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COMMUNICATION FROM THE COMMISSION

TO THE COUNCIL, THE EUROPEAN PARLIAMENT,  
THE ECONOMIC AND SOCIAL COMMITTEE  
AND THE COMMITTEE OF THE REGIONS

*on the follow-up to the*

**GREEN PAPER ON THE PROTECTION OF MINORS AND HUMAN  
DIGNITY IN AUDIOVISUAL AND INFORMATION SERVICES**

*including a*

Proposal for a

COUNCIL RECOMMENDATION

concerning the protection of minors and human dignity in audiovisual and information  
services

(presented by the Commission)

## INTRODUCTION

- The development of the audiovisual and information services industry in the European Union requires not only the right economic and political conditions but also a certain level of **protection for the general interests of the European citizen**. It was in this connection that the *Green Paper on the protection of minors and human dignity*<sup>1</sup> opened a wide-ranging debate on the problems associated with the protection of minors<sup>2</sup> and human dignity<sup>3</sup> in audiovisual and information services, whatever their means of conveyance (television, proprietary on-line services, services on the Internet). The extensive consultation process produced a first set of conclusions which were submitted to the Council on 30 June 1997 as a Commission working document.<sup>4</sup> The Council welcomed these conclusions and encouraged the Commission to continue its work along the lines sketched out.
- The work on the Green Paper showed that while the principle of the protection of fundamental rights is clearly applicable to all audiovisual and information services, its practical application varies considerably from service to service. In the field of television, a coherent and tested regulatory framework is in place at national and Community level,<sup>5</sup> but the use of digital technology makes it necessary to look at new methods of protecting minors. There have been real difficulties in applying laws and general principles to the on-line services sector: **the first national initiatives to adapt to the new services have taken the form of self-regulation as a supplement to existing legislation, in the form of voluntary action by the parties concerned.**
- The consultations on the Green Paper clearly showed that **the protection of minors and human dignity is an essential prerequisite to establishing the climate of trust needed for the development of the audiovisual and information services industry**. The European Union can, while taking account of the differences in national sensitivities and with absolute respect for the principle of subsidiarity, improve the effectiveness of national measures by ensuring a minimum level of coherence in the development of national self-regulation frameworks and by encouraging cooperation at European level; this is where Community “added value” comes in.

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<sup>1</sup> COM (96) 483 final.

<sup>2</sup> Protection of minors against legal content which could impair their physical and/or moral development.

<sup>3</sup> Contents offensive to human dignity are illegal contents which are prohibited to the whole of society regardless of age and medium, and which strike at the very foundations of society and human dignity (for example, child pornography, extreme forms of violence, incitement to racial hatred and xenophobia).

<sup>4</sup> Consultations on the Green Paper: SEC (97) 1203 of 13 June 1997.

<sup>5</sup> See chapter 5 of the “Television without frontiers” Directive: Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC of 3 October 1989.

- **The European Union should, therefore :**
  - 1) **coordinate the development of national self-regulation by promoting common codes of practice and principles to be applied by the Member States, industries and interested parties and the European Union.**
  - 2) **reinforce cooperation, including that between businesses, and pool know-how at European and international level,**

**with a view to improving the effectiveness of relevant national measures.**

- While taking account of the work done to date on the follow-up to the Green Paper by other institutions, and work done on the follow-up to the Commission Communication on "Illegal and Harmful Content on the Internet",<sup>6</sup> this communication presents to the European Parliament and the Council a proposal for a Council recommendation on the protection of minors and human dignity in audiovisual and information services, which represents, at this stage, an appropriate instrument strictly proportionate to the objectives defined at (1) above and identifies the Community instruments and frameworks already available for strengthening the cooperation referred to at (2) above.

## 1. THE MAIN RESULTS OF THE CONSULTATIONS ON THE GREEN PAPER

The work on the "Green paper on the protection of minors and human dignity in audiovisual and information services" produced broad agreement on objectives and the action to be taken.<sup>7</sup>

### • General principles

- Respect for the fundamental principles of the protection of minors and human dignity is a *sine qua non* for the development of the audiovisual and information services industry, which can only develop in a clear and stable environment of legal certainty and trust. Answers are needed urgently.
- The fundamental democratic principles of freedom of expression and respect for privacy, enshrined in Articles 8 and 10 of the European Convention on Human Rights,<sup>8</sup> must be observed, and any measure restricting these freedoms must be legitimate, necessary for the aim pursued, and strictly proportionate in the limitations it imposes.
- The two problems of illegal content and harmful content require different approaches and different solutions.

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<sup>6</sup> The Council Resolution of 17 February 1997, the 1997 European Parliament resolution and the two working party reports submitted to the Council on 28 November 1996 and 27 June 1997. The ministerial declaration adopted at the Bonn Conference on "Global Information Networks: Realising the potential", 6-8 July 1997, also backs the line of action proposed.

<sup>7</sup> The full report on the consultations appears in the Commission working document - see footnote 4 above.

<sup>8</sup> See also Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

- **Legal framework**

- There was broad agreement that, strictly speaking, there is no legal vacuum as regards the protection of minors and human dignity, not even in on-line and Internet services. According to the principle of territorial jurisdiction, the law and the principles of the protection of fundamental rights apply on the national territory of the State and hence also apply to on-line services.
- In on-line services, however, the main problems stem from the application of general laws on the protection of minors and human dignity. On the question of enforcing these laws, the debate clearly highlighted the technical difficulties involved in identifying offending operators and users. Such problems do not call into question the broad consensus on freedom of expression and the protection of privacy.

- **The protection of minors**

- In the world of television, leaving aside the binding rules already in place at national and Community level, the question of the protection of minors has been focused on the use of parental control systems (electronic programme guides, the V-chip, etc.).
- However, in the case of on-line services, the impossibility of monitoring all the content available on world networks means that the adoption of good practices as regards the identification and presentation of offending material (warning pages, systems for checking the age of the user, labelling of content, etc.) and support for parental control are vital for the protection of minors.
- For parental control devices to be effective, there must be a consistent system for labelling content, so that it can be filtered by software.
- Over and above these preventive and educational measures, there was a strong demand for positive measures to be taken to promote the access of children to the new services in public places (schools, libraries, etc.) and to encourage high-quality material aimed at minors.

- **The protection of human dignity**

- On national territory, governments have the legal powers to punish infringements of the law. However, there are problems in identifying, prosecuting and punishing offenders in relation to on-line services. The instruments available to governments could be made more effective through the pooling of experience and information, the training of police officers and the judiciary, and judicial cooperation.
- The diversity of rules and their interpretation is seen by operators as an obstacle, since the rules applying in the country from which content is "sent" are not necessarily the same as in the country where the content is "received".

- **National responses to the role of the European Union**

- The maturity of the debate and the level of progress made are uneven across Europe, as the geographical origin of the contributions to the Green Paper shows. While some Member States have organisational structures representing industry

that are capable of designing and implementing self-regulation instruments, in others the coordination of the many different players involved is still in its infancy.

- There is broad agreement that the European Union has a role to play in these areas where work is in progress at national level, according to priorities which differ in scale. The sharing of experiences between Member States was often cited as an important requirement and an area where the European Union could provide added value.

## 2. THE PROPOSAL FOR A RECOMMENDATION

- The proposal for a recommendation **relates to all audiovisual and information services, regardless of the medium (broadcasting, proprietary on-line services, the Internet). It sets out a common reference framework at European Union level, in three sections:**
  - a specific **methodology** for dealing with questions on the protection of minors and human dignity in accordance with the approach in the Green Paper;
  - **common guidelines** for the implementation of a self-regulation framework at national level to protect minors and human dignity in audiovisual and information on-line services (see Annex). These guidelines are to be implemented by service providers themselves, with a view to encouraging cooperation between the parties concerned, in particular businesses, and assessment of initiatives at national and Community level. Agreement on common guidelines would be a real step forward. This part of the proposal is a major component of the Community “added value” in the Recommendation;
  - initiatives, for all the parties concerned, aimed at giving the public (including minors) greater access to new services in educational and/or public places, promoting quality content for minors, **fighting against content offensive to human dignity** and, finally, developing new means of parental control.

## 3. MOBILISATION OF OTHER RELEVANT COMMUNITY INSTRUMENTS

When implementing the planned initiatives to strengthen cooperation and the sharing of experience at European and international level and when implementing measures which require budgetary support, the Commission will ensure that the best use is made of the existing instruments (listed below), **maintaining close coordination with the work on implementing the attached proposal for a recommendation:**

- The work<sup>9</sup> on the Communication on “**Illegal and Harmful Content on the Internet**”<sup>10</sup> has led to the examination of possible projects specifically aimed at

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<sup>9</sup> “Interim report on Initiatives in EU Member States with respect to Combating Illegal and Harmful Content on the Internet” WPIC 15/97, presented to the Telecommunications Council on 27 June 1997.

<sup>10</sup> COM (96) 487 final of 16.10.1996.

promoting safe use of the Internet. This work is focused on four areas of action: creating a safe environment through self-regulation and monitoring of content, giving the user a free hand by using technical means and labelling, reinforcing awareness of filtering and coding systems and encouraging support measures.

- In the field of audiovisual and information services, the “*Television without frontiers*” Directive provides for a coherent series of measures, specifically aimed at the protection of minors in the field of television broadcasting, and for a “Contact Committee” as an appropriate framework for cooperation.
- In the field of education, the “Action Plan for a European education initiative” (1996-1998) <sup>11</sup> adopted on 2 October 1996 aims to improve children’s access to new services in four ways: by encouraging regional and national schools networks,<sup>12</sup> by stimulating the development and dissemination of educational content of European interest, by helping to provide support and training for educators who can integrate technology into educational methods and by informing all those concerned about the opportunities offered by multimedia.
- In the field of judicial and police cooperation, specific initiatives should be envisaged under the mechanisms provided for by Article K of the Treaty on European Union, for example in the area of training professionals in the complexities of the new services and in cooperation for the purposes of identifying illegal content and prosecuting the originators.

#### 4. CONCLUSIONS

- The deliberations on the Green Paper on the protection of minors and human dignity in audiovisual and information services have rapidly resulted in a consensus which forms the basis for the attached proposal for a Recommendation on the protection of minors and human dignity in audiovisual and information services.
- The proposed European-level measure will allow the European Union to introduce a coherent cooperation framework and thus enable it to take part in the debate on the protection of fundamental rights in the information society and to produce common instruments which can be used for the protection of minors and human dignity at European and international level in the context of promoting the development of the audiovisual and information services industry.

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<sup>11</sup> COM (96) 471 final.

<sup>12</sup> For example, the “European Network of Schools” (EUN) will be launched in November 1997 with the backing of all the Member States.

- The Commission submits the attached Communication, together with a proposal for a recommendation, to the European Parliament, the Council and the Economic and Social Committee.

**Proposal for a**  
**Council Recommendation**

**concerning the protection of minors and human dignity in audiovisual and information services**

Council Recommendation of ..... on the protection of minors and human dignity in audiovisual and information services

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130(3) thereof,

Having regard to the Commission's proposal,<sup>13</sup>

Having regard to the opinion of the European Parliament,<sup>14</sup>

Having regard to the opinion of the Economic and Social Committee,<sup>15</sup>

- (1) Whereas the Commission adopted the Green Paper on the protection of minors and human dignity in audiovisual and information services on 16 October 1996<sup>16</sup> and the Council received it favourably at its 2022nd meeting on 16 December 1996;
- (2) Whereas the European Parliament,<sup>17</sup> the Economic and Social Committee<sup>18</sup> and the Committee of the Regions have all adopted opinions on the Green Paper;<sup>19</sup>
- (3) Whereas the conclusions of the consultation process were submitted by the Commission to the Council at its meeting of 30 June 1997 and were unanimously welcomed;<sup>20</sup>

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<sup>13</sup> OJ

<sup>14</sup> Opinion of

<sup>15</sup> Opinion of

<sup>16</sup> COM (96) 483 final.

<sup>17</sup> European Parliament opinion of 24 October 1997 (OJ C .....of ....., page )

<sup>18</sup> Opinion of 28 May 1997 (OJ C 287 of 22.9.1997, page 11)

<sup>19</sup> Opinion of 13 March 1997 (OJ C 215 of 16.7.1997, page 37)

<sup>20</sup> Commission working document - SEC (97) 1203 of 13 June 1997. Protection of minors and human dignity in audiovisual and information services: Consultations on the Green Paper.



- (4) Whereas on 16 October 1996, the Commission adopted the Communication on Illegal and Harmful Content on the Internet;<sup>21</sup> whereas the Council adopted the Resolution on Illegal and Harmful Content on the Internet on 17 February 1997;<sup>22</sup> whereas the European Parliament adopted an opinion on the Commission Communication on Illegal and Harmful Content on the Internet on 24 April 1997;
- (5) Whereas this work is continuing in a manner complementary to the present Recommendation, since it deals with all forms of illegal and harmful content specifically on the Internet, whereas the present Recommendation addresses the particular issues of protection of minors and of human dignity in relation to audiovisual and information services in general, whatever the means of conveyance;
- (6) Whereas Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, and in particular Articles 22, 22a and 22b thereof, lays down a full range of measures aimed at the protection of minors with regard to television broadcasting for the purposes of ensuring the free movement of television broadcasts;
- (7) Whereas the development of audiovisual and information services is of vital importance for Europe in view of their significant potential in the fields of education, access to information and culture, economic development and job creation;
- (8) Whereas full achievement of this potential requires the existence of a successful and innovative industry in the Community; whereas beyond the important role played by the public authorities, it is in the first instance incumbent on businesses to ensure and improve their competitiveness;
- (9) Whereas the protection of certain general interests, such as the protection of minors and of human dignity in relation to audiovisual and information services, is essential for the establishment of the climate of confidence needed to achieve the potential of this industry and this will contribute to removing obstacles to the development and the full competitiveness of the said industry;
- (10) Whereas the general competitiveness of the European audiovisual and information industry will improve through the development of a environment that favours co-operation between the enterprises in the sector; whereas the existence of certain technological conditions enables a high level of protection of the above-mentioned general interests and, consequently, the adherence of all users;
- (11) Whereas it is important therefore to encourage enterprises to develop a national self-regulatory framework through co-operation between them and the other parties concerned; whereas self-regulation could provide enterprises with the means to adapt themselves rapidly to the quickening technical progress and to market globalisation;

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<sup>21</sup> COM (96) 487 final of 16.10.1996.

<sup>22</sup> OJ C 70, 6.3.1997.

- (12) Whereas the protection of general interests sought in this manner must be seen in the context of the fundamental principles of respect for privacy and freedom of expression, as enshrined in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and as incorporated into the Community legal order by Article F2 of the Treaty on European Union and by the case law of the Court of Justice as general principles of Community law;
- (13) Whereas any restriction of these rights and freedoms must be non-discriminatory, necessary to achieving the desired objective and strictly proportional with regard to the limitations it imposes;
- (14) Whereas the global nature of communications networks necessitates an international approach to the question of the protection of minors and human dignity in audiovisual and information services; whereas, in this context, the development of a common approach at European level makes it possible both to promote European values and a make decisive contribution to the international debate;
- (15) Whereas it is vital to distinguish between questions relating to illegal content which is offensive to human dignity and those relating to content that is legal, but liable to harm minors by impairing their physical, mental or moral development; whereas these two types of problem require a different approach and different solutions;
- (16) Whereas the national laws in which Member States have laid down rules and principles on the protection of minors and human dignity reflect cultural diversity and national and local sensitivities; whereas, in this regard, particular attention must be paid to the application of the subsidiarity principle;
- (17) Whereas, in view of the transnational nature of communications networks, the effectiveness of national measures would be strengthened, at European Union level, by coordination of national initiatives and of the bodies responsible for their implementation and by the development of cooperation and the sharing of good practices, in areas including justice and home affairs;
- (18) Whereas, as a supplementary measure, and with full respect for the existing regulatory frameworks at national and Community level, greater self-regulation by operators should contribute to the rapid implementation of concrete solutions to the problems of the protection of minors and human dignity, while maintaining the flexibility needed to take account of the rapid development of audiovisual and information services;
- (19) Whereas in addition to measures to protect minors and to combat illegal content offensive to human dignity, legal and responsible use of information and communication services should be encouraged, through the exercise of parental control among other measures; whereas the provision of information, the raising of awareness and the education of users are essential if this aim is to be achieved, whereas it is a condition of the European citizen's full participation in the information society;
- (20) Whereas the contribution of the European Union, the aim of which will be to supplement Member States' measures to protect minors and human dignity in audiovisual and information services should be based on maximum use of existing instruments and close coordination of the various relevant initiatives conducted in parallel with the follow-up to the Green Paper, particularly the work on the follow-up to the Communication on "Illegal and Harmful Content on the Internet", including the Council Resolution of 17 February 1997, the 1997 European Parliament Resolution and the two working party

reports submitted to the Council on 28 November 1996 and 27 June 1997, and the work on cooperation on justice and home affairs;

(21) Whereas the implementation of this recommendation will be closely coordinated with that of any possible new measure resulting from the work on the follow-up to the Commission Communication on Illegal and harmful content on the Internet;

**I. RECOMMENDS that the Member States:**

1. encourage the participation of relevant parties (users, consumers, businesses, public authorities) in the definition, implementation and evaluation of national measures for the protection of minors and human dignity in audiovisual and information services and contribute to the establishment of a common assessment methodology at European Union level.
2. promote, as a supplement to the existing regulatory framework, the establishment of a national framework for self-regulation by operators of on-line services, based on the principles and methodology set out in Annex;
3. encourage broadcasters in their jurisdiction to experiment on a voluntary basis with new means of protecting minors and informing viewers, as a supplement to the existing national and Community regulatory frameworks governing broadcasting;
4. take measures where necessary and feasible in the fight against illegal content offensive to human dignity with a view to the identification, prosecution and punishment of offenders against national legislation on the protection of human dignity, while developing appropriate cooperation between their respective police and judicial authorities;
5. promote, in close cooperation with the parties concerned, measures to enable minors to make responsible use of new audiovisual and information services, notably by improving the level of awareness among parents of the potential of the new services and of the means whereby they may be made safe for minors; facilitate identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places.

**II. CALLS ON the industries and parties concerned to:**

1. cooperate with the national authorities in setting up a structure representing all the parties concerned at national level, in order *inter alia* to participate in coordination and cooperation at European and international level;
2. cooperate in the drawing up of codes of conduct applying to the provision of on-line services, based on the principles and the methodology set out in Annex;
3. as regards broadcasting services, develop and experiment, on a voluntary basis and in addition to the existing regulatory frameworks, with new means of protecting minors and informing consumers;

4. develop positive measures for the benefit of minors, including initiatives to facilitate their access to new audiovisual and information services;
5. collaborate in the regular follow-up and evaluation of initiatives carried out at national level in application of this recommendation.

**III. CALLS ON the Commission to:**

1. facilitate, where appropriate through the relevant Community financial instruments, the networking of the bodies responsible for the definition and implementation of national self-regulation frameworks and the sharing of experience and good practices, at European Union level, between the Member States and parties concerned in the various areas covered by this recommendation;
2. encourage cooperation and the sharing of experience and good practices between the police and judicial authorities in the Member States, with a view to combating the circulation of illegal content offensive to human dignity in audiovisual and information services;
3. promote international cooperation in the various fields covered by this recommendation, particularly through the sharing of experience and good practices between operators and other concerned parties in the European Union and their partners in other regions of the world;
4. develop, in cooperation with the competent national authorities, a methodology for evaluating the measures taken to protect minors and human dignity in audiovisual and information services, with particular attention to the evaluation of the added value of the cooperation process at European Union level;

Done at Brussels,

For the Council

## ANNEX

### *COMMON GUIDELINES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF A SELF-REGULATION FRAMEWORK FOR THE PROTECTION OF MINORS AND HUMAN DIGNITY IN AUDIOVISUAL AND ON-LINE INFORMATION SERVICES*

#### **Objective**

The purpose of these guidelines is to ensure broad consistency, at European Union level, in the development, by the businesses and other parties concerned, of the national self-regulation frameworks for the protection of minors and human dignity in the audiovisual and on-line information services industry.<sup>23</sup> This consistency will enhance the effectiveness of the self-regulation process and provide a basis for the necessary transnational cooperation between the parties concerned.

While taking into account the voluntary nature of the self-regulation process - the primary purpose of which is to supplement existing legislation - and respecting the differences in approach and varying sensitivities in the Member States of the European Union, this Annex sets out minimum guidelines on four key components of a national self-regulation framework:

- consultation and representativeness of the parties concerned,
- code(s) of conduct,
- national bodies facilitating cooperation at European Union level,
- national evaluation of self-regulation frameworks.

#### **1. Consultation and representativeness of the parties concerned**

The objective is to ensure that the definition, implementation and evaluation of a national self-regulation framework benefits from the full participation of the parties concerned, particularly the public authorities, the users, consumers and the businesses which are directly or indirectly involved in the audiovisual and on-line information services industry .

The voluntary nature of self-regulation means that the acceptance and effectiveness of a national self-regulation framework depends on the extent to which the parties concerned actively cooperate in its definition, application and evaluation.

All the parties concerned must also help with longer-term tasks such as the development of common tools or concepts (for example, on labelling of content) or the planning of ancillary measures (for example, on information, awareness and education).

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<sup>23</sup> The services covered by these guidelines are those provided at a distance, by electronic means and on the individual request of a service receiver. They do not include broadcasting services covered by the "Television without Frontiers" Directive. The contents concerned are those which are clearly intended for the public, rather than private correspondence. See the proposal for a directive included in the Communication "Regulatory transparency in the internal market for information society services" (COM (96) 392).

## 2. Code(s) of conduct

### 2.1 General

The objective is the production, within the national self-regulation framework, of basic rules which are strictly proportionate to the aims pursued; these rules will be incorporated into a code (or codes) of conduct covering at least the areas set out at 2.2 below, to be voluntarily adopted and implemented by the operators (i.e. primarily the businesses) concerned.

In drawing up these rules, the following should be taken into account:

- the diversity of services and functions performed by the various categories of operator (providers of network, access, service, content etc.);
- the diversity of environments and applications in on-line services (open and closed networks, applications of varying levels of interactivity).

In view of the above, operators may need one or more codes of conduct.

Given such diversity, the proportionality of the rules drawn up should be assessed in the light of:

- the principles of freedom of expression, protection of privacy and free movement of services,
- the principle of technical and economic feasibility, given that the overall objective is to develop the information society in Europe.

### 2.2 The content of the code(s) of conduct

The code (or codes) of conduct should at least provide basic rules on:

#### 2.2.1 Protection of minors

**Objective:** to ensure that minors do not gain access, without the consent of their parents or teachers, to legal content which may impair their physical, mental or moral development. Besides coordinated measures to educate minors and to improve their awareness, this involves the establishment of certain minimum standards in the following fields:

##### a) information to users

**Objective:** within the framework of encouraging responsible use of networks, on-line service providers should inform users, where possible, of the risks to consumers from the content of on-line services and of such appropriate means of protection as are available.

The codes of conduct should provide basic rules on the nature of the information to be made available to users, its timing and the form in which it is communicated. The most appropriate

