



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 30.4.2004
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2004/0117 (COD)

Proposal for a

**RECOMMENDATION OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

**on the protection of minors and human dignity and the right of reply in relation to
the competitiveness of the European audiovisual and information services industry**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

On 24 September 1998, the Council adopted the Recommendation on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (98/560/EC)¹ ("the Recommendation"). The Recommendation is the first legal instrument at EU-level concerning the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet.

In section III of the Recommendation, paragraph 4 calls on the Commission to present an evaluation report on its application in the Member States, two years after its adoption, to the European Parliament and the Council.

The implementation of the Recommendation was evaluated for the first time in 2000, and the first report was published in 2001: Evaluation Report to the Council and the European Parliament on the application of Council Recommendation of 24 September 1998 on protection of minors and human dignity². The report indicated that the implementation of the Recommendation was already quite satisfactory in overall terms. The Council meeting (Culture) adopted its conclusions concerning the evaluation report on 21 June 2001, and Parliament adopted a resolution on the report on 11 April 2002³, in which it called on the Commission to draw up a further report, at an appropriate time, and preferably before 31 December 2002.

On 12 December 2003, the European Commission has adopted a new evaluation report on the September 1998 Council Recommendation concerning the protection of minors and human dignity in audiovisual and information services. The report analyses the measures adopted in the Member States and at EU level since the year 2000.

In order to be able to keep up with the challenges which technological developments bring, the Commission now follows up on the Second evaluation report by proposing this additional Recommendation.

2. CONTEXT

The Recommendation calls on the Member States, industry and interested parties, as well as the Commission, to take steps to enhance the protection of minors and human dignity in the broadcasting and internet sectors. Illegal, harmful and undesirable content and conduct on the Internet continues to be a concern for law-makers, industry and parents. There will be new challenges both in quantitative (more "illegal" content) and qualitative terms (new platforms, new products). Taking into account the ever-increasing processing power and storage capacity of computers, and

¹ OJ L 270, 7.10.1998, p. 48.

² COM(2001) 106 final, 27.2.2001.

³ C5-0191/2001 - 2001/2087(COS).

the fact that broadband technologies allow distribution of content such as video on 3G mobile telephones, the need for a safe environment is greater than ever.

3. SCOPE OF THE RECOMMENDATION

The Recommendation focuses on the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet.

4. WHY A RECOMMENDATION FROM THE EUROPEAN PARLIAMENT AND THE COUNCIL RATHER THAN A RECOMMENDATION FROM THE COMMISSION?

Given that the harmonisation of laws of the Member States is excluded from industrial and cultural policies, the Community is bound to use non-binding instruments, such as recommendations, to fulfil the tasks and obligations enshrined in the Treaty.

The EC Treaty gives the Commission powers to adopt Recommendations: Article 249 provides that “in order to carry out their task and in accordance with the provisions of the Treaty ... the Commission shall ... make recommendations”. Article 211 states that “in order to ensure the proper functioning and development of the common market, the Commission shall ... formulate recommendations or deliver opinions on matters dealt with in this Treaty, if it expressly so provides or if the Commission considers it necessary”.

Nevertheless, the Commission considers that a Recommendation from the European Parliament and the Council has to be preferred to a Recommendation from the Commission on this matter.

The Recommendation in question seeks the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity. This can be better achieved if the Recommendation is discussed and adopted by the Council. In addition to this, the European Parliament has fully backed the need to protect minors and human dignity in its resolution⁴ of 11 April 2002, on the first evaluation report on the Recommendation. Therefore, it seems appropriate to fully involve the European Parliament in the discussion and adoption of the Recommendation. The involvement of the European Parliament will result in more public debate and a bigger impact of the Recommendation. In conclusion, the objective pursued by the Community can be better achieved by the adoption of a Recommendation from the European Parliament and the Council rather than a Recommendation from the Commission.

⁴ C5-0191/2001 - 2001/2087(COS).

5. LEGAL BASIS FOR THE RECOMMENDATION

The audiovisual and information industry in Europe has great potential for creating employment and contributing to economic growth. The conditions for the competitiveness of these industrial activities need to be improved, especially as regards better use of technological developments, such as digitisation. Therefore, the legal basis proposed for the Recommendation is Article 157 of the EC Treaty, which requires the Community and the Member States to ensure that the conditions necessary for the competitiveness of the Community's industry exist, with action aimed, inter alia, at fostering better exploitation of the industrial potential of policies of innovation, research and technological development.

Article 157 has already formed the legal basis for Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity⁵, which is complemented by this Recommendation and Council Decision of 20 December 2000 on the implementation of a programme to encourage the development, distribution and promotion of European audiovisual works (MEDIA Plus – Development, distribution and promotion 2001-2005)⁶.

⁵ OJ L 270, 7.10.1998, p. 48.

⁶ OJ L 13, 17.1.2001, p. 35.

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(text with EEA relevance)

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 157 thereof,

Having regard to the proposal from the Commission,⁷

Having regard to the Opinion of the European Economic and Social Committee,⁸

Having regard to the Opinion of the Committee of the Regions,⁹

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

- (1) Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity¹⁰ is the first legal instrument at Community level concerning the content of audiovisual and information services covering all forms of delivery, from broadcasting to the Internet.
- (2) By Decision No 276/1999/EC¹¹, the European Parliament and the Council adopted a multi-annual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (the "Safer Internet Action Plan").
- (3) Decision No 1151/2003/EC of the European Parliament and the Council¹² extended the Safer Internet Action Plan for two years and amended its scope to include measures to encourage exchange of information and coordination with the relevant actors at national level as well as special provisions for the accession countries.

⁷ OJ C [...], [...], p. [...]

⁸ OJ C [...], [...], p. [...]

⁹ OJ C [...], [...], p. [...]

¹⁰ OJ L 270, 7.10.1998, p. 48.

¹¹ OJ L 33, 6.2.1999 p. 1. Decision as last amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

¹² OJ L 162, 1.7.2003, p. 1.

- (4) Directive 2000/31/EC of the European Parliament and the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market¹³ clarifies some legal concepts and harmonises certain aspects in order to enable information society services to fully benefit from the internal market principles. A number of the provisions of Directive 2000/31/EC are also relevant to the protection of minors and human dignity, in particular Article 16(1)(e), according to which Member States and the Commission are to encourage the drawing up of codes of conduct regarding the protection of minors and human dignity.
- (5) The changing media landscape, resulting from new technologies and media innovation, makes it necessary to teach children, and also parents, to use the media effectively.
- (6) In the public consultation concerning Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities¹⁴, it was suggested that media literacy be included among the subjects covered by Recommendation 98/560/EC.
- (7) The Commission encourages cooperation and the sharing of experience and good practices between (self)regulatory bodies, which deal with the rating or classification of audiovisual content, with a view to enable all viewers, but especially parents and teachers, to assess the content of programmes.
- (8) As suggested during the public consultation concerning Directive 97/36/EC, it is appropriate for the right of reply to apply to all electronic media.
- (9) The Council resolution of 5 October 1995 on the image of women and men portrayed in advertising and the media¹⁵ which invites the Member States and the Commission to take adequate measures to promote a diversified and realistic picture of the skills and potential of women and men in society.
- (10) When tabling its proposal for a Council Directive implementing the principle of equal treatment between women and men in the access to and supply of goods and services¹⁶, the Commission noted that the portrayal of the sexes in the media and in advertising raises important questions about the protection of the dignity of men and women, but concluded that it would not be appropriate to address these questions in that proposal.
- (11) It is appropriate to seek conciliation between the principle of protection of human dignity and free speech through the adoption by the Members States of a cross-media approach explicitly aimed at encouraging the industry to avoid and to combat any type of discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media.

¹³ OJ L 178, 17.7.2000, p. 1.

¹⁴ OJ L 202, 30. 7. 1997, p. 60.

¹⁵ OJ C 296, 10.11.1995, p. 15-16

¹⁶ COM(2003) 657.

- (12) This Recommendation should complement Recommendation 98/560/EC in order to take account of technological developments,

I. RECOMMEND that the Member States foster a climate of confidence which will promote the development of the audiovisual and information services industry by:

- (1) considering the introduction of measures into their domestic law or practice in order to ensure the right of reply across all media, without prejudice to the possibility of adapting the manner in which it is exercised to take into account the particularities of each type of medium;
- (2) promoting, in order to encourage the take-up of technological developments and in addition to and consistent with existing legal and other measures regarding broadcasting services, and in close cooperation with the parties concerned:
 - action to enable minors to make responsible use of on-line audiovisual and information services, notably by improving the level of awareness among parents, educators and teachers of the potential of the new services and of the means whereby they may be made safe for minors, in particular through media literacy or media education programmes.
 - action to facilitate, where appropriate and necessary, identification of, and access to, quality content and services for minors, including through the provision of means of access in educational establishments and public places.
- (3) encouraging industry to avoid discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media, and to combat such discrimination.

II. RECOMMEND that the industries and parties concerned:

- (1) develop positive measures for the benefit of minors, including initiatives to facilitate their wider access to audiovisual and information services, while avoiding potentially harmful content, including a ‘bottom-up’ harmonisation through cooperation between self-regulatory and coregulatory bodies in the Member States, and through the exchange of best practices concerning such issues as a system of common, descriptive symbols which would help viewers to assess the content of programmes;
- (2) develop effective measures to avoid discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in all media, and to combat such discrimination and promote a diversified and realistic picture of the skills and potential of women and men in society.

Done at Brussels, [...]

For the European Parliament
The President

For the Council
The President

ANNEX

INDICATIVE GUIDELINES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF MEASURES IN THE DOMESTIC LAW OR PRACTICE SO AS TO ENSURE THE RIGHT OF REPLY ACROSS ALL MEDIA

Objective: introducing measures in the domestic law or practice of the Member States in order to ensure the right of reply across all media, without prejudice to the possibility to adjust its exercise to the particularities of each type of medium.

- Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular, but not limited to, reputation and good name, have been affected by an assertion of **facts in a publication or transmission** should have a right of reply or equivalent remedies. Member States should ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply should be within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the publication or transmission to which the request refers.
- A right of reply or equivalent remedies should exist in relation to all media under the jurisdiction of a Member State.
- Member States should adopt the measures needed to establish the right of reply or the equivalent remedies and should determine the procedure to be followed for the exercise thereof. In particular, they should ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.
- An application for exercise of the right of reply or the equivalent remedies should be rejected if the claimant does not have a legitimate interest in the publication of such a reply, or if the reply would involve a punishable act or transgress standards of public decency.
- Provision should be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies could be subject to judicial review.