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**IN TODAY'S MEETING OF THE CONCILIATION COMMITTEE :**

***COUNCIL AND PARLIAMENT REACH AGREEMENT ON NEW  
"TELEVISION WITHOUT FRONTIERS" DIRECTIVE***

The European Parliament and the Council have today reached agreement on the revision of the 1989 "Television without frontiers" Directive<sup>(1)</sup>. Meeting in the Conciliation Committee<sup>(2)</sup> the delegations from the two institutions worked out a joint text. Once this text has been finalized in the official languages of the Community, each Institution will have a period of six weeks in which to finally confirm it - by an absolute majority of the votes cast as regards the European Parliament, and by a qualified majority in the case of the Council - whereby the new Directive will be adopted. Member States will then have 18 months for its transposition into national law.

The representative of Germany announced that his country would vote against the Directive as it could not support the new article 3.3.a concerning the broadcasting of events considered of major importance for society (see further on); Belgium will abstain while Sweden and Greece announced that they are in favour of the joint text (it is recalled that the Council's common position had been supported by a qualified majority of 12 delegations, with Sweden voting against and Belgium and Greece abstaining).

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(1) The official title is: "Directive amending 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".

(2) The Conciliation Committee has 30 members: 15 members from the European Parliament and one representative of each Member State. The meeting on 16 April 1997 was co-chaired by Ms Nicole FONTAINE, Vice-President of the European Parliament and by the President-in-Office of the Council, Mr Aad NUIS, State Secretary for Education, Cultural Affairs and Science of the Netherlands.

Today's agreement therefore represents the penultimate step in bringing to a close a debate which has lasted for over two years: A first discussion among ministers about the revision of the 1989 Directive took place in February 1995 at the informal Council meeting of Culture ministers in Bordeaux. The Commission presented its formal proposal on 31 May 1995, followed by the European Parliament's first reading on 4 March 1996. Overall political agreement in the Council on a common position was reached on 11 June 1996 (with its formal adoption on 8 July 1996); the European Parliament then had its second reading of the proposal on 12 November 1996.

During its second reading, the European Parliament had adopted 44 amendments to the Council text. Agreement on most of the proposed changes was already reached in informal discussions with the Council prior to the Conciliation Committee meeting<sup>(3)</sup>, leaving few issues to be sorted out in the formal gathering of the two delegations.

### **Which are the main changes made to the Council's common position ?**

#### Broadcasting of "events of major importance for society"

In its second reading (amendments 9 and 20) the European Parliament had suggested the introduction of a new article (3.3.a) regarding this matter. The idea was taken up by the Council, and the EP finally rallied to a text drafted by the Presidency in collaboration with the Commission. The new article reads as follows:

- "1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. In doing so, each Member State may designate a list of events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner, in due and effective time. If it does so, the Member State concerned shall also determine whether these events should be available via whole or partial live coverage or, where necessary and appropriate for objective reasons of general interest, whole or partial deferred coverage.
2. Member States shall immediately notify to the Commission any measures taken or to be taken by virtue of paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established by virtue of Article 23a. It shall publish the measures taken forthwith in the Official Journal of the European Communities and at least once a year the consolidated list of the measures taken by Member States.

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<sup>(3)</sup> 13 amendments were simply withdrawn by the EP, leaving the Council's common position intact on the issues concerned; 4 amendments were accepted as such by the Council; on 18 others a new wording was agreed.

3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights acquired by those broadcasters following the date of publication of the present Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State as referred to in the preceding paragraphs, via whole or partial live coverage or whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1."

A whereas-clause makes it clear that the events concerned can be national or non-national, "such as the Olympic games, the football Worldcup and the European football Championship".

In order to avoid speculative rights purchases with a view to circumvention of national measures, these provisions will apply to contracts entered into after the publication of the directive (i.e. some time in June probably, once it has been adopted by Parliament and Council and signed by their Presidents) and concerning events which take place after the date of implementation (which is 18 months from publication). When contracts that predate the publication of the directive are renewed, they are considered to be new contracts.

Other aspects of this new article are also clarified in the recitals:

- Events of "major importance for society" should, for the purposes of the directive, meet certain criteria i.e. be outstanding events which are of interest to the general public in the Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is in a legal position to sell the rights pertaining to that event.
- "free television" means broadcasting on channel, either public or commercial, of programmes which are accessible to the public without payment additional to the modes of funding of broadcasting that are widely prevailing in each Member State (such as license fee and/or the basic tier subscription fee to a cable network).

#### The so-called "V-Chip" issue

The European Parliament, in its proposed amendment no. 40 had asked for certain TV programmes to be coded and TV sets to be equipped with what is known as a "V-Chip" to filter such programmes. Recognizing that this might not, after all, be the "miracle solution" to a complex problem, the EP has come round to accepting a text (new paragraph 2 of article 22b) which reads as follows:

"The Commission shall within one year from the date of publication of this directive, in liaison with the competent Member State authorities, carry out an investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch. This study shall involve, inter alia, the desirability of:

- the setting up of appropriate rating systems,
- encouraging family viewing policies, other educational and awareness measures, taking into account experience gained in this field in and beyond Europe as well as the views of interested parties such as producers, educationalists, media specialists and relevant associations."

### First broadcasting of movies

The common position (article 7) stated that, unless otherwise agreed between rights holders and broadcasters, the latter shall not broadcast any cinematographic work until 18 months have elapsed since the work was first shown in cinemas in one of the Member States (12 months for pay-per-view and pay- television channels as well as in the case of cinematographic works co-produced by the broadcaster).

The Council delegation was able to follow the EP which, in its amendment no. 29, had simplified this provision which now reads:

"Member States shall ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rightholders."

### Channels broadcasting in non-Community languages

The European Parliament wanted (amendment 24) to clarify the obligations regarding the broadcasting of European works (according to article 4 of the Directive - the famous "quota" rule - a majority proportion of transmission time should be reserved to such works, where practicable) and of works by independent European producers (article 5 stipulates that these should amount to at least 10% of a broadcaster's programming budget). This has now been done in the form of the following recital:

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

### Notion of "independent producers"

The European Parliament had wanted to define precisely, with specific figures put forward in its amendment no. 7, the notion of "independent producers". The Member States, and the smaller ones in particular, argued successfully that this should essentially be left to them. The compromise formula now reads as follows:

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

## **What is the 1989 Directive about, and what is the general purpose of its amendment ?**

The general aim of the amendments to the Directive on television without frontiers (proposed by the Commission as part of the review provided for in the present Directive) is to update that Directive and to clarify certain aspects of it.

The aim of the 1989 Directive is to coordinate the relevant Member State provisions in order to ensure free movement of television broadcasts. Thanks to the Directive and to the introduction of common rules in the areas where such rules were essential, it is sufficient for a television broadcasting company established in a Member State to comply with the law applicable in that State for its broadcasts to be freely received and retransmitted throughout the Union. Coordinated areas include the determination of criteria governing Member State jurisdiction over a broadcaster, television and sponsor advertising (volume and message content), the protection of minors, the protection of public health, right of reply and a specific chapter on the promotion of the production and distribution of European audiovisual programmes.

The purpose of the amendments to the present Directive which have now been agreed in conciliation and which are not yet summed up here before (in other words the changes made to the 1989 directive which were not or little contentious) is, in particular, to:

- clarify certain definitions ("television advertising", "teleshopping", "European works") and the question of Member States jurisdiction with regard to TV channels. The competent State is determined mainly on the basis of the actual head office and of the place at which management decisions regarding programming are taken. Other criteria apply if necessary so as to ensure that the competent State may be determined in every case;
- introduce rules on teleshopping which are similar in part to the rules on advertising;
- introduce also rules on channels devoted exclusively to self-promotion;
- strengthen the protection of minors by making it compulsory for unencoded programmes likely to be unsuitable for minors to be preceded by a sound or visual warning or for such a warning to be featured throughout the duration of such programmes;
- establish a contact committee as a forum for consultations between Member States and the Commission on the application of the Directive and the development of rules in the field of television broadcasting;
- provide a better definition of freedom of reception. The conditions for any restrictive measures which the Member States might take are clearly stipulated.

The amending Directive does not modify the present system whereby television channels are required to devote a majority proportion of broadcasting time to European works (Articles 4 and 5 of the 1989 Directive), but includes a new review clause (5 years after the adoption of the amending directive).

Finally, the text provides for periodical reports (the first after 3 years) from the Commission on the application of the Directive, accompanied, where necessary, by proposals for bringing it into line with developments in the field of television broadcasting in the light, particularly, of technological advances since its adoption.