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(Acts whose publication is not obligatory)

COUNCIL

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 dignity

(98/560/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 130 thereof,

Having regard to the Commission's proposal,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

(1) Whereas the Commission adopted the Green Paper on the protection of minors and human dignity in audiovisual and information services on 16 October 1996 and the Council received it favourably at its meeting on 16 December 1996;

(2) Whereas the European Parliament ⁽³⁾, the Economic and Social Committee ⁽⁴⁾ and the Committee of the Regions ⁽⁵⁾ have all adopted opinions on the Green Paper;

(3) Whereas the conclusions of the consultation process were submitted by the Commission to the Council at its meeting of 30 June 1997 and unanimously welcomed;

(4) Whereas on 16 October 1996, the Commission adopted the communication on illegal and harmful content on the Internet; whereas on 17 February 1997 the Council and the representatives of the Governments of the Member States, meeting within the Council, adopted the resolution on illegal and harmful content on the Internet ⁽⁶⁾; whereas on 24 April 1997 the European Parliament adopted an opinion on the Commission communication on illegal and harmful content on the Internet; whereas this work is continuing in a manner complementary to the present recommendation since it deals with all forms of illegal and harmful content specifically on the Internet;

(5) Whereas the present recommendation addresses, in particular, issues of protection of minors and of human dignity in relation to audiovisual and information services made available to the public, whatever the means of conveyance (such as broadcasting, proprietary on-line services or services on the Internet);

(6) Whereas, in order to promote the competitiveness of the audiovisual and information services industry and its adaptation to technological development and structural changes, the provision of information, the raising of awareness and the education of users are essential; whereas this is also a condition

⁽¹⁾ Opinion delivered on 13 May 1998 (not yet published in the Official Journal).

⁽²⁾ OJ C 214, 10. 7. 1998, p. 25.

⁽³⁾ OJ C 339, 10. 11. 1997, p. 420.

⁽⁴⁾ OJ C 287, 22. 9. 1997, p. 11.

⁽⁵⁾ OJ C 215, 16. 7. 1997, p. 37.

⁽⁶⁾ OJ C 70, 6. 3. 1997, p. 1.

- of the European citizen's full participation in the information society; whereas, therefore, in addition to measures to protect minors and to combat illegal content offensive to human dignity, legal and responsible use of information and communication services should be encouraged, through the exercise, *inter alia*, of parental control measures;
- (7) Whereas 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 activities ⁽¹⁾, and in particular Articles 22, 22a and 22b of Directive 89/552/EEC, lays down a full range of measures aimed at the protection of minors with regard to television broadcasting for the purposes of ensuring the free movement of television broadcasts;
- (8) Whereas the development of audiovisual and information services is of vital importance for Europe in view of their significant potential in the fields of education, access to information and culture, economic development and job creation;
- (9) Whereas full achievement of this potential requires the existence of a successful and innovative industry in the Community; whereas it is in the first instance incumbent on businesses to ensure and improve their competitiveness with the support of public authorities where appropriate;
- (10) Whereas the establishment of the climate of confidence needed to achieve the potential of the audiovisual and information services industry by removing obstacles to the development and full competitiveness of the said industry is promoted by the protection of certain important general interests, in particular the protection of minors and of human dignity;
- (11) Whereas the general competitiveness of the European audiovisual and information services industry will improve through the development of an environment that favours cooperation between the enterprises in the sector on matters concerning the protection of minors and human dignity;
- (12) Whereas the existence of certain technological conditions enables a high level of protection of the abovementioned important general interests, in particular the protection of minors and human dignity, and, consequently, the acceptance by all users of these services;
- (13) Whereas it is important therefore to encourage enterprises to develop a national self-regulatory framework through cooperation between them and the other parties concerned; whereas self-regulation could provide enterprises with the means to adapt themselves rapidly to the quickening technical progress and to market globalisation;
- (14) Whereas the protection of general interests sought in this manner must be seen in the context of the fundamental principles of respect for privacy and freedom of expression, as enshrined in Articles 8 and 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and as recognised by Article F(2) of the Treaty on European Union and by the case-law of the Court of Justice as general principles of Community law;
- (15) Whereas any restriction of these rights and freedoms must be non-discriminatory, necessary to achieving the desired objective and strictly proportional with regard to the limitations it imposes;
- (16) Whereas the global nature of communications networks necessitates an international approach to the question of the protection of minors and human dignity in audiovisual and information services; whereas, in this context, the development of a common indicative framework at European level makes it possible both to promote European values and make a decisive contribution to the international debate;
- (17) Whereas it is vital to distinguish between questions relating to illegal content which is offensive to human dignity and those relating to content that is legal, but liable to harm minors by impairing their physical, mental or moral development; whereas these two types of problem may require a different approach and different solutions;
- (18) Whereas the national laws in which Member States have laid down rules and principles on the protection of minors and human dignity reflect cultural diversity and national and local sensitivities; whereas, in this regard, particular attention must be paid to the application of the principle of subsidiarity;
- (19) Whereas, in view of the transnational nature of communications networks, the effectiveness of national measures would be strengthened, at Community level, by coordination of national initiatives, and of the bodies responsible for their implementation, in accordance with the respective responsibilities and functions of the parties concerned and by the development of cooperation and the sharing of good practices in relevant areas;

⁽¹⁾ OJ L 202, 30. 7. 1997, p. 60.

- (20) Whereas, as a supplementary measure, and with full respect for the relevant regulatory frameworks at national and Community level, greater self-regulation by operators should contribute to the rapid implementation of concrete solutions to the problems of the protection of minors and human dignity, while maintaining the flexibility needed to take account of the rapid development of audiovisual and information services;
- (21) Whereas the contribution of the Community, the aim of which will be to supplement Member States' measures to protect minors and human dignity in audiovisual and information services, should be based on the maximum use of existing instruments;
- (22) Whereas there should be close coordination of the various relevant initiatives conducted in parallel with the follow-up to the Green Paper, particularly the work on the follow-up to the communication on 'Illegal and Harmful Content on the Internet', including the resolution adopted by the Council and the representatives of the Governments of the Member States meeting within the Council on 17 February 1997, the 1997 European Parliament resolution and the two working party reports submitted to the Council on 28 November 1996 and 27 June 1997, work carried out according to the provisions of Article 22b of 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⁾ and the work on cooperation on justice and home affairs;
- (23) Whereas the implementation of this recommendation will be closely coordinated with that of any possible new measure resulting from the work on the follow-up to the Commission communication on illegal and harmful content on the Internet,
- I. HEREBY RECOMMENDS that the Member States foster a climate of confidence which will promote the development of the audiovisual and information services industry by:
- (1) promoting, as a supplement to the regulatory framework, the establishment on a voluntary basis of national frameworks for the protection of minors and human dignity in audiovisual and information services through:
- the encouragement, in accordance with national traditions and practices, of the participation of relevant parties (such as users, consumers, businesses and public authorities) in the definition, implementation and evaluation of national measures in the fields covered by this recommendation,
 - the establishment of a national framework for self-regulation by operators of on-line services, taking into account the indicative principles and methodology described in the Annex,
 - cooperation at Community level in developing comparable assessment methodologies;
- (2) encouraging broadcasters in their jurisdiction to carry out research and to experiment, on a voluntary basis, with new means of protecting minors and informing viewers, as a supplement to the national and Community regulatory frameworks governing broadcasting;
- (3) taking effective measures, where appropriate and feasible, to reduce potential obstacles to the development of the on-line services industry while sustaining the fight against illegal content offensive to human dignity, through:
- the handling of complaints and the transmission of the necessary information about alleged illegal content to the relevant authorities at national level,
 - transnational cooperation between the complaints-handling structures, in order to strengthen the effectiveness of national measures;
- (4) 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,
 - 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.

⁽¹⁾ OJ L 298, 17. 10. 1989, p. 23. Directive as amended by Directive 97/36/EC of the European Parliament and of the Council (OJ L 202, 30. 7. 1997, p. 60).

II. RECOMMENDS that the industries and parties concerned:

- (1) cooperate, in accordance with national traditions and practices, with the relevant authorities in setting up structures representing all the parties concerned at national level, in order *inter alia* to facilitate participation in coordination at European and international level in the fields covered by this recommendation;
- (2) cooperate in the drawing up of codes of conduct for the protection of minors and human dignity applying to the provision of on-line services, *inter alia* to create an environment favourable to the development of new services, taking into account the principles and the methodology described in the Annex;
- (3) develop and experiment, as regards broadcasting services, on a voluntary basis, with new means of protecting minors and informing viewers in order to encourage innovation while improving such protection;
- (4) 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;
- (5) collaborate in the regular follow-up and evaluation of initiatives carried out at national level in application of this recommendation.

III. INVITES the Commission to:

- (1) facilitate, where appropriate through existing Community financial instruments, the networking of the bodies responsible for the definition and implementation of national self-regulation frameworks and the sharing of experience and good practices, in particular in relation to innovative approaches, at Community level, between the

Member States and parties concerned in the various fields covered by this recommendation;

- (2) encourage cooperation and the sharing of experience and good practices between the self-regulation structures and complaints-handling structures, with a view to fostering a climate of confidence by combating the circulation of illegal content offensive to human dignity in on-line audiovisual and information services;
- (3) promote, with the Member States, international cooperation in the various fields covered by this recommendation, particularly through the sharing of experience and good practices between operators and other concerned parties in the Community and their partners in other regions of the world;
- (4) develop, in cooperation with the competent national authorities, a methodology for evaluating the measures taken in pursuance of this recommendation, with particular attention to the evaluation of the added value of the cooperation process at Community level, and present, two years after the adoption of this recommendation, an evaluation report on its effect to the European Parliament and the Council.

Done at Brussels, 24 September 1998.

For the Council
The President
J. FARNLEITNER

*ANNEX***INDICATIVE GUIDELINES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF A SELF-REGULATION FRAMEWORK FOR THE PROTECTION OF MINORS AND HUMAN DIGNITY IN ON-LINE AUDIOVISUAL AND INFORMATION SERVICES****Objective**

The purpose of these guidelines is to foster a climate of confidence in the on-line audiovisual and information services industry by ensuring broad consistency, at Community level, in the development, by the businesses and other parties concerned, of national self-regulation frameworks for the protection of minors and human dignity. The services covered by these guidelines are those provided at a distance, by electronic means. They do not include broadcasting services covered by Council Directive 89/552/EEC or radio broadcasting. The contents concerned are those which are made available to the public, rather than private correspondence.

This consistency will enhance the effectiveness of the self-regulation process and provide a basis for the necessary transnational cooperation between the parties concerned.

While taking into account the voluntary nature of the self-regulation process (the primary purpose of which is to supplement existing legislation) and respecting the differences in approach and varying sensitivities in the Member States of the Community, these guidelines relate to four key components of a national self-regulation framework:

- consultation and representativeness of the parties concerned,
- code(s) of conduct,
- national bodies facilitating cooperation at Community level,
- national evaluation of self-regulation frameworks.

1. CONSULTATION AND REPRESENTATIVENESS OF THE PARTIES CONCERNED

The objective is to ensure that the definition, implementation and evaluation of a national self-regulation framework benefits from the full participation of the parties concerned, such as the public authorities, the users, consumers and the businesses which are directly or indirectly involved in the audiovisual and on-line information services industries. The respective responsibilities and functions of the parties concerned, both public and private, should be set out clearly.

The voluntary nature of self-regulation means that the acceptance and effectiveness of a national self-regulation framework depends on the extent to which the parties concerned actively cooperate in its definition, application and evaluation.

All the parties concerned should also help with longer-term tasks such as the development of common tools or concepts (for example, on labelling of content) or the planning of ancillary measures (for example, on information, awareness and education).

2. CODE(S) OF CONDUCT**2.1. General**

The objective is the production, within the national self-regulation framework, of basic rules which are strictly proportionate to the aims pursued; these rules should be incorporated into a code (or codes) of conduct covering at least the categories set out at 2.2, to be adopted and implemented voluntarily by the operators (i.e. primarily the businesses) concerned.

In drawing up these rules, the following should be taken into account:

- the diversity of services and functions performed by the various categories of operator (providers of network, access, service, content, etc.) and their respective responsibilities,
- the diversity of environments and applications in on-line services (open and closed networks, applications of varying levels of interactivity).

In view of the above, operators may need one or more codes of conduct.

Given such diversity, the proportionality of the rules drawn up should be assessed in the light of:

- the principles of freedom of expression, protection of privacy and free movement of services,
- the principle of technical and economic feasibility, given that the overall objective is to develop the information society in Europe.

2.2. The content of the code(s) of conduct

The code (or codes) of conduct should cover the following:

2.2.1. Protection of minors

Objective: to enable minors to make responsible use of on-line services and to avoid them gaining access, without the consent of their parents or teachers, to legal content which may impair their physical, mental or moral development. Besides coordinated measures to educate minors and to improve their awareness, this should cover the establishment of certain standards in the following fields:

(a) Information to users

Objective: within the framework of encouraging responsible use of networks, on-line service providers should inform users, where possible, of any risks from the content of certain on-line services and of such appropriate means of protection as are available.

The codes of conduct should address, for example, the issue of basic rules on the nature of the information to be made available to users, its timing and the form in which it is communicated. The most appropriate occasions should be chosen to communicate the information (sale of technical equipment, conclusion of contracts with user, web sites, etc.).

(b) Presentation of legal contents which may harm minors

Objective: where possible, legal content which may harm minors or affect their physical, mental or moral development should be presented in such a way as to provide users with basic information on its potentially harmful effect on minors.

The codes of conduct should therefore address, for example, the issue of basic rules for the businesses providing on-line services concerned and for users and suppliers of content; the rules should set out the conditions under which the supply and distribution of content likely to harm minors should be subject, where possible, to protection measures such as:

- a warning page, visual signal or sound signal,
- descriptive labelling and/or classification of contents,
- systems to check the age of users.

Priority should be given, in this regard, to protection systems applied at the presentation stage to legal content which is clearly likely to be harmful to minors, such as pornography or violence.

(c) Support for parental control

Objective: where possible, parents, teachers and others exercising control in this area should be assisted by easy-to-use and flexible tools in order to enable, without the former's educational choices being compromised, minors under their charge to have access to services, even when unsupervised.

The codes of conduct should address, for example, the issue of basic rules on the conditions under which, wherever possible, additional tools or services are supplied to users to facilitate parental control, including:

- filter software installed and activated by the user,
- filter options activated, at the end-user's request, by service operators at a higher level (for example, limiting access to predefined sites or offering general access to services).

(d) Handling of complaints ('hotlines')

Objective: to promote the effective management of complaints about content which does not comply with the rules on the protection of minors and/or violates the code of conduct.

The codes of conduct should address, for example, the issue of basic rules on the management of complaints and encourage operators to provide the management tools and structures needed so that complaints can be sent and received without difficulties (telephone, e-mail, fax) and to introduce procedures for dealing with complaints (informing content providers, exchanging information between operators, responding to complaints, etc.).

2.2.2. *Protection of human dignity*

Objective: to support effective measures in the fight against illegal content offensive to human dignity.

(a) Information for users

Objective: where possible, users should be clearly informed of the risks inherent in the use of on-line services as content providers so as to encourage legal and responsible use of networks.

Codes of conduct should address, for example, the issue of basic rules on the nature of information to be made available, its timing and the form in which it is to be communicated.

(b) Handling of complaints ('hotlines')

Objective: to promote the effective handling of complaints about illegal content offensive to human dignity circulating in audiovisual and on-line services, in accordance with the respective responsibilities and functions of the parties concerned, so as to reduce illegal content and misuse of the networks.

The codes of conduct should address, for example, the issue of basic rules on the management of complaints and encourage operators to provide the management tools and structures needed so that complaints can be sent and received without difficulties (telephone, e-mail, fax) and to introduce procedures for dealing with complaints (informing content providers, exchanging information between operators, responding to complaints, etc.).

(c) Cooperation of operators with judicial and police authorities

Objective: to ensure, in accordance with the responsibilities and functions of the parties concerned effective cooperation between operators and the judicial and police authorities within Member States in combating the production and circulation of illegal content offensive to human dignity in audiovisual and on-line information services.

The codes of conduct should address, for example, the issue of basic rules on cooperation procedures between operators and the competent public authorities, while respecting the principles of proportionality and freedom of expression as well as relevant national legal provisions.

2.2.3. *Violations of the codes of conduct*

Objective: to strengthen the credibility of the code (or codes) of conduct, taking account of its voluntary nature, by providing for dissuasive measures which are proportionate to the nature of the violations. In this connection, provision should be made, where appropriate, for appeal and mediation procedures.

Appropriate rules to govern this area should be included in the code of conduct.

3. NATIONAL BODIES FACILITATING COOPERATION AT COMMUNITY LEVEL

Objective: to facilitate cooperation at Community level (sharing of experience and good practices; working together) through the networking of the appropriate structures within Member States, consistent with their national functions and responsibilities. Such structures could also allow international cooperation to be extended.

Cooperation at European level means:

— cooperation between the parties concerned:

all the parties involved in the drawing up of the national self-regulation framework are asked to set up a representative body at national level to facilitate the sharing of experience and good practices and to work together at Community and international level,

— cooperation between national complaints-handling structures:

to facilitate and develop cooperation at European and international level, the parties involved in an effective complaint management system are asked to set up a national contact point to strengthen cooperation in the fight against illegal content, facilitate the sharing of experience and good practices, and improve legal and responsible use of the networks.

4. EVALUATION OF SELF-REGULATION FRAMEWORKS

The objective is to provide for regular evaluations of the self-regulation framework at national level, to assess its effectiveness in protecting the general interests in question, to measure its success in achieving its objectives and to adapt it gradually to changes in the market, technology and types of use.

The parties concerned are asked to set up an evaluation system at national level so that they can monitor the progress made in implementing the self-regulation framework. This should take into account appropriate European-level cooperation, *inter alia* on the development of comparable assessment methodologies.
