

Brussels, 22 July 2004

OPINION
of the
Committee of the Regions
of 17 June 2004
on the
**Communication from the Commission to the Council, the European Parliament,
the European Economic and Social Committee and the Committee of the Regions
on the
Future of European Regulatory Audiovisual Policy**
COM(2003) 784 final

THE COMMITTEE OF THE REGIONS,

Having regard to the Communication from the Commission to the Council, the European Parliament, the European Economic Social Committee and the Committee of the Regions on the *Future of European Regulatory Audiovisual Policy* (COM(2003) 784 final);

Having regard to the decision of the European Commission of 15 December 2004 to consult it on this subject, under the first paragraph of Article 265 of the Treaty establishing the European Community;

Having regard to the decision of its President of 5 April 2004 to instruct its Commission for Culture and Education to draw up an opinion on this subject;

Having regard to its Opinion on *Certain legal aspects relating to cinematographic and other audiovisual works* (CdR 387/2001 fin)¹;

Having regard to its Opinion on the *Fourth Report from the Commission on the application of Directive 89/553/EEC "Television Without Frontiers"* (CdR 90/2003 fin)²;

Having regard to its Opinion on the *Communication on Barriers to widespread access to new services and applications of the information society through open platforms in digital television and third generation mobile communications and the Communication on the transition from analogue to digital broadcasting: (from digital "switchover" to analogue "switch-off")* (CdR 308/2003 fin);

Having regard to the draft opinion (CdR 67/2004 rev.1) adopted by the CoR Commission for Culture and Education on 5 April 2004 (rapporteur: **Mr Dieter Schiffmann**, Member, Rheinland-Palatinate Landtag (DE-PES));

unanimously adopted the following opinion at its 55th plenary session, held on 16-17 June 2004 (meeting of 17 June):

¹ OJ C 192 of 12.8.2002, p.15

² OJ C 256 of 24.10.2003, p.79

1. **The Committee of the Regions' views**

The Committee of the Regions

- 1.1 **acknowledges** the central role of the audiovisual media in the growth of a pluralistic society in Europe, the safeguarding of regional and local identity and the development of democratically enshrined civil rights;
- 1.2 **underlines** the objective of adapting the legal framework for the audiovisual media in a way that is conducive to – and encourages – their positive development, as befits their key remit;
- 1.3 **recognises the need** also to give consideration to other paramount objectives of general interest connected with the regulation of the audiovisual sector, such as competition, consumer protection and telecommunication law, and welcomes the fact that the Commission has taken this opportunity to draw up a communication on the further development of European regulatory policy in the entire audiovisual sector;
- 1.4 **considers it is useful**, particularly with EU enlargement in the offing, to clarify the legal framework governing audiovisual policy and to set out the timetable for its further development, so that, *inter alia*, the accession countries have the greatest possible legal certainty at an early stage;
- 1.5 **sees** major opportunities for the continued development of the audiovisual sector in ongoing technical innovations (e.g. flat-screen televisions), and stresses the need to reflect that in the future framework;
- 1.6 **endorses – and underscores** – in essence the Commission's principles for a regulatory framework in the audiovisual sector;
- 1.7 **shares** in essence the positive assessment of the *Television without Frontiers* directive (TVWF directive) as a sound and secure legal framework for television services within the Community that has, essentially, ensured the free movement of television broadcasting services within the Community, and draws attention to its opinion on the subject (CdR 90/2003 fin);
- 1.8 **stresses** the importance of the country of origin principle as a basic tenet of the single market in the audiovisual sector, but also shares the concerns expressed during the consultation exercise that, given the diversity of national laws, broadcasters might seek out whichever Member State has the least stringent legislation;
- 1.9 **shares** the Commission's view that a thorough revision of the TVWF directive might be necessary in order to take account of changes;

- 1.10 in the light of the developments and changes that have taken place on the audiovisual market in the meantime, **would have welcomed** therefore a Commission initiative for a speedy and comprehensive reworking of the TVWF directive into a coherent European legal framework for the dissemination of audiovisual content, which could provide for differing degrees of regulation for the services subject to the TVWF directive and for information society services;
- 1.11 **considers** that further issues relating to the application of TVWF directive must not be addressed through interpretative communications but through a speedy reworking of the directive itself in order to achieve the requisite legal certainty;
- 1.12 **stresses** the importance of safeguarding competition rules in audiovisual policy;
- 1.13 **underscores** the responsibility for the maintenance and further development of media pluralism in Europe, the EU Member States and the European regions;
- 1.14 **stresses** the need for a legal framework for information society services such as e-commerce and access to new services and, since differing degrees of regulation are required, is pleased that the Commission has no intention of calling the distinction between information society services and services subject to the TVWF directive into question;
- 1.15 **stresses** the need for a consumer-friendly switch-over from analogue to digital broadcasting and draws attention to its opinion on the subject (CdR 308/2003 fin);
- 1.16 **stresses** the tremendous importance of the right to information as a personal right enjoyed by European citizens, and is pleased that, as part of the consultation exercise, the Commission addresses the question of the right to information on events of major importance for society and considers that the issue needs further attention;
- 1.17 **underscores** the key role of regional film support, and firmly believes that regional and local audiovisual production is becoming more important, and, together with national output, provides a counterbalance to non-European productions;
- 1.18 **underscores** the need for action to promote European works, and considers that support for the inclusion of such works by independent producers in the programme schedules does much to promote a diverse European audiovisual landscape and is also a particularly appropriate way of safeguarding and highlighting Europe's diverse regional and local heritage; it does not feel, however, that the quota rule in place up to now does adequate justice to this objective;
- 1.19 **underscores** the need for balanced qualitative and quantitative rules on advertising;

- 1.20 **welcomes** the Commission's readiness to review the recommendation on the protection of minors and human dignity;
- 1.21 **considers** that the right of reply is a key element in protecting human rights and freedom of expression, and welcomes the plan to extend that right to all media;
- 1.22 **welcomes** the Commission's intention to update the *recommendation on the protection of minors and human dignity*, with the focus on media literacy, right of reply, and measures against discrimination or incitement to hatred in all online media;
- 1.23 **recognises** the need for co- and self-regulation models in the individual Member States, which provide scope for reflecting distinctive national and regional features; at the same time, however, it also backs the plan to draw up a study of co-regulatory models in the media sector in order to examine their effect and compatibility with the European legal framework;
- 1.24 **underscores** the need for the Community to continue to comprehensively safeguard the European audiovisual model at international level too, not least in the WTO negotiations.

2. Committee of the Regions' recommendations

The Committee of the Regions

- 2.1 **recommends** the rapid revision and reworking of the TVWF directive in order to put in place the requisite legal certainty, particularly for the accession countries, and to adapt the directive to ongoing technical developments;
- 2.2 **recommends** that, in the reworking of the TVWF directive and the other general conditions governing the audiovisual sector, account should be taken of – and support given to – the key role of the audiovisual media and productions in the development and growth of regional and local identity. Accordingly, the heavy concentration of this industry must also be contained and/or compensated for at national and international level;
- 2.3 **recommends** that, in the light of increasing media convergence, the legal framework should be divided up according to production content, regardless of the technical platform involved;
- 2.4 **advocates** maintaining the current qualitative rules on advertising, particularly in relation to the protection of children and minors and the distinction between advertising and editorial content;
- 2.5 **would recommend**, however, that, bearing in mind increasing user choice and control, further consideration be given to making the quantitative rules on advertising more flexible,

not least against the backdrop of EU enlargement, in order to send out a signal calling for less red tape;

- 2.6 **recommends** that the advertising rules should also apply to the new techniques such as split-screen, virtual and interactive advertising, and that appropriate provisions should be introduced to maintain the clear distinction between editorial content and advertising, thereby clarifying the legal position regarding the use of advertising techniques of this kind;
- 2.7 **welcomes** the fact that more and more related regulatory areas such as competition policy, copyright protection and consumer protection are also being considered within the purview of audiovisual policy and the TVWF directive, and recommends that future legislation should increasingly reflect these interrelations;
- 2.8 stresses that, particularly with ten new Member States joining the Union, action must be taken to ensure that the rules on the protection of minors and human rights are consistently applied across the entire audiovisual sector;
- 2.9 **recommends** therefore that, in the proposal announced in the communication to update the recommendation on the protection of minors and human dignity, greater efforts should be made to put in place efficient self- and co-regulation tools, including making greater use of exchange of best practice and network cooperation, particularly in the digital and online environment;
- 2.10 **recommends** that the proposal announced in the communication should attach particular importance to promoting media literacy since, as the Commission rightly notes, "to know where to find information and how to interpret it nowadays represents an essential skill", and that this necessary proposal promoting media literacy should cover all the languages of the European Union, ensuring a minimum level of representation and information content for each of them;
- 2.11 **supports** safeguarding the right to information, including information in relation to events that are subject to exclusive rights and events of major importance for society; the CoR underscores its view that the rules for the broadcasting of major events on free-to-air television should be flexible, bearing in mind the specific linguistic features of each individual country, and that consideration should be given to drawing up a European list of major events; the CoR also recommends establishing, at European level, a right to short television reports on information of general interest;
- 2.12 **recommends**, that, given the healthy development of the European market in audiovisual content, further consideration should be given to promoting European cinema and television films not, as now, under the quota arrangements set out in Articles 4 und 5 of the TVWF directive, but rather by providing more backing to production and distribution through

support programmes; it stresses its view that, when assessing these works, particular consideration should be given to preserving European culture and to the impact on regional policy and the economy; to this end a specific support programme should be developed for production and distribution of a regional nature and/or using different European languages;

- 2.13 **reiterates** its recommendation that, given the investments required for the transition to digital production and dissemination, and the fact that local and regional television broadcasting produces much of its own material, possibilities for supporting regional and local television services should be encouraged or permitted so as to ensure cultural and regional diversity when television goes digital; to this end it is proposed that priority be given to supporting investment in the digitalisation of regional audiovisual services;
- 2.14 **advocates** that the review of the TVWF directive should also ensure that public service broadcasting is able to fulfil its remit in line with Member State rules; it also advocates support for public-service operators providing regional coverage.

Brussels, 17 June 2004

The President
of the
Committee of the Regions

The Secretary-General
of the
Committee of the Regions

Peter Straub

Gerhard Stahl