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REPORT

drawn up on behalf of the Committee on Economic and
Monetary Affairs and Industrial Policy

on the economic aspects of the common market for
broadcasting (COM(84) 300 fin.)

Rapporteur: Mr Gijs DE VRIES

PE 98.359/fin.

Or. En

By letter of 29 November 1984 the Committee on Economic and Monetary Affairs and Industrial Policy requested authorisation to draw up a report on the economic aspects of the Commission's Green Paper on 'Television Without Frontiers' (COM(84) 300 fin).

At its sitting of 14 January 1985 the European Parliament authorised the Committee on Economic and Monetary Affairs and Industrial Policy to draw up a report.

At its meeting of 30 January 1985 the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr DE VRIES rapporteur.

At its sitting of 10 June 1985, the European Parliament authorised the Committee on Energy, Research and Technology to submit an opinion to the Committee on Economic and Monetary Affairs and Industrial Policy.

The Committee considered the draft report at its meetings of 22 - 24 April 1985, 25 - 27 June 1985 and 24 - 26 September 1985.

It adopted it on the latter date with 19 votes in favour, 1 against and 4 abstentions.

The following took part in the vote:

SEAL (Chairman), BEAZLEY (Vice-Chairman), DE VRIES (rapporteur), BESSE, BEUMER, BONACCINI, Mrs BRAUN-MOSER (replacing Franz), CASSIDY, CAROSSINO (replacing de March), CHIUSANO, COLLINS (present according to Art. 93.2), CRYER (replacing Gautier), FALCONER, FILINIS, Mrs T. NIELSEN, Mrs OPPENHEIM, PAPOUTSIS (replacing Metten), PATTERSON, Ms QUIN, RAFTERY, ROGALLA, TOUSSANT (present according to Art. 93.2), Mrs van ROOY, von WOGAU

The opinion of the Committee on Energy, Research and Technology is attached to this report.

The report was tabled on 26.9.1985.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Economic and Monetary Affairs and Industrial Policy hereby submits the following motion for a resolution together with explanatory statement:

A

MOTION FOR A RESOLUTION

on the economic aspects of the common market
for broadcasting in the European Community

The European Parliament,

- A. having regard to its earlier resolutions, in response to which the European Commission published "Television Without Frontiers", a Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable,
- B. having regard to the Green Paper (COM (84) 300 final),
- C. having regard to the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy on promotion and development of a European programme industry (PE 98.356/fin.),
- D. having regard to the report of the Committee on Economic and Monetary Affairs and Industrial Policy and the opinion of the Committee of Energy, Research and Technology (Doc. A 2-102/85),
- E. noting that broadcasting is a strategic sector of the service economy of the European Community offering opportunities for new employment in a rapidly growing industry,
- F. noting that in particular the cable industry, the satellite industry and the programme industry would benefit from the establishment of a common market in broadcasting,
- G. also noting that rapid technological change will soon make it possible for broadcasts originating in any part of the world to be received directly in Community Member States,

1. Supports the initiative intended to establish, as soon as possible, a common market for broadcasting, especially by satellite and cable;
2. Points out the clear links between the development of a European television space, and the encouragement at European level of the new technologies. Points out, in particular, the need for a joint approach by the Member States to the establishment of an integrated wide-band telecommunications network using glass-fibre technology, which would permit an enhanced European network for the transmission of data, improve existing telecommunications services, and help in the development of new services such as home banking and shopping, and educational and security services, as well as the provision of more television channels;
3. Emphasises, however, that the European television project will have no chance of achieving its fundamental social and cultural objectives and serving Europe's wider interests unless the opening up of this market is accompanied by the simultaneous development of a fully-fledged European communications industry producing infrastructures and hardware on the one hand and software on the other. Commercial considerations and the role of Europe's industries must both be taken into account if this project is to be a success;
4. Emphasises the important economic stimulus provided by the research and industrial activities and services which this new sector could generate. It also seems clear that, by the same token, great progress could be achieved in the fields of communication and reciprocal information and the establishment of a shared cultural background;
5. Calls on the Commission after consulting the European Broadcasting Union, to seek the agreement of the Member States on a common project for the development of the second generation of direct broadcasting satellites;

6. Calls on the Member States, acting on a proposal from the Commission, to adopt a common technical standard for direct broadcasting by satellite before the end of 1986;
7. Calls on the European telephone authorities to agree on a common European system for digital cellular radio for the 1990s;
8. Requests, as regards CB radio, a full report from the Commission as to how it intends to respond to the criticisms of the varied ways in which CEPT Recommendation TR 20 02 has been implemented in Community member States, and whether it now feels that the interests of users would better be met by the harmonization of national legislation in this field as called for in paragraph 10 of Parliament's resolution on broadcast communication of 30 March 1984;
9. Makes the general observation that the setting up of a 'television without frontiers' system in Europe by European industry presupposes, in view of the scale of investment required, planning a European project largely financed by the Community, principally through the NCI and the EIB; considers that it is essential for the Community that this European project is undertaken by European industries both in the interests of Europe's economy, technology and employment situation and also in view of the cultural objectives of the project itself;
10. Considers that great care must also be taken to ensure that the European 'television without frontiers' project does not, mainly by allowing an excessive amount of advertising on television, unfairly favour the development of the new media to the detriment of existing media - cinema, radio and the press - which still play an essential role;!
11. Requests the Commission to set up an investigation into the competition policy aspects of current developments in the television market and the film industry;

12. Urges the Commission to follow closely developments in the telecommunications industry so as to increase its competitiveness and to avoid distortions of competition from occurring;
13. Considers that a study of the potential impact on employment of the introduction of broadband communications is required to ensure that adequate provision is made for professional training;
14. Welcomes the Commission's intention to submit a draft directive to harmonize certain aspects of national regulations concerning advertising, as was called for in earlier resolutions by the European Parliament; calls on the Commission to submit this before the end of the year;
15. Emphasises that only the absolutely necessary minimum of harmonized rules should be aimed for; and that detailed control of advertising should continue to be carried out at national level, paying attention to the variety of culture and taste in the Member States;
16. Observes that over rigorous controls on advertising will merely have the effect of encouraging the establishment of broadcasting stations outside the Community's judicial area, with a consequent loss of revenue to Community established broadcasters;
17. Believes that the draft directive should contain a clause to the effect that the amount of time given to advertising should not be so great as to detract from the value of the programmes as a medium for information, education and entertainment; bearing in mind however, that there could well be development of stations carrying primarily advertising in the same way as certain newspapers and magazines are bought mainly for their advertising content;
18. Agrees that Member States should remain free (a) to fix the time of day when broadcast advertising should be allowed; (b) to prohibit domestic advertising on Sundays and public holidays, and (c) to allow commercials to be positioned in natural breaks of a programme, provided cross-frontier broadcasting from other Member States is allowed at any time;
19. Does not consider it necessary to impose a maximum duration of three minutes on individual advertising spots and a maximum of twelve minutes on advertising slots;

20. Emphasises that advertising should be clearly recognisable as such, should be clearly separated from programme material and should not be allowed to influence programme content, nor dominate the programmes;
21. Requests the Commission to investigate under what circumstances sponsorship should be allowed, on the basis of the principle that the responsibility for the content and the transmission of programmes should remain with the broadcasting organisations;
22. Agrees that tobacco advertising in broadcasts should be banned throughout the Community;
23. Agrees that alcohol advertising would be permitted in cross-border advertising but that Member States should be free to impose tighter controls on broadcasts first transmitted in their country;
24. Considers that the position of daily and weekly newspapers should be taken into account in regulations on advertising, with particular reference to advertising revenue;
25. Agrees that a Community-wide code of practice on the content of broadcast advertising to be applied in the country of original transmission should be established, notably on the basis of the International Chamber of Commerce's International Code of Advertising Practice;
26. Notes that, to satisfy the needs created by the increasing number of television channels in Europe, the Community should promote the development of a European programme industry to avoid further reducing its own productive potential to the advantage of non-European programme makers;
27. Is in favour of voluntary contractual licences to enable free transmission of broadcasts across frontiers wherever possible; only where the absence of such licences is a real obstacle to cross frontier cable distribution of television programmes, Member States should be obliged to remove these obstacles by any effective means.

28. Calls on the Commission to report back to the Parliament on how it intends to remedy the lack of statistics and data at European Community level on industries and services related to the common market for broadcasting, such as television and radio and information market services, and the film and video, advertising and cable and satellite industries. Believes that comparable statistics on numbers employed in each sector, investments, shares of GNP and other important indices, are essential, in what will increasingly be one of the growth areas of the European economy;
29. Is concerned at the danger that programmes will be pirated and rebroadcast by stations established outside the Community judicial area, and calls on the Commission to negotiate international agreements whereby this can be prevented;
30. Instructs its President to forward this resolution, together with the accompanying report by the committee responsible, to the Council and Commission.

Explanatory Statement

1. On 12 March 1982, the European Parliament adopted a resolution on radio and television broadcasting in the European Community in which it considered "that outline rules should be drawn up on European radio and television broadcasting, inter alia with a view to protecting young people and establishing a code of practice for advertising at Community level"¹. In response to this resolution, the European Commission first published an interim report, entitled "Realities and tendencies in European television: perspectives and options"².
2. In two further resolutions, adopted on 30 March 1984, Parliament reaffirmed its position, calling on the Commission and the Council "to provide a reliable legal framework in which to implement the principles of the Treaty of Rome applicable to the subject, particularly... freedom to provide services"³. Acting upon Parliament's request, the Commission published "Television Without Frontiers", a Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable⁴.
3. The Bureau has requested the Committee on Youth, Culture, Education, Information and Sport to draw up a report on the cultural and information aspects of this Green Paper. It further decided to mandate the Committee on Economic and Monetary Affairs and Industrial Policy to make an initiative report on the economic and industrial aspects of "Television Without Frontiers".
4. After assessing the economic importance of a common market in broadcasting, this report will discuss the major technical and legal obstacles that stand in the way of its establishment. It will then turn to the initiatives envisaged by the European Commission to create a common market for broadcasting.

I. Industrial aspects

5. Three sectors of industry stand to benefit significantly from the establishment of a common market in broadcasting: the cable industry, the satellite industry, and the programme industry (notably the film industry). There is a symbiotic relationship between the three. Each sector stands to gain from a healthy development of the other two.
6. To move up the speed of cable penetration in Europe, television programmes must be provided to subscribers in sufficient quality and numbers. With the aid of direct broadcasting and communications satellites, more and better programmes can be made available. For the growth of the satellite industry, notably in the field of direct broadcasting, it is important to ensure demand from consumers for the programmes and services offered. Until sufficient numbers of individual and community receivers for direct satellite broadcasts are available, cable networks can help to secure the financial viability of satellite projects. Finally, the European programme industry, faced with fierce competition from non-European (mainly American) programme providers, could draw major benefits from a wider, cross-border dissemination of its products with the aid of satellite and cable.
7. In the following paragraphs, these three sectors of industry will be looked at in turn. First, the role of cable and satellite industry in the establishment of new information networks in Europe will be discussed.
8. The European Community has a strong base of traditional information services. The media generate 1.5 to 2 % of the Community's gross national product and employ 1 % of the labour force⁵. The publishing sector alone employs around 1 million persons and had revenues in 1982 of some 30 billion ECUs⁶.
9. The development of new technologies, especially regarding cable and satellite, increasingly leads to the "migration" of these traditional services to electronic media, for instance electronic publishing, electronic document delivery, online bibliographical retrieval, etc. Some of these areas promise to be of significant economic importance in the coming decade; according to

Commission estimates, the Community electronic document delivery market for specialized information alone may represent some \$900 million by 1990⁷. The information services sector now embraces a wide range of participants, including libraries, publishers, computer service bureaux, data base producers, cable network operators, distributors of information via the mass media and the users of all these. Much as computing and communications have merged in the past ten years, will broadcasting, computer services and communications converge in the years to come. The convergence of data transmission and mass media communication channels on satellites may serve as a prime example.

10. Broadcasting is a strategic sector of the Community's service economy. Cable and satellite play an important role in developing Europe's communications infrastructure. As is rightly pointed out in the Interim Report and the Green Paper, broadcasting satellites and cable are techniques which, individually but above all jointly, make it possible simultaneously to transmit vast quantities of information and TV programmes over long distances. Provided a cable network has been properly designed, in particular with the use of optical fibre technology, not only a large number of television channels can be provided, but also interactive services. Subscribers will then be offered the opportunity to use their television set to pay bills, buy goods, register their opinion, enquire about train times, book a hotel or bet on a horse, to name some examples.

11. Cable systems, however, tend to be profitably operated only in areas with sufficient subscription density. Sparsely populated areas will therefore particularly benefit from the arrival of direct broadcasting satellites. Furthermore, the pace of cable penetration is steady, but slow. According to the latest figures, the percentage of French households linked to cable will rise from 2 % at present to 4.5 % in 1989. The figure for Britain is likely to rise from 5 % to 6.5 %, and that for the Federal Republic from 4.5 % to 12 %. In 1995, the percentage of European households linked to cable will probably be in the order of 17 %, up from 8.5 % at present. The number of homes with interactive cable will be even smaller⁸. In other words, the number of homes with a cable connection in five years time is unlikely to exceed one fifth of the 126 million homes in the EC. Direct broadcasting

satellites therefore have an important role to play, because they can reach the remaining households. DBS will also give a better quality television picture, and will lead to the introduction of multilingual dubbing and subtitling, as well as a broad range of new services.

12. Next to television programmes, as many as 20 new information services may lend themselves to delivery by satellite in the 1990's. Video communications by satellite for large companies and governments could be a major market opportunity. Such private broadcasting, particularly for training, could be cheaper than physically distributing large numbers of video tapes. The other main service that satellites could bring will be electronic delivery of newspapers direct to the home. This would enable consumers to select different pages from a number of newspapers⁹. Market surveys carried out for the European Space Agency have shown that the business world is also interested in providing telesoftware to home computers, and high speed videotext broadcasting information on financial data, sports results, the weather, travel news and timetables. Here, too, there is evident convergence between broadcasting and information services.

13. Cable and DBS are complementary technologies. This is not only true to the extent that direct broadcasting will be available in areas that are not yet cabled. In yet two more respects can cable and DBS be seen as complementary, and even mutually supporting technologies. First, there is the question of costs. Until more satellite TV channels become available and the price of satellite receiving equipment will come down, the cost of buying a dish antenna will far exceed that of a cable subscription. Cable can facilitate satellite reception at an acceptable cost for the user, as well as offer various other programmes and services, not available on satellite. Satellite exploitation could thus benefit from the expansion of cable networks. This is particularly important as long as the European market in dish aerials and related electronics is in its early years (estimated turnover in 1987: £150 - £200 million)¹⁰.

14. Reciprocally, the broadcasting satellites will provide the cable networks with programme material for redistribution to the public. This will in turn facilitate the exploitation of cable networks, which will need time to develop enough programmes and to market interactive services.

II. The need for a common market

15. As the Commission points out, a major hindrance to the development of a European market in information services is the difficulty of achieving economies of scale. The fragmentary effect of the many differences in national requirements, legal as well as technical ones, renders potential information service providers reluctant to make the necessary investments. Whereas the USA and Japan have large home markets, restrictions and uncertainties about government policies fragment the Community market. This is to the detriment of new services, such as electronic publishing. These services must often operate internationally in order to be viable (due to high set-up costs) and in order to meet competition from abroad (since data networks encourage trans-border data flows)¹¹.
16. The price the Community is paying for the absence of a common market is rapidly increasing. European markets in telecommunications and broadcasting are expected to grow only 6.7 % a year from 1982 to 1987 (from \$12.5 to \$17.2 billion in 1979 dollars). This compares with annual growth rates of 7.8 % for North America (from \$19.9 to \$ 29.1 billion) and 10.1 % for Japan (from \$ 11.8 to \$ 19.1 billion)¹². Europe's comparative strength, already modest (see table), must be expected to decline even further, unless immediate and far-reaching steps are taken.

Comparative assessment of the strengths in
information technology

| | Japan | US | W. Europe |
|---------------------------------------|-------|----|-----------|
| Computer technology | | | |
| Fifth-generation computers | A | B | B |
| Super computers | A | A | C |
| Mainframes | A | A | C |
| Mini-computers | B | A | C |
| Personal computers | A | A | C |
| Software | C | A | A |
| Semiconductor technology | | | |
| VLSI | A | B | C |
| Microprocessors | B | A | C |
| Production and testing equipment | B | A | C |
| Next generation devices | A | A | C |
| Communications technology | | | |
| Optical fibres | A | B | C |
| Optical public communications network | B | A | C |
| Semiconductor lasers | A | A | C |
| Digital electronic exchanges | B | B | A |

In ascending order of strength: C B A

Source: Published by Ostasien Institut B.V. in "Implications of the Industrial Strategy for the Community Office Automation Industry", 1983

17. To make matters even worse, European industry in these circumstances is simply unable to build up an export potential funded on large home markets for advanced equipment and services. EC products turn out to be inappropriate, for example, for American markets, shaped by city administrators, demanding highly sophisticated services, such as 48-, 60- or even 100-channel, or two-way cable systems, with special channels provided free of cost for city government, educational, legal, and medical institutions, and - at extra cost - insurance, shopping, fire and burglar alarm services¹³.
18. The European Commission estimates that for viable information and communication networks to be established throughout the Community, investment in the order of over 100 billion ECU in the EC as a whole will be required¹⁴. The main beneficiary will be the telecommunications industry as a whole, including the cable industry, communication engineering, information technology and the electronic components industry, as well as the aerospace industry.
19. Such staggering investment cannot conceivably be financed unless private demand can be stimulated. Paradoxically, however, the information revolution generated by the latest developments in satellite and cable technology is entertainment-led. It is demand for more and better television programmes that provides the biggest financial incentives to the cable and satellite industry; not interactive services. This phenomenon is particularly evident in countries like the United Kingdom, where the laying of wide-band cable systems with two-way communication capability is not heavily sponsored by the government. Unless cable operators provide subscribers with what they want to see, citizens will either disconnect (at great cost to cable providers) or they will not subscribe to cable services at all. The availability of sufficient programme material at the right price is therefore of prime importance. There is a clear demand from consumers to be provided with a wider choice of programmes at minimum cost.
20. Yet here lies a major problem. At present, the four largest Member States produce around 1 000 to 5 000 hours per year of films, TV films, series and documentaries. As the Community enters the 1990's, demand for such products is expected to rise to 300 000 - 500 000 hours. Assuming that 50 % will be

bought from non-EC countries and that 25 % will be repeats, the European programme industry will have to produce between 75 000 and 125 000 hours of material¹⁵. In terms of cost, however, and due to its small home markets, it is a tall order for the European programme producers to compete with their American counterparts. Compare, for example, the £200 000 production cost for an hour of UK-produced popular drama with the £25 000 an hour for which the BBC and ITV could buy a peak-time series which costs \$1 million per hour to produce in the USA¹⁶.

21. If EC Member States want their film industry to compete with that of the United States, they will have to provide EC film producers with a sufficiently large home market. The availability of a wide variety of foreign programmes across frontiers is therefore of great importance to the European film industry. As stated earlier, this will also provide a significant incentive for viewers to contribute to the costs of laying cable and developing satellite broadcasting technology.
22. For the development of a new information infrastructure in the European Community, therefore, as well as for the future of the European programme industry, a common market in broadcasting is indispensable.
23. This is all the more necessary as both the laying of high quality cable and the launching of direct broadcasting satellites have incurred significant delays in recent years.
24. In France, at the end of 1985, about 700 000 homes will be connected to cable, rather than the 1.4 million foreseen in the Plan Cable¹⁷. Only recently have decisions by the city authorities of Rennes, Paris and Montpellier to join with the PTT in constructing fibre optics networks restored faith in the future of French cable. In the United Kingdom, concern over the slow pace of cable penetration has prompted the government to allow individuals and businesses such as hotels to set up satellite receiving equipment. By liberalizing the rules on satellite master antennae television (SMATV), the British government hopes to provide an interim market for the cable programme providers until a significant proportion of the country is cabled. In Germany, where less than one million homes have so far been

cabled, a similar liberalisation of SMATV is expected, notably to provide the SAT 1 satellite channel, in which German publishers invested heavily, with sufficient audience capacity.

25. Similar difficulties beset the satellite industry. Only the French TDF-1 satellite will be launched according to plan, on 7 July 1986. It will probably be followed by the Olympus satellite in July 1987. The German DBS TV SAT, postponed several times, is now finally due for launch in 1987. A Luxembourg satellite system is being planned for mid-1987; two earlier Luxembourg efforts to get a satellite system going have foundered. In the United Kingdom, plans to set up a direct broadcasting satellite project have been abandoned for the time being. The importance of this decision is immediately evident if one realises that in Britain's DBS project alone, an estimated 20 000 potential new jobs were at stake¹⁸. Finally, the Irish government has postponed a decision to launch an Irish DBS system. The recent stark increase in the premium rates for launch insurance - this year the failure rate of satellites launched has been one in three - will do little to improve prospects.
26. In this light, the proposal of Eutelsat's Secretary-General Caruso that European governments should join forces rather than run a number of different systems, requires careful consideration. To make the second generation of DBS financially viable, Mr Andrea Caruso proposes to develop only one system, Eurosat. He also wants to put only two satellites in orbit as of 1992, and to operate only one satellite and communication control centre and one single management entity¹⁹.
27. In the immediate future, however, the establishment of a common market in broadcasting, making television programmes available throughout the Community, is necessary to stimulate demand from viewers for the TV productions available on satellite, thereby facilitating a healthy development of the satellite industry, as well as to provide the cable industry with sufficient programme material to be able to attract subscribers.

28. A number of obstacles still block the establishment of a common market in broadcasting. To these we now turn. First, the lack of common technical standards and various competition aspects will be discussed - subjects to which the Green Paper devotes scant attention. Subsequently, the legal initiatives proposed by the Commission will be commented upon.

III. Standards

29. For the development of the information industry, common technical standards are essential. One of the main consequences of the lack of such common standards in the EC is that it takes much more time in Europe to produce equipment meeting the various national specifications than it takes in North America: 60 months and 24 months respectively²⁰.

30. The importance of common norms and standards is well illustrated in Europe's fragmented TV market, where Philips has to supply over 100 different types of television sets to meet differing European standards²¹.

31. The existence of the rival PAL and SECAM standards for colour television within Europe has been a classic example of what should be avoided in future. With the development of the MAC (Multiplexed Analogue Component) technique of broadcasting TV pictures, the opportunity is there to agree on a new and improved standard for use throughout Europe in the era of cable and satellite broadcasting. Nevertheless, there is still no agreement on which MAC standard to adopt.

32. The UK government is in favour of the C-MAC standard which is apparently good for satellite broadcasting but less good for narrow-band cable television networks. The European Association of Consumer Electronics Manufacturers (EACEM), however, adopted a resolution in October 1984 supporting the rival D-2 MAC/Packets standard for direct satellite broadcasting. This was unanimously adopted with the exception of the UK representatives. Subsequently, the French government has supported the adoption of D-MAC as well, and the German government followed suit. The difference between C-MAC

and D-MAC is not very great, but C-MAC permits 8 digital sound channels and D-MAC only 4. British engineers also maintain that C-MAC would permit easier upgrading for wide-screen broadcasts.

33. There are other MAC variations besides C-MAC and D-MAC, such as the more advanced B-MAC, and also E-MAC. The Japanese are developing their own NHK high definition standard. There is thus considerable uncertainty in this area. Some countries may wish to wait until a fully digital standard is economically feasible.
34. The issues posed are those that often arise in standardisation. One standard may represent the best immediate option, while another may cause more problems in the short term but offer better long-term possibilities. But in the longer term, other technical solutions may be even better. Again, adoption of a European standard quickly could act as a commercial weapon against Japan. Conversely, failure to adopt a European standard could result in the dominance of Japanese standards. The question of which is the best economic and technical solution must still, therefore, be resolved. Continuing delay, however, is highly undesirable. One European standard should be chosen as soon as possible.
35. Much the same applies to cellular radio. Cellular radio systems are at present mainly being produced for private dispatch services - taxis, courriers, local delivery - and for public utilities - firebrigades, ambulances and police. They are likely to create a substantial new market for the electronics industry; not just in the form of portable telephones and car telephones, but also in sending computer data to mobile terminals using the cellular system. Worldwide revenues are expected to exceed \$5 billion a year by 1990. The American consultancy agency Arthur D Little estimates the potential demand for cellular radio in Europe at 2.6 to 3.8 million sets by 1992²².
36. One factor impeding a healthy development of cellular radio in Europe is the existence of a number of different standards:
- the Nordic Mobile Telephone system (NMT) of Ericsson, accepted by the Benelux countries;

- the AMPS system developed amongst others by Motorola in the United States and adopted by the United Kingdom; and
- the MATS-E system developed by CIT-Alcatel which has not yet found major customers and was rejected by the Dutch and German governments²³.

37. Meanwhile, France and Germany are going ahead with two different systems: the Bundespost will introduce the C-Network developed by Siemens, and in France Matra will introduce the Radiocom 2000 system.

38. It need hardly be mentioned that a similar failure to agree on a joint European system must be avoided when digital cellular radio will be introduced around 1990.

IV. Competition policy aspects

39. The new developments in the television sphere, in particular the spread of cable TV and the development of DBS, are already leading to new patterns of media ownership. New issues are thus raised in the field of competition policy:

- what are the consequences of granting local monopolies to cable systems operators? Could they also be programme providers or should the two functions be separated?
- Should there be tighter criteria evaluating concentration in the TV field than in the newspaper or publishing fields?
- Should there be criteria for evaluation undesirable degrees of concentration as a result of increasing cross-ownership in the media?

40. These are not mere theoretical questions. Increased concentration in the cable industry is a highly likely development. Already in the United States, the financial uncertainties involved have tended to leave the larger multiple systems operators in a dominant position. In 1984, for instance, it was estimated that of the nearly 5 000 cable systems in operation, the top 50 alone account for 65 % of all subscribers, and the top ten for a remarkable 40 %²⁴. Similarly, out of the proliferation of private TV companies in Italy

after the ending of the RAI monopoly, a large number have disappeared, and of those who have survived, the de facto national private networks of Silvio Berlusconi have achieved a clear dominance.

41. Considerable publicity has also been given recently to certain newspaper magnates' efforts to move into the television market, such as Robert Hersant with his proposed European Channel, and above all Rupert Murdoch with his increasingly successful Sky Channel in various European countries and with recent purchase of TV companies in the United States.

42. There has also been considerable concern in the US about the problems posed by vertical integration, such as where a multiple system operator (MSO) also has programme service interests. This carries the danger "for one MSO to carry his own programming but exclude that of a rival service provider", and "for a system operator's local monopoly to effectively give him the ability to determine what cable services will or will not be made available to subscribers"²⁵. To quote a specific example, Times-Mirror, TCI, Cox, and Storer introduced their Spotlight pay channel into their own cable systems in 1981-82 "by compulsorily switching subscribers from rival film services HBO, Showtime and the Movie Channel, these being removed for a time from the services on offer"²⁶.

43. Statistical data on media concentration in Europe as a whole is notable by its absence. The Commission did procure some studies on newspaper concentration from outside experts a few years ago, but these are of little practical use in evaluating the above trends.

44. A Council of Europe study²⁷ identifies four tendencies leading to greater control of markets by the leading communications groups:

- integration, within the same branch, of software (programmes) and hardware (equipment) manufacture;
- control, from production to the distribution stage, of cinema, video, musical publishing and book publishing;
- association with interests outside the communications sector, such as banks and para-financial companies;
- association with companies in the data-processing sector.

45. Clearly, there should not be too restrictive a policy at Community level. Indeed, the new trends in television open up great new possibilities for new TV operators, programmers and film makers. Nevertheless, criteria should be developed for evaluating possible threats to competition in such a fast-evolving field.
46. As for the film industry, the Commission may in particular want to look into the dominant position of a number of large American distribution companies on the European market. In exchange for box-office films, these so-called majors require cinema managements to take all other films for which they hold distribution rights.
47. Finally, criteria should be set with respect to the telecommunications industry. Recent interventions by the Commission and the German Ministry of Economic Affairs have prevented the Bundespost from extending its telecommunications monopoly to cordless telephones. The Commission should be equally alert to prevent similar developments in future.

V. Legal aspects

48. The main part of the Green Paper is devoted to a thorough and convincing analysis of the role of the EEC Treaty in cross-border broadcasting. After a detailed examination, the Commission concludes that on some aspects of cross-border broadcasting, the national rules must be aligned. These aspects are: advertising, the protection of minors, the right of reply, and copyright. Of these aspects, advertising and copyright fall within the scope of this report; the other aspects will be treated in the report by the Committee on Youth, Culture, Education, Information and Sport.
49. First, the relevant Treaty provisions will be briefly commented upon. Following this, the Commission's proposals concerning advertising and copyrights will be examined.

V.1 General Framework

50. Articles 59(1) and 62 of the Treaty of Rome aim at creating a common market in services. Article 59(1) requires that restrictions on the freedom to provide services within the Community be abolished; article 62 prohibits the introduction of new restrictions. These provisions apply to television signals, as in the Sacchi case the Court of Justice ruled that broadcasts come within the rules of the Treaty relating to services. As a rule, therefore, all restrictions on freedom to broadcast across the frontiers of the Member States are contrary to European law. The Treaty and the judgements of the Court only allow for narrow exceptions to this principle.
51. A. First of all, discriminatory restrictions on foreign broadcasts are prohibited. The broadcasting, reception and retransmission of foreign programmes may not be subjected to more stringent conditions or less favourable treatment than is the case with domestic programmes. Exemptions from this principle are allowed only on grounds of public policy, public security or public health (articles 56(1) and 66).

Exemptions on grounds of public policy, however, may not be based on economic considerations, the very subject matter of the provisions of the Treaty. So, for example, discrimination against foreign broadcasts containing advertisements in order to protect the advertising interests of national broadcasters is not permissible. Furthermore, exemptions on the grounds mentioned in articles 56 (1) and 66 may not be broader in scope than is allowed under Article 10 of the European Convention on Human Rights. That is, they must be "necessary in a democratic society". Finally, such exemptions can only relate to the reception and/or distribution of broadcasts; the freedom of nationals to transmit broadcasts which can (also) be received in another Member State may not be restricted even by way of exception.

The practical consequences of these principles are profound. For example, Member States are not allowed to limit the retransmission of foreign broadcasts to a maximum percentage of broadcast time. Neither is the prior consent principle in the final act of the World Administrative Radio Conference of 1977 compatible with the Treaty.

52. 8. Articles 59 and 62 prohibit not only discriminatory, but all other restrictions on the freedom to broadcast across frontiers of the Member States as well. Exceptions to this principle may be justified on the grounds mentioned in Article 56(1), as well as on grounds of general interest, as the Court stated with respect to national broadcast advertising rules (Debaue case), or on grounds of literary and artistic copyright (Coditel I case). These exceptions, too, must not be broader in scope than is allowed under Article 10 ECHR.

53. The two Court judgements referred to above have the effect of postponing the free movement of numerous broadcasting services until the different national provisions will have been harmonised. Only thus will it be possible to create a genuine common market in broadcasting. In its Green Paper, the Commission therefore announces its intention to submit draft directives with the aim of harmonising existing rules with respect to advertising and copyright.

V.2 Advertising

54. In announcing its intention to submit a draft directive to harmonise advertising regulations, the Commission is not only acting upon a Court ruling. It is also acting in response to resolutions adopted by the European Parliament, in which Parliament called for advertising to be subject to legal regulation, by means of the approximation of legislation through Community directives²⁸.

55. Such harmonisation efforts are indeed urgently required in view of the present exotic variety of national rules concerning broadcast advertising. To name but a few examples:

- positioning of commercials in natural breaks of programmes is only tolerated by five States: Greece, Ireland, Italy, Luxembourg and the UK. Sponsoring of TV programmes is only possible in two countries, Italy and Luxembourg, and in Germany only on private (commercial) TV. Advertising

- on Sundays and public holidays is banned in four countries: Germany, Greece, Italy and the Netherlands. Germany continues to ban it on public TV, yet the Länder permit it for commercial TV;
- three countries limit advertising to specific parts of the day: France, Germany and the Netherlands, though German private stations can advertise around the clock;
 - there are bans on advertising for the printed media, immovable property and margarine in France; for contraceptives and games of chance in Ireland; for arms, slimming preparations, recording tapes, motor cars, motor cycles, boats, jewellery, furs, games of chance, horse racing, money lending, marriage bureaus, holiday companies, the printed media and pet foods in Italy for RAI, and for correspondence courses and sugar confectionery in the Netherlands;
 - tobacco advertising is restricted everywhere, but in Belgium, France, Ireland, Italy and the Netherlands, the restriction on advertising not only covers cigarettes, but all tobacco products;
 - France is the only country to restrict advertising for alcoholic drinks by law. Advertising for whisky, vodka and gin is completely forbidden. In other countries, the advertising of alcohol is subject to sometimes very detailed codes of conduct which differ in content. For example, beer and wine may not be advertised in Ireland before 7.00 p.m.; in Spain drinks with more than 23 % may be advertised only after 9.30 p.m. In Portugal all alcoholic drinks may be advertised, but again only after 9.30 p.m.

56. All these restrictions operate as real barriers to transborder television if they are enforced not only on national broadcasting, but on foreign programmes too. It is obvious, however, that it would be politically impossible to achieve identical regulations on all these points in all countries of the Community. Such legal perfectionism is not only undesirable, it is even unnecessary. In the Green Paper, a much more modest and prudent approach is put forward.

57. The Commission proposes that existing restrictions be removed by the introduction of a harmonising directive laying down minimum standards to be complied with in all Member States. Advertisements which meet these minimum standards must be allowed to be received in all Member States.
58. Such a harmonising directive will be important to consumers in that it will ensure protection against a surfeit of advertising and against abuses. For the advertising industry the main advantage will be that the planning of advertising (especially across frontiers) will be simplified, so that trade in goods and services across frontiers will be increased.
59. Advertisers have long maintained that Europe needs more commercial airtime. The existing controls restricting the use of television as an advertising medium may in their view be inhibiting economic growth in the countries affected. It has been stated, for example, "that many companies are simply not prepared to risk launching new products in a number of European markets because of the lack or absence of commercial television airtime. Of the twelve European countries in which Y&R operates only in the UK, Austria and Spain were advertisers able to obtain enough airtime for their campaigns"²⁹.
60. In this light it is not surprising that European business and industry are interested in the advertising opportunities offered by the various DBS and communications' satellite projects presently under consideration in France, the FRG and other European countries. A recent survey suggests that the 25 top Community companies are prepared to spend 5 % of their current advertising budget on TV commercials on satellite networks³⁰. J. Walter Thompson estimate the unspent potential TV advertising expenditure in the EC at between 2.4 and 3.3 billion dollars per annum³¹. The European Commission in its Green Paper puts the additional potential at between 3.5 and 7 billion ECU³².
61. The rapporteur agrees with the Commission that harmonisation will have to be achieved in three areas : the rules concerning advertising time, the regulations concerning the relationship between advertising and programmes, and the restrictions imposed on certain products (tobacco and alcohol).

62. In all of this, it is important to bear in mind that - as indeed the Commission itself accepts - only the absolutely necessary minimum of harmonised rules should be aimed for.
63. Obviously, the rules concerning advertising time can be a special barrier to cross-border broadcasting. In the Member States, different rules at present apply to total broadcasting time, advertising on Sundays and public holidays, the times at which advertising is broadcast, and on the length of individual spots or commercial breaks.
64. The Commission proposes to restrict the total time for advertising to 20 % of the total amount of broadcasting per day. Broadcasting organisations would of course not be obliged to use the full amount of advertising time permitted. Member States would have to accept a maximum level of 20 % broadcast advertising in cross-frontier broadcasts.
65. It would appear that such an upper limit, to be applied not only to foreign broadcasts but also to domestic ones, is not indispensable to further the Commission's aims. A general clause, to the effect that the amount of time given to advertising should not be so great as to detract from the value of the programmes as a medium for information, education and entertainment, would appear sufficient, provided programmes allowed in one country would not be banned when retransmitted in another state of the Community. Experience suggests that under such a clause, the 20 % limit will hardly ever be obtained.
66. The Commission rightly proposes to allow Member States to fix the time of day when domestic broadcast advertising would be allowed and to prohibit domestic advertising on Sundays and public holidays, provided cross-frontier broadcasting from other Member States is tolerated at any time. Member States should also be free to allow commercials to be positioned in natural breaks of a programme. From a Community point of view, the possible distortion of competition which may result from differences in these regulations does not appear unacceptable.

67. Measured by the same standard, however, the Commission's proposals to impose a maximum duration of three minutes on individual advertising spots and a maximum of twelve minutes on advertising slots do not seem necessary.
68. The Green Paper rightly emphasises that advertising should be clearly recognisable as such. It should be clearly separated from programme material and should not be allowed to influence programme content, nor dominate the programmes. As for sponsorship, a particularly important principle must be that the responsibility for the content and transmission of programmes should remain with the broadcasting organisations.
69. The Commission proposes to ban advertising of tobacco products on radio and television throughout the Community, as is already the case in most Member States. Alcohol advertising would be permitted in cross-border advertising but Member States would be free to impose tighter controls on alcohol advertising on broadcasts first transmitted in their country. At present, advertising for alcoholic beverages is not prohibited anywhere in the Community, except in France by law.
70. The Commission further proposes a Community-wide code of practice on the content of broadcast advertising to be applied in the country of original transmission. The code would be based on principles common to most Member States. These would be allowed to rely on existing monitoring arrangements, whether of a voluntary or a statutory nature. The Commission suggests that this code of practice should contain standards relating to children and young people, and to alcoholic beverages, as is already the case in some Member States.
71. As for the general standards such a code is to include, the International Chamber of Commerce's International Code of Advertising Practice should provide a starting point. In this area, as indeed in all legislative activity, the Commission would be wise to head its own call for only the absolutely necessary minimum of rules. It is questionable, therefore, if more than a simple reference to the ICC code is called for.

V.3 Copyright

72. Broadcasting involves a variety of aspects of copyright. Copyright and related rights are regulated in all Member States, but are divided territorially, being governed by domestic law in each country. Cross-frontier broadcasting could obstruct the exercise of such rights, and in the case of unauthorised broadcasts could infringe them.
73. To overcome these obstacles, the Commission proposes a mechanism of statutory licencing. Under this system, rights holders would not be able to block redistribution by cable operators in another Member State. They would, however, receive a right to equitable remuneration.
74. This arrangement does not appear to strike a balance between the freedom to broadcast across frontiers and the legitimate rights of copyright owners. There would be little scope for discussions between the parties and both cable operators and copyright owners must accept the decisions with respect to the level of compensation.
75. A different solution has been suggested during last year's congress of the Fédération Internationale pour le Droit Européen (Den Haag, 19-21 September 1984). This would be in principle to set up a system of voluntary contractual licences, whereby the cable operators would negotiate with the copyright interest groups. If after a predetermined period no contractual licence had been agreed upon, a licence would be issued on a statutory basis. Alternatively, provisions for arbitration might be made. Such arrangements would appear to be better suited to reconcile the liberalising principles of the Treaty of Rome with the need to protect rights' holders.

- ¹ OJ No. C 87, 5-4-1982, p. 110 (Hahn resolution)
- ² COM (83) 229 final, 25-5-1983
- ³ OJ No. C 117, 30-4-1984, p. 201 (Arfe resolution)
- ⁴ COM (84) 300 final, 14-6-1984
- ⁵ COM (84) 300 final, p. 42
- ⁶ SEC (84) 1928, 15-2-1985, p.1
- ⁷ *ibid.*, p. 20
- ⁸ International Herald Tribune, 22-5-1985
- ⁹ Financial Times, 20-4-1985
- ¹⁰ Financial Times, 9-3-1985
- ¹¹ SEC (84) 1928, p. 2
- ¹² Maurice English, "The European Information Technology Industry", in Alexis Jaquemin, *European Industry: Public Policy and Corporate Strategy* (Oxford: Clarendon Press, 1984), p. 251
- ¹³ *Ibid.*, p. 266
- ¹⁴ COM (84) 300 final, p. 52
- ¹⁵ "Television Without Frontiers", European Commission, Information Series No 19/84
- ¹⁶ Anthony Pragnell, *Television in Europe*, European Institute for the Media (Manchester, 1985), p. 30

- 17 Cable and Satellite News, Vol. 2, No. 11, 31-5-1985, p. 8
- 18 Financial Times, 23-3-1985
- 19 Financial Times, 13-12-1985
- 20 COM (83) 329 final, p. 6
- 21 English, op.cit., p. 244
- 22 Financial Times, 27-3-1985
- 23 Rob van Tulder and Gerd Junne, European Multinationals in the Telecommunications Industry (University of Amsterdam, 1984), p. 73
- 24 Timothy Hollins, Beyond Broadcasting: Into the Cable Age (London: BFI Publishing, 1984), p. 132
- 25 Ibid., p. 132
- 26 Ibid. p. 146
- 27 Hole Lhoest, The Interdependence of the Media, Council of Europe Mass Media Files No. 4 (1983), pp. 57-58
- 28 OJ No. C 117, 30-4-1984, p. 198 (Hutton resolution)
OJ No. C 117, 30-4-1984, p. 202 (Arfe resolution)
- 29 Michael F. Townsin, deputy chairman Young and Rubicam, Conference on cable television and satellite broadcasting, London, 26-27 January 1983
- 30 European Report, No. 1139, 12 June 1985
- 31 SEC (84) 1928, 15-2-1985, p. 19
- 32 COM (84) 300 final, p. 49

OPINION

(pursuant to Rule 101 of the Rules of Procedure)

of the Committee on Energy, Research and Technology

draftsman: Mr SCHINZEL

At its meeting of 30 January 1985 the Committee on Energy, Research and Technology appointed Mr Schinzel draftsman of an the opinion.

The draft opinion was considered by the committee at its meeting of 23 April 1985. On 21 June 1985 it adopted the conclusions with 9 votes in favour and one abstention.

The following took part in the vote: Mr PONIATOWSKI, chairman; Mr SCHINZEL, draftsman; Mr BONACCINI (deputizing for Mr IPPOLITO), Mr FORD (deputizing for Mr LINKOHR), Mr KILBY, Mr KOLOKOTRONIS, Mr MALLETT, Mr RIGO (deputizing for Mrs LIZIN), Mr TOKSVIG and Mrs VIEHOFF.)

1. New technologies in the media - social implications

The first decisive steps towards satellite television (Ariane and the development of satellite technology) were taken in the 1960s and 1970s, without any idea of the desirable or undesirable social effects it might have. The cultural, economic and employment dimensions of these decisions were neglected, and there was no process of consultation with the general public as to policy objectives. The decisions were made by experts on technological and economic grounds without regard for the implications in other areas of society. Another factor is the electronics industry's desire to open up new growth areas.

It is therefore not surprising that many developments in the media today appear to occur by force of circumstance, and that all that can be done is to make them more or less bearable.

Both the general public and politicians are thereby pushed on to the defensive and inevitably give the impression that they are simply trailing along behind technological advances.

It will be a guiding principle of future work by the Committee on Energy, Research and Technology that the implications of new technology should be assessed before the technology is introduced, so that responsible political decisions can be taken.

Given the expansion of cable networks in the Community countries, for example, there is now a need for data protection regulations to protect the consumer and his or her privacy.

The mass media and information must not be viewed only from the point of view of technology and the market. They are of central importance in shaping public opinion on political issues and in the working of democratic processes. In future, therefore, access to information must not be dependent on income levels.

2. The Commission's Green Paper takes as read the technological facilities now available (wide-band cabling and satellite technology) and does not question them. Instead it looks at them largely from an economic and legal point of view and attempts to turn them to the service of European integration on the basis of the EEC Treaties.

The committee approves of the development of technology allowing every household to receive channels from other Member States. Technology should also be developed for the transmission and reception of a multi-language European television channel produced by a European broadcasting organization. Reciprocal reception of European channels and the broadcasting of a multi-language European television channel are socially desirable results of the new technological capabilities.

There are considerable uncertainties and reservations in the minds of experts, politicians and consumers with regard to technologies used in the individual Member States (copper cable, optical fibres, DBS and communications satellites).

3. Evaluation of the new technology

3.1 Satellite television

Several Member States have decided to spend very large sums of money on the development of direct broadcasting satellites (DBS - direct broadcasting by satellite). The high-power satellites (up to 250 watts) are limited for technical reasons to a small number of channels, and the cost to broadcasting organizations using them is correspondingly high (20 - 25 million ECU per channel per year). The development of new medium-power satellites (50 watts) that can be used for both telecommunications and direct television broadcasting (with up to 16 channels) has led firms in the US to pull out of DBS technology when comparative costings showed that the user charge per channel on these lower power satellites was only one-sixth of that on high-power DBS satellites. If the same development occurs in Europe, it will only be possible to operate DBS satellites with the aid of massive subsidies.

In view of this the Olympus project might turn out to be obsolete, and be carried out merely as a demonstration project. In the light of current telecommunications programmes, it is the committee's view that the basic component of Europe's future media infrastructure will be a wide-band telecommunications network (using glass-fibre cables), backed up by communications satellites.

3.2 Spillover

The introduction of DBS inevitably leads to the internationalization of television programmes. Channels broadcast from national satellites are received in large areas of neighbouring countries because of the technically unavoidable 'spillover'. In 1977 the World Administrative Radio Conference (WARC) in Geneva allocated particular service areas to each country, but it is not technically possible to delimit these precisely to match the territory of the relevant countries. The efficiency of receiving equipment for satellite broadcasts has now been significantly enhanced as a result of technical developments, so that the allocation of television satellites to national service areas is now virtually irrelevant.

3.3 Transmission technology - Receivers

The internationalization of television means that uniform technical standards are needed in Europe. This will bring down the cost of receivers and, assuming that the technical quality is of the first order, the equipment will have healthy prospects on the world market.

The present PAL and SECAM systems are now obsolete and unable to cater for multi-language broadcasting. The European Parliament has decided unanimously that the MAC system (C, D, D2), the most advanced in the world, should be introduced.

The committee welcomes the moves by the Commission towards harmonizing technical standards. The new European television standard should be introduced without a transitional phase, in order to keep down the increase in the price of television sets (below 100 ECU) through large-scale manufacturing. It will be possible to convert old sets by fitting an adapter.

Substantial costs are also involved in connecting receivers to cable networks, and in view of the fact that real incomes in the Community are falling, considerable reticence on the part of consumers can be expected.

3.4 Cable technology

In view of developments in telecommunications, the Member States must agree on a joint approach for establishing an integrated wide-band telecommunications network using glass fibre technology.

This glass fibre network could carry all existing forms of telecommunications :

- narrow-band personal communications
(telephone calls, data and text)
- wide-band personal communications
(videophone and videoconferencing)
- wide-band broadcast communication
(television and radio)

For both technological and structural reasons, concerted action is needed for the deployment of glass fibre technology. At the same time the possible implications of the use of wide-band communications for employment must be assessed and allowed for in the planning of future social policy.

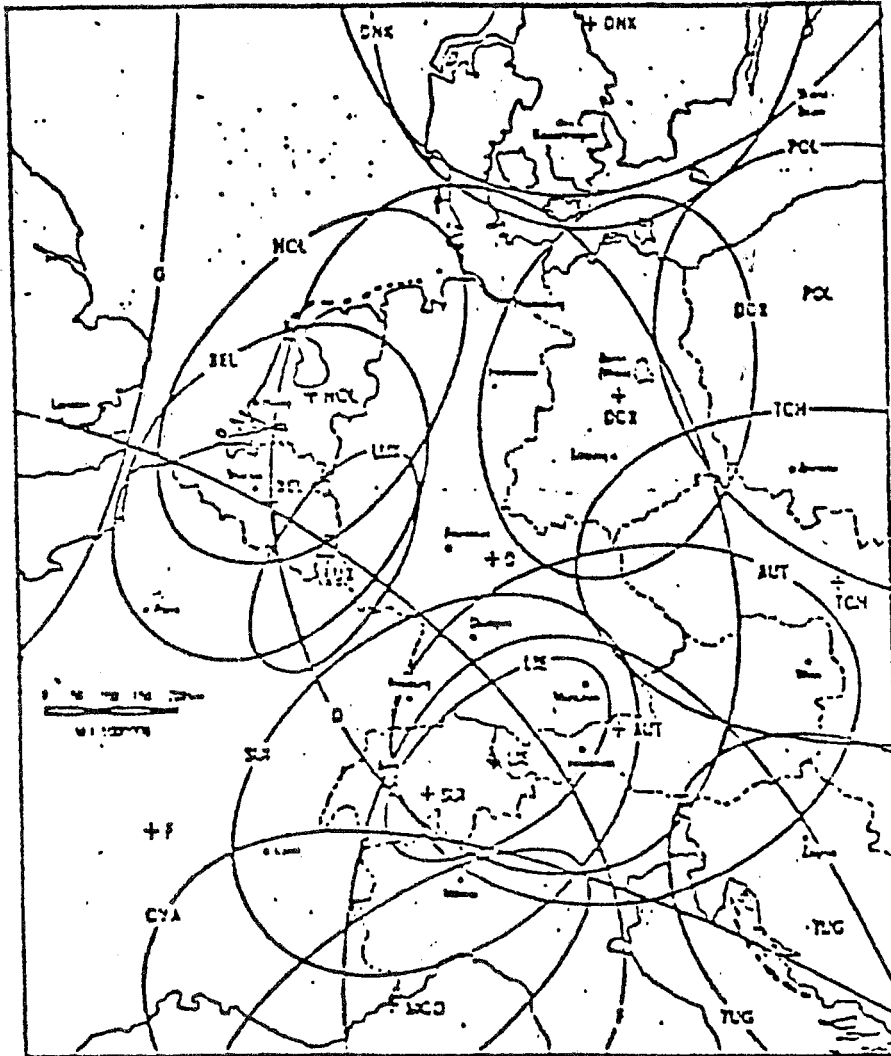
Particular attention must be devoted to uniform and effective data protection regulations in the Community to protect the privacy of the individual.

The introduction of these technologies must not be the first step towards a completely 'wired' Community and permanent surveillance of its people.

4. Conclusions

The committee responsible is requested to take account of the suggestions and reservations set out above by the Committee on Energy, Research and Technology in its report and the motion for a resolution.

Fig. 1 Satellite coverage areas in western Europe



Given this situation, a European institution is called for to regulate access to satellite television by issuing licences to broadcasting organizations under a regulation on a European convention on the media pursuant to Article 235 of the EEC Treaty.

The nucleus of such an institution could be formed by a European licensing authority, equipped with the relevant powers, working with the Commission. The licensing procedure would comprise approval by the national body responsible for the channel concerned and by the European licensing authority.

To ensure the long-term future of a multi-language European television channel, the Community should apply to the WARC for its own frequency and a service area covering the whole of the Community.