

COMMON POSITION (EC) No 24/2006**adopted by the Council on 18 September 2006****with a view to the adoption of Recommendation 2006/.../EC of the European Parliament and of the Council of ... on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry**

(2006/C 295 E/02)

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,

Having regard to the Opinion of the European Economic and Social Committee ⁽¹⁾,

After consulting the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty ⁽²⁾,

Whereas:

- (1) The Charter of Fundamental Rights of the European Union ⁽³⁾ ('the Charter') declares in Article 1 the inviolability of human dignity, providing that it must be respected and protected. Article 24 of the Charter provides that children have the right to such protection and care as is necessary for their well-being and that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
- (2) The European Union should gear its political action to preventing any form of violation of the principle of respect for human dignity.
- (3) Legislative measures need to be enacted at Union level on the protection of the physical, mental and moral development of minors in relation to the content of all audiovisual and information services and the protection of minors from access to inappropriate adult programmes or services.
- (4) The constant development of new information and communication technologies makes it urgent for the Community to ensure full and adequate protection for citizens' interests in this field on the one hand, by guaranteeing the free delivery and free provision of information services and, on the other hand, by ensuring that

their content is legal, respects the principle of human dignity and does not impair the overall development of minors.

- (5) The Community has already intervened in the field of audiovisual and information services in order to create the necessary conditions to ensure the free movement of television broadcasts and other information services, in compliance with the principles of free competition and freedom of expression and information, but it should act with greater determination in this area with the aim of adopting measures to protect consumers from incitement to discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation and of combating any such discrimination. Such action should strike a balance between the protection of individual rights on the one hand and freedom of expression on the other, in particular with respect to Member States' responsibility for defining the notion of incitement to hatred or discrimination in accordance with their national legislation and moral values.
- (6) 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 dignity ⁽⁴⁾ is the first legal instrument at Community level which in its recital (5) addresses issues of the protection of minors and of human dignity in relation to audiovisual and information services made available to the public, whatever the means of conveyance. Article 22 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 ⁽⁵⁾ ('Television without Frontiers Directive') has already specifically addressed the question of the protection of minors and human dignity in television broadcasting activities.

⁽¹⁾ OJ C 221, 8.9.2005, p. 87.

⁽²⁾ Opinion of the European Parliament of 7 September 2005 (OJ C 193 E, 17.8.2006, p. 217), Council Common Position of 18 September 2006 and Position of the European Parliament of ... (not yet published in the Official Journal).

⁽³⁾ OJ C 364, 18.12.2000, p. 1.

⁽⁴⁾ OJ L 270, 7.10.1998, p. 48.

⁽⁵⁾ 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).

- (7) It is suggested that the Council and the Commission should pay special attention to the implementation of this Recommendation when revising, negotiating or concluding new partnership agreements or new cooperation programmes with third countries, bearing in mind the global character of producers, distributors or providers of audiovisual content and Internet access.
- (8) By Decision No 276/1999/EC ⁽¹⁾, the European Parliament and the Council adopted a multiannual Community Action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (the 'Safer Internet Action Plan').
- (9) Decision No 1151/2003/EC of the European Parliament and of the Council ⁽²⁾ 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.
- (10) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ⁽³⁾ 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.
- (11) The changing media landscape, resulting from new technologies and media innovation, makes it necessary to teach children, and also parents, teachers and trainers to use audiovisual and on-line information services effectively.
- (12) On the whole, self-regulation of the audiovisual sector is proving an effective additional measure, but it is not sufficient to protect minors from messages with harmful content. The development of a European audiovisual area based on freedom of expression and respect for citizens' rights should be based on continuous dialogue between national and European legislators, regulatory authorities, industries, associations, citizens and civil society.
- (13) 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 activities ⁽⁴⁾, it was suggested that the need to adopt measures in relation to media literacy be included among the subjects covered by Recommendation 98/560/EC.
- (14) The Commission encourages cooperation and the sharing of experience and best practices between existing self- and co-regulatory bodies, which deal with the rating or classification of audiovisual content, regardless of the means by which it is delivered, with a view to enabling all users, but especially parents, teachers and trainers, to report illegal content and assess the content of audiovisual and on-line information services, as well as any legal content which could harm the physical, mental or moral development of minors.
- (15) As suggested during the public consultation concerning Directive 97/36/EC, it is appropriate for the right of reply or equivalent remedies to apply to on-line media, and to take into account the specific features of the medium and service concerned.
- (16) The Council Resolution of 5 October 1995 on the image of women and men portrayed in advertising and the media ⁽⁵⁾ 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.
- (17) When tabling its proposal for a Council Directive implementing the principle of equal treatment between men and women in the access to and supply of goods and services, 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, in the light of other fundamental rights, including the freedom and pluralism of the media, it would not be appropriate to address these questions in that proposal but that it should take stock of these questions.

⁽¹⁾ Decision No 276/1999/EC of the European Parliament and of the Council of 25 January 1999 adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (OJ L 33, 6.2.1999, p. 1). Decision as last amended by Decision No 787/2004/EC (OJ L 138, 30.4.2004, p. 12).

⁽²⁾ Decision No 1151/2003/EC of the European Parliament and of the Council of 16 June 2003 amending Decision No 276/1999/EC adopting a multiannual Community action plan on promoting safer use of the Internet by combating illegal and harmful content on global networks (OJ L 162, 1.7.2003, p. 1).

⁽³⁾ OJ L 178, 17.7.2000, p. 1.

⁽⁴⁾ OJ L 202, 30.7.1997, p. 60.

⁽⁵⁾ OJ C 296, 10.11.1995, p. 15.

- (18) The audiovisual and on-line information services industry should be encouraged at Member State level 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 such media and all advertising, including new advertising techniques, without infringing freedom of expression or of the press.
- (19) This Recommendation covers new technological developments and complements Recommendation 98/560/EC. Its scope, on account of technological advances, includes audiovisual and on-line information services made available to the public via fixed or mobile electronic networks.
- (20) Nothing in this Recommendation prevents Member States from applying their constitutional provisions and other legislation and legal practices regarding freedom of expression,
- tion of means of access in educational establishments and public places,
- (c) action to inform citizens more about the possibilities offered by the Internet;
- examples of possible actions concerning media literacy are outlined in Annex II;
3. promoting a responsible attitude on the part of professionals, intermediaries and users of new communication media such as the Internet by:
- (a) encouraging the audiovisual and on-line information services industry, without infringing freedom of expression or of the press, to avoid all discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, in all audiovisual and on-line information services, and to combat such discrimination,

HEREBY RECOMMEND THAT:

I. The Member States, in the interests of promoting the development of the audiovisual and on-line information services industry, take the necessary measures to ensure the protection of minors and human dignity in all audiovisual and on-line information services by:

1. considering the introduction of measures into their domestic law or practice regarding the right of reply or equivalent remedies in relation to on-line media, with due regard for their domestic and constitutional legislative provisions, and 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, in addition to and consistently with existing legal and other measures regarding broadcasting services, and in close cooperation with the parties concerned:

- (a) action to enable minors to make responsible use of audiovisual and on-line information services, notably by improving the level of awareness among parents, teachers and trainers 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 and, for instance, by continuous training within school education,
- (b) action to facilitate, where appropriate and necessary, the identification of, and access to, quality content and services for minors, including through the provi-

- (b) encouraging vigilance and the reporting of pages considered illegal, without prejudice to Directive 2000/31/EC,
- (c) drawing up a code of conduct in cooperation with professionals and regulatory authorities at national and Community level;

4. promoting measures to combat all illegal activities harmful to minors on the Internet and make the Internet a much more secure medium; consideration could be given inter alia to the following measures:

- (a) adopting a quality label for service providers, so that users can easily check whether or not a given provider subscribes to a code of conduct,
- (b) establishing appropriate means for the reporting of illegal and/or suspicious activities on the Internet.

II. The audiovisual and on-line information services industry and other parties concerned:

1. develop positive measures for the benefit of minors, including initiatives to facilitate their wider access to audiovisual and on-line information services, while avoiding potentially harmful content, for instance by means of filtering systems. Such measures could include harmonisation through cooperation between the regulatory, self-regulatory and co-regulatory bodies of the Member States, and through the exchange of best practices concerning such issues as a system of common descriptive symbols or warning messages indicating the age category and/or which aspects of the content have led to a certain age recommendation, which would help users to assess the content of audiovisual and on-line information services. This could take place, for instance, through the actions outlined in Annex III;

2. examine the possibility of creating filters which would prevent information offending against human dignity from passing through the Internet;
 3. develop measures to increase the use of content labelling systems for material distributed over the Internet;
 4. consider effective means of avoiding and combating discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation in audiovisual and on-line information services and of promoting a diversified and realistic picture of the skills and potential of men and women in society.
3. intends to explore the possibility of supporting the establishment of a generic second level domain name reserved for monitored sites committed to respecting minors and their rights, such as .KID.eu;
 4. continues to maintain a constructive and ongoing dialogue with content providers' organisations, consumer organisations and all parties concerned;
 5. intends to facilitate and support the formation of networks by self-regulatory bodies and the exchanging of experience among them, so as to assess the effectiveness of codes of conduct and approaches based on self-regulation in order to ensure the highest possible standards of protection for minors;

TAKE NOTE THAT THE COMMISSION:

1. Intends to promote, in connection with the 2005-2008 multiannual Community programme on promoting safer use of the Internet and new on-line technologies, information actions aimed at citizens Europe-wide using all communications media, to inform the public about the benefits and possible risks of the Internet, how to use it responsibly and safely, how to make complaints and how to activate parental control. Specific campaigns could be aimed at target groups such as schools, parents' associations and users;
 2. intends to explore the possibility of introducing a European freephone number or of extending an existing service to assist Internet users by directing them to available complaint mechanisms and information resources and providing information for parents about the effectiveness of filtering software;
6. intends to submit to the European Parliament and the Council, on the basis of information supplied by the Member States, a report on the implementation and effectiveness of the measures specified in this Recommendation, and to review this Recommendation if and when the need arises.

Done at ..., on ...

For the European Parliament
The President

...

For the Council
The President

...

ANNEX I

INDICATIVE GUIDELINES FOR THE IMPLEMENTATION, AT NATIONAL LEVEL, OF MEASURES IN DOMESTIC LAW OR PRACTICE SO AS TO ENSURE THE RIGHT OF REPLY OR EQUIVALENT REMEDIES IN RELATION TO ON-LINE MEDIA

Objective: introducing measures in the domestic law or practice of the Member States in order to ensure the right of reply or equivalent remedies in relation to on-line media, with due regard for their domestic and constitutional provisions and without prejudice to the possibility of adjusting its exercise to the particularities of each type of medium.

The term 'medium' refers to any means of communication for dissemination to the public of edited information on-line such as newspapers, periodicals, radio, television and Internet-based news services.

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 the 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 right of reply or equivalent remedies should exist in relation to on-line media under the jurisdiction of a Member State.

Member States should adopt the measures needed to establish the right of reply or 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 of reply or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

The right of reply can be ensured not only through legislation, but also through co-regulatory or self-regulatory measures.

The right of reply is a particularly appropriate remedy in the on-line environment because it allows for an instant response to contested information and it is technically easy to attach the replies from the persons affected. However, the reply should be within a reasonable time after the request has been substantiated and at a time and in a manner appropriate to the publication or transmission to which the request refers.

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 review by the courts or similar independent bodies.

An application for exercise of right of reply or the equivalent remedies may 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, would render the content provider liable to civil law proceedings or would transgress standards of public decency.

The right of reply is without prejudice to other remedies available to persons whose right to dignity, honour, reputation or privacy have been breached by the media.

ANNEX II

Examples of possible actions concerning media literacy:

- (a) continuing education of teachers and trainers, in liaison with child protection associations, on using the Internet in the context of school education so as to maintain awareness of the possible risks of the Internet with particular regard to chatrooms and fora;
 - (b) introduction of specific Internet training aimed at children from a very early age, including sessions open to parents;
 - (c) an integrated educational approach forming part of school curricula and media literacy programmes, so as to provide information on using the Internet responsibly;
 - (d) organisation of national campaigns aimed at citizens, involving all communications media, to provide information on using the Internet responsibly;
 - (e) distribution of information packs on possible risks of the Internet ('how to surf the Internet safely', 'how to filter unwanted messages') and the setting up of hotlines to which reports or complaints concerning harmful or illegal content could be addressed;
 - (f) adequate measures to establish or improve the performance of telephone hotlines, so as to make it easier to lodge complaints and to make it possible to report harmful or illegal content.
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ANNEX III

Examples of possible actions by the industries and the parties concerned for the benefit of minors:

- (a) systematically providing users with an effective, updatable and easy-to-use filtering system when they subscribe to an access provider;
 - (b) offering access to services specifically intended for children which are equipped with automatic filtering systems operated by access providers and mobile telephone operators;
 - (c) introducing incentives to provide a regularly updated description of the sites available, making it easier to classify sites and assess their content;
 - (d) posting banners on search engines drawing attention to the availability both of information about responsible use of the Internet and of telephone hotlines.
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STATEMENT OF THE COUNCIL'S REASONS

I. INTRODUCTION

1. On 30 April 2004 the Commission submitted to the European Parliament and to the Council a proposal for a recommendation, based on Article 157 of the EC Treaty, on the protection of minors and the right of reply in relation to the competitiveness of the audiovisual and information services industry.
2. The European Economic and Social Committee delivered its opinion on 9 February 2005.
3. The European Parliament delivered its opinion at first reading on 7 September 2005.
4. The Commission submitted an amended proposal on 20 January 2006.
5. On 18 September 2006, the Council adopted its common position in accordance with Article 251 (2) of the EC Treaty.

II. OBJECTIVE

The proposal follows up on Council Recommendation 98/560/EC of 24 September 1998⁽¹⁾, the first legal instrument at EU level which addresses issues of protection of minors and human dignity in relation to audiovisual and information services.

The proposed Recommendation calls on the Member States, industry and interested parties and the Commission to enhance the protection of minors and to respect human dignity in both the broadcasting sector and on the internet. It proposes that Member States consider the introduction of measures concerning the right of reply in relation to on-line media. The following issues are addressed by the draft Recommendation:

- media literacy;
- rating or classification of audiovisual content;
- portrayal of the sexes in media and advertising;
- right of reply.

III. ANALYSIS OF THE COMMON POSITION

1. General comments

The Council's common position retains the main elements of the Commission's original proposal. The main changes introduced by the Council aim to further refine the scope of the Recommendation. The Council has thus specified that the Recommendation covers 'audiovisual and online information services' rather than 'audiovisual and information services', and has differentiated the scope of the right of reply, which applies to online media, from the wider scope of the part of the Recommendation dealing with the protection of minors.

2. European Parliament amendments

The Council has sought in its common position to take account of the European Parliament's concerns and priorities and was able to accept most of Parliament's amendments.

The Council accepted in full, in part or in principle, as did the Commission in its amended proposal, amendments 1, 2, 4, 6, 7, 8, 9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 33, 35, 36, 37 and 38.

The Council wishes to make the following comments on those amendments where its position slightly diverges from the Commission's modified proposal.

⁽¹⁾ OJ L 270, 7.10.1998, p. 48.

Regarding amendments 23 and 29, the Council has followed the approach taken by the Commission, i.e. some parts of the respective amendments were transferred — in the form of examples of possible actions to be taken in order to achieve the stated aims of the Recommendation — to annexes. It has, however, reinserted some elements considered important by the European Parliament in the body of the Recommendation, in order to further approximate positions with Parliament.

Likewise, whilst trying to avoid the introduction of a burdensome reporting obligation, the Council was able to accept the spirit of amendments 35 and 36, to meet Parliament's concerns that follow-up be ensured.

The Council was unable to accept the part of amendment 37 replacing the term 'indicative guidelines' by 'minimum principles' in the section relating to the right of reply, as this term was considered excessive in the context of a recommendation.

Regarding amendment 26, last indent, the Council took the view that it was preferable not to focus exclusively on the establishment of a single telephone hotline when envisaging the possible means of reporting illegal or suspicious activities on the Internet, and has retained a more open-ended wording.

The Council has followed the line taken by the Commission in its amended proposal and did not include amendments 3, 5, 13, 27, 32 and 34 in its common position.

IV. CONCLUSION

The Council considers that, as a whole, its common position is fully in line with the objectives of the Commission's amended proposal. The Council also considers that it has taken due account of the objectives pursued by the European Parliament in its amendments to the Commission's proposal and looks forward to an agreement with the Parliament in the near future with a view to the early adoption of the Recommendation.
