

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (89) 247 final - SYN 52

Brussels, 26 May 1989

Re-examined proposal for a

COUNCIL DIRECTIVE

ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY
LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES
CONCERNING THE PURSUIT OF TELEVISION BROADCASTING ACTIVITIES

(presented by the Commission pursuant to Article 149 2, d, of the EEC Treaty)

COMMISSION OF THE EUROPEAN COMMUNITIES

ADDENDUM : ANNEX
=====

COM (89) 247 final / 2 - SYN 52
=====

Brussels, 31 May 1989

Re-examined proposal for a
COUNCIL DIRECTIVE

ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY
LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES
CONCERNING THE PURSUIT OF TELEVISION BROADCASTING ACTIVITIES

(presented by the Commission pursuant to Article 149 2, d, of the EEC Treaty)

RE-EXAMINED PROPOSAL FOR A COUNCIL DIRECTIVE
ON THE COORDINATION OF CERTAIN PROVISIONS LAID DOWN BY
LAW, REGULATION OR ADMINISTRATIVE ACTION IN MEMBER STATES
CONCERNING THE PURSUIT OF TELEVISION BROADCASTING ACTIVITIES

Explanatory memorandum

1. On 30 April 1986 the Commission presented to the Council a proposal for a Directive on "television without frontiers".¹
2. The Economic and Social Committee delivered its opinion² on the proposal on 1 July 1987 and Parliament delivered its opinion at its sitting on 20 January 1988.³
3. An amended proposal was drawn up to take account, as far as possible, of the opinions delivered by these two institutions.⁴ The Commission was able to accept practically all the amendments proposed by Parliament.
4. On 13 April 1989 the Council adopted the common position,⁵ on which it delivered its reasoned opinion⁶ and on which the Commission commented.⁷
5. Parliament carried out its second reading of the proposal on 24 May 1989 under the cooperation procedure and voted in favour of 16 amendments.⁸

1 COM(86)146 final/2, OJ No C 179, 17.7.1986, p.4.

2 OJ No C 232, 31.8.1987, p.29.

3 OJ No C 49, 20.1.1988, p.53.

4 COM(88)154 final, OJ No C 110, 27.4.1988.

5 Council documents 5858/89 of 10.4.1989 and 5858/89 COR of 13.4.1989.

6 Council document 5858/89 Add 1 of 13.4.1989.

7 SEC(89)595 final - SYN 52, 14.4.1989.

8 ...

6. This re-examined proposal for a Directive incorporates, in accordance with Article 149(2)(d) of the EEC Treaty, amendments relating to the recitals, the proportion of transmission time reserved for European works, the proportion of transmission time reserved for independent productions, advertising breaks, the amount of advertising and the scope of the Directive.
 - (a) As requested by Parliament, the 16th recital stipulates that Member States must ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in broadcasts or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole.
 - (b) In order to take account of technical developments, Article 2(3) has been amended to ensure that the Directive also applies to television broadcasts which, while intended exclusively for reception in non-Community countries, may nevertheless be received directly or indirectly in one or more Member States.
 - (c) As requested by Parliament, the wording of Article 4 has been aligned, in all the language versions, on the Community law terminology in the EEC Treaty.
 - (d) The first sentence of the third subparagraph of Article 4(3) has been amended to ensure that the reports drawn up by the Member States on the application of the proportions laid down are also brought to Parliament's notice.
 - (e) Article 5 has been amended in two respects. Firstly, it now provides an additional stimulus to real investment in the independent production sector by supplementing the 10% proportion of transmission time earmarked for European works created by independent producers, excluding the time allocated to news, sports events, games, advertising and teletext services, by an alternative proportion of at least 10% of the programming budget.

Secondly, and with a similar aim in view, it is stipulated that, in order for the proportion envisaged to be reached, adequate account should be taken of recent works, i.e. those broadcast within a relatively short time after being produced. A relatively short time is deemed to be one which does not exceed five years.

- (f) The new version of Article 11(1) introduces criteria of a general nature alongside those already contained in paragraph 1 of the common position without, however, affecting the detailed conditions governing the insertion of advertising during television broadcasts, which are contained in paragraphs 2 to 5. The overall balance of the Article has thus not been undermined, and the ability of Community television broadcasters to compete with those from non-member European countries has been safeguarded.
- (g) The aim of the amendments made to paragraphs 3 and 5 of Article 11 is to give legal expression to Parliament's and the Council's wish that the periods provided for in the two paragraphs should be calculated on the basis of the scheduled duration of programmes.
- (h) By adding the words "notwithstanding the provisions of paragraph 1" to the beginning of paragraph 3 of Article 18, it has been made clear that the limit of one hour per day for the broadcasting of direct offers to the public for the sale, purchase or rental of products or for the provision of services applies cumulatively to the general provision in paragraph 1 of that Article, which limits to 20% of transmission time the entire advertising content of television programmes, including such forms of advertisements.
- (i) The Commission has not incorporated a number of other major amendments requested by Parliament. While these were in keeping with the spirit of the Directive, they would have reintroduced constraints which would have jeopardized the rapid adoption of the Directive, whereas the current state of the European audio-visual industry and the rapid development of broadcasting and reception technologies necessitates the urgent adoption of measures, whether from the point of view of the free movement of programmes or of a policy for encouraging creativity, production and distribution. The system for monitoring

application of the Directive will enable the Community to evaluate the progress made and to make any amendments to the Directive that may prove necessary.

Re-examined proposal for a Council Directive

5

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

COMMON POSITION

RE-EXAMINED PROPOSAL

Whereas it is essential for the satisfactory implementation of this Directive to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in broadcasts or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole;

Whereas it is essential for Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television broadcasts or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole;

The remaining recitals,
Article 1 and Article 2(1) and (2) unchanged

Article 2(3)

Article 2(3)

3. This Directive shall not apply to broadcasts intended exclusively for reception in States other than Member States.

3. This Directive shall not apply to broadcasts intended exclusively for States other than Member States which are not received directly or indirectly in one or more Member States.

Article 3 unchanged

COMMON POSITION

RE-EXAMINED PROPOSAL

Article 4(1)

Article 4(1)

1. The 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.

1. The 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 allocated 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.

Paragraph 2 unchanged

First sentence of third subparagraph of Article 4(3)

First sentence of third subparagraph of Article 4(3)

The Commission shall inform the other Member States of the reports, which shall be accompanied, where appropriate, by an opinion.

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 rest of paragraph 3 and paragraph 4 unchanged

COMMON POSITION

RE-EXAMINED PROPOSAL

Article 5

Article 5

The 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, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcasters' informational, educational, cultural and entertainment responsibilities to their viewing public, should be achieved progressively, on the basis of suitable criteria.

The Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time allocated to news, sports events, games, advertising and teletext services, or, alternatively, at least 10% of their programming budget for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcasters' informational, educational, cultural and entertainment responsibilities to their viewing public, should be achieved progressively, on the basis of suitable criteria; it should be reached by allocating an adequate proportion to recent works, i.e. those produced a relatively short time before they are transmitted. A period of not more than five years shall be considered to be a relatively short time.

Articles 6, 7, 8, 9 and 10 unchanged

COMMON POSITION

RE-EXAMINED PROPOSAL

Article 11(1)

Article 11(1)

1. Advertisements shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this Article are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.

1. Advertisements shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this Article are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme are not prejudiced in particular because the advertising coincides with a natural break in the programme and the duration and nature of the programme are such as to permit that advertising break, and in such a form that the rights of the rights holders are not prejudiced.

Article 11(2) unchanged

3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

Paragraph 4 unchanged

COMMON POSITION

RE-EXAMINED PROPOSAL

5. Advertisements shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when they are of less than 30 minutes' duration, shall not be interrupted by advertisements. If they last for 30 minutes or longer, the provisions of the previous paragraphs shall apply.

5. Advertisements shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when they are of less than 30 minutes' scheduled duration, shall not be interrupted by advertisements. If they are scheduled to last for 30 minutes or longer, the provisions of the previous paragraphs shall apply.

Articles 12, 13, 14, 15, 16, 17 and 18(1) and (2) unchanged

Article 18(3)

Article 18(3)

3. Forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day.

3. Notwithstanding the provisions of paragraph 1, forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services shall not exceed one hour per day.

Articles 19, 20, 21, 22, 23, 24, 25, 26 and 27 unchanged

Annex

Re-examined Proposal for a

Council Directive

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

The Annex contains the amendments of Parliament which the Commission has not accepted, not accepted in part (indicated by *) or not accepted in the formulation adopted by Parliament (indicated by **).

Common position of the Council

Text amended by Parliament

(Amendment No. 3)

Article 4(1)

1. The 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.

1. The Member States shall ensure, using appropriate and legally effective means and according to a progressive timetable commensurate with the prevailing situation, that within four years after the entry into force of this Directive all television broadcasters reserve the majority of their transmission time for European works, within the meaning of Article 6, excluding the time assigned 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.

(*)

Common position of the Council	Text amended by Parliament
<p data-bbox="241 915 793 1063">2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for <u>1988</u> in the Member State concerned.</p> <p data-bbox="286 1081 812 1196">However, in respect of the Hellenic Republic and the Portuguese Republic, the year <u>1988</u> shall be replaced by the year <u>1990</u>.</p>	<p data-bbox="989 798 1276 827">(Amendment No. 4)</p> <p data-bbox="848 858 1028 887"><u>Article 4(2)</u></p> <p data-bbox="848 915 1384 1152">2. In respect of the Hellenic Republic and the Portuguese Republic, if the proportion laid down in paragraph 1 cannot be achieved, the actual proportion must not be any less than the average for <u>1990</u> in the Member State in question.</p>

COMMON POSITION OF THE COUNCIL

The Commission shall inform the other Member States of the reports, which shall be accompanied, where appropriate by an opinion.

AMENDMENTS ADOPTED BY PARLIAMENT

(Amendment No. 6/rev.)

Article 4(3), third subparagraph,
first sentence

The Commission shall inform the Member States and the European Parliament of the reports, which shall be accompanied where appropriate, by an opinion; it shall also forward an annual report on the state of implementation of the Directive.

(*)

Common position of the Council

The 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 tele-text services, for European works created by producers who are independent of broadcasters. 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.

Text amended by Parliament

(Amendment No. 7)

Article 5

The Member States shall ensure that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and tele-text services, for European works created by producers who are independent of broadcasters. 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.

(*)

Common position of the Council

Text amended by Parliament

(Amendment No. 8)

Article 5, second paragraph (new)

The Member States shall ensure, in conjunction with or as an alternative to the provisions set out in paragraph 1, that broadcasters reserve at least 5% of their transmission time or of their programming budget to Community works created by producers independent of the television companies.

(*)

Common position of the Council	Text amended by Parliament
	<p data-bbox="987 796 1270 829">(Amendment No. 9)</p> <p data-bbox="831 851 1317 884"><u>Article 5, third paragraph (new)</u></p> <p data-bbox="831 906 1426 1205"><u>This percentage shall be progressively increased to at least 10% three years after the date specified in Article 25; this minimum shall be reached by assigning an appropriate quota for recent works, i.e. those produced a reasonably short time before they are transmitted. A period of not more than five years shall be considered as a reasonably short time.</u></p> <p data-bbox="1176 1769 1223 1802">(*)</p>

Common position of the Council

Text amended by Parliament

(Amendment No. 10)

Article 11(1)

1. Advertisements shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this Article are fulfilled, advertisements may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.

1. Television advertising shall not interrupt the structural coherence of programmes and shall be inserted between programmes in such a way as not to prejudice their integrity and value or the rights of the rights holders.

(**)

Common position of the Council	Text amended by Parliament
	<p data-bbox="969 769 1255 798">(Amendment No. 11)</p> <p data-bbox="812 836 1408 864">Article 11(1), second subparagraph (new)</p> <p data-bbox="812 913 1370 1024"><u>However, interruption shall be permitted only if it does not constitute unreasonable interference, because:</u></p> <p data-bbox="812 1030 1370 1086"><u>(a) the advertising is inserted in a natural break within the programme;</u></p> <p data-bbox="812 1092 1370 1174"><u>(b) the duration and nature of the programme is such as to permit that advertising break;</u></p> <p data-bbox="1094 1749 1154 1778">(**)</p>

Common position of the Council

Text amended by Parliament

(Amendment No. 13)

Article 17

1. Sponsored television programmes shall meet the following requirements:

(a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of the programmes;

(b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or at the end of the programmes;

(c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

1. Member States shall allow the sponsorship of broadcast programmes.

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

(a) programmes shall not refer to specific undertakings, products or services in a way not necessary for their content;

COMMON POSITION OF THE COUNCIL

2. Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by Articles 13 or 14.

3. News and current affairs programmes may not be sponsored.

TEXT AMENDED BY PARLIAMENT

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

Common position of the Council

Text amended by Parliament

(Amendment No. 14)

Article 18(1)

1. The amount of advertising shall not exceed 15% of the daily transmission time. However, this percentage may be increased to 20% to include forms of advertisements such as direct offers to the public for the sale, purchase or rental of products or for the provision of services, provided the amount of spot advertising does not exceed 15%.

1. The amount of advertising shall not exceed 15% of the daily transmission time.

Common position of the Council

2. The amount of spot advertising within a given one-hour period shall not exceed 20%.

Text amended by Parliament

(Amendment No. 15)

Article 18(2)

2. The amount of spot advertising within a given one-hour period shall not exceed 18%.

PE 133.154/15

Or. It.

Common position of the Council

Text amended by Parliament

(Amendment No. 16)

Article 18 (2a) (new)

2a. The maximum percentages referred to in paragraphs 1 and 2 shall apply to all forms of television advertising, including teleshopping.

(**)

PE 133.154/ 16

Or. It.