



**COUNCIL OF  
THE EUROPEAN UNION**



Luxembourg, 15 October 2007  
13953/07 (Presse 239)

## **Television without frontiers**

The Council adopted a common position on a draft directive amending certain provisions regulating the pursuit of television broadcasting activities. The common position will be sent to the European Parliament with a view to the second reading, in the context of the co-decision procedure (10076/07).

The common position reflects the outcome of informal contacts between the European Parliament, the Commission and the Council, as foreseen by the Joint Declaration on Practical Arrangements for the Co-decision Procedure. Therefore, the text now adopted by the Council is likely to be adopted by the European Parliament with no changes.

The draft directive mainly aims to adapt the current regulatory framework to the consequences of the use of new technologies in the transmission of audiovisual media services.

# **P R E S S**

The Commission submitted its proposal on 13 December 2005. Although the common position contains some significant changes with regard to the Commission's proposal, the basic approach proposed by the Commission, as well as all the principal elements contained in its proposal, have been retained. The most significant changes are set out below.

### **Structural changes**

The Commission proposed a two-tier regulatory architecture comprising a core of rules applicable to all audiovisual media services and an additional layer of more restrictive obligations applicable only to television broadcasting. The common position retains this basic philosophy but introduces significant structural changes to ensure that obligations applicable to all service providers are grouped separately from those applicable only to on-demand services, which are in turn grouped separately from those applicable only to television broadcasting.

### **Substantive Changes**

The extension of scope proposed by the Commission to include on-demand audiovisual media services is clarified by the text, notably through the introduction of requirement for on-demand services to consist of 'television-like' programmes.

Regarding the question of applicable law, the common position supports the basic approach of the Commission's proposal, i.e. that jurisdiction should continue to be determined on the basis of the establishment of the service provider (**country of origin principle**) but that there should be a mechanism for dealing with cases where a television broadcast is directed wholly or mostly towards a Member State other than the one where the broadcaster is established. However, this mechanism is developed in more detail.

The common position recognises the important role of '**soft law**' by including an obligation on Member States to encourage co- and/or self-regulatory regimes to the extent permitted by their legal systems.

The common position establishes the principle that **product placement** be prohibited for all programmes produced after the transposition deadline for the Directive. However, exemptions to this principle are provided for certain types of programme (films, series, sports and light entertainment) subject to certain conditions. These exemptions will apply automatically unless a Member State opts out of them. The requirement to identify product placement at the moment that a programme resumes after an advertising break has also been added.

The common position essentially follows the philosophy of the Commission proposal, whereby a core of 'qualitative' rules on audiovisual commercial communication (**advertisement**) are applied to all audiovisual media services, whilst the 'quantitative' rules, which apply only to television broadcasting, have been simplified and streamlined compared to the rules of the existing Directive, with a view to creating a regulatory environment in which the 'free-to-air' broadcasting model can continue to compete with subscription-based television channels.

The common position ensures additional protection for **children**. It requires Member States and the Commission to encourage the development of codes of conduct regarding advertising of 'junk food' aimed at children, whilst the quantitative rules on interruption of programmes are stricter for children's programmes.

With the aim of **protecting minors**, whilst leaving the current provisions applicable to television broadcasting intact, the common position adds an obligation with regard to on-demand audiovisual media services. The obligation envisages that minors are not normally able to access services which might seriously impair their physical, mental or moral development. The common position refers to filtering systems and PIN codes as examples of measures that could be used. It also draw attention to the Recommendation of the European Parliament and the Council of 20 December 2006 on the protection of minors and human dignity and on the right to reply.

The Commission proposal sought to ensure the non-discriminative application of national systems aimed at guaranteeing, for the purpose of short news reports, broadcasters' access to events of **high interest to the public**. The common position goes further by creating a Community-wide right, the key aspects of this right being harmonised by the Directive, whilst the detailed modalities and conditions of its application being left to Member States to decide in accordance with the principle of subsidiarity.

Concerning the promotion of **European works**, the provisions of the existing Directive applicable to television broadcasting are left untouched by the common position. With regard to on-demand audiovisual media services, however, media service providers have a new obligation to promote production of and access to European works.

The common position contains an obligation on Member States to encourage service providers to ensure that their services are gradually made accessible to people with a **visual or hearing disability**.

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