

Opinion of the Economic and Social Committee on the 'Communication from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions — Principles and guidelines for the Community's audiovisual policy in the digital age'

(2001/C 14/22)

On 22 December 1999 the Commission decided to consult the Economic and Social Committee, under Article 262 of the Treaty establishing the European Community, on the above-mentioned communication.

The Section for Transport, Energy, Infrastructure and the Information Society, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 8 September 2000. The rapporteur was Mr Morgan, but following his resignation the section appointed Mrs Carroll to replace him on 18 October 2000.

At its 376th plenary session held on 19 October 2000 the Economic and Social Committee adopted the following opinion by 75 votes to four, with six abstentions.

1. Introduction

1.1. In its Communication 'Principles and guidelines for the Community's audiovisual policy in the digital age' the Commission sets out to inform interested parties of its intended strategy over the next five years.

1.2. The Communication is timely because digital technologies are bringing about major changes in the audiovisual sector. In the Commission's words: 'Regulatory policy in the sector is aimed at safeguarding certain public interests, such as cultural and linguistic diversity, the protection of minors and consumer protection. These are not called into question by technological development. However, following on wide-ranging consultation in recent years, new regulatory approaches and techniques would appear necessary in future' (1).

1.3. The ESC endorses the regulatory principles adopted by the Commission. Furthermore it recognises the challenges to the principles represented by multi-channel digital TV and unlimited access to a world of Internet web-sites.

1.4. Community policy is now based on separate approaches to the regulation of transmission infrastructure and content. The main infrastructures envisaged in the Communication are Internet in an IT environment, audiovisual transmission via the Internet, audiovisual transmission to television sets and Internet transmission to television sets. Broadly speaking, conventional audiovisual films and TV programmes intended

for the cinema and TV can be regulated in the public interest and controlled by parents. The Internet is less easy to control although its reception on TV sets can be physically controlled. On the Internet a more explicit categorisation of web-sites could provide a way forward. Our detailed comments on regulatory policy are made later in this Opinion in the context of the Commission's proposals. We have dealt with these chapter by chapter as follows.

2. The audiovisual Sector — why it matters (Chapter 1)

2.1. The Communication states that the sector matters for two reasons:

- economic growth and jobs
- the social, cultural and educational impact of the sector.

2.2. However, these two factors do not receive the same emphasis in the Communication: 'Whilst the economic aspects and job-creating potential of the sector ... are clearly major elements to be taken into account in the elaboration of Community policy, it is the social and cultural role of the audiovisual media which forms the point of departure for policymaking'.

2.3. The ESC endorses the view of audiovisual media expressed in the Communication: 'The audiovisual media play a central role in the functioning of modern democratic societies. Without the free flow of information, such societies cannot function. Moreover, the audiovisual media play a fundamental role in the development and transmission of social values. This is not simply because they influence to a

(1) See ESC Opinion of 22 September 1999 on the Proposal for a Council Decision concerning Community participation in the European Audiovisual Observatory, OJ C 329, 17.11.1999; ESC Opinion of 29 April 1998 on the Convergence Green Paper, OJ C 214, 10.7.1998.

large degree which facts about and which images of the world we encounter, but also because they provide concepts and categories — political, social, ethnic, geographical, psychological and so on — which we use to render these facts and images intelligible. They therefore help to determine not only what we see of the world, but how we see it'.

2.4. This perspective leads the Commission to conclude that the audiovisual industry is not like others, simply producing goods and services for the market. Its ethos is cultural not commercial. This is certainly not the ethos of Hollywood, Bollywood, or even Pinewood, who clearly set out to satisfy the market need for entertainment. Hence, while we endorse the principles of ethnic and cultural diversity, and acknowledging the 'exemplary' role assigned to audiovisual policy in Europe, we believe that the balance of trade deficit highlighted by the Commission is likely to persist, for as long as the 'market' is given a secondary priority.

2.5. The ESC therefore suggests that Community audiovisual policy propose, in addition to social, cultural and educational objectives, two basic commercial ones:

- progressive substitution of imports on EU markets;
- implementation of export strategies designed to penetrate world markets.

These objectives would allow the present audiovisual trade deficit with the US to be reduced. To this end, measures such as tax rebates on audiovisual investments should be boosted, in particular offering incentives for SMEs to invest in the sector.

2.6. Import substitution can be achieved in two ways. There is clearly scope for co-production by Member States and for the supportive use of EU funds in this context. For multi-country distribution, the presumption is that, with translation, successful productions would be accepted in other Member States because they reflect shared European cultural values. The Media II programme is designed to facilitate this distribution. In this context, cultural diversity can be a positive advantage.

2.7. The ESC believes that this import substitution strategy can both promote Europe's cultural and linguistic heritage while stimulating economic growth in the production sector. The only concern must be that with the channel proliferation which is now taking place, EU output could still be swamped.

2.8. The Commission's export strategy as expressed in the Communication is virtually non-existent. This is a major lacuna in the Commission's thinking. What is needed is a strategy to provide global entertainment products in the languages of world markets. Successful businesses in every sector sell in the language of the customer. One key opportunity not mentioned is to use the industries of the various Community countries to develop the global cultural diaspora addressable in their various languages.

2.9. In any case, the specific needs of the audiovisual sector in countries of low audiovisual capacity and in small linguistic and geographical regions will need to be addressed. Since multilingualism represents Europe's chief asset, it should be promoted by means of the digital systems generated by technological progress (e.g. DVDs offering subtitles in a range of languages).

2.10. Competition policy must serve as an appropriate and effective instrument for preventing the creation of market dominance, in terms of both concentration of media ownership in the new digital environment and preservation of pluralism.

2.10.1. The Committee suggests that the Commission examine the advantages of applying at European level a single set of competition rules like those in the United States which prevent the same operator from functioning at different levels within the audiovisual sector (creation, production, distribution and transmission).

2.10.2. In order to achieve the legal certainty called for by European operators in the audiovisual sector, the ESC calls upon the Commission to draw up 'guidelines on aid to the European audiovisual sector' which, in line with the Treaty rules on culture, could allow for aid to be allocated in the light of a range of factors based on a points system taking account of specific headings such as a given amount for each ticket sold, or a percentage in the case of films bought in by TV channels, etc.

3. Aims and means of the Community's audiovisual policy (Chapter 2)

3.1. The ESC acknowledges the progress achieved by Community initiatives in the audiovisual sector:

- the Television Without Frontiers⁽¹⁾ directive provided the necessary framework for crossborder transmissions;
- the Media I and Media II⁽²⁾ programmes give essential support to the industry. The distribution focus of Media II provides an important stimulus to the distribution of national audiovisual output into international markets;
- technological innovation via broadcasting standards has been as important for digital media as GSM standards have been for mobile telephony;
- the INFO 2000 programme is also significant.

3.2. The ESC agrees that digital television will require new initiatives along the same axes and expects that the 5th Framework Programme will also make a significant contribution to audiovisual developments in the EU. In particular, we would highlight 'User Friendly Information Society' programme and the two key actions — 'Multimedia contents and tools' and 'Systems and services for the citizen'.

3.3. The Committee further considers important the coordination and a greater cooperation with other European initiatives in the audiovisual field and in particular with Audiovisual Eureka⁽³⁾.

4. Principles for regulation of the audiovisual sector in the digital age (Chapter 3)

4.1. The ESC congratulates the Commission on the scope and effectiveness of its recent consultative process and endorses the five general principles for regulatory action towards the communications infrastructure.

4.2. The ESC endorses the concept that the principle of proportionality as applied to audiovisual content 'requires that the degree of regulatory intervention should not be more than is necessary to achieve the objective in question' and that therefore 'the Community can now manage the changes taking

place by building in its existing instruments and principles and where appropriate through providing initiatives for self regulation'.

4.2.1 In view of the growth of digital technology, existing Community law on the audiovisual sector must be adjusted rapidly in order to strike a proper balance between the application of current basic principles and on-going technological change.

4.3. The ESC has already contributed to the consensus that the regulation of audiovisual content and communications infrastructure should be separated. Accordingly, we endorse the conclusions given in chapter 3, section 2 of the Communication.

4.4. The ESC agrees that 'the digital revolution does not call into question the need for audiovisual policy to identify relevant general interests and, where necessary, to protect them through the regulatory process', and that 'technological developments call for an ongoing evaluation of the means and methods used'. The Internet is a case in point.

4.4.1. The ESC is of the view that the digital age must not be accompanied by a failure to apply public interest objectives such as freedom of expression and opinion, pluralism, cultural and linguistic diversity, safeguarding of minors and human dignity and consumer protection, since it is convinced their protection and reinforcement fulfils a key function for democracy.

4.5. The ESC considers that broadcasting as a public service fulfils a number of cultural, social and democratic functions from which all benefit, and is therefore of crucial importance in guaranteeing democracy, pluralism, social cohesion and cultural and linguistic diversity.

4.5.1. The growing diversity of programmes provided by the media in the new technological environment heightens the importance of the overall function of broadcasting bodies having public service obligations.

4.5.2. The Committee believes that public service broadcasters' capacity to provide the public with high-quality, majority-taste programmes and services must be maintained and further developed. This includes diversifying activities in the digital age.

4.6. The ESC endorses the Commission's view of self-regulation and, in particular, the caveat designed to prevent major incumbent operators defining 'the rules of the game'.

4.6.1. The ESC believes that:

- self-regulation could effectively supplement normal rules in the context of the digital age, and

(1) COM(95) 86 final; ESC Opinion of 13 September 1995 on the Proposal for a European Parliament and Council Directive concerning the pursuit of television broadcasting activities, OJ C 301, 13.11.1995.

(2) See ESC Opinion on the Proposal for a Council Decision concerning the Media II Programme (1996-2000), OJ C 256, 2.10.1995.

(3) Eureka Audiovisual is a pan-European intergovernmental organisation established in 1989 with the aim of promoting the European audiovisual industry. It has 35 members (the Member States, the European Commission and the Council of Europe with associated member status).

- third-party interests, particularly those of consumers, must be taken into consideration when envisaging self-regulation in the new services offered by the media.

4.7. The ESC would like to emphasise the principle that regulatory authorities should be independent of Government and operators. It would welcome the establishment of a 'European audiovisual forum' bringing together the industry and interested parties, such as broadcasting professionals and operators, regulatory and self-regulatory bodies from the audiovisual sector, organisations classifying Internet and computer programme content and specialist consumer associations, in order to examine how greater clarity can be brought to bear on methods for assessing and classifying audiovisual and multimedia content (cinema, television, Internet, video games and webcasting).

4.8. The Committee generally welcomes the Commission's statement of the general principles of European law, which apply in the audiovisual sector.

5. Action in the regulatory field (Chapter 4)

5.1. The Committee generally welcomes and agrees with the Commission's proposal for action.

5.2. In particular, the Committee endorses the Commission's proposal for an independent study into the impact of the provisions of the Television Without Frontiers Directive concerning the promotion of European works to be carried out by June 2002. The Commission states that such study will provide 'an opportunity for an overall examination of regulatory and support instruments for the promotion of cultural and linguistic diversity with regard to the audiovisual sector'. The Committee believes that an effort must be made so that, without prejudice to their cultural and linguistic value, such products can be sufficiently attractive to be marketed competitively throughout the world. To this end, the Commission's action should focus on:

- fostering multilingualism and European cultural diversity;
- the demand for high-quality products making use of new forms of expression;
- the need for compatible standards and formats to facilitate data exchange;
- introducing support mechanisms for the creation of European networks and products;
- the need for multimedia-friendly training combining technical know-how with mastery of content;
- supporting dissemination and promotion.

The ESC expects that technological developments will gradually allow the production of multi-linguistic audiovisual works⁽¹⁾ thus making easier the achievement of cultural objectives.

5.3. The Committee agrees with the Commission's approach to access on audiovisual content and shares the Commission's concern about the danger of social and cultural exclusion. In particular, the Committee agrees with the Commission's statement that 'access to content may raise questions of affordability: where there may be a danger of social exclusion (resulting in a society of information "haves" and "have-nots"), consumers should have access to the content in question at an affordable price'.

5.3.1. The ESC reaffirms the principle whereby in the information society, all consumers must be guaranteed access to networks and content in accordance with the criteria of universality, accessibility, non-discrimination and transparency. Some specific technical aspects concerning consumer access to content, such as electronic programme guides and conditional access, together with all technical systems interposed between access to the broadcasting media and choice of content, require specific standards in order to protect consumers' freedom of choice.

5.3.2. Access to content actually implies access to the digital infrastructure and the availability of information and entertainment across that infrastructure.

5.3.3. Digital terrestrial television and conversion of the terrestrial radio and television system must be matters of public interest in accordance with content policy. The consequence of this principle is the need for public service broadcasting to be guaranteed available bandwidth for free digital transmission.

5.3.4. Clearly one of the technological uncertainties recognised by the Commission is the final shape of the digital delivery infrastructure and, within that, the definition of the 'free to air' content.

5.3.5. The ESC will support regulatory development which ensures that the information and entertainment content of public service broadcasting is freely available in the digital environment. In particular, information content such as national news is critical for the proper functioning of democracy.

5.3.6. As far as premium entertainment content is concerned, the question of affordability is not a regulatory matter. Broadcasters pay heavily for premium broadcast rights and it is up to them to set prices which generate audiences sufficient to provide the necessary return on investment.

⁽¹⁾ See also MLIS-Multilingual Information Society.
www.hltcentral.org/hlt/mlis/.

5.4. The Committee agrees with the importance attached by the Commission to copyright protection and the fight against piracy and is looking forward to the adoption of the Directive on Copyright and Related Rights.

5.5. The Committee agrees with the Commission's conclusions regarding the protection of minors. The Committee considers that protection of minors is becoming more difficult to achieve in the digital era and therefore a stricter approach to standards and mechanisms should be adopted, for example:

- (a) it would be possible to place child protection mechanisms in television sets and computers which allow the highest level of protection. At the same time, the protection mechanisms could be removed or reduced to suit individual circumstances;
- (b) information on child/human dignity and protection systems and rating should be available on Internet pages, leaflets and mouse pads at points of sale;
- (c) compulsory rating of programming/content;
- (d) the use of domain names to extend the film rating system to the Internet;
- (e) in a positive and pro-active direction, quality and attractive programming like the German 'Kinder Kanal' sets a good example.

5.6. The Committee welcomes the Commission's proposal for a study into new advertising techniques in view of a possible future evaluation of the provisions contained in the Television without Frontiers Directive. The Committee agrees with the Commission in that a clear distinction between advertising and other content should be ensured and that consumers should be made aware when they receive advertising.

6. Principles for the development of Community support instruments (Chapter 5)

6.1. The Committee generally agrees with the proposed principles which should guide the action of the Community in respect of support instruments.

6.2. However, the Committee would welcome clarification by the Commission of its proposal for reflection at European level on how to strengthen the complementarity of support mechanisms in order to develop a coherent approach. Does this mean control over national support measures? The

Committee considers that the proposal to develop a coherent approach to support mechanisms should not harm successful national measures.

6.3. The Committee supports the Commission's proposal to seek added-value through ensuring 'better synergy between the various instruments aimed at promoting content for the information society'.

7. Action in the field of support mechanisms (Chapter 6)

7.1. The ESC supports the Commission's goal that Europe's cultural and linguistic diversity must be assured and as such be a component of the development of the information society. At the same time, the ESC warns that policy which concentrates exclusively on cultural and linguistic diversity is unlikely to satisfy the complementary objective of increased European market share of global audiovisual entertainment.

7.2. The ESC has already given its endorsement of the Media Plus initiative⁽¹⁾.

7.3. The ESC looks forward to giving its opinion on the eEurope initiative.

7.4. Actions within the 5th Framework Programme can play an important part in EU's audiovisual development (see paragraph 3.2).

7.5. The ESC encourages the Commission to pursue its proposal for experience sharing between Member States.

8. The external dimension of Community audiovisual policy (Chapter 7)

8.1. The Committee urges the Commission to adopt the necessary measures concerning trade in audiovisual services in the context of WTO negotiations so that European products will have easier access to non-EU markets. It also welcomes the possibility of the Community and the Member States maintaining and developing their capacity to define and implement cultural and audiovisual policies in order to protect their cultural diversity.

⁽¹⁾ COM(1999) 658 final, ESC Opinion of 27 April 2000 on the Proposal for a Council Decision 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), OJ C 168, 16.6.2000.

9. Conclusion

9.1 The Committee

- generally supports the Commission's Communication as a significant step towards the determination of an appropriate audiovisual policy in the digital age;
- recognises that the audiovisual sector, as well as being one of the main sources of job creation, is set to continue playing a crucial function in terms of democracy, freedom of opinion and pluralism, together with the protection and promotion of cultural diversity in Europe;

- is looking forward to see and evaluate the results of the studies and other actions proposed by the Commission;
- considers the need for consistency between EC cultural, audiovisual and competition policy must be reflected in guidelines which safeguard cultural diversity by allowing the different national systems to provide proper encouragement for production potential in the Member States;
- believes that public broadcasting services must continue to take advantage of technological progress in the performance of their functions, in order to guarantee democracy, pluralism, social cohesion and cultural and linguistic diversity.

Brussels, 19 October 2000.

*The President
of the Economic and Social Committee*

Göke FRERICHS

Opinion of the Economic and Social Committee on the 'Proposal for a Council Directive concerning the European Agreement on the Organisation of Working Time of Mobile Workers in Civil Aviation concluded by the Association of European Airlines (AEA), the European Transport Workers' Federation (ETF), the European Cockpit Association (ECA), the European Regions Airline Association (ERA) and the International Air Carrier Association (IACA)'

(2001/C 14/23)

On 19 October 2000, the Economic and Social Committee decided to draw up an opinion, in accordance with Rule 23(3) of its Rules of Procedure, on the above-mentioned proposal.

The Committee's work on the subject was prepared by the Section for Transport, Energy, Infrastructure and the Information Society. In accordance with Rules 20 and 50 of the Rules of Procedure, Mr Konz was appointed rapporteur-general.

At its 376th plenary session of 19 October 2000 the Economic and Social Committee adopted the following opinion by 81 votes to one with one abstention.

1. Introduction

1.1. On 22 March 2000 the social partners in the civil aviation sector concluded a European Agreement on the organisation of working time of 'mobile' staff, in other words airline pilots and flight engineers as well as cabin crew.

1.2. They then forwarded this European Agreement to the Commission, with the specific request that it be implemented at Community level by a Council decision on a proposal from

the Commission in accordance with Article 139(2) of the Treaty.

1.3. On both the employers' and the trade union side, the five organisations⁽¹⁾ which are signatories to the Agreement are recognised as:

⁽¹⁾ AEA (Association of European Airlines)
AICA (International Air Carrier Association)
ERA (European Regions Airline Association)
ECA (European Cockpit Association)
ETF (European Transport Workers' Federation).