

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 57 final
Brussels, 03.03.1994

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

1. INTRODUCTION

This communication to the European Parliament and the Council contains the Member States' reports on their implementation of Articles 4 and 5 of 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 activities¹ and the Commission's opinion pursuant to Article 4(3) on the overall application of the Directive's scheme for promoting the production and distribution of European works.

Since 3 October 1991 the Directive has provided the legal basis for coordinating the laws, regulations and administrative practices of the Member States governing the pursuit of TV broadcasting activities in the European Union.

Coordination covers promotion for the production and distribution of European TV programmes (Articles 4 to 9), advertising and sponsorship (Articles 10 to 21), the protection of minors (Article 22), and the right of reply (Article 23). The Directive is designed to protect the public interest at Community level in these areas while ensuring that TV programmes from Member States can be received and retransmitted in the others. It provides that each broadcaster is to be subject to a single system of law, determined on the basis of criteria ensuring that all broadcasters in the Community are subject to the laws of at least one Member State – but only one.

Article 26 requires the Commission to present Parliament and the Council, by 3 October 1994, with a report on the application of the Directive containing, if necessary, further proposals to adapt it in line with developments in the field of television broadcasting. But the monitoring system established by Article 4(3) also provides for specific two-yearly reports beginning in October 1993. The reader should be aware that these are two wholly separate exercises.

This communication, then, is devoted specifically to the application of measures taken by the Member States to promote the production and distribution of programmes by European and independent producers in pursuance of Articles 4 and 5. The reference period runs from 3 October 1991 to 31 December 1993. The Member States were required to present their reports to the Commission by 3 October 1993, although these were in fact sent in at various dates between October 1993 and February 1994.

Future monitoring exercises will cover periods of two consecutive calendar years, so the next report period will run from 1 January 1993 to 31 December 1994.

¹ OJ L298, 17.10.1989.

2. EUROPEAN PROMOTION MEASURES

Articles 4 and 5 are the Community's first legislative measures to encourage the European television programme industry to adapt to the new audiovisual area created by the Directive. They pursue the dual aim of encouraging both the production and the distribution of European works and works by independent European producers within the Community by television broadcasters.

Article 4² sets up a structure based on the familiar three-pillar concept:

- establishment of a core of broadcasting time devoted to specific types of programme (all categories except news, sports events, games, advertising and teletext services);
- devotion of a majority proportion of broadcasting time to European works (as defined in Article 6) wherever practicable. Member States are required to ensure by appropriate means that this proportion is attained progressively, on the basis of suitable criteria. Where it cannot be attained, it must not be lower than the average for 1988 in the Member State concerned (1990 in Greece and Portugal);
- review and evaluation by the Commission on the basis of statistical reports from the Member States, taking account of the particular circumstances of certain Member States and channels.

2.

It reads:

"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, 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 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 it may deem appropriate no later than the end of the fifth year from the adoption of this Directive.

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

Article 5³ sets the proportion of transmission time (or alternatively of programming budgets) to be reserved for European works by producers who are independent of broadcasters at 10% of the same core time, subject to the same review requirements. An adequate proportion must be earmarked for recent works, that is to say works transmitted within five years of their production.

These measures are designed to meet both an economic and a cultural objective expressly set by the Community institutions when the Directive was enacted in 1989. They cover an area where harmonization is essential for the free movement of TV broadcasts; and Community coordination of the national rules and regulations governing broadcasting activities makes such free movement legally possible.

One final point: the Directive was enacted as part of the Community's general policy on the audiovisual media, launched by the Rhodes European Council in December 1988; this also encompasses the MEDIA programme of measures to encourage the development of the European audiovisual industry⁴ and the Action Plan for the introduction of advanced television services in Europe.⁵

3. THE TRANSPOSAL PROCESS

As noted earlier, the deadline set for compliance with the Directive was 3 October 1991, two years after its enactment. All the Member States were required to have national measures transposing the provisions of the Directive into their own legal order in place by that date, in the form of laws, regulations or administrative provisions.

When scrutinizing these measures, the Commission had regard to the principle explicitly incorporated in Articles 4 and 5 of the Directive, reflecting the third paragraph of Article 189 of the EC Treaty (*A Directive shall be binding, as to the result to be achieved, on each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods*).

The Commission was therefore chiefly concerned to verify whether the obligations flowing from Articles 4 and 5 were duly imposed by national rules and regulations

³ It reads:

"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."

⁴ Council Decision 90/685/EEC, 21.12.1990: OJ L 360, 31.12.1990, p. 37.

⁵ Council Decision 93/424/EEC, 23.7.1993: OJ L 196, 5.8.1993, p. 48.

governing broadcasting activities, whatever the Member State's decision between formal legislative enactment, administrative rules or any other legal instrument.

The process is not yet complete, as transposal difficulties have been encountered. In some instances infringement proceedings have been commenced under Article 169 of the Treaty; in others, talks are proceeding with the Member States concerned.

The legal flexibility of the system is clear from the words used in the Directive itself (*where practicable and by appropriate means and progressively*), which were the upshot of a political compromise desired both by the Member States and by the Community institutions.

But it is partly offset by the Commission's duty to monitor the reality of the various national systems, on the basis of statistical reports to be sent by the Member States at defined intervals (every two years, the first time in October 1993), recording the results actually announced by broadcasters in attaining their obligation to broadcast European and independent works on all channels under their jurisdiction (the word "channel" will hereafter be used in place of "television programmes", the expression used in Article 4(3), to reflect the fact that some broadcasters offer a choice of programmes – BBC1 and BBC2, for example).

The Commission has asked the Member States to play a particularly active part in the process, since it cannot make its report without detailed figures from them and explanations to help make them clearly comprehensible.

Regular meetings have been held with their representatives to discuss, among other things, questions of interpretation in the transposal of the two Articles; a methodological approach has been devised to ease the task both of the Commission and of the Member States, though the responsibility for compiling the reports lies firmly in the hands of the Member States.

That approach is set out in the paper reproduced at Annex I (Proposed guidelines for monitoring the application of the television without frontiers Directive), sent to the Member States following the meeting of 15 February 1993.

The main point is to put forward a series of common definitions and information categories based on the concepts underlying the Directive itself and on the Commission's review obligation, especially where the language used in the Directive is liable to give rise to differing interpretations.

Broadly speaking this means:

- the definition of a broadcasting company includes all the channels it operates;
- the question of the jurisdiction to which a company is subject to depends on its place of establishment;
- broadcasting time used to calculate proportions does not include test-card display time;
- the definition of European works may be amplified to include factors concerning the place of establishment of the production company or the staff involved;
- two criteria are used cumulatively to identify a producer as being independent of the broadcaster – the broadcaster's capital holding (maximum 25%) and

- proportion of business done with the same broadcasting company (maximum 90% over any three-year period);
- to help analyse the progressive attainment of the objectives set, Member States were asked to supply statistics first for the period from October to December 1991 and then for the full year 1992;
 - statistics are gathered from broadcasting companies in aggregate and for each channel they operate.

Member States were also asked to add all further information that might be useful, such as definitions, information categories and interpretations they used.

4. SUMMARY OF REPORTS FROM MEMBER STATES

This Chapter, which should be read with the statistical tables at Annex II,⁶ gives a brief summary, without comment, of the material contained in the Member States' reports, compiled on the basis of a literal construction of Article 4. It will be remembered that Article 4(3) requires the reports to contain:

- "a *statistical statement* on the achievement of the proportion referred to in Articles 4 and 5 for each of the television programmes falling within the jurisdiction of the Member State concerned";
- the *reasons* in each case for failure to attain that proportion;
- the *measures* adopted or envisaged to achieve it.

Other information explicitly provided by the national reports is also outlined.

1. Belgium

The Commission received two reports for Belgium, one from the Flemish Community (CFI) and one from the French (CFr).

1. Statistical statement CFI: the CFI statement reports on four channels under its jurisdiction and gives figures for a reference period running from 1 October 1991 to 31 December 1992. Two channels (from the same broadcaster) transmitted the required proportion of European works. The statement gives the 1988 average for the Flemish Community, but the figure is higher than the proportion observed for the two channels that did not attain the required majority proportion.

On the other hand the report gives no figures for the proportion of independent productions or the volume of recent works transmitted except in the case one channel, where the figures are very high.

⁶ The tables for each Member State contain only such figures as they supplied for the reference period, including the averages for 1988 (1990 for Greece and Portugal) where given.

Reasons CFI: the Flemish Community was unable to obtain figures on works by independent producers transmitted by the two BRTN channels.

2. *Statistical statement CFr:* the CFr statement reports on four channels⁷ transmitted by three broadcasters, indicating that eleven local and community channels are also broadcast within the French Community's jurisdiction but are not subject to the requirements of Articles 4 and 5 because they are local and do not form part of a national network. Figures are given for two reference periods, covering the 1992 calendar year in the case of the two channels transmitted by the same broadcaster and the period from October 1991 to 31 December 1992 in the case of the two others.

All the channels transmitted a majority proportion of European works except one, where the figure was, nevertheless, equal to the national average for 1988 as indicated in the report.

The report also spells out the definition of an independent producer and gives figures on independent productions transmitted by the three channels, although it does not state explicitly whether they cover the same reference periods. No figures are given for the volume of recent works broadcast except in the case of one channel.

2. Denmark

Statistical statement: the Danish statement reports on two channels broadcast by two companies. The two channels attained the required majority proportion of European works during the reference period running from 1 October 1991 to 31 December 1992. The report indicates that the definition of European works used by the broadcasters is that given in order N° 100 of 5 March 1993 (transposing Article 6 of the Directive).

In the case of one channel, the figures for broadcasts of independent productions relate to two reference periods (October to December 1991 and 1992), while the figures for the other cover a single period (1992). Both channels transmitted the required proportion. They also stated that they had used the same definition drawn from the national legislation on limited liability companies, the main factors being the broadcaster's financial stake in the production company and the degree of influence exercised.

No figures on the transmission of recent works are given.

3. Germany

Statistical statement: Germany's report states that there are eight channels transmitted by broadcasters within its jurisdiction. Proportions were calculated for the two reference periods, except that SAT 1 notified figures for the full years 1991 and 1992. Six of the eight channels transmitted a majority of European works in both periods. All of them broadcast more than 10% of works by independent European producers.

⁷

One of the channels (RTL-TV) is also covered in the Luxembourg report.

No figures are given for recent works, but it is specified that the bulk of independent producers' works were transmitted for the first time during the reference period.

Four new channels (Kabelkanal, n-tv, Vox, RTL-2) began transmitting in 1992 or 1993 and are not covered by the statement. TELE 5 has also been left out, as it ceased transmitting its original programme on 31.12.1992.

Reasons: for the two channels that did not attain the required proportion, RTL Plus and PRO 7, the following information is given:

- RTL Plus was close to the majority proportion at 45% in 1991 and 49% in 1992, and the trend is rising, notably towards the end of 1992;
- PRO 7: the report states that this channel was launched only in 1989 and has not yet reached maturity. Moreover, it is short of frequencies and has not yet managed to cover the whole country.

For practical reasons, the report gives no figures for 1988, since the resources that would have to be deployed to gather them would be out of all proportion to the benefit and the general trend in 1992 was upwards anyway.

In general terms the report argues that it is necessary to consider the reality of the market, and particularly the fact that new broadcasters, especially those addressing special interests, need an experimental phase of at least five years.

The report adds that the definition of an independent producer in the Commission's guidelines was disregarded as impractical, but is silent on the question of the definition actually used.

4. Greece

Statistical statement: the Greek statement reports on six channels broadcast by companies within the jurisdiction. The figures were calculated for two reference periods (October to December 1991 and the 1992 calendar year) except in the case of one channel (New Channel), where a sampling method was used (one week in 1991 and four weeks in 1992).

All the channels, with one exception, broadcast a majority proportion of European works. No figures are given on the transmission of independent works in the case of two channels, while one channel broadcast none at all and the three others (private sector) gave high figures.

The Greek report also mentions two further channels – Channel 29 and Seven X) – indicating that the former ceased transmission in 1993, while the second supplied no information.

No figures are given for broadcasts of recent works by independent producers.

5. Spain

Statistical statement: The Spanish statement reports on thirteen channels transmitted by ten companies within Spain's jurisdiction.

The proportions were calculated for the two reference periods. In the first of them, none of the channels transmitted either a majority of European works or the required proportion of independent works. In the second period, there was a substantial rise in the proportion of European works: eight channels transmitted the required majority and the other five lay between 44% and 49%. None of them transmitted the required proportion of independent works in either period. Figures are given for recent works.

The 1988 average is not indicated.

6. France

Statistical statement: The French statement reports on five State-owned channels broadcast over the air and six cable and satellite channels. The figures for the latter were obtained by sampling (over four weeks in 1992) and are therefore incomplete, the reason being the date when the Conseil Supérieur de l'Audiovisuel conferred legal status on them (1992). The proportion of European productions transmitted by the channels broadcasting over the air was determined for two reference periods, the first running from October to December 1991 and the second covering the whole of 1992. All the channels transmitted a majority of European works.

The figures on independent productions relate only to 1992. All the channels devoted more than 10% of their programming budgets to independent productions. The report gives detailed figures on the national system, which imposes an obligation on broadcasters to invest a proportion (10%) of their net turnover for the previous year in independent audiovisual productions and explicitly defines what is meant by "independent". It also gives a statistical analysis along the lines proposed by the Commission, though with some qualifications owing to the differences between French legislation and the Directive, in particular with regard to the definition of audiovisual works (in France, these do not include broadcasts mainly produced on stage and cinema films). The report also emphasizes the fact that an exact figure could not be given for the volume of non-French-language European co-productions by the channels, but that they were limited.

The report also deals with four other channels (TV5/Europe, Eurosport, TV-Sport, La Sept) separately: practically all the works broadcast by TV5 (promotion of French-language programmes) are of European origin so that the requirements of Articles 4 and 5 are met; Eurosport and TV-Sport are outside the scope of the Directive (sports channels); La Sept was broadcast until 28 May 1992 and then replaced by ARTE (EEIG established in 1991), broadcasting from 28 September 1992. Its programming comprised mainly European works (95%) and the proportion reserved for independent producers was 47%. Lastly the report lists five local stations which are not part of a national network (Articles 4 and 5 do not apply).

No figures are given on the proportion of recent works transmitted.

Reasons: the report states that in the case of the one channel which failed to transmit the required majority proportion of European works (Canal Jimmy) the reason was the low overall volume of transmissions. This was the channel which broadcast the lowest number of programmes in 1992 (42 hours a week).

The report gives the following 1988 averages for the channels broadcast over the air (not including Canal Plus): France 2 – 68.1%; France 3 – 73.6%; TF1 – 57.5%; M6 – 63.7%.

7. Ireland

Statistical statement: The Irish statement reports on the two channels transmitted by the sole broadcasting company. The percentages are calculated for the two full years 1991 and 1992 as an average for the two channels, which together attain the majority proportion of European works. The proportion of independent works is not, however, attained. No figures on recent works are given.

Reasons: the report states that the figures given for recent productions are estimates, as information on a programme's production history is difficult to gather retrospectively. The new rules have also influenced the situation.

8. Italy

Statistical statement: The Italian statement reports on eleven channels transmitted by companies within the jurisdiction. Proportions are given for five reference periods covering the full years 1988 to 1992. Proportions for three channels (TELE+1/2/3) are calculated for three years (1990 to 1992). In 1991 and 1992, seven channels transmitted a majority of European works. Figures for independent works are given only for seven channels, three of which attained the required proportion. Figures are not given for recent works.

Reasons: the percentages for the channels that did not transmit a majority of European works (Italia 1, Rete 4, TeleMonteCarlo and TELE+1), compared with the 1988 averages, reveal the following trends:

- the proportions rose on individual channels between 1988 and 1991/92;
- the 1991 and 1992 percentages are still below the 1988 average for Italy as a whole.

9. Luxembourg

Statistical statement: Luxembourg's statement reports on six channels transmitted by two companies within its jurisdiction.

Between 3 October 1991 to 31 December 1992, one channel transmitted a majority of European works and three attained the target proportion of independent works. Figures are given for recent works.

Reasons: the report states that those channels which failed to attain the required proportion of European works did so because there was a lack of European material that would appeal to the mass audience, because of the special situation of one of the channels and, in one case, because of a lack of information.

It indicates that one of the two companies covered by the report is not included in the statement since it broadcasts exclusively material that is not within the programme categories to which Article 4(1) relates.⁸

10. The Netherlands

Statistical statement: The Dutch statement reports on three channels transmitted by the one company within the jurisdiction. It extends solely to the land-based broadcasters; others who transmit exclusively by cable are omitted even though they are within the jurisdiction.

All three channels attain the required proportions of European and independent works. Figures are given for recent works.

The statistics are for a representative sample of weekly schedules in the period from October 1991 to December 1992. The reason given for this is the cost of making a full survey.

11. Portugal

Statistical statement: The Portuguese statement reports on two channels transmitted by the one company within the country's jurisdiction. Percentages of European and independent works are calculated for three reference periods, covering the full years from 1990 to 1992. In 1991 and 1992 both channels transmitted a majority of European works but only one attained the required proportion of independent works. Figures for recent works are not given, but the Portuguese authorities state that the majority of independent works are recent.

The report notes that SIC (Sociedade Independente de Comunicação Independente SA) is omitted, since it only began broadcasting experimentally in October 1992.

It also notes that in calculating the proportions, broadcasting time was taken as total broadcasting time minus the time given over to excluded programmes, which included those classed as institutional, comprising political and religious broadcasts which the national public television service is required to transmit.

Reasons: the report states that the figures for independent productions are confined to national production, as it was impossible to determine the origin of independent European productions purchased abroad. That is why the figures are so low. The Portuguese authorities also point out that "independent producers" were determined on the basis of

⁸

The same company is covered by the UK report as it is UK-based.

three criteria (legal personality separate from the broadcaster, economic independence from the broadcaster, financial and professional qualification).

The Portuguese authorities made the general point that the specific situation of broadcasting in the country had to be taken into account, with low audiovisual production capacity and a restricted language area.

Measures envisaged: the report makes reference to new rules for audiovisual production aid and to a revision of the legislation governing television (Law N° 58/90 of 7 September), which should foster the positive development of the independent production sector in the future.

12. United Kingdom

Statistical statement: the report covers 42 channels, of which 19 transmitted a majority proportion of European works and 36 attained the required proportion of works from independent European producers. It does not indicate the reference period, but states that it was drawn up following the Commission's guidelines.

Figures are given for many but not all channels on the proportions of recent works (indicating that 16% of channels transmitted more than 5% and five transmitted less than 5%).

Reasons: where channels have not reached the required proportions, reasons given by the broadcasters themselves are indicated. The proportion is in some cases said to be impracticable, notably in the case of channels targeted at ethnic minorities and expatriate communities.

No figures for the 1988 average are given.

Measures envisaged: all the channels concerned are non-national satellite licence-holders. The UK authorities have elected to regulate them by subordinate legislation.⁹ They have written to all channels falling short of the target proportions and to all new broadcasters not covered by the statement (twelve new channels launched in 1992 alone). The letters remind them of their obligation to reserve a majority of their relevant transmission time for European works where practicable and ask them to submit schedules for attaining that objective and the Article 5 objective. Measures will be taken if the replies are found to be inadequate.

5. COMMISSION OPINION

The Commission's opinion is divided into four sections setting out its comments on methodological difficulties and problems of substance, market trends, the economic

⁹

Land-based broadcasters are regulated by primary legislation, in the form of the Broadcasting Act 1990.

impact of the Directive as evidenced by the reports and the limited scope of the present monitoring system.

5.1 Methodological difficulties

The content of the national reports has prompted the Commission to make a number of comments on methodology, which deal with factors that complicate its task of comparison and assessment. This first monitoring exercise has also brought to light several technical and legal difficulties.

Its observations fall under five headings:

1. Statements by the television channels

1.1 Jurisdiction

Three reports raise the issue of determining where jurisdiction for a single channel lies. In the first instance, both Luxembourg and the United Kingdom reported on CNN (whose up-link is in Luxembourg, but which is established in the United Kingdom) in their statistical statements, although it does not have to meet the requirements of Articles 4 and 5 regarding proportions because its range of programmes falls outside the scope of the Directive. In addition, Luxembourg and the French Community in Belgium each treated RTL-TVi as coming within their jurisdiction, although the broadcaster is clearly established in Belgium.

Beyond the immediate problem of the differences in the figures given for RTL-TVi,¹⁰ this kind of situation amounts to a complete contradiction of the single system of law introduced by the Directive, since a single channel is treated as coming under dual jurisdiction. This directly raises the question of the conformity of whether the national legislation fully complies with the Directive and highlights the vital need to abide by a common interpretation in line with Article 2(1).

If the reports reveal few real difficulties in terms of conflict – or absence – of jurisdiction, it is because they relate to a period where broadcasting is still predominantly land-based. The rapid rise of satellite channels is bound to throw up real problems of jurisdiction, affecting the operability of national regulation systems and hence of the Directive itself, if common criteria on jurisdiction are not observed.

Turning specifically to the United Kingdom's report, the Commission can only conclude from the information given that all the channels listed in the statement are transmitted by broadcasters actually established in the country, since the criterion introduced in the guideline document is that of establishment, in line with Article 2(1) of the Directive. This report can therefore be considered exhaustive for the present reference period.

¹⁰ There is a discrepancy of around 10% as regards both European works and works by independent producers.

1.2 Channels covered

The purpose of the monitoring exercise is not simply to draw up a full list of all the channels under the jurisdiction of each Member State but rather to provide significant statistics for the reference period regarding the application of Articles 4 and 5 by the channels in question (i.e. all except local ones which are not part of a national network – see Article 9 of the Directive). That is presumably why some Member States did not include in their statements every channel broadcast within their jurisdiction. Germany, Greece, Portugal and the United Kingdom, for example, did not include every channel – for reasons ranging from a lack of relevant data, to the experimental nature of a channel, its transmission range or the late start-up of transmissions (in relation to the reference period). The Netherlands made no mention of cable channels. On another level, the Irish report presented figures covering the broadcasting activities of the two channels together, rather than separately, as intended by the Directive.

The Commission expects these shortcomings to be resolved in the next reporting exercise on 1993/94, as the Directive clearly states in Article 4(3) that the national reports should cover each of the television programmes falling within the jurisdiction of the Member State concerned (except those excluded under Article 9).

2. Reference period

2.1 Coverage

The national reports use differing reference periods for compiling the statistics. Not only do the periods chosen vary from one report to another, but some reports even use different periods for the statistics on Article 4 and those on Article 5 or for different channels.

For example, Luxembourg, Denmark, the Flemish Community in Belgium, and the Netherlands present statistics covering a single fifteen-month period; the French Community in Belgium gives figures covering a single period of fourteen months for two channels and a calendar year (1992) for the two others; Germany (for one channel), Portugal, Italy and Ireland include several periods covering calendar years, while Germany (with one exception), Greece (with one exception), Spain, Denmark (for broadcasts of independent productions by one channel) and France (for broadcasts of European works over the air) give figures for two periods covering the last quarter of 1991 and the 1992 calendar year. France also takes the 1992 calendar year as the basis for compliance with Article 5 for all channels.

The United Kingdom report indicates no reference period at all and the report by the French Community in Belgium also fails to indicate one for the proportion of independent productions transmitted. The Netherlands report, like the Greek (for one channel) and the French (for the transmission of European works by the cable companies) are based on samples.

2.2 Statistical base

Portugal states that it used a more limited base for calculating the statistics, taking total broadcasting time minus the time devoted not only to news, advertising, sport, games and teletext but also to religious and political broadcasts.

The Commission further notes that some other Member States also took a more limited base in determining their figures – without stating so explicitly in their reports except in the case of France – in particular by using a definition of European audiovisual works aimed more at creative television works. This approach is linked to the political desire to promote certain types of work above others.

2.3 Non-slipback clause

Article 4(2) requires that where a majority proportion of European works is not attained, national reports should indicate the average for 1988 (or 1990 in the case of Greece and Portugal). Not all the channels covered in the reports from Luxembourg, the United Kingdom, Germany, Spain, Italy, Belgium, France and Greece attained this proportion. Three countries (France,¹¹ Italy and Belgium¹²) calculated the 1988 average. Some Member States (Germany) gave practical reasons for not calculating the figure – such as the lack of available data or the amount of work involved – while others were silent on the subject (Luxembourg, United Kingdom, Spain, Greece). The Commission must point out, however, that it is impossible to monitor the application of Article 4(2) if the Member States do not provide the required data for 1988 (or 1990, as the case may be).

3. Independent producers

3.1 Definition

The application of the 10% rule laid down in Article 5 of the Directive posed difficulties in several Member States because of the definition of "independent producer". This led to some complex situations. First there were those that ignored the definition proposed in the guidelines: Germany stated that all its broadcasters exceeded the required proportion without giving any indication of the definition used or the proportion actually attained. Portugal, Denmark and the French Community in Belgium offered definitions close to that proposed. Italy stated that the level of its figures was due to the absence of a legal definition and wanted a Community definition. France provided a double set of figures using its own national definition and the definition put forward in the guidelines.

Other Member States claimed to have had great difficulty in collecting data of this kind or had not received any information at all for some channels: they were the Flemish Community in Belgium, Luxembourg, Ireland, Italy and Portugal, which stated that it could only supply figures for national productions. The Commission would make the point that for it to be able to monitor the application of Article 5, the required data must

¹¹ The average was calculated separately for each channel.

¹² The Flemish Community's report determines the average for the Flemish region, while the French Community's report gives a national average for 1988.

actually be supplied. This means that if a common definition is not used, then at least the information needed to make valid comparisons must be given.

In three cases (TV2 in Denmark, VTM in Belgium, New Channel in Greece) the proportion of European works from independent producers was higher than the proportion of European works, which would seem impossible by definition. The Commission suspects that all independent productions must have been included in the figures, rather than just European ones as defined in Article 6.

3.2 Recent works

Several of the national reports place no figure on the proportion reserved for recent works by independent producers, defined in the Directive as those broadcast within five years of their production. Germany and Portugal indicated that the proportion was attained. France, Denmark, Italy, Greece and Ireland were silent on the question.

The Belgian, Luxembourg and United Kingdom reports do not contain figures on all channels because information was not forthcoming. Once again the Commission can only repeat that these are gaps which the Member States must endeavour to fill.

4 Information about channels failing to reach the required proportions

The reports from Luxembourg, Belgium, France, the United Kingdom, Germany, Ireland, Spain, Italy and Greece indicate which channels did not attain the proportions laid down in Articles 4 and 5. All except Spain, Greece and Belgium gave a range of reasons for the failure to meet the requirement for European or independent works.

Only the United Kingdom, however, spelled out the kind of measures envisaged to encourage broadcasters to achieve these objectives. Ireland reported on the adoption of a new regulatory framework meant to have that effect and Spain¹³ did not consider there was any need to put forward measures in view of the upward trend observed in 1992.

5. Definition of European works

The definition of European works to be used in applying Articles 4 and 5 is contained in Article 6. It rests on the country of establishment in the case of producers and the country of residence in the case of authors and workers. The Commission notes that the national reports made no particular comments on this topic and therefore concludes that the application of Article 6 poses no problem, apart from the possible misunderstanding that may have arisen in three instances mentioned earlier (TV2/Denmark, New Channel/Greece and VTM/Belgium) regarding the reference in Article 5 to European works created by independent producers. Since the definition of European works is the same as in Article 4, the proportion of European works created by independent producers can be equal to or lower than the overall proportion of European works, but not higher.

¹³

The draft Spanish legislation transposing Directive 89/552/EEC lays down specific measures, one of their notable features being that they are progressive.

5.2 General upward trend

Looking beyond the issues raised above, which mainly concern the key question of the comparability of the data for assessing the gradual impact of the measures taken, the Commission notes a general upward trend, especially where a majority proportion of European works was not being broadcast at the outset.

1. Broadcasting of European works

The total number of channels identified in the Member States' statements is 112. The Commission took into account 105 of them in determining the relevant averages.¹⁴ Of those channels, 70 – or 66.6% – transmitted a majority proportion of European works.

The picture in detail is as follows:

- *Portugal, Ireland, Denmark, Netherlands*: all the channels covered in the reports attained or exceeded a majority proportion of European works;
- *United Kingdom, France*: all the channels transmitting over the air broadcast more than a majority proportion of European works;
- *Italy, Spain, Belgium, Greece, Germany, Luxembourg, France (one cable channel), United Kingdom (some satellite channels)*: some channels covered in the reports did not broadcast the required proportion. Nevertheless, a marked improvement in the proportion of European works broadcast by the channels in question can be seen in some Member States which supplied figures for more than one reference period. This applies to Greece, Italy and Spain, while the figures given by Germany, the French Community in Belgium, and Luxembourg for these channels were close to a majority proportion.

It is worth pointing out that the broadcasters who still command by far the largest share of the market in all the Member States – i.e. the general-interest channels broadcasting over the air – frequently attained proportions of European works well above the 51% required and rarely below 40%, with some marked improvements in 1992 over 1991.

In the United Kingdom, which has the largest number of channels, a striking feature was the marked difference between the land-based broadcasters, which comfortably exceeded the required proportion, and the satellite stations, some of which were well below the target.

The main reasons advanced by the Member States for the various failures to meet the requirements were as follows:

- the situation of special interest or paying channels (catering for special interests or targeted at ethnic minorities or other specific categories of television consumers);
- the situation of new channels;

¹⁴

It excluded those whose programming content (news, sports, home shopping) fell outside the scope of Articles 4 and 5 and those aimed at non-European ethnic minorities.

- the problem of the supply of European programmes liable to attract a large enough audience;
- the volume of broadcasts.

2. Independent productions

2.1 Fulfilling the proportion requirements

Figures on the broadcasting time or proportion of the programming budget devoted to European works by independent producers were supplied for 92 (87.6%) of the 105 channels taken into consideration, with 63 of them (68.4%) attaining the required proportion.

In particular:

- all the channels reported on by *France* (the only country using the "proportion of the programming budget"), *Germany*, *Denmark* and the *Netherlands* attained the required proportion;
- *Spain*, *Ireland* and *Portugal* supplied figures on all their channels, but only one in Portugal satisfied the requirement. The others showed figures generally ranging between 5% and 9%, with a very slight but rather insignificant increase from 1991 to 1992;
- *Luxembourg*, *Belgium*, the *United Kingdom*, *Greece* and *Italy* were unable to give the relevant figures for all the channels covered in their reports. But where figures were given, it appears that a majority of channels in all these countries attained the required proportion, often going above 10%. This applies in particular to Luxembourg, Greece, Belgium, and the United Kingdom.

2.2 Recent works

The picture for the transmission of an adequate proportion of recent works is as follows:

- *Italy*, *Portugal*, *Germany*, *Denmark*, *Greece*, *France* and *Ireland* gave no figures. Portugal and Germany believed that this requirement was met in practice;
- *Spain* and the *Netherlands* gave figures for all their channels, ranging between 1% and 3% in Spain and between 9% and 29% in the Netherlands;
- the *United Kingdom* and *Luxembourg* gave figures for most channels, ranging between 1% and 15% in Luxembourg and 1% and 100% in the United Kingdom;
- *Belgium* gave figures for two channels: 67.7% in the case of VTM and 3.4% in the case of RTL-TVi.

The explanations given in the reports for the shortcomings were as follows:

- lack of available information;
- the problem of the definition of "independent producer";
- the problem of identifying works in this category;
- the problem of "smaller countries" (low national production capacity and restricted language area);
- nature of some channels (paying, special interest, limited extent).

Since the aim of the requirement laid down in Article 5 is to encourage investment in new productions, the Commission's assessment on the basis of the information provided is that the overall situation cannot be considered satisfactory. It can only urge the Member States concerned to redouble their efforts to produce the required statistics and to take measures to ensure that a greater part of the proportion required under Article 5 is earmarked for recent works.

5.3 The limitations of assessment at this stage

The definite conclusion to emerge from analysis of these first national reports as a whole is that in 1991-92 (more so in 1992 than in 1991 or earlier years) the vast majority of broadcasters under the jurisdiction of the Member States broadcast a majority proportion of European works on all the channels they transmit and that a smaller, but nevertheless significant number broadcast a substantial proportion of works by independent producers. Overall, then, the results are positive, especially bearing in mind the upward trend observed in those cases where the 51% proportion required by Article 4 was not already attained at the outset.

However, the Commission regrets that there was some lack of transparency on the part of the Member States in terms of the methods used in compiling the figures, even though several of them indicated that they had followed the guidelines. In particular this applies to the techniques used by broadcasters in accounting for works. Because of this lack of clarity the Commission is unable to assess the reliability of the data supplied.

The Commission would like to point out here that there is an economic logic behind measures taken by the Member States pursuant to Articles 4 and 5, which is explicitly spelled out in the preamble to the Directive (20th recital): the objective is not only to ensure the transmission of a majority proportion of European works but also to encourage the movement of programmes between the Member States and so to promote the emergence of economically viable secondary markets for all European productions, in particular those created by the independent sector.

Because of the problems of comparability due to the diversity of presentation in all the reports and the absence of certain statistics or other necessary information, the Commission is unable to make a satisfactory assessment of the current state of the audiovisual sector in the Member States and whether there has been any increase in movements and production of European programmes, especially fiction and documentaries, whose viability depends on a wider profitable market.

It is impossible to determine how much of the proportions of European works attained is accounted for by non-national works. As things currently stand the Commission's ability to monitor effectively, with the formal aim of observing the intra-Community flows of European programmes, is therefore limited. The situation is further aggravated by the lack of figures on new broadcasting services and, in some Member States, on cable and satellite broadcasting. In a number of cases this in effect confines this first monitoring exercise to channels broadcasting principally over the air via land-based networks.

6. CONCLUSIONS

6.1 Scope of Articles 4 and 5

Articles 4 and 5 apply to all broadcasting stations under the jurisdiction of the Member States except local stations that are not part of a national network. The Commission realizes that the wording of the articles, and in particular the use of terms such as "where practicable" and "progressively", posed interpretation problems for both national authorities and operators. The use of such terms reflects the need for flexibility in a system that covers both generalist land-based broadcasters and special interest satellite services, for instance.

The ideal answer would probably be to include in the Directive more detailed rules better tailored to cater for the differences between the various types of channel. However, the Commission's view is that this first monitoring exercise has helped to clarify the scope of the two articles. It clearly emerges that the majority of channels covered in the reports – in particular those that have been established for some time – are economically able to present a majority proportion of European works and at the same time achieve satisfactory audience ratings.

The Commission therefore considers that Article 4 requires all channels under the jurisdiction of the Member States to transmit, in principle, a majority proportion of European works where they exist in sufficient number for the type of channel in question or where the European programme industry is potentially able to produce them in sufficient quantity. The aim of the provision, after all, is to stimulate the development of the industry and to enable viewers to have access to such productions. Furthermore the Directive establishes a legal framework that applies to all broadcasters; the principle of fair competition means that this framework must be applied equitably and as uniformly as possible. The reports show that there are no grounds (in terms of economic viability) for any significant differences in applying the rules of Articles 4 and 5 to channels of the same type in whatever market, simply because the broadcaster in question comes under the jurisdiction of another Member State. The term "progressively" makes it possible to make allowance for the special circumstances facing new broadcasters, but does not release them from the obligation to attain a majority proportion in the long run. In this connection, Article 4(2) lays down a reference threshold which applies in all the Member States if the majority proportion is not attained.

Article 5 imposes rather less onerous obligations on broadcasters. The Commission therefore feels that the same degree of flexibility is not appropriate as for Article 4 and that Article 5 should therefore be applied more rigorously by the Member States.

6.2 Legal assessment and follow-up envisaged

Further to the review of transposal of the Directive which the Commission has already carried out, the national reports enable it to assess in concrete terms the Member States' compliance with the obligations flowing from Articles 4 and 5.

These obligations are twofold:

- the obligation to monitor, whereby the Member States are required to supply a certain amount of information;
- the obligation to see that broadcasters under their jurisdiction are subject to an effective mechanism to ensure that the required proportions are attained progressively and where practicable.

As far as the first of these is concerned, some Member States were found wanting since their reports did not cover all the elements required under Article 4, not to mention the guidelines proposed by the Commission.

The Commission is fully aware of the difficulty of implementing control mechanisms, and since this was the first reporting exercise, it does not intend to initiate infringement proceedings under Article 169 EC at this stage. Through meetings with the representatives of the Member States it will be asking for the major gaps in these first reports to be filled and will do all it can to iron out the last remaining difficulties so as to ensure that all the required data are supplied when the next reports are produced.

Turning to the second obligation, the Commission will request the national authorities to provide a detailed explanation of what action they plan to take with regard to broadcasters who fail to attain the proportions required by Articles 4 and 5. Where appropriate the Commission may then consider whether those measures satisfy the obligations imposed by Articles 4 and 5, taking into account its interpretation of the criteria of what is "progressive" and "practicable" in the light of the findings analysed.

6.3 Limitations of the system

In the Commission's opinion, the results at the end of the initial period of application of Articles 4 and 5 are encouraging, above all in view of the fairly general upwards trend. Nevertheless it is not unaware of the limitations of the system in terms of both the measures themselves and monitoring. At this stage the Commission will confine itself to the following observations:

- the nature of the information supplied does not make it possible to ascertain whether the upward trend is due to the national measures taken to implement the Directive or to natural market growth (a growing public preference has been observed for European programmes) or to both;
- the proportion of broadcasting time relates to total transmission time;
- the obligations imposed by Article 4 relate solely to broadcasting time and do not include any direct obligation to invest in production; Article 5, by contrast, offers a choice between a proportion of broadcasting time and a proportion of the programming budget, and the Commission considers that this second option is more likely to ensure that the objectives are attained;
- lastly the Commission has already highlighted the issue of providing encouragement, which it considers essential for the movement of works.

6.4 Future implications

Article 4(4) expressly mentions the possibility of proposals for revision of Articles 4 and 5. The Commission would like to make clear that the question of refining or

strengthening the system set up by Articles 4 and 5 is now under consideration and would also make the point that harmonization in this area is essential to help independent operators in the context of the new Community audiovisual market established by the Directive.

However, it does not believe that it would be appropriate to put forward proposals for revision at this juncture since by 3 October 1994 it is due to submit an overall assessment of the application of the Directive; and the Directive's scope extends far beyond the field covered by Chapter III (Articles 4 to 9). The Commission therefore intends to wait until that overall assessment is complete before proposing any changes, which would then form part of a broader set of proposals.

This approach will also allow it to take into account the outcome of discussions on the Green Paper on audiovisual policy which are due to be held in the spring.

As a specific part of this overall process, the Commission is anxious to seek the opinion of the European Parliament and the Council on this communication as rapidly as possible.

ANNEX I

SUGGESTED GUIDE-LINES FOR THE MONITORING OF THE "TV WITHOUT FRONTIERS" DIRECTIVE.

Introduction.

In order to assist Member States in their duty to monitor the application of Articles 4 and 5 of the Council Directive (89/552/EEC) on TV without frontiers and to render transparent to all interested parties the manner in which this legislation will be implemented by the Commission's Services the following guide-lines have been drafted.

Suggested definitions to be applied by Member States in their monitoring of Articles 4 and 5 of the directive:

1) Definition of a broadcaster

A broadcaster must be taken to mean a "channel" where the broadcaster has more than one channel.

The determining criterion of jurisdiction is the Member State where the broadcaster is established. (See No 2 below)

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

2) Member States jurisdiction over broadcasters

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

Establishment is relied on as a basis for defining both the origin of a broadcaster and of a programme. The point of establishment within the Community can be taken to mean that Member State where, for example, the broadcaster's head-quarters are based, it being understood that the top management and majority of staff involved in both the preparation of programming schedules and commercial operations would be located at this point.

3) Relevant Programme Transmission Time on which the quotas are calculated.

Programme transmission time, within the meaning of article 4, paragraph 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.

4) Definition of a European work.

This is already clearly defined in Article 6 of the Directive.

For the purposes of Article 6, paragraph 2 a producer will be considered established within a European State if the company is an up and going concern which has a permanent staff (taking into account the specificities of the sector) involved in both production and commercial operations at the EUROPEAN LOCATION.

In the case of Article 6, paragraph 3 and 6, paragraph 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) Concept of Independence.

A producer with broadcasting interests will only be considered as an independent producer if his/her broadcasting interests do not represent his/her principal activity.

With reference to Article 5 of the Directive, it is suggested that a producer should be considered independent of a broadcaster.

- If one broadcaster does not account for more than 25% of the producer's equity, or 50% for a number of broadcasters. In this specific instance "broadcasters" are understood to mean the organisation as a whole and not individual channels operated by the same broadcaster.

and

- no more than 90% of a producer's output over a period of three years is furnished to one broadcaster, except where the producer makes only one programme or series during this reference period.

It would also be consistent if the above criteria were to be applicable in reverse (eg in the case where a producer has a significant stake in a broadcaster).

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.

Under Article 4, paragraph 3 of the directive Member States are required to submit a monitoring report to the Commission on the implementation of Articles 4 + 5.

For this first report the base year will be 1988 for all Member States, except Greece and Portugal whose base year is 1990.

The first monitoring report should consist of data for the period October 1991 to December 1991, and for the calendar year January until December 1992. Thereafter the data will be collected annually and submitted to the Commission every two years.

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

7) Collection of Data.

Statistics must cover the channels of all broadcasters which are under the jurisdiction of the Member State, irrespective of whether they are new or theme channels.

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

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

If Member States use definitions different from those listed above, then the monitoring report must include details of the definitions used and how they differ from those given above and when possible in what way they affect the resulting data.

In so far as broadcasters can code their programmes according to the afore-mentioned definitions they should be recommended to apply data recording systems such that comprehensive statistics for their entire annual schedule will be collected.

If a broadcaster clearly demonstrates to both the Member State and the Commission that the collection of data from previous years poses a significant and heavy cost burden, then where necessary an exception could be made for the first reporting period.

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

ANNEX

Directive on "Television without frontiers"
Article 2(1)

. Article 2(1) reads:

"Each Member State shall ensure that all television broadcasts transmitted

- by broadcasters under its jurisdiction, or
- by broadcasters who, while not being under the jurisdiction of any Member State, make use of a frequency or a satellite capacity granted by, or a satellite up-link situated in, that Member State,

comply with the law applicable to broadcasts intended for the public in that Member State."

- . In the context of the internal market and freedom to supply services, this provision logically enough seeks to ensure that the law of one state only applies to each broadcast from a Member State, and thus to avoid a situation where either no laws or control are applicable (negative conflict of laws) or multiple laws and control apply (positive conflict of laws).

That this is the objective is borne out by the following recitals:

. "Whereas it is consequently necessary and sufficient that all broadcasts comply with the law of the Member State from which they emanate;"

. "Whereas it is necessary, in the common market, that all broadcasts emanating from and intended for reception within the Community and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of this Directive;"

. Four linking factors - one primary and three secondary ones - are therefore set out to determine which body of legislation applies to a broadcaster:

- The first, relating to the jurisdiction of the broadcaster's Member State, is the most important. The expression "under its jurisdiction" refers to the criterion of the organization's place of establishment. "Place of establishment" may be defined by a range of criteria whereby it should be possible to determine the real and stable place of business of the broadcaster, in accordance with the principles established by the Court of Justice.

- The requirement of stability, which is indispensable both to the Member States for the organization of their national audiovisual system and to certainty as to the law applicable to businesses, underlines the secondary nature of the other three linking factors set out in Article 2. The allocation of a frequency or a satellite capacity or the establishment of a satellite up-link are, by their very nature, unstable links which contrast with the real and stable place of establishment referred to earlier. Consequently, they apply only when the primary linking factor cannot be invoked, in other words when the broadcasting organization is not under the jurisdiction of any Member State but uses a frequency, satellite capacity or up-link situated in a Member State.
- . It is essential that national legislation respect the hierarchy between the two indents, so that within the EEC broadcasters are governed by no more than one body of legislation.
- . A situation where a broadcaster was subject to the law of several different countries, with all the contradictions that might entail, would be incompatible with the aim of the Directive, because it would generate restrictions on the free movement of broadcasts.
- . This interpretation of the Directive does not affect the freedom of Member States to determine the organizational details of their national audiovisual system (licensing, authorizations, etc.).

ANNEX II

STATISTICAL SUMMARY

COUNTRY: BELGIUM (FLEMISH COMMUNITY)

Date sent: 17 December 1993

Reference period(s): 1 October 1991 to 31 December 1992

CHANNELS:

% European works (EW)
% Independent production (IW)
% Recent works (RW)

| NAME | EW | IW | RW |
|-----------------|-------|------|------|
| BRTN(TV1) | 64.06 | - | - |
| BRTN(TV2) | 92.26 | - | - |
| VTM | 38.1 | 82.1 | 67.7 |
| Filmnet Plus | 24.30 | - | - |
| Average 1988 | 40.26 | | |

STATISTICAL SUMMARY

COUNTRY: BELGIUM (FRENCH COMMUNITY)

Date sent: 17 January 1994

Reference period(s): 1992 in the case of two channels (RTBF1 and TELE 21) and 30 October 1991 to 31 December 1992 for the two others (RTL-TVi and CANAL+ TVCF) as regards the proportion of European works; no specific reference dates are indicated as regards the proportion of independent works.

CHANNELS:

% European works (EW)

% Independent production (IW)

% Recent works (RW)

| NAME | EW | IW | RW |
|-----------------|------|------|-----|
| RTBF1 | 68 | 16 | - |
| TELE 21 | 95 | 47 | - |
| RTL-TVi | 52.4 | 29.5 | 3.4 |
| CANAL+ TVCF | 41.6 | - | - |
| Average 1988 | 41.6 | | |

STATISTICAL SUMMARY

COUNTRY: DENMARK

Date sent: 17 December 1993

Reference period(s): 1 October 1991 to 31 December 1992, except for the proportion of independent productions broadcast by Danmark Radio, where the first reference period covers October to December 1991⁽¹⁾ and the second extends over the 1992 calendar year.⁽²⁾

CHANNELS:

% European works (EW)

% Independent production (IW)

% Recent works (RW)

| NAME | EW | IW | RW |
|------------------|----|------------------|----|
| Danmark Radio | 79 | 1. 11 2. 12.5 | - |
| TV2 /Danmark | 53 | 77.2 | - |

STATISTICAL SUMMARY

COUNTRY: GERMANY

Date sent: 18 November 1993

Reference period(s): 3 October 1991 to 31 December 1991 and 1 January 1992 to 31 December 1992 except in the case of SAT-1,^(*) where the figures cover the calendar years 1991 and 1992.

CHANNELS:

- % European works (EW)
- % Independent production (IW)
- % Recent works (RW)

| NAME | | EW | IW | RW |
|-----------|------|------|-----|----|
| ARD | 1991 | 88.1 | >10 | - |
| | 1992 | 90.1 | >10 | - |
| EINS PLUS | 1991 | 90.2 | >10 | - |
| | 1992 | 91.5 | >10 | - |
| ZDF | 1991 | 79.4 | >10 | - |
| | 1992 | 80.9 | >10 | - |
| 3-SAT | 1991 | 90.5 | >10 | - |
| | 1992 | 92.0 | >10 | - |
| SAT-1 (*) | 1991 | 50.9 | >10 | - |
| | 1992 | 53.4 | >10 | - |
| RTL | 1991 | 45.0 | >10 | - |
| | 1992 | 49.0 | >10 | - |
| PRO-7 | 1991 | 34.1 | >10 | - |
| | 1992 | 34.1 | >10 | - |
| PREMIERE | 1991 | 50.0 | >10 | - |
| | 1992 | 50.0 | >10 | - |

STATISTICAL SUMMARY

COUNTRY: GREECE

Date sent: 1 February 1994

Reference period(s):- October to December 1991 and January to December 1992 for five channels
 - sample for one channel^(*)
 (weeks: 1-6/11/1991; 1-7/2/1992; 4-10/3/1992; 3-9/8/1992; 31/10-6/11/1992)

CHANNELS:

% European works (EW)
 % Independent production (IW)
 % Recent works (RW)

| NAME | | EW | IW | RW |
|-------------|-------|-------|-------|----|
| ET1 | 1991 | 87.48 | - | - |
| | 1992 | 76.74 | - | - |
| ET2 | 1991 | 59.1 | - | - |
| | 1992 | 65.7 | - | - |
| ET3 | 1991 | 83.3 | 0 | - |
| | 1992 | 82.3 | 0 | - |
| MEGA | 1991 | 60.06 | 23 | - |
| | 1992 | 52.5 | 30.8 | - |
| ANTENNA | 1991 | 60.82 | 32.74 | - |
| | 1992 | 61.89 | 32.25 | - |
| NEW CHANNEL | 1991* | 29.23 | 34.15 | - |
| | 1992* | 40.32 | 65.3 | - |

STATISTICAL SUMMARY

COUNTRY: SPAIN

Date sent: 6 October 1993

Reference period(s): 1 October 1991 to 31 December 1991 and
1 January 1992 to 31 December 1992

CHANNELS:

% European works (EW)
% Independent production (IW)
% Recent works (RW)

| NAME | | EW | IW | RW |
|------------------------|------|------|-----|-----|
| TVE-1 | 1991 | 33 | 5.5 | 1.5 |
| | 1992 | 59 | 6 | 2 |
| TVE-2 | 1991 | 35 | 6 | 2 |
| | 1992 | 67 | 6.3 | 2.2 |
| TELEMADRID | 1991 | 34 | 7 | 2.2 |
| | 1992 | 49.8 | 7.4 | 2.5 |
| TV-3 | 1991 | 33 | 3 | 1 |
| | 1992 | 49 | 3.5 | 1.5 |
| CANAL-33 | 1991 | 43 | 5.5 | 2 |
| | 1992 | 89 | 6 | 2.5 |
| CANAL-9 | 1991 | 25 | 4.5 | 2 |
| | 1992 | 48 | 5.5 | 2.5 |
| EITB-1 | 1991 | 36 | 6 | 1.8 |
| | 1992 | 73 | 7 | 2.2 |
| EITB-2 | 1991 | 36 | 5.5 | 1.5 |
| | 1992 | 69 | 6.5 | 2 |
| TVGalicia | 1991 | 34 | 6 | 2 |
| | 1992 | 57 | 7.5 | 2.5 |
| CANAL SUR Andalucia | 1991 | 33 | 6 | 2.5 |
| | 1992 | 68 | 7 | 2.7 |

| | | | | |
|-------------------|------|----|---|-----|
| CANAL PLUS | 1991 | 24 | 3 | 1 |
| | 1992 | 44 | 4 | 1.5 |
| ANTENA-3 | 1991 | 30 | 6 | 2 |
| | 1992 | 52 | 7 | 2.5 |
| TELE-5 | 1991 | 29 | 6 | 2 |
| | 1992 | 47 | 7 | 2.5 |

STATISTICAL SUMMARY

COUNTRY: FRANCE

Date sent: 20 December 1993 (+ additional report on 1 February 1994)

Reference period(s):

- Article 4: (1) October 1991 to December 1991 and 1992
- (2) sample = 4 selected weeks in 1992
- Article 5: (3) proportion of programming budget

CHANNELS:

% European works (EW)
 % Independent production (IW)
 % Recent works (RW)

| NAME | | EW | IW | RW |
|--------------------|---------------|------|-------|----|
| FR2 | (1) 1991 | 76.3 | | - |
| | (1) 1992 | 74.8 | | - |
| | (3) 1992 | | 33.9 | - |
| FR3 | (1) 1991 | 83 | | - |
| | (1) 1992 | 76.9 | | - |
| | (3) 1992 | | 40.38 | - |
| TF1 | (1) 1991 | 70.7 | | - |
| | (1) 1992 | 66 | | - |
| | (3) 1992 | | 20.45 | - |
| M6 | (1) 1991 | 63.8 | | - |
| | (1) 1992 | 63.2 | | - |
| | (3) 1992 | | 37.5 | - |
| CANAL + | (1) 1991 | 61 | | - |
| | (1) 1992 | 57.9 | | - |
| | (3) 1992 | | 29.28 | - |
| CANAL J | (2-3) 1992 | 53 | 34 | - |
| CANAL JIMMY | (2-3) 1992 | 46 | 40 | - |
| PLANETE | (2-3) 1992 | 77 | 40 | - |

| | | | | |
|-----------------------------|---------------|----|----|---|
| MCM/Euro musique | (2-3) 1992 | 58 | 58 | - |
| Ciné- Cinémas | (2-3) 1992 | 53 | 40 | - |
| Ciné-Cinéfil | (2-3) 1992 | 53 | 40 | - |

STATISTICAL SUMMARY

COUNTRY: IRELAND

Date sent: 5 November 1993

Reference period(s): 1991 and 1992

CHANNELS:

- % European works (EW)
- % Independent production (IW)
- % Recent works (RW)

| NAME | | EW | IW | RW |
|-------------------------|------|----|----|----|
| RTE-1 + NETWRWK 2 | 1991 | 73 | 9 | - |
| | 1992 | 75 | 9 | - |

STATISTICAL SUMMARY

COUNTRY: ITALY

Date sent: 30 November 1993

Reference period(s): 1988 to 1992

CHANNELS:

% European works (EW)
 % Independent production (IW)
 % Recent works (RW)

| NAME | | EW | IW | RW |
|-----------------|------|-------|-------|----|
| RAI-1 | 1991 | 73 | 10.4 | - |
| | 1992 | 73 | 12.7 | - |
| RAI-2 | 1991 | 58 | 4.6 | - |
| | 1992 | 61 | 5.7 | - |
| RAI-3 | 1991 | 75 | 7.7 | - |
| | 1992 | 67 | 6.5 | - |
| CANALE 5 | 1991 | 57.8 | - | - |
| | 1992 | 72 | - | - |
| ITALIA-1 | 1991 | 42.5 | - | - |
| | 1992 | 39.8 | - | - |
| RETE-4 | 1991 | 27 | - | - |
| | 1992 | 39.5 | - | - |
| TELEMONTE-CARLO | 1991 | 32.28 | 17.84 | - |
| | 1992 | 40.28 | 16.98 | - |
| BETA-TV | 1991 | 57.4 | 57.4 | - |
| | 1992 | 60 | 60 | - |
| TELE+1 | 1991 | 23.03 | - | - |
| | 1992 | 31.68 | - | - |
| TELE+2 | 1991 | 100 | - | - |
| | 1992 | 98.16 | - | - |
| TELE+3 | 1991 | 69.74 | - | - |

| | | | | |
|----------------|------|-------|------|---|
| | 1992 | 73 | - | - |
| AVERAGE | 1988 | 43.02 | 1.28 | - |

STATISTICAL SUMMARY

COUNTRY: LUXEMBOURG

Date sent: 13 October 1993

Reference period(s): 3 October 1991 to 31 December 1992

CHANNELS:

% European works (EW)

% Independent production (IW)

% Recent works (RW)

| NAME | EW | IW | RW |
|----------------|-------|-------|-------|
| RTL TV | 46.23 | 25.50 | 4.78 |
| RTL TVi | 41.33 | 19.15 | 2.25 |
| RTL 4 | 39.73 | 23.47 | 14.41 |
| RTL Télé. | 48 | - | - |
| RTL HeiElei | 98 | 2 | 1.14 |
| CNN | - | - | - |

STATISTICAL SUMMARY

COUNTRY: NETHERLANDS

Date sent: 29 September 1993

Reference period(s): sample: 46 in 1991 and 4, 20, 34 and 42 in 1992

CHANNELS:

% European works (EW)

% Independent production (IW)

% Recent works (RW)

| NAME | EW | IW | RW |
|-------|----|----|----|
| NED.1 | 74 | 30 | 29 |
| NED.2 | 65 | 25 | 22 |
| NED.3 | 89 | 11 | 9 |

STATISTICAL SUMMARY

COUNTRY: PORTUGAL

Date sent: 20 January 1994

Reference period(s): 1991 and 1992

CHANNELS:

% European works (EW)

% Independent production (IW)

% Recent works (RW)

| NAME | | EW | IW | RW |
|---------|------|----|----|----|
| CANAL 1 | 1991 | 50 | 6 | - |
| | 1992 | 52 | 8 | - |
| CANAL 2 | 1991 | 62 | 14 | - |
| | 1992 | 62 | 15 | - |
| AVERAGE | 1990 | 54 | 8 | - |

STATISTICAL SUMMARY

COUNTRY: UNITED KINGDOM

Date sent: 4 November 1993

Reference period(s): -

CHANNELS:

% European works (EW)
 % Independent production (IW)
 % Recent works (RW)

| NAME | EW | IW | RW |
|---------------------------|------|------|------|
| ITV | 65.4 | 16.6 | 13 |
| CHANNEL-4 | 67.3 | 39 | 34.6 |
| BBC-1 | 71.5 | 14.5 | - |
| BBC-2 | 70 | 11 | - |
| Childrens Channel | 52.8 | 48.6 | 20.4 |
| SKY ONE | 8.5 | 5.3 | 3.6 |
| CNN | - | - | - |
| SKY Sports | 65.2 | 34.7 | 34.7 |
| SKY MOVIES + | 13.7 | 5.8 | 1.2 |
| MOVIE CHANNEL | 16.4 | 12.4 | 3.1 |
| SKY NEWS | 64.3 | 28.9 | 28.9 |
| SKY MOVIES GOLD | 19.1 | 19.1 | 0 |
| TV3 BroadcastingG Norvège | 23.4 | 17.4 | 0 |
| TV3 BroadcastingG Danmark | 15.6 | 7.6 | 0 |
| TV3 BroadcastingG Suède | 24.8 | 18.8 | 0 |
| Quantum TV | 0 | 0 | 0 |
| Japan Satellite TV | 0 | 0 | 0 |

| | | | |
|--|------|------|------|
| BRAVO | 29.2 | 6.8 | 0 |
| Adult Channel | 49.7 | 28.7 | 17.5 |
| Asia Vision | 4.3 | 0.5 | 0 |
| Super Channel | 70.9 | 31.2 | 29.2 |
| MTV EUROPE | 84.3 | 83.9 | 83.9 |
| TV ASIA | 19.4 | 0 | 0 |
| LEARNING Channel | 98.3 | 50 | 45.3 |
| Supershop Limited | 0 | 0 | 0 |
| REGAL SHOP | 13.3 | 13.3 | 13.3 |
| Landscape Channel | 100 | 100 | 100 |
| Parliamentary Channel | 100 | 100 | 100 |
| UK GOLD | 63.3 | 0 | 0 |
| China News Europe | 0 | 0 | 0 |
| Discovery Channel | 51.3 | 31.7 | 24.1 |
| Muslim TV Ahmadiyya | 0 | 0 | 0 |
| Namaste Asian TV | 0 | 0 | 0 |
| TV 1000 | 22.9 | 22.9 | 3.9 |
| Middle East Broadcasting Centre | 25.9 | 0 | 0 |
| ARTS Channel | 67 | 32 | 20 |
| KINDERNET | 60.3 | 37 | 16.5 |
| BBC WORLD SERVICE TV | 99.6 | 11.3 | - |
| THE BOX | 62 | 18.6 | 0 |
| VISION | 27.8 | 22.3 | 20.3 |
| HVC | 24.9 | 14 | 5.4 |
| Channel Guide | 100 | 0 | 0 |