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COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0260 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251(2) of the EC Treaty

concerning the

Common Position of the Council on the adoption of a proposal for a Directive of the European Parliament and of the Council 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 activities (Audiovisual Media Services Directive)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and the Council [(document COM(2005) 646 -2005/0260(COD))]: 15 December 2005

Date of the opinion of the European Economic and Social Committee: 13 September 2006 [CESC 1178/2006]

Date of the opinion of the European Parliament, first reading: 13 December 2006

Date of transmission of the amended proposal: 29 March 2007

Date of adoption of the Common Position: 15 October 2007

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the Audiovisual Media Services Directive (AVMSD) is to deepen the internal market for non-linear/on-demand audiovisual services (minimum harmonisation with regard to protection of minors, hate speech, commercial communication) on the basis of the country-of-establishment principle, and to modernize the rules, especially advertising rules, for linear/broadcast services.

3. COMMENTS ON THE COMMON POSITION

3.1 General Comment on Common Position

The (political agreement on the) Common Position is, in substance and to a large extent, in line with the Commission's proposal and therefore can be supported fully. This is especially true for rules on scope, commercial communication, product placement, short reports, media pluralism, media literacy and co-regulation.

3.2 Agreement at Common Position Stage

The Common Position is the result of intense inter-institutional negotiations. The Chair of the CULT Committee, Mr Nikolaos Sifunakis, confirmed the agreement in a letter of 21 May 2007 to Dr. P. Witt, President of the COREPER.

At the Council meeting on 24 May, the Commission took note with satisfaction that the co-legislators made the choice not to modify the rules that define the **place of establishment** of a media service provider in Article 2 and reaffirmed the right of a broadcaster to offer its services in the Internal market from the country of establishment he chooses. As concerns **stricter national rules** (Article 3), the Audiovisual Media Services Directive provides a new procedure regarding broadcasters possibly circumventing the stricter rules of a Member State having availed itself of the faculty to adopt such rules that are compatible with Community law.

The Commission is confident that the first stage of the procedure, consisting of cooperation between the Member States concerned on a "best endeavours" basis, will enable most difficulties to be solved at an early stage. Should the non-binding cooperation stage fail, a second, formal stage would begin, where the European Commission would play its role according to the new procedure set in place, which is to examine the compatibility of the Member State's proposed measures with Community law. If the proposed measures are deemed by the Commission not to be compatible with Community Law, the Member State concerned must refrain from taking them. The Commission considers that these procedural provisions safeguard the "country of establishment" principle.

With regard to **short reporting** for general new purposes the compromise provision is acceptable for the Commission. On compensation the compromise wording reads: *"Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access."* This wording was chosen to ensure that the right to short reporting can not be read as compulsory license which would have given the receiving broadcasters wider rights. This solution is largely supported by all stakeholders, broadcasters as well as rights owners.

As regards the **ban on discrimination in audiovisual commercial communications**, Article 3d(1) c) of the common position, the Council accepted, in response to Parliament's request, that the compromise text should refer to all the categories of discrimination mentioned in Article 13 of the Treaty and read "must not include or promote ---". This is acceptable for the Commission.

With regard to the **independence of regulatory authorities** the Presidency proposed a reference in a recital referring to the faculty for Member States to create independent national regulatory bodies. These should be independent from national governments as well as from operators. The EP and the Commission found it necessary that the reference to such bodies be included in the operative part of the Directive. The compromise in Article 23b, which is acceptable to the Commission, reads: *"Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 thereof, notably through their competent independent regulatory bodies."*¹

¹ Original Commission Proposal (Art. 23b.):
"1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently. 2. National regulatory authorities shall provide

4. CONCLUSION

The Common Position meets the aims of the Commission's initial and modified proposals. The Commission therefore supports the text.

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