all Member States. They are provided, either directly or indirectly, in return for payments made by citizens, accepting the services supplied by the broadcasting organization(s) and receiving broadcasts using the appropriate apparatus, or in return for payments from the advertisers, or in return for both types of remuneration. Paragraph 1 of Article 60 does not concern itself with who pays the remuneration, whether it is the end-user (broadcast audience), the broadcasting organizations themselves, the sponsors of programmes (e.g. an advertising company) or the relayers of broadcasts (e.g. a cable company), or a combination of several of the above. It is also unimportant whether all the recipients pay or only those who receive the service in the country in which it is provided. It is therefore of no consequence for example if the broadcasting audience is not confined to receiving broadcasts for which it pays fees. It is sufficient that the service is "normally" provided for remuneration.

Even in Member States in which the broadcasting fee takes the form of a licence fee or tax on the use of reception apparatus, this represents in actual fact a legally based service provided by the recipients of broadcasts to the broadcasting authorities, in remuneration for the broadcasts. The concept of remuneration for the purposes of paragraph 1 of Article 60 includes all types of revenue from broadcasting. It therefore includes State revenue from fees or taxes on viewers and listeners and private income from subscriptions or individual payments or from the granting of airtime for advertising. Whether the programme is actually heard and/or seen by the recipient, has as little effect on the fact that the fee or tax is in the nature of a remuneration as it would for a private subscription. Similarly, the fact that the fees or taxes are in the main determined by the State, that this decision is not devoid of political considerations and that they are very frequently brought together into a lump sum, does not preclude them from constituting remuneration for the broadcasts provided.

For all these reasons broadcasts are services or activities provided for remuneration and thus services within the meaning of the EEC Treaty. The Court reached the same conclusion in the <u>Sacchi</u> case:[1] "In the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services. Although it is not ruled out that services <u>normally provided for remuneration</u> may come under the provisions relating to free movement of goods, such is however the case, as appears from Article 60, only in so far as they are governed by

[1] Case 155/73 [1974] 409, at 427 ground 6, (emphasis added).

such provisions. It follows that the transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services."

II. Establishment of the provider of the service in a Member State other than that in which the recipient is established (Article 59(1))

Article 59 calls for the abolition of "restrictions on freedom to provide services within the Community ... in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended". Whereas the definition of a service given in paragraphs 1 and 2 of Article 60 does not contain any transfrontier component - neither with regard to the service or activity or the remuneration - and consequently covers all services in the Community regardless of whether they are provided and received in one and the same or in differing Member States, paragraph 1 of Article 59 forbids restrictions only on internal or transfrontier services covered by Article 60 which involve the provider of a service who is established in a Member State other than that of the recipient.

Therefore, restrictions on broadcasts, both the provider and recipient of which are established in the same Member State, do not come under Article 59. At least a small proportion of potential recipients of broadcasts must be established in another Member State. It must therefore be possible to receive the broadcasts there.

In the event of broadcasting over the air waves, this is often the case. This primarily applies to areas along intra-Community borders, i.e. between Belgium and Luxembourg and the Netherlands, between the latter and Germany and France, between Germany and France, France and Italy, Denmark and Germany and Ireland and the United Kingdom. Planned satellite broadcasting will considerably extend the transfrontier dissemination areas (see Part 1, Section III B).

On the other hand difficulties are caused when it comes to deciding whether programmes broadcast from another country and then relayed by cable internally are covered by Articles 59 and 60. The customary and most common case in practice is that of programmes being broadcast over the airwaves by a broadcasting company in another Member State being picked up by a cable company with the aid of a special antenna, amplified and simultaneously relayed unaltered in their entirety by cable to the cable company's subscribers. The question is whether this procedure can be viewed as a whole and is thus covered by paragraph 1 of Article 59 and paragraphs 1 and 2 of Article 60, or whether it should be broken up into different services, each of which must meet the requirements of both sets of provisions, in order for the liberalizing requirements of Article 59 to be applicable to the whole case.

1. Relay by transmitter and relay via cable as two separate services

This latter argument was put forward by several participants in Debauve[1] and Coditel/Ciné Vog.[2] The relevant service performed by the foreign broadcasting organization is the broadcasting of the programme. This comes to an end at the limits of the natural reception zone of the transmitter. This service remains totally unaffected by any of the restrictions on the additional service provided by the national cable company. This is because the service of the original broadcasting organization can be provided only to the extent made possible by technical constraints. The cable company's service consists of picking up the broadcasts and relaying them to its indigenous viewers. Since the viewers were situated outside the natural reception zone of the foreign broadcaster, the fact that the foreign transmitter was insufficiently powerful to reach them made this a new service.

The relationship between the national cable company and national cable subscribers amounted to the provision of a service for remuneration (Article 60(1)). The provider and recipient of the service were, however, established in the same Member State and therefore the provisions of paragraph 1 of Article 59 did not apply.

The requirement for establishment in two different Member States (Article 59(1)) did exist in the relationship between the foreign broadcasting organization and the national cable company. However, there was neither a legal nor commercial relationship between the provider and recipient of this service. One-way services could be considered as services within the meaning of Article 59. But the provider of the service would then have to apply a user-specific treatment, viz. his broadcast would have to achieve the aim of appealing to viewers on the other side of the frontier. This is not the case here. In addition and above all, no service is provided for remuneration between the broadcasting organization and the cable company and therefore paragraph 1 of Article 60 does not apply.

Where programmes of an advertising nature were involved, services within the meaning of Articles 59 and 60 were provided in the relationship between the foreign broadcasting organization (provider of the service) and the national sponsor of the advertisements (recipient of the service). In this case services between persons in differing Member States were being performed for remuneration.

2. Relay by transmitter and relay via cable as a single service

The first argument, according to which the relationship between the foreign broadcasting organization and the national cable subscribers constituted for the purposes of the Treaty a single service, was put forward by other participants in both of these cases.[3] According to them Article 59 did not confine itself only to services between persons established in differing Member States. The purpose of Article 59 was the freedom to provide services even across intra-Community borders, not just freedom for providers of services

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[1] Case 52/79 /‾1980_7 833, 838 to 848.
[2] Case 62/79 /‾1980_7 881, 886 to 889.
[3] Debauve and Coditel/Ciné Vog.

to carry on their activities. This only actually came into application if the foreign broadcasts were also intended for national viewers. Any national restrictions on the broadcasting activities of foreign broadcasters were covered by Article 59. These provisions also covered any national restrictions on the activities of foreign sponsors of advertisements by foreign broadcasters. In addition the wording of Article 59 meant that a restriction on the activities of the provider of a service established in another Member State did not necessarily have to be involved. It was sufficient for the restriction to have an effect "on" a national of one of the Member States established in another Member State. It was sufficient for the substance of the service - the foreign broadcast - to originate from another Member State.

The Court contented itself with stating that:[1] "It should be observed that the provisions of the Treaty on freedom to provide services cannot apply to activities whose relevant elements are confined within a single Member State. Whether that is the case depends on findings of fact which are for the national court to establish."

The Commission restated the following opinion:[2] "Television signals broadcast by bodies exercising a non-gratuitous economic activity constitute the provision of services within the meaning of Article 59 of the Treaty where those signals are transmitted and picked up in the form of radio waves outside the territorial limits of the country where the broadcasting station is situated, there being no need for remuneration to be paid directly to the provider of the service by the recipients (cable television distributors and television viewers) located outside those limits."

(a) Provider, recipient, remuneration

The grounds for the above opinion are as follows.[3] Following the judgment in the Sacchi case[4] no doubt remains that a television broadcast is a service for the purposes of Article 59 and paragraph 1 of Article 60. In the case in question the relevant service is the television communication (programme) provided by the broadcasting organization. The recipients of the service are first and foremost those in the country of the broadcasting organization, which is therefore established in the same country as its viewers. In this respect paragraph 1 of Article 59 does not apply. The viewers do however provide remuneration. Paragraph 1 of Article 60 is therefore fulfilled. This is because there is no requirement in this paragraph for the service to be transfrontier. A service is being provided for remuneration. Secondly, there are recipients of the service who are cable viewers established in another Member State. This means that the requirements of Article 59 are met. They also provide remuneration, but to the cable company. In this respect, therefore, paragraph 1 of Article 60 does not apply. However, it is sufficient, within the meaning of paragraph 1 of Article 60, for the provider of the television broadcast - the foreign broadcasting organization - "normally" to be remunerated for its service, in this case by

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[1] Debauve, 52/79 /‾1980_7 833, at 855, ground 9.
[2] Coditel/Ciné Vog, 62/79 /‾1980_7 881, at 890.
[3] See part of the Commission's observations in Coditel/Ciné Vog at 889.
[4] 155/73 /‾1974_7 409, at 428, ground 6.

the viewers established in its own country. Thirdly, the national cable company is also the recipient of the foreign broadcast. In this respect it comes under the provisions of Article 59. However, the cable company often makes no payment to the broadcasting organization. But then paragraph 1 of Article 60 does not require transfrontier remuneration nor remuneration from each recipient of the service. It is sufficient for payments to be made by viewers in the country in which the broadcasting organization is located.

In the words of Mr Advocate-General Warner:[1] "The purpose of the definition of "services" in that Article is to identify the kinds of services to which the Treaty applies and in particular to exclude those that are normally provided gratuitously. Television broadcasting is financed in different ways ... /_some_7 .... out of fees /_some out of _7 advertising revenue; and /_some_7 .... partly /_from_7 the one and partly /_from_7 the other. The question here is whether television broadcasting as such is a service of a kind to which the Treaty applies. The method of financing particular broadcasting organizations or particular broadcasts cannot be relevant to the answer to that question. The decisive fact is that television broadcasting is normally paid for, i.e. remunerated, in one way or another. The conclusion must therefore be that it is a service of a kind to which the Treaty applies, no matter from whom in any particular case payment may come or may not come." It is therefore irrelevant whether the fact that the service crosses a frontier is remunerated, what is relevant is whether the broadcasting organization concerned is basically remunerated for its broadcasting service.

(b) The basic nature of broadcasting

In conclusion, the basic nature of television (and radio) broadcasting argues in favour of considering the relationship between a foreign broadcasting organization and national cable viewers as a service within the meaning of Articles 59 and 60. Whilst normally services are provided and received at one and the same place - the provider visits the recipient or vice versa - or at all events in two specified locations, that of the provider of the service and that of the recipient (for example in insurance by correspondence or telephone advisory services), broadcasting is by definition not bilateral and localized, but of a multilateral nature, covering large surfaces and travelling over wide areas.

It does not have one single, but many recipients. These receive the broadcast irrespective of whether it is intended for them. A broadcast may be picked up regardless of the intentions of the broadcasting organization. The fact that broadcasts may be received over a wide area is not an unavoidable side effect but a natural and technically inevitable offshoot of broadcasting, particularly with satellite broadcasting.

Broadcasting from ground-based or airborne transmitters is, for these reasons, to be considered as being provided for any person who is able to pick it up, either directly through an individual aerial or community antenna, or indirectly via a central antenna and cable company network.

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[1] Opinion of Mr Advocate-General Warner delivered on 13 December 1979 in Debauve /_1980_7 860, at 876.

In addition broadcasting is not local but regional in nature. A broadcast, as a result of the very techniques used to propagate it, has a natural reception zone. When broadcasting is via ground-based transmitters, this zone is small but with satellites it is significantly larger. Since a broadcast is propagated through the air, it cannot follow country frontiers for both technical reasons and because of natural laws. The signals spill over frontiers. By its very nature, therefore, broadcasting is a transfrontier activity.

Its international nature is a major factor in overcoming obstacles to the freedom to provide services or broadcasts between Member States which is one of the main aims of the Community (Article 3(c)). This aim of Community activity ought not to be forgotten when interpreting Articles 59 and 60: reception of broadcasts on the other side of a frontier on an aerial and relaying them over cable does not alter the international nature of the service, nor interrupt it, but on the contrary reinforce it. The cable network represents an extension of the receiving aerial and therefore remains an accessory to it. It is used to relay one and the same original broadcast without alteration. In so far as the cable network company does not diffuse its own programmes, but only provides a technical service, the legal position is unaffected. This continues to apply for as long as cable relay is only a substitute for normal reception with a domestic TV aerial.

For all the above reasons the whole process of broadcasting by a foreign broadcasting organization to a national viewer comes under Articles 59 and 60 and should be regarded as a liberalizing service within the meaning of the Treaty.

3. <u>Transmission by microwave link, long-distance cable or telecommunications satellite and relay through cable as a single service</u>

What was said in the last paragraph also applies where the cable operator receives with his equipment the wireless broadcast intended for the public, not in the form of signals broadcast via a ground-based or airborne transmitter, but as signals broadcast via a terrestrial microwave link, a telecommunications satellite or a long-distance cable.

The cable operator makes use of such technical means mainly in cases where it is only in this way that he can receive (either at all or in the necessary quality) the broadcasting organization's programme at the place where his receiving equipment is situated, i.e. in cases where the receiving equipment is beyond the range of the signals broadcast by the relevant broadcaster. However, the cable operator also receives off-air by aerial the signals directed to him by microwave link or telecommunications satellite. Only in the case of long-distance cable does he not receive them off-air by aerial.

A slightly different type of arrangement, but one which must also be included under this heading, involves those not uncommon cases in which the aerial of the cable operator's receiving equipment is set up at a (considerable) distance from his cable network and the signals are transmitted from there to the cable network by long-distance cable or off-air by microwave link.

From the point of view of Community law, it makes no difference how the cable operator receives the broadcast and relays it to his subcribers. It is not a question of concepts, distinctions and value judgments laid down in broadcasting and telcommunications law. Under Articles 59 and 62, protection is afforded to the free cross-frontier movement of the broadcast as such, once it is broadcast and its reception is technically possible on the other side of the internal frontier. The decisive factor is the origin of the broadcast in one Member State and its reception in another. How the signals cross the internal frontier within the Community or are fed into the cable system in the country of reception is irrelevant.

Whether the broadcast is brought from the broadcaster to the cable distributor via transmitter and/or by long-distance cable, microwave link or point-to-point satellite and distributed through the cable network to the recipients, it is not a different broadcast or one that has been changed along the way, but one and the same service which has merely been transported in a different manner. Its free movement from provider to recipient is protected by Community law irrespective of how it is conveyed.

Articles 59 and 62 both guarantee freedom to provide services to the extent that such provision is possible on the basis of the technological state of the art, that is to say, in this context, to the extent that broadcasts from other Member States have become receivable by one or more means of transmission.

For these reasons, it does not matter for the purposes of Community law whether the final recipients live in the broadcaster's service area or at least within his "natural" reception area, that is to say whether they can receive the broadcast off-air with an individual aerial, whether weak or powerful. If any such criterion were applied, it would mean relegating cable transmission to the level of a substitute for individual reception and robbing it of its main function, which is to make the broadcasts accessible to additional groups of recipients living at some distance away. Articles 59 and 62 provide as comprehensive territorial and personal protection as is technically possible for the free cross-frontier provision of broadcasting services and accordingly they also protect the individual right of the provider of the broadcasting service to provide it for all recipients who can be reached using the technology available.

4. Consent to the cable relay of copyright domestic programmes abroad as a further service

The situation existing at the time of the Debauve and Coditel/Ciné Vog cases, in which there were no proper legal relationships between the non-Belgian broadcasting organizations on the one hand and the Belgian cable companies on the other (see the third paragraph of (1) above) has changed since 1 July 1983. Now, the Belgian cable companies pay eight German, British, French, Luxembourg and Dutch broadcasting organizations remuneration for their consent to the relay of the copyright programmes broadcast outside Belgium and picked up in Belgium. This relationship between a foreign broadcasting organization and a domestic cable company, this granting of performing rights for remuneration, involves a further service within the meaning of the first paragraph of Article 59 and the first paragraph (and subparagraph (b) of the second paragraph) of Article 60, one which is additional to the service dealt with under (2).

The new facts are as follows. After it was finally established that the distribution of foreign programmes in Belgium through cable networks raises questions of copyright, the Union Professionnelle de la Radio et de la Télédistribution (RTD, association of Belgian cable companies) on the one hand and the holders of the copyright and performers' rights (SABAM;[1] the broadcasting organizations BRT, RTBF, NOS, TF 1, A 2, FR 3, ARD, ZDF, RTL and BBC; BELFITEL[2] and AGICOA[3]) on the other concluded an agreement on 29 September 1983 on a fixed remuneration for the rights to distribute by cable 14 foreign programmes (Nederland 1 and 2, TF 1, A 2, FR 3, ARD (three channels), ZDF, RTL, BBC 1 and BBC 2 and ITCA (two channels))[4] and the four Belgian channels. Under the agreement, the Belgian cable companies must pay a remuneration calculated in accordance with the number of subscribers and the amount of the subscription fee (see Part Four, section D in fine). The holders of the rights or the undertakings representing them grant the rights to which they are respectively entitled to the cable companies for the purposes of cable distribution. In so far as they are not entitled to the rights necessary for this purpose, they undertake to relieve the cable companies of any financial liabilities.

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[1] The Belgian collecting society Belgische Vereniging der Auteurs, Componisten en Uitgevers/Société belge des auteurs, compositeurs et éditeurs.

[2] BELFITEL is the full name of a Belgian company registered as a "Société civile à forme coopérative pour la gestion collective des droits de télédistribution".

[3] International Association for the Collective Management of Cable Distribution of Motion Pictures and Filmed Television Programmes.

[4] ITCA stands for Independent Television Companies Association.

B. Restrictions discriminating against non-nationals (Articles 59(1) and 62)

Article 62 states: "Save as otherwise provided in this Treaty, Member States shall not introduce any new restrictions on the freedom to provide services which have in fact been attained at the date of the entry into force of this Treaty /¯1 January 1958, or 1 January 1973 for Denmark, Ireland and the United Kingdom, and 1 January 1980 for Greece 7." What is meant by restrictions under this standstill obligation?

With regard to restrictions in existence before the Treaty entered into force, Article 59(1) stipulates: "Within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period /¯until 31 December 1969 7 in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended." The question once more is what is meant by restrictions?

According to Court of Justice decisions and unanimous academic opinion the term "restrictions" covers first of all any kind of discrimination against "the freedom to provide services within the Community in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom these services are intended" (Article 59(1)). The service provided by the non-national must not be discriminated against in respect of the service provided nationally.