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Television without frontiers**European Parliament resolution on the application of Articles 4 and 5 of Directive 89/552/EEC ("Television without Frontiers"), as amended by Directive 97/36/EC, for the period 2001-2002 (2004/2236(INI))***The European Parliament,*

- having regard to Council Directive 89/552/EEC 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⁽¹⁾ as amended by Directive 97/36/EC of 30 June 1997 of the European Parliament and of the Council (together "the Directive")⁽²⁾,
- having regard to the results of the public consultation held by the Commission on the application of Articles 4 and 5 of the Directive,
- having regard to the Council of Europe's 1989 European Convention on Transfrontier Television,
- having regard to the Council of Europe's resolution on cultural diversity and media pluralism in times of globalisation, adopted by the 7th European Ministerial Conference on Mass Media Policy in Kiev (Ukraine), 10-11 March 2005,
- having regard to the Commission communication on the future of European regulatory audiovisual policy (COM(2003)0784),
- having regard to the Commission communication on principles and guidelines for the Community's audiovisual policy in the digital age (COM(1999)0657),
- having regard to Articles 151 and 157 of the EC Treaty, the Charter of Fundamental Rights of the European Union and the Protocol on the system of public broadcasting in the Member States annexed to the EC Treaty,
- having regard to its resolution of 4 September 2003 on Television without Frontiers⁽³⁾,
- having regard to its resolution of 4 October 2001 on the third report of the Commission to the Council, the European Parliament and the Economic and Social Committee on the application of Directive 89/552/EEC "Television without Frontiers"⁽⁴⁾,
- having regard to its resolution of 2 July 2002 on the Commission communication on certain legal aspects relating to cinematographic and other audiovisual works⁽⁵⁾,
- having regard to its position of 12 February 2004 on the proposal for a European Parliament and Council decision modifying Council Decision 2000/821/EC of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works⁽⁶⁾,
- having regard to its resolution of 26 September 2002 on an EU action plan for the successful introduction of digital television in Europe⁽⁷⁾,
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on Culture and Education (A6-0202/2005),

⁽¹⁾ OJ L 298, 17.10.1989, p. 23.⁽²⁾ OJ L 202, 30.7.1997, p. 60.⁽³⁾ OJ C 76 E, 25.3.2004, p. 453.⁽⁴⁾ OJ C 87 E, 11.4.2002, p. 221.⁽⁵⁾ OJ C 271 E, 12.11.2003, p. 176.⁽⁶⁾ OJ C 97 E, 22.4.2004, p. 603.⁽⁷⁾ OJ C 273 E, 14.11.2003, p. 311.

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- A. whereas the Lisbon strategy seeks to reinforce the innovative capacity of European industry and to make the EU the most competitive and dynamic knowledge-based economy in the world,
- B. whereas the audiovisual sector is characterised both by technological innovation and by its social, economic and cultural impact,
- C. whereas one of the EU's priorities is to defend the specific nature of cultural goods, including those in the audiovisual sector, within the World Trade Organization (WTO); whereas the Commission regrettably failed observe that principle by proposing to bring the audiovisual sector within the scope of the proposal for a directive on services in the internal market,
- D. whereas the movement of European works and the works of independent producers is essential in order to promote cultural diversity, freedom of expression and pluralism,
- E. whereas the Directive, which was enacted in the context of the single market, must take greater account of aspirations relating to a Community area of law, citizenship and political union,
- F. whereas the Directive is also obsolete in the light of the rapid development of new technology, which will soon result in unlimited supply in the context of the European audiovisual landscape, making it necessary to adapt the rules which it lays down to technological developments,
- G. whereas it is the responsibility of the Member States and their national competent authorities to apply the Directive, although the Commission plays an essential evaluating and supervisory role, with which Parliament, national parliaments, national regulatory authorities and public opinion must all be associated,
- H. whereas the Directive, forming a flexible framework which has permitted the application of rules by the Member States and self-regulation by the audiovisual industry, plays an important role in establishing a minimum framework,
- I. concerned to note that certain provisions in the Directive (on quotas, advertising, etc.) are inadequately applied and observed in certain Member States due to a lack of appropriate monitoring,
- J. whereas the growth in the number and diversity of the services on offer must go hand in hand with access for all,

Application of Articles 4 and 5 of the Directive

1. Notes that the above-mentioned Commission communication on the future of European regulatory audiovisual policy highlights positive results and that the indicators, in all but a few cases, show an increase in the scheduling of European works; notes that the quotas for the broadcasting of European works and works of independent producers have broadly been met; notes that the Commission considers that the objectives of the Directive have been achieved; encourages Member States, however, to strengthen their efforts with regard to broadcasting of European and independently-produced programmes;
2. Regrets the fact that over the reference period analysed in the Commission's 6th report on the application of Articles 4 and 5 (COM(2004)0524), the proportion of independent productions has declined by 3.48 % in four years (page 7 of the report);
3. Notes that major discrepancies among the methods of applying and interpreting the provisions of the Directive make it impossible accurately to reflect the situation, as the findings of the independent audits have shown; recommends that the Commission establish and forward to the Member States a standard grid making it possible to obtain comparable results; stresses the urgency of analysing the results from the new Member States; proposes that this standard grid also include data on services to assist the disabled;
4. Stresses that a more consistent indicator to measure compliance with Article 5 would be to base the 10 % quota on value (rather than on qualifying hours), thus removing the inconsistencies observed among the Member States as to what counts as qualifying hours;

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5. Regrets that some Member States have still not provided all the relevant information, particularly as regards satellite and/or cable TV channels, which are often omitted from national reports; considers that the Commission has a responsibility to ensure that the Member States comply with their obligations and that it should do more than merely stress that the notification requirement applies to all television programmes under the jurisdiction of a Member State; and calls on the Commission and the competent national authorities to impose clear sanctions in the event of persistent failure to comply with the relevant provisions or with the obligation to supply information;
6. Regrets that in certain Member States the application of quotas is calculated by broadcaster and not by channel, which is in breach of the principles of the Directive, such breach being particularly serious in Member States where there is a high concentration of broadcasters;
7. Calls for the discretion which the Member States are allowed in applying Article 4 to be at least compensated for by the communication of public, accurate and transparent indicators;
8. Believes that the differing interpretations among Member States of the concepts of "European work" and "independent producer" could be avoided if the Commission, in the context of the revision of the Directive, gave a more precise definition of the concepts of "independent producer", "European work" and "thematic channel"; considers also that this would offer greater legal certainty in the application of the Directive;
9. Notes that the quotas for "European works" are mainly filled by national works and supports voluntary initiatives for further quotas for non-national European works;
10. Stresses the importance of strengthening the MEDIA programme, pointing out that the objective behind its inception and its renewal is, and should continue to be, to support independent producers and small and medium-sized enterprises;
11. Stresses the importance of strengthening this programme as an essential tool of European audiovisual policy for professional training and support for the distribution, broadcasting and movement of cinematographic works; encourages the Member States to open up their educational systems to a knowledge of the European film heritage, the languages, cultures, tastes, histories and experiences of the peoples of Europe;
12. Recalls the importance, for the movement of European works, of European co-productions and common marketing strategies; notes that the European audiovisual space is better exploited by United States producers than by Europeans themselves — even though Europeans produce more documentaries and fiction — owing to the lack of an integrated and globalised European industry; considers that the imbalance in the movement of audiovisual works could jeopardise cultural diversity;
13. Considers that, to enable the European audiovisual industry to compete with the United States industry, European efforts should be geared much more towards promotion;
14. Draws the Commission's attention to the fact that, in the face of the onslaught by production groups on European markets, it seems essential to encourage aid for uniquely European content and to develop such content by establishing a link with sources of finance;
15. Recalls the importance of giving the greatest possible number of European citizens access in as many languages as possible to pan-European channels such as Arte and Euronews or other similar initiatives; calls on the Commission and the Member States to support Europe-wide information about, and the broadcasting of, European cultural events, by also providing formats accessible to the disabled (i.e. with audio-description, subtitling and sign language);
16. Stresses that methods of qualitative analysis must be established as a matter of priority covering the cultural content of European audiovisual production and recalls the importance of the RTD Framework Programme;

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Revision of the Directive

17. Stresses that the audiovisual sector contributes to technological innovation, economic growth and job creation; considers it also to be an important instrument for the functioning of the single market; believes that it is also of critical importance to the functioning of democracy, provided there is diversity of input and opinion, pluralism and cultural diversity; considers that, precisely in order to maintain such democratic values and freedom of expression and opinion, measures are needed to regulate the protection of the right to one's own image;

18. Asserts that the European audiovisual model must be founded on a balance between a strong, independent and pluralistic public service sector and a dynamic and equally pluralistic commercial sector, both of which are directly and indirectly creators of jobs; considers that the continued existence of this model is essential to the vitality and quality of creative work and requires a legislative framework to ensure respect for the rights of Europeans;

19. Stresses that universal public access to high-quality and diverse content is becoming ever more crucial against a background of technological change and increased concentration in an ever more competitive and globalised environment; considers that public broadcasting services are essential in forming opinion in a democratic manner and allowing people to experience and familiarise themselves with cultural diversity, and that such services must have equal opportunities of priority access to the market, including in new media services;

20. Considers that the Directive needs to be revised in order to tackle structural changes; considers that such a revision must not call into question the fundamental principles of the Directive — free movement of European broadcasts, free access to major events, promotion of European works and recent independent productions, protection of minors and public policy, consumer protection, right of reply — but rather must adapt them to the new challenges without losing sight of the need for quality and economic vitality in the sector;

21. Recommends that a safeguard clause be included expressly to establish respect for Member States competence in the fields of culture and the media;

22. Considers that the revision of the Directive should ensure the development of new technologies and new services, in order to secure the growth of the European economy in accordance with the Lisbon strategy;

23. Notes that the Commission has for some years been conducting a public consultation around a new directive which it intends to present at the end of 2005; notes that the British Presidency of the Council will be holding a conference in Liverpool on the revision of the Directive; calls for Parliament to be fully involved in all stages of the proceedings;

24. Fears that, on such an important subject, the debate and consultation will give preference to economic considerations and inter-governmental relations; is aware that the market alone will not resolve the problems and that the institutions must respond to the concerns of Europeans about the cultural content of television;

25. Calls on the Commission to ensure that independent producers are in a position to retain the rights in their productions and make it easier for them to uphold their intellectual property rights so as to improve their ability to attract private investment;

26. Is concerned about the pressure to reduce regulation in this sector and recalls that the Directive establishes minimum standards which have not succeeded in preventing a deterioration in the quality of programmes;

27. Notes the role of advertising in the funding of certain general-interest TV channels and its effect on scheduling; notes however that in some countries there remain such serious shortcomings in the application of the articles restricting the duration of advertisements that it has become difficult to maintain strict separation between advertising and editorial content, to the detriment of the cultural integrity of the works;

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28. Underlines the need to define clearly the content and regulation of advertising, in particular that relating to alcohol, which has a particularly harmful effect on children and vulnerable people; recalls that the protection of minors must remain a priority objective of audiovisual policy and a fundamental principle which ought to be extended to all audiovisual services made available to the public;
29. Emphasises, therefore, the need to preserve the rules limiting the opportunities for advertisement breaks during audiovisual works;
30. Stresses that the revision of the Directive must make it possible to lay down legal obligations and set out a firm political will to ensure strict separation between editorial and artistic content on the one hand and commercial promotion on the other;
31. Calls for the revised Directive to impose on Member States and their competent authorities more effective mechanisms to ensure the observance and monitoring of the legislation and the imposition of the sanctions provided for, particularly as regards quotas and advertising;
32. Notes that digitisation and interactivity represent opportunities both for the industry and for consumers, but that more choice does not necessarily equate with better quality or a greater proportion of European works; notes the risk of a two-speed audiovisual sector emerging;
33. Observes that new forms of television have been introduced, for example television via ADSL networks, via the Internet and via mobile phone; considers that, in order to avoid any distortion of competition between the different forms of television available today, the application of the Directive to these new forms of television should be clarified as part of the revision process;
34. Notes that extending the scope of the Directive should not prevent the strengthening of the European model founded on freedom of movement, high quality, public service, the general interest and respect for European values;
35. Stresses the need for European legislation to be so far as possible independent of audiovisual technology; calls for such legislation to state clearly that public service providers may make use of all new technologies and new media, such as the Internet and WAP services, without thereby infringing the rules of the internal market;
36. Welcomes, in the light of technological developments (such as growing convergence and digitisation), the Commission's announcement, in connection with the revision of the Directive, of a proposal to broaden its scope to cover all services based on the principle of a graduated form of regulation;
37. Considers that, if the scope of the Directive is extended to cover new services, the Directive should ensure that these services, too, abide by the principles of promoting European works and independent European productions; is aware that the mechanisms provided for under Articles 4 and 5 relating to traditional services are not suited to the new services and calls on the Commission to lay down obligations relating to investment (production or purchase), to offering European content and to providing access to this content;
38. Considers that, in order to ensure cultural diversity, measures should be laid down to promote European works for new services, such as video on demand;
39. Stresses the urgent need, in the light of digital technology, to make radical changes to the approach taken until now in Community legislation, based on a distinction between content and "infrastructure";
40. Stresses the need both to reinforce the monitoring of non-EU channels under the jurisdiction of a Member State in accordance with Article 2 of the Directive which broadcast programmes inciting to racial and religious hatred, and to improve coordination between Member States in this area;

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41. Calls for particular attention to be paid to access to programmes for persons with visual or hearing impairments; proposes that Member States submit data to the Commission each year on the percentage of their total programme output carrying services to assist the disabled (i.e. subtitling, audio-description and sign language) on both their public service and commercial channels and draw up national action plans to increase the availability of such services and make them easier to access on TV equipment;

42. Asks the Council and the Commission, within the framework of the information society, to develop and to implement media literacy programmes to promote active and aware citizenship in Europe;

43. Stresses the importance of the working party of national regulators and calls for Parliament to be involved in it as an observer;

44. Proposes the holding of a European Audiovisual and Media Year, involving the institutions, political parties, civil society and the audiovisual sector, with a view to drawing up a "European Innovation Pact" guaranteeing a balance between competitiveness, high quality, culture and pluralism;

Pluralism and concentration

45. Is alarmed at the tendency towards (vertical and horizontal) concentration of the media in certain Member States, which poses a threat to democracy and a risk to cultural diversity and could accentuate tendencies towards the extreme commercialisation of the audiovisual sector and the hegemony of certain national products over those with narrower linguistic areas and smaller production;

46. Stresses that particular care should be paid, in order to ensure pluralism of opinion and diversity in programme distribution, to preventing, when drafting Community or national regulations on digital switch-over, the majority of new digital distribution services from falling under the control or decisive influence of large, capital-rich, multinational media groups — particularly those with interests outside the EU;

47. Stresses that competition and competition law are not enough to ensure media pluralism; considers that pluralism is based on respect for and promotion of diversity of points of view across all media, through the recognition of editorial independence, both in the public and the commercial sectors, and through the authority and independence of the regulatory authorities;

48. Is concerned about patterns of concentration of advertising in some Member States;

49. Stresses that the fragmentation of the European audiovisual markets into national markets does not reduce the risks of media concentration at European level, and that a violation of freedom of expression and respect for pluralism and diversity as a result of media concentration in a Member State also constitutes a risk factor for the Community institutional and democratic order;

50. Calls on those Member States, both old and new, which are experiencing rapid development in the sector, to examine and strengthen, if necessary, national rules or measures to restrict concentration of media ownership and to respect the independence of the regulatory authorities; considers that the Commission's role in supervising, exchanging information and comparing legislation should be strengthened; reminds the Commission of its request to draw up a Green Paper on the degree of media concentration in Europe, which would allow a broad debate to be launched on the subject, and of its wish to include in the revised Directive an agreement on the diversification of media ownership and control;

51. Observes that, since cultural diversity and the freedom and pluralism of the media remain the most important elements of the European audiovisual model, these three values are essential prerequisites for cultural exchange and democracy; considers that the revised Directive should accordingly include provisions to uphold and protect freedom of expression and media pluralism;

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