COMMISSION OF THE EUROPEAN COMMUNITIES

COM (90) 78 final

Brussels, 21 February 1990

Communication

from the Commission to the Council and Parliament

on audi

TABLE OF CONTENTS

Introduction

The purpose of this Communication is to be put before the Council and Parliament:

- the analysis made by the Commission of the prospects for the European audiovisual market at the end of the year 1989 which was marked by the holding of the Audiovisual Conference, the launching of the EUREKA audiovisual programme, the adoption of the "Television without frontiers" Directive, the adoption of the Community strategy in the field of high-definition television (HDTV) and pursuing the pilot phase of the MEDIA programme (measures to promote the development of the audiovisual industry);
- the way in which the Commission intends to respond to the guidelines laid down by the last three European Councils, in particular the one which met in Strasbourg, which "considered it essential to consolidate recent achievements" and expressed the hope that "the efforts to produce the European HDTV system will be stepped up, that the Community action programme extending MEDIA will receive the necessary financial support and that the necessary synergy with audiovisual Eureka will be ensured".

This is thus a position paper which provides the framework for overall action and lays down the specific deadlines for each of the three sections of the audiovisual "triptych": the rules of the game, the programme industries and new technologies. It responds to a legitimate expectation of information on the part of the Council and Parliament, though it does not presume to prejudge the treatment which will be reserved in parallel, and sometimes simultaneously, for various specific proposals.

This document takes largely into account the analysis made and the recommendations drafted by the numerous professionals of this sector who attended the Audiovisual Conference held on 30 September 1989 in Paris and who performed a major task on behalf of the European audiovisual industry.

0. Summary

1. The European audiovisual market

Against a background of rapid and constant change, the European audiovisual industry is seeking an appropriate development space likely to enable it to take the place it is entitled to claim.

Subjected to the pressure of a world market dominated by American and Japanese firms, the structural constraints of the European market are obstacles to be overcome and the present inadequacy of supply in relation to demand must be faced in a resolutely dynamic spirit.

We must expect a continuation of the technological change which is upsetting the traditional relations between those involved in the audiovisual industry by offering new opportunities for distribution and a diversification of sources of income. The gradual exploitation of these new opportunities coupled with changes in regulations is accompanied by an increase in demand which is causing a new industrial dynamism in which independent production is trying to find its appropriate place.

Having developed mainly within a national framework, the European audiovisual industry is currently having to overcome the present fragmentation of the market and adapt its production and distribution structures, which are too narrow and insufficiently profitable.

The setting-up of an audiovisual area by developing the free movement of programmes, the organization of a financial framework likely to bring about a sharing of risks at European level, the promotion of the programme industry and mastery of new technologies will make it possible to liberate fully the potential of this sector in a competitive market.

2. An overall Community policy

Defined and confirmed by the last European Councils, Community audiovisual policy aims at developing coordinated action geared to three issues: the establishment of the rules of the game, promotion of the programme industry and mastery of new technologies.

In line with the principle of subsidiarity, achievements in this field (the television without frontiers Directive, the joint strategy in respect of promotion of HDTV and implementation of the MEDIA pilot programme) must be supplemented by in-depth action.

A. The basis provided by the television without frontiers Directive must be supplemented so as to constitute an environment beneficial to the competitiveness of the audiovisual industry.

The first addition needed is harmonization of national copyright laws to provide effective protection and equitable remuneration of authors throughout the Community. The Commission will, in particular, have to deal with the problems presented by cable distribution and satellite broadcasting by seeking, within the framework of a draft Directive, a consensus reflecting a balance between the various interests involved.

Next it will be necessary to ensure that development of the audiovisual sector is not at the expense of pluralism but, on the contrary, helps to intensify it by promoting, in particular, the diversity of the programmes shown to the general public.

Furthermore, a policy of competition guided by a concern for legal security will have to make it possible to ensure an effective containment of national aids and avoid the creation of new obstacles deriving from agreements contrary to the rules of competition.

Finally, the Commission will look at how it can help to promote independent production and encourage the development of a secondary rebroadcasting market, taking account of the prime role the Member States will have to play in this area.

B. The MEDIA programme, which will end its pilot phase in 1990, will, in 1991, have to be the subject of a Council Directive on the continuation and intensification of its activities as part of an action programme to promote the audiovisual industry. With an eye to the single market, MEDIA has demonstrated its ability to inspire synergies by creating networks of crossfrontier cooperation and attracting public and private capital by the use of seed capital. By giving priority to the SMEs, MEDIA is contributing to the restructuring of the audiovisual industry and seeking to promote a balance between the large and small national industries. Upstream and downstream of production as such, MEDIA is developing a set of supplementary operations which derive the specific value from the Community dimension and which are geared to the four main aspects of this issue: distribution, production, training and financing.

As part of its forward-looking dynamism, MEDIA will explore new fields of action and cooperation such as the new audiovisual services, audiovisual facilities in the less-favoured regions and collaboration with the professionals of other European countries.

The proposal for a programme to support the audiovisual programme industry will also include a major component, "Eureka audiovisual", so as to ensure synergies, in line with the wishes expressed by the Strasbourg European Council, between the two initiatives and in order to establish legal bases for Community participation in Eureka Audiovisual.

The new programme, to fulfil another wish expressed by the Strasbourg European Council, will have to receive the necessary financial resources.

C. As regards new technologies, the Council is moved, on the one hand, by the wish to optimalize the exploitation of the new broadcasting facilities deriving, in particular, from the development of satellites. To this end it will draft a proposal for a Directive to replace the 1986 Directive on the family of MAC/packets standards and, as part of the telecommunications policy, it will send to the Council a Communication on satellite communications in Europe. On the other hand, in the vital field of European HDTV, Community action will aim mainly at implementing a coordinated and planned strategy for its gradual introduction in Europe over the 1992 to 1995 period.

Apart from its commitment along with industrialists to the development of the technologies themselves as part of Eureka 95 and under its research programmes, the Commission has brought about the setting-up of a European Economic Interest Grouping (EEIG) which brings together manufacturers of equipment, producers and distributors so as to promote the European system by means of demonstrations and the building-up of a stock of quality programmes. At the same time, the Council, on a proposal from the Commission, adopted a Decision on joint action to ensure adoption of the European standard for programme production and exchange as a world standard at the meeting in May 1990 in Düsseldorf of the International Broadcasting Advisory Committee.

3. External aspects

The direct external implications of this Community audiovisual policy are many and various. The setting-up of the single market and, in particular, the free movement of programmes against a background of rising demand provides major opportunities to both Community and non-Community entrepreneurs in the audiovisual sector.

The technological field involves an "external cooperation" aspect with major implications, especially with regard to the promotion of the European HDTV standard.

Furthermore, the Community is taking part in the international talks now under way, especially those under the aegis of GATT (Uruguay Round) on the liberalization of international trade in the services sector.

4. The work plan

The work plan shows the main deadlines in 1990 for the implementation of the Community's audiovisual policy.

1. The European audiovisual market

Against a background of rapid and constant change the European audiovisual industry is seeking an appropriate development space likely to enable it to take the place it is entitled to claim.

The sector covers the cinema, video and television, but this definition is tending to be overtaken by technological developments, for developments in information services, consumer electronics and audiovisual products are converging to such an extent that their present designations are likely to be no longer valid in a few years' time. At the same time, new interest groups are emerging, including equipment manufacturers, advertising agencies, makers of electronic games and video discs, and multimedia groups. Combined with a major rise in demand on the part of both households and undertakings, the technological developments now under way are throwing into disarray the conditions under which the European audiovisual industry is operating.

One of the constraints we have to put up with in trying to inventarize this sector is the lack of data - and the unreliability of what data exist. Those relating to final receipts, which represent some 60% of the sector's turnover, show that these receipts amount to ECU 16 thousand million for the Community as compared with ECU 33.5 thousand million for the United States. However, the two hours a day which the average European spends in front of his television set and their impact on the general public in terms of news, consumer fashions and life styles are such that the sector's importance cannot be measured solely in terms of its contribution to the GDP.

1.1 Diagnosis - characteristics of the European market

Having developed mainly within a national framework, the European audiovisual industry has somewhat the look of a random mosaic, put together in the context of a market open to the outside world and on the basis of structural constraints imposed by the current organization of the market in Europe.

1.1.1 The context of world markets

To think of the audiovisual sector solely in terms of national criteria would be a mistake, for there are several audiovisual markets competing with each other. As regards fiction, there is not only a world market, but language markets and national markets. As regards news, we also discover local or regional markets. The part played by American firms in the creation of a world market - firstly as regards films and the cinema and then as regards television programmes and videos - and their level of development (roughly double that of the audiovisual industry in Europe) give them a predominant position on the world market. Nevertheless, other countries such as Australia, Brazil and Japan (as regards cartoons) have also been able to establish themselves in this market. It is, above all, ownership of a stockpile of ready-to-go programmes and an efficient marketing structure which are the prerequisites for success on world markets. The existence of this world market means that no policy can be conceived exclusively in terms of European conditions, but must also take that market into account.

1.1.2 Organization of the market in Europe

The organization of the market in Europe at the present time constitutes a series of structural constraints on its development. For example, the cinema and television have traditionally functioned as separate activities despite the large number of films shown on television. From the beginning, the European television networks took the form of organizations integrated vertically with their own production studios and often their own transmission facilities. There was very little inducement for these broadcasters to embark on a transnational activity because their resources and aims were laid down originally in purely national terms in their broadcasting charters. Debarred from producing television programmes, the cinema industry remained highly fragmented.

This situation is very different from that existing in the United States, were a regulation of the Federal Communications Commission forbids the networks to programme their own productions with the exception of news and sports coverage. The major American studios were thus able to diversify into the production of television programmes, assisted in this by the emergence of a secondary market of rebroadcasting by local stations. Thus there has always been a balance between producers and distributors in the United States, a balance which is lacking in Europe.

Structurally speaking, the audiovisual sector is characterized by the existence of a large number of small and medium-sized undertakings, often highly enterprising, which dominate at the production stage, confronted by very large undertakings at the distribution stage, especially as far as the television networks are concerned. This concentration may be attributed in part to the lack of a national secondary market for programmes broadcast in Europe, made up of local and rebroadcasting stations. Another factor is the inadequate liaison between the various stages of the sector, which detracts from the efficiency of the sector as a whole.

However, the audiovisual scene in Europe is changing very rapidly, mainly because of the combining of changes in regulations and in technology. The decision by the public authorities to allow new networks to broadcast, something made possible in part by the development of cable and satellite television, combined with a prolongation of the daily amount of screen time of existing networks, has brought about an explosion in the number of hours programmed.

1.1.3 The situation of the programmes market

In 1988, Europe bought 700 million dollars' worth of programmes from the United States. However, the present imbalance between supply (production of programmes) and demand on the part of broadcasters is to be understood exclusively as the result of a number of developments in the audiovisual sector and therefore as revealing more deep-seated difficulties rather than as a problem in itself. The European shortage of television programmes, a recent phenomenon, is to be explained both by high production costs, especially for fiction, and by the increase in broadcasting hours. The decline in film production resulting from the 40% drop in cinema box-office takings in the 1980s and the rise in costs, which has not been offset by a comparable increase in income from video and television broadcasting rights, have exacerbated the problem.

Given viewers' marked preference for programmes of national origin, recourse to imports from the world market is seen above all as being made chiefly for want of a better solution, for rights to the stock of existing European programmes are held by competing national broadcasting companies, which may refuse to allow new entrants to use it. Being unable either to produce or to buy enough new products to fill their schedules, new entrants are obliged to obtain their supplies from stocks which are available and easily accessible elsewhere, i.e. mainly American products.

1.1.4 Impact of the new technologies

The impact of the new technologies is to be felt throughout the sector and entails a substantial increase in the capital required whilst at the same time eliminating what used to be unavoidable technical restrictions. For example, high-definition television may have a series of implications for the operation of the audiovisual sector. Firstly, high-definition technology increases the tendency towards convergence between television and cinema production, a phenomenon which is taking place for commercial reasons. Secondly, it has major consequences both for the large-scale consumer electronics industries, entailing, as it will, the re-equipment of homes with receivers, and for broadcasting methods, especially satellite broadcasting. The high-definition video standard is also likely to be of interest to firms, which are purchasing more and more audiovisual services for their training and communication needs. Lastly, the large number of microprocessors which the high-definition standard will necessitate will probably cause receivers to become intelligent machines, around which the development of new interactive services could be envisaged.

The emergence of the new technologies is creating major needs as regards training and will require special efforts in the field of promotion.

1.1.5 Rising demand

While the new technologies dictate the future opportunities for the development of the audiovisual sector, the demand situation largely conditions the decision to exploit them. The audiovisual sector is one in which demand is increasing substantially. This increase can be attributed both to the increase in leisure time, innovations such as video recorders, which make it possible to defer the consumption of television programmes and to enlarge the audience for cinema films and, increasingly, for video productions in their own right, as well as to the more abundant supply of television programmes. This increase in demand finds expression in greater financial resources generated by increased television advertising (from ECU 2 700 to 8 500 million in the 1982-89 period), the hire and purchase of video cassettes (ECU 2 900 million), subscriptions to cable networks (ECU 680 million), sponsoring and direct payment for certain stations. Despite the decline in cinema takings (which have recently stabilized and in some countries, such as the United Kingdom, are rising again) and the stabilization of the television licence fee, the trend remains positive.

1.1.6 Industrial dynamism

The combined effects of the increase in demand, technological innovations and the change in the system of regulation have given rise to a new industrial dynamism. Manufacturers of equipment have therefore begun to integrate vertically towards the production of programmes. At the same time, powerful multimedia groups are forming around certain printing and publishing groups followed by a large number of other printing concerns. The advertising business is financing programmes which can then be traded for advertising spots. The water distributors are using their technological and marketing capacities to invest in cable television. Faced with these new competitors, some television companies have reacted by pursuing vertical integration and internationalization strategies.

Whereas this upsurge in activities may be a sign of dynamism, the losses currently suffered by the majority of new entrants into the audiovisual sector could have serious long-term consequences. Indeed, firms whose centre of interest lies in the audiovisual sector could see their financial situation deteriorate while new entrants could withdraw while their investments are still limited. The way would then be open to investors from third countries.

1.2 The assets and weaknesses of the European audiovisual sector

The European audiovisual sector has a high development potential: a potential which is nonetheless held back by weaknesses of a structural nature.

1.2.1 Cultural diversity and market fragmentation

Europe's rich cultural diversity represents both an advantage and a disadvantage - an advantage as a source of renewal to an industry in which creativity plays a decisive role, a disadvantage as a factor in the fragmentation of the market in terms of language, preferred types of broadcast and maximum viewing hours, not to mention the obstacles arising in the field of distribution and transmission. However, other sectors, such as advertising, are likewise faced with problems of this nature and have succeeded in taking advantage of the situation. Indeed, the capacity to overcome linguistic and cultural barriers should be an asset to the European audiovisual industry in conquering world markets, especially since languages other than English are still very widespread (German in Eastern Europe, French in Africa, Spanish and Portuguese in Latin America).

1.2.2 Industrial structures

The existence of a large number of high-performance SMEs and a number of broadcasting bodies with a world reputation constitute definite assets. However, faced with the rise in the production costs for fiction and the investments to be made in new equipment, the modest size of European firms is beginning to make itself felt, especially in the field of production. For example, in 1985 none of the 100 largest companies classified by turnover was a leisure or media group and only 15 of the list of the 500 largest European companies by stock exchange quotation belonged to that category.

Production based on ad hoc projects with specially selected teams is finding it increasingly difficult to secure adequate financing. The weaknesses of the distribution system are adding to this problem. As regards the cinema, it is the lack of a distribution network - on the lines of that operated by the big Hollywood studios - which is particularly disturbing. The inadequate development of video (ECU 3 000 million as against ECU 7 000 million in the United States) and the fact that 40% of distributors are controlled by American companies also represent weaknesses in the European structures. As regards television programmes, there is the problem of the inadequacy of the broadcasters' resources, which differs according to the type of programme and the size of the broadcaster. In the case of fiction, production costs have become so high that very few broadcasters are able to make such programmes with their own budgets alone.

1.2.3 Inadequate profitability

Fragmentation of the market and ill-adapted structures have resulted in an inadequate level of profitability in all areas of the audiovisual sector despite the rise in demand and the diversification of sources of finance.

The poor coverage of risk by the financial system raises the rate of return required on the capital and reduces the number of projects accordingly. At present, improved profitability depends above all on more intensive use of new European productions and particularly of existing stocks through retransmission on national and local secondary markets, more intensive exchanges within Europe and an increase in exports to third countries.

1.3 Priority aims of the European audiovisual industry

Combating the weaknesses of the European audiovisual sector demands coordinated action designed to overcome the current fragmentation of the market, find adequate financing and promote new technologies while safeguarding diversity.

- Overcoming the current fragmentation

The establishment of an area without borders allowing for the free movement of television broadcasts is a fundamental instrument for the internationalization and therefore for ensuring greater profitability of production.

Furthermore, the development of an independent production industry, by its nature more capable of operating on a large market, and the emergence of a genuine secondary market will contribute to the establishment of a single European audiovisual area.

- Finding adequate financing

The inadequate coverage of risk is a factor which exacerbates the problem of financing in the European audiovisual sector. While individual audiovisual production projects are subject to a high risk of failure, this is no longer the case when one considers the sector as a whole. The creation of an appropriate European financial framework therefore depends on the distribution of the risk over portfolios of projects set up on a European scale by mobilizing new investment instruments, which the provisions governing free movement of capital and securities markets can help to emerge.

- Promoting new technologies

In a context of swift changes, advantage has to be taken of the opportunities offered by technological developments in the field of broadcasting and production so as to promote the expansion of the European audiovisual market.

Furthermore, technological success and in particular the challenges of European HDTV represent primary objectives for ensuring the competitiveness of the European audiovisual industry on the world market of tomorrow.

- Diversity

The European audiovisual sector can only thrive in an open and competitive market. The development of this market must be conditioned by the strict application of the rules on competition and the certainty that any measures of a regulatory, industrial and sectoral type which are adopted will be conducive to its development.

- **Ensuring the transparency of the market**

The availability, adequacy and reliability of data are essential requirements for the development of the market particularly for decision-makers in firms, but also if consultation between and with the various occupational categories is to take place on the basis of clear information.

- **Exploiting Europe's cultural diversity**

Films and television programmes are an important cultural vector. The exploitation of Europe's cultural diversity can contribute more than it does at present to intensifying Europe's audiovisual capacity. This will in turn help the European cultures to thrive both in Europe and on the world scale.

At the same time, trends towards concentration in the media sector and the development of multimedia ownership call for a certain vigilance as regards their implications for the pluralism which our democratic societies must jealously guard.

Taking advantage of the opportunities and meeting the challenges of the European audiovisual sector admittedly requires the establishment of an appropriate framework by the public authorities. However, responsibility for the development of the audiovisual sector in Europe lies first and foremost on the efforts to be made jointly by the various operators directly involved: creators, producers and distributors, broadcasters, investors, manufacturers of equipment and advertisers form in their diversity the only real European audiovisual "strike force".

2. An overall Community policy

2.1 Guidelines for Community policy

2.1.1 The overall approach and its principles

The establishment of an appropriate framework for the development of the European audiovisual industry depends on the combined efforts of the Member States, the Community and Europe as a whole.

Member States play a primary role in this field, particularly in view of their responsibilities as regards the establishment of broadcasting bodies and devising national support systems or cultural policies.

At the level of Europe as a whole, there are two identifiable frameworks for action: the Council of Europe, whose convention on transfrontier television provides a natural extension of the Community directive on the free movement of broadcasts and Audiovisual Eureka, which offers a cooperation framework embracing 26 countries and the Commission.

As for the Community, it occupies a specific place defined by the integration objectives on which it is based, the first and foremost of which is the establishment of a genuine area without frontiers where people, goods, services and capital circulate freely.

In this context and in a manner consistent with all its activities, the Community, whilst strictly respecting the powers conferred by the Treaty, will base its initiatives in the audiovisual field, on the principles governing Community action, i.e. subsidiarity, Community added value and respect for national measures which conform to Community law.

In order to take account of the industrial, technological and cultural complexity and specificity of the sector, this policy is based on a three-pronged approach which the European Council of Rhodes consolidated in 1988 by fixing the basic political guidelines for action on a European scale in the audiovisual field:

- the overall objective is to strengthen Europe's audiovisual capacity;
- this requires coordinated efforts in the three fields of the audiovisual sector i.e. the rules of the game (free movement of programmes); the promotion of the programme industries (creation, production, distribution) and mastery of the new technologies (particularly HDTV);
- this also requires greater awareness at Community and European level as well as the exploitation of European cultural diversity.

It is an overall approach both as regards the objective fixed by the European Council and through the means which it outlines, i.e. coordinated efforts in the three main components of the audiovisual sector. As the previous chapters show, this approach is fully justified both by the in-depth analyses carried out by the Commission in 1989 and by the lessons drawn from the Audiovisual Conference. In the design and implementation of measures devised in order to achieve the overall objective, there is a need, in view of their considerable interdependence, to safeguard the balance between the three components. The measures in question must be mutually complementary, which, amongst other things, implies their simultaneous implementation. Nonetheless, the specificity of each of the three components implies, from the point of view of implementation, a diversity of methods suited to each of them (depending on the case, regulation but also recommendation, encouragement, consultation, organization).

The adoption of the "Television without frontiers" Directive, the developments of the pilot phase of the MEDIA programme and the definition of a strategy with regard to HDTV form the platform for the overall policy in which future action must be rooted.

2.1.2 Future action

In view of the progress made in 1989, the European Council of Strasbourg was concerned to reaffirm, on the one hand, the importance which it attaches to audiovisual policy and, on the other, the need to make simultaneous progress as regards each of the three components:
- the Council considered it imperative to consolidate recent achievements whilst indicating the need to add to the regulatory component, particularly by means of measures in the field of competition policy;
- at the same time, it called for more intensive efforts to promote the European HDTV system, for the Community action programme in the prolonged MEDIA programme to be given the necessary financial support and for the appropriate degree of synergy to be established with Audiovisual Eureka.

These guidelines have conditioned the drafting of the Commission's work programme for 1990 and will guide its implementation (see 4 below).

2.1.3 Permanent monitoring of the market

The permanent assessment of the impact and relevance of Community measures implies the existence of appropriate machinery for the analysis and monitoring of the audiovisual market situation. In this context, the Commission will continue to participate, in the Audiovisual Eureka framework, in the establishment of that European body to monitor the audiovisual sector called for by almost all professional circles at the Audiovisual Conference. This new structure responds to the need felt by all private and public operators for reliable, neutral, transparent and accessible information on the audiovisual sector.

In order to meet these requirements, the role and methods of operation of such a body must be defined with the parties involved so as to safeguard not only its independence with regard to both public authorities and professionals but also its operational efficiency.

The task of the monitoring bodies should be to collect, process and disseminate economic, statistical and documentary data concerning the various aspects of the audiovisual industry in a manner which is compatible with and does not create any duplication of the work of existing bodies. It should also contribute to the development of a methodology ensuring the comparability of data.

The monitoring body should therefore act as the central channel for information between the various potential users, professionals, public authorities, universities, research institutes, etc.

In the light of these guidelines, the Committee for Audiovisual Eureka Coordinators has instructed a team of experts to examine the practical arrangements for the operation of the monitoring body. These experts will present their recommendations during the second half of 1990 with a view to setting up the body before the end of the year.

At the same time as the Commission is involved in the establishment of the monitoring body, it will continue to develop, particularly with a view to the implementation of the Directive, its own internal capacities for the economic and industrial analysis and survey of the market.

2.1.4 Consultation machinery

Consultation of the professionals constitutes one of the principles governing the Commission's activity and the existing machinery has already largely contributed to the various positions on the audiovisual sector adopted by the Commission.

The Commission nonetheless considers it particularly important for the machinery for consulting the professional circles to be those which best suits a sector of the economy with particular industrial structures and cultural specificity. The need for a new consultation framework is to be felt in particular in the field of the programmes industry, where a wide range of parties such as creators, distributors, employers' and workers' representatives and consumers have to be involved. To this effect, new mechanisms based on the positive experience of the Audiovisual Conference will be proposed to the circles concerned in the first half of 1990.

2.2 Setting up an environment favourable to the competitiveness of the audiovisual industry: the rules of the game

The establishment of a minimum legal framework must enable the operators concerned to develop their activities in a genuinely European audiovisual area. The adoption of the "Television without frontiers" Directive and the measures to be taken in the copyright field are the basic components of this framework. However, if obstacles of a structural type subsist, the beneficial effects expected of the European audiovisual area will not fully materialize. The measures to be carried out in order to promote independent production, the development of a second broadcasting market and distribution circuits must specifically contribute to overcoming these obstacles. The proper functioning of the area thus created must also be ensured by the application of the law on competition and the safeguarding of media pluralism.

In the context of the internal market, one of the principles of which is that of the free movement of services, the "Television without frontiers" Directive sets out to ensure the application of this principle to television broadcasts between the Member States. The harmonization of national laws deriving from the Directive in the fields of the promotion, distribution and production of television programmes (particularly independent production), advertising, sponsoring, right of reply and protection of minors, combined with the principle of the application of the law of the broadcasting State alone henceforth constitute a common legal framework facilitating the free reception and retransmission of broadcasts from another Member State. Thus, from this angle, the Directive contributes also to that freedom of expression as recognized in particular in Article 10 of the European Convention on Human Rights.

2.2.1 Copyright

The legal framework established by the Directive has still to be amplified on the question of copyright. At a time when cross-frontier broadcasting has, as a result of technology, become a reality and, by legislation, a free right, its exercise must be accompanied by an effective protection of copyright in all the Member States in order that the holders of such rights may benefit fully from the European dimension of broadcasting.

Failing a Community approach on this question, the legislative compartmentalization and legal insecurity due to differences in the various national protection systems will constitute a disincentive to investment in creativity, limit opportunities for the exploitation of creative works, encourage piracy and prove detrimental or advantageous, depending on the nature of the legal system applied, to certain of the interested parties. In the event of inaction, the European audiovisual space will be set up artificially wholly on the basis of the legal opportunities left open, to the detriment of all, in general, and of creativity in particular. There is therefore a common interest among all the parties concerned that the question of copyright be handled within a Community context.

To resolve this question, apart from work undertaken in the context of the 1988 Green Paper (COM(88)172 final) on copyright - for example concerning rental rights - an initiative will be taken with a view to determining a new approach. The principal aspects of this initiative will be the desire to maintain a balance between the various interests and to facilitate, particularly for satellite and cable transmission, the management of copyright and neighbouring rights on a contractual basis, in respect of individuals or corporate entities, or on the basis of extended collective agreements, taking into account the growing need for rights to be administered no longer in terms of national territory but in terms of broadcasting areas and taking into account the real audience.

Such action will be the subject of a proposal for a Directive and should tackle the problems posed by cable distribution and satellite broadcasting. It should consider the question of application of the principle of the law of the country of transmission and, as far as possible, a minimum level of harmonization of certain basic rules. A Commission discussion paper will shortly be submitted to the professionals for consultation with a view to the possibility of framing a proposal for a Directive before the end of 1990.

2.2.2 Market structures and competition

- **Production**

On the production side, the most important measures to be taken concern promotion of the independent production of television programmes. Given the experience acquired by broadcasters in the production of quality programmes in Europe and the current shortage of programmes, it would seem inappropriate to consider separating production and broadcasting as in the United States. It is a question rather of creating the conditions for genuine competition whereby the broadcaster can be guided in the choice of whether or not to use an outside producer, based on the cost/benefit ratio offered compared with his own production.

All action should be aimed at creating a sufficiently broad market to enable independent producers to develop autonomously and find the necessary financing. This is because there is a minimum threshold below which programme production becomes a one-off activity without continuity, with the result that the development of a genuine market is not possible.

Article 5 of the "Television without Frontiers" Directive provides for measures to encourage independent production, allotting them 10% of transmission time or of the programming budget. Article 3 of the Directive enables Member States to go further. In addition to legislation, there are several means which should henceforth be employed to promote independent production. One of the criteria of the Community policy will be promotion of this sector, particularly in the context of competition and of Community programmes.

Lastly, adapting the rules concerning the acquisition of rights by broadcasters could prove equally important in the pursuit of this objective. Currently, the pre-financing which accompanies the placing of an external order for a programme by a broadcasting company is most often divided into two parts. One part concerns rights of first transmission within a specified area for a limited period, and the other concerns repeat rights and rights of first transmission over areas other than those covered by the broadcaster. Reference is habitually made to network shares and to co-producer shares. Recourse to major co-producer shares deprives the producer of marketing control over his work and greatly reduces his opportunities to call upon the financial markets. This is because the contributions of finance institutions are often based on the successive receipts which they consider achievable from the sale by the producer of his repeat transmission rights.

The Commission will examine how it could promote the possibility of independent producers retaining rights over the ownership of their works.

- Distribution circuits

As stated in the first section, the distribution circuits for audiovisual works in Europe are deficient in several respects. In the case of the cinema and video, European distributors capable of bringing out a film or videocassette in all European countries at the same time, with adequate promotion budgets - after the fashion of America's major distributors - are currently thin on the ground. Promoting the emergence of such distributors must become one of the priorities of Europe's audiovisual sector. The steps that the Community can take to encourage such structures are limited. Nevertheless, in the implementation of its measures and policies (MEDIA, competition policy) and in the context of its participation in EUREKA-Audiovisual, the Commission will take account of the need to promote the development of adequate distribution networks for European films and videocassettes.

The creation of a secondary market represents a necessary complement to the promotion of independent production since it will create the possibility of profitable production through multiple broadcasts and the conditions for genuine competition between broadcasters.

The secondary market may be made up of local or national broadcasters, by networks which rebroadcast programmes belonging to a foreign channel or by networks aimed at Europe as a whole. The importance of radio channels and radio links for the broadcasting of television programmes, the importance of television for access to news and the national characteristics of the programme markets mean that the Member States for a long time will perform a preeminent role in the establishment of television channels and the conditions under which they operate. For this secondary market to develop, it is necessary that its specific features be taken into account when broadcasting licence decisions are taken in respect of a television channel. This means that secondary market channels should not have imposed upon them conditions difficult to sustain in terms of production proper or programme schedules.

- Cartels and abuse of dominant positions

Competition problems have arisen in three markets:

(a) <u>Production and distribution of cinema and television films</u>

The structural weaknesses in this field and the extremely vigorous cooperation from outside the Community mean that cooperation between EEC companies may be needed, whether in the field of co-production or distribution.

At the Audiovisual Conference, recommendations were made on the application of competition law to the media, calling in particular for the adoption of block exemption regulations or guidelines for certain agreements on the production and distribution of cinema films and television films. The Commission will seek to respond to this call by drawing up guidelines.

The Commission tends to apply the following principles:

- Articles 85, 86 and 90 of the EEC Treaty apply to undertakings in the audiovisual industry in the same way as to undertakings in other economic areas;
- Community efforts to create a unified market in the products and services sector must not be called into question by the re-erection of barriers through contractual arrangements contrary to competition rules;
- in view of the difficult economic situation in the film and TV production sector and given its cultural function, a positive approach on the part of the Commission towards inter-company cooperation is justified. However, the Commission has to ensure that a balance is maintained between the measures taken in the various Member States and that their nationals are not discriminated against;
- the granting of exclusive television rights is not in itself anti-competitive; however, agreements which are excessive in their

scope or duration or which impose additional restrictions on the parties may fall under Article 85(1).

(b) <u>Market for TV broadcasts</u>

The Commission's main concern here is to keep markets open and to prevent barriers to market entry. In particular, the Commission wishes to ensure that all broadcasting companies have appropriate access to attractive programmes and is therefore endeavouring above all to prevent programme material being withdrawn from the market as a result of collective long-term arrangements. Likewise, the Commission is opposed to agreements within groups of TV broadcasters by which joint rates and conditions are fixed for the use of their programmes by third parties.

Agreements or practices relating to the joint acquisition or distribution of television rights normally fall within the scope of Article 85(1). Exemption is possible if joint acquisition or distribution allows rationalization advantages to be achieved and if no barriers to market entry by competitors are set up. Where rights are jointly acquired by members of multinational associations, it must be ensured that non-members have appropriate access to the relevant programme material. This can be achieved through limitations on exclusivity or through the granting of sub-licences.

(c) <u>Market for satellite broadcasting services</u>

The Commission wishes to see an increase in supply in this area because such a trend would help the expansion of the second market. Consequently, its action in this sphere will be guided by essentially the same principles as those which apply to the previous two sectors.

- framework for State aids

On the basis that a strong audiovisual sector is necessary in the Community, for cultural as well as economic reasons, the Commission recognizes that State aids have a role to play in developing this sector and plans to take a positive attitude to this question.

In the past, the Commission has on numerous occasions authorized the granting of State aids to the film industry, provided they meet the conditions laid down in Article 92(3)(c) of the EEC Treaty. It has sought to ensure, however, under the terms of the same Article, that trade between Member States is not adversely affected by such aid to an undue extent, and also that the terms of the aid, in accordance with Articles 7, 48, 52 and 59 of the Treaty, do not discriminate against nationals of other Member States. The Commission will maintain its positive attitude towards aid to this sector and will publish in 1990 - after consultation with the Member States - a framework for State aids to the audiovisual sector.

The Commission guidelines will cover all types of aid, including tax incentives, taking into account the different characteristics of the cinema film and audiovisual production sector. This framework will help to ensure equal opportunities for the companies in this sector, while at the same time indicating the Commission's wish to see a development of audiovisual production in Europe.

2.2.3. Pluralism and mergers

With regard to the already mentioned increase in the number of mergers involving the media, the Commission considers that the establishment of the European audiovisual space does not derive merely from its wish to promote the audiovisual industry but also from the importance attached by the Community to the requirements of a democratic society, such as, notably, the respect for pluralism in the media and for freedom of expression. The Community's audiovisual policy seeks therefore, also, to ensure that the audiovisual sector is not developed at the expense of pluralism but, on the contrary, that it helps to strengthen it by encouraging, in particular, the diversity of the programmes offered to the public.

Whereas the activities of media operators have increasingly assumed a European dimension, the response to the effects these may have, in certain cases, on pluralism has, for the time being, not gone beyond national limits. National legislation, existing or planned, could be circumvented and would not therefore be sufficient to guarantee pluralism in all cases. Moreover, this situation, characterized by a multiplicity and disparity of national laws, may produce the opposite effect of limiting the activity of operators who could contribute to a growth of pluralism in the Member States.

Nor is the application of Community competition law, in particular Articles 85 and 86 of the Treaty, able to cover all situations in which a threat to pluralism is posed, notably in the case of multimedia ownership. Likewise, the Regulation on mergers, adopted on 21 December 1989, covers only large mergers which affect competition on the market in question. This is why that Regulation provides that Member States may continue to apply their national legislation on the protection of pluralism and freedom of expression when the Commission does not take steps to counter a merger in the media.

On account of the importance it attaches to the objective of maintaining pluralism, the Commission is studying this question with a view to a possible proposal for a Directive, whose aim would be to harmonize certain aspects of national legislation in this field.

2.2.4. Other aspects

- obstacles to transnational production activities

For audiovisual programme production to benefit fully from the completion of the single market, it is important to verify whether practice and the effective implementation of the principles of free movement have been able to remove obstacles to transnational activities.

The Commission will pay special attention to the implementation of freedom of movement in respect of production teams and personnel; this applies also to audiovisual equipment and the impact of certain tax procedures on cooperation between European producers.

- audience ratings

The development of an audience rating system capable of measuring the viewing rate of a broadcast over the whole of its transmission area would be highly desirable. Such a system could improve market transparency by enabling producers and broadcasters to assess a programme's potential on a European scale. For satellite transmissions, this system could demonstrate to advertisers the advantage of using this type of transmission and would therefore promote advertising growth. The system would also assist the calculation of royalties.

The Commission will study with the parties concerned how it could contribute to the drawing up of procedures for the development of a pan-European audience rating system.

2.3. Action programme to promote the audiovisual industry

2.3.1. Developing the achievements of the MEDIA pilot phase

As regards support for the programme industries, the Commission's approach is based essentially on a wish to improve the economic context of those industries with an eye to the advent of the single market.

Before presenting a definitive programme, the Commission has sought to assess pragmatically the instruments of a development strategy. Accordingly, on the basis of broad consultations with the professionals, it launched pilot projects to measure the relevance and effectiveness of a series of economic incentives for the audiovisual sector.

These pilot projects were grouped under the acronym M.E.D.I.A. standing for Measures to encourage the development of the Audiovisual Industry.

Their subsequent development depends on the Council's decision. Under the 1990 budget procedure, the Commission undertook to present to the Council a proposal for a Decision to continue the activities of the MEDIA Programme as from the 1991 financial year. By this commitment, the Commission is preparing to bring the MEDIA experimental phase to a close; it proposes to pass on to the principal phase as part of a Community action programme, providing for the necessary synergy with EUREKA-Audiovisual. The Commission is responding thereby to the wish expressed by the Strasbourg European Council.

In its proposal, the Commission will refer also to the opinions expressed by European professionals at the Audiovisual Conference, namely that the MEDIA project were of exemplary value and should be developed, in liaison with EUREKA.

In addition, a circumstantial assessment of MEDIA is being undertaken by a Group of Independent Experts. The Commission will study carefully the comments of this "Brains Trust" and will take account of their conclusions in its proposal for an Action Programme.

2.3.2. Guidelines for the main phase of MEDIA

The Commission is seeking to improve the environment of audiovisual enterprises without intervening directly in production. Hence, the MEDIA projects are located both upstream and downstream of production along the industrial chain and cover training, research and development, preproduction, multilingualism, distribution and promotion, as well as the financial framework and audiovisual "engineering".

As from now, the collective entirety of these projects combines all the conditions required of a Community programme.

It is in line with the prospect of the single market.

- It seeks to meet the Community's priority objective in creating in the programme industries the "dimension effect" of the new economic space:

  - by strengthening national industries through the distribution of their products on a Community scale;

  - by creating collaborations between such industries, with a view to increasing their production and distribution capacity on the international market.

- <u>It decompartmentalizes national markets by creating transfrontier cooperation networks</u>

The MEDIA pilot projects are based on a simple mechanism: the setting-up of networks of economic and cultural agents. Indeed, transfrontier collaboration networks can provide effective solutions to the structural problems of the European audiovisual sector, i.e. the fragmentation and dispersion of the industries concerned.

- <u>It contributes to the restructuring of the audiovisual industry by giving priority to SMEs</u>

MEDIA develops a "networks policy" in terms of both enterprises and capital. By creating networks of enterprises, MEDIA addresses itself primarily to SMEs (small and medium-sized enterprises) which constitute the essential fabric of the majority of the European audiovisual industry.

Bringing small and medium-sized audiovisual firms into some kind of organization would make it possible to some extent to restructure the market from the bottom up by creating what one might call multinational structures, which would to some extent make up for the lack of major industrial firms in key audiovisual sectors.

- <u>It sets out to create a balance between "minor" and "major" national industries</u>

The scale and connections of the cooperation networks are a major guarantee for a balanced expansion of the European market, in that they would encourage solidarity between countries and markets of different sizes. It would then be possible to bridge the gap between small and large firms and provide a degree of balance for the less widespread cultures and languages.

- <u>It tends towards a coherent set of complementary actions which derive their specific value from the Community dimension</u>.

To be successful, the MEDIA projects need networks of a sufficient size in order to generate effects of scale and bring synergy into play. To be economically effective the networks must be as extensive as possible and cover all the Member States of the Community.

The MEDIA networks, moreover, are both complementary and interactive.

Creating networks of firms has implications for capital: MEDIA will inject seed money into industry, which will then attract further funding from private investors, professional organizations, sponsors, patrons and public bodies.

MEDIA funding will generally take the form of repayable loans, with returns being reinvested immediately. On this basis the projects should become self-supporting after a number of years, generating their own financial resources.

The resources at MEDIA's disposal in the pilot project phase are extremely limited in relation to the requirements of the single audiovisual market. In order to make a significant impact during its principal phase, MEDIA will therefore need substantially increased resources.

2.3.3 Specific operations to improve the production and develop distribution machinery

Action taken during the pilot project phase of the MEDIA programme as well as a number of developments which the Commission might build on during the main stage of the project, are described below.

- Distribution/promotion

This is a vital sector if European production is to exploit fully the potential of the single market. As things stand today, the circulation of European production is hampered not only by language barriers but also by the compartmentalization of national markets and inadequate promotion.

(a) The distribution of films through cinemas

The pilot project carried out by EFDO (European Film Distribution Office), which involves the distribution of European films through cinema networks, has shown that the Single Market can both raise profitability and stimulate creativity.

In future we shall have to increase the number of films benefiting from distribution incentives and back up distribution with promotion activities for European films outside the Community. We should also provide much more support to promote the showing of films in cinemas.

(b) Video and television distribution

A growing proportion of film receipts now come from video cassettes. This is why the EVE project (Espace Vidéo Européen) supports the issue and distribution of European works on the basis of the model tried out by EFDO. This model should also serve to set up a mechanism to encourage cross-border broadcasting of television programmes.

(c) Support for multilingual television programmes

The pilot phase of BABEL (Broadcasting Across the Barriers of European Languages) has revealed a considerable demand in the multilingual sector, which is an essential requirement for the circulation of European television productions. BABEL should create significant incentives for dubbing, to ensure that a greater number of programmes can be made profitable on the European market. The growing number of television satellites, in particular, will require the development of multilingual broadcasts in such areas as information, training and culture.

(d) Promotion of independent European production

The promotion and other services provided to independent producers by EURO-AIM (European Organization for an Audiovisual Independent Market) have confirmed that effective marketing of audiovisual products is essential for their distribution.

The EURO-AIM initiative proves that the sale of European productions can be increased and should therefore be developed more widely, not only at Community level but also on international markets.

- Production

The Audiovisual Conference once again emphasized the quantitative deficit of European production. Television and cinema programmes are overwhelmingly dominated by non-European productions, particularly where fiction and animated films are concerned. To help redress the balance, MEDIA is devoting considerable attention to the preparation of scenarios, the systematic development of business and financial structures, the strengthening of production facilities, and greater use of advanced technology.

(a) The development of scenarios and pre-production (fiction and non-fiction)

To attract the necessary private funding for productions the quality of scenarios with a potential international audience must be raised.

The experience acquired since 1989 by the European SCRIPT Fund provides a solid basis. In order to make a significant breakthrough SCRIPT should have considerably more funding at its disposal and should also concern itself with economic and preproduction project management (organization, management, financial structures) and the improvement of scenarios.

Future action by SCRIPT with regard to fiction should be matched by preproduction support for documentaries and educational films.

(b) Development of the European animated film industry

In spite of worldwide recognition of the talent of our animated film makers - and a rich graphic heritage - Europe is held back in this area by a lack of production capacity and the low level of competitiveness of its animation studios.

By extending the networking of European studios, which was part of the pilot phase initiated by CARTOON (European association for animated films) production infrastructure could be further developed, which in turn would make it possible to produce major competitive quality series, for which there is an increasing demand.

The scripting, preparation and production of pilot films, moreover, is an essential first step for quality projects needed to provide work for the studio networks. This requires significant amounts of seed money likely to attract major investments.

(c) Promotion of new European technologies

New technologies (videotex, digital and high-definition television, interactivity) represent a rapidly expanding market in which, however, Japanese and American firms are already firmly entrenched. Europe must fight for its share of this market by pooling its efforts in terms of research, development, production, information and training.

The MEDIA Investment Club for Advanced Technology Applied to Audiovisual Productions is an organization on which industrial firms as well as communications and financial businesses are represented. Its aim is to promote audiovisual productions in high technology growth areas.

This should become the catalyst for a European programme of technological innovation in the production and distribution of audiovisual material.

In conjunction with Eureka Technology and Eureka Audiovisual, and with the new EEIG (see below 2.4.3), it is specifically designed to support projects aimed at promoting productions using the European high-definition television standard.

(d) Exploitation of archives

Major resources are locked up in television and cinema archives. These represent considerable assets both in economic and cultural terms. Better use should be made of this "collective audiovisual memory" by creating a genuine second market.
MEDIA has started to exploit possible ways of using archive material and is expanding this initiative in liaison with MAP-TV (Memory Archives Programme), which is setting up a network of European television archives.

- Training

Training is part of most MEDIA projects. The idea is to enable European professionals to adapt to the conditions of the Single Market and to acquire the necessary economic management skills to exploit its potential.

An initial series of seminars on project management has taken place within the framework of the EAVE (European Audiovisual Entrepreneurs). The success of this initiative has demonstrated the need to multiply and diversify this type of training, which would require an expansion of EAVE into a flexible and decentralized structure which is to be known as the "European Business School for Cinema and Television".

- Better funding mechanisms

Structuring the audiovisual industry, encouraging well-prepared projects, and the outlets offered by the Single Market will all contribute to attracting new investment.

During its consultation phase, MEDIA concentrated on identifying the right sort of funding mechanisms. These mechanisms - depending on their nature (i.e. venture capital as in MEDIA-Venture, or guarantee funds, as in MEDIA guarantee) - could be part of the principal phase of the MEDIA project, or they could take the form of ad hoc projects; or again, they could take shape within the framework of Eureka-Audiovisual.

In addition, MEDIA is working on ways of promoting cross-border co-productions and co-financing schemes, which are essential for the development of the audiovisual industry in Europe.

2.3.4 Planning for the future

In the interest of flexibility and openness MEDIA will continue to explore new areas and ways of cooperation in order to keep abreast of developments in the European audiovisual industry.

It could for instance set up experiments in the field of new audiovisual services, such as the planned ISDN (Inter-Services Digital Network), making sure such services meet the needs of consumers.

MEDIA could moreover provide a systematic framework for initiatives designed to develop audiovisual activities in the Community's less-favoured regions, thus enabling these regions both to express their particular identities and exploit their own economic potential.

Finally, cooperation with professionals from non-member states, including central and east European countries, could increase the economic, cultural and political impact of the action programme.

2.3.5 Setting up synergetic effects with Eureka-Audiovisual

As is set out in Annex 2 of the Paris Declaration of 2 October 1989, the European Community could take part in Eureka audiovisual projects, particularly through its own programmes, without these projects taking the place of existing forms of cooperation. Commission intervention will depend on whether a Community dimension would enrich or improve a project.

MEDIA and Eureka-Audiovisual complement each other in a positive way, which is partly due to their different characteristics:

- MEDIA is a coherent and interactive set of incentives at both pre- and post-production level, combined with an effect of scale generated by the participation of the Twelve Member States;
- Eureka-Audiovisual provides a platform - similar to Eureka-Technology - to help professionals to set up and carry out transnational projects. It does so by taking a large number of initiatives, particularly in the field of production, with all the flexibility that the tailor-made participation of both private and public partners gives it.

On the basis of these specific characteristics two types of synergy can be established:

(a) MEDIA extended to new partners: the "added value" provided by the Community dimension will be further augmented by the effects of geographical, economic and creative enlargement.

The MEDIA programme will preserve its Community character and will continue to be implemented by the Commission.

(b) MEDIA as partner in Eureka audiovisual projects

The form and nature of participation in these projects will in each case be determined by the Commission and Eureka-Technology jointly.

This Commission intervention via MEDIA will make it possible to increase the overall coherence and interactivity between the various actions through participation in projects which complement actions already undertaken. It will also make it possible to create synergy between separate but similar or parallel projects which, by linking them up to some extent, could generate their own momentum.

(c) Other forms of participation in Eureka-Audiovisual

Although the Commission's involvement in Eureka-Audiovisual should normally pass through its own programmes, it is free to develop any other form of participation via its coordinator.

It may, moreover, present its own projects to the other participants. The principles underlying the MEDIA programme could in that case serve as a basis for deciding how a project should be managed.

2.4 Technology as a driving force

2.4.1 New audiovisual technologies

The entire audiovisual sector is being shaken up by constant innovations in terms of new technologies, particularly the new generation of satellites and the development of high-definition television (see 1.1 above).

The Commission, as well as many other public and private bodies, is taking part in this process through its contributions to standardization (the "MAC-Packet" Directive of 3 November 1986 represents a first step towards the adoption of a common standard for direct satellite broadcasting). The Commission also contributes through its research programmes (ESPRIT, RACE, AIM) and through its role as coordinator (which is essential for the development and promotion of European high-definition television).

Although it must consolidate what it has achieved, the Community should concentrate its efforts on two vital aspects:

- the setting up of a standardization environment for the development of a European market of satellite television services;

- providing the necessary impetus for the launch of HDTV services in Europe.

2.4.2 The new generation of satellites

The MAC/Packet Directive is limited in scope to high-powered DBS satellites as defined in the World Administrative Radio Conference (WARC) in 1977.

The scope of the Directive is also limited to the early stages of the introduction of the MAC/Packet family and to certain technical aspects only.

The environment for satellite television has in the meantime developed significantly. The following issues requiring attention may be noted:

(i) advances in receiver technology now allow television to be delivered direct to the home using satellites of lower power than the original WARC definition;

(ii) plans are advancing for the broadcast of HDTV which will require a precise specification of the transmission system to be used;

(iii) divergences have occurred on the selection of encryption systems used for TV services with conditional access;

(iv) harmonization of national approaches to the planning of cable networks capable of distributing MAC and HD-MAC signals is required.

In the second half of 1990 the Commission will put forward proposals to update the existing MAC/Packet Directive, which expires on 31 December 1991, to take account of present and expected future circumstances as well as to extend its scope.

As part of its telecommunications policy the Commission will also send to the Council a communication on satellite communication in Europe, which will include a chapter on aspects of television broadcasting by satellite.

2.4.3. Actions required to realize the potential of HDTV Technology

The introduction of any new technology requires careful planning and the cooperation of many different actors throughout the Community and Europe - particularly when it will have such a wide and general impact as a radical improvement of the television format.

On 27 April 1989, on a proposal from the Commission, the Council adopted a decision which sets the basis for a comprehensive strategy for the introduction of HDTV in Europe.

It is articulated in an Action Plan containing five lines of action:

A. The development of the technology components and equipment required for the launch of HDTV services in Europe

The research and development work to define an HDTV production standard and to demonstrate it, in particular for broadcast applications, has been under the Eureka 95 HDTV project since 1986. By 1988 a complete line of prototype equipment, from production cameras and recorders through satellite links to home receiving HDTV sets, was successfully demonstrated. In the course of 1989 a number of short programmes were produced by European professionals and shown at various opportunities with great success.

Presently, a second phase of the Eureka 95 project, to cover the period 1990 to end 1992, is being defined and will address objectives focused on services introduction.

In parallel, the Commission is exploring, with the industry concerned with developments, the scope for Community participation in the development of certain key strategic technologies which will be required for the ultimate goal of HDTV introduction. Community participation is envisaged within the new R&D Framework Programme. The objective is to produce a coordinated set of initiatives, marrying together the continuing Eureka initiative with significant Community involvement to address a shared strategic objective.

B. The adoption of the European proposal (1250/50/1:1) for a single worldwide standard for the origination and exchange of HDTV programme material

Since before the CCIR plenary in Dubrovnik in 1986, the Commission, through active coordination, has succeeded in developing with the Member States a coherent common position in relation to HDTV standards. This consensus exists up to the present day and an increasing number of countries from outside the Community appreciate the European positions and support its intent.

Work in the CCIR (Comité Consultatif International de Radiodiffusion) is intensifying in view of the proximity of important milestone meetings in March 1990 (Atlanta, Georgia, USA) and the Plenary Session of the CCIR (Düsseldorf, May 1990) which should adopt the single worldwide standard.

The Council has already adopted on 7 December 1989 a Decision (under Article 116 of the Treaty) on the common action to be taken by the Member States with respect to the adoption of a single worldwide high-definition television production standard by the Plenary Assembly of the CCIR in 1990. This common action shall be based on the proposals arising from the Eureka 95 project.

There is a significant probability that the 1990 Plenary of the CCIR will not reach final agreement and that a further study period will be necessary before a single worldwide production standard can be adopted. Further harmonization work has already been planned for September 1990 and an Extraordinary Plenary meeting in 1992 is a likely possibility if the full 4-year study period appears unnecessary for a final decision to be taken. The Commission intends to continue its tight coordination of the strategy and tactics to be adopted by the European parties until such time as our objectives are achieved.

Since HDTV broadcasting standards must be compatible with current broadcasting standards (which are not the same in the Community and the United States) they are bound to be different. We must, however, make sure that they are compatible with the single production standard which will be adopted at world level. In this context Eureka and the EEIG which is about to be set up, will have to increase their efforts to ensure that this compatibility is achieved, and gather as many partners as possible in support of this production standard.

C. Preparation of the market for the new technology and building up of expertise in programme production

The latest technological developments in HDTV give a major opportunity for TV programme and film makers to expand their means of expression, address new markets, and benefit from a substantial reduction in production time and processing. This requires however that those concerned are made aware of the possibilities of the new technologies and that equipment, expertise and training facilities are made available to allow them to experiment and to make their first productions with them.

In this connection, the Commission has encouraged industry, broadcasters, independent TV and film producers and other interested parties to create jointly a European Economic Interest Grouping (EEIG) "Vision 1250" with a view to promoting the use of HDTV programme production. This Grouping, which has the support of Governments and the Commission, will be fully operational in the first half of 1990. Its activities will be adapted in response to the evolution of the market and should extend for a full four years until 1994.

Vision 1250 will set up and manage HDTV facilities, and make them available to programme makers. It will:

- provide the necessary means for high-quality productions in High Definition for immediate release on film or by broadcast emission;
- carry out by all appropriate means a comprehensive programme in order to assist the adoption of the European production and transmission standards worldwide;
- provide producers with expert assistance in HDTV production techniques and in the use of the equipment where required;
- carry out demonstrations worldwide of all the components of an HDTV system operating to European standards, from studio equipment through transmission to consumer reception and recording;
- provide training, advice and other services including, but not limited to, maintenance of HDTV equipment, to participants and third parties;
- collate comments of users and feedback to equipment manufacturers;
- cooperate with those responsible for any closely-related HDTV projects and relevant national and European activities.

It is to be anticipated that this initiative will result in many high-quality productions using the 1250 system to be made and shown around the world during this 4-year period.

D. The introduction of HDTV services in Europe

The introduction of HDTV in Europe requires a coordinated approach if we are to benefit from the lessons of the past and avoid wasteful segmentation and fragmentation of the market. It also requires careful planning so that the introduction on the market runs in synchrony with the necessary technical developments.

To follow up the successful research and development stage, the introduction of services will be done in two stages:

(a) A pre-operational phase, in which the Commission intends to play a catalytic role, starts now with experimental programme making under the auspices of Vision 1250 and experimental transmissions. Pilot transmissions will start from 1992 with several hours of HDTV pilot transmissions being beamed down from satellites and covering such major events as the winter Olympic Games in Albertville, the summer Olympic Games in Barcelona, and the Universal Exhibition Expo 92 in Seville (in which the Community is actively participating). These major events will be followed by others in 1993 and later and it is also likely that a number of operators will wish between 1992 and 1995 to start offering regular services in HDTV with a range of programmes, including films, etc.

(b) It is generally accepted that 1995 will see the wide availability of HDTV services throughout Europe.

The Commission will forward to the Council in the second half of 1990 a proposal concerning the Community's role in the introduction of HDTV services.

E. The building-up of expertise in programme production

Vision 1250 will manage HDTV facilities and make them available for use by those interested in programme production for release on film or by broadcast emission and will provide producers with expert assistance in HDTV production techniques and in the use of the equipment. It will provide training, advice and other services as required for the satisfactory development of the use of this new technology up to the full implementation of regular services in HDTV by 1995.

The Vision 1250 activity will result in a major enhancement of European HDTV production expertise and the creation of a large stock of HDTV software in the European standard.

The Community's MEDIA programme as well as Eureka-Audiovisual should also contribute to the process of building up European HDTV production.

3. Internal aspects: the Community as partner

As in other areas where the Community is active, the idea of Europe as a partner has in recent times taken on a new meaning with regard to audiovisual policy. In concrete terms it manifests itself in the external effects of Community policies either completed or currently being implemented, such as the internal market for audiovisual productions, technological cooperation, development of programme production and negotiations within the context of the Uruguay Round.

3.1 The external dimension of the single market

Within the context of the setting-up of the internal market the Community is committed to a process of liberalization of telecommunications services, notably of audiovisual services.

The liberalization introduced by the television without frontiers Directive (Council Directive of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities) has repercussions outside the Community, since it will benefit the industrial audiovisual production of the Community's partners.

3.1.1. The advantages of the internal market for the Community's partners:

The free movement of broadcast programmes respecting Community standards and the freedom of access and the free movement in the internal market for all broadcasts containing advertising, information, sports and gains thus provide producers of this type of broadcast throughout the world with the opportunity of gaining access to a unified market already comprising some 60 television stations. All producers throughout the world will be able to take advantage of an increased demand for programmes and the resulting substantial growth of the audiovisual market.

In addition, the question of production costs must continue to be monitored, since there is a dual conflicting trend: the increase in demand is giving rise to a considerable price increase; on the other hand, a dual sales price system on the American market and the European market will be harmful to Community producers.

3.1.2. The international context

The international context is characterized by the reinforcement of relations with certain European countries, as a result of the recent events in eastern Europe and, lastly, by the expected completion of the Uruguay Round negotiations at the end of 1990 (see 3.2. below).

- Rules of the game

With the EFTA countries, the approach is to examine the possible areas of extending Community provisions. This is already the case in the television without frontiers Directive, the extension of which makes it possible, as part of the negotiations to extend the internal market to these countries, to ensure a European economic area in the audiovisual field and to put an end to the possibility of prohibiting rebroadcasting between these countries and the Community.

Another means of extension recently opened relates to the eastern European countries. Free movement is being established in this field between the two Germanies and a wider extension can only be desirable.

In the long run and in keeping with the desire for complementarity between the activities of the Community and the Council of Europe, the Community will have to envisage becoming a party to the Council of Europe European Convention on Transfrontier Television opened for signature in May 1989.

It is also important to ensure that the OECD's work on invisible transactions guarantees observance of the special nature of the audiovisual sector.

- Technological cooperation

The diversification of participation in the R&D programmes varies from one Community partner to another. In general, the Commission notes with satisfaction the initial effects of its cooperation with third countries, namely:

- with the EFTA countries, an EC/EFTA working party on telecommunications has been set up and these countries support the Community's proposals with regard to HDTV;
- with the United States, even where there is no reciprocal participation of European and American enterprises in the R&D programmes launched by one or other, cooperation is being set up in the United States between operators;
- with the USSR, attempts at cooperation have been made in that Soviet support for the European HDTV standard; the question of direct Soviet participation in the Eureka technology programme is still in abeyance.

Moreover, the Community is actively participating in international negotiations conducted by the UIT with a view to laying down a single international standard for high definition television (cf. 2.4.3. above).

- Promotion of programme industries

There are many countries, in particular in eastern Europe, which wish to participate in Community programmes for developing audiovisual production.

The MEDIA programme already allows its non-Community members to take part by agreement (such as the case for Switzerland). The same should be true for audiovisual Eureka (see 2.3. above), which covers 26 countries (Member States of the Community, members of the Council of Europe, Poland, Bulgary, USSR and Yugoslavia). Participation of this kind could, in particular,be based on cooperation agreements concluded are being negotiated with each of these countries and be aimed inter alia at cooperation with regard to services.

- Cooperation with Mediterranean countries

The preceding remarks also apply, in certain cases, to audiovisual cooperation with the Mediterranean countries. The Commission will seek ways for the Community to improve or augment cooperation with these countries.

3.2. Uruguay Round: General negotiations on services

As part of the new Uruguay Round negotiations launched at Punta del Este in 1986, it was decided to draw up a multilateral discipline for the services business which will take the form of a general agreement on services. Telecommunications, including audiovisual services, is one of the sectors covered by this exercise and the negotiations.

For the purposes of these negotiations, the Community intends to define audiovisual services on the basis of a two-fold component: first, the transmission of broadcast signals which represent the content of broadcasting services and, secondly, the programming comprising these signals and constituting it's content.

The existence of this first component determines the inclusion of audiovisual services in the telecommunications sector which, in this way, must be treated as a whole, since the rules for the transmission of broadcast signals (the right of establishment not, however, having been affected by Community harmonization) is the subject of liberalization in the Community in the same way as other telecommunications services.

The second component of broadcast services introduces, on the other hand, a sectoral specificity in respect of the content of the broadcast signals, since the content transmitted by the broadcast signals is subject to rules (in the Member States, in the Community and in non-Community countries), having regard to the role played by broadcasting as a vector of cultural identities. This is therefore a matter of cultural specificity which offsets the liberalization of the transmission of broadcast signals and aims at ensuring a necessary qualitative aspect to this liberalization.

As far as the Community is concerned, the starting point for these negotiations is as follows:

- a liberalization carried out by the Community: the external repercussions of the internal audiovisual market are already considerable where the industrial audiovisual production of our partners is concerned, the more so as the Community has not laid down any condition of reciprocity;

- as a corollary, the cultural specificity of the content of the signals, whose transmission has been entirely liberalized, should not be affected by this liberalization. It depends on cultural policy objectives which were already recognized in Montreal for the following 3 reasons:

    - it responds to concerns regarding cultural and linguistic identities which must be protected;

    - it is an integral part and assures the harmonious development of an opening up of the Single Market in the audiovisual sector;

    - it is a step which many other countries (e.g. Australia and Canada) have taken with the same objectives.

The Community is therefore approaching these negotiations with the firm intention of achieving international liberalization within the limits already achieved within the Community, i.e. by leaving intact the cultural specificity of the sector and the Community measures dependant on this specificity.

4. <u>Work schedule</u>

In implementing the guidelines set out in the preceding chapters, the Commission will attempt to respect, both in its methodology and in its scheduling, the principle of achieving a balance between the three aspects of the audiovisual triptyque. To this end, it envisages the major 1990 deadlines as follows:

Rules of the game: A solution to the copyright problem will be proposed in the form of a draft Directive* following consultation with the parties concerned on the basis of a working paper before the end of the year;

Competition: Concurrently the guidelines* will be drafted for the application of competition law in the audiovisual sector, inter alia with regard to certain production and distribution agreements and a framework for aids for cinema and audiovisual production.

Programme and film industries: The action programme* to encourage the development of these industries will be the subject of a proposal for a Council Decision in March/April so as, firstly, to ensure continuity between the pilot schemes and the main phase of the MEDIA programme and, secondly, to establish the necessary legal bases for the Community's contribution to Audiovisual Eureka.

New technologies: in the 2nd half of 1990 the Commission will present an action plan for the introduction of HDTV* as part of telecommunications policy and will also forward to the Council a communication on satellite communications in Europe which will include a section on the aspects of satellite television distribution. With regard to research and development, schemes relevant to HDTV are likely to be conducted in Synergy with the second phase of the Eureka 95 project as part of the new RTD framework programme.

The Commission will also present a proposal for a Directive to ensure the follow-up to the current MAC-Packet Directive.

Completion of the Uruguay Round: A general agreement on services might be adopted at the Ministerial Conference which will be held in Brussels in December covering, among other things, telecommunications, including audiovisual services.

This timetable, which is merely indicative, refers only to the main institutional deadlines currently envisaged by the Commission subject to consultations being held in each sector. It therefore cannot be comprehensive (e.g. it does not cover the continuation of many schemes in progress), but it nevertheless provides an outline of the Commission's activities in 1990 with a view to putting into practice the guidelines laid down for audiovisual policy by the last three European Councils.

In addition, the discussion begun in 1988 will be pursued with a view, in particular, to preparing measures likely to be the subject of proposals in 1991 and beyond, for example with regard to pluralism and media concentration.

---

* indicates an action included into the Commission's work programme for 1990.