II

(Preparatory Acts)

COMMISSION

Proposal for a Council Directive on the coordination of certain rules concerning copyright and neighbouring rights applicable to satellite broadcasting and cable retransmission

(91/C 255/03)

COM(91) 276 final — SYN 358

(Submitted by the Commission on 22 July 1991)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission,

In cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

(1) Whereas the objectives of the Community as laid down in the Treaty include establishing an ever closer union among the peoples of Europe, fostering closer relations between the States belonging to the Community, and ensuring the economic and social progress of the Community countries by common action to eliminate the barriers which divide Europe;

(2) Whereas to that end the Treaty provides for the establishment of a common market and an area without frontiers; whereas this is to include the abolition of obstacles to the free movement of services and the institution of a system ensuring that competition in the common market is not distorted; whereas to that end the Council may adopt directives for the coordination of the provisions laid down by law, regulation or administrative action in Member States concerning the taking up and pursuit of activities as self-employed persons;

(3) Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the most important ways of pursuing these Community objectives, which are at the same time political, economic, social, cultural and legal;

(4) Whereas the Council has already adopted 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], which makes provision for the promotion of the distribution and production of European television programmes and for advertising and sponsorship, the protection of minors and the right of reply;

(5) Whereas, however, the achievement of these objectives in respect of cross-border satellite broadcasting and the cable retransmission of programmes from other Member States is currently still obstructed by a series of differences between national rules of copyright and some uncertainties as to the law; whereas this means that holders of rights are exposed to the threat of seeing their works exploited without payment of remuneration or that the individual holders of exclusive rights in various Member States block the exploitation of their rights; whereas the legal uncertainty in particular constitutes a direct obstacle to the free circulation of programmes within the Community;

(6) Whereas a distinction is currently drawn for copyright purposes between broadcasting by direct satellite and broadcasting by communications satellite; whereas, since individual reception is possible and nowadays affordable with both types of satellite, there is no longer any justification for this differing legal treatment;

(7) Whereas the free broadcasting of programmes is further impeded by the current legal uncertainty as to whether broadcasting by a satellite whose signals can be received directly affects the rights in the country of transmission only, or in all countries of reception together; whereas, since communications satellites and direct satellites are treated alike for

[1] OJ No L 298, 17. 10. 1989, p. 23.

copyright purposes, this legal uncertainty now affects almost all programmes broadcast in the Community by satellite;

(8) Whereas, furthermore, the legal certainty, which is a prerequisite for the free movement of broadcasts within the Community, is missing where programmes transmitted across frontiers are fed into and retransmitted through cable networks.

(9) Whereas the development of the acquisition of rights on a contractual basis is already making a vigorous contribution to the creation of the desired European audio-visual area; whereas the continuation of such contractual agreements should be ensured, and their smooth application in practice should be promoted wherever possible;

(10) Whereas at present cable operators in particular cannot be sure to have actually acquired all the programme rights covered by such an agreement;

(11) Whereas, lastly, parties in different Member States are not all similarly bound by obligations which prevent them from improperly refusing to negotiate on the acquisition of the rights necessary for cable distribution or improperly allowing such negotiations to fail;

(12) Whereas the legal framwork for the creation of a single audio-visual area laid down in Directive 89/552/EEC must therefore be supplemented with reference to copyright;

(13) Whereas, therefore, an end should be put to the differences of treatment of the transmission of programmes by communications satellite which exist in the Member States, so that the vital distinction throughout the Community becomes whether protected works and other protected matter are communicated to the public; whereas this will also ensure equal tretament of the suppliers of cross-border broadcasts, regardless of whether they use a direct broadcasting satellite or communications satellite;

(14) Whereas the legal uncertainty regarding the rights to be acquired which impedes cross-border satellite broadcasting will be overcome by defining the notion of communication to the public by satellite at a Community level; whereas this definition will at the same time specify where the act of communication takes place; whereas such a definition is necessary to avoid the cumulative application of several national laws to one single act of broadcasting; whereas communication to the public occurs only when, and in the Member State where, a broadcasting organization takes a single decision on the content and the transmission of programme-carrying signals; whereas there is no communication if the chain of broadcasting equipment between the point where such a single decision is taken and the transmission of the relevant signals from the satellite is interrupted;

(15) Whereas in arriving at the amount of the payment to be made for the rights acquired the parties should take account of the actual or potential audiences throughout the area in which the broadcast can be received;

(16) Whereas a special transitional provision applicable to existing agreements should be provided for so that at the latest by 1998 these agreements will be adapted in the light of the new legal framework;

(17) Whereas programmes broadcast from non-member countries to the territory of the Community will be outside the scope of this Directive; whereas they may be treated differently in the law of the Member States from programmes transmitted from a Member State if the protection provided for by this Directive is not granted in the non-member country or only granted to a lesser extent;

(18) Whereas the arrangements made should also include provisions for the protection of holders of copyrights and neighbouring rights; whereas it is necessary to ensure that protection for specific categories is accorded in all Member States to the extent provided for by this Directive and that this protection is not subject to a statutory licence system; whereas only in this way is it possible to ensure that any difference in the level of protection within the common market will not create distortions of competition which might result in an unjustified disadvantage for programme suppliers and holders of rights in Member States with a high level of protection;

(19) Whereas the minimum protection provided for neighbouring rights is mainly taken from the substance of the Rome International Convention of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations which at present must be considered to provide the most comprehensive standard of protection of neighbouring rights in the international field; whereas this standard has been accepted by the majority of Member States; whereas, however, in accordance with the aims of this Directive, it is not appropriate to allow for derogations corresponding to those provided for in the Rome International Convention;

(20) Whereas the cable retransmission of programmes from other Member States is an act subject to copyright and neighbouring rights; whereas the cable operator must therefore obtain the authorization from every holder of rights in each part of the programme retransmitted; whereas, pursuant to this Directive, the authorizations should be granted contractually unless an exception is provided for in the case of existing legal licence schemes;

(21) Whereas this Directive, through the obligation to have recourse to a collecting society, provides for the exclusive collective exercise of the authorization right to the extent that this is required by the special features of cable retransmission; whereas this Directive is thereby seeking to ensure that the smooth operation of contractual arrangements is not called into question by the intervention of outsiders holding rights in individual parts of the programme; whereas the authorization right as such remains intact and only the exercise of this right is regulated to some extent, so that the right to authorize a cable retransmission can still be assigned; whereas this Directive does not affect the exercise of moral rights;

(22) Whereas contractual agreements regarding the authorization of cable retransmission shall be promoted by additional measures; whereas, to begin with, all the rights necessary for a cable retransmission should be acquired in the form of a general contract; whereas, furthermore, any party shall be entitled, at any moment, to call upon the assistance of impartial mediators whose task it is to assist negotiations and to put forward non-binding proposals; whereas, finally, it is necessary to ensure that the negotiations are not improperly blocked or that individual holders of rights are not improperly prevented from taking part in the negotiations; whereas none of these measures for the promotion of the acquisition of rights calls into question the contractual nature of the acquisition of cable rights;

(23) Whereas, however, Community rules are not needed to deal with all of those matters whose effects, perhaps with some commercially insignificant exceptions, are felt only inside the borders of a single Member State;

(24) Whereas this Directive lays down the minimum rules needed to establish and guarantee free and uninterrupted cross-border broadcasting by satellite and simultaneous, unaltered cable retransmission of programmes broadcast from other Member States, on what is essentially a contractual basis;

(25) Whereas this Directive does not prejudice further harmonization in the field of copyright and neighbouring rights and the collective administration of such rights;

(26) Whereas it is therefore a matter for the Member States to supplement the general provisions needed to achieve the objectives of this Directive by taking legislative and administrative measures in their domestic law, provided these do not run counter to the objectives to this Directive and are compatible with Community law; whereas, in particular, Member States are accordingly free to lay down rules for the protection of rights related to copyright which go beyond those provided for in this Directive;

(27) Whereas this Directive does not affect the applicability of the competition rules in Articles 85 and 86 of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

DEFINITIONS

Article 1

For the purpose of this Directive:

(a) 'satellite' means any satellite operating either on frequencies which under telecommunications law allow reception by the public (a broadcasting satellite) or on frequencies which are reserved for closed, point-to-point communication (a communications satellite). In the latter case, however, the circumstances in which individual reception of the signals takes place must be comparable to those which apply in the case of broadcasting satellites;

(b) 'communication to the public by satellite' inside the Community means the act of taking a single decision on the content and the transmission by satellite of programme-carrying signals by the broadcaster. This act of communication to the public by satellite occurs in the Member State where the broadcaster takes the single decision on the content and the transmission by satellite of programme-carrying signals. If the programme-carrying signals are encrypted, communication to the public by satellite means the act of taking a single decision on the content and the transmission of the programme-carrying signals under the condition that decoders are provided to the public by the broadcaster himself or with his approval. There is no

communication to the public by satellite, however, if there is any interruption of the chain of broadcasting equipment between the point where a single decision is taken and the transmission of the relevant signals from the satellite;

(c) 'cable retransmission' means the simultaneous, unaltered and unabridged retransmission of a broadcast from another Member State by a cable or microwave system for reception by the public;

(d) 'broadcasting' means the initial transmission, by wire or over the air, including that by satellite, of television or radio programmes intended for reception by the public;

(e) 'collecting society' means an organization whose members have appointed it to manage copyright or related rights.

CHAPTER II

BROADCASTING OF PROGRAMMES BY SATELLITE

Article 2

Broadcasting right

Member States shall provide a right for the author to authorize or to prohibit the communication to the public by satellite of copyright works, subject to the provisions set out in this Chapter.

Article 3

Acquisition of broadcasting rights

1. Member States shall ensure that the right referred to in Article 2 may be acquired only by agreement.

2. Where, on 31 July 1991, it is provided by a Member State that an agreement between a collecting society and a broadcasting organization may be extended to include holders of rights not represented by the collecting society, this shall continue to be possible until 31 December 1997.

3. Paragraph 2 shall not apply to cinematographic works, including works created by a process analogous to cinematography.

Article 4

Performers

Member States shall provide that performers shall enjoy the right:

— to authorize or prohibit the communication to the public by satellite of their performance except where the performance used in the broadcasting is itself already a broadcast performance or is made from a fixation,

— to authorize or prohibit the fixation of their unfixed performances,

— to authorize or prohibit the reproduction of a fixation of their performance.

Article 5

Remuneration for the use of phonograms

Member States shall provide that if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for a communication to the public by satellite, a single equitable remuneration shall be paid to the performers, or to the producers of phonograms, or to both.

Article 6

Broadcasting organizations

Member States shall provide that broadcasting organizations shall enjoy the right to authorize or prohibit:

— the simultaneous retransmission of their broadcasts by satellite,

— the fixation of their broadcasts,

— the reproduction of fixations of their broadcasts.

Article 7

Limitations on rights

1. Member States may provide for limitations to the protection guaranteed by Articles 4, 5, and 6 only as regards:

— private use,

— use of short excerpts in connection with the reporting of current events,

— ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts,

— use solely for purposes of teaching or scientific research.

2. Notwithstanding paragraph 1 of this Article, any Member State may provide for the same kinds of limitation with regard to the protection of performers, producers of phonograms and broadcasting organizations as it provides for in its legislation concerning the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with the Rome International Convention for the Protection of Performers, Producers of Phonograms and broadcasting organizations.

Article 8

Minimum protection

1. Member States may provide for more far-reaching protection for authors, and holders of neighbouring rights under their jurisdiction than that required by Articles 2 to 6.

2. In applying paragraph 1 Member States shall observe the definitions contained in points (a) and (b) of Article 1.

Article 9

Transitional provision

Agreements concerning the exploitation of protected works and services, in force on 1 January 1995, shall not be subject to Articles 2 to 8 until 31 December 1997 if they expire after that date.

CHAPTER III

CABLE RETRANSMISSION

Article 10

Cable retransmission right

1. Member States shall ensure that when programmes from other Member States are retransmitted by cable in their territory the applicable copyright and neighbouring rights are observed, and that such retransmission takes place on the basis of agreements between copyright owners, holders of neighbouring rights and cable operators.

2. Notwithstanding paragraph 1, Member States may retain until 31 December 1997 such statutory licence systems as are in operation or expressly provided for by the national law on 31 July 1991.

Article 11

Exercise of the cable retransmission right

1. Member States shall ensure that the right of copyright owners and holders of neighbouring rights to authorize or prohibit the cable retransmission of a broadcast may be exercised only through a collecting society.

2. A holder of a right who has not transferred the management of his rights to a collecting society shall have a claim to compensation on the collecting society which manages rights of the same category. His claim shall be confined to the sum which he would have received if he had mandated the collecting society to exercise his rights.

Article 12

Exercise of the cable retransmission right by broadcasting organizations

Article 11 shall not apply to the rights exercised by a broadcasting organization in respect of its own transmissions.

Article 13

General contracts

Member States shall ensure that a party seeking the conclusion of a general contract is for its part obliged to submit collective proposals for an agreement.

Article 14

Mediators

1. Where no agreement is concluded regarding authorization of the cable retransmission of a broadcast, Member States shall ensure that either party may call upon the assistance of one or several mediators referred to in paragraphs 2 and 3.

2. The mediators shall have the task of providing assistance with negotiation. They may also submit non-binding recommendations to the parties.

3. Member States shall ensure that the mediators are so selected that their impartiality is beyond doubt.

Article 15

Prevention of the abuse of negotiating positions

Member States shall ensure that the parties do not improperly prevent negotiation regarding authorization for cable retransmission.

CHAPTER IV

GENERAL PROVISIONS

Article 16

Competition rules

This Directive shall be without prejudice to the Community competition rules.

Article 17

Collective administration of rights

The regulation of the activities of collecting societies shall be a matter for the Member States.

Article 18

Final provisions

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1995. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the provisions of national law which they adopt in the field covered by this Directive.

Article 19

This Directive is addressed to the Member States.

Proposal for a Council Regulation (EEC) establishing a support system for soya beans, rape seed and sunflower seed

(91/C 255/04)

COM(91) 318 final

(Submitted by the Commission on 31 July 1991)

THE COUNCIL OF THE EUROPEAN ECONOMIC COMMUNITY,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 42 and 43 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas a new support system for the producers of soya beans, rape seed and sunflower seed harvested within the Community, has to be established; whereas the best way to achieve this objective is to provide for a compensatory payment for producers who sow and intend to harvest such products; whereas this system shall be applied with effect from those plantings intended for harvest in 1992 thereby superseding the provisions relating to oil seeds aids contained in Council Regulations 136/66/EEC [1] and (EEC) No 1491/85 [2];

Whereas such compensatory payments should reflect the specific structural characteristics that influence yields and that the drawing up of a regionalization plan based on objective criteria should be left to the Member States; whereas the regionalization plans must be consistent with the average yields of each region achieved in a given period; whereas a specific procedure should be provided in order to examine these plans on the Community level;

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[1] OJ No 172, 30. 9. 1966, pp. 3025/66.

[2] OJ No L 151, 10. 6. 1985, p. 15.