

EUROPEAN PARLIAMENT

Working Documents

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DOCUMENT 1-230/84

REPORT

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

on the market of violent and horrific video cassettes

Rapporteur: Mr Richard SIMMONDS

PE 85.903/fin.

At its sitting of 11 April 1983, the European Parliament referred to the Committee on Youth, Culture, Education, Information and Sport as the Committee responsible, and to the Committee on Economic and Monetary Affairs and to the Legal Affairs Committee for their opinion, the motion for a resolution tabled by Mr HAHN and others on the video cassette market (Doc. 1-55/83).

At its meeting of 21 September 1983, the Committee on Youth, Culture, Education, Information and Sport appointed Mr SIMMONDS rapporteur.

In connection with the preparation of the report, a video cassette containing examples of the type of material at issue was introduced and presented to Members of the European Parliament by two representatives of the British police authorities (New Scotland Yard) at the Palais de l'Europe at Strasbourg on 16 November 1983.

The Committee discussed the draft report at its meetings of 4 November 1983, 29 February - 1 March 1984, 20-21 March 1984 and 26-27 April 1984, adopting it unanimously on the latter occasion.

The following took part in the vote:

Mr FAJARDIE, acting Chairman; Mr HAHN and Mr SCHWENCKE, Vice-Chairmen; Mr SIMMONDS, rapporteur; Mr ALEXIADIS; Mr BOCKLET (representing Mr BROK); Mr GEROKOSTOPOULOS; Mr PAPAPIETRO (representing Mr FANTI); and Mrs PERY.

The opinions of the Committee on Economic and Monetary Affairs and of the Legal Affairs Committee are attached.

The dépôt was made on 3 May 1984.

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

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A.

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

MOTION FOR A RESOLUTION

on the market of violent and horrific video cassettes

The European Parliament,

- A having regard to the European Convention on Human Rights to which the European Parliament recommended in 1982 that the European Community accede⁽¹⁾ and in particular to Article 10 thereof which guarantees the right to the individual of freedom of expression,
- B having regard to the motion for a resolution on the video cassette market tabled by Mr HAHN and others (Doc. 1-55/83),
- C having regard to the following basic and inalienable principles:
- the respect for human dignity and the inviolability of the human person, the body and health,
 - the duty to maintain and protect the human values of European culture in this respect, which are vital to the operation of our democratic society,
 - freedom of opinion and freedom of information in a democracy,
 - respect for individual freedom, the only restraint being that no harm be done to others,
- D having regard to the increase in violence and the rising crime rate,
- E concerned for the social behaviour and co-existence of the members of our society,
- F having regard to the rapidly expanding market in video cassettes brought about by technical advance, and to the international traffic both legal and illegal of violent video-cassettes,
- G having regard to the different legislation applying in each Member State and to the fact that most legislation was introduced prior to the widespread availability of video-recorders and cassettes,
- H having regard to the impossibility of preventing the access of young people to potentially harmful films available on video cassettes,
- I alarmed that the market is being flooded with video cassettes of films depicting unimaginable atrocities, including the dismemberment of human beings and cannibalism, and that these films represent a substantial proportion of the market in sales and hirings,
- J having regard to the imminent danger:
- of acts of violence such as homicide, abduction and rape being made to appear harmless,
 - of imitation of these acts of violence by mentally impaired persons or those who already tend towards violence,

(1) OJ C 304 of 22.11.82, p. 253

- of sexual disorientation,
 - of a loss of trust by the individual in his fellow men and environment,
 - of undesirable effects on adults as well as children and young people,
- K having regard to the demand in many Member States for appropriate action to combat these dangers, at national or Community level,
- L whereas about 20% of the European population are entitled to protection as minors,
- M not wishing to decry individual media or new technologies, but to have excesses curbed,
- N having regard to the progress of proposed new legislation in certain Member States,
- O having regard to the report by the Committee on Youth, Culture, Education, Information and Sport, and the opinions of the Committee on Economic and Monetary Affairs and of the Legal Affairs Committee (Doc.1-230/84),
1. Calls upon the Commission to consider the legal options under the Treaties of Rome for combatting these dangers by Community action;
 2. Points out, however, that the Community authorities must establish the criteria on the basis of which video-cassettes can or should be deemed violent;
 3. Requests the Commission to institute an immediate inquiry into the existence and extent of these dangers in the Member States, and as a first step, to finance and call a Conference open to the different national bodies responsible and to experts.

The purpose of such a Conference will be: (i) to examine common areas of agreement as to what can be achieved realistically at Community level; (ii) to consider the progress of recent new national legislation on the subject and to consider existing national classification systems, whether voluntary or statutory;

4. Recommends that the Conference, taking account of civil liberties and the right of freedom of expression, should examine the problem under the following headings:
 - (a) acts of violence: brutalizing material which encourages or incites acts of violence or crimes,
 - (b) drug-taking: material which glorifies or makes light of drug-taking,
 - (c) race hatred: material which incites race hatred or fails to show the required degree of tolerance,

- (d) tyranny: material which glorifies, makes light of or encourages the imitation of past or present tyrannies,
 - (e) glorification of war: material which glorifies or makes light of war,
 - (f) human dignity, material in which human dignity is grossly violated simply for the purpose of entertainment,
 - (g) pornography: video-cassettes which seek to glorify suffering and violence in connection with sex,
 - (h) discrimination against women: material which debases women by treating them merely as sexual consumer articles;
4. Requests that the Commission report to Parliament on the outcome of the Conference and its recommendations;
 5. Instructs its President to forward this resolution to the Commission and Council.

B.

EXPLANATORY STATEMENT

The spectacular growth of the Home Video Industry has had one regrettable side-effect - that at least one-fifth of the market in sales and hirings of video tapes is of violent and pornographic films. Unlike cinema films, they are widely available and can be viewed at home.

The size of the problem in each Member State appears to be directly related to the number and availability of video-recorders (see Annexes 1 and 2).

Within the Member States there are many different official attitudes to the control of sexual pornography and this is reflected in their legislative approaches. Your rapporteur believes that whilst some countries are more relaxed on such pornography, there is a united sense of revulsion and concern about the new trends in violent sadistic films.

The recent experience of the passage of legislation in the United Kingdom Parliament has proved how difficult it is to restrict the availability of all but the very worst of these films, as most people will argue that what adults do in the privacy of their homes is their own business. However, it appears that a substantial proportion, even a majority of such cassettes which are hired out, are viewed by minors. Your rapporteur believes that there is a demand for legislation to restrict their availability to young people.




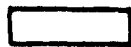



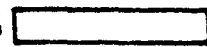






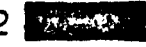

The international nature of the trade in the manufacturing, copying and distribution, legally and illegally, of cassettes dictates that Community-wide action is necessary.

Attached as Annex 3 to this Statement is a brief summary of the current censorship regulations in the separate Member States.

The rapporteur is indebted to the IFPI for permission to reproduce statistical material in this report.

PENETRATION OF VIDEOCASSETTE RECORDERS IN HOUSEHOLDS IN THE EEC.

In 1982 & 1985 (estimates & forecasts)

Belgium	1982 	4%
	1985 	11%
Denmark	1982 	8%
	1985 	16%
France	1982 	5%
	1985 	17%
Germany (FR)	1982 	10%
	1985 	26%
Greece	1982	0.5%
	1985 	4%
Ireland	1982 	3%
	1985 	10%
Italy	1982	1%
	1985 	3%
Netherlands	1982 	10%
	1985 	23%
United Kingdom	1982 	15%
	1985 	40%

● Luxembourg not included

PENETRATION OF VIDEOCASSETTE RECORDERS IN HOUSEHOLDS

Estimates and forecasts 1978-1985

YEAR	BELGIUM	DENMARK	FRANCE	GERMANY(FR)	GREECE	IRELAND	ITALY	NETHERLANDS	UNITED KINGDOM	U.S.A.
1978	-	-	-	0.5%	-	-	-	0.9%	-	0.7%
1979	-	1.4%	0.7%	1.2%	-	-	-	1.7%	-	1.5%
1980	0.2%	2.7%	1.3%	2.8%	-	-	-	3.0%	3.0%	2.2%
1981	3.0%	4.2%	2.7%	5.1%	-	-	-	6.2%	6.5%	4.1%
1982	4.0%	8.0%	4.7%	10.0%	0.6%	3.2%	0.8%	9.7%	15.0%	6.3%
1983	6.0%	9.2%	7.4%	14.5%	-	-	-	14.3%	25.0%	8.0%
1984	-	-	10.0%	20.5%	-	-	-	19.8%	35.0%	10.0%
1985	11.0%	15.7%	17.0%	26.5%	4.0%	10.0%	3.0%	22.9%	40.0%	14.0%

- Not available

Sources : Association of IFPI National Groups in the European Communities.

Screendigest.

EIU Video Revolution in Western Europe.

JWT : Television Today and Television Tomorrow.

CENSORSHIP REGULATIONS IN MEMBER STATESBelgium

Pornographic material is forbidden under Article 343 of the Penal Code though in practice a certain amount of discretion is used, and only "hard" pornography is prosecuted. There is no penal provision relating to material showing extreme violence. There is a control commission which has competence over films for cinema exhibition, but this does not extend to video for private viewing.

Denmark

The Ministry of Culture is responsible for censoring theatre films. By informal agreement with the Ministry, the Danish Video Association is to follow the same criteria in self-censorship as that applied for public exhibition. There are three categories: universal, 12-16 and over 16, and the Association's code of ethics does not admit to membership producers of pornography or "brutal" violence. Retailers are contractually assimilated to cinema controllers and thus obliged to prevent sale or public exhibition of material unsuitable for children. In practice, a person under 18 may not rent a videogram. Videograms destined for public showing would be treated as if they were cinema film.

There is no power to prohibit the showing of cinema film unless it be pornography involving children.

In a recent parliamentary debate, the Minister for Cultural Affairs has indicated he is against the introduction of video censorship.

Germany (Federal Republic)

The German film industry association has operated a voluntary system of classification through a certification body, the FSK, for 34 years. Some video distributors have been submitting product for FSK approval since mid-1983, and by the end of 1983 the Federal Video Society decided to adopt as policy the ratings system used by the FSK. This measure is now compulsory for all distributors in the group.

Video material falls under the law governing the distribution to minors of harmful publications. Material which is considered dangerous to minors but not of a nature to infringe the criminal law may be "indexed", that is, they may not be advertised in catalogues or displayed in shops in areas to which children may have access. They may be displayed in areas with access restricted to adults.

The voluntary system of classification is being threatened by a draft revision of laws produced by the Family Ministry. This would impose a statutory control of video and also ban the rental or video material portraying extreme violence. The idea behind the proposal appears to be "censorship by price tag" since the violent videos would be prohibitively expensive to buy. The measure is seen by the German National Group of IFPI Video as penalising adults indiscriminately to protect young people, and it is likely to encourage pirate dissemination of the material.

Greece

The Decree pertaining to censorship of cinema films is held to extend to video material. The whole system of classification and control is currently under review.

The criminal law relating to obscene publications covers video material. Thus the production and circulation of obscene video material is in breach of the criminal law. Guidelines as to criteria for judgement on censorship standards are embodied in legal provisions. There is also provision for a two-tier appeal procedure.

France

Video material is in the same legal position as books and records if it offends decency or promotes racialism or violence: the producer, publisher, distributor, retailer and author would then be liable to prosecution. Pornography attracts an especially heavy duty (about \$42,000 per title) but nevertheless constitutes over 50% of software sales. There is no system of censorship, and the requirement of deposit with the National Archives is for conservation purposes only.

Ireland

There is no official censorship of video material. The Irish Videogram Association supports a policy of applying a voluntary code of ethics.

Italy

There is pre-censorship for the public exhibition of films and there is a strong move politically to remove this.

Under the Penal Code, on complaint from the police or the public any film or publication can be prosecuted under obscene publication legislation.

Luxembourg

There are no specific rules for the censorship of videos. It is assumed that they are covered by the same voluntary classification rules which apply to films to be viewed by those under sixteen years of age.

Other than this, film distributors apply a voluntary classification for films to which different rates of local tax are levied: (a) family films attracting 10% tax; (b) artistic films attracting 5% tax and (c) pornographic films which attract 25% tax.

If anybody challenges the classification of a film, a local court may decide the matter but can only levy any increased tax due if the complaint is upheld.

Netherlands

There is no legally imposed censorship of videograms. There is a voluntary system of censorship for theatre films with three categories: universal, minimum age of 14 and 18.

United Kingdom

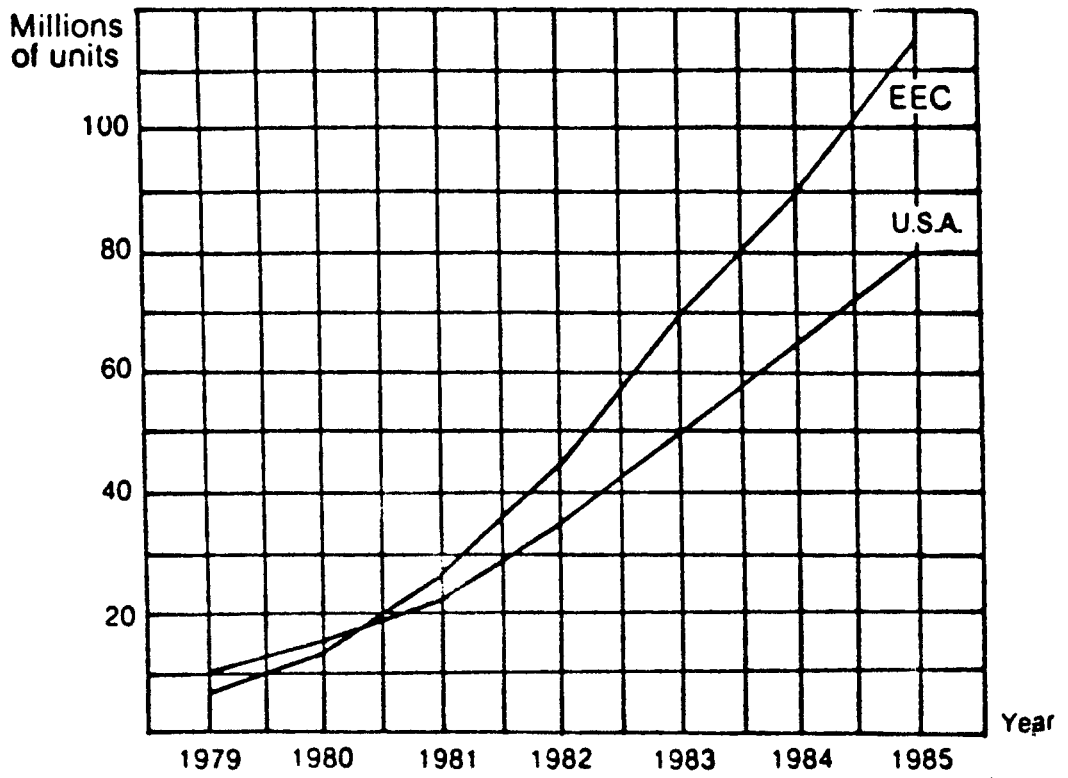
Cinema films are governed by the standards of the British Board of Film Censors which has four categories:

- U - unrestricted
- P.G. - some scenes are unsuitable for young children
- 15)
- and) - minimum age of persons admitted
- 18)

In addition to these classifications, the Obscene Publications Act controls all audio-visual material and other publications. (Television applies self-regulation according to the internal rules of the BBC and the Independent Broadcasting Authority.)

SALES OF BLANK VIDEO CASSETTES IN THE EEC AND THE U.S.A.

Estimates and Forecasts 1979 - 1985



SALES OF BLANK VIDEOCASSETTES
Units - Estimates and Forecasts 1979-1985

EEC							
<u>Country*</u>	<u>1979</u> ('000)	<u>1980</u> ('000)	<u>1981</u> ('000)	<u>1982</u> ('000)	<u>1983</u> ('000)	<u>1984</u> ('000)	<u>1985</u> ('000)
BELGIUM	N/A	N/A	N/A	2,000	N/A	N/A	N/A
DENMARK	170	350	600	N/A	N/A	N/A	N/A
FRANCE	N/A	1,800	4,900	9,100	N/A	N/A	N/A
GERMANY (FR)	1,500	4,000	10,000	15,000	N/A	N/A	N/A
IRELAND	5	15	50	125	150	160	N/A
ITALY	100	200	500	1,000	1,300	2,000	3,000
NETHERLANDS	N/A	N/A	1,400	2,500	N/A	N/A	N/A
UNITED KINGDOM	<u>N/A</u>	<u>5,500</u>	<u>9,000</u>	<u>15,000</u>	<u>20,000</u>	<u>40,000</u>	<u>50,000</u>
TOTAL EEC	7,000	13,500	27,000	46,000	70,000	90,000	115,000
U.S.A.	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>
	10,000	15,500	22,500	36,000	50,000	65,000	80,000

* No information for Greece and Luxembourg.

N/A Not available

Source : IFPI National Groups, L.S.A. 7 January 1983, Video Pro Jan. 1983, WEA European Coordinating Inc.

SALES OF PRE-RECORDED VIDEOCASSETTES
Units - Estimates and Forecasts 1979-1985
 (Trade deliveries)

<u>Country*</u>	<u>1979</u> ('000)	<u>1980</u> ('000)	<u>1981</u> ('000)	<u>1982</u> ('000)	<u>1983</u> ('000)	<u>1984</u> ('000)	<u>1985</u> ('000)
<hr/>							
EEC	<hr/>						
BELGIUM	N/A	N/A	120	340	N/A	N/A	N/A
DENMARK	50	100	100	N/A	N/A	N/A	N/A
FRANCE	50	150	400	900	1,200	3,000	N/A
GERMANY (FR)	100	320	950	1,600	N/A	N/A	N/A
GREECE	N/A	N/A	35	N/A	N/A	N/A	N/A
ITALY	25	70	120	183	215	300	400
NETHERLANDS	100	200	270	450	700	N/A	N/A
UNITED KINGDOM	<u>300</u>	<u>1,500</u>	<u>3,200</u>	<u>4,500</u>	<u>N/A</u>	<u>N/A</u>	<u>N/A</u>
TOTAL EEC	700	1,400	5,200	8,150	N/A	N/A	N/A
<hr/>							
USA			5,500	6,000	(+ 6,300 videodiscs)		
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* No information for Ireland and Luxembourg.
 N/A Not available.
 Sources : IFPI National Groups, Screendigest (USA).
 WEA European Co-ordinating Inc..

tabled by Mr Hahn, Mr Alber, Mr Gerokostopoulos, Mr Del Duca, Mrs Gaiotti de Biase, Mr Aigner, Mr McCartin, Mr Estgen, Mr Pedini, Mr Salzer, Mr Ghergo, Mr Bocklet and Mr Brok

on behalf of the EPP Group (Christian-Democratic Group)
pursuant to Rule 47 of the Rules of Procedure
on the video cassette market

The European Parliament,

- A having regard to the 1949 Council of Europe Human Rights Convention to which the European Community acceded in 1982,
- B having regard to the following basic and inalienable principles :
 - the respect for human dignity and the inviolability of the human person, the body and health,
 - the duty to maintain and protect the moral and human values of European culture in this respect, which are vital to the operation of our democratic society,
 - freedom of opinion and freedom of information in a democracy
- C having regard to the increase in violence, especially among young people, and the rising crime rate,
- D concerned for the social behaviour and co-existence of the members of our society,
- E having regard to the rapidly expanding market in video cassettes brought about by technical advance,
- F having regard to the different legislation applying in each Member State and its ineffectiveness with respect to the video market,
- G having regard to the impossibility of preventing the access of young people to potentially harmful films available on video cassettes,
- H alarmed that the market is being flooded with video cassettes of films depicting unimaginable atrocities, including the dismemberment of human beings and cannibalism, and that these films are selling so well,
- I having regard to the imminent danger:
 - of the distortion of values, with acts of violence such as homicide, abduction and rape being made to appear harmless,
 - of imitation of these acts of violence by mentally impaired persons or those who already tend towards violence,
 - of sexual disorientation,

- of a loss of trust by the individual in his fellow men and environment,
- of undesirable effects on adults as well as children and young people,

J whereas about 20% of the European population are entitled to protection as minors,

K having regard to the demand in many Member States for appropriate action to combat these dangers, at national or Community level,

L not wishing to decry individual media or new technologies, but to have excesses curbed,

1. Requests the Commission to institute an immediate inquiry into the existence and extent of these dangers in the Member States, and to submit a report on the subject to the European Parliament;
2. Calls upon the Commission to consider the legal options under the Treaties of Rome for combatting these dangers by Community action;
3. Calls upon the Commission to draw up proposals for such action:
4. Proposes specifically the establishment of a European Inspection Office for material potentially harmful to young people,
 - composed of lawyers and officials from the Ministries of Education, of teachers and youth leaders, of psychologists, psychiatrists and journalists,
 - to draw up criteria defining the limits of what may be depicted in the media, in the light of the protection of minors, the threat to society and breaches of criminal law - these criteria to be confirmed by the European Parliament,
 - to ban the production and marketing of certain media products if so decided by a three-quarters majority of its members,
 - appeals against whose decisions may be brought before the European Court of Justice,
 - entitled to act on its own initiative or at the request of national inspection bodies, government bodies, youth welfare offices or at least one hundred citizens of the Community,

5. Recommends that the Inspection Office should examine the material from at least the following points of view:
 - (a) acts of violence: brutalizing material, which encourages or incites acts of violence or crimes,
 - (b) drug-taking: material which glorifies or makes light of drugtaking,
 - (c) race hatred: material which incites race hatred or fails to show the required degree of tolerance,
 - (d) tyranny: material which glorifies, makes light of or encourages the imitation of past or present tyrannies,
 - (e) glorification of war: material which glorifies or makes light of war,
 - (f) human dignity: material in which human dignity is grossly violated simply for the purpose of entertainment,
 - (g) pornography: material that might lead to sexual disorientation,
 - (h) discrimination against women: material which debases women by treating them merely as sexual consumer articles;

6. Instructs its President to forward this resolution to the Commission and Council.

EXPLANATORY STATEMENT

Largely undisputed estimates by the trade put recent sales of video recorders in the Federal Republic of Germany at :

1980	:	400,000 units
1981	:	950,000 units

For this year video recorder sales are accordingly estimated at between 1.5 and 2 million, and in Germany the market is still only at 10% of saturation. It is estimated in the trade that by 1986 every second to third household will have a video recorder.

It must be assumed that the trend in the other Member States will be similar.

The market for video cassettes for sale or hire to the general public has grown at a similar rate, and is undergoing an unexpected boom. However, much freedom of opinion, artistic freedom and the absence of censorship count among the fundamental principles of freedom and democracy, the abuse of the free market, violating all the moral standards of our culture for commercial purposes, cannot be accepted. It is likely to discredit freedom of thought and to cause severe spiritual, moral and social damage to many people and not only the young.

According to the Federal German Government, increasing numbers of video cassettes chiefly portraying extreme violence against other persons as an end in itself are being sold and hired out. The trade estimates that horror, war and action films account for nearly 45%, i.e., nearly half of all sales. Pornographic films hold about 12% of the market.

The following examples will suffice to demonstrate the abominable nature of these films :

- Pregnant women are hacked open alive with pick axes in order to eat their embryos,
- Live victims have their eyes gouged out, their heads sawn to pieces, splinters and knives driven into their eyes, and
- Live victims are nailed to doors in order to make it easier to decapitate them.

The range of perverse violence is unimaginable. Its mental and social effects on its viewers are incalculable. Watching brutality on video is now part of the leisure activities of children and young people in Europe. Legislation in the Member States is at present inadequate for the successful prosecution of the makers and sellers of these video cassettes. Voluntary restraint, as has been introduced in some places, is also a failure, as it is frequently ignored or consciously evaded when films are being transferred to cassettes. As the problem now exists throughout Europe, a European initiative would be appropriate to resolve it.

OPINION

(in accordance with Rule 101 of the Rules of Procedure)
of the Committee on Economic and Monetary Affairs

Draftsman : Mr NYBORG

At its meeting of 21 April 1983, the Committee on Economic and Monetary Affairs appointed Mr NYBORG draftsman of the opinion.

The committee considered the motion for a resolution at its meeting of 28 September 1983 and unanimously adopted the conclusions in the opinion.

The following took part in the vote: Mr MOREAU, chairman;
Mr von WOGAU (deputizing for the rapporteur); Mr BEAZLEY; Mr BEUMER (deputizing for Mr Vergeer); Mr BONACCINI; Mr DAMSEAUX (deputizing for Mr Delorozoy); Mrs DESOUCHES; Mr ROGALLA (deputizing for Mr Wagner); Mr van ROMPUY and Mr WEDEKIND (deputizing for Mr Schnitker).

1. With regard to the present motion for a resolution on the video cassette market, the Committee on Economic and Monetary Affairs in large measure adopts the same view as it expressed in its opinion on war toys (Doc. 1-288/82). The committee thus sees no possibility for the Community to prohibit or regulate by any other means the production or sale of pre-recorded video cassette tapes. Unlike in the case of war toys, however, Article 36 of the EEC Treaty unquestionably provides scope for the individual Member States to lay down, on grounds of public morality and the protection of human health, restrictions on imports and exports of pre-recorded video cassette tapes and the Committee on Economic and Monetary Affairs is therefore agreed that it would be appropriate for Member States to lay down uniform guidelines.

2. However, the Committee on Economic and Monetary Affairs is convinced that it would be particularly difficult to lay down common guidelines for the contents of films sold in the form of video cassettes. The Member States still have, for instance, their own individual forms of film censorship and they would be likely to construe any attempt by the Community to lay down common moral criteria for the contents of films, video cassettes, television broadcasts, books and comic strips, etc. as a gross encroachment on their autonomy.

3. Within its own particular terms of reference, the Committee on Economic and Monetary Affairs has no objections to points 1, 2 and 3 of Mr HAHN's motion for a resolution. However, the committee has definite reservations about the decision-making procedure proposed under point 4, though it acknowledges that this matter lies outside its terms of reference.

With regard to point 5, the committee naturally has no objection to a body examining the material concerned but, in consequence of its position with regard to point 4, stresses that there can be no question of this body exercising powers of control.

Conclusion

- (a) The EEC Treaty provides no scope for the Community to take action on the content of films recorded on video cassettes;
- (b) the Member States are able under Article 36 of the EEC Treaty to prohibit or restrict, on grounds of public morality and protection

of human health, imports and exports of pre-recorded video cassettes. Even though the number of video cassette tapes is rising sharply, the Committee on Economic and Monetary Affairs does not take the view that differences in national regulations constitute a significant barrier to trade, since the producers of pre-recorded video tapes are accustomed to the fact that there are differences as regards the kinds of scenes, etc. that may be shown on film in different countries. Differences in national regulations in this area are a normal commercial hazard in this business;

- (c) the committee responsible is requested to seek the opinion of the Legal Affairs Committee, in particular with regard to point 4 of the motion for a resolution.

O P I N I O N

(in accordance with Rule 101 of the Rules of Procedure)

of the Legal Affairs Committee

Draftsman : Mr MEGAHY

At its meeting of 20 and 21 September 1983, the Committee appointed Mr MEGAHY draftsman.

The committee examined the draft opinion at its meeting of 21 and 22 February 1984 and adopted it with 9 votes in favour and 1 abstention at this meeting.

The following took part in the vote: Mrs VEIL, Chairman; Mr MEGAHY, draftsman; Messrs D'ANGELOSANTE, Bruno FRIEDERICH, GONTIKAS, JANSSEN van RAAY, OUZOUNIDIS and SIEGLERSCHMIDT, Mrs VAYSSADE and Mr VETTER.

Introduction

1. The motion for a resolution tabled by Mr Hahn and others (Doc. 1-55/83) is primarily motivated by the necessity of dealing with the problem of the distribution and showing of certain categories of video cassette which are pornographic or depict extreme forms of violence, colloquially known in the British newspapers as "video nasties": in particular, concern is voiced as to the effect watching such videos could have on children, and the dangers of imitation of the acts shown by mentally impaired persons or those with a pre-existing tendency to violence.

The motion for a resolution calls for a series of actions to curb the excesses of the existing and future video cassette market; in particular it calls for an immediate enquiry by the Commission into the existence and extent of the dangers of these video cassettes, a study of the legal options under the EEC Treaty and proposals for Community action where possible, and for the setting up of a European Inspection Office for material potentially harmful to young people.

A number of legal texts are cited, though no specific legal basis for action is suggested; these are examined below.

Regulation of the Video Cassette Market and the European Convention on Human Rights

2. The European Convention for the Protection of Human Rights and Fundamental Freedoms is cited in the preamble to the motion for a resolution, and the European Parliament's resolution of 29 October 1982¹ in favour of the Community's accession to the Convention is also mentioned. For the purposes of Community law, it should be noted that such accession would formally constitute an obligation on the institutions to respect the provisions of the Convention in the exercise of the Community's powers and functions²; thus it is for each Member State to ensure compliance with the provisions of the Convention as far as controlling the manufacture and distribution of "video nasties" within its territory is concerned. The provisions of the European Convention of Human Rights could however become relevant should the Community institutions decide to take action such as that called for in the motion for a resolution, and thus a brief examination of the relevant Convention provisions is necessary.

3. While it is true that Article 10(1) of the ECHR provides that the right to freedom of expression shall include the freedom "to receive and impart information and ideas without interference by public authorities and regardless of frontiers", the same provision expressly allows the High Contracting Parties to license "broadcasting, television or cinema enterprises". Thus Article 10 of the Convention would appear to permit a licensing system for video cassettes.

4. The exercise of the freedom of expression is subject to a number of restrictions laid down by Article 10(2); it is particularly noteworthy that, of the freedoms listed in Section I of the Convention, only freedom of expression is said to carry with it "duties and responsibilities".

¹ OJ No. C 304, 22 November 1982, page 253

² The European Parliament, the Council and the Commission have already made a political engagement to this effect: see Joint Declarations, The Treaties, page 214

Restrictions on the exercise of this freedom as regards video cassettes can be justified, according to this provision, on a number of grounds and in particular 'for the protection of health and morals, for the prevention of disorder or crime, (and) for the protection of the rights of others'; indeed the European Court of Human Rights has expressly recognized that restrictions on freedom of expression can be justified for the purposes of 'safeguarding the moral interests and welfare of certain individuals or classes of individuals who are in need of special protection for reasons such as lack of maturity, mental disability or state of dependence'¹.

5. This Court has also pointed out that in judging what is "necessary in a democratic society", the main condition which restrictions on the freedoms protected by the Convention must satisfy, the High Contracting Parties have a more extensive margin of appreciation where the protection of morals is in issue than that which applies to most of the other interests which justify restrictions on those freedoms. It may therefore be concluded that the European Convention on Human Rights leaves a large margin of manoeuvre in controlling the distribution of the types of video cassette under discussion, exercise of which would not breach the fundamental right to the freedom of expression.

Import and Export Restrictions and the EEC Treaty

6. It may be envisaged that Member States will respond to the problem of 'video nasties' by introducing legislation to supervise their manufacture and distribution; a private member's bill on this very subject is currently being considered by the House of Commons, and existing United Kingdom legislation² already prohibits the import of 'indecent and obscene' materials into the territory of the United Kingdom. It is clear that any legislation which the Member States may introduce on trade in such video cassettes must respect the relevant provisions of the EEC Treaty and in particular, as far as import or export restrictions are concerned, Articles 30 - 36. Apart from the question of intra-Community trade, it is difficult to envisage how substantive measures to control distribution of video cassettes could fall within the parameters of Community law (subject to paragraph 10 below) especially given that the matter would normally fall to be dealt with by the Criminal Law.

7. By virtue of Article 36 restrictions on trade in goods may escape the provisions of Articles 30 - 34 on grounds, inter alia, of "public morality, public policy ... (and) the protection of health and life of humans"; restrictions on trade on video cassettes of the type described could be justified under all these heads. The European Court of Justice has already held that the above-mentioned provision of United Kingdom law is compatible with Articles 30 - 36 of the Treaty and that "in principle, it is for each Member State to determine in accordance with

¹ Dudgeon v. United Kingdom judgment of 22 October 1981, Series A No. 45, page 20, paragraph 47; see also Handyside, judgment of 7 December 1976, Series A No. 24 and Sunday Times judgment 26 April 1979, Series A No. 30

² Section 42, Customs Consolidation Act 1876

its own scale of values and in the form selected by it the requirements of public morality in its territory".¹

8. It should however be noted that by analogy with a consistent line of thought in the jurisprudence of the Court of the European Communities regarding derogations from the fundamental principle of the free movement of persons, the concepts which are relied upon to justify derogations must be strictly construed, that is, their scope "cannot be unilaterally determined by each Member State without being subject to control by the institutions of the Community"².

9. In the light of the foregoing, the Legal Affairs Committee supports the proposal that the Commission of the European Communities should conduct a study of the matter in order to ensure that the protective measures which the member States take against "video nasties" do not go beyond the restrictions justified under Article 36 of the Treaty.

Conclusions

10. The Legal Affairs Committee:

- (a) - notes that action which could be taken by the relevant authorities to combat the distribution of harmful video cassettes is unlikely to constitute a violation of the European Convention on Human Rights;
- (b) - takes the view that import or export restrictions on trade in such cassettes are likely to escape the prohibition on such restrictions contained in Articles 30 to 34 of the Treaty where they do not constitute a means of arbitrary discrimination or a disguised restriction in trade between Member States.

¹ R v. Henn and Darby (1979) ECR, page 3795, at page 3813, paragraph 15

² Case 41/74 Van Duyn v. The Home Office (1974) ECR 1337