Coordination of certain provisions in Member States concerning the pursuit of television broadcasting activities ('Audiovisual media services without frontiers')

2005/0260(COD) - 18/10/2007 - Commission communication on Council's position

The Commission states that the common position meets the aims of the Commission's initial and modified proposals, and that the Commission therefore supports the text. The political agreement on the common position is, in substance, in line with the Commission's proposal. This is especially true for rules on scope, commercial communication, product placement, short reports, media pluralism, media literacy and co-regulation.

The Commission points out that 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. The Commission noted with satisfaction that the colegislators chose not to modify the rules that define the **place of establishment** of a media service provider 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**, 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 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,** 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. 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. Parliament and the Commission found it necessary that the reference to such bodies be included in the operative part of the Directive, and the text is acceptable to the Commission.