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REPORT

drawn up on behalf of the
Committee on Youth, Culture, Education, Information and Sport

on a framework for a European media policy based on the Commission's Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable (COM(84) 300 final)

Rapporteur: Mr W. HAHN

WG(2)/1738E PE 92.783/fin.

By letter of 27 September 1984, the Committee on Youth, Culture, Education, Information and Sport requested authorization to draw up a report on 'Television without Frontiers', the Commission's Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable (COM(84) 300 final).

By letter of 14 January 1985, the Committee on Youth, Culture, Education, Information and Sport was authorized to report on this subject.

The Committee on Economic and Monetary Affairs and Industrial Policy was authorized to draw up a report on those aspects of the document covered by its terms of reference. The Committee on Budgets, the Committee on Energy, Research and Technology, the Committee on Legal Affairs and Citizens' Rights, and the Committee on the Environment, Public Health and Consumer Protection were asked for their opinions.

At its meeting of 20/21 November 1984, the Committee on Youth, Culture, Education, Information and Sport appointed Mr HAHN rapporteur.

The committee decided to discuss in its report the motions for resolutions by Mr BETTIZA on freedom of broadcasting in the countries of the European Community (Doc. 2-897/84) and by Mrs EWING on multilingual TV broadcasting (Doc. 2-1063/84) referred to it on 25 October and 12 December 1984 respectively.

The Committee on Youth, Culture, Education, Information and Sport considered the draft report at its meetings of 26/27 March, 24-26 April, 22/23 May and 24/25 June 1985.

At the last meeting, it unanimously adopted the motion for a resolution as a whole.

The following took part in the vote: Mrs EWING, chairman; Mr FAJARDIE, Mr SELVA, Mr PAPAPIETRO, vice-chairmen; Mr HAHN, rapporteur; Mr BARZANTI (deputizing for Mr FANTI), Mr BAUDOUIN, Mr BEYER DE RYKE (deputizing for Mrs LARIVE-GROENENDAAL), Miss BROOKES, Mr COLLINS (deputizing for Mr GALLO), Mr ELLIOTT, Mrs FONTAINE (deputizing for Mr HERSANT), Mr HOWELL, Mr McMAHON, Mr MIZZAU (deputizing for Mr POMILIO), Mr MUNCH, Mr PELIKAN, Mrs SEIBEL-EMMERLING and Mr SIMMONDS (deputizing for Mr McMILLAN-SCOTT).

The opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on the Environment, Public Health and Consumer Protection are attached. The Committee on Energy, Research and technology is delivering its opinion for the Committee on Economic and MOnetary Affairs and Industrial Policy.

The Committee on Budgets decided on 19 June 1985 not to deliver an opinion.

The report was tabled on 2 July 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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Opinion of the Committee on Legal Affairs and Citizens' Rights

The Committee on Youth, Culture, Education, Information and Sport hereby submits to the European Parliament the following motion for a resolution together with explanatory statement:

A

MOTION FOR A RESOLUTION

on a framework for a European media policy based on the Commission's Green Paper on the establishment of the common market for broadcasting, especially by satellite and cable

The European Parliament,

A. having regard to its resolutions of
- 12 March 1982 on radio and television broadcasting in the European Community [1],
- 30 March 1984 on a policy commensurate with new trends in European television[2],
- 13 April 1984 on broadcast communication in the European Community (the threat to diversity of opinion posed by the commercialization of new media)[3], and
- 25 May 1984 on European media policy[4],

B. having regard to the Commission's Interim Report on Realities and Tendencies in European Television: Perspectives and Options (COM(83) 229 final),

C. encouraged by the Commission's Green Paper - 'Television without Frontiers' - on the establishment of the common market for broadcasting, especially by satellite and cable (COM(84) 300 final),

D. whereas the provisions of the EEC Treaty relating to the free movement of services form the basis for establishing the common market for radio and televison,

E. whereas freedom to broadcast and receive information and ideas irrespective of frontiers is guaranteed under Article 10 of the European Convention on Human Rights,

F. whereas the principle of the free flow of information across national frontiers is invoked in Basket III of the Final Act of the Helsinki Conference on Security and Cooperation in Europe (CSCE),

[1] OJ C 87, 5.4.1982, p. 110 (Hahn report)

[2] OJ C 117, 30.4.1984, p. 201 (Arfè report)

[3] OJ C 127, 14.5.1984, p. 147 (Hutton report)

[4] OJ C 172, 2.7.1984, p. 212

G. whereas, pursuant to Article 62 of the draft Treaty establishing the European Union adopted by the European Parliament on 14 February 1984, the exchange of information and access to information for the Union's citizens shall be encouraged,

H. having regard to the report submitted to the European Council in Milan by trhe Ad Hoc Committee for a People's Europe, and in particular to paragraph 3.4 et seq. on television,[1]

I. having regard to the draft opinion of the Economic and Social Committee on the Green Paper entitled 'Television Without Frontiers'[2],

J. having regard to the motions for resolutions by Mr Bettiza on freedom of broadcasting in the countries of the European Community (Doc. 2-897/84) and by Mrs EWING on multilingual TV broadcasting (Doc. 2-1063/84),

K. having regard to the report on the Commission's proposal for a Council regulation on a Community aid scheme for non-documentary cinema and television co-productions, which is being drawn up by its Committee on Youth, Culture, Education, Information and Sport[3],

L. having regard to the report by the Committee on Youth, Culture, Education, Information and Sport and the opinions of the Committee on Legal Affairs and Citizens' Rights and the Committee on the Environment, Public Health and Consumer Protection on a framework for a European media policy (Doc. A2-75/85) and to the report by the Committee on Economic and Monetary Affairs and Industrial Policy and the opinion of the Committee on Energy, Research and Technology,

M. realizing the increased importance of radio and television for the democratic development of the European Community, the emergence of a European consciousness, and the maintenance of Europe's cultural diversity and identity,

N. whereas the decisions being taken by the Member States do not reflect the full potential of the new transmission technologies with regard to the dissemination of culture at European level and across frontiers,

O. whereas there is a risk that the Community will waste the opportunity of establishing a common media policy and that instead utilization of the capabilities afforded by technical developments will result in the emergence of immutable, commercially orientated international media structures, monopolies or non-European information services,

[1] SN/2536/3/85 of 28-29 June 1985

[2] CES 320/85

[3] COM(85) 174 final

1. Welcomes the media report submitted by the Commission, comprising the Interim Report and the Green Paper entitled 'Television without Frontiers', which considers not only the legal aspects but also the cultural, social, economic, technological and industrial dimensions of this issue;

2. Calls on the Commission and Council to give more systematic expression to these different aspects of the Community treaties and to evolve a comprehensive European media policy;

3. Notes that a European television environment, which is an essential feature of a European Community in the process of integration, implies the following in particular:

   - reception of national channels from all Member States

   - the establishment of a multilingual European television channel

   - support for Europe's programme-making industry

   - harmonization of certain principles of broadcasting law and of technical standards,

4. Welcomes, as steps in the right direction, the efforts of the Commission, the Council and the Ministers for Cultural Affairs meeting within the Council to protect Europe's television environment

   - by creating a Community system of support for film and television coproductions,

   - by ensuring an appropriate role for audio-visual productions of European origin,

   - by distributing cinema films rationally in the audio-visual media;

5. Supports, accordingly, all measures which help to safeguard European broadcasting quality and to increase European content in broadcasting;

6. Calls for the proposal to create a Community fund to encourage and assist the production of European television programmes, which is contained in its resolution of 30 March 1984, to be implemented as soon as possible and therefore welcomes the Commission's proposal to support non-documentary cinema and television productions;

7. Stresses that broadcasters' freedom of expression, cable undertakings' freedom of reception and retransmission and the public's freedom of reception are an indispensable basis for cultural life and democracy, guaranteeing both cultural diversity and unrestricted opinion-forming;

8. Stresses that these can be best protected if all broadcasting companies are licensed by national broadcasting authorities;

9. Advocates the elimination of the legal obstacles to such freedoms in respect of transnational media, and television in particular, since this would help the nations of the Community to develop closer ties;

10. Is convinced that, in accordance with Article 10 of the Declaration on Human Rights, no country could exclude or restrict broadcast material from another country in the Community except as far as Article 10(2) applies;

11. Calls on the Member States to give priority to the transfrontier broadcasting of European and national television channels during the development of cable and satellite television to come, in order to prevent the process of European integration from being hampered or jeopardized, and therefore supports all efforts to establish a European television channel;

12. Proposes, to this end, the establishment of an independent editorial board for a European television channel, on which the organizations involved in the European television channel project would be represented;

13. Calls, to this end, on the Commission and Council to include an item with adequate appropriations in the Community budget by way of initial assistance;

14. Calls on the Member States to make satellite channels available for a European television service and to make its broadcasts accessible through relaying into national cable networks; in order to safeguard a common multilingual European television channel in the long term, the Community should apply to the World Administrative Radio Conference (WARC) for allocation of a separate frequency and a coverage area extending over its entire territory;

15. Agrees with the Commission and the Court of Justice that broadcasts of any type are also services within the meaning of the EEC Treaty and that freedom of movement of services within the Community therefore applies.

This means three things:

(a) Broadcasting organizations licensed in a Member State are entitled to transmit, in accordance with the law of the transmitting country, for reception in other Member States (and by cable network companies) and are not subject to restrictions by the authorities in such states, whether transmission is via ground transmitter, direct-broadcasting satellite, directional-radio link, long-distance cable, or telecommunciations satellite;

(b) Viewers and listeners in a Member State are entitled to receive all broadcasts from other Member States that are technically and physically receivable, without restrictions on the part of domestic authorities, in the form in which they are transmitted in accordance with the law of the transmitting state;

(c) As recipients and conveyors of services, cable network companies licensed in a Member State are entitled to receive, without restrictions on the part of domestic authorities, all broadcasts from other Member States that are technically and physically receivable and to distribute them via cable networks in their original form;

16. Shares the Commission's view that such rights, which are derived from Articles 59 and 62 of the EEC Treaty, give specific expression under Community law to general principles enshrined in Article 10(1) of the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. Freedom of broadcasting, which is enshrined in the EEC Treaty, must therefore be interpreted in the light of these analogous basic rights. Community institutions and Member State authorities can insist, on the basis of Community law and in accordance with the processes thereof, that such rights be respected;

17. Calls on the Commission to act without delay against violations of freedom of broadcasting between the Member States and to give priority to consideration of the rules and practices concerning the distribution of broadcasts via cable networks;

18. Stresses that derogations from the ban on discriminatory practices are permissible only on grounds of public policy, public security or public health (Article 56(1) of the EEC Treaty) and must also be justified in the Community context and in the light of the criteria set out in Article 10(2) of the Convention on Human Rights;

19. Would welcome greater scope for articulating the various cultural trends within the Member States (and across their frontiers) and for exchanges in this regard, with a view to maintaining variety as the hallmark of Europe's cultural identity, and therefore considers that continued diversity in the European media and broadcasting services is desirable while underlining the important role of public-broadcasting organizations in this context whose effectiveness must be safeguarded;

20. Takes the view that Europe's arts industries require a single domestic market for broadcasting in order to maintain both their cultural and commercial hold internationally;

21. Calls on the Commission to submit to the Council without delay a proposal for a directive instituting a common technical standard for direct broadcasting via satellite;

22. Is convinced that audience demand for radio and television channels can help to facilitate the funding of powerful, state-of-the-art communications networks, on which Europe's economic competitiveness is increasingly dependent;

23. Supports the Green Paper's proposal to create a framework for European and national radio and television channels - a proposal made by the Commission at the request of the European Parliament - since this is a necessary component of a European media policy;

24. Calls on the Commission to submit without delay the proposals it has announced for directives and for rules governing advertising, the protection of minors, and copyright - respect for which is essential if cultural life is to be protected and progress - and for regulating the aspects referred to in paragraphs 3 and 4;

25. takes the view that the directive on broadcast advertising should incorporate the following:

(a) A legal framework.

(b) Supervision at national level so as to ensure flexibility and speed of reaction to any complaints.

(c) Limits on advertising time to be regulated by the relationship between the consumer's strict tolerance level of advertising material and the advertiser's need to retain the interest of the consumer.

(d) The total amount of advertising time to be divided into suitable sequences,at appropraite intervals, so that programme material is not unduly disturbed, inappropriate concentration of advertising is avoided and the consumer is thereby protected from unreasonable interference with his enjoyment of the programmes.

(e) A clear separation of advertising and programme material.

(f) A total ban on the advertising of tobacco and tobacco products because of the clear evidence of its effect on health, making sure that overt advertising does not become covert advertising.

(g) Strict rules governing the advertising of alcohol in accordance with national practice and incorporating the principles of the ICC and IBA codes.

(h) The use of these codes to protect the interests of children.

(i) The availability of advertising time for public information or for the purposes of health education which could be funded by public bodies.

26. Suggests that the Commission shoud give serious attention to the problems which might arise so far as competition is concerned in allowing some countries to adopt different standards of control than those envisaged in the previous paragraph;

27. Takes the view that such rules are specifically designed to facilitate the transfrontier broadcasting of radio and television programmes and the production of such programmes in the Community in line with the objectives of the EEC Treaty and that the legal basis for this exists in Articles 57(2) and 66 of the said treaty;

28. Favours therefore the establishment of a common television environment in which all discriminatory and restrictive practices would be abolished in order to permit transfrontier broadcasting and reception;

29. Welcomes the fact that the Commission has considerably stepped up cooperation with the Council of Europe in broadcasting; requests the Commission to continue with this collaboration and, in addition, to establish contacts with particularly interested third countries if this is desired;

30. Requests the Commission to submit framework proposals only, as projected in the Green Paper, and to resist the temptation to tender perfectionist solutions;

31. Instructs its President to forward this resolution to the Council and Commission of the European Communities.

B

EXPLANATORY STATEMENT

On 12 March 1982, the European Parliament adopted a resolution[1] calling for a European media policy. To this end, the Commission was to submit a report on the media with a view to assisting the Community institutions in preparing the decisions to be taken by them in this field and, on the basis of this report, to create the political and legal basis for the establishment of a European television channel. Parliament also called for rules on European radio and television broadcasting to be drawn up, inter alia with a view to protecting minors and establishing a code of practice for advertising at Community level.

The Commission heeded the European Parliament's call by first submitting an Interim Report on Realities and Tendencies in European Television: Perspectives and Options[2] on 1 July 1983, which concludes that the new media technologies could help Europe to make a greater industrial and cultural impact vis-à-vis its competitors 'provided a common policy is launched without delay'.

The European Community should take the initiative:

a) on the institutional front, in order to establish a general framework for cable and satellite television;

b) in industrial policy, where uniform technical standards should be introduced and European technology promoted;

c) in the field of programme production, since 'no European country will be able to satisfy the enormous needs of tomorrow on its own'; and

d) in cultural policy, 'in order to maintain the pluralism of national identities that go to make up the cultural unity of Europe'.

In addition, the Commission welcomed the project for a European television channel, describing it as 'highly desirable', and promised 'political and material support'. According to the Commission, such a channel would 'go a long way towards making and keeping Europe's citizens aware of the European dimension in their lives ...' and would thus make a major contribution towards realising the prime objective of the EEC Treaty: 'to lay the foundations of an ever-closer union among the peoples of Europe'.

The European Parliament responded with a report on 'a policy commensurate with new trends in European television' and adopted, on 30 March 1984, a resolution[3] calling on the Council and Commission:

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[1] OJ C 87, 5.4.1982

[2] COM(83) 229 final

[3] OJ C 117, 30.4.1984

a) to create a European legal framework containing rules on the protection of young people, on television advertising and on authors' rights and including 'proposals to allocate transmission time between Community and non-Community productions';

b) to promote technical and industrial cooperation with regard to new technologies and to support a standardised satellite transmission system in Europe;

c) to create the legal, political and material conditions for a television channel broadcast by satellite, inter alia by authorising a European DBS reception area;

d) to set up a Community fund to assist the production of television programmes and to create 'Community infrastructures to provide credit facilities for the production and co-production of programmes in the countries of the Community'.

On 25 May 1984, the Commission then submitted its Green Paper on the Establishment of the Common Market for Broadcasting, Especially by Satellite and Cable[1] as the second part of the media report that had been requested.

[1] COM(84) 300 final

I.

PRIMARY CONSIDERATIONS

Through the establishment of a common market for broadcasting, the Green Paper is intended to complement efforts to set up a European television channel, with a view to promoting European integration and cultural exchanges in the light of the political basic rights of freedom of information and of expression.

The Commission is concerned to ensure, by applying the provisions of the EEC Treaty on the freedom to provide services and through a limited number of legislative measures, that the new technologies such as satellite and cable are not reserved exclusively for national broadcasting; rather, equal priority should be given to exchanging channels originating in the Member States.

The Commission has analysed the current legal barriers to this direct exchange of broadcasts and has set out its views on how they can be gradually overcome. Given the various extremely complex aspects involved, this objective is laudable.

1) In terms of cultural policy, greater cultural exchange between the Member States would stimulate intellectual creativity. Dissemination of European productions would be promoted, while productions from non-Community countries would be at a disadvantage. Transnational information flow would be encouraged; there would be greater knowledge of the other European cultures.

2) In terms of information policy, this solution would give tangible expression to the hopes that many Europeans have placed in the new technical capabilities with a view to greater availability of information from domestic and foreign sources. In contrast to the efforts of the Communist-bloc nations to achieve world-wide control over information availability by invoking the principle of prior consent (by the State), this would be a model geared as far as possible to the principle of unrestricted information flow. In response to the concern expressed in some Member States as to what is to be broadcast via the fast-developing new-technology media, the Commission points to the existing shortcomings as regards the reception of foreign services.

3) In terms of policy on Europe, Community-wide broadcasting of national channels would be the requisite complement to a European television service, with a view to achieving European integration. Even if foreign channels from other Member States were watched only by chance or occasionally - indeed, because of the very possibility of doing so - there would be greater awareness that there is a European Community; and it is on this basis that Europe's citizens could effectively play their part in building the Community, in particular as voters in elections to the European Parliament.

4) In terms of economic policy, Community-wide broadcasting would provide the large, homogeneous internal market that Europe's arts industry requires in order to recoup its investment in its products. There would be no production costs to be borne by viewers and listeners; rather, they would pay only the cost of programme distribution proper.

In terms of overall economic effects, it would be easier to finance the establishment of powerful, state-of-the-art communications networks if private demand could be stimulated by the presence of a number of additional non-domestic channels.

II.

THE LEGAL BASIS

The European Parliament resolution of 12 March 1982 called inter alia on the Commission to clarify the legal basis for Community action in this field. It is self-evident that this question is of particuar importance as regards the establishment of a European framework for radio and television broadcasting. Most of the Green Paper is devoted to this question:

- Part IV - 'Legal aspects' (pp. 63-104)* - is a survey of the broadcasting laws of the ten Member States - the emphasis is on television - and sets out the conditions for an approximation of broadcasting laws in the Community.

- In Part V - 'Freedom to provide services' (pp. 105-208) - the Commission interprets the EEC Treaty's provisions on radio and television broadcasting in the light of the judgments of the Court of Justice.

The brief summary in the introduction to the Green Paper (on pages 8 and 9) refers to the articles in the EEC Treaty that form the basis for the Commission's actions, anticipating, to a certain extent, the conclusions to be drawn from the arguments set out on subsequent pages. Owing to its clarity, it has been reproduced in full below.

EEC Treaty and broadcasting

The EEC Treaty encompasses broadcasting in a multitude of ways, the most important of which are discussed below:

(i) It applies to signals transmitted or relayed by radio, considering them to be services (Article 60). It provides for the abolition of restrictions on the freedom to broadcast within the Community (Article 59). It prohibits any new restrictions on the freedom to provide such services (Article 62). It thus guarantees broadcasters the right to transmit or relay their signals to other Member States (freedom of Community-wide broadcasting). It affords recipients in the other Member States the opportunity to capture such signals (freedom of Community-wide broadcasting reception) and to include them in their own selection of broadcasting (freedom of Community-wide choice of transmissions).

*The page numbers in parentheses refer to the Green Paper.

(ii) The EEC Treaty applies to broadcasters in their capacity as persons carrying on a self-employed activity for remuneration (second paragraph of Article 52). It is irrelevant here whether they are natural or legal persons, companies with or without legal personality, associations, cooperatives or foundations, or public-law or private-law organizations (Article 58). The Treaty provides for the abolition of restrictions on their freedom of establishment in the territory of another Member State (first paragraph of Article 52). It prohibits the introduction of any new restrictions on the right of establishment (Article 53). Consequently, it guarantees Member States' nationals the freedom to take up and pursue broadcasting activities in other Member States (freedom of establishment throughout the Community).

The Commission is responsible for ensuring, both on its own initiative and in response to complaints, that this European fundamental right and that of freedom to provide services are respected (Article 155, first indent, and Article 169, first paragraph). If a Member State fails to comply with the Commission's reasoned opinion, the Commission may bring the matter before the Court of Justice (Article 169, second paragraph). The other Member States have the same right (Article 170).

(iii) The EEC Treaty applies to national broadcasting and telecommunications legislation as the sum of the provisions laid down in individual Member States concerning the taking up and pursuit of a self-employed activity, viz. broadcasting (Article 57(2)). 'In order to make it easier for persons to take up and pursue activities as self-employed persons', the Treaty provides for coordination of the relevant provisions of broadcasting and telecommunications legislation (Article 57(1), taken in conjunction with Article 57(2), and Article 66). This approximation of legislation is to be achieved through directives adopted by the Council, acting on a proposal from the Commission and after consulting Parliament (Articles 57(2) and 66).

(iv) The EEC Treaty applies to those working for broadcasting organizations. To those who are employees it guarantees freedom of movement within the Community (Article 48). To those working for them in a self-employed capacity it affords freedom of establishment (Article 52) and freedom to provide cross-frontier services (Article 59). In so doing, it extends the freedom of reporting, expressing opinions and presenting cultural performances to the entire territory of the Community. All occupations, including journalistic and artistic activities, are covered (Articles 48, 52 and 60). In order to establish freedom of movement for workers, including those active in the spheres of culture, sport and reporting (Article 49) and to make it easier for persons to take up and pursue activities in a self-employed capacity (Article 57(1) and (2)), the EEC Treaty prescribes a series of Community measures (Articles 49, 50, 51, 57(2) and 66), including the mutual recognition of diplomas, certificates and other evidence of formal qualifications (Article 57(1)). Such recognition is to be secured through directives issued by the Council, acting on a proposal from the Commission and after consulting Parliament.

(v) The EEC Treaty applies to such of the Member States' technical provisions governing broadcasting (relay procedures and equipment, transmitters, receivers, standardization, etc.) as directly affect the establishment or functioning of the common market (first paragraph of Article 100), in particular therefore the transmission, dissemination or reception of signals from other Member States and the manufacture and

Community-wide marketing of such procedures and equipment by industry and commerce in the Community. The EEC Treaty provides for the approximation of such provisions, to be achieved through directives issued by the Council, acting on a proposal from the Commission and after consulting Parliament and the Economic and Social Committee (Article 100).

(vi) The EEC Treaty applies to broadcasting organizations as undertakings that deal in materials, sound recordings, films and other products which they need to carry on their activity. It prohibits all State restrictions on free movement in such goods between Member States (Articles 9, 12, 30 and 31). It thus guarantees broadcasting organizations, as well as their suppliers and customers both at home and abroad, the freedom to take part in Community-wide trade.

(vii) The EEC Treaty applies to broadcasting organizations in their capacity as undertakings engaged in competition. It prohibits them from entering into agreements that restrict competition and from abusing a dominant position that may affect trade between Member States (Articles 85 and 86). It thus guarantees broadcasting organizations the freedom to compete with one another within the Community and protects their suppliers and customers from any abuse of economic power.

The Commission is entrusted under the Treaty with the task of securing compliance with these provisions on the freedom of Community-wide competition and trade.

The conclusions in the Green Paper that have been quoted are based on the Commission's view that, contrary to what is widely imagined, the EEC Treaty applies not only to economic activities but, as a matter of principle, to all activities carried out for remuneration, regardless of whether they take place in the economic, social, cultural or any other sphere (p. 6). The scope of Community law is defined in the EEC Treaty. According to the preamble, the Treaty aims 'to lay the foundations of an ever closer union among the peoples of Europe', '... to strengthen the unity of their economies and to ensure their harmonious development ...' (cf. also Article 2). The Treaty applies to all economic actions and all related activities; only activities wholly unconnected with the economic sphere, e.g. exclusively cultural associations or charitable institutions, are not subject to Community rules.

Broadcasting continues to be an important element of social and cultural life in the Member States. However, broadcasting is also indisputably an economic activity within the meaning of Article 2 of the EEC Treaty (p. 207). In this connection, the Commission has submitted impressive evidence (p. 37 ff, p. 205 ff plus Annexes 1 to 17). Accordingly, there is every reason that the common market should apply not only to those actively engaged in the arts, but also to those involved in the public presentation of cultural activities.

Clearly, in view of this legal basis, there is a need for Community action (p. 37). The integration of this sector of the economy - both satellite-broadcast and conventionally transmitted television services - into Community law presupposes, of course, that its transfrontier activities can be governed by the provisions of the EEC Treaty. This condition has been satisfied: the Commission presents a detailed survey of the ten broadcasting systems in the Community (pp. 63 ff) and takes the view that television is subsumed under Community law relating to services within the meaning of Articles 59 and 60 ff of the EEC Treaty (p. 105).

The Commission regards the relationship between broadcasting organizations of one country and viewers in another as a transfrontier, remunerated service (p. 109 ff). In the Commission's view, the form of the remuneration - whether in fulfilment of a contract, a charge, a fee, a levy or a tax (p. 107) - is not the essential aspect. According to the Commission, Article 60 of the EEC Treaty presupposes no relationship as such, under either private or public law, between the provider and the recipient of a service; rather, the decisive factor is whether broadcasting is an activity 'normally' carried out for remuneration, i.e. against payment in some form (p. 107).

In adopting this teleological interpretation in accordance with the spirit of the EEC Treaty, the Commission has laid the foundations for a development in Community law that would be of major importance in terms of policy on European integration. The Court of Justice, which has often given considerable impetus to the process of European unification through its rulings of general principle, has paved the way for this. With regard to transfrontier (cable) television, the Court ruled as follows in the Sacchi and Debauve cases (155/73 and 52/79 respectively; p.105):

> 'In the absence of express provision to the contrary in the Treaty, a television signal must, by reason of its nature, be regarded as provision of services ... The transmission of television signals, including those in the nature of advertisements, comes, as such, within the rules of the Treaty relating to services.'

This legal precedent has opened up the Community's internal frontiers to the free flow of transfrontier broadcasting. Essentially, this implies two things: broadcasting organizations licensed to operate in one Member State may broadcast to other Member States (freedom of transnational broadcasting); and reception of these broadcasts may not be prevented or hampered in the Member States in which they are received (freedom of reception) (pp. 8, 158, 160). Moreover, the basic rights enshrined in Article 10 of the European Convention on Human Rights substantively reflect this legal position (p. 128).

In order to protect these freedoms to provide transfrontier services, Article 59 of the EEC Treaty stipulates that (existing) restrictions should be abolished and Article 62 prohibits the introduction of new restrictions. According to the spirit of the Treaty, 'restrictions' mean not only clear cases of national discrimination against foreigners (on grounds of nationality and/or of place of residence; cf. Article 7 of the EEC Treaty); rather, this also covers non-discriminatory national restrictions affecting nationals and non-nationals differently with regard to transfrontier services (p. 117 ff, 140 ff).

Implementation of the liberalization principles pertaining to broadcasting law may be restricted only under exceptional circumstances:

1) Explicit exceptions

   National restrictions on broadcasts from other countries are permissible pursuant to Articles 56(1) and 66 of the EEC Treaty if the reception and national retransmission of foreign broadcasts would place public policy, public security and public health at serious risk (pp. 125, 175, and 125 ff, 134 ff, 169, 170).

2) Implicit exceptions (p. 150)

a) In its judgment on retransmission via cable television (Debauve case, 52/79), the Court ruled that, with regard to the transfrontier broadcasting of advertisements, all discrimination against foreign broadcasts was prohibited. In spite of this, however, the Court takes the view that general, non-discriminatory restrictions - and even complete bans - on the national retransmission of foreign advertising broadcasts which are applied equally to national and foreign services are permissible if two conditions are fulfilled:
- if such action would be in the national general interest and
- if national laws have not been approximated (p. 167).

Thus, in this judgment on the broadcasting of advertisements, the Court had no intention whatsoever of perpetuating the use of national restrictions. As the Commission accurately states, the Court's view in the Debauve case was simply that the free dissemination of advertising, which is in fact guaranteed (by the EEC Treaty), cannot be imposed if national laws have not been approximated (p. 153). According to the Commission's interpretation of the judgment in this context, the Court considers that the elimination of national disparities in the field of broadcast advertising are a subject for approximation pursuant to Articles 66 and 57 of the EEC Treaty in connection with Article 3 (c), (f) and (h) thereof (pp. 152, 153, 155).

b) It should be noted that, according to the Commission, the Court's judgment in the Debauve case represented a general formulation of the temporary-exception rule described above (justified on grounds of general interest in the absence of approximation). In the Commission's view, this is indicative of the Court's unwillingness to see such exceptions applied only to the field of radio and television advertising (pp. 156, 167, 169, 171, 175); rather, accordingly, the (unwritten) reservation of general interest, which largely reflects the list of justifications contained in Article 10 of the European Convention on Human Rights, would be applicable to all areas governed by Community law (pp. 156, 167, 169, 171, 175).

Because of such reservations, there are still, in the final analysis, national inconsistencies; though, in theory, these inconsistencies can be attenuated through approximation, experience indicates that, as regards the heart of public-order legislation at least, they virtually defy elimination through harmonization.

The Commission rightly stresses the principle that reservations - exceptions to the rule - should generally be interpreted narrowly and that, for Community bodies, they must be verifiable in substantive and adjective law (pp. 126 ff and 167; Case 36/75, Rutili).

The Commission deserves credit for having pointed out that the Community's principles of liberalization in transfrontier services between the Member States are incompatible with principles that have emerged, or are emerging, in international law with regard to direct broadcasting by satellite (DBS). In the Commission's view, incompatibility exists with (p. 122 ff):

- Article 7, ground 428 A, of the 1971 Executive Order, Radio Regulations, for the International Telecommunications Union (ITU, a UN specialized agency). With regard to certain spill-over broadcasts, these rules, which chiefly affect radio broadcasting, have set in motion a move to establish a principle analogous to that of prior consent;

- in addition, the satellite broadcasting plan adopted by the ITU World Administrative Radio Conference in 1977, which, inter alia, defines system specifications for satellite broadcasting lobes in such a way that, where possible, the waves reaching the earth's surface are received in national services areas (though, in some cases, this is not possible and there are certain spill-over areas and superbeam zones);

- and, lastly and most importantly, the principle of prior consent, which implies that receiving states should give prior consent to transfrontier broadcasts (cf., in this connection, the UN General Assembly Resolution of December 1982 on the Principles Governing the Use by States of Artificial Earth Satellites for Direct Television Broadcasting and p. 27 of the Green Paper).

Since the western world is very divided on the prior-consent principle, it is all the more gratifying that the Commission should so emphatically regard this principle as incompatible with the principles of liberalization enshrined in the EEC Treaty.

There is no danger that the Commission's position might undermine the entire system of ITU regulations. The overwhelming majority of the ITU's technical regulations are virtually unaffected by Community provisions . On the contrary: the Member States, which, incidentally, voted to adopt the regulations in most cases, find them technically useful and, in some cases, even a necessity. At present, the Community's liberalization principles clash chiefly with the satellite system specifications designed to restrict television DBS transmissions to national coverage areas. However, it should be noted that these 1977 WARC regulations in particular are obsolescent as a result of enhancements to aerial arrays.

The Commisson then underlines its intention to comply with the 'legal imperative' (p. 181) to proceed with approximation of laws (Article 57(2) of the EEC Treaty), which, pursuant to Article 57 thereof, includes the taking up and pursuit of activities in the field of broadcasting. By this, common-market harmonization would be subject not only to provisions on transfrontier freedom of movement but also to national legal provisions, in so far as the proper functioning of the common market demanded this (Articles 57 and 66 in connection with Article 3(c), (f) and (h) of the EEC Treaty) (p. 155).

III.

THE COMMISSION'S SPECIFIC PROPOSALS

The current legal obstacles to the transfrontier dissemination of broadcasts are to be found in the Member States' differing provisions on

- programme content
- advertising
- protection of minors
- right of reply
- copyright

1) Programme content

The Commission is not proposing to establish a uniform European programming law through harmonization. It takes the view that the EEC Treaty permits the Member States to continue to apply their national programming laws to broadcasting organizations established on their territories and, if necessary, to extend the scope of such laws in the light of national traditions and special factors; however, the Treaty also obliges Member States to refrain from hindering the dissemination of broadcasts legally transmitted in other Member States (with certain exceptions relating to the protection of public safety in particular). Indeed, a broadcasting organization cannot be expected to comply not only with the programming rules of the country in which it is established, but also with all the programming rules of other Member States in which its broadcasts can be received or are retransmitted. Transfrontier dissemination of broadcasts - an objective inferred in the EEC Treaty - demands tolerance on the part of a Member State with regard to other Member States' different programming rules. Furthermore, this approach would be superior to harmonization in major respects:

- It would dispense with harmonization, which is complex and time-consuming, in an area that is, politically, extremely sensitive and obviate unnecessary processes of adjustment in the Member States;
- An artificial, standard television service at European level would not be established; rather, Europe's cultural diversity would be maintained.

2) Advertising

In the light of the Court's judgment in the Debauve case, the Commission proposes that the principal rules governing broadcast advertising should be harmonised.

This is justified on various grounds:

- the European viewing audience must be protected against a proliferation of advertising in programming schedules that are increasingly international in character;
- broadcasting organizations in a common market for broadcasting must operate under comparable terms of competition;
- advertising is a vital source of revenue for broadcasting organizations.

- as a result of differing restrictions, advertising would be transmitted from countries operating fewer or less severe restrictions, with implications for the consumer, broadcasting organizations and the advertising industry.

The Commission is examining the following aspects of broadcast advertising, which require regulation:

- prohibition of authorization (p. 263),
- extent (p. 268),
- limitation of advertising revenue (p. 275),
- advertising on Sundays and public holidays (p. 275),
- times of the day at which advertisements may be broadcast (p. 276),
- the blending-in of advertising (p. 276),
- individual spots and advertising slots (p. 276),

- separation of advertising and other programme material; sponsored advertising (p. 277),
- restrictions on the advertising of specific products (p. 282),
  - tobacco advertising (p. 282),
  - alcoholic beverages (p. 282),
- broadcast-advertising control; organization (p. 282),
- advertising practices: general standards (p. 284),
- standards relating to children and young people (p. 284),
- standards relating to alcoholic beverages (p. 285).

This list of subjects for harmonization is most diverse, though the advertising industry and broadcasting organizations need not feel intimidated by it: at the beginning of each section, the Commission stresses that, with regard to harmonization, 'perfectionism' should not be sought (p. 262); the aim should be to restrict harmonization to an absolute minimum, with, in each case, a careful examination of what constitutes minimum harmonization (p. 262).

A directive on television advertising should contain the following elements:

(a) A legal framework.

(b) Detailed control at national level so as to ensure flexibility and speed of reaction to any complaints.

(c) Limits on advertising time to be left to the relationship between the consumer's strict tolerance level of advertising material and the advertiser's need to retain the interest of the consumer. In any event, the possible development of a television channel or channels entirely devoted to advertising (for example, mail order television) should be not excluded.

(d) The total amount of advertising time to be divided into suitable blocks so that programme material is not unduly disturbed, inappropriate concentration of advertising avoided and the consumer thereby protected from unreasonable interference with his enjoyment of the programmes.

(e) A clear separation of advertising and programme material.

(f) A total ban on the advertising of tobacco and tobacco products because of the clear evidence of its effect on health, making sure that overt advertising does not become covert advertising.

(g) Strict rules governing the advertising of alcohol in accordance with national practice and incorporating the principles of the ICC and IBA codes.

(h) The use of these codes to protect the interests of children.

(i) The availability of advertising time for public information or for the purposes of health education which could be funded by public bodies.

(j) Adequate provision for broadcast advertising in each Member State.

3) Protection of minors

The Commission's aim is to ensure that children and young people are adequately protected against broadcasts which might impair their physical, intellectual or moral development and that broadcasts meeting this standard of protection can be freely transmitted. Community-level approximation of laws relating to the protection of minors would be the most suitable approach, with a view to ensuring that broadcasts meeting a Community-wide minimum standard of protection can be freely transmitted in all Member States. National legislatures would remain free to impose stricter standards for broadcasts within the country. However, supranational broadcasts from other Member States would be permissible if they met Community standards (p. 293).

The relevant directive could embody the principle that broadcasts which might seriously harm the physical, intellectual or moral development of children or young people should not be permitted. This should include broadcasts involving hard-core pornography, horrific and inhuman violence, or incitement to racial hatred.

The broadcasting of less harmful programmes which might still, however, impair the physical, intellectual or emotional development of children and young people should only be permitted late at night.

The Member States should be left to handle the practical implementation of the directive's few rules. It would be necessary only to require them to arrange for their implementation in such a way that programmes infringing the rules would not be broadcast. For that purpose, they could rely on existing broadcasting institutions or on self-regulation.

4) Right of reply

The growth of transfrontier broadcasting is desirable. The Commission envisages that, in the course of this, a standard definition of what constitutes a right of reply or correction in respect of radio and television broadcasts would be established in order to provide effective, comparable protection for Community citizens, irrespective of the Member State in which a broadcast originates. However, the need for an appropriate directive has not yet been unequivocally demonstrated: though the Member States' current legal provisions in this area differ, this generally does not constitute an obstacle to transfrontier broadcasting.

5) Copyright

The proposals on copyright form probably the most controversial section of the Green Paper. It begins by stating that, internationally the dominant feature of the law on copyright and related rights is the principle of territoriality.

As a general principle, the concept of territoriality, international agreements and national law enable an author to conclude separate marketing agreements for each national market and thus maximise remuneration from copyright. At the same time, however, the territoriality principle is at variance with the objective of securing freedom to provide services within the Community. This principle is irrelevant to direct broadcasting across national frontiers: only the act of transmission is considered to have copyright implications (p. 303).

According to the Green Paper, it has not yet been definitively established whether this should also extend to direct broadcasting via satellite. Efforts are underway to seek application of the law of the receiving country as well as that of the transmitting country (p. 304).

Following a synopsis of the rights relating to radio and television broadcasts and of the relevant international agreements, the Green Paper notes that, usually, a number of copyrights and, in most Member States, related rights too are affected by the transmission of broadcasts (p. 313). Such rights are only sometimes held by their original owners; sometimes they are granted to marketing undertakings and are usually divided according to territorial area. In view of the resulting legal obstacles to the transfrontier distribution of broadcasts via cable networks in the Community, the Commission considers it imperative to contemplate a statutory solution and proposes that the right of holders of copyright and of related rights to grant cable-retransmission rights should be reduced to a simple entitlement to remuneration or that statutory licensing with a view to cable retransmission should be imposed on broadcasting rights. In this instance, the level of remuneration would be negotiated collectively or, if necessary, set by the authorities, in the courts or through arbitration.

In respect of statutory licensing, which the Commission considers the most effective means of realising its intentions as regards liberalization, a Member State would be obliged to amend its copyright laws within an appropriate period in such a way that the right of prohibition enjoyed by copyright holders and holders of related rights in connection with the cable transmission of foreign radio and television broadcasts would be withdrawn under certain narrowly defined conditions.

All holders of rights, however, should be granted an entitlement to equitable remuneration; in order to facilitate settlement, such claims should be enforceable only through collecting societies.

The proposal to introduce statutory licensing has met with considerable opposition from the parties concerned on the ground of insufficient flexibility; it is also feared that, as a result, holders of copyright would not receive remuneration at a level commensurate with the value of their work.

IV.

THE GREEN PAPER: THE DEBATE SO FAR

The many conferences held in all Member States, but also the hearings organised by the Commission bear witness to the importance attached to this document throughout Europe. The attention devoted to the Green Paper is far in excess of that which the Interim Report was able to attract. There is an understandable reason for this: the Green Paper has given advance notice of proposals for directives with a view to reorganising major sectors of the media.

The wide-ranging debate cannot be reproduced in this report. Only the arguments of the principal protagonists can be highlighted:

1) Understandably, the advertising industry's interest is particularly great. Their views can be divided into two categories, represented by two camps:

   a) The London-based Advertising Association welcomes the proposal to establish a single television advertising area for the Community, as expressed in the Green Paper. However, it disputes the Commission's authority and competence to seek a statutory solution in the form of a directive regulating the content and scheduling of advertising. According to this group, such regulation is the responsibility of broadcasting organizations and the advertising industry; they endorse the Council of Europe declarations and the European Convention on Human Rights, which they consider perfectly adequate.

   b) The European Advertising Tripartite - combining advertisers, advertising agencies, the media (the press, radio and television, and advertising-poster and direct-mailing undertakings) and national tripartites (advertising associations, etc.) - largely welcomes the Green Paper despite certain reservations (though these are not fundamental).

   c) The largest grouping within the advertising industry - in particular the International Union of Advertisers Associations (UIAA), the Brussels-based European Advertising Agencies Association (EAAA) and the Central Council of the Advertising Industry (ZAW) - warmly welcomes the efforts to establish a common market in advertising, as expressed in the Green Paper, and agrees that there is a need to harmonize broadcasting laws in the Community with a view to transfrontier advertising. There is most emphatic support for the Commission's view that there should be no attempt to achieve perfectionism in this process and that approximation should be kept to a minimum; and there is criticism of specific proposals.

2) The European Bureau of Consumers Unions too has commented on behalf of Europe's consumer organizations, which are deeply concerned at the frosty reception accorded to the Green Paper by the European Broadcasting Union (EBU), by various broadcasting organizations and by certain sections of the advertising industry. In the light of their experience at national level as regards television advertising, they stress the urgent need for Community-level regulation of such advertising and for international cooperation to combat abuse of commercial television. They take the view that Community harmonization of television advertising laws is unavoidable, since EBU and Council of Europe proposals have not been acted on. The consumer organizations are also critical of the specific proposals, however. For example, they would like a clear distinction to be made between traditional advertising and new types of advertising now feasible, or anticipated, as a result of the new media. In their view, freedom of advertising is not identical with freedom of opinion; the former, rather, is not absolute. The consumer organizations oppose the Green Paper's minimalist approach, particularly as regards the proposal to permit a Member State government to impose on domestic broadcasting organizations more far-reaching restrictions on advertising and greater obligations with a view to the protection of minors, while broadcasts from outside the country would be unaffected. According to the consumer

organizations, this would result in distortions of competition - an objection, moreover, also raised by all advertising organizations. The consumer groups call for a much more consistent harmonization of advertising law; they would also like other aspects to be regulated, i.e. involving a ban on advertisements for pharmaceuticals.

3) The position of the European Broadcasting Union (EBU) on the Green Paper is uniquely significant - all the more so since it comprises 40 television broadcasting organizations from 30 countries and its statement was issued after full consultation of the member bodies (especially those established in the Member States). Of the major national organizations, only the BBC, NOS, ITCA, RTBF, ARD and ZDF have as yet issued a separate position paper. (The latter two did so jointly.) In content, the ARD/ZDF statement is largely congruent with the EBU's; but, in certain respects, it is even more critical.

- The British commercial-television contractors making up the London-based Independent Television Companies Association (ITCA) have rejected the Green Paper's proposals on the ground that, under the the EEC Treaty, the Commission has no power whatsoever to submit proposals for a directive in the field of television; nor, in their view, is there any need for such a directive, since the practices of the parties concerned are perfectly adequate. Accordingly, this proves that a solution to any such problems would be best left to the television experts and the advertising industry alone. Their criticism of the Green Paper's specific proposals reflects this view.

The comments by the EBU, the BBC and the German corporations ARD and ZDF can be summarized as follows:

- As regards the objective to establish a common television market and to harmonize broadcasting laws in the Community, as set out in the Green Paper, action is not called for at present; rather a wait-and-see attitude should be adopted until it is clear which direction the developments set in motion by the new media are taking; existing agreements at EBU and Council of Europe level, such as the European Convention on the protection of broadcasting activities, are adequate.

- The President of the EBU has refrained from giving either his interpretation of the EEC Treaty or his comments on the legal arguments expounded in the Green Paper since, in his view, this is the prerogative of Member State governments.

- Nevertheless, exception is taken to the fact that the Green Paper would appear to define television as an essentially economic activity and thus subject to the provisions of the EEC Treaty. Objectors maintain, however, that only some aspects of broadcasting are economic in nature; essentially, television is a factor in cultural life and social policy that is of major importance to the national identity of each Member State. Accordingly, despite the Court's judgment in the Debauve case, television cannot be defined as a 'service'; it most certainly cannot be considered a 'remunerated' service; and television stations cannot be defined as 'undertakings'. According to the German Federal Constitutional Court, broadcasting organizations perform a 'public function' (ARD/ZDF statement).

- According to the EBU, the Green Paper not only puts at risk international agreements on radio and television broadcasting, such as the 1977 WARC agreement on frequency allocation or the European Convention on the protection of broadcasting activities; rather, it is also a threat to national broadcasting laws. Thus, the EBU is a keen advocate of retaining the WARC rules and the European Convention; it rejects in particular statutory licencing in respect of copyright, as proposed in the Green Paper, since, in its view, this would seriously jeopardize European culture. The EBU also repudiates the proposals to regulate television advertising on the ground that its 1983 declaration on the principles governing commercial television advertising via direct broadcasting by satellite has proved adequate.

Such criticism of the Green Paper is not intended to convey the impression that the EBU holds no brief for European cooperation in the field of television. The EBU is not insistent on perpetuating existing structures within television; rather, it is motivated by a desire for close cooperation between television organizations at European level in the widest sense - 'in a free national and European framework'. The EBU is prepared to hold discussions with Community bodies. A sentence in the EBU President's letter may shed light on the underlying reason for his organization's generally critical stance on the Green Paper: '... The right to a so-called 'free' broadcasting system, based on purely economic considerations, might well undermine traditional organizations and result in the introduction into Europe's media of what is to us an alien concept'.

4) It is this viewpoint which has been taken up by an important academic in the field of media policy research in Europe: Professor George Wedell, Director of the European Institute for the Media in Manchester. His is the final contribution on this subject.

- According to Wedell, the Green Paper's objective of supranational regulation of television in Europe is necessary because it is commensurate with the challenge presented by the new media - the challenge of increasing the number of television channels receivable in each coverage area from three or four to 30 or 40 and of extending the transmission area beyond national frontiers to encompass, potentially, the whole of Western Europe. If there were no Community, ad hoc arrangements would undoubtedly have to be made in order to cope with this development; as things stood, it was desirable for the existing multinational Community to act - via its administrative apparatus - provided the Community were entitled to do so.

- If, in order to secure the legal basis, the Green Paper was an attempt to derive this authority from the EEC Treaty, concentrating on the concept of 'remunerated services' (cf. the Court's judgment in the Debauve case), this was an example of over-interpretation of the said treaty. In his view, which, in the light of the Green Paper's arguments, neither the report of the Committee on Youth, Culture, Eduction, Information and Sport nor the opinion of the Committee on Legal Affairs and Citizens' Rights endorses, justification should be sought on the basis of the overall purview of the EEC Treaty and the political rather than the legal domain should receive greater emphasis.

- Wedell's main criticism is reserved for the failure of the Green Paper to take sufficient account of the ambivalent nature of advertising in its proposals for a single television market (particularly for advertising). Thus, more effective regulation was called for: if the Community did not apply a more dynamic regulatory framework than that proposed in the Green Paper, developments in Europe would in all probability follow a pattern similar to that in the US, resulting, in Europe's case, in the loss of a broadcasting tradition of major cultural importance to the Member States. If implemented, such a vision, which has become reality in the US, might result in a fall in quality. Variety in national broadcasting structures also encouraged

  variety in programming at European level; the quality of European television should be maintained; this included a balanced output of sophisticated broadcasts on the arts, minority programmes and light entertainment. Broadcasting organizations should continue to produce their own programmes. Quality should not be sacrificed in order to open up the European market. This argument, which was also apparent in the EBU's criticism, should be taken very seriously.

- However, Wedell is clearly in favour of the Green Paper's proposal on copyright: a solution which, in his view, should provide the formula for replacing the current European Convention on the protection of broadcasts.

V.

THE DEBATE SO FAR: AN APPRAISAL

The debate so far has revealed four series of problems, on which the European Parliament must define its position:

1) Should the Community establish a legal framework for a single, Community-wide broadcasting area? This is opposed by, in particular, the EBU and its member television organizations, as well as by the commercial contractors grouped within the British Independent Broadcasting Authority (IBA), while most of the international advertising industry and the consumer organizations are calling for the establishment of a common television market (particularly for advertising). Opponents of such action argue either that existing arrangements at Council of Europe and EBU level are adequate or that this is a task for the parties concerned. However, this does not take account of two factors:

   - the challenge presented by the new media, particularly the internationalization of television - now uncheckable because of satellite technology - and the resulting need for supranational rules (an appropriate forum for which would be the European Community);

- the design, enshrined in the EEC Treaty, of European unification, which implies not only the elimination of obstacles at the Community's internal frontiers and of discrimination in competition and employment, but also the removal of barriers to broadcasting (in respect of which the Council of Europe recommendations are not adequate because they are not binding).

2) Would a common market in radio and television broadcasting jeopardize both the cultural identity of the Member States and European culture? It is generally believed that the new media will bring about fundamental changes in the structure of radio and television broadcasting. At the media congress held in Brussels on 21 November 1984, Mr Carel Enkelaar of NOS, a leading television expert and vice-chairman of the EBU's programming committee, said that European television required new organizational structures at European, national and regional levels; whoever underestimated this would be unable to perform his or her duties responsibly. Concern that forced reorganization of television - because of the new media - may harm European culture is by no means unfounded. Professor Wedell openly expresses this view; but it is also implied in the EBU's position. At all events, the structures within television in Europe, which were established in the fifties will be transformed as a result of the internationalization of this medium. Private, commercial-television companies will operate in parallel with public corporations; the national monopolies enjoyed by such corporations will be broken up. However certain it may be that the resulting competition will be productive if inflexible bureaucratic bodies hitherto immune to competition are broken up, it is equally certain that the disappearance of public broadcasting corporations and complete commercialization would jeopardize the quality of television output. A relative lack of dependence on advertising has enabled public corporations to broadcast sophisticated programmes on the arts and on politics which are not designed for success on the mass market and to take into account the wishes of minorities. However, such corporations continue to reply on advertising as well as on fees. Through their wide-ranging output, which is a function of their status as providers of a public service, they play an important political, social and cultural role in their respective societies. Even if private television broadcasting, which has been made possible by the new technologies, is welcomed, the existence of public corporations should not be called into question.

Therefore, a shared European television channel broadcast via satellite is not intended to replace national services; rather, the aim is to add a European television layer 'above' the national level (in the same way as regional channels are added 'below' the national level).

The continued existence of national public corporations in the Member States should not be called into question by the elimination of barriers, as proposed in the Green Paper in accordance with the objectives of the EEC Treaty, to the reception of television broadcasts from other Member States. This aspect is inadequately covered by the Green Paper, and should be taken into consideration in efforts to establish a common television market free of all national barriers to broadcasting and

retransmission from all other countries. The measures called for in the motion for a resolution, with a view to prompting programme-making in Europe and therefore European creativity and originality (i.e. European culture in its diverse manifestations), would be an important starting point from which to achieve this. However, it must be stressed that to refuse to exercise joint control at European level, to stand idly by and give free rein to technical innovation, and to allow the market to be dominated by economic interests would present a much more immediate threat to national and European culture than a European broadcasting system capable of incorporating good European traditions and of providing quality programming. Let no-one underestimate the enthusiasm with which commercial interests will use the new media and the market opportunities they represent. We must act quickly if we are not to waste this opportunity of creating a European broadcasting system in which the achievements of the European tradition in television would be preserved.

3) Are radio and television broadcasts services within the meaning of Articles 59 and 60 of the EEC Treaty and thus subject to the provisions of the EEC Treaty? The main objection to the views of the Court and Commission is that, in many Member States (e.g. in the Federal Republic of Germany), the organization and role of broadcasting should not be considered primarily in economic terms; accordingly, rather, it is inter alia a vehicle for the arts, a factor in the opinion-forming process and thus an element of cultural and social policy. In this connection, attention is also drawn to the fact that, ostensibly, no powers in the field of cultural activities devolve upon the European Community under the EEC Treaty. For these reasons, some take the view that, with a few exceptions (e.g. in the advertising sector), transfrontier broadcasting cannot be considered either an economic commodity or a remunerated service. Because of this role in cultural and social policy, others, e.g. the German Lander, do not reject out of hand the subsuming of transfrontier broadcasting under Community provisions on services, though they consider special arrangements to be necessary with regard to certain aspects.

Despite the importance of these viewpoints in the light of traditional, national broadcasting structures, this is no argument against the incorporation of broadcasting into the Community's legal system. Broadcasting's important function in terms of social policy and in culture - as an opinion former, as a channel for exercising freedom of opinion, and as a vehicle for the arts in the modern world of mass communications - can in no way be called into question. Nor can it be denied, however, that the rights to freedom and equality of treatment enshrined in the EEC Treaty are also enjoyed by all remunerated employed and self-employed persons in the arts, entertainment, the media (in the widest sense of the term), education and sport. Their services must not be placed at a disadvantage vis-à-vis economic services and must not be restricted to the individual's home country. Moreover, broadcasting has become an economic factor of the highest order. In the Federal Republic of Germany alone, for example, total turnover levels of DM 45,000 m have been attained in the field of cultural activities (literature, theatre, the press, museums, broadcasting, etc.). In all Member States, advertising in commercial and public broadcasting has given a major boost to radio and television's economic role.

According to the 1984 budget estimates, for example, ZDF's revenue from advertising would total DM 523.3 m, or 40 percent of aggregate revenue (licence fees plus advertising). In all Member States, cultural activities in broadcasting have evolved into an arts industry - a term clearly expressing the irrevocable fusion of culture, technology and the economy. Thus it is all the more sensible to include transfrontier television in the Community's legal system.

In this connection, the Green Paper's proposals should be complemented by measures to safeguard the quality and independence of European broadcasting, which implies that the determination not to exert any influence whatsoever on television, as expressed in the Green Paper, will have to be abandoned. The Commission is correct in its view that

- harmonization in any aspect of television broadcsting must be eschewed,

- a standardized European channel must not be established - rather, the existing diversity of cultural expression must be maintained - and

- there must be no interference in the process of determining programme content.

Nevertheless, a number of guidelines on safeguarding quality, diversity and independence and further supporting measures with a view to satisfying future demand for television productions are called for in respect of all channels broadcast in Europe.

The debate in Europe has so far produced the following proposals in this respect:

- specification of a minimum level of European programming content,

- appropriate provision, in addition to advertising, for the various programming areas such as news and current affairs, education, culture, entertainment, sport etc. on all television channels transmitted in the European Community,

- binding advertising-related provisions of the type already contained in the Green Paper.

Since Europe's current capacity to produce television programmes can in no way satisfy future demand, a European television broadcasting fund should be established on the Canadian model, which would be responsible for providing top-up funding for European broadcasts (provided these met certain quality criteria yet to be laid down, and were actually transmitted on European television). A European marketing organization for European television films should be developed, and European cooperation in programming should be promoted. In this context, cooperation should boost decentralized production in the Member States, particularly with a view to enabling smaller Member States to produce independently. European marketability of national productions should be ensured by means of dubbing and subtitles, thus permitting the high production costs to be recouped. The competitive drawback of European productions - except for those originating in the United Kingdom and Ireland - is Europe's linguistic diversity: American films need only be produced in one language, whereas European films have to find acceptance among, and be understood by, people of different languages, which involves an enormous increase in costs. This probem must be mastered by the European Community, with a view to making European television films competitive.

Finally, there must be common technical standards in DBS television if Community-wide reception of broadcasts from all the Member States is to be possible. The current technical standards PAL and SECAM are obsolete. There is already unanimous agreement in the European Parliament on the need for an enhanced television standard which can accommodate a large number of audio-frequency channels and is geared towards Community-wide reception, with a view to world-market success.

4) What should be the content of Community directives on television?

Directives should eliminate all restrictive practices; in addition, common standards should be laid down as regards content. Standards should cover the most important aspects only; perfectionism should be eschewed. However, they should be equally binding on all Member States in all respects. The Commission's proposal to authorize the Member States to impose stricter conditions in respect of domestic services has rightly been the subject of much criticism.

However, it does contain positive aspects too, with a view to preserving particular cultural features such as bans on broadcast advertising on Sundays and public holidays (on the ground of religious tradition) and at certain times of the day.

5) Are the Council of Europe measures sufficient?

The European Parliament shares the Commission's view of the European Community as part of the free and democratic Europe associated within the Council of Europe. The Community functions on the basis of a culture and civilization that it shares with other European states outside the Community. All progress towards extending the Community to form a single broadcasting area also serves the interests of Europe as a whole associated within the Council of Europe.

It is therefore laudable that the Commission has considerably stepped up cooperation with the Council of Europe in three ways:

- It interprets the provisions of the EEC Treaty on freedom of movement of services and on freedom of broadcasting within the Community (Articles 59, 60, 62 and 66 in connection with Articles 56, 57 and 58) in line with the rulings of the European Court of Human Rights in Strasbourg, which are binding on all member states of the Council of Europe, and with the decisions the European Commission of Human Rights in Strasbourg on Article 10 of the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms. This is a major contribution towards preserving uniformity in European jurisprudence and strengthening safeguards in respect of the European basic right to freedom of expression in the Community.

- Since 1984, the Commission has sent observers to meetings of the (Council of Europe's) Steering Committee on the Mass Media, which comprises expert officials of a large number of governments.

- The Commission, for its part, invites observers from the Secretariat of the Council of Europe to meetings of its working parties on the approximation of domestic law on broadcasting and copyright.

The Commission should continue with such collaboration and, in addition, establish bilateral contacts with particularly interested third countries which are members of the Council of Europe, if this is desired, while strongly resisting attempts such as those made recently by the Steering Committee on the Mass Media to discuss initiatives called for by the European Parliament and taken by the Commission in bodies that have no authority to do so and actually to deliver opinions on such matters to Community bodies in order to hamper their activities and lead them in other directions. This can be illustrated as follows. On 7 December 1984, the Committee of Ministers of the Council of Europe recommended[1] that a member state should only transmit a broadcast by another member state, or by the latter's broadcasting organization(s), via its satellite if both states have agreed on the system of law to be applied in this regard. According to the explanatory memorandum, this arrangement is based on the member states' desire for concerted action 'for an orderly transition of their electronic media to the new period of satellite television and radio services', each member state being concerned 'to keep the situation under control' for the duration of this transitional period. Clearly, then, the Committee of Ministers is still unwilling to accept a European broadcasting market, in respect of which each state would be entitled to supply competing services for reception by neighbouring counries too, despite the fundamental declaration of support for the freedom of information across fontiers contained in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and reiterated in an earlier fundamental declaration by the Committee of Ministers specifically on the new information technologies[2].

The situation is analogous with regard to the recommendation of 23 February 1984 of the Committee of Ministers of the Council of Europe on the principles of television advertising, particularly via satellite[3], according to which the broadcasting laws of not only the transmitting state but also the receiving state should be respected. In this regard too, no attempt is being made to create conditions similar to those on domestic markets; rather, the aim is to preserve and protect existing national markets as far as possible. This is the very opposite of a common market.

6) Are certain International Telecommunication Union technical regulations on direct-broadcast satellites in line with the EEC Treaty and its objectives? The tendency for countries to protect their traditional self-sufficiency in broadcasting - in television - against satellite transmissions which are broadcast directly to their territory or are attractive in other ways was the dominant theme at the 1977 World Administrative Radio Conference, which therefore decided that, as a matter of principle, the coverage area of a direct-broadcast satellite should be restricted to the territory of the country operating the satellite.

[1] Recommendation on the utilization of satellites for radio and television broadcasting, No. R (84) 22

[2] Declaration of 29 April 1982 on the Freedom of Expression and Information

[3] No. R(84) 3

Although, in international law, states are prepared to allow radio broadcasts in the long and short waves, which attract relatively low audience levels, to be directed at specific countries as part of the 'free flow of information', such willingness wanes as the technical capabilities for the creation, via satellite, of a Europe-wide broadcasting environment for television develop; in particular, states will only abandon national television monopolies or oligopolies after much hesitation, since they are an instrument with which to guide public opinion, preserve a country's cultural 'identity' and raise revenue from domestic advertising.

In its Green Paper, the Commission rightly points to the incompatibility of such arrangements in international and national law with the EEC Treaty and calls on the Member States not to apply them reciprocally.

The activities of the Council of Europe and the European Community in broadcasting are complementary rather than mutually exclusive. While the Council of Europe endeavours to break down broadcasting 'frontiers' through a form of unstructured cooperation between its member states that does not prevent a broadcast from being governed by several systems of law simultaneously, the Community and its Member States are committed to integration: to opening up their frontiers for unrestricted broadcasting governed by the law of the transmitting state and to establishing a common market for broadcasting. This implies that, for intra-Community transmissions, conditions equivalent to those on domestic markets must be created.

To realize these objectives, which are contained in the EEC Treaty, the Community must take considerably more far-reaching action than the Council of Europe. In doing so, however, the Community will realize the cultural and political objectives that are also incumbent on the Council of Europe pursuant to Article 10 of the Convention on Human Rights and will not erect any new barriers between its Member States and non-Community members of the Council of Europe.

Thus, in all but a few non-essential aspects, the Commission's approach set out in its Green Paper is justified in the light of the EEC Treaty, the development of the new media over the last decade, and their great significance for our future. Objections to the Green Paper reveal arguments which are worthy of consideration; and they should be taken into account in the proposals for directives. Nevertheless, an assessment of the debate thus far demonstrates that the Green Paper stands up to criticism.

VI.

CONCLUSIONS

It is certain that, with regard to specific proposals, new arguments will continually emerge, thus necessitating appropriate policy adjustments. Nevertheless, examination of the two Commission documents on radio and television - the Interim Report on Realities and Tendencies in European Television and the Green Paper on Television without Frontiers - reveals a consensus between the Commission and the European Parliament on three major aspects which must provide the outlines of a future European media policy:

1) The 1957 Treaties of Rome are not the definitive constitution of the European Community; rather, they are conceived as an initial stimulus to the establishment of political union. However, they form the basis for the initial phase of this process - there is no going back for any Member State - and the Commission is obliged to act in this light. This view - that the EEC Treaty represents only an intermediate point on the path towards greater European unification - has been confirmed in the 'Solemn Declaration' by the Heads of State or Government in Stuttgart, as well as the Fontainebleau declaration, and is in line with the draft Treaty establishing the European Union adopted by the European Parliament on 14 February 1984.

2) The developments that have taken place in the media, which were inconceivable at the time the Treaty was concluded in 1957, call for the establishment of a European media policy by the Community in the interests of European unification. Now that television too has been internationalized through satellite technology, it has become imperative to incorporate such a policy into the process of European integration: otherwise, we risk experiencing developments that will run counter to this process. In view of the political and economic significance accruing to this issue in recent years, Community action is urgently needed now; on this, there is a consensus between the Commission and Parliament.

3) Parliament and the Commission also agree that the possibility of suppressing or emasculating national broadcasting services should not be entertained. A European media policy should ensure that the variety and particular features of national broadcasting services with regard to organizational structures and output, as well as the quality of the programming that is characteristic of European television, should be retained. Its objective is to give the Member States access to each other's national broadcasting services, to harmonize legal provisions, technical standards and other regulations with a view to establishing a common broadcasting environment, and to utilize transfrontier, satellite-broadcast and cable television to develop European self-awareness as the basis for political unification.

Thus, neither the European Parliament resolution of 12 March 1982 nor the Commission's Green Paper aims to standardize television in the Community or subject it to State control. On the contrary: they seek to maintain the freedom of the media to disseminate information; indeed, they seek to liberalize the broadcasting media by eliminating the national frontiers and national structures that are Europe's barriers. Although the Green Paper has given rise to misgivings on the part of many of television's decision-makers in particular, it is undeniable that the need for reorganization in the face of the major challenges resulting from the meteoric development of communications technologies has been on the agenda at the many media conferences that have taken place in recent years. The now shrill criticism of the Green Paper by most television organizations is motivated by concern that the Community might regulate television analogously to the agricultural market - via a centralized, ponderous bureaucracy - and would wish to be consulted on all television-related questions. This is not the case: what is under discussion are framework directives laying down certain minimum standards such as those governing the field of international transport, which, far from restricting freedom, have actually made freedom of international movement a reality.

In submitting the Green Paper, it was the Commission's intention to initiate a wide-ranging debate involving all the parties concerned, prior to drawing up directives for submission to Council. This debate, which is taking place throughout Europe, has raised fundamental issues: in particular, the relevance of the Treaty to the media, a sector of ever-increasing importance; the Community's powers to act in this field; and the very objective of European unification. These questions demand an answer from the European Parliament.

European media policy has teamed up with 'institutional affairs', the redrafting of the Treaty with a view to European political union: it is a touchstone for judging whether the Member States, and public broadcasting corporations, are prepared to take European unification seriously and adopt a common policy on the media. It is the Council which must make the decisive move in this direction.

Motion for a resolution (Doc. 2-897/84)
tabled by Mr E. BETTIZA, on behalf of the Liberal and Democratic Group
on freedom of television broadcasting in the countries of the European Community

The European Parliament,

- having regard to its resolutions:
  - of 12 March 1982 on radio and television broadcasting in the European Community,
  - of 30 March 1984 on radio and television broadcasts,
  - of 30 March 1984 on a policy commensurate with new trends in European television;
- having regard to the interim report by the Commission of the European Communities of 25 May 1983 on realities and tendencies in European television: perspectives and options;
- having regard to the 'green paper' by the Commission of 14 June 1984 on the establishment of television broadcasting by cable in particular;
- Reaffirming the principle that pluralism of information is a right enshrined in the constitutions of all the countries of the EEC;
- Pointing out the important role played by local radio and television in the dissemination of information;
- Regretting that the population in certain areas of Italy has been prevented from following the programmes of certain private television channels which have been transmitting their programmes for years;
- Whereas this 'black-out' is based on a gap in the law and is in conflict with the interest of the community in enjoying a service which makes an important contribution to the freedom of information;
- Whereas the countries of the Community are tending to eliminate the state monopoly in radio and television broadcasting to allow maximum access by the people to the sources of information;

1. BELIEVES, at a time when important provisions are appearing at European level regarding satellite broadcasts which can be received throughout the Community, that the private television companies in a Member State must be allowed to continue to make their contribution to the freedom of information;
2. WELCOMES the fact that pending comprehensive legislation the Italian Government has provisionally re-established the freedom of broadcasting for private television companies;
3. CALLS ON the competent Community authorities to draw up an outline regulation to create a European audiovisual area and ensure pluralism of information;
4. INSTRUCTS its President to forward this resolution to the Commission and the Council.

Motion for a resolution (Doc. 2-1063/84)
tabled by Mrs EWING, on behalf of the European Democratic Alliance
on multilingual TV broadcasting

The European Parliament,

A. having regard to the EEC's wealth of culture and languages and to the desirability of measures to promote European cultural exchange while efforts to protect and foster the EEC's "lesser spoken languages" are continued,

B. having regard to recent and exciting developments in television broadcasting including, inter alia,

- the growing internationalism of Belgian cable TV networks;
- the introduction of teletext and teletext subtitles;
- the introduction of bi-lingual TV broadcasting (with the simultaneous transmission of original language and dubbed soundtracks using stereo equipment), and
- the launching of satelite TV,

C. recognising the role which multi-lingual TV broadcasting could play in promoting European cultural exchange, in the fostering of lesser spoken languages in linguistic education and in the development of valuable new technologies for export,

1. Calls on the Commission to investigate ways in which the Member States can co-ordinate attempts to develop multi-lingual TV broadcasting with a view to promoting European cultural exchanges;

2. Calls on the Commission to encourage Member States to apply new TV technologies to the promotion of lesser spoken languages within their territories and to finance pilot projects to this end;

3. Requests its President to forward this resolution to the Commission and the Council.

OPINION

(Rule 101 of the Rules of Procedure)

of the Committee on the Environment, Public Health and Consumer Protection

Draftsman: Mr K. COLLINS

On 29 January 1985, the Committee on the Environment, Public Health and Consumer Protection appointed Mr COLLINS draftsman of the opinion.

The committee considered the draft opinion at its meetings of 21/22 March, 23 April and 21 May 1985. At the last meeting, it adopted the conclusions contained therein by 17 votes to 0 with 3 abstentions.

The following took part in the vote: Mrs Schleicher, acting chairman; Mrs Bloch von Blottnitz, vice-chairman; Mr Collins, vice-chairman and draftsman; Mrs Banotti, Mr Elliott (deputizing for Mr Bombard), Mr Iversen, Mrs C. Jackson, Mrs Lentz-Cornette, Mr Mertens, Mr Pearce, Mrs Peus (deputizing for Mr Alber), Mr Roelants du Vivier, Mr Ryan (deputizing for Mr Parodi), Mr Schmid, Mr Schwalba-Hoth (deputizing for Mr van der Lek), Mr Sherlock, Mrs Squarcialupi, Ms Tongue, Mr Vittinghoff and Mrs Weber (chairman).

I. OPINION

1. In submitting the Green Paper, the Commission has heeded the European Parliament's calls for action, which were contained in its resolutions of 12 March 1982 (OJ C 87, 5.4.1982, p. 110) and 30 March 1984 (OJ C 117, 30.4.1984, p. 201) on radio and television in the European Community.

2. In the Commission's view, action in the field of broadcasting is now called for, since this is an area of major importance as a result of its considerable and ever increasing influence on the process of European unification. The Commission also points to the fact that the capital for large-scale investment in the new technologies (cable and satellite television) would be raised more easily and more quickly if the providers of the new services could expect immediate access to a single broadcasting area covering the entire Community.

   Many organizations agree that there is a need for regulation now. A few disagree, however, on the ground that a wait-and-see attitude should be adopted until the direction of technical developments within cable and satellite television emerges.

3. The Commission advocates the authorization of broadcast advertising in all Member States, at least in respect of commercial broadcasting organizations. However, broadcasting organizations financed entirely from the public purse, for example, should not be compelled to take advertizing.

   (a) The Commission proposes a possible ceiling on advertising time of 20 per cent of total daily programming time. Several organizations reject this on the ground that it is either too far-reaching or too restrictive.

   The consumer organizations, for example, consider this too long; they take the view, rather, that there should be regulation in respect of the length of advertising time per hour, the maximum length of an advertising slot and the maximum number of advertising spots per slot.

   Other organizations reject all action to regulate the length of advertising time.

(b) In the Commission's view, a directive in this area should incorporate the following principles:

- There should be a clear distinction between advertising and other programming content;
- Advertising should be presented so as to be clearly recognizable as such. The Commission feels that advertising in the form of programme sponsoring gives rise to particular concern;
- Advertising of certain products should be prohibited; in respect of others, a code of practices should be drawn up under which certain forms of inducement that are generally considered undesirable would be banned. There should probably be a complete ban on the advertising of cigarettes and other tobacco products, with special restrictions in respect of alcoholic beverages.

Invoking freedom of advertising, a number of organizations reject statutory restrictions on content. At most, voluntary restraint based on a code of practices could be envisaged.

(c) Lastly, according to the Commission, this directive should ensure that, in each Member State, broadcast advertising is regulated by an agency empowered to vet advertising content prior to transmission, e.g. a self-regulatory division within broadcasting organizations. A code of practices, based on the Member States' standards, should be drawn up; certain fundamental rules could be incorporated in the directive itself.

4. The Commission proposes that the directive lay down minimum standards with a view to the protection of minors. Accordingly, programmes likely to impair seriously the physical, intellectual and moral development of children or minors, in particular through scenes involving hard-core pornography, violence or racial hatred, would be banned. Broadcasting organizations' programme announcements would have to indicate which broadcasts were unsuitable for children or minors (because of the possible risk to their physical, intellectual or moral development).

5. The Commission proposes that the law of copyright, which is still governed by the principle of territoriality, should be abandoned with a view to the widest possible dissemination of broadcasts in the Community. Programme-makers' legitimate interests must not be neglected as a result of such liberalization, however. According to the Commission, one method of reconciling both parties' interests might be a system of statutory licensing, under which copyright holders' right to prohibit the simultaneous transfrontier broadcasting of a programme would be reduced to an entitlement to reasonable remuneration.

II. CONCLUSIONS

The Committee on the Environment, Public Health and Consumer Protection

1. Congratulates the Commission on recognising that the use of a Green Paper system, in line with the recommendation of the EP, is an important advance towards the development of an open consultation procedure in the Community.

2. Regrets, however, that the Commission failed to use it to its full capacity by omitting to consult the EP formally and by failing to declare clear deadlines for written and oral evidence on the Green Paper before proceeding to legislation.

3. Is convinced that, in view of the likely impending growth in the demand for and supply of television programmes and the rapid changes in broadcasting technology, it is important that legislative action should be taken now so as to establish a clear framework to protect consumers before any firm pattern in transfrontier television emerges.

4. Believes that it is important to maintain and improve the quality of television available in Europe and do this using, whenever possible, European-based material and resources which are expressions of European culture.

5. Is convinced that any framework of law in this area should be produced by the European Community rather than leaving it to the less certain procedures of the Council of Europe.

6. Is of the view that advertising on televison, while it does provide the consumer with information about products and their availability, and also supplies revenue which can be used to produce quality programme material, should not be mandatory, and that non-commercial broadcasting can often produce programmes of high quality and is therefore to be encouraged.

7. Concludes, therefore, that the Directive on Television Advertising should have the following components:-

   a) A loose framework of law,
   b) Detailed control at national level so as to ensure flexibility and speed of reaction to any complaints.

c) Limits on advertising time to be left to the relationship between the consumer's strict tolerance level of advertising material and the advertiser's need to retain the interest of the consumer. In any event, the possible development of a television channel or channels entirely devoted to advertising (for example, mail order television) should be not exlcuded.

d) The total amount of advertising time to be divided into suitable blocks so that programme material is not unduly disturbed, inappropriate concentration of advertising avoided and the consumer thereby protected from unreasonable interference with his enjoyment of the programmes.

e) A clear separation of advertising and programme material.

f) A total ban on the advertising of tobacco and tobacco products because of the clear evidence of its effect on health, making sure that overt advertising does not become convert advertising.

g) Strict rules governing the advertising of alcohol in accordance with national practice and incorporating the principles of the ICC and IBA codes.

h) The use of these codes to protect the interests of children.

i) The availability of advertising time for public information or for the purposes of health education which could be funded by public bodies.

8. Takes the view that all broadcasting companies should be licensed by national broadcasting authorities.

9. Suggests that the Commission should give serious attention to the problems which might arise so far as competition is concerned in allowing some countries to impose stricter standards of control than those envisaged in para 7.

10. Is convinced that in accordance with Article 10 of the Declaration on Human Rights, no country could exclude or restrict broadcast material from another country in the Community.

11. Is strongly convinced that since consumer behaviour is influenced by programme material as well as by advertising, programme makers be made fully aware of the laws in force and of the contents of the various codes of practice that exist in this area and should observe these in all programmes broadcast in the EC and that particular attention should be paid to the use of tobacco, alcohol and drugs and to the portrayal of violence or other sadistic material or hardcore pornography.

12. Believes that, since problems of copyright often have the effect of depriving the consumer of programme material, the Commission should enter into immediate discussion with the appropriate organizations and individuals with a view to producing a framework of Community law within which problems can be solved and to allowing the widest possible distribution of programmes. Any such proposals should be made separately from the proposals on television.

OPINION

of the Committee on Legal Affairs and Citizens' Rights
Draftsman: Mr BARZANTI

Mr BARZANTI was appointed draftsman of the opinion at the meeting of 30 November 1984 of the Committee on Legal Affairs and Citizens' Rights.

The committee considered the matter at its meeting of 14/15 May 1985 in Paris.

At its meeting of 19/20 June 1985, the committee adopted the draft opinion unanimously with three abstentions.

The following were present: Mrs VAYSSADE, chairman; Mr BARZANTI, draftsman; Mr FORD (deputizing for Mr GAZIS), Mr HOON, Mr MARINARO, Mr PORDEA, Mr PRICE, Mr PROUT, Mr SCHWALBA-HOTH, Mr STAUFFENBERG, Mr ULBURGHS and Mr VETTER.

INTRODUCTION

The remarkable technological advances and unparalleled changes which will take place in the telecommunications sector in the next few years demand prompt action to confront the problems connected with the future of television in Europe. Taking as our starting point the major documents produced by the Commission of the EEC[1] in response to the calls made on several occasions by the European Parliament[2], we should take this opportunity to consider certain questions and establish certain guidelines for a possible legal framework designed to promote the gradual process of coordination, harmonization and approximation which are essential if the Community is to play an active part in a sector vital to Europe's future and its role in the world.

We have to endorse the statement made in the closing section of the FAST report to the effect that the most crucial of the challenges which the Community faces today is in the field of telecommunications, and that Europe's economic importance in the 21st century could be seriously weakened by a failure on its part to take action in that sector; the report stresses that it is essential to start planning now to set up the necessary telecommunications infrastructures in Europe.

1. The principle of freedom of radio broadcasting, which is already incorporated in international customary law, should be extended to television broadcasts; this development follows from a series of advances which, if properly regulated, would allow a tremendous leap forward to be made, by using appropriate methods and instruments in each case, both with regards to intra-Community communications and in those between Community and third countries. The right to freedom of information and opinion is an important principle frequently found stated in documents which are of fundamental importance for our social systems and the safeguarding of our civil rights and liberties.

Reference should be made, in particular, to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, 4 November 1950) Article 10(1) of which reads as follows: 'Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.'

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1 Cf. Interim Report COM(83) 229 final of 15 June 1983, henceforward referred to as R, and Communication COM(84) 300 final of 14 June 1984, henceforward referred to as C.

2 See, in particular, the resolution adopted on 12 March 1982 (OJ C 87 of 5 April 1982, p. 110)

Even though this article does not preclude states from operating a licensing system, its main thrust and emphasis is of considerable importance, particularly if it is read in conjunction with other texts such as the Universal Declaration on Human Rights adopted by the UN in 1948 and the Final Act of the Conference on Security and Cooperation in Europe (CSCE, Helsinki, 1 August 1975). In basket III of the Final Act (cooperation in the field of information), there is a particularly significant passage - paragraph 2(b) - concerning the exchange of radio and television programmes.

2. In the strictly Community sphere, a careful reading of the EEC Treaty and the relevant jurisprudence would seem to justify an initiative aimed both at creating the legal framework and significantly strengthening the industrial structures required to meet new demands in this field. We endorse the lengthy and well-reasoned arguments put forward in C, and partly anticipated in R, to the effect that the Community is competent to act in that sector for various purposes envisaged in the EEC Treaty in relation to questions of a political or cultural nature (C, pp 6-7), and we also support the Commission's argument that television broadcasting should undoubtedly be regarded as providing a service for remuneration.

The Treaty provisions directly applicable to this subject are, therefore, Articles 48 to 52 (free movement of workers employed by broadcasting organizations), 52 to 58 (freedom of establishment in the sector for self-employed persons, whether physical or legal persons), and 59 to 66 (freedom to provide services). These provisions enshrine the principle of the abolition of restrictions on freedom of movement and the prohibition on imposing new restrictions (cf. Articles 48, 52, 53, 62 and 63), while also offering the prospect of taking Community action of a binding nature, particularly in the form of directives, to coordinate and facilitate access to professional activities and the liberalization of the provision of services (cf. Articles 57 and 63).

Two essential requirements must be met if Articles 59 and 60 on freedom to provide services are to be implemented:

- a service must be international in character (cf. Article 59(1));
- the services must be 'normally provided for remuneration' (cf. Article 69).

The Commission argues convincingly that the two requirements cited above are met in the case of the provision of radio and television services, and further supports its case by referring to three judgments by the Court of Justice:

(a) the SACCHI judgment of 30 April 1974[1], in which the Court found that a television broadcast should be considered as being in the nature of a service provided;

(b) the DEBAUVE judgment[2], which extended the definition of television broadcasts as a service to the cable diffusion of television;

(c) the CODITEL-CINE' VOG judgment[3], which confirmed that the international character of the service is a prerequisite for the application of Treaty provisions.

1 Case 155-73, volume 1974, p. 409 et seq.
2 Case 52-79, volume 1980, p. 833 et seq.
3 Case 62-79, volume 1980, p. 881 et seq.

To sum up, the Committee on Legal Affairs and Citizens' Rights can endorse all the arguments contained in C which are based, as explained above, on the following important point: television broadcasts constitute a unique case of the provision of services and one in which, because of the special character of the service involved, the provider of the service does not approach the person receiving it or vice versa.

With regard to those aspects of the liberalization of broadcasts which do not appear to be covered by the provisions quoted above, perhaps we should mention, for the sake of completeness, Article 235 of the EEC Treaty, which, significantly enough, was reiterated in the Declaration of the Conference of Heads of State and Government of the Member States of the Community held in Paris on 19 to 21 October 1974.

3. The appropriate instrument to allow progress along the lines contained in the Commission proposal and laid down by Parliament itself is a directive to harmonize or render uniform the basic distinguishing features of the various national systems. The approach chosen must possess the necessary flexibility while establishing certain basic points, notably the fact that the broadcasting system of each Member State is mixed, pluralist and subject to statutory control. Other questions to be addressed are the complex material and technological conditions which make the free exchange and transmission of programmes possible, the inflection of the programmes, fiscal matters and copyright. But this should not prejudice the existence and role of statutory television authorities as essential means of guaranteeing the democratic provision of information and ensuring a high-quality service.

4. European TV should not be envisaged as something grafted on to the wide range of existing services, but as a means of encouraging productive exchanges and joint initiatives in a rich and varied cultural sphere; it should be seen as the outcome of an increasingly important process of collaboration and integration between public and private bodies, between States, between undertakings and between cultural workers.

The main points to be emphasized here are:

1. freedom of movement;
2. the coordination of legislation (Article 57(2) of the EEC Treaty);
3. forms of collaboration;
4. production incentives, without which no legislation in itself will be sufficient to overcome the serious imbalance between Europe and the US and Japan.

In addition to this wealth of opportunities and possible exchanges in the field of communications, it is important to consider also the plans for a European television service in the narrow sense, in other words a channel and one or two production centres which would be quite distinct and separate from the broadcasting authorities or companies in the various Member States. But such an initiative will have to involve organizations which are truly representative of the industrial and cultural interests which make up those Member States.

An effectively integrated service made possible by technological advances and the autonomous development of Community broadcasting are two objectives which should be followed simultaneously.

It would also appear to be useful to set aside a minimum proportion of broadcasting time on the various channels for European productions.

5. The Draft Treaty establishing the European Union demonstrates the strategic importance accorded to an information policy to suit the times, particularly at Article 62, which states that the Union 'shall encourage cooperation between radio and television companies for the purpose of producing Union-wide programmes'. Although this article has no formal force of law, it can still be regarded as a political directive to be followed with all due diligence.

6. It will be a particularly complex task to find suitable methods of incorporating into the legal and administrative provisions the reservations set out in Article 10(2) of the ECHR, which are not unlike those contained in Article 56(1) of the EEC Treaty, at least in part.

The grounds on the basis of which it is envisaged that States may take action of a restrictive nature ('in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary') are very broad and, moreover, characteristic of a cautious and suspicious attitude which is largely outdated nowadays as far as relations between Community countries are concerned.

It is only by interpreting this and other, similar, provisions in the light of a radically altered situation, and by harnessing present-day aspirations for a more fully and obviously integrated Community in the cultural field too that we will be able to achieve an agreement between the Member States which will incorporate the necessary reforms but still ensure that the free exchange of broadcast material is not subject to unworkable regulatory systems or state censorship.

7. There can be no question of introducing common European legislation on television programmes; but, for that very reason, there should be thorough consideration of all the questions connected with the free exchange of programmes, both for broadcasting and in the context of the provision of services.

8. If programmes are to be exchanged and received as efficiently as possible, close attention will have to be paid to all the technical adjustments necessary to create a truly integrated television system at European level. At the same time it will be necessary to gradually adapt programme schedules to ensure that it will be possible for programmes to be received and retransmitted simultaneously. It will not only be necessary, therefore, to approximate the relevant legal provisions, but also the relevant regulations and administrative provisions, as laid down in Article 100 of the EEC Treaty.

9. With regard to advertising, which is particularly affected by the reservations contained in Article 10(2) of the ECHR and has profound implications from the economic and commercial point of view, it should be possible first of all to set aside a fixed proportion of time for advertising on all the various channels, while keeping the following aims in view:

(a) avoiding frequent interruptions of programmes as a form of interference with original work;

(b) encouraging self-regulatory systems to ban the showing of violence or indecent scenes or others likely to cause offence to members of the public;

(c) prohibiting advertisements for certain products such, for example, as certain drugs and tobacco.

It is essential to encourage the sponsorship system, which ensures a proper balance between the requirements of advertising and the integrity of programmes.

10. We could expatiate on the subject of copyright, which, because it is subject to territorial limits, is completely at variance with the new technologies and urgently in need of revision. Moreover, the problems posed in this area by cable television and TDS are totally different.

Among the various hypotheses which have emerged from the extensive debate on the problem it seems that one solution in particular should be considered favourably because it is realistic, simple and likely to protect the originator's work. This is the approach which aims to secure the originator's right to remuneration via agencies or collecting societies capable of entering into the necessary contractual relationships with broadcasting companies or services wishing to make use of intellectual property of this kind. Only the choice of some such system, which moreover is suggested in C (pages 312-313), can provide the necessary flexibility and safeguards which it might be difficult to achieve by other means such, for example, as the statutory licence.

On the subject of fiscal harmonization, which is also extremely complex, we are not submitting specific proposals here, partly because the Commission is shortly to publish a memorandum which will need to be taken into account. Doubtless, however, measures will have to be taken in this field also to reduce the mean-minded and negative restrictions placed on intellectual property with a view to achieving a coordinated and efficient liberalization.

CONCLUSIONS

A. The freedom of radio and television broadcasting is of vital importance for the very future of Europe, not only as a cultural but also as an economic entity: which is why that freedom is enshrined in various provisions of international law. In Community law, apart from the important political guidelines contained in the draft Treaty establishing the European Union, the applicable provisions are Articles 48 to 66 of the Treaty etablishing the EEC, as the Commission has argued with additional reference to judgments by the Court of Justice (cf. paras 1, 2, 5).

B. The Committee on Legal Affairs and Citizens' Rights also agrees with the Commission's choice of a directive as the appropriate legal instrument; only a directive can, by harmonizing the basic legislation, ensure the necessary flexibility while respecting Europe's cultural pluralism. Any such directive, which should enshrine the mixed, pluralist and statutorily regulated character of each country's television broadcasting system while ensuring the free exchange of broadcast material, must set standards for the coordination of legislation, for the production incentives required and for collaboration between public and private organizations, States, undertakings and cultural workers (cf. paras 3, 4 and 7).

C. The directive will have to devote partiular attention to the problem of restrictions on the free exchange of programmes; the scope for state intervention envisaged in Article 56(1) of the EEC Treaty must be interpreted in an extremely restricted sense, not only because of the near impossibility in practical terms of imposing censorship by intervention of this kind, but, above all, because of Europe's ever-increasing cultural integration, which underlines the futility of any such attempts except in truly exceptional cases (cf. para 6).

D. The Committee on Legal Affairs and Citizens' Rights emphasizes the need to change programme scheduling gradually to allow programmes to be received and retransmitted simultaneously, and also the need to promote all the technical adjustments necessary to enable this to be achieved (cf. para 8).

E. Advertising must be regulated, with particular emphasis being placed on self-regulation, and at the same time encouragement should be given to sponsorship, as the means of guaranteeing an acceptable relationship between the requirements of advertisers and the integrity of programmes (cf. para 9).

F. On the question of copyright, which is traditionally subject to territorial limits and has therefore been overtaken in many respects by technological progress, the approach to be adopted is to secure the right to remuneration for intellectual property; to this end it will be necessary to have recourse to collecting societies or agencies (cf. para 10).