



COMMISSION OF THE EUROPEAN COMMUNITIES

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THIRD COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT
on the application of Articles 4 and 5 of Directive 89/552/EEC
"Television without Frontiers"
for the period 1995-96
including an overall assessment of application
over the period 1991-96

CONTENTS

SUMMARY	3
INTRODUCTION	5
I - SUMMARY OF REPORTS FROM MEMBER STATES	7
II - SUMMARY OF REPORTS FROM THE MEMBER STATES OF THE EUROPEAN FREE TRADE ASSOCIATION THAT ARE PART OF THE EUROPEAN ECONOMIC AREA	45
III - COMMISSION'S OPINION ON THE IMPLEMENTATION AND GENERAL CONCLUSION OF THE PERIOD 1991-1996	48
1. Commission's opinion on the Member States' reports	48
1.1. <u>Implementation by EU Member States</u>	48
1.2. <u>Implementation by the Member States of the European Free Trade Area participating in the European Economic Area</u>	55
2. Commission's opinion on the period 1991-1996	56
2.1. <u>European works</u>	56
2.2. <u>Independent productions</u>	56
2.3. <u>Classifying the channels</u>	57
IV - MONITORING IN THE FUTURE: THE NEW TELEVISION WITHOUT FRONTIERS DIRECTIVE	59
1. The new Television without Frontiers directive	59
2. Monitoring in the context of the changing face of the audiovisual industry in Europe	61
V - ANNEXES	64
Annex 1: "Suggested guidelines for the monitoring of the "Television without Frontiers" Directive" (in force for the period covered by this report)	65
Annex 2: Number of channels per country in Europe (1992-1996)	68
Annex 3 : List of channels not achieving the target for European works and independent productions (1995-1996)	70

SUMMARY

This is the third Commission monitoring report on the application of Articles 4 and 5¹ of the Television without Frontiers Directive.² It covers the 1995-96 period running from 1 January 1995 to 31 December 1996.

It comprises four chapters: Chapter I summarises the national reports sent in by the Member States; Chapter II summarises the national reports sent in by the European Free Trade Association (EFTA) States that are part of the European Economic Area (EEA); Chapter III contains the Commission's opinion on the application of Articles 4 and 5 during the reference period and over the whole period 1991-96; Chapter IV discusses how monitoring will operate in the future under the new "Television without Frontiers" Directive as the face of television broadcasting changes with the arrival of digital television and the enormous increase in the number of channels.

The period 1995-96

The reports for the period 1995-96 reveal that overall television channels did satisfactorily meet the objectives of Articles 4 and 5 in most cases.

When it came to devoting the majority of broadcasting time to European works, the channels fell into two main groups. However, this distinction was only made for the sake of clarity when analysing the results, since there was considerable variation between individual circumstances. The first group, covering Denmark, France, Germany, Ireland, the Netherlands and Portugal, improved their performance considerably over the period. The second group is more mixed, covering several countries where better performance by some channels is offset by other channels' worse performance. This was the case in Belgium, Greece, Luxembourg and the United Kingdom, although there were considerable differences between them. Finland's results were down over the period, but still satisfactory in terms of the objectives of the directive. Austria's results were not only down, but also no longer met the objectives. Spain and, to a lesser extent, Italy failed to provide all the information needed for the reports. Sweden's results stabilised over the period, but are inadequate.

As regards compliance with Article 5, which concerns independent productions, the results in the national reports are generally satisfactory.

¹ See footnote 5.

² See footnote 6.

The period 1991-96

The three monitoring reports on the application of Articles 4 and 5, covering the period 1991-96, were examined to see how the situation was developing and to draw some general conclusions.

Following the rapid increase recorded in the first report, the percentage of channels meeting the target of devoting a majority of broadcasting time to European works has stabilised.³ This trend, which dates from the second report, is borne out by this report. However, these figures do not tell the whole story, since they do not show the considerable changes in certain channels over the period or exactly how far the channels fall above or below the 51% mark.

The Member States have reported a considerable increase in the proportion of works by independent producers being broadcast, which means better compliance with Article 5 over the period. On the basis of the first report it was calculated that 68.4% of the channels on which information had been provided were complying with Article 5, whereas in the current report the percentage has risen to 85%.⁴

Now that Articles 4 and 5 have been in force for six years and three monitoring reports have been produced, an attempt has been made to classify the channels to get a better picture of how the obligation to devote a majority of broadcasting time to European works is being acted on and to see which types of channels are not meeting the objectives of the Directive. The main category of channels not meeting the targets is special-interest channels: due to the nature of their specialisation, they may find it difficult to comply with the Directive, since there may not be a sufficiently large pool of European works available in that specialist area. Two further categories are paying film channels, which are to a certain extent dependent on what is being shown in the cinemas, and channels that are new on the market. Other more marginal categories are also discussed in the report.

³ In 1993, 80 out of 118 channels, i.e. approximately 67.7% of channels, broadcast mainly European programmes

⁴ In 1996 information was provided by 177 of the 214 channels, and 151 of them were complying with their obligations under Article 5.

INTRODUCTION

This is the third Commission monitoring report on the application of Articles 4 and 5⁵ of Directive 89/552/EEC.⁶ It covers the 1995-96 period running from 1 January 1995 to 31 December 1996. It was drawn up on the basis of the reports sent in by the Member States concerning application of Articles 4 and 5 over the reference period and also contains the Commission opinion on the overall application of the articles, as provided for in Article 4(3).

⁵ "Article 4

1. Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and of Article 5.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive.

To that end, the Commission report shall, on the basis of the information provided by the Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

Article 5

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternately, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production."

⁶ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 298, 17.10.1989.

The Member States were required to submit their national reports to the Commission by 30 June 1997 (the Member States of the European Economic Area had until 1 December). Reminders to this effect were sent to the Permanent Representatives on 17 March 1997 (November 1997 in the case of the EEA States). The Commission actually received the reports over a period ranging from June to December 1997. Since the provisions of the Directive covered by this report and the operation of the Directive in general were discussed at some length in the two previous reports,⁷ covering the period from 1991 to 1994, these legal aspects will not be repeated here, but can be found by referring back to the previous reports.⁸

Suffice it to say that the "Television Without Frontiers" Directive is the legal reference framework for the pursuit of television broadcasting activities in the European Union, based on the coordination of certain provisions laid down by law, regulation or administrative action in the Member States. There have already been two reports, as provided for in Article 26, on the implementation of the Directive as a whole.⁹

⁷ For 1991-92: COM(94) 57 final, 3 March 1994; for 1993-94: COM(96) 302 final, 15 July 1996.

⁸ See in particular the section entitled "Provisions and Transposal of Directive 89/552/EEC", COM(96) 302 final, 15 July 1996, p. 4 ff.

⁹ The first implementation report (COM (95) 86 final), covering the period up to the end of 1994, concluded that the Directive needed to be reviewed. The second implementation report (COM (97) 523 final) covers the period from 1 January 1995 to 30 July 1997, which is when the new Directive came into force.

I - SUMMARY OF REPORTS

FROM MEMBER STATES

Key :

"NR" : not reported

"-" : channel not in operation over period in question.

BELGIUM

The Commission received three reports, one from the German-speaking Community (Deutschsprachige Gemeinschaft, DSG), the French-speaking Community (FrC) and the other from the Flemish Community (FlC).

GERMAN-SPEAKING COMMUNITY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
1	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
BRF	BRF	100	100	0	0	0	0

B) Reasons given by Member State for failure to reach proportion

1. European works

Not applicable.

2. Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

Total annual broadcasting time was 11.5 hours in 1995 and 10.5 hours in 1996.

FRENCH-SPEAKING COMMUNITY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
5	calendar year	Sampling (8 weeks chosen at random over the two years) for RTBF channels; systematic survey for RTL-TV i and Canal + TVCF channels

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
RTBF 1	RTBF	74	80	27	32	17	25
21	RTBF	91	71	22	18	10	14
RTL-TV i	TVI	45.57	43.70	17.19	10.92	9.6	7.77
CLUB RTL	TVI	29.05	30.72	16.74	23.25	3.22	3.83
CANAL +	CANAL + TVCF	42.54	52.35	28.28	30.41	NR	NR

B) Reasons given by Member State for failure to reach proportion

1. European works

RTL-TV i had said that certain types of programmes had been taken off and replaced with programmes of non-European origin and that it was difficult to find the right programmes at the right price on the European market.

As a new special-interest channel, *RTL Club*, was having difficult finding the right programmes for its target audience on the European market. Finally, the policy of *Canal+* on what films to broadcast was closely linked to what films were being shown in cinemas in Belgium.

Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

The 1995 figures for *Club RTL* cover the period from 15 February 1995, which was when the channel was launched, to 31 December 1995.

The Commission should point out that the *RTL TVi* and *Club RTL* channels are the same as the ones broadcast by *CLT S.A.* in Luxembourg, which is why they figure in the reports for both countries.

FLEMISH COMMUNITY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
7	calendar year	

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
TV 1	BRTN	63.3	64.1	10.6	25.4	100	75.6
TV2	BRTN	69.7	65.5	11.8	19.7	100	96
VTM	VTM	48	62	33	44	100	83
Kanaal 2	VTM	-	23	-	21	100	14
Filmnet1	Filmnet Television NV	34	25	34	9.2	93	91
Filmnet2	Filmnet Television NV	34	25	18	9.2	93	91
Supersport	Filmnet Television NV	74	75	23	23	100	100

B) Reasons given by Member State for failure to reach proportion

1. European works

Kanaal 2, which was launched by *VTM* on 30 January 1995, changed its programming policy as regards European programmes, which have been largely shown on *VTM* since 1996. The reasons given were competition from the new channel, *VT4*, the fall in advertising revenue and the higher prices of European programmes.

FilmNet Television offers 3 paying services broadcast on two channels: *Canal 1* (= *FilmNet 1*) and *Canal 2* (= *FilmNet 2* + *Supersport*). The report referred to the particular difficulty in complying with European quotas faced by pay channels that broadcast mostly films.

Independent productions

The report said that *FilmNet Television* was intending to show more local programmes, which would obviously be European.

C) Measures taken or envisaged by the Member State

Concerning *Kanaal 2*: Not reported.

Concerning *FilmNet* : Given the special nature of channels like this, the authorities saw no need to take any particular action.

DENMARK

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
6	calendar year	

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
DR 1	DR	77	79	19	18	13	14
DR 2	DR	-	76	-	21	-	15
TV2		61	65	67	67	84	86
DK 4	CIAC	100	100	70	70	10	10
TV Bio	PPV, DK	-	32	-	100	-	7
Erotica	DSTV	-	11	-	0.5	-	0.5

B) Reasons given by Member State for failure to reach proportion

1. European works

- *DSTV* gave several reasons for not meeting the quota, in particular problems with its associates and the ownership of its mother company, The Home Video Channel Ltd (UK), which belongs to SPICE Entertainment Companies (USA) and is obliged to schedule programmes produced by SPICE.

- *TV Bio* did not go on the air until 1 November 1996.

2. Independent productions

- *DSTV* : Same reasons as above.

C) Measures taken or envisaged by the Member State

The report said that the licenses issued to *TV Bio* and *DSTV* by the Independent Satellite and Cable Authority (*Selvstændige Satellit- og Kabelnævn*) required them to meet the quota of European programmes by the end of 1997.

The Ministry of Culture reserved the right to recommend that the Independent Satellite and Cable Authority look into the matter with a view to imposing penalties.

D) Further comment

The report said that *TV2*'s eight regional channels broadcast daily local bulletins, which lasted about half an hour and were basically made up of locally produced regional news programmes. Data on these programmes had not been included in the total figures.

GERMANY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
19	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)*</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
ARD	ARD-Rundfunkanstalten	90.3	90.3	41.9	43	40.8	41.6
ZDF	ZDF	85.1	79.3	62	74	71	70
3 SAT	ZDF-ORF-SRG-ARD	96.8	97.1	39.2	36.4	36.4	28.8
Deutsche Welle TV	Deutsche Welle	95	96	88.25	88.76	83	81
DSF-Deutsches Sportfernsehen	DSF Deutsches Sportfernsehen GmbH	98	97.9	86	87	86	87
KABEL 1	K1 Fernsehen GmbH	24.64	31.29	19.34	23.11	31.28	33.69
Onyx Music Television	Onyx Television GmbH	NR	NR	NR	NR	NR	NR
Premiere	Premiere Median GmbH & Co KG	35.10	31.17	100	100	97.98	97.36
Pro Sieben	ProSieben Media AG	45.78	47.04	33.45	35.78	34	38
RTL	RTL Deutschland Fernsehen GmbH & Co Betriebs KG	54	59	±35	±45	>5	>5

RTL2	RTL2 Fernsehen GmbH & Co KG	31	32	18	15	38	37
SAT.1	SAT.1 Satelliten Fernsehen GmbH	65	63	65	63	62	50
Super RTL	RTL Club Fernsehen GmbH & Co KG	26.5	29.8	10.65	10.96	>10	>10
TM3-Fernsehen für Frauen	TM3 Fernsehen GmbH & Co KG	64	63	64	63	51	52
VH-1	VH-1 Television GmbH & Co OHG	NR	NR	NR	NR	NR	NR
VIVA	VIVA Fernsehen GmbH & Co KG	70	70	6.1	5.4	100	100
VIVA 2	VIVVA Fernsehen GmbH & Co KG	40	40	0.9	1.3	NR	NR
VOX	VOX Film- und Fernseh GmbH & Co KG	15.9	31.5	14.85	26.27	15.95	30.24
WRTV (Der Wetterkanal- Wetter und Reise Television)	Wetter und Reise Television GmbH und Co. KG	-	99	-	99	-	99

* The recent works are calculated as a proportion of the European works, not of the independent productions.

B) Reasons given by Member State for failure to reach proportion

1. European works

Not reported.

The report did, however, distinguish between the normal programmes of the pay channel, Premiere, and the first-time showings it broadcasts. The percentages for first-time showings were as follows:

Premiere (first-time showings)	Premiere Medien GmbH & Co. KG	56.87	52.81	100	100	98.15	97.81
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2. Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

Since it is a 24-hour news channel, *n-tv/Der Nachrichtensender* was not included in the report. The music channel, *Onyx*, did not go on the air until 6 January 1996 and so the relevant data was not available. The weather channel, *Der Wetterkanal*, went on the air on 3 June 1996. The report ended with a table showing the launch dates of all the private channels in Germany.

GREECE

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
11	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
ET 1	ERT A.E.	86	85	45	46	NR	NR
ET 2	ERT A.E.	57.2	56.9	2.2	2.4	NR	NR
ET 3	ERT A.E.	60.8	61.7	3.37	3.51	NR	NR
ANT 1	Antenna Television A.E.	70.3	76	12.3	13.7	NR	NR
Mega Channel	Tiletypos A.E.	56	61	54	54	NR	NR
New Channel	Neo Kanali Radiotileorasi A.E.	53.3	53.5	36.3	36.7	NR	NR
Seven X	Xenia Radiophoniki kai Tileoptiki	71	65	25	15	NR	NR
Skai 100,4	Ermis Mazika Mesa Enimerosis A.E.	53	52.5	28	29.5	NR	NR
TV Makedonia	Radiotileoptikes Epicheiriseis Afoi Karavasili	93	95	7	5	NR	NR

Aristera Sta FM 902 T.V.	Radiotileoptiki A.E.	-	53	-	18	NR	NR
Kanali 5	NR	NR	NR	NR	NR	NR	NR

B) Reasons given by Member State for failure to reach proportion

1. European works

Not applicable.

2. Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

The report provided data on the hours of programming of recent European works without distinguishing which ones were made by independent producers, which is why these data could not be included in the above table.

The report also mentioned a channel called *Kanali 5*, but gave no data on it.

SPAIN

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
13	calendar year	

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)*</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
TVE-1	Radiotelevisión Española	58	50	10.8	11	6	6.9
TVE-2	Radiotelevisión Española	77	76	13.1	14.2	6.3	7
ANT-3	Antena 3 Televisión	43	42	11.9	12.6	3.4	2.6
TELE-5	Geste Visión Tele 5	33	38	13.6	30.00	12.4	26.6
CANAL+	Sociedad de TV Canal +	39	40	16	18	13.3	13.2
CST	Radiotelevisión Andaluza	61	62	28.9	30.3	23.2	21.2
ETB-1	Euskal Irrati Telebista	81	78	14	14.7	8	7.2
ETB-2	Euskal Irrati Telebista	55	51	6	6.3	4.1	4.6
TV-3	Televisión Cataluña	66	65	2.2	2.8	1.8	2.2
TV-33	Televisión Cataluña	79	79	5.8	5.6	2.2	2.9
TVG	Televisión Galicia	72	75	10.8	11.2	4.6	4.8
TVAM	Televisión Madrid	52	53	11	11.4	7.3	7.1

TVV	Radiotelevisión Valenciana	58	53	16	16.2	10.4	10.8
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*Recent works were not calculated as a percentage of independent productions but of European works in general.

B) Reasons given by Member State for failure to reach proportion

The report said that reasons would be given at a later date.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

Data on certain channels under Spanish jurisdiction were not reported. The Commission is currently in contact with the Spanish authorities concerning this matter.

FRANCE

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
18	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
TF1 (a)	TF1	64.2	66.8	12.5	14.9	100	100
France 2 (a)	France Télévision	77.9	79.6	17.8	17.5	100	100
France 3 (a)	France Télévision	69.8	67.9	18.1	16.8	100	100
Canal + (a)	Canal + SA.	58.2	65	10.8	13.1	100	100
La Cinquième (a)	France Télévision	88.2	83.9	72.1	66.3	100	100
M6 (a)	Métropole TV	66.1	63.5	17	15	100	100
Canal J (c)	Canal J SA	63.7	72	48.2	52		
Canal Jimmy (b)	Canal Jimmy SNC	53.6	52	40	37.1		
Ciné-Cinéfil (b)	Ciné-Cinémas Câble SA	60	61.5	64.3	45		
Ciné-Cinémas (b)	Ciné-Cinémas Câble SA	52.6	54.3	67	42.8		
MCM/ Euromusique (b)	Euromusique SA	85.3	86.7	13	15		
Muzzik (c)	Métropole TV	-	95.7	-	90.7		

Multivision	Telcarte SA	5.5	23.9	NR	NR	NR	NR
Paris Première (c)	Paris Première	91	95	48.1	50.7		
Planète (b)	Planète Câble SA	80	80	42.3	65		
Série Club (c)	Extension TV SA	55	55.5	53.4	50.6		
TMC (c)	Monégasque des Ondes	56.6	61.6	32.7	38		
Voyage (c)		-	70.6	-	41.1		

B) Reasons given by Member State for failure to reach proportion

1. European works

The report said that the pay-per-view channel, *Multivision*, was having difficulties getting the broadcasting rights for recent European works and that it had not been launched until May 1994.

2. Independent productions

Not applicable.

C) Measures taken or envisaged by the Member State

The report said that, since the licence agreement between *Multivision* and the *Conseil Supérieur de l'Audiovisuel* (CSA) had come up for renewal in May 1997 and other pay-per-view channels had applied for licences, the CSA would be looking into various ways of making sure that channels of this type met the quotas in the future.

D) Further comment

Launch date

Muzzik started broadcasting in June 1996 and *Voyage* in February 1996.

Channels not included

The report referred to various channels that were given licences in 1996 (*Festivals, Teva, Seasons, 28 AB Sat* channels). Since these did not actually go on air until rather later (only 3 of the AB Sat channels are actually broadcasting), they figure on only very few cable networks and so were not included in the report.

Channels not broadcasting programmes covered by Article 6 of the Directive were also left out of the report. This means the 24-hour news channels (*Euronews* and *LCI*), sports channels (*Eurosport France* and *Eurosport International*), advertising-only channels (*CTV* and *Rapido*) and a weather channel.

Independent and recent productions

The figures provided relate to both independent and recent productions, as defined in Articles 3, 9, 10 and 11 of Decree No 90-67 of 17 January 1990, as amended, which contains more restrictive criteria concerning the basis for the definition of works, the concept of orders, the scope of the obligation and the limit on a broadcaster's stake in the capital of a production company.

The figures show:

- independent works and recent works as percentages of company turnover for channels marked (a);
- independent works as a percentage of the programming budget for channels marked (b);
- independent works as a percentage of transmission time for channels marked (c).

Particular cases

Arte, a Franco-German channel devoted to European arts programmes.

Arte	Arte GEIE	85.6	84.1	38.7	41	NR	NR
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The independent production figures relate to the percentage of the programming budget of *La Sept*, the French partner in the EEIG.

TV5 Europe is an international channel showing programmes already broadcast by various French-language channels in their own countries (*TF1*, *France 2*, *France 3*, *RTBF*, *SSR*, *CTQC*). Consequently most of the programmes broadcast are European.

France Supervision broadcasts a selection of mostly European programmes from *France 2* and *France 3* in 16:9.

IRELAND

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
2	calendar year	systematic survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
RTÉ 1; Network 2	Radio Telefis Éireann (RTÉ)	76	88	14	16	100	100

B) Reasons given by Member State for failure to reach proportion

1. European works

Not applicable.

2. Independent productions

Not applicable.

C) Measures taken or envisaged by the Member State

None.

D) Further comment

The report pointed out that the data were based on complete surveys and not samples. It also said that under Section 5 of the Broadcasting Authority (Amendment) Act of 1993, independent producer means a producer who has control over the making of the programme and is neither a subsidiary nor a holding company of the broadcaster. The national authorities felt that the maximum of 90% of a producer's output over a

three-year period, as proposed in the guidelines, was not suitable for Ireland, whose only broadcaster during the reference period had limited production capacity.

The report ended by announcing that an Irish-language channel, *Teilifís na Gaeilge*, had started broadcasting on 31 October 1996.

ITALY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
13	calendar year	

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
RAI Uno	RAI - SpA	75.10	70.00	15.70	15.40	NR	NR
RAI Due	RAI - SpA	63.10	61.90	20.00	22.90	NR	NR
RAI Tre	RAI - SpA	79.70	75.60	25.20	22.60	NR	NR
Canale 5	RTI SpA	76.16	75.46	NR	11.76	NR	45.47
Italia Uno	RTI SpA	43.21	38.81	NR	14.88	NR	33.95
Rete Quattro	RTI SpA	37.28	40.86	NR	17.16	NR	20.12
Telepiù Uno	Prima TV	34.84	34.97	NR	NR	NR	NR
Telepiù Due	Europa TV	100	100	NR	NR	NR	NR
Telepiù Tre	Omega TV	83.30	96.22	NR	NR	NR	NR
TMC		NR	NR	NR	NR	NR	NR
TMC 2		NR	NR	NR	NR	NR	NR
Rete Mia		NR	NR	NR	NR	NR	NR
TBS Rete		NR	NR	NR	NR	NR	NR

B) Reasons given by Member State for failure to reach proportion

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

The report stated that Italian law did not currently contain a definition of independent producer, although one was due to be included in Bill No 1138 to amend the Media Act No 223/90.

The report gives average percentages of European works and independent productions for the general channels. The percentage of European works was 62.42 % in 1995 and 60.43 % in 1996, while the percentage of independent productions was 20.2 % in 1995 and 17.45 % in 1996.

The report regretted the broadcasters' failure to provide data on *TMC*, *TMC2*, *Rete Mia* and *TBS-Rete*. The data would be reported at a later date.

LUXEMBOURG

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
8	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
RTL 4	CLT S.A.	48.08	52.50	36.51	41.28	27.83	33.84
RTL 5	CLT S.A.	33.63	29.33	27.68	21.51	20.54	15.55
RTL Television	CLT S.A.	54.10	59.51	35.00	45.00	Satisfact. proport.	Satisfact. proport.
RTL TVI	CLT S.A.	45.57	43.70	17.19	10.92	9.60	7.77
Club RTL	CLT S.A.	29.05	30.72	16.74	23.25	3.22	3.83
RTL 9	CLT S.A.	52.45	58.86	29.15	40.28	4.72	4.25
RTL 7	CLT S.A.	-	39.16	-	33.75	-	rather small %
RTL Télé Lëtzebuerg (Hei Elei)	CLT S.A.	100	100	± 10	± 5	± 10	± 5

B) Reasons given by Member State for failure to reach proportion

1. European works

RTL Television and *RTL 9* met the quota, while *RTL 4* and *RTL 5* were continuing to improve. *RTL 4* passed the 50% threshold in 1996, whereas *RTL 5*'s improvement was adversely affected in 1996 by preparations for a new format.

The proportion of European works broadcast by *RTL TVi* dropped in 1995 and 1996, while *Club RTL*, the sister channel of *RTL TVi* launched in 1995, improved its percentage in 1996.

The reason given by the broadcaster for the failure of *RTL5*, *RTL TVi* and *Club RTL* to meet the quota was the lack of availability of European fiction programmes suitable for these channels at competitive prices.

The report also contained a table showing the average progress made by all the channels since 1991.

2. Independent productions

In autumn 1995 *RTL Télé Lëtzebuerg* introduced a new format which made it no longer possible to maintain the proportion of works by independent producers at 10%.

C) Measures taken or envisaged by the Member State

The report said that the Government had called on the broadcaster to take the necessary action to comply with Articles 4 and 5 of the Directive, as transposed into Luxembourg law.

D) Further comment

RTL7 was not launched until 6 December 1996, so the figures given are not particularly significant. *Club RTL* started broadcasting on 13 February 1995. *RTL9* is the new name of the channel that was called *RTL TV* in the previous monitoring report.

The report stated that *RTL5* had gone over to a new format at the beginning of 1997, devoted mainly to news and weather, so the figures from 1997 onwards would not be comparable with those from the period 1991-96.

Although not giving any figures, the report also referred to *Galavisión*, a channel belonging to *Televisa S.A de C.V.*, under the heading "Programmes transmitted via a satellite under Luxembourg jurisdiction or by broadcasters using an up-link located in the Grand-Duchy of Luxembourg, but not falling under the jurisdiction of any Member State". This channel carries many programmes that do not count for the purposes of calculating the proportion of European works and of those that do count very few are European, most of them being of Mexican origin. The report finished by saying that this channel was due to discontinue broadcasting via Astra satellite and would then no longer come under Luxembourg jurisdiction.

NETHERLANDS

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
9	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
NED. 1		67	73	23	25.33	81	83.33
NED . 2		77	85.66	27	31	96	89
NED. 3		78	82.5	17	20.25	87	80.75
TV 10		45	48	NR	NR	0	0
Veronica	HMG B.V.	37.6	70.9	29	57.7	96.7	97.1
SBS 6	Scandinavian Broadcasting System SBS 6 B.V.	30.9	0.7	28	29.5	100	100
Canal +	Canal + Nederland B.V.	15	18	15	17	100	100
Music Factory	The Music Factory B.V.	> 50	> 50	NR	NR	99	99
The Box	The Box Holland B.V.	± 70	± 70	NR	NR	99	99

B) Reasons given by Member State for failure to reach proportion

1. European works

According to the report, *SBS6* and *TV10* quoted their start-up period as the reason for their failure to meet the quota.

Canal+ said that since it specialised in films and sport, it would be impossible for it to meet the quota of European works, since the majority of popular films were produced outside Europe. The channel had asked for an exemption under Article 53b(5) of the Media Decree ("*mediabesluit*"). The national authorities were considering whether an exemption could be granted.

In the case of the music channel, *The Music Factory*, the report said that it was difficult to determine the origin of the video clips, i.e. where the production company was registered. In its report *The Music Factory* had said that generally speaking a good half of the video clips broadcast were European productions and that nearly all the items broadcast were recent works.

2. Independent productions

TV10 is a commercial channel that broadcasts old television series. The series are over 5 years old and so the percentage of recent productions is zero. Since the series are old ones, it is also often difficult to find out the names of the producers and, therefore, to establish the percentage of independent productions.

C) Measures taken or envisaged by the Member State

The report said that the monitoring authorities would be making sure that *SBS6* reached a satisfactory percentage in 1996-97. In any case, *SBS6* itself had said that it was expecting a steady increase in the number of European productions.

D) Further comment

Veronica started broadcasting in September 1995; *SBS6* on 28 August 1995; *The Music Factory* on 1 May 1995 and *The Box*, another music channel, on 31 May 1995.

Canal+ used to be called *Multichoice*.

The report explained that *The Box* was an interactive music channel, where viewers could phone in and make requests.

In the case of *Canal +* and *TV 10*, the survey was carried out over a week each three months.

AUSTRIA

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
2	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
ORF 1	ORF	48.4	40.8	17.6	16.0	40.7	39.3
ORF 2	ORF	85.1	79.6	20.3	17.6	43.7	49.2

B) Reasons given by Member State for failure to reach proportion

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

PORTUGAL

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
5	calendar years	survey, except for TVI: sampling

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
Canal 1	RTP, SA	45.7	55.1	13.6	18.5	93	76
TV 2	RTP, SA	70.9	62.4	10.1	9.4	92	50
RTP I	RTP, SA	99.4	99.9	51.3	44.8	82	78
SIC	SIC, SA	30.7	37.9	21.4	27	87.8	92.6
TVI	TVI, SA	21.6	23.8	7.9	10.6	77	70

B) Reasons given by Member State for failure to reach proportion

1. European works

The report stressed that *SIC* had been improving (up 7% between 1995 and 1996) and that it had only been on the market since October 1992. Other reasons quoted were the small advertising market in Portugal and competition from Brazilian productions, which have already paid for themselves by the time they get to Portugal and are, therefore, available more cheaply than Portuguese productions.

TVI is the latest broadcaster to be launched on the Portuguese market; its percentage of European productions is progressing satisfactorily as stipulated in Article 4(1) of the Directive.

2. Independent productions

The report noted that *TV2*'s proportion of independent productions had improved, reaching 12.2% by December 1996.

C) Measures taken or envisaged by the Member State

The Portuguese authorities saw no reason to impose any penalty on *Canal 1*, since its percentage was rectified by 1996. The same applied to *TV2*'s proportion of independent productions in 1996, which has been improving ever since.

The Portuguese authorities have been making it clear to the private channels, *SIC* and *TVI*, that they must take action to bring their percentages closer to the levels stipulated in the Directive. However, since both channels have been gradually improving, the authorities decided not to impose any penalties but to monitor the situation closely.

D) Further comment

The report drew attention to the problem of countries with low audiovisual production capacity and a less widely spoken language.

SWEDEN

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
11	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
TV 1000	TV 1000 Sverige AB	35	32.5	35	32.5	NR	NR
TV 1000 Cinema	TV 1000 Sverige AB	35	20.5	35	20.5	NR	NR
TV 6	TV 6 Broadcasting AB	47	50	47	50	NR	NR
FilmNet Plus	FilmNet Television AB	10	11	10	11	NR	NR
FilmNet- the Com- plete Movie Channel	FilmNet Television AB	10	11	10	11	NR	NR
The Adult Channel	The Adult Channel (Sweden) AB	NR	NR	NR	NR	NR	NR
Z TV	Z TV AB	79	80	15	80	NR	NR
TV 4	TV 4 AB	43	50	53	40	NR	NR
-	Sveriges Utbildnings- radio AB	96	99	27	23	NR	NR

SVT 1	Sveriges Television AB	80	82	19	23	NR	NR
SVT 2	Sveriges Television AB	90	86	15	22	NR	NR

B) Reasons given by Member State for failure to reach proportion

1. European works

The report said that the pay channels, *TV 1000 FilmNet* and *FilmNet Plus*, had had difficulty finding sufficient numbers of attractive European productions on the market and obtaining the rights for them.

2. Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

The 1995 data on European works for *TV 1000*, *TV 1000 Cinema*, *FilmNet Plus* and *FilmNet-The Complete Movie Channel* were not broken down.

The 1995 percentages of independent productions for *TV4* refer to the proportion of the programming budget and not the broadcasting time.

The educational channel, *Sveriges Utbildingsradio*, broadcasts its programmes during programming gaps on *SVT 1* and *SVT 2*.

According to the report, *The Adult Channel* filed for bankruptcy in January 1996, which is why no data could be provided. The report also said that *FilmNet-The Complete Movie Channel* and *FilmNet Plus* were under new ownership,¹⁰ which would change their programme scheduling from September 1997.

¹⁰ Canal Plus.

FINLAND

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
3	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
TV1	YLE	84	81	22	19	73	67
TV2	YLE	85	76	7	24	52	55
MTV 3	MTV 3	57	57	20	21	100	100

B) Reasons given by Member State for failure to reach proportion

1. European works

Not applicable.

2. Independent productions

Not reported.

C) Measures taken or envisaged by the Member State

Not applicable.

UNITED KINGDOM

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
80	calendar year	survey

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
3+		-	24	-	18	-	18
Adult Channel		38	38	24	25	23	25
Ag Vision		100	100	0	0	0	0
Asianet		10	7	9	1	9	1
BBC Prime		100	100	9	4	9	4
BBC World		97	98	11	7	11	7
BBC1		68	67	18	18	18	18
BBC2		72	73	21	20	21	20
Box Music TV		66	71	25	25	0	0
Bravo		54	47	0	0	0	0
Carlton Food Network		-	83	-	10	-	31
Carlton Select		91	80	19	23	31	15
Cartoon Network		15	20	16	19	8	9
Challenge TV (formerly the Family Channel)		25	36	10	13	10	14

Channel 4		57	57	40	40	35	35
Chinese Channel		4	5	4	5	4	5
Chinese News and Entertainment		1	2	0	0	0	0
Christian Channel		-	24	-	14	-	14
CNBC		-	54	-	54	-	54
Cultural Television		100	100	65	65	31	31
Discovery Channel		55	55	35	36	31	33
Disney Channel UK		19	19	6	5	4	4
EBN		90	80	0	0	0	0
Fox Kids		-	19	-	8	-	4
GSB Goodlife TV		-	100	-	0	-	0
GSB Men + Motors		-	85	-	0	-	0
GSB Plus		-	100	-	0	-	0
GSB Talk TV		-	59	-	0	-	0
Het Weer Kanaal		-	100	-	100	-	100
History Channel		8	34	3	12	3	12
Home Video Channel		14	21	3	11	2	8
ITV		71	70	26	24	24	23
JSTV (previously Japansat)		0	0	0	0	0	0
Kanal 5		-	15	-	15	-	15

Kindernet CV		90	77	78	63	11	9
Landmark Travel Channel		39	47	42	41	5	30
Landscape Channel		100	100	100	100	100	100
Live TV		86	86	3	3	0	3
MBC Ltd (Middle East Broadcasting)		14	23	0	1	0	1
MED TV		99	78	74	47	68	47
Movie Channel		18	17	11	7	4	3
MTV Central		80	83	62	60	62	60
MTV North		80	83	62	60	62	60
MTV South		80	83	62	60	62	60
Muslim Television Ahmadiyyah		94	81	0	4	2	3
Namaste TV		8	13	0	0	0	0
NBC		46	58	19	55	19	55
Nickelodeon		27	25	8	11	5	9
Paramount Comedy Channel		1	7	7	3	0	3
Parliamentary Channel		100	95	75	25	75	25
Performance - The Arts Channel		70	73	22	25	10	5
Playboy TV		-	6	-	0	-	0
S4C		100	100	76	74	68	66
Sat-7		25	25	45	50	45	50

Sci-Fi Europe LLC		2	8	8	9	1	6
Sky 2		0	27	0	0	0	0
Sky Movies		25	13	10	5	11	1
Sky Movies Gold		27	20	16	12	0	0
Sky One		33	38	10	4	10	4
Sky Scottish		-	25	-	0	-	0
Sky Soap		4	7	0	0	0	0
Sky Travel Channel		23	32	17	13	15	13
Step-Up		100	100	100	100	100	100
TCC		21	22	10	14	6	11
TCC Nordic		-	21	-	18	-	6
Television X		47	47	10	26	16	20
TLC (The Learning Channel)		67	50	45	35	42	35
TNT		22	33	22	33	5	0
TV 1000 Sverige AB		36	32	0	0	0	0
TV3 Denmark		36	54	17	17	17	17
TV3 Norway		34	47	18	12	18	12
TV3 Sweden		41	55	26	22	26	22
UK Gold		54	51	14	15	12	13
UK Living		66	54	66	54	64	53
VH1		87	97	98	88	30	30
VH1 Export		-	98	-	88	-	30
Vision Channel		39	49	29	35	25	32

VT4		32	27	26	18	17	18
Weather Channel		-	100	-	0	-	0
Zee TV (formerly Asia TV)		18	21	2	0	0	0

B) Reasons given by Member State for failure to reach proportion

1. European works (several reasons may be given at once)

a) because of the subject matter of the channel

History Channel (history documentaries), *Home Video Channel* (action films), *Movie Channel* (recent films), *Nickelodeon* (programmes for children), *Playboy TV* (erotic programmes), *Sat-7* (religious programmes), *Sci-Fi Europe LLC* (science-fiction), *Sky Movies* (films), *Sky Gold* (films), *Sky Soap* (soap operas), *Sky Travel Channel* (travel), *Vision Channel* (religious programmes).

b) because of when the channel began broadcasting

3+, *Christian Channel*, *Disney Channel*, *Fox Kids*, *Sky Scottish*, *VT4*.

c) because of non-European language programmes¹¹

Asianet, *Chinese Channel*, *Chinese News and Entertainment*, *JSTV*, *MBC Ltd* (Middle East Broadcasting), *Namaste TV*, *ZeeTV*.

d) because of difficulty in finding European programmes or finding European programmes at competitive prices

Challenge TV, *Kanal 5*, *Nickelodeon*, *Playboy TV*, *Sci-Fi Europe LLC*, *Sky 2*, *Sky One*, *Sky Soap*, *Sky Travel Channel*, *TCC*, *TCC Nordic*, *Television X*, *TV3 Denmark*, *TV3 Norway*, *TV3 Sweden*, *VT4*.

e) subsidiaries of companies based in non-member countries broadcasting programmes mostly from their own stock

Cartoon Channel, *Fox Kids*, *Landmark Travel Channel*, *Paramount Comedy Channel*, *Sat-7*, *TNT*, *Vision Channel*.

f) other reasons

The Adult Channel (ending of a commercial agreement with a producer of European programmes)

2. Independent productions

¹¹ Directive 97/36/EC amending the 1989 Directive takes account of this problem. Recital 29 reads: "... channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5...."

BBC Prime and *BBC World* quoted contractual problems (transfer of rights) causing difficulties in meeting the quotas stipulated in the Directive. *Bravo* is a special-interest channel that broadcasts only films over ten years old and so commissioning programmes does not enter into their scheduling. *GSB Goodlife TV*, *GSB Men+Motors*, *GSB Plus* and *GSB Talk TV* are new channels with insufficient budgets to allow for larger investment in production.

C) Measures taken or envisaged by the Member State

The Department for Culture, Media and Sports (DCMS) has asked broadcasters who have failed to meet the quotas to give detailed reasons for this failure and to state when and how they intend to reach the required level.

The Commission received additional information stating that the British authorities had taken the following further steps to improve compliance with Article 4:

- Where quotas have not been met and no reasonable justification has been given, the authorities may use Section 188 of the Broadcasting Act 1990, which provides for a range of penalties right up to withdrawal of the license.
- The British authorities are organising an annual conference for all broadcasters operating under a British licence, concerning compliance with Community legislation. The first was held in 1997.
- From now on broadcasters will be required to provide the necessary data every three months.

Further information in the British report showed that there had been overall improvement in meeting the targets, as illustrated in the following table:

European works				Independent productions				Recent works			
1993	1994	1995	1996	1993	1994	1995	1996	1993	1994	1995	1996
44	45	52	54	23	26	30	27	20	17	21	21

D) Further comment

The report surveyed 154 channels operating under a British license, although 42 of them were not in operation during the reference period. A further 29 of the channels surveyed were not subject to the quotas, since they were devoted exclusively to news, sports events, games, advertising or teletext, and are not included in Table A.2.

The authorities have laid the report before the two Houses of Parliament, whose libraries have made it accessible to the public.

**II - SUMMARY OF REPORTS FROM THE MEMBER STATES OF
THE EUROPEAN FREE TRADE ASSOCIATION THAT ARE
PART OF THE EUROPEAN ECONOMIC AREA**

ICELAND

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
3	calendar year	

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works (RW)</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
RÚV	Ríkisutvárpíð	53.5	53	37	35	80	79
Stöð (Channel) 2	Independent Broadcasting Service	29	39	26	22	100	100
Sýn	Independent Broadcasting Service	44	28	43	41	100	100

B) Reasons given by Member State for failure to reach proportion

1. European works

Not reported.

2. Independent productions

Not applicable.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

Sýn was launched on 16 November 1995.

NORWAY

A) Statistical statement

1. Summary table

<i>Number of channels</i>	<i>Reference period</i>	<i>Method</i>
4	calendar year	survey and/or sampling (see D)

2. Proportions (%)

<i>Channel</i>	<i>Broadcaster</i>	<i>European works (EW)</i>		<i>Independent productions (IP)</i>		<i>Recent works</i>	
		<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>	<i>1995</i>	<i>1996</i>
NRK 1	NRK	80	80	57	55	79	71
NRK 2	NRK	-	64	-	78	-	71
TV2	TV2 AS	53.4	53.9	42.8	48.2	100	100
TV Norge	TV Norge AS	21.3	10.7	10	7	77.6	90.4

B) Reasons given by Member State for failure to reach proportion

Not reported.

C) Measures taken or envisaged by the Member State

Not reported.

D) Further comment

The data in Table A.2. on independent productions and recent works for all channels and on European works for *TVNorge* are based on a sample of four weeks chosen at random over four three-month periods, whereas the data on European works for *NRK1*, *NRK2* and *TV2* are based on a systematic survey.

NRK2 did not start broadcasting until 1996.

III - COMMISSION'S OPINION ON THE IMPLEMENTATION AND GENERAL CONCLUSION OF THE PERIOD 1991-1996

1. *Commission's opinion on the Member States' reports*

1.1. Implementation by EU Member States

The Commission's opinion is based on extracting information from the Member States' reports on conclusions and general trends, with a view to giving a more comprehensive picture of the effects of Articles 4 and 5 of the directive and the extent to which they are being implemented.

Previous reports gave a great deal of space to discussing aspects relating to method, such as defining the territory of jurisdiction or the channels covered, the method of calculating the quota and the state of progress in enacting the relevant provisions in the Member States. The Commission feels there is no need to go back over that ground in this report, as monitoring is now fully operational.

The first conclusion to be drawn from 1995-96 concerns the figures for the total number of channels mentioned in the Member States' reports. These were 189 for 1995 and 214 for 1996. By way of comparison, there were 162 in 1994, 159 in 1993 and 124 in 1991-92.¹² In other words, there was a rapid and substantial increase in the number of television channels operating in Europe. This trend may create difficulties for the monitoring system as it currently operates, as will be seen in the next chapter.

As regards compliance by television broadcasters with the requirement that a majority of the works broadcast must be European, and the requirement in Article 5 concerning independent productions, the findings set out in the Member States' reports are by and large satisfactory, with the aims of the directive being met in most cases. The results of the monitoring exercise covering 1995 and 1996 are set out in greater detail below.

1.1.1 Requirement to broadcast a majority quota of European works

As regards the requirement that most of the material broadcast must be European, countries fall into two main groups: some made considerable progress over the period in question, while with others there were mixed results, with the proportion put out by some broadcasters even falling. The point of drawing this distinction is to give a clear picture of the breakdown; otherwise it has no validity, considering how different the broadcasting scene is from one country to another.

¹² Using figures based on estimates for Austria, Finland and Sweden for 1991/92-1993.

In the first group, there was an overall increase in the percentage of European works broadcast in 1995-96. The countries concerned were Denmark, France, Germany, Ireland, the Netherlands and Portugal.

- In **Denmark**, the quota was by and large met, except in the case of two special-interest and/or recently established channels. In one case, the reason for failure to comply was that the parent company which owned the channel imposed its own programmes. Although some of the figures for 1995 are missing, when it comes to the channels which did supply full data it is clear that the proportion of European works broadcast increased over the reference period. The report says that the Ministry of Culture reserved the right to recommend that the Independent Satellite and Cable Broadcasting Authority examine the situation before imposing any penalties.
- In **Germany** most of the channels complied with the directive, with five of them coming out at between 90 and 100%. Those which did not meet the quota did nevertheless increase their percentage year on year, with one exception. Concerning the first channel, the national report draws a distinction between the general programme put out on the channel and first television presentations, which did meet the majority quota requirement.
- **France** complied with the requirements of the directive by a wide margin, with overall results up year on year, except in the case of Multivision, a pay-TV station. The report says the reason for this was the difficulty of acquiring broadcasting rights for European works. It says that the CSA (Conseil Supérieur de l'Audiovisuel) would look into ways of enforcing compliance with the directive by government regulation. As regards Arte, as it is an unconventional case (a Franco-German European economic interest grouping), the report gives the figures for independent productions only in the case of La Sept, the French part of the grouping.
- **Ireland** met the requirements of the directive by a wide margin.
- **The Netherlands** gave the results for nine channels: six of them complied with Article 4, with an overall upward trend in the proportion of European works broadcast; in some cases (e.g. Veronica) the increase was very substantial.
- **Portugal** gave the results for five channels. Three did not meet the majority quota requirement in 1995, and two in 1996. Four of them, however, increased the proportion of European works broadcast over the period as a whole. The reasons put forward by the Member State have to do with competition from Brazilian productions, which have already covered their costs when they arrive on the market and are therefore more competitive than home-grown Portuguese productions, and the recent appearance on the market of a number of channels. The Portuguese authorities reminded certain channels of the need to meet the aims of the directive. As the findings showed that progress was being made, no penalties were imposed.

No general conclusion applying to all the countries in the second group can be drawn from the reports: the results differed markedly from country to country. There are countries such as Belgium, Greece, Luxembourg and the United Kingdom, where a rise in the quota broadcast by some companies offset a reduction by others; even these countries displayed quite different patterns from each other. There is also one country, Finland, where the results were down over the period but satisfactory in terms of the aims of the directive. In Austria the results were down and not satisfactory in terms of these objectives. Two countries did not supply all the information needed for the breakdown; these were Spain and, to a lesser extent, Italy. In Sweden, lastly, results stabilised over the two years but were inadequate.

- In **Belgium**, only about half the stations monitored broadcast the required majority quota. In five of them the proportion went down significantly between 1995 and 1996. The arguments put forward here were to do with the difficulty of finding European material to suit the target audience and at affordable prices, and the fact that some channels were new or that the broadcasting of new films was closely linked to their public screening in Belgian cinemas. There was, however, no indication of how it was proposed to remedy this failure to comply with the directive.
- In **Greece**, all the stations monitored met the majority quota requirement, although the percentage broadcast by four of them fell year on year. However, the figure went up in four others.
- **Finland** easily met the majority quota requirement, although there was a slight drop over the period.
- The **Luxembourg** report showed mixed results. Only half the stations met the majority quota requirement, with none of them exceeding 59% in 1996. The trend over the period was for a slight rise (RTL 4 first met the quota requirement in 1996). The reasons given were the lack of sufficient European feature-film material available at competitive prices and geared to the way the stations were oriented. As regards proposed action, the report said the Government had called on the broadcasting company to take the requisite steps to comply with the directive.
- The report from **Sweden** gave the results for 11 stations, which were, overall, a long way from meeting the majority quota requirement, though with four exceptions. There was very little change over the period, apart from the drastic drop in the figures for TV1000 Cinema (from 35 to 20.5% between 1995 and 1996). The reasons given were actually not to do with this particular station but with other channels devoted to broadcasting feature films, which were facing difficulties in carrying out their assignment, particularly in terms of acquiring rights to recent European works and the link with the results such works achieved when screened in Swedish cinemas.
- The **United Kingdom** submitted a very bulky report, covering 80 channels. Half of them met the majority quota requirement and were tending to stabilise. Some

channels fell below the 51% mark during the reference period (Bravo, TLC) or rose above it (NBC, TV3 Denmark, TV3 Sweden). Of the channels which did not meet the majority quota requirement, 20 made progress over the reference period. Land-based channels showed results in the vicinity of at least 80% and up to 100% in some cases. The national report gave a detailed analysis of the reasons for failure to comply, classifying the channels according to the reasons given, of which there were six. Most of these were the same as with the other national reports (channel only recently inaugurated; difficulty of finding European programmes at competitive prices; programme material imposed by the parent company; expiry of a contract). Other arguments put forward included special-interest programming by a channel and programming in a non-European language.¹³ Regarding measures which the Member State proposed to take, the report said that the Department for Culture, Media and Sport had asked broadcasters to say why they had failed to comply and state the deadlines and targets they had set themselves in order to reach the majority quota. Other sources mentioned in the national report¹⁴ also said that other strict and specific measures were planned and were already being implemented, with a view to securing greater compliance with Community law by broadcasters. The Commission wholeheartedly welcomes such endeavours and the action taken to encourage broadcasters to comply with the majority quota requirement. Note that TV1000 Sverige AB is included in the United Kingdom report, while the Swedish report also includes it but as a broadcasting body for TV1000 Cinema and TV1000. The figures in the two reports differ slightly. The Commission is currently seeking to have this point clarified.

- **Austria** reported on two channels: one by and large complied with the directive, while the other had not reached the majority quota requirement. Results at both had fallen significantly over the period; no further comment had been added by the Member State.
- In **Italy** there was two-thirds compliance with the directive – the figures for the other third varied between 34.97 and 40.86% in 1996. However, the figures for four small-audience channels were not submitted, and the report strongly regretted that the broadcasters concerned had not supplied the data. Overall there was a tendency for the percentage of European works broadcast to fall slightly over the period, with only two exceptions.
- The great majority of the channels covered by the report from **Spain** comply with the directive; among those which did not, there was no perceptible improvement between 1995 and 1996.

To make the arguments clearer and single out some points which are more concise than the national reports, it is possible to draw up a summary table of the reasons put

¹³ The new "Television without frontiers" Directive (97/36/EC), which amends the 1989 directive, contains a new recital, n°29, which stipulates that "... channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5 ...".

¹⁴ See Chapter II.

forward by the Member States for failure to comply with the majority quota requirement. The main reason which is seen as an obstacle to achieving the quota is the fact that a channel is new. This is an argument which the national reports put forward to excuse a large number of recently-established channels. The arguments they put forward are purely economic, to the effect that new stations, in the first few months, or even years, of their existence, opt for inexpensive, immediately available programmes, which in most cases are not European, and that they only start turning to European-made programmes and putting their own investment into productions originating in Europe once they have attained a certain "maturity" threshold on the market.

A second line of argument in relation to special-interest channels is that it is difficult to find European works on the market which match the specific criteria of their target audiences.

The case most often put forward is that of film channels like Canal +, where the broadcasting of European works is closely tied to the screening of the works in cinemas.

A third reason is that it is difficult to find competitively priced European works. This is an argument which is forever coming up in the Member States' reports. Another variant is that it is difficult to acquire the broadcasting rights for recent European works.

The reports also touch on the question of subsidiaries of companies from non-EU countries which may have to broadcast programmes based for the most part on what the parent companies have in stock.

Various other reasons mentioned by only a few of the Member States include the smallness of the national advertising market and competition from certain productions (Brazilian in the case of Portugal) which have already covered their costs when they arrive on the reference market, and are therefore more competitive than home-grown productions. Some reports draw attention to the special problem of countries which produce very little broadcasting material and whose language is not widely spoken. One national report draws a distinction between the general programme put out by a particular channel and first televised transmissions, in respect of which the majority quota does apply. Reports also refer to the expiry of contracts on commercial agreements with a producer of European origin.

1.1.2 The requirement relating to works by independent producers

The findings in the national reports as regards compliance with Article 5, concerning independent productions, are on the whole satisfactory.

- In **Belgium**, the quota for independent productions was met, all in all.¹⁵ The percentage achieved in 1996 was in most cases (seven out of a total of twelve) between 20 et 44%.
- **Finland** filled the required quota in 1996 – one channel, TV2, more than trebled its output between 1995 and 1996.
- In **Denmark**, with the exception of one channel, which also failed to meet the European works quota, the percentage requirement was met by a good margin.
- Only two channels in **Germany** failed to meet the objective, and one channel failed to supply the figures. The figures for most of them went well beyond the requirements of the directive, varying between 36.4 and 100% in 1996 (10 channels out of 19). The percentage put out by ten of the channels went up year on year.
- In **Greece**, the quota set by the directive was not met in three cases out of eleven, while the figures for the remaining stations were between 13.7 and 54% in 1996. There was a slight increase in the figure for most of these channels.
- In the case of **Spain**, most of the channels for which figures were supplied met the Article 5 objective. Many of them showed a very slight rise in the percentage output between 1995 and 1996.
- In **France**, the quota was achieved in all cases (except for one channel which did not supply the figures) and went beyond what is required by the directive: 11 channels out of 18 achieved results of more than 37%. However, the figures for certain channels put out on cable almost halved between 1995 and 1996.
- **Ireland** met the requirements of the directive by a wide margin.
- **Luxembourg** achieved the objectives of the directive by a wide margin, except for one channel. In this case the report says that the reason was the new format for the new 1995 broadcasting season. The findings as regards progress were mixed: while half the channels showed a considerable rise in output from 1995 to 1996, the figures for the other half went down.
- **The Netherlands** complied with Article 5, apart from one channel specialising in repeats of old television series. The trend was upwards.
- **Austria** gave details of two channels which achieved results in line with the aims of the directive, although the figures went down over the reference period.
- **Portugal** gave details of five channels which filled the quota, with the exception of one channel; here the report stressed that progress was being made, though that

¹⁵ Except for the German-speaking Community, where such broadcasts accounted for 11.5 hours in 1995 and 10.5 hours in 1996.

was not what was shown by the table for 1995-96. Overall the report drew attention to the special problem of countries which produce very little broadcasting material and whose language is not widely spoken.

- **Sweden** submitted a report showing that all channels, except for Adult Channel, which supplied no information, were well in line with the requirements of the directive. It is difficult to pick out any general trend, as the figures are down for four of the channels and up for five others.

Two Member States, the United Kingdom and Italy, stood out from the others in that their results were modest or incomplete.

- The **United Kingdom** submitted a report giving extremely varied figures for independent productions. Many channels (49) met the required quota, while the rest were below 10%, and 17 of them actually scored zero per cent. . There was a slight change in the figures year on year, which would suggest that trends are comparatively static (except for NBC, whose percentage went up from 19 to 55, and TNT, which dropped from 33 to 5%, and some others). The reasons given by the UK are contractual and economic, with recently established channels unable to invest in production owing to tight budgets.
- **Italy** supplied no figures the output of independent productions by most of the channels. As for the rest, the figures are well in line with the directive.

1.1.3 Monitoring of recently produced works

Monitoring implementation in this area is a particularly complicated exercise, on account of two main difficulties. Firstly, some of the Member States do not calculate the percentages on the basis stipulated by the Commission. Germany and Spain calculate the figures from the European works broadcast, not from the independent productions. Also some of the Member States do not supply the relevant data (Greece and Sweden) or only supply partial data (Italy, which only gives a few scant figures). It is therefore impossible to draw any conclusions on the matter at this stage.

The Member States' reports do not always state the reasons for failure to comply. Two of them mention the special case of certain channels which specialise in repeats of old television series, where it is often difficult to find out the name of the producer and consequently determine the percentage of independent productions broadcast. In many cases the reasons why so little independently produced material is broadcast have to do with the budget available, or the fact that there are no funds to invest.

One interesting observation is that when it comes to plans for measures to comply with the directive, television channels tend to contemplate running more locally produced material, in other words more European works, for commercial rather than statutory reasons.

1.2. Implementation by the Member States of the European Free Trade Area participating in the European Economic Area

This report, the first of its kind, gives the figures for Iceland and Norway. Liechtenstein did not submit a report as there are no broadcasters within its jurisdiction.

- **Icelandic** channels achieved satisfactory results in terms of independent productions but performance was weaker when it came to European works, where only one channel out of the three discussed met the Community's targets. The channel with the lowest figures only went on air recently. These results should be studied with due regard for the very limited scale of the national market.
- **Norway** submitted a table covering four channels. Three of these met the majority quota requirement for European works by a wide margin, while the figures for the channel which failed to comply fell by half between 1995 and 1996. The findings for independent productions were the same: the same channel, which just managed to meet the 10% investment quota in 1995, showed a fall to 7% in 1996. There was no commentary on this specific situation.

2. Commission's opinion on the period 1991-1996

The three monitoring reports on the application of Articles 4 and 5, covering the period 1991-96, were examined to see how the situation was developing and to draw some general conclusions.

2.1. European works

The first monitoring report noted an overall increase in the proportion of Europe programmes broadcast, particularly by channels who had not met the quota at the beginning of the exercise. Considerable progress was made between 1991 and 1992, when the rules had just started being applied. The second report contained figures comparable to those in the first report¹⁶ and showed that the overall average figure for compliance by all Member States was stabilising. The latest report confirms this trend. However, the Commission would stress that these figures should be interpreted with caution. Such overall figures do not show how much the performance of certain channels has changed over the period or exactly how far above or below the 51% mark they are. Moreover, the television industry varies considerably from one Member State to another, not only technically and organisationally, but also in terms of the choices, objectives and regulatory principles determined in the Member States, in accordance with Community law. Consequently the Commission feels that it would not be right to produce a comparative economic analysis on the basis of these overall data alone.

The Commission has based its evaluation of the application of Article 4 on whether the figures provided by the Member States are moving in the right direction, in the light of particular circumstances affecting broadcasters and national markets.

2.2 Independent productions

The Member States reported considerable increases in the proportion of works by independent producers broadcast over the period, meeting the requirements of Article 5. For example, in 1991-92 Spain, Portugal and Ireland were well under the required 10% (with only one Portuguese channel meeting the target), whereas in 1996 these countries' figures were satisfactory. Both the Irish channels and 10 of the 13 Spanish channels reached the 10% mark, and this time only one Portuguese channel failed to meet it. Furthermore, the number of Member States failing to report these figures has gone down. Whereas in 1991-92 it was difficult to measure compliance with Article 5 for Belgium, Luxembourg, Greece and the United Kingdom owing to a lack of data, this was no longer the case this time round.

¹⁶ See footnote 3.

At the time of the first report 68.4% of the channels on which information had been provided were reckoned to fulfil the requirements of Article 5. This time round the figure is 85%.¹⁷

2.3. Classifying the channels

Now that Articles 4 and 5 have been in effect for six years and three monitoring reports have been produced, this is a good time to try to classify the channels to get a better picture of who is and is not meeting the targets, on a different basis than the figures reported by the Member States. The national reports clearly show that the channels not meeting the quotas, particularly the quota for European works, fall into certain categories.

Several of the channels not meeting the quota¹⁸ are special-interest channels, i.e. ones that broadcast only particular types of programmes. The type of programme they specialise in may affect their ability to comply with the Directive, since there may simply not be many European works of that type available. This problem is faced, for example, by channels that specialise in soap-operas or science fiction.

Another type of channel having difficulty in meeting the quota is paying film channels. They are to a certain extent dependent on what is being shown in cinemas or at least their scheduling reflects box-office successes, but European films do not account for the majority of films shown in cinemas anywhere in the European Union.

Channels that have only recently been launched may make up a further category. This is widely quoted as a reason in the national reports. It may also explain why certain channels' figures have been improving, for it seems that channels that have been around for some time tend to improve on their proportion of European works, unless they are special-interest channels, in which case the reasons set out above apply. This trend rather puts paid to the idea that public channels comply with the Directive better than private ones, since several private channels have improved their figures considerably once they have been operating for a few years. The German market provides some good examples of this.

There is a further distinction, which the Commission already drew in the previous reports, between general-interest terrestrial channels that have been operating for several years and have no difficulty meeting the quota, and other channels, such as satellite channels, which account for the vast majority of new channels over the last three years. The Commission proposal on the review of the Directive¹⁹ set out to resolve this dichotomy by offering the possibility of investing in European works to channels which had difficulties fulfilling broadcasting obligations because of their

¹⁷ See footnote 4.

¹⁸ See Annex 3.

¹⁹ See COM(95)86 final, OJ C 185, 19.7.1995.

type or specialisation. But this part of the Commission proposal was not taken up in the new Directive.

This difference between types of channel may partly explain why the average figure for compliance with Article 4 went from 66.6% in 1992 to 62.7% in 1996. This does not mean that there was less compliance with Article 4 all round, but rather illustrates the impact of the new channels of a different type, affecting the overall figure. Here the Commission would like to stress the limits of what can be concluded just on the basis of these figures, when the flexible nature of Article 4 and the bases the different Member States use for calculating the proportions make it difficult to compare the data for the purposes of producing an overall economic assessment. The Commission is therefore carrying out additional studies in parallel, taking account of the situation as a whole and the particular characteristics of the existing legislation.

The Commission notes the argument put forward by certain channels that they are unable to broadcast a majority of European programmes, because their schedules are filled mostly with programmes from their holding company (large production studios). However other channels of a similar type have managed to broadcast mostly European programmes, which puts this argument into perspective.

The Commission would once again stress that, in order to make the monitoring exercise meaningful, the Member States must send in complete national reports and include any new channels or broadcasters that have come on the scene.

In the follow-up to this report, the Commission will be assessing the degree of compliance with the established quotas and what action to take in the event of non-compliance in the light of broadcasters' particular circumstances, such as whether it is feasible for a particular type of channel to meet the quota, whether the broadcaster has been getting nearer the required proportion, what the average is for all a broadcaster's channels and how much they have invested in European works. The Commission reserves the right to take action against Member States not meeting the objectives of Articles 4 and 5.

IV - MONITORING IN THE FUTURE: THE NEW TELEVISION WITHOUT FRONTIERS DIRECTIVE

The new Television without Frontiers directive was adopted on 30 June 1997.²⁰ No changes of substance were made to Articles 4 and 5, since it was felt that the 1989 wording was still adequate for the purpose. Member States have until 30 December 1998 to transpose the new Directive, which will then be the legal basis for the next round of monitoring of the application of Articles 4 and 5.

This section sets out to discuss how the next round of monitoring might be approached, given the changes that have taken place in the European television industry since the 1989 Directive and in particular in the last few years. The next monitoring exercise will be conducted in an institutional context that is on the move.²¹

1. *The new Television without Frontiers directive*

The changes to the 1989 Directive are intended to tighten up and clarify certain definitions, in particular that of Member States' jurisdiction over broadcasters, as well as introducing rules on teleshopping and the protection of minors. The scope of the Directive has not been changed, since the Council and the European Parliament agreed with the Commission's proposal not to amend it.²²

As regards measures promoting the distribution and production of European television programmes, the new Directive makes only minor changes to Articles 4 and 5 as worded in the 1989 Directive, which allow for a certain flexibility. In this respect the Commission's proposal was only partly taken up in the new Directive.²³ This means that the wording still lends itself to the interpretation that the obligation is to act in a particular way rather than to produce a specific result.²⁴

The basis for categorising which programmes do not count as "works" was changed to take account of the growth of teleshopping. The relevant parts of Articles 4 and 5 now

²⁰ European Parliament and Council Directive 97/36/EC amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, OJ L 202, 30.7.1997.

²¹ See the Commission Communication entitled "Services of General Interest in Europe", (COM(96)443 final) and the new protocol annexed to the Amsterdam Treaty on the system of public broadcasting in the Member States.

²² The Directive covers broadcasting services, including pay-per-view and near-video-on-demand, but not new on-line audiovisual services, such as video-on demand (VOD). See the Commission proposal: COM(95)86 final, OJ C 185, 19.7.1995.

²³ See footnote 16.

²⁴ "Where practicable and by appropriate means"

read "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping".

Recital 31,²⁵ which is new, gives a clearer indication of how "independent producer" should be defined to help the Member States implement the Directive more easily and effectively. Another new recital, No 29,²⁶ deals with the special case of channels broadcasting in non-European languages.

The definition of European works in Article 6 has been extended to cover co-productions with certain non-member countries. Works that would not otherwise be European works, but are produced under bilateral co-production treaties between Member States and non-member countries count as European works, provided the Community co-producers supply a majority share of the total cost of the production and production is not controlled by one or more producers established outside the territory of the Member States.

The new Directive also sets up a Contact Committee,²⁷ made up of representatives of the Member States' authorities and chaired by the Commission. Its job is to examine

²⁵ "Whereas, with a view to promoting the production of European works, it is essential that the Community, taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union, should promote independent producers; whereas Member States, in defining the notion of 'independent producer', should take appropriate account of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights;"

²⁶ "Whereas channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5; whereas, nevertheless, where such a language or languages represent a substantial part but not all of the channel's transmission time, the provisions of Articles 4 and 5 should not apply to that part of transmission time".

²⁷ "Article 23a

1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of this committee shall be:

(a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;

(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;

(c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;

(d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;

(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding television broadcasting services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;

(f) to examine any development arising in the sector on which an exchange of views appears useful."

implementation of the Directive and, in particular, Articles 4 and 5,²⁸ developments in the television industry and organise exchanges of views on a range of issues. The Committee will have an important role to play in interpreting the provisions of the new Directive, particularly during the transposition period.

2. Monitoring in the context of the changing face of the audiovisual industry in Europe

The new Directive maintains the provisions of Article 4(3) concerning the monitoring of the application of Articles 4 and 5. Therefore, at least on paper, the legal situation as regards monitoring has not changed. However, the structure of the television industry in Europe is constantly changing, which means that future monitoring will be taking place in a more fluid context.

To maintain monitoring as a practicable and meaningful exercise, the system referred to in Article 4(3) needs to be rethought and brought in line with the new environment.

The beginning of the 90s saw a rapid increase in the number of television channels in Europe,²⁹ as attested by the three monitoring reports on the application of Articles 4 and 5. Digital television, which did not come onto the scene until 1995-96, is also set to increase the number of channels, thanks to digital compression technology which makes it possible to carry more programmes. A single transmission medium will be able to broadcast many more channels than at present.³⁰ This means that the beginning of the reference period for the implementation of the new Directive and the next monitoring exercise (1997-98) are likely to see a rapid mushrooming of the number of television channels in Europe.

Using digital technology, broadcasters will be able to use the same medium either to offer various different services (groups of increasingly specialised services) or to broadcast a single service at different time intervals ("near-video-on-demand").

The arrival of digital technology does not just mean more channels; it also affects what the audiovisual market is offering. This new development affects the content of what is broadcast as much as the transmission media themselves. As the number of channels increases, programmes will become richer and more varied and increasingly specialised channels will spring up, while presentation will be more varied thanks to new scheduling methods. Multiplexing³¹ and vertical scheduling³² are examples of developments set to make a radical difference to the television broadcasting industry.

²⁸ See Article 23a(2)(c).

²⁹ See Annex 2.

³⁰ Using current compression technology, on average 8 times as many channels could be carried. Using statistical multiplexing in the future could mean 20 times more channels, if not more.

³¹ Multiplex is where the same set of programmed is shown on different channels sequentially.

³² Vertical scheduling is where the same programme is broadcast throughout the day on the same channel.

Faced with these developments, the way the application of Articles 4 and 5 is currently monitored needs to be looked at and the Commission, in conjunction with the Member States, will have to find ways of adapting the monitoring system in line with developments in the broadcasting industry to keep it workable and to meet the objectives established in the directive by the legislator.

The current monitoring system is based on the interpretation of the directive in line with the broadcasting environment of the beginning of the 90s. The reference point for the monitoring, as conducted for this and the previous reports, is the concept of "television programme",³³ which is taken to mean the same as "television channel". The term "television programme" has been interpreted in this way for reasons internal to the system, although the word "programme" is open to other interpretations.

The information in the successive monitoring reports has become more and more detailed and specific, as the number of channels has grown. This has made it more difficult to get an overview of how the articles are being applied, since the focus tends to be on individual examples rather than an overall analysis. Therefore, the prime objective of the monitoring, which is to report on the implementation of articles 4 and 5 with a view to identifying overall trends and conclusions, might no longer be met if this exercise continued to be based upon the concept of the "television channel".

The increasing difficulty of monitoring television channels when there are so many of them is made worse by the fact that the very concept of "channel" is becoming increasingly blurred. For example, does "near-video-on-demand" count as a channel when the same programme is being broadcast 20 times with 15-minute breaks? What about digital multiplexing, where a single frequency band can be used to carry 3 or even 6 channels, depending on the type of programme (since certain formats require less data than others)?³⁴

A third factor to consider is the fact that channels are becoming more and more specialised, particularly the new ones coming on the market. This puts a strain on the current monitoring system, because some specialised channels, because of the nature of their programming, may find it difficult to broadcast a majority of European programmes. Examples of this are the channels already operating in Europe that specialise in showing westerns, since the proportion of European works in this area is virtually negligible. This also applies to a certain extent to film channels, particularly those that broadcast recent box-office successes. If their scheduling has the same proportion of European films as being shown in their country's cinemas they may have difficulty in accounting for more than half.

Current developments, in particular digital television, will therefore pose challenges to the monitoring system based on the concept of television channel. This is why it needs to be reconsidered in the context of the changing face of the audiovisual

³³ Article 4(3): "...That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned..."

³⁴ See, for example, the terrestrial digital television system introduced in the United Kingdom under the Broadcasting Act 1996.

industry, and taking into account the flexibility of the system, in order to ensure that the monitoring of the application of Article 4 and 5 remains a meaningful and practicable exercise.

The Commission intends to examine these issues in conjunction with the Contact Committee set up by the new Directive in order to prepare the ground for the next monitoring report.

V - ANNEXES

Annex 1: "Suggested guidelines for the monitoring of the "Television without Frontiers" Directive" (in force for the period covered by this report)³⁵

Introduction

The following guidelines have been prepared to assist Member States in their duty to monitor the application of Articles 4 and 5 of the Council Directive (89/552/EEC) on television without frontiers and to render transparent to all interested parties the manner in which this legislation will be implemented by the Commission.

Suggested definitions to be applied by Member States in their monitoring of Articles 4 and 5 of the Directive are given below.

1) A television broadcaster

The definition of a television broadcaster includes each channel it operates.

Local television broadcasters not forming part of a national network are excluded from the monitoring aspects of the Directive.

2) Jurisdiction over broadcasters

If a broadcaster is established in a Member State, then it falls under the jurisdiction of that Member State.

Establishment serves as a basis for defining both the origin of a broadcaster and of a programme. The place of establishment in the Community can be taken to mean that Member State where the broadcaster has fixed premises and a viable economic activity, for example, the place where the broadcaster's headquarters are based, assuming the management and a meaningful proportion of staff involved in both the preparation of programming schedules and commercial operations are located there.

3) Relevant transmission time on which quotas are calculated

Programme transmission time, within the meaning of Article 4(1) is a channel's total transmission time, the test card excluded, less the time reserved for news, the retransmission of sports events, games, advertising and teletext services.

³⁵ This document was drawn up by a group of experts from the Member States for the implementation of Directive 89/522/EEC to clarify certain definitions so as to avoid differences of interpretation which could lead to the Directive being implemented in different ways. This document has no mandatory legal force and is merely intended to clarify certain provisions of the Directive.

4) European works

This is clearly defined in Article 6 of the Directive.

For the purposes of Article 6(2) a producer is considered established in a European State if the company is a going concern which has a permanent staff involved in both production and commercial operations at the European location.

With respect to Article 6(3) and (4), which refers to "works which are mainly made with authors and workers residing in one or more European states", and in order to cope with borderline co-production cases, the rule of thumb is that over 50% of both creative and management staff and other production staff must be European residents.

5) Independence

Producers with broadcasting interests will only be considered as independent producers if their broadcasting interests do not represent their principal activity.

With reference to Article 5, it is suggested that a producer should be considered independent of a broadcaster, if:

- one broadcaster does not hold more than 25% of the producer's equity, or 50% in the case of several broadcasters. In this case, broadcasters mean the organisation as a whole and not individual channels operated by the same broadcaster;
- a maximum of 90% of a producer's output over a three-year period is furnished to one broadcaster, except where the producer makes only one programme or series during the reference period.

The above criteria should also be applicable in reverse (as where a producer has a significant stake in a broadcasting company).

The industry is strongly urged to introduce an independent certification scheme for independent productions in order to facilitate the implementation of quotas and the monitoring process.

6) Reporting period

The third monitoring report should include data for 1995 and 1996 (January to December).

On the basis of these reports the Commission is required to present a report and an opinion to the Council and Parliament.

7) Data collection

Statistics, expressed in hours and percentages, must cover the channels of all broadcasters under the jurisdiction of the Member State during the reporting period, irrespective of whether they are new or special-interest channels.

Member States must submit annual statistics for each channel separately and not for each broadcaster.

We suggest that Member States use the definitions provided by the Commission in order to ensure the compatibility of national reports.

If Member States use definitions other than those given above, the monitoring report should include details of the definitions used and how they differ from those given above, and also, where possible, how they affect the resulting data.

Where broadcasters can code their programmes according to the abovementioned definitions, they should be advised to apply data recording systems in such a way that comprehensive statistics for the entire annual schedule can be compiled.

If the authorities are satisfied that a derogation from comprehensive reporting is justified in the reference period, then a detailed description of the broadcaster's sampling procedure and basis of estimates should be submitted for consideration to the Commission. Samples should consist of at least one week (chosen at random) per quarter of the reporting period.

Model:

Broadcaster	Channel	A. European works (EW)		B. Independent productions (IP)		C. Recent works (RW) (% of B)		Reasons for non- compliance	Measures adopted or envisaged
		1995	1996	1995	1996	1995	1996		

Annex 2: Number of channels per country in Europe (1992-1996)

This table includes only those channels reported in the national reports. It does not cover channels that broadcast exclusively programmes that fall outside the scope of Article 4 (such as news and sports events) or most of the channels covered by Article 9.³⁶

	1992	1993	1994	1995	1996
AT *	2	2	2	2	2
BE/CFR	4	5	5	5	5
BE/DSG				1	1
BE/FLG	4	6	6	7	7
DE	8	14	14	18	19
DK	2	3	3	3	6
GR	6	8	8	10	11
ES	13	13	13	13	13
FR	11	14	14	16	18
IE	2	2	2	2	3
IT	11	12	12	13	13
LU	6	7	7	7	8
NL	3	5	5	9	9
PT	2	5	5	5	5
FI *	3	3	3	3	3
SE *	5	8	11	11	11
UK	42	52	52	64	80
TOTAL	124	159	162	189	214

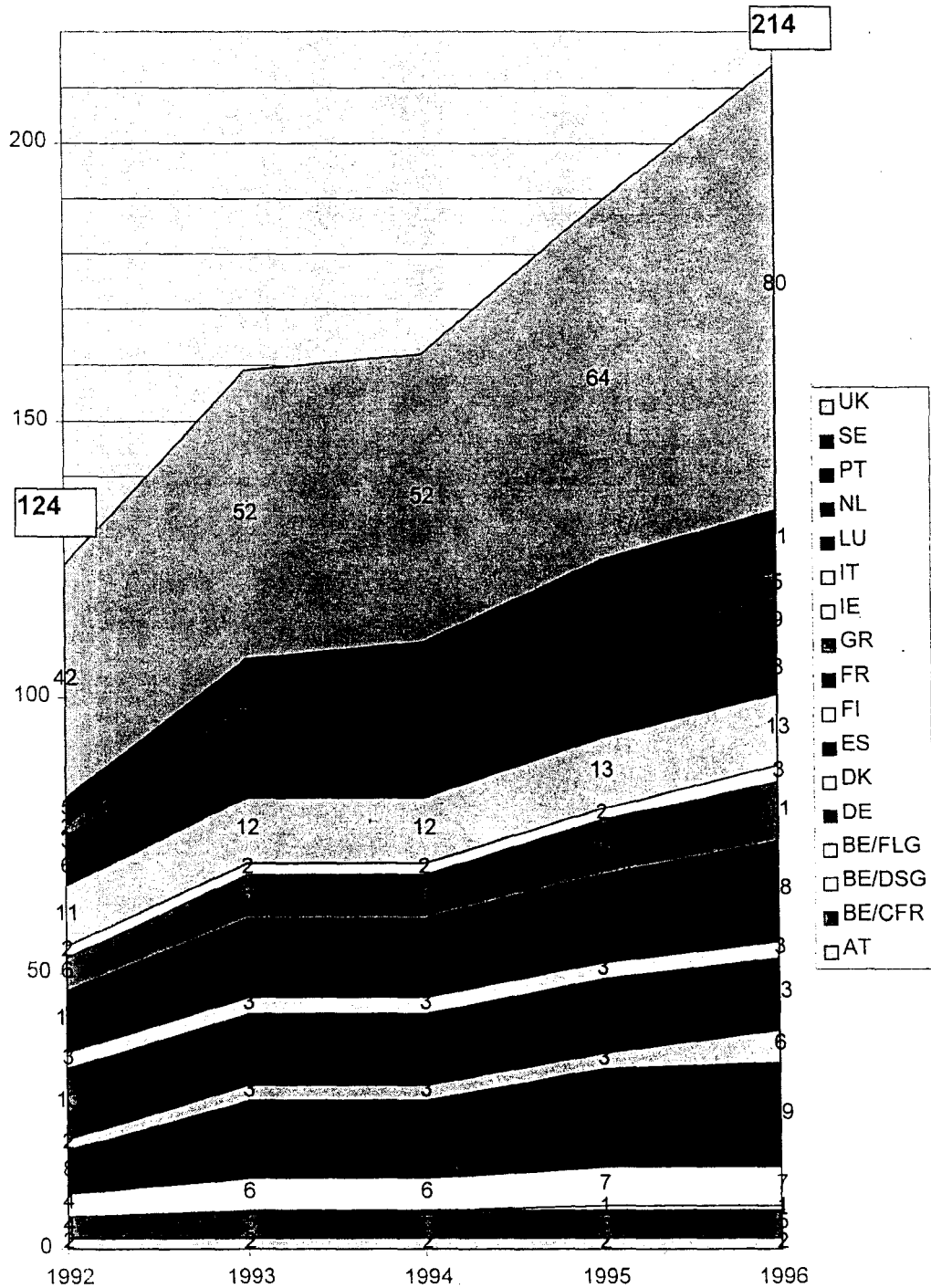
EFTA					
IS *	2	2	2	3	3
NO *	3	3	3	3	4

* AT, SE, FI, NO, IS: 1992-1993: estimates.

³⁶ "Local television broadcasts not forming part of a national network".

Number of channels included in the Member States' reports (1992-1996)

1992-1993 : estimates for AT, FI, SE



**Annex 3 : List of channels not achieving
the target for European works and independent productions (1995-1996)**

A) European works:

<u>ownership</u>	<u>type</u>	
PR private channel	GE general-interest	x target not met
PB public channel	SI special-interest	✓ target met
PY paying channel	LA non-	- channel not in operation in
BA channel which is part of a basic service for a cable network or satellite service	Community language	reference year

		1995	1996	owners	type
				hip	
BE	RTL TVi	x	x	PR	GE
	Club RTL	x	x	PR	GE
	Canal +	x	✓	PR/PY	SI
	VTM	x	✓	PR	GE
	Kanaal 2	-	x	PR	GE
	Filmnet I & II	x	x	PR/PY	SI
DK	TV Bio	-	x	PR	
	Erotica	-	x	PR/PY	SI
DE	Kabel 1	x	x	PR	SI
	Premiere	x	x	PR/PY	SI
	Pro7	x	x	PR	GE
	RTL 2	x	x	PR	GE
	Super RTL	x	x	PR	GE
	Viva II	x	x	PR	SI
	Vox	x	x	PR	GE
ES	Antena 3	x	x	PR	GE
	Tele 5	x	x	PR	GE
	Canal +	x	x	PR/PY	SI
IT	Italia 1	x	x	PR	GE
	Rete 4	x	x	PR	GE
	Telepiù	x	x	PR/PY	SI
LU	RTL 4	x	✓	PR	GE
	RTL 5	x	x	PR	GE
	RTL Tvi	x	x	PR	GE
	Club RTL	x	x	PR	GE
	RTL 7	-	x	PR	GE

NL	TV10	x	x		
	Veronica	x	✓	PR	GE
	SBS 6	x	x	PR	GE
	Canal +	x	x	PR/PY	SI
PT	Canal 1	x	✓	PB	GE
	SIC	x	x	PR	GE
	TVI	x	x	PR	GE
SE	TV 1000	x	x	PR/PY	SI
	TV 1000 Cinema	x	x	PR/PY	SI
	TV6	x	✓	PR	
	FilmNet Plus	x	x	PR/PY	SI
	FilmNet/C. Movie Ch.	x	x	PR/PY	SI
	TV4	x	✓	PR	GE
UK	3+	-	x	PR	GE
	Adult Channel	x	x	PR/PT	SI
	Asianet	x	x	PR	LA
	Bravo	✓	x	PR/BA	SI
	Cartoon Network	x	x	PR/PT	SI
	Challenge TV	x	x	PR	GE
	Chinese Channel	x	x	PR	LA
	Chinese News & Ent.	x	x	PR	LA
	Christian Channel	-	x	PR	SI
	Disney Channel UK	x	x	PR/PY	SI
	Fox Kids	-	x	PR/BA	SI
	History Channel	x	x	PR/BA	SI
	Home Video Channel	x	x	PR/PY	SI
	JSTV	x	x	PR	LA
	Kanal 5	-	x	PR	GE
	Landmark Travel Ch.	x	x	PR	SI
	MBC	x	x	PR	LA
	Movie Channel	x	x	PR/PY	SI
	Namaste TV	x	x	PR	LA
	NBC	x	✓	PR	GE
	Nickelodeon	x	x	PR/BA	SI
	Paramount Comedy Ch.	x	x	PR/BA	SI
	Playboy TV	-	x	PR/BA	SI
	Sat-7	x	x	PR	SI
	Sci-Fi Europe LLC	x	x	PR/BA	SI
	Sky 2	x	x	PR/BA	GE
	Sky Movies	x	x	PR/PY	SI
	Sky Movies Gold	x	x	PR/PY	SI
	Sky One	x	x	PR/BA	SI
	Sky Scottish	-	x	PR/BA	SI
	Sky Soap	x	x	PR/BA	SI
	Sky Travel Channel	x	x	PR/BA	SI

TCC	x	x	PR/BA	SI
TCC Nordic	-	x	PR	SI
Television X	x	x	PR/PY	SI
TNT	x	x	PR	GE
TV 1000 Sverige AB	x	x	PR/PY	SI
TV3 Denmark	x	✓	PR	GE
TV3 Norway	x	x	PR	GE
TV3 Sweden	x	✓	PR	GE
Vision Channel	x	x	PR	SI
VT4	x	x	PR	GE
Zee TV	x	x	PR/PY	LA

B) Independent productions

<u>ownership</u>	<u>category</u>	
PR private channel	GE general-interest	x target not met
PB public channel	SI special-interest	✓target met
PY paying channel	LA Non-	- channel not in operation in
BA channel which is part of a basic service for a cable network or satellite service	Community language	reference year

		1995	1996	owners hip	type
BE	BRF	x	x	PB	GE
	FilmNet I & II	✓	x	PR	SI
DK	TV Erotica	-	x	PR	SI
DE	Viva	x	x	PR	SI
	Viva 2	x	x	PR	SI
GR	ET3	x	x	PB	GE
	TV Makedonia	x	x	PR	GE
ES	ETB 2	x	x	PB	GE
	TV 3	x	x	PB	GE
	TV 33	x	x	PB	GE
LU	RTL Tele Lëtzebuerg	✓	x	PR	GE
PT	TV2	✓	x	PB	GE
	TVI	x	✓	PR	GE
UK	Ag Vision	x	x	PR	SI
	AsiaNet	x	x	PR	LA

BBC Prime	x	x	PB	GE
BBC World	✓	x	PB	SI
Bravo	x	x	PR/BA	SI
Chinese Channel	x	x	PR	LA
Chinese News & Ent.	x	x	PR	LA
Disney Ch. UK	x	x	PR/PY	SI
EBN	x	x	PR/BA	SI
Fox Kids	-	x	PR/BA	SI
GSB Goodlife	-	x	PR/BA	SI
GSB Men & Motors	-	x	PR/BA	SI
GSB Plus	-	x	PR/BA	SI
GSB Talk TV	-	x	PR/BA	SI
History Channel	x	✓	PR/BA	SI
Home Video Channel	x	✓	PR/PY	SI
JSTV	x	x	PR	LA
Live TV	x	x	PR	SI
MBC Middle East	x	x	PR	LA
Movie Channel	✓	x	PR/PY	SI
Muslim TV Ahmad.	x	x	PR	LA
Namaste TV	x	x	PR	LA
Nickelodeon	x	✓	PR/BA	SI
Paramount Comedy Ch.	x	x	PR/BA	SI
Playboy Ch.	-	x	PR/BA	SI
Sci-Fi Europe	x	x	PR/BA	SI
Sky 2	x	x	PR/BA	GE
Sky Movies	✓	x	PR/PY	SI
Sky One	✓	x	PR/BA	SI
Sky Scottish	-	x	PR/BA	SI
Sky Soap	x	x	PR/BA	SI
TV 1000 Svergie AB	x	x	PR/PY	SI
Weather Ch.	-	x	PR	SI
Zee TV	x	x	PR/PY	LA