

# COMMISSION OF THE EUROPEAN COMMUNITIES

REVISED VERSION

COM(86) 146 final/2

APPLIES TO THE FRENCH,  
GERMAN AND ENGLISH VERSIONS

Brussels, 6 June 1986

Proposal for a  
COUNCIL DIRECTIVE  
on the coordination of certain provisions laid down by law, regulation  
or administrative action in Member States concerning the pursuit of  
broadcasting activities

---

(submitted to the Council by the Commission)

COM(86) 146 final/2

EXPLANATORY MEMORANDUM

I. Scope and purpose of the proposal for a directive

1. The main purpose of this proposal for a directive is to permit broadcasts, particularly television broadcasts, which comply with the directive's requirements to be received and re-transmitted freely in all Member States. Once the directive enters into force, any broadcast complying with the laws of the Member States in which it originates should then be able to circulate freely throughout the Community unrestricted by divergent national requirements in the receiving States concerning broadcast advertising and youth protection since the directive will have coordinated the laws of the Member States in those areas. The coordination proposed takes the form of a limited number of rules constituting the minimum necessary for the protection of the different interests in cause. The Member States accordingly will remain free to impose stricter or more detailed requirements on broadcasts originating on their own territories (Articles 13(2) and 16).
  
2. This proposal provides for the approximation of the laws of Member States:
  - on the production of television programmes within the Community;
  - on the distribution of such Community works by television broadcasters;
  - on broadcast advertising and sponsoring;
  - on copyright in retransmission of broadcasts by cable;
  - on the protection of children and young persons;
  - on the law applicable to broadcasts.
  
3. More specifically, the proposal has the following objectives:
  - to promote the exposure within the Community of each Member State's broadcasts, thus advancing the mutual economic, social, cultural and political interpenetration of Member States and their peoples (citizens' Europe);

- to promote freedom of expression within the Community, in particular the rights to impart and to receive information and ideas without interference by public authority and regardless of frontiers (European civil rights);
- to promote freedom to provide broadcasting services across the internal frontiers of the Community, including those which help to promote trade in goods and other services (European economic rights);
- to ensure the free circulation within the Community of all broadcasts complying with the law of the Member State in which they originate, by coordinating the laws of the Member States where they can be applied to impede reception and redistribution of cross-frontier broadcasts, thus avoiding the cumulative application of the laws of all the Member States (and their regions) in which such broadcasts are received and retransmitted (free flow of broadcasts in Europe);
- to promote markets of sufficient size for television productions in the Member States to recover the necessary investment, by establishing common rules opening up national markets and progressively establishing a common market for programmes of each kind (European programme markets);
- to increase the production of television programmes within each Member State, in particular of creative works, in order to develop national cultural industries (broadcasters, programme companies, producers, creators, other creative activities) and the expression of the specific cultural identity of each Member State (preference for Community productions);
- to stimulate new sources of television production, in particular the creation of small and medium-sized enterprises, for the reasons just mentioned and to offer new opportunities and outlets to the creativity of cultural professions and workers (promotion of S.M.E's in the audiovisual sector);
- to promote the distribution (transmission and retransmission) of television programmes of all kinds produced within the Community, in particular of creative works, for economic reasons and in the interests of cultural exchange and European integration (preference for the distribution of Community productions);

- to ensure the remuneration of authors and other contributors to programmes for the distribution of their works to a wider European audience through laws on copyright and related rights which guarantee both respect for those rights and, as necessary, the removal of obstacles to cross-frontier broadcasting;
  - to stimulate the development of broadcasting as a strategic sector of the Community's telecommunications industry, necessitating the extensive use of modern technology and equipment such as satellites, cable networks, antennas, television receivers, etc. (Promotion of industrial and economic growth in telecommunications);
  - to stimulate the development of a modern communications infrastructure in the Community's economy as a key element in its strength and future competitiveness on world markets.
4. Before dealing with the main issues concerning cross-frontier television in the Community and with the content of the directive, this memorandum first seeks to place the subject in the broader context of the development of the Community's internal market and industrial and cultural policies.

## II. Television without frontiers as an aspect of the Community's policies for the internal market and the cultural industries

5. Until relatively recently, television broadcasting has for the most part been organized along essentially national lines. The broadcasting systems in place accordingly have had a strongly national focus and character. The specialized international structures dealing with television broadcasting often reflect these features and accept, indeed actively defend, the prerogative of each individual State to regulate as it wishes televised broadcasting received on its territory.
6. Technical change has in recent years begun to change the situation. The capacity of television broadcasting systems is increasing as is their ability to transport programmes effectively and cheaply over considerable distances. First retransmission by cable; then telecommunications satellites combined with cable; and now direct broadcasting by satellite

(DBS) are all replacing traditional broadcasting techniques and creating opportunities for new kinds of activity, including cross-frontier broadcasting.

7. To facilitate and coordinate these developments in a manner which will ensure a coherent approach to the audio-visual sector, the Commission has already made one proposal for a "Council directive on the adoption of common technical specifications of the MAC/packet family of standards for direct satellite television broadcasting" adopted by the Commission on 8 January 1986 and submitted to the Council<sup>1</sup>. The Commission has proposed this directive in order to avoid a repetition in the new field of direct broadcasting by satellite of the situation at present encountered in the field of terrestrial television broadcasting, where the two systems, PAL and SECAM, co-exist to the detriment of the consumer and viewer. In this way, it seeks to unify the potential market for the home receivers necessary for direct broadcasting satellite systems. At the same time, and to complement the action taken as regards the equipment manufacturing industry, a framework for decision making is to be established for the benefit of operators, including cable distribution enterprises, and the receiving public.
  
8. Within the context of the European Community, broadcasting, including broadcast advertising, is a service within the meaning of the relevant provisions of the EEC Treaty. In the case of television, while broadcasting techniques limited the scope for cross-frontier activities, this was of limited significance. However, in the situation now developing, the Treaty provisions assume particular importance. They constitute the legal basis on which Community broadcasters, actual and potential, can demand access to audiences in Member States other than the one in which they are established.
  
9. The manner in which the Commission approaches this problem is thus a very important aspect of the way in which it seeks to develop the Community's internal market for services, and indeed

---

<sup>1</sup> Doc. COM(86) 1 final of 22 January 1986.

services of a vitally important character namely those utilizing modern communications and information technology to reach persons in their own homes. For this reason, the creation of a common market for broadcasting figures prominently and as an urgent task in the Commission's White Paper "Completing the internal market"<sup>2</sup>, the principle and the main lines of which were approved by the European Council in Milan in June 1985.

10. At the same time, the problem is clearly not narrowly economic or technical. The realization of cross-frontier broadcasting will promote several fundamental objectives of the EEC Treaty, including a closer union among the peoples of Europe, the preservation and strengthening of peace and liberty, and closer relations between the Member States, as well as the basic freedoms of Article 10 of the European Convention on Human Rights<sup>3</sup>.
  
11. The European Parliament's strong interest in the subject and its broad-based support for measures designed to promote exchanges of broadcasts between Member States is founded in large part on considerations of a highly political order. These include, in addition to the economic goal of providing a large internal market for the Community's broadcasting and associated industries, and for advertising<sup>4</sup>, important objectives in the fields of cultural policy, information policy, and policy designed to promote European integration<sup>5</sup>. In essence, by enabling citizens in one Member State to receive directly or via

---

<sup>2</sup>See Doc. COM(85)310 final of 14 June 1985, points 115 - 117, and Annex (Timetable), p. 28 (expected date for the adoption of the Commission's proposal for a directive: 1987).

<sup>3</sup>This Article embodies in particular the rights "to receive and impart information and ideas without interference by public authority and regardless of frontiers".

<sup>4</sup>See the European Parliament's "Resolution on the economic aspects of the common market for broadcasting in the European Community", adopted by a large majority on 10 October 1985, OJ No. C 288 of 11.11.1985, p. 119.

<sup>5</sup>See the European Parliament's "Resolution on a framework for a European media policy based on the Commission's Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable", adopted by a large majority on 10 October 1985, OJ No. C 288 of 11.11.1985, p. 113.

cable, if they wish, unaltered broadcasts originating in others, a cultural interpenetration can be achieved which will make a significant contribution to the European Community's future development as a genuine Community. Each citizen will have ready access to the ideas, information, opinion, art and entertainment that are available on television in the others.

12. This broader view of the issue was shared by the Ad Hoc Committee on "A people's Europe" (Adonnino) which reported to the European Council at Milan in the following terms<sup>6</sup>:

"In order to bring the peoples of Europe closer together, the Committee proposes that the European Council recommend to each Member State of the Community and to the Community institutions that they consider which legal and technical steps, taking into account the differing situations that exist in this field, should be taken so that every citizen may have access to the greatest number of programmes broadcast by the various channels of the Community countries, in conformity with the Treaty."

13. For its part, the European Council approved the report's proposals, mentioning expressly those on culture including television, and instructed the Commission and the Member States "to take the necessary implementing measures"<sup>7</sup>.

14. The economic objectives of the policy thus form part of a wider set of goals of which cultural objectives are an important component. In this way, the Commission's policy on cross-frontier television links up with other initiatives being pursued in the context of Community action in the cultural sector. Two of these are of particular relevance:

- first, the creation of a European television channel, as suggested in the Commission's Interim Report on "Realities and Tendencies in European Television: Perspectives and Options"<sup>8</sup>,

---

<sup>6</sup>Bull. EC Supp. 7/85, p. 21-22, no. 3.8.

<sup>7</sup>Bull. EC Supp. 7/85, p. 31.

<sup>8</sup>Doc. COM(83) 229 final of 25 May 1983.

and possibly a financial participation of the Community in European programmes such as "Europa-TV";

- and second, the "Amended proposal for a Council regulation on a Community aid scheme for non-documentary cinema and television co-productions"<sup>9</sup> involving partners from different Member States.

The present proposal for a Council directive on cross-frontier television should accordingly be regarded, not in isolation, but as one important aspect of the Commission's overall approach to the audio-visual sector.

15. At present, this global policy of the Commission includes the following aspects and activities:

- to assist, politically and financially, the production and satellite distribution of European programmes, covering news, politics, education, culture, entertainment and sport; such programmes will be European in origin and subject matters (being produced by a multinational editorial team with a European perspective); in target audience (being multilingual); and in transmission range (being transfrontier);
- to promote, via the proposed Community financial aid scheme, European coproductions;
- to promote, through the present directive, the production of national programmes and the development of national audio-visual industries within Member States;
- to ensure, by the present directive, an appropriate role for national productions and European coproductions as regards the distribution of television programmes in the Community;
- to ensure, by enforcement of the EEC Treaty and by the present directive, the free flow of broadcasts within the Community;
- to promote, by the present directive, trade in goods and services within the Community through broadcast advertising;

---

<sup>9</sup>Doc. COM(85)800 final of 19 December 1985.



- to avoid, by common standards to be introduced under the directive already proposed in January, that different incompatible technical systems for direct satellite television broadcasting exist within the Community, and thus to create the common market for the equipment to be produced for direct reception of satellite television programmes;
- to facilitate, with the help of the same directive, the broadcasting of multilingual television programmes.

16. Taken together, all of these measures are designed to realize the same basic goals and form a coherent policy involving, in addition to the realisation of an internal market for broadcasting, broadcast advertising and associated industries, the promotion of the Community's growing political, social and cultural identity but, at the same time, respecting and promoting the diversity and the specificity of the audio-visual cultures of its Members.

### III. The need and scope for harmonization and its relationship to the EEC Treaty's directly applicable provisions

17. The present proposal for a directive is based on the Commission's Green Paper "Television without frontiers"<sup>10</sup>, adopted on 23 May 1984, and on the extensive consultations that have been held on the basis of the paper's analysis and suggestions.
18. As explained in the Green Paper, the means provided by the EEC Treaty for the establishment of the common market for broadcasting and broadcast advertising are two-fold: first, the direct application of the Treaty's provisions and, second, coordination of national legislation.
19. As to the former, the Commission is given the obligation to ensure that the directly applicable provisions of the Community Treaty are respected. Articles 59 and 62 of the Treaty prohibit

---

<sup>10</sup> Subtitled "Green Paper on the Establishment of the Common Market for Broadcasting, especially by Satellite and Cable", COM(84)300 final of 14 June 1984.

all restrictions on freedom to broadcast across the frontiers of Member States. Rules and other measures which discriminate against broadcasts from other Member States, i.e. make them subject to stricter conditions than internal broadcasts, have to be abolished and, until such time, must not be applied.

20. The Treaty (Articles 66 and 56) and the judgements of the Court of Justice only allow for three exceptions to this principle. These concern measures justified on grounds of public policy, public security or public health.
21. In fulfilment of its responsibilities, the Commission has begun to take up with the Member States possible violations of the Treaty provisions. Examples include the discriminatory treatment of advertising in programmes retransmitted from another Member State, the discriminatory prohibition of the retransmission by cable of foreign programmes, the discriminatory prohibition of the retransmission of programmes from another Member State sub-titled in the language of the receiving State, together with discriminatory quotas applying to the retransmission of television programmes from other Member States.
22. By contrast, restrictions which apply equally to internal and foreign broadcasts are, under the judgements in the Debauve<sup>11</sup> and Coditel I<sup>12</sup> cases, still allowed in the absence of harmonization if they are justified on grounds of the general interest or of copyright. Thus, until their harmonization, the laws of the receiving State on advertising in broadcasts, on the protection of children and on copyright may even today be opposed to the retransmission of programmes lawfully broadcast in another Member State. Such diverging provisions on advertising and on youth protection, together with allocation of copyrights in broadcasts to different persons in different

---

<sup>11</sup> Case 52/79 18.3.80 (1980) ECR 833.

<sup>12</sup> Case 52/79 18.3.80 (1980) ECR 881.

Member States possible under the copyright laws, give rise to the main legal obstacles that lie in the path of cross-frontier broadcasting in the Community.

23. This is one of the reasons why Article 57(2) of the Treaty provides for the coordination of national provisions "in order to make it easier for persons to ... pursue activities" in broadcasting as in other fields. "Making it easier" means eliminating difficulties which arise from legal disparities and also "making such safeguards equivalent" (Article 54(3)(g)) in order to make it possible to promote the pursuit of broadcasting activities throughout the Community under equivalent competitive conditions. "Making it easier" does not mean that coordination may not lead to the introduction of stricter rules in a Member State, that is to say, that the alignment must be on the basis of the most liberal legislation at any particular time. The concept nevertheless indicates the liberalizing direction which coordination must take.
24. In the Green Paper, the Commission suggested the coordination of Member States provisions in the fields of broadcast advertising, youth protection and copyright and possibly the right of reply. These areas were selected either because the Court of Justice has already decided that divergent national rules can be applied until harmonisation is achieved (advertising, copyright) or because divergent national rules exist which seem likely also to be justifiable under the criteria established by the Court (youth protection, right of reply). In both cases, the differences in national law were thought to be such that they risked obstructing the development of cross-frontier broadcasting.
25. The consultations on the basis of the Green Paper and subsequent events have confirmed the need for harmonization to remove a serious risk of divergent national laws in the fields of advertising, copyright and youth protection obstructing cross-frontier broadcasting. As regards the right of reply, the risk

of significant obstruction appears to be sufficiently small that, at least until experience proves otherwise, harmonization does not appear necessary.

26. The follow-up to the Green Paper also led to other suggestions being made for harmonization measures, in particular, to promote the production and distribution of television programmes within the Community and, though less widely supported, to regulate the moment at which films produced for showing in cinemas may first be broadcast on television.
  
27. Harmonization of national measures to promote the production and distribution of television programmes in the Community is not necessary to ensure that cross-frontier broadcasting will not be obstructed. The application to broadcasts from other Member States of national restrictions designed to promote the production and distribution of national programmes is not justifiable on grounds of public policy given the narrow interpretation that the Court of Justice has given to this concept when it has been invoked to justify a derogation from one of the fundamental freedoms conferred by Community law<sup>13</sup>. Grounds such as the protection of national economic, social or cultural interests, values or objectives accordingly cannot be relied on to justify any discrimination against broadcasts from other Member States<sup>14</sup>. Thus, such discriminations have simply to be abolished and, until such time, must not be applied.
  
28. Nor is the application of indistinctly applicable national measures to promote the production and distribution of programmes of Community origin justifiable as being in the general interest since such restrictions do not fall into the categories of measure which the Court has so far indicated as being relevant for this purpose. The object of applying such measures to programmes from other Member States would seem, at least in part, to be to manage trade flows in programmes from

---

<sup>13</sup> See in particular Case 36/75 Rutili 28.10.1975 (1975) ECR 1219 at 1231, ground 27.

<sup>14</sup> See in particular as regards cultural interests, Case 229/83 Leclerc 10.1.1985 (not yet published), ground 30.

those Member States<sup>15</sup>. But even if it is argued that the measures are justifiable given their purpose of encouraging the production or distribution of audio-visual programmes as such, the obstacles to the free circulation of broadcasts that the application of divergent national requirements would create go beyond what is necessary to achieve that objective, not least because the restrictive effect of such measures is not limited in time but could prohibit the retransmission of broadcasts altogether<sup>16</sup>. Hence, in accordance with Articles 59 and 62 of the Treaty, restrictions on programmes from other Member States flowing from such measures have simply to be abolished.

29. The necessity for coordinating national measures of this kind thus does not flow from the need to remove legal obstacles to the free circulation of broadcasts, but from the need to adapt and promote production and distribution structures to the increased scale of the enlarged market for television programmes or, in the words of the Treaty, in order to make it easier for self employed persons, a term which includes legal persons, to take up and pursue activities relating to the production and distribution of television programmes within the Community. In this way, the enlarged market for television programmes will operate similarly to a domestic market but on a scale that corresponds to the territorial limits of the Community taken as a whole.
  
30. Such measures will also ensure that the new televisual media continue to reflect the Community's cultural diversity and richness, and that the enlarged market does not operate simply to encourage a search for the audio-visual lowest common denominator. An obligation on all television broadcasters to broadcast a certain amount of material of Community origin, some of which must be creative programming broadcast for the first time and some of which must be independently produced will

---

<sup>15</sup>Cases 60 and 61/84, Cinéthèque and others 11.7.85 (not yet published), ground 21.

<sup>16</sup>Cases 60 and 61/84, ground 24.

ensure that they provide the outlets necessary to stimulate the development of the Community's programme industry and to ensure the presence of productions expressing its cultural diversity.

31. To the extent that such measures will constitute a form of Community preference in the field of broadcast services, it will be necessary, before they are applied, to seek a consensus with non-Member States which also produce programme material suitable for broadcasting in Europe. The implementation of Community measures in this area will also depend on a satisfactory resolution of any problem of compatibility with existing international agreements<sup>17</sup>. This issue is of particular concern to a number of international organizations including the Council of Europe, the Organization for Economic Cooperation and Development and the General Agreement on Tariffs and Trade. Discussions relevant to these problems should be begun with a view to identifying the most appropriate means of resolving them. A combination of agreed multilateral standards or understandings coupled, where appropriate, with bilateral arrangements on specific problems, would seem to offer the best chance of a satisfactory overall solution.

32. As to national laws imposing a chronological order on the presentation by different media of films produced for showing in cinemas, the need for harmonization at Community level is at present unclear. The decision of the European Court of Justice concerning the distribution of films on videocassette<sup>18</sup> did not address the specific problem of cross-frontier broadcasting. Different considerations apply to the latter which might well lead to a different conclusion should a Member State seek to prevent the reception or retransmission of a film broadcast from another Member State rather than its sale as a videocassette. Moreover, even on the assumption that indistinctly applicable national restrictions on reception or retransmission are

---

<sup>17</sup> The extent to which Article 3 of the GATT applies to requirements concerning programmes transmitted by broadcasting organizations is a matter requiring careful attention, particularly where programmes are delivered by radio signals rather than on a physical support such as a film or video tape.

<sup>18</sup> Cases 60 and 61/84 (11.7.85) (not yet published).

permissible, it is far from clear that given the manner in which films are distributed in practice, significant barriers to cross-frontier television are likely to arise. In addition, the wisdom of seeking at the present time to fix arbitrarily by law the future relationship between different audio-visual media can be doubted. For these reasons, the Commission is of the opinion that it is premature to propose harmonization of national rules in this field. In the first instance, the problem should be left to the concerned industries to settle voluntarily in accordance with their own perception of where their best interests lie. In particular, film producers can rely on their rights to control the showing of their films and to coordinate their exploitation by different media throughout the Community. Of course, should such an approach not produce an acceptable solution and should it appear then that divergent national rules are indeed obstructing cross-frontier television broadcasts to a significant extent, the conditions would arise in which a proposal for further harmonization in this respect would become necessary.

33. As to the type of harmonization proposed, the Green Paper suggested that in accordance with the objectives of the Community Treaty, the directive should not only lead to the removal of indistinctly applicable obstacles to cross-frontier broadcasting in the field of advertising, youth protection and copyright. It should certainly produce this result, but on the basis of the adoption of a common core of basic standards to apply in every Member State. However, in certain cases, it would also probably be necessary to allow Member States to apply stricter or more detailed rules than those specified in the directive which would then have the character of minimum standards. Moreover, in other cases, a rule applying to cross-frontier transmission only might be all that was needed at the present time, as in the copyright field. Nevertheless, harmonization should produce a common core of basic standards that should be followed everywhere and on the basis of respect for which cross-frontier broadcasts and broadcast advertising would be accepted in all Member States.

34. The main reason for this approach was the following. The Treaty's means for promoting its principal political, economic, social and cultural objectives, as laid down in its preamble and Article 2, is to create a common market. This common market, comprising all Member States (Article 2), is to operate as a single, internal market characterised by equivalent competitive conditions in each of those Member States (Article 3(c) and (f)). For these purposes, the Treaty provides for the approximation of the laws of Member States to the extent required for the proper functioning of the common market (Article 3(h)) and in particular, for the coordination by Community directives of national provisions concerning the pursuit of activities as self-employed persons, including those engaged in broadcasting and broadcast advertising, in each Member State (Article 66 in conjunction with Article 57(2)). The immediate purpose of this coordination is to make it easier for these persons, including legal persons, to pursue such activities everywhere in the Community (Article 66 in conjunction with Article 57(2) and (1)). At the same time, providers of such services are to be placed in a position where they can pursue their activities under equivalent conditions, irrespective of their place of establishment within the Community. Moreover, the full advantages of a larger market will only be realized if the conditions for the provision of cross-frontier services do not differ too much from the conditions under which those services can be provided within a single Member State.
35. The Green Paper's basic approach to harmonization found a large measure of support and has accordingly been adopted in the proposal. In the fields of promotion of distribution and production, advertising and youth protection, the proposed directive's rules will accordingly apply for the most part not only to cross-frontier broadcasts, but to all broadcasts originating in the Community, including broadcasts intended for a Member State's own market. National provisions will have to be amended accordingly. In some cases in the fields of advertising and as regards youth protection, Member States will be able to



apply more detailed or stricter standards to broadcasts originating on their own territory, but all programmes meeting the standards in the directive will be able to circulate freely.

36. In accordance with this general philosophy, the Green Paper also suggested that broadcast advertising should be made lawful in all Member States, as it already is in the overwhelming majority. A number of considerations of a legal, economic and political nature led to this suggestion.
37. These considerations included, first, the need to pursue, not only as regards broadcasting but also as regards broadcast advertising, the Treaty objective of facilitating the taking up and pursuit of such activities throughout the Community (Articles 57 and 66). At the same time, the general admission of broadcast advertising would ensure that competition in this sector of the common market was not distorted. Advertisers and advertising enterprises would be able to operate on the basis of a common market in which artificial barriers would no longer restrict the scope for promoting goods and services in certain States nor divert advertising activity and revenue to others.
38. Broadcast advertising plays an important stimulating role in relation to the economy as a whole. It encourages competition and, especially, by promoting the marketing of new, innovative goods and services, it contributes to structural change and industrial modernisation. If broadcast advertising is completely prohibited in a Member State, its own industry is thus placed at a disadvantage compared with those in other Member States. This disadvantage is felt by its industry generally and not only by those engaged in advertising. It is unable to present itself in its home market as others do in theirs, while advertising activities and revenue are artificially diverted to other States. Conversely, industries from those other Member States do not have the same scope for promoting their sales in a State where broadcast advertising is not permitted as is granted in their home markets to their competitors from such a State. Such differences between the provisions in force in the Member States on broadcast

advertising have now for more than a decade distorted the conditions of competition for many consumer goods and services in the Community and are restricting trade in such goods and services both as between and within Member States.

39. Accordingly, in the Commission's Green Paper, adopted in 1984, it was considered that, as a matter of principle, the Community should seek to pursue a policy which would lead to the admission of broadcast advertising as a legitimate activity in every Member State.
  
40. This concept of a Community-wide market for broadcast advertising was endorsed by a clear majority in the debate on the Green Paper, in particular in the European Parliament. However, the Commission considers that the admission of broadcast advertising remains a sensitive political question in the two States where complete legal prohibitions still exist. Proposing as a matter of Community law the obligatory admission of broadcast advertising in all Member States seems under this aspect not to be opportune. In addition, once cross-frontier broadcast advertising from other States is admitted, the practical significance of a prohibition on national broadcasters is reduced.

41. The Commission considers that there is indeed every chance that a common market for broadcast advertising can be achieved without the adoption of a formal legal obligation to admit advertising in every Member State. In these circumstances, it sees no compelling reason to insist at this time on a formal requirement, in the directive, provided agreement can be reached rapidly that cross-frontier broadcasts carrying advertising should be freely admitted in accordance with the directive's provisions (Articles 1 and 14).
  
42. The follow-up to the Green Paper also established, however, that many considered that at this stage a common approach to the question of a fixed maximum time limit for broadcast advertising was neither feasible nor necessary. According to this view, endorsed by a large majority in the European Parliament, a fixed maximum could be established for cross-frontier broadcasts, leaving the Member States to fix their own limits for their broadcasters on the basis of certain general criteria. Accordingly, this approach has been incorporated into the proposal for a directive (Article 5).

IV. Particular provisions

Chapter I : General provision

Article 1

43. This article establishes the principle that all broadcasting activity intended for reception within the territory of the Community must comply with the law of the country in which it originates, i.e. the Member State in which the originating body is established, irrespective of whether the programme is intended for reception by the public in that Member State or other Member States. The article explicitly excludes from the scope of the directive broadcasts exclusively intended for reception outside the Community. In accordance with the definition set out in Article 21 (1), the term broadcasting covers both radio and television broadcasts. Hence, - with the exception of the chapter on copyright - broadcasts by telecommunications satellite which are intended for reception by the public directly or indirectly via cable distribution, are also included. These broadcasting techniques do not justify a general exemption from the constraints imposed on traditional broadcasters. However, provisions can be enacted under national legislation, within the framework of the standards laid down by the directive, which take account of the specific functions of the various broadcasting bodies and the nature of the broadcast.
44. This provision thus establishes the Member State's responsibility for ensuring that broadcasts made on its territory comply with the laws of that Member State and, consequently, with the standards laid down in the directive. In this way it provides the guarantee that enables, in the co-ordinated fields, the possibility of cumulative application of the laws of the countries of reception and of any checks by the authorities of such countries to be excluded.
45. Paragraph 2 therefore is the counterpart to paragraph 1 in that it guarantees the free movement of such programmes across frontiers. By coordinating national legislation imposing non-discriminatory limits on broadcast advertising in the

general interest, the directive firstly introduces a common market for broadcast advertising and secondly removes the major obstacles to cross-frontier broadcasts.

46. If the public interest can be thus protected at Community level by the approximation of the relevant legislation, there is no longer a need for the Member States to safeguard the general interest nationally by applying their own provisions to broadcasts from other Member States. Furthermore, the obligation on the Member States to ensure that it is checked that broadcasts, originating in their territory, comply with the provisions of the directive is intended to do away with the need for a second check in the recipient State, on the assumption that the initial check was based on the application of the provisions laid down in the general interest.
47. Nevertheless, there are still national provisions that apply, for example, to advertising in general which are not coordinated by this directive which concern the pursuit of broadcasting activity. These are general laws, applicable indiscriminately to internal and cross-frontier broadcasts, which are necessary in the general interest in order to ensure compliance with essential requirements relating in particular to the protection of public health, the fairness of commercial transactions and the defence of consumers.
48. In particular, in the absence of harmonisation, the Member States retain the possibility of applying national legislation on unfair competition to broadcast advertising originating in other Member States. Any potential obstacles to cross-frontier broadcasts which might result, however, would apply only in particular cases and after the event. Reference can be made to the analogous situation of the press, since the applicability of various national laws on advertising has never significantly hindered the free movement of newspapers and magazines. The fear that the free movement of broadcasts might be systematically blocked is therefore unjustified at this stage. If it were to emerge that the Member States were using the application of these national provisions to impede

systematically the re transmission of certain broadcasts, this problem would have to be resolved through subsequent harmonization of the provisions concerned.

Chapter II : Promotion of the distribution and production of television programmes.

49. Because of the specific character of sound broadcasts and the absence of any real production problems in this field, the scope of this chapter is confined to television broadcasts alone.

Article 2

50. The purpose of this article, which relates to the total programming time (excluding the time devoted to news, sporting events and game shows, advertising and teletext services) by each broadcaster established in the territory of the Community, is to guarantee a substantial place for audio-visual works, including films of Community origin, regardless of the Member State in which they originate. Given that its purpose is directly to promote employment in the cultural industries, certain categories of programmes which require little or no creative work, in particular, sports broadcasts or game shows, are left out of consideration.

51. Total programming time, that is to say the total time during which a television broadcasting body televises its broadcasts, seems to be the best criterion for determining the impact of the broadcaster and as a basis for applying preference arrangements. By setting a percentage, this provision makes it possible to tailor the obligation to be met by each of the broadcasters according to their size; nevertheless, in view of the different systems operated in the various Member States, the differences in the legal status of broadcasters and their differing economic importance, it is proposed to increase the percentage progressively over a specified period of time to provide broadcasters who are not currently covered by such preference arrangements with an opportunity to adapt. The same applies to Article 5.

52. For the purposes of the application of the general threshold by cable distributors who re-transmit the programmes from both Member States and non-Community countries, programmes from broadcasters in the Member States shall be regarded in their entirety as Community works, regardless of the composition of the programme itself.
  
53. Broadcasters are also obliged, within the overall threshold, to include among their initial transmissions a number of Community works which have not yet been televised in the Community. The specific aim of this provision is to guarantee a place for new Community audio-visual productions in television programming within the Community. The aim is to promote the amortization of such productions on the Community market and to inject fresh money in order to maintain and create jobs in the Community's cultural industries.
  
54. In as much as its purpose is to ensure, through distribution, the development of new Community works, this obligation - unlike the previous provision - excludes from its scope bodies which re-transmit by wire or over the air. In the cases of co-produced Community works, every internal broadcaster of television who contributes to the co-production may count his first broadcast of that co-production for the benefit of the quota for first broadcasts, even if the co-production is first televised in the Community by one of the other co-producers.
  
55. In fact, this article is based on arrangements that already exist or are planned in certain Member States. Under the specifications applicable to French television broadcasters, for instance, 60% of the programming time consisting of non-documentary works produced for television or the cinema are reserved for works originating in the Member States of the European Economic Community. Similarly, Italian legislation exists which is designed to support both the production and distribution of Community works for the cinema - by reserving 25% of the programming time for the broadcasting of films - and a draft law was tabled in 1985 by the Italian Government which proposes to promote the creation of audio-visual works - by allocating a share of programming time, which varies according

to the legal status of the broadcasters, to the distribution of original works produced by the broadcaster alone or on a co-production basis.

Article 3

56. By requiring the Member States to ensure that television broadcasters reserve 5%, and later 10%, of their programming budget for Community works created by independent producers, this article seeks to stimulate audio-visual production through the development of new production sources. Consequently, its aim is to help maintain and create a large number of new producers who are not dependent on a specific broadcaster. Traditionally, television programming consists very largely of the broadcaster's own productions, supplemented by productions made elsewhere, including by foreign broadcasters and the film industry. As a result, people with creative talent are too often forced to work either for broadcasting bodies or in the film industry, but are rarely able to persuade broadcasters to provide a proper outlet for their independent productions. Furthermore, following the convincing results achieved by the United Kingdom which imposed similar requirements on the new Channel 4 and in Canada - Radio Canada is due to reserve 50% of its production for independent producers by 1988 - new structures for the production of audio-visual works will come into being. These works will thus be able to compete with the major established producers and provide part of the television programming in the Community, particularly for new broadcasters who encounter supply difficulties on the European programme market. Production structures will be able to vary widely, particularly in terms of their size (small firms consisting of a few employees will exist alongside the major traditional producers); in terms of their duration (undertakings will be able to be set up for a specific production with staff specifically qualified for the particular project and then to disband on its completion); or in terms of their activities (these can be confined to production alone, leaving the script writing, editing or directing of the work, for example, to others).



57. This allows all operators considerable room for manoeuvre and it is up to the Member States to define the concept of independent producers, with the proviso that this concept should be limited to producers who do not carry out broadcasting activities.

Article 4

58. It is up to the Member States to lay down the criteria governing Community origin, but in any event this concept must cover all works created by producers established in the Member State in which the programme is broadcast or produced (generally considered as "national" works) and those created by producers from other Member States.

59. The criteria relating to the application of Community preference have been arrived at by analogy with those selected for the proposal for a regulation on a Community aid scheme for non-documentary cinema and television co-productions, in its revised form<sup>19</sup>. With regard to audio-visual works created by producers from European non-Community countries, the possibility of proposing bilateral agreements to them in due course, aimed at ensuring mutual recognition of audio-visual works in each of those countries and of the Member States, could be considered.

---

<sup>19</sup> See above.

Chapter III : Broadcast advertising and sponsoring

Section 1 : Internal broadcasts

Article 5

60. As explained in Part III of this memorandum, the Commission considers that the admission of cross-frontier broadcasts carrying advertising in all Member States will create the conditions in which existing complete prohibitions on broadcast advertising will lose much of their significance and will in all probability be repealed. For this reason Articles 5 to 13 are limited in their application to internal broadcasters that are permitted by member States to carry advertising.
61. The directive accordingly respects the liberty of the national legislator to decide whether and which national broadcasters may carry advertising. The article also leaves considerable latitude for Member States to determine the amount of time permitted for advertising and the kind of formula used (per day, per hour or some other).
62. The determination of advertising time must be made, however, on the basis of respect for two general principles. On the one hand, the time should be so limited that advertising does not interfere improperly with the function of broadcasting as a medium for the communication of information, education, culture and entertainment. On the other, the time allowed should be sufficient for the demand for broadcast advertising in a given Member State to be largely met, taking also account of the interests of other media. The first of these general principles takes its inspiration from the ninth general principle of the Council of Europe's relevant Recommendation<sup>20</sup>. In the context of the second criterion, the Member States shall be responsible for determining the level of advertising demand. In doing so, they must take into account the size of the demand for advertising time for all internal broadcasts in each Member

---

<sup>20</sup> Recommendation no. R(84)3 of the Committee of Ministers to Member States on principles concerning television advertising, adopted on 23 February 1984.

State, regardless of whether the demand originates from national advertisers or from advertisers of other Member States. The margin of discretion left to the Member States should enable them to balance the different, sometimes conflicting, interests involved : those of the broadcasters, advertisers, the advertising industry, other media including the press and the cinema, and last but by no means least the listening or watching public.

#### Article 6

63. This provision establishes the principle that the advertising content of broadcasts should be examined prior to transmission, at national level and only for the first broadcast, to ascertain whether it complies with the directive. This examination of the first broadcast is a necessary pre-condition for the application of the principle of the free movement of broadcasts within the Community, without secondary checks on reception or re-transmission, as explained in Article 1 of the proposal. The Member States remain totally free to determine, without prejudice to the application of other Community acts, how these examinations are to be carried out (by public authorities, by the broadcasters themselves, ...). They are also responsible for enacting appropriate measures to this end.

#### Article 7

64. By confining itself to generally accepted principles, this article allows the Member States latitude to determine the detailed rules on the manner in which broadcast advertising is to be presented. In conjunction with Article 13(2) they can, in particular, make it obligatory for internal broadcasts to display a distinctive symbol on the screen when advertisements are being broadcast, or to fix the duration of advertising spots or blocks and the number of advertisements these must or may include.
65. The Member States are also responsible for defining in more detail the concepts of unreasonable interference and natural break; this may even mean that, internally, they may prohibit

such interference for certain programmes or fix the minimum duration of a programme which can be interrupted for advertising purposes (in conjunction with Article 13(2)).

66. This article makes the possible insertion of broadcast advertising into programme breaks subject to three requirements that must all be met. For example, in the Community framework, the insertion of broadcast advertising of a nature liable to prejudice the integrity and value of programmes or their natural continuity is not permitted. Regulated in this way, such a possibility will prevent distortions in the nature of programmes broadcast.

#### Article 8

67. The general principles governing the content of advertising, laid down in this article, reflect the essential features of the rules generally accepted in the Member States by the circles concerned, in the form of codes of conduct. The advantage of incorporating them into the Directive is that by making these provisions mandatory consumer protection is strengthened while, because of their general nature, there is no risk that they will require frequent amendment. Taken in conjunction with the provisions of Article 1, these principles can be spelt out in greater detail at national level, and possibly made more restrictive (in conjunction with Article 13(2)). Lastly, this Article presupposes the application of Community law relating to advertising in general, in particular the provisions set out in the directive on misleading advertising<sup>21</sup>.

#### Article 9

68. Broadcast cigarette advertising is already prohibited in virtually all the Member States. It is consistent with the development of Community policy on consumer and health protection that this ban should be generalized and imposed on all Member States. For this reason, and in order to avoid any distortion of competition, no exception is admitted for national

---

<sup>21</sup> Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising (OJ no. L 250, 19.9.1984, p. 17).

broadcasting under Article 13. Since it is always possible for different types of tobacco products to be substituted and difficult to eliminate this possibility entirely, the ban on advertising is extended to cover all tobacco products as is already the case in many Member States.

#### Article 10

69. This provision sets out the main objective of the specific codes of conduct relating to advertising of alcoholic beverages which are applied in most Member States. These rules are consistent with developing Community policy on consumer and health protection. In order to ensure that these rules are complied with in all broadcasts, they must be generalized and imposed on all advertisers and broadcasters within the Community. Prohibitions on the advertising of alcoholic beverages are found only in a small minority of States. Nevertheless, under Article 13, the Member States remain free to do more and to restrict more severely or even prohibit advertising for alcoholic beverages in internal programmes. Thus the directive does not preclude an eventual movement towards a ban based on national regulations.
70. The last paragraph of this article refers in a neutral manner to alcoholic content without being more specific. It covers advertising which emphasises either the low or high alcoholic content of beverages.

#### Article 11

71. This article reflects the rules of conduct relating to young people and advertising, which exist in several Member States and at international level. It sets out basic rules governing the protection of children and young persons in relation to advertising which is specifically addressed to them; the protection of children and young people taking part in the production of advertising broadcasts must be the subject of provisions that are more general in scope. The Member States are free to enact more detailed, possibly more restrictive, rules at national level (Article 13 (2)).

Article 12

72. While accepting that sponsoring already legitimately helps to finance certain national broadcasters, the purpose of this article is to introduce certain restrictions on a Community-wide basis. In order to avoid the dangers that certain forms of sponsoring may pose to the integrity of programme content, the article establishes the principle that undertakings shall not exert undue influence over the content of that part of the programme which does not consist of advertising. Similarly, the broadcaster is required to avoid any possibility of confusion in the mind of the public. Furthermore, the article sets out more detailed rules for the most important cases. However, since the whole field of sponsorship is undergoing fundamental transformation, it was felt necessary to leave it to the Member States to define sponsorship in the light of current developments. Similarly, the concept of programme content and style will be defined at national level; the possibility of implementing more stringent conditions is left open (in conjunction with Article 13 (2)).

Article 13

73. This article enables the Member States, for specific purposes, to apply rules that are stricter than some of the above-mentioned provisions to broadcasters pursuing their activity on their territory. This freedom to apply stricter rules does not extend the imposition of a total ban, except in the case of broadcast advertising on Sundays and public holidays and advertising for alcoholic beverages.

74. Leaving open the possibility of prohibiting or restricting the broadcasting of advertising on Sundays and public holidays, at national level, makes it possible to safeguard traditional customs in certain Member States that are not common to the whole of the Community. By leaving open the possibility of prohibiting advertising for alcoholic beverages, the article allows those Member States which so wish to evolve their own policy on consumer protection and the protection of public health, if this is necessary at national level.

Section 2 : Cross-frontier television broadcasts

Article 14

75. This article permits one exception to the principle according to which the free circulation of broadcasts within the Community cannot be restricted by national rules adopted in the general interest in the field of broadcast advertising. This exception concerns national rules on the amount of advertising authorized by the Member States. Article 5 of this directive leaves considerable flexibility for the Member States to fix the legal maximum for advertising at national level on the basis of the general principles that it establishes. However, such an approach to the problem of cross-frontier broadcasting would not produce workable results.
76. In this context, a clear criterion is needed that will be interpreted uniformly throughout the Community, namely, a fixed limit of some kind. Such a legal maximum should ensure that obstacles to cross-frontier broadcasting are removed, but also serve as a legal guarantee that advertising will not form a completely unreasonable proportion of broadcasts coming from other Member States. At the same time, the maximum proposed should take into account the legal provisions already applying to established broadcasters in the Member States.
77. The threshold proposed, 15% of daily broadcasting time, is designed to satisfy the requirements set out in the previous paragraph. It should be observed that maxima of this order have been thought necessary to provide new entrants to broadcasting with a sufficient guarantee that the cost of the considerable investment necessary can be recovered from advertising revenue that is not artificially and unduly restrained. At the same time, it is clear that in practice the real amount of advertising broadcast does not coincide with the maxima permitted and that in an environment in which substantially more channels will be available, some of them carrying little or no advertising, market forces will exercise a restraining influence on the amount of advertising actually transmitted.

Chapter IV : Protection of children and young persons

Article 15

78. The aim of this provision is to guarantee the free movement, as between Member States, of programmes which comply with certain fundamental conditions with respect to the protection of young persons.
79. This provision is necessary for two reasons. Although the relevant national rules can be justified, from the point of view of Community law, as being in the general interest, they nevertheless differ on points of detail from one Member State to another; they may therefore hamper the development of cross-frontier broadcasting. Likewise, a systematic check on the content of programmes which are redistributed by cable poses technical, financial and practical problems and, as regards direct reception, might not prove effective. This is why it is fair to say that one of the necessary counterparts to the opening-up of national frontiers to broadcasting is the adoption of Community rules designed to protect young people.
80. Consequently, all broadcasts which are likely, by virtue of their nature or the time at which they are broadcast, to seriously harm the physical, mental or moral development of children and young persons, in particular those that involve pornography, gratuitous violence or incitement to race hatred must be prohibited.
81. As in the case of advertising, the Member States must take steps to institute a procedure for the prior examination of broadcasts, to check that they comply with the rules in question. This procedure may be self-regulatory and exist within the various broadcasting bodies. The Member States are also responsible for enacting effective measures to ensure compliance with the above requirements. The counterpart of the measures for internal monitoring of broadcasts is the free movement of broadcasts which have been thus examined within the Community. It follows from the general principle in Article 1 paragraph 2 that, in the coordinated fields, the Member States



will no longer have the possibility of preventing cross-frontier broadcasts on grounds of public order for the protection of children and young persons.

Article 16

82. The Member States remain free to apply more detailed rules and to define at national level the various concepts contained in this article, including both the concepts of children and young persons, and also the concepts of pornography, gratuitous violence or incitement to race hatred. They also remain free to apply stricter and more detailed rules to broadcasters pursuing their activity on their own territory.

Chapter V : Copyright

Article 17

83. This provision establishes the principle that all re-transmissions by cable of broadcasts from other Member States must comply with the provisions in respect of copyright and related rights applicable there, and that unauthorized re-transmissions are subject to appropriate sanctions. At the same time it requires the Member States to ensure that such re-transmission can take place.
84. It would be preferable if respect for copyright and related rights were to take the form of contractual arrangements concluded between the authorised persons and the cable operators but the Member States are free to opt for other methods.
85. The scope of this article is limited to cross-frontier re-transmission by cable. It therefore does not apply to the re-transmission of programmes by cable within the same Member State or to the transmission of programmes by telecommunication or direct broadcasting satellite.

Article 18

86. This article puts into practice the Community objective of the freedom to transmit broadcasts. The re-transmission in question must be simultaneous, unaltered and unabridged. The concept of an unabridged re-transmission excludes from the scope of this article partial re-transmissions of programmes, unless the break in transmission is beyond the control of the cable operator.
87. The procedure provided for in this article will not come into play unless the re-transmission of a particular broadcast is rendered impossible by the invocation of copyright and related rights. It therefore only applies in the event of a dispute and where no other solution, in particular of a contractual nature, is possible. It allows for an additional negotiating period, from the application by the cable operator to re-transmit by cable a programme broadcast in another Member State. Only when this period of time has elapsed and without an agreement having been reached, is the Member State bound to allow re-transmission by means of a statutory licence to be incorporated into its legislation before the expiry of the two-year period.
88. The legislative procedure is set in motion by the submission of an application from the cable operator who is unable - in the absence of an authorisation from the right-owners - to distribute a programme originating in another Member State. In order to establish the date from which the time limit is to run, this application must be notified to the competent authorities of the Member State concerned.
89. Article 1(1) of the European Agreement on the Protection of Television Broadcasts of 22 June 1960 grants the broadcasting bodies alone, in respect of all their television broadcasts, the right to authorize or prohibit, on the territory of all parties to the Agreement, the re-broadcasting and the diffusion of such broadcasts by wire. Article 3(3) recognises that the parties to the Agreement may, in respect of their own territory, designate a body with jurisdiction over cases in which broadcasting rights have been arbitrarily refused or granted on unreasonable terms by the broadcasting body in which such rights are vested. Opinions differ as to whether the system for the protection of

the interests of broadcasting bodies provided for in the Agreement precludes the introduction of statutory licence advocated in this article and whether it is consequently necessary to denounce this Agreement. However, the issue of denunciation will only be likely to arise in exceptional cases. In fact, only five Member States (Belgium, Denmark, Germany, France and the United Kingdom) are parties to this Agreement and two of them (Belgium in part and the United Kingdom) have already invoked a reservation whereby a derogation may be made for cable transmission of broadcasts from abroad. Since Denmark has interpreted the Agreement as being compatible with the introduction of a statutory licence, the question of denunciation is only likely to arise in a small number of Member States. For this to happen, however, there would have to be a situation in these Member States where, despite efforts by the parties, no contractual agreement could be reached to allow the simultaneous, unaltered and unabridged re-transmission of broadcasts from the other Member States and, furthermore, it would be necessary for a cable owner, pursuant to paragraph 1, to notify the Member State concerned that this re-transmission had been prevented. It is only at that stage and, what is more, only if the Member State concerned concludes that the problem cannot be solved other than by applying a statutory licence that it would be obliged to denounce the Agreement pursuant to Article 14, in order to re-negotiate the terms of that Agreement in such a way as to accommodate the statutory licence arrangements envisaged by that Member State.

#### Article 19

90. The purpose of this article is to establish the conditions determining an equitable remuneration for the holders of copyright and related rights, assuming that a statutory licence has been applied. To this end the directive uses the criterion set out in Article 11(a) of the Berne Convention, namely an "equitable remuneration determined in the absence of an amicable agreement, by the competent authority". It then sets out a number of criteria which must be taken into account for the purposes of determining a fair level of remuneration.

91. On the basis of the principle that a statutory licence will only be granted in the absence of a contractual agreement, it is logical to adopt the customary level of remuneration in contracts as a criterion. If it is found that practices have changed markedly, as for example the payment of rights for cable re-transmission by the initial broadcaster, it will be necessary to take this into account when assessing the remuneration claimed under the statutory licence procedure.
92. The point of paragraph 3 is to allow the right to be collected in full and to make collecting societies responsible for the allocation of these rights as between the various individual right owners.
93. The specific provisions on the competent authority are based on provisions set out in the directive on misleading advertising which have already been the subject of an agreement in the Council<sup>22</sup>.

#### Article 20

94. The application of this Directive, and in particular, the possible introduction of a statutory licence, cannot under any circumstance prejudice the full exercise of moral rights. However, such rights must not be used as a means of arbitrary discrimination or disguised restriction in economic relations between Member States.
95. The Member States remain responsible for defining, within the framework of the relevant international conventions, the concept and scope of moral rights conferred on copyright owners and owners of related rights.

#### Chapter VI : Final provisions

#### Article 21

96. This article defines the various concepts used to demarcate the scope of the directive.

---

<sup>22</sup> See above.

97. The first paragraph explains that the broadcasting of radio and television programmes in respect of which this directive on the coordination of relevant national provisions seeks to facilitate the cross-frontier movement includes all forms of broadcasting, in particular territorial transmission over the air, direct broadcasting satellite, telecommunication's satellite in unencoded or encoded form, and the retransmission by wire or over the air. An exception has to be made in the case of Chapter V on copyright for transmissions by telecommunication's satellite. Experience has shown that where this means of transmission is used by broadcasting bodies to transmit programmes intended to be relayed to the public by cable operators within the Community, these bodies take responsibility for acquiring the necessary rights. As a result, from the point of view of copyright and related rights, the freedom of movement of such a programme is already guaranteed. Moreover, unauthorised reception of such transmissions is prohibited under the convention on the distribution of programme signals transmitted by satellite, particularly to protect point by point transmissions which are not intended for direct reception by the public. The cross-frontier movement of sound broadcasts in the Community is an area which, for a number of reasons, is much less controversial and which in practice has not raised any major problems to date. Nevertheless sound broadcasts should not be excluded from the planned Community measures. Indeed, Community measures that are suitable for television can equally apply to radio broadcasts and, in this way, create a common market for broadcasting as a whole.

98. The directive does not include any forms of private transmission, such as video cassettes. Pay television, however, is covered by the scope of the directive.

99. Lastly, the directive does not include services on individual demand, such as electronic banking and similar services, although it does apply to purely passive services such as teletext service, with the exception of Chapter II.

100. The definition of broadcast advertising uses the terms set out in the directive on misleading advertising <sup>23</sup> adapted to the

---

<sup>23</sup> See above.

specific needs of broadcasting. In particular, it is specified that advertising broadcast by a public undertaking is covered by the Directive. Hence, the definition of broadcast advertising is sufficiently broad to cover all advertisers and all broadcasters. Sponsored programmes are not regarded as advertising, even where they are made with a view to directly supporting the activity of the sponsoring firm, except where they include messages that can be strictly considered as advertising. Furthermore, it is up to the Member States to define the concept of sponsoring.

101. "Internal broadcasts" means any initial transmission by a broadcasting body established in the territory of a Member State, irrespective of the destination of the broadcast. It also covers programmes from non-Community countries in respect of which a Member State has authorised retransmission on its territory. On the other hand in Article 1 the directive expressly excludes from its scope programmes solely intended for reception by the public in non-Community countries.

102. The concept of cross-frontier broadcasts covers internal broadcasts which can be received by the public in another Member State, irrespective of the method used.

#### Article 22

103. This article lays down a time limit within which the directive must be transposed into national legislation. It requires the Member States to communicate the text of the main provisions of national law which they adopt in the fields covered by this directive.

Article 23

104. The provisions of this directive shall be re-examined by the Commission after five years' application, in order to assess the experience acquired by then and to make further proposals if necessary to accommodate new developments in the rapidly changing field of broadcasting.

Article 24

105. This directive is addressed to the Member States.

Proposal for a  
COUNCIL DIRECTIVE

on the coordination of certain provisions laid down by law, regulation or  
administrative action in Member States concerning the pursuit of  
broadcasting activities.



LIST OF CONTENTS

	<u>Pages</u>
Recitals	41
Chapter I    General Provision (Article 1) .....	50
Chapter II    Promotion of distribution and production of television programmes (Articles 2-4).....	50
Chapter III    Broadcast advertising and sponsoring.....	51
- Section 1 : Internal broadcasts (articles 5-13) .....	51
- Section 2 : Cross-frontier television broadcasts (article 14) .....	54
Chapter IV    Protection of children and young persons (Articles 15 and 16) .....	55
Chapter V    Copyright (Articles 17-20) .....	55
Chapter VI    Final provisions (Articles 21-24) .....	57

Proposal for a  
COUNCIL DIRECTIVE

on the coordination of certain provisions laid down by  
law, regulation or administrative action in Member  
States concerning the pursuit of broadcasting  
activities

---

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic  
Community, and in particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the objectives of the Community as laid down in the Treaty  
include an ever closer union among the peoples of Europe and closer  
relations between the States belonging to the Community, ensuring  
the economic and social progress of its countries by common action  
to eliminate the barriers which divide Europe, the constant  
improvement of the living conditions of its peoples as well as the  
preservation and strengthening of peace and liberty;

Whereas for these purposes, the Treaty provides for establishing a  
common market, including the abolition, as between Member States,  
of obstacles to freedom of movement for services, the institution  
of a system ensuring that competition in the common market is not  
distorted, and the approximation of the provisions of Member  
States to the extent required for the proper functioning of the  
common market;

Whereas broadcasts transmitted across frontiers within the  
Community, in particular by satellite and cable, are one of the  
principal means to promote the above objectives of the Community  
which are at the same time of political, economic, social, cultural  
and legal nature;

Whereas the attainment of the above objectives of the Community calls, almost thirty years after the establishment of the Community, for transition from the stage of the opening up of national markets for the production and distribution of broadcasts to the stage of one internal market for broadcasts;

Whereas the achievement of this common market presupposes, in addition to the elimination of obstacles to the free movement of broadcasts, the adaptation and promotion of the factors of production and distribution in the Community of broadcast programmes in order to ensure that the enlarged market for broadcast programmes will operate similarly to a domestic market;

Whereas for this purpose or, in the words of the Treaty, in order to make it easier for persons to take up and pursue activities as self-employed persons, including the activities of producing or distributing broadcast programmes, the Treaty provides for the issuing of directives for the coordination of the provisions concerning the taking up and pursuit of such activities;

Whereas the broadcasting of commercial advertisements is a service within the meaning of the Treaty because it is provided for remuneration; whereas the liberalisation of this service helps to promote trade in goods and services and has therefore to be given priority under the Treaty;

Whereas the broadcasting of other messages is also a service within the meaning of the Treaty because this activity is normally provided for remuneration and is, by its nature, not 'goods' governed by the provisions of the Treaty relating to freedom of movement for goods such as other media like videocassettes, videodiscs, records, newspapers, magazines, periodicals and books;

Whereas the grant by a foreign broadcasting organization or other right holder to a domestic cable operator of the authorization required by copyright or other laws to relay the foreign programmes also constitutes a service within the meaning of the Treaty because it is normally provided for remuneration;

Whereas the Treaty does not exclude from its scope any such service, by reason of its particular nature, such as its cultural aspects or implications, but provides for the liberalization and free movement of all services normally provided for remuneration which are therefore and without prejudice as to their cultural or other contents considered by the Treaty to be economic activities, a harmonious development of which is one of the objectives of the Community;

Whereas the Treaty guarantees freedom to provide services within the Community, including broadcasts, without restrictions 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 this individual right to provide broadcasts to recipients in other Member States, including cable operators, free of restrictions is a specific Community law manifestation of the more general European human right to freedom of expression which includes freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers, enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all Member States;

Whereas, for this reason, freedom to provide broadcasts under Community law must be implemented, when applying the Treaty and issuing directives for the coordination of the provisions concerning the pursuit of the activities of broadcasters and cable operators, in the light of and at least to the extent guaranteed by the corresponding freedoms provided for in Article 10(1) of the European Convention on Human Rights;

Whereas the same parallelism must be respected when applying the Treaty and issuing directives for the coordination of provisions limiting the exercise, on the one hand, of freedom to provide broadcasts which are authorized under Article 56(1) of the Treaty or justified on grounds of general interest and, on the other, of

the freedoms to receive and impart information and ideas through broadcasts which are authorized under Article 10 (2) of the European Convention on Human Rights;

Whereas the laws, regulations and administrative measures in Member States concerning the pursuit of activities as broadcasters and cable operators contain disparities in respect of their applicability and content, on producing and distributing programmes, on advertising and sponsoring, on protecting children and young persons, and on copyright, which may impede the free movement of broadcasts within the Community and may distort competition within the common market;

Whereas the disparities referred to in the field of broadcast advertising have the additional effect of impeding the free movement of goods and services inasmuch as the opportunities to advertise those goods and services throughout the Community, which are an integral part of the process of marketing them, are subject to variable restriction and prohibition;

Whereas the free movement of broadcasts within the Community is also impeded where the right to communicate a particular programme is assigned to different persons in different Member States, allowing the assignees to rely upon their rights to prohibit the cable re-transmission of a foreign broadcast in different Member States;

Whereas all such restrictions on freedom to provide broadcasting services within the Community shall be abolished under the Treaty both by virtue of Article 59 of the Treaty and, in so far as such restrictive rules treat broadcasting services identically whatever their origin or the nationality or place of establishment of the persons providing them and in so far as those laws are justified on grounds of general interest, by issuing directives for the coordination of the provisions concerning the pursuit of activities as self-employed persons, including activities of broadcasters and cable operators;

Whereas the purpose of this coordination is to make it easier for persons to pursue activities as self-employed persons, in particular, to make it easier for broadcasters and cable operators to pursue the transmission and the retransmission of broadcast programmes and advertisements and thus to abolish obstacles to the free movement of broadcasts and, more generally, to the free flow of information and ideas within the Community;

Whereas under the Treaty, nationals of Member States providing services from within a Member State to a person in another Member State may pursue their activities exclusively under the conditions imposed by the law of the first Member State;

Whereas for this reason, for the reason mentioned before the last recital and in order to avoid the cumulative application to the same broadcast, broadcaster or cable operator of the broadcasting law of all or several Member States, it is necessary but sufficient that all broadcasts comply with the law of the Member State in which they originate;

Whereas it is necessary in the common market that all broadcasts originating and intended for reception within the Community, and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of this Directive in order to protect consumers as listeners and viewers, in particular young persons, as well as authors, producers, broadcasters and performers, advertisers and advertising agencies and the interests of the public in general;

Whereas checks on respect for national law as coordinated by this Directive in the originating Member State are sufficient under Community law to ensure free circulation of broadcasts without secondary control on the same grounds in each of the receiving Member States;

Whereas this Directive is without prejudice to existing or future Community acts of harmonization which are or will be necessary, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions;

Whereas the coordination of national laws designed to secure and promote distribution and production of television programmes in respect of provisions that are not based upon grounds of general interest, public policy, public security or public health is not necessary since they cannot be invoked to restrict the free circulation of broadcasts within the Community;

Whereas such coordination is nevertheless needed at the Community level to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities;

Whereas minimum requirements in respect of all public or private Community television programmes for audiovisual productions originating in the Community are an effective means to promote production, independent production and distribution in the above-mentioned industries and are complementary to other instruments which are already or will be proposed to pursue the same objective;

Whereas the vulnerability of European cultural industries is not due to lack of creative talent, but to fragmented production and distribution systems and whereas it is therefore necessary to promote markets of sufficient size for television productions in the Member States to recover necessary investments not only by establishing common rules opening up national markets but also by offering productions from the Community of each kind an adequate part in television programmes of all Member States, which will at the same time promote the presence of other European cultures in the television programmes of each Member State;

Whereas the progressive establishment of a general preference for the distribution of television programmes of all kinds produced within the Community, and specific measures designed to promote

employment and small and medium-sized enterprises within the Community's cultural industries, allows for the necessary adaptation of audiovisual production facilities to meet the increasing demand for television programmes;

Whereas, in particular, a preference for the first broadcast of new Community productions of a creative kind will promote actual and future employment in the industries mentioned in the preceding recitals;

Whereas, in addition, a preference for independent productions, made outside the broadcast undertaking, will stimulate new sources of television production, especially the creation of small and medium-sized enterprises and offer new opportunities and outlets to the marketing of creative talents and employment of cultural professions and workers;

Whereas the admission of advertising in cross-frontier broadcasts will create the conditions in which broadcast advertising should become lawful in all Member States, thereby establishing a common market for broadcast advertising throughout the Community;

Whereas Member States should limit the volume of broadcast advertising, so that it does not detract from the function of radio and television as media for information, education, culture and entertainment and so that demand for advertising in internal broadcasts of each Member State is largely met taking also into account the interests of other media;

Whereas in order to ensure that the interests of consumers as listeners and viewers of broadcasts are fully and properly protected, it is essential for broadcast advertising to be subject to a number of rules and standards, the compliance with which is checked prior to transmission;

Whereas the implementation of the free cross-frontier movement of broadcasts implies a legal framework at Community level containing certain minimum standards on advertising, but it is for the Member States to complete these provisions at the national level and



whereas the Member States must retain the right to introduce stricter standards for domestic transmissions such as refusing to permit the broadcasting of advertisements on Sundays or public holidays;

Whereas it is necessary to ensure that consumer interests are respected, especially bearing in mind the considerable impact of advertising on listeners and viewers and thus it is necessary, in accordance with the solution adopted in the majority of Member States to prohibit all advertisements promoting cigarettes and tobacco products and to introduce strict rules relating to the advertisement of alcoholic beverages and to permit those Member States who so wish to prohibit such advertisements in their internal broadcasts;

Whereas, more particularly, advertisements can unduly influence younger people if special standards are not laid down to prevent it;

Whereas because of the constant rise in the cost of audio-visual programmes sponsorship is developing greatly and playing an increasing role in the financing of programmes; whereas sponsorship should not be excluded from such financing, but it should be strictly ensured that sponsors do not exercise any improper influence on the contents of programmes and that there is no link between programmes and advertising within or around them which can be taken to suggest this;

Whereas, given the large degree of flexibility for Member States to fix the total volume of advertising time in internal broadcasts, Member States may restrict the retransmission of cross-frontier broadcast advertising exceeding 15% of each broadcast receivable each day by the public in those Member States, in order to give a certain guarantee to consumers in receiving countries and to avoid important distortions of competition between broadcasters in the Community;

Whereas a lower limit than 15% could have the effect of excluding certain existing broadcasters in some Member States from free provision of their services within the Community;

Whereas it is accepted that the protection of the physical, mental and moral development of children and young persons is in the general interest;

Whereas in a common market for broadcasting, broadcasters should be subject to similar obligations in relation to the protection of children and young persons against possible harmful effects of confrontation with inappropriate audio and audiovisual material;

Whereas the Community, while ensuring the free movement of broadcasts, must ensure respect for copyright and related rights;

Whereas a preference to arrive at this result by an agreement freely entered into by the various interested parties, that is a contractual solution, is generally recognised;

Whereas a sufficiently long period for negotiation should be allowed to permit these parties to conclude such agreements respecting the interests of each of them;

Whereas, nevertheless, in the absence of an agreement and if a cable operator has manifested his desire to retransmit a certain programme coming from another Member State, the balance between these interests has to be safeguarded by a system of legal licences providing for adequate remuneration which the particular Member State will be obliged to introduce under these circumstances,

HAS ADOPTED THIS DIRECTIVE :

CHAPTER I : GENERAL PROVISION

Article 1

1. Each Member State shall ensure that all internal broadcasts originating on its territory comply with its law applicable to broadcasts intended for the public in that Member State.
2. Without prejudice to Article 14 and the provisions of Chapter V, Member States shall not restrict the reception and retransmission on their territories of broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive.
3. This Directive shall not apply to broadcasts intended exclusively for reception in States other than Member States.

CHAPTER II : PROMOTION OF DISTRIBUTION AND PRODUCTION OF  
TELEVISION PROGRAMMES

Article 2

1. Member States shall ensure that internal broadcasters of television reserve at least 30% of their programming time not consisting of news, sporting events and game shows, advertising or teletext services for broadcasts of Community works within the meaning of Article 4, of which in the case of initial transmissions at least one third shall be reserved for first broadcasts in the Community.
2. This percentage shall be progressively increased to reach at least 60% after the expiry of three years from the date specified in Article 22.
3. For the purposes of this Article,
  - in cases of simultaneous, unaltered and unabridged retransmission, internal broadcasts from other Member States shall be regarded in their entirety as Community works;

- in cases of co-produced Community works, the first broadcast by each of the co-producers shall be considered a first broadcast in the Community.

### Article 3

1. Member States shall ensure that, as regards their initial transmissions, internal television broadcasters reserve at least 5% of their programming budget for Community works, within the meaning of Article 4, created by independent producers.
2. This percentage shall be progressively increased to reach at least 10% after the expiry of three years from the date specified in Article 22.

### Article 4

Community works within the meaning of this Chapter are:

- a) works made by producers from a Member State;
- b) works made by producers from several Member States;
- c) works made by producers from one or several Member States and non-Member States where the Community proportion of total production costs is at least 70%.

## CHAPTER III : BROADCAST ADVERTISING AND SPONSORING

### Section 1 : Internal broadcasts

### Article 5

Member States shall fix the amount of time allowed for broadcast advertising so that :

- a) it does not detract from the function of radio and television as media for information, education, culture and entertainment and
- b) the demand for broadcast advertising can be largely met, also taking into account the interests of other media.

Article 6

1. Without prejudice to the provisions of other Community acts, Member States shall ensure that broadcast advertising in internal broadcasts is checked prior to transmission and is broadcast only if it complies with the rules of this section.
2. Member States shall ensure that, in the case of broadcasts that do not respect these requirements, appropriate measures sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 7

1. Broadcast advertising shall be clearly recognizable as such.
2. Broadcast advertising shall be grouped in blocks and kept quite separate from the other programme material.
3. Broadcast advertising shall not interrupt coherent programme items except where the interruption does not constitute an unreasonable interference because :
  - a) the advertising is scheduled in such a way as to avoid prejudice to the integrity and value of programmes or their natural continuity;
  - b) the advertising is inserted in a natural break within the programme and
  - c) the duration and nature of the programme is such as to permit that advertising break.

Article 8

Broadcast advertising shall not :

- a) offend against prevailing standards of decency and good taste;
- b) contain any racial or sexual discrimination;
- c) be offensive to religious or political beliefs;
- d) seek to rely on fear without justifiable reason;
- e) encourage behaviour prejudicial to health or safety.

Article 9

Broadcast advertising for cigarettes and other tobacco products shall be prohibited.

Article 10

Broadcast advertising for alcoholic beverages shall comply with the following rules :

- a) it shall avoid anything that might prompt or encourage children and young persons to consume alcohol;
- b) it shall not link the consumption of alcohol to physical performance or to driving;
- c) it shall not create the impression that the consumption of alcohol contributes to social or sexual success;
- d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- f) it shall not place undue emphasis on the alcoholic content of beverages.

Article 11

Broadcast advertising shall further comply with the following rules for the protection of children and young persons :

- a) it shall not directly exhort children and young persons to buy a product or a service or exploit their immaturity of judgement and experience;
- b) it shall not encourage children and young persons to persuade their parents or others to purchase the goods or services being advertised;
- c) it shall not exploit the special trust children and young persons place in parents, teachers or other persons;
- d) it shall not unreasonably show children and young persons in dangerous situations.

Article 12

Undertakings shall not exert improper influence over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or programme which could reasonably be taken to suggest or imply that undertakings, for advertising purposes, have influenced parts of the programme which are not an advertisement. In particular,

- a) programmes shall not refer to specific undertakings, products or services in a way not necessary for their content;
- b) programmes, which are funded or co-funded by non-broadcasters shall be identified as such; however, the identification shall be restricted to a credit at the beginning and end of the programme;
- c) programmes shall not contain any promotion equivalent to advertising, especially on behalf of those who funded or co-funded them;
- d) advertising within or around programmes shall not be allowed if there is any link in content or presentation with the programme.

Article 13

1. Member States shall remain free to prohibit or restrict broadcast advertising on Sundays and Public Holidays and to prohibit all broadcast advertising for alcoholic beverages.
2. Member States shall remain free to apply more detailed or stricter rules with regard to Articles 7, 8 and 10, 11 and 12.

Section 2 : Cross-frontier television broadcasts

Article 14

Member States shall admit the reception and retransmission of advertising in cross-frontier television broadcasts which does not exceed 15% of the broadcast receivable each day by the public in those Member States. Where a Member State allows one or several internal television broadcasters to carry advertising for more than 15% of daily broadcasting time, it shall admit

comparable types of cross-frontier broadcasts, which contain amounts of advertising that do not exceed those permitted for internal television broadcasts of the same category.

CHAPTER IV : PROTECTION OF CHILDREN AND YOUNG PERSONS

Article 15

1. Member States shall ensure that internal broadcasts do not include programmes which might seriously harm the physical, mental or moral development of children and young persons, in particular, those that involve pornography, gratuitous violence or incitement to race hatred.
2. Member States shall ensure that internal broadcasts are checked prior to transmission and broadcast only if they comply with the requirements under paragraph 1. Member States shall further ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 16

Member States shall remain free to apply to internal broadcasts more detailed or stricter rules for the protection of children and young persons.

CHAPTER V : COPYRIGHT

Article 17

Member States shall ensure that the retransmission by cable in their territory of internal broadcasts from other Member States may take place with respect for applicable copyright and related rights, in particular on the basis of contractual agreements between right-owners and cable operators. When a cable operator retransmits a broadcast before a contractual agreement has been reached or a statutory licence is applied, he shall be subject to civil and penal sanctions, provided for in the law of the Member State where the retransmission takes place, sufficient to secure compliance with the rules.



Article 18

1. Where a cable operator notifies a Member State that the simultaneous, unaltered and unabridged retransmission by cable of an internal broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been so notified shall ensure, within a period of two years from the notification, that the retransmission is made possible by the application of a statutory licence. However, such a statutory licence need not be granted if, during the two year period, the obstacle to retransmission has been removed, in particular, by a contractual agreement between right owners and one or several cable operators.
2. Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the introduction of the statutory licence, the Member State shall denounce the Agreement to the extent necessary to permit the statutory licence to be introduced in accordance with paragraph 1.

Article 19

1. The statutory licence introduced in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights.
2. In determining the remuneration, in particular all the following criteria shall be taken into account :
  - a) the usual level of contractual licence fees for comparable cable transmissions;
  - b) the usual level of remuneration paid for the first broadcast;
  - c) the number of subscribers linked to the cable network and the level of fees paid by them;
  - d) the likelihood and the extent of any impairment of other marketing opportunities, in particular the showing of films and the performance of dramatic or dramatico-musical works.

3. The remuneration may be claimed only by collecting societies.
4. In the absence of an amicable agreement, the remuneration shall be determined by the competent authority.
5. The competent authority may be a court, an administrative authority or an arbitration body. It shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions. Where it is not a Court, provision shall be made for procedures whereby improper or unreasonable exercise of the competent authority's powers or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

#### Article 20

The provisions of this chapter shall not affect the moral rights of copyright owners and equivalent personal rights of owners of related rights.

### CHAPTER VI : FINAL PROVISIONS

#### Article 21

For the purposes of this Directive :

1. "Broadcasting" means the initial transmission or retransmission by wire or over the air, including those by satellite, in unencoded or encoded form, of radio and television programmes intended for reception by the public. Except for the purposes of Chapter V, it includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.
2. "Broadcast advertising" means an announcement in any form broadcast by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations. It does not include sponsored programmes.

3. "Internal broadcasts" means initial transmissions by public or private undertakings engaged in broadcasting on the territory of a Member State, including transmissions exclusively intended for reception in other Member States. It also includes the initial re-transmission by such undertakings of broadcast transmissions originating from an undertaking engaged in broadcasting on the territory of a State other than a Member State.
4. "Cross-frontier broadcasts" means internal transmissions that can be received directly by the public in another Member State or by way of retransmission even where they are re-transmitted by an undertaking established in the territory of that other Member State.

Article 22

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ..... They shall forthwith inform the Commission thereof.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields governed by this Directive.

Article 23

Before the end of the sixth year after the date given in Article 22, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on the manner in which this Directive has operated and, if necessary, make further proposals to adapt it to developments in the broadcasting field.

Article 24

This Directive is addressed to the Member States.

Done at

For the Council