

STATUTORY INSTRUMENTS.

S.I. No. 313 of 1999.

EUROPEAN COMMUNITIES (TELEVISION BROADCASTING) REGULATIONS, 1999.

I, SÍLE DE VALERA, Minister for Arts, Heritage, Gaeltacht and the Islands, in exercise of the powers conferred on me by [section 3 of the European Communities Act, 1972 \(No. 27 of 1972\)](#), and for the purpose of giving effect to Council Directive 89/552/EEC of 3 October 1989¹, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997², hereby make the following Regulations:

² O.J. No. L202 of 30/7/1997, p. 60.

¹ O.J. No. L298 of 17/10/1989, p. 23.

1. These Regulations may be cited as the European Communities (Television Broadcasting) Regulations, 1999.

2. (1) In these Regulations—

"the Authority" means Radio Telefís Éireann;

"broadcaster" means the person under the jurisdiction of the State who has editorial responsibility for the composition of schedules of television programmes intended for reception by the public and to which the definition of "television broadcasting" relates, and who transmits them or has them transmitted by third parties;

"the Directive" means Council Directive 89/552/EEC¹ as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997²;

² O.J. No. L202 of 30/7/1997, p. 60.

¹ O.J. No. L298 of 17/10/1989, p. 23.

"the Minister" means the Minister for Arts, Heritage, Gaeltacht and the Islands;

"teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

"television broadcasting" means the initial transmission by wire or over the air in unencoded or encoded form of television programmes intended for reception by the public and includes the communication of programmes between undertakings with a view to their being relayed to the public, but does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;

"transmission by wire or over the air" includes transmission by satellite.

(2) A word or expression that is used in these Regulations and is also used in the Directive shall, unless the contrary intention appears, have the same meaning in these Regulations as it has in the Directive.

3) Article 2 of the Directive applies to these Regulations in determining whether a broadcaster is under the jurisdiction of the State or another Member State.

3. Regulations 4, 5 and 6 of these Regulations shall not apply to a television broadcast—

(a) that is intended for local audiences and does not form part of a national network, or

(b) by a channel exclusively devoted to teleshopping or self-promotion.

4. (1) Subject to paragraph (2) of this Regulation, a broadcaster, where practicable and by appropriate means, shall reserve for European works a majority proportion of its transmission time, excluding the time appointed to news, sporting events, games, advertising, teletext services and teleshopping.

(2) The apportionment of transmission time by a broadcaster for the purposes of paragraph (1) of this Regulation shall be made having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public and shall be achieved progressively on the basis of suitable criteria.

(3) Where the proportion of transmission time laid down in paragraph (1) of this Regulation cannot be attained, it shall not be lower than the average proportion of transmission time devoted to European works if any in 1988.

5. (1) Subject to paragraph (2) of this Regulation, a broadcaster where practicable and by appropriate means, shall reserve at least 10 per cent of its transmission time for European works created by producers who are independent of broadcasters under the jurisdiction of the State or any other state, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping or, reserve 10 per cent of its programming budget for European works which are created by producers who are independent of such broadcasters.

2) The apportionment of the transmission time or the programming budget of a broadcaster shall have regard to a broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public and shall be achieved progressively, on the basis of suitable criteria.

(3) An adequate proportion of works referred to in paragraph (1) of this Regulation shall comprise works which are transmitted within 5 years of their production.

6. (1) The Minister shall provide the Commission of the European Communities every 2 years with a report on the application of Regulations 4 and 5 of these Regulations.

(2) Where a request is made by the Minister to the Authority or, in the case of any other broadcaster, to the Independent Radio and Television Commission, for information necessary to enable the Minister to make a report referred to in paragraph (1) of this Regulation, it shall be complied with by the Authority or the Independent Radio and Television Commission, as the case may be.

7. A broadcaster shall not broadcast cinematographic work outside the periods agreed with the rights holders of that work.

8. (1) Subject to paragraph (2) of this Regulation, a broadcaster shall not broadcast programmes that might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.

(2) Programmes (not being those that involve pornography or gratuitous violence) which might impair the physical mental or moral development of minors may only be shown—

(a) where the broadcaster ensures, by selecting the time of the broadcast or by any technical means, that minors would not normally be expected to hear or see such broadcasts, and

(b) if broadcast in unencoded form, where the broadcaster ensures that such programmes are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

9. (1) In this Regulation "the Court" means the High Court.

(2) Where—

(a) on application to the Court by any person directly affected by any activity or conduct of a broadcaster under the jurisdiction of the State which results or would result in a failure by the broadcaster to comply with these Regulations, and

(b) the Court is satisfied that such failure is occurring or is likely to occur or reoccur,

then the Court may make an order directing the broadcaster to refrain from carrying on or attempting to carry on that activity or conduct.

(3) The Court may make such order as to the costs of the parties to or heard by the Court in proceedings relating to an application for an order under this Regulation as it considers appropriate.

(4) Nothing in this Regulation shall be construed as affecting any right to damages or other remedy against a broadcaster.

10. The European Communities (Television Broadcasting) Regulations, 1991 ([S.I. No. 251 of 1991](#)), are hereby revoked.

GIVEN under my Official Seal, this 8th day of October, 1999.

SÍLE DE VALERA,

Minister for Arts, Heritage, Gaeltacht and the Islands.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to give effect to certain provisions of Directive 97/36/EC of the European Parliament and Council of 30 June 1997, which amended Directive 89/552/EEC, commonly Known as the Television without Frontiers Directive.

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