

EUROPEAN ECONOMIC AREA
STANDING COMMITTEE
OF THE EFTA STATES

Brussels, 14 September 2005

Ref. No.: 1058392

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

**EEA EFTA COMMENTS ON THE ISSUE PAPERS FOR THE LIVERPOOL
AUDIOVISUAL CONFERENCE 21/22 SEPTEMBER 2005**

Issue Paper 1: Rules Applicable to Audiovisual Content Services
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EXECUTIVE SUMMARY

The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive (TVWF Directive) which is a necessary step to deal with the challenges for the regulatory framework caused by the technological developments in the audiovisual sector and the globalisation of the economy.

With regard to the issue paper on Rules Applicable to Audiovisual Content Services, the EEA EFTA States are of the opinion that the five general rules for the basic tier of obligations mentioned in the issue papers shall apply to all audiovisual content services. They particularly suggest to extend the existing rules on the protection of minors and human dignity to all types of audiovisual services. A sub set of rules derived from the TVWF Directive would only apply to linear services. The EEA EFTA States recommend that the impact of the e-Commerce Directive on the audiovisual services sector be subject to further studies and considerations, and explicitly addressed in a revised TVWF Directive. The EEA EFTA States also recommend further studies on how the means employed to protect the listed public policy objectives should vary according to the distinctive features of the service.

A future regulation should take into account the concerns expressed by several Member States regarding broadcasting services that are established in one Member State, but primarily target the audience in one or more other Member States aimed at circumventing a higher level of public policy objectives.

I GENERAL REMARKS

1. The EEA EFTA states welcome the Commission's initiative to review the Television Without Frontiers Directive and appreciate the opportunity to comment upon the issue papers

prepared by the Commission. The papers cover a wide range of topics and EEA EFTA States will focus on those of particular importance to them.

2. In general, the EEA EFTA States would like to emphasise that the aim of the TVWF Directive is not solely to promote the internal market for television services within the EU, but also cultural policy objectives such as the protection of minors and the promotion of European productions.

3. The EEA EFTA States recognise that technological developments and the globalisation of the economy make a revision of the TVWF Directive necessary. These developments create challenges for the regulation of the audiovisual sector that must be dealt with.

II SPECIFIC REMARKS ON ISSUE PAPER (IP 1)

A) Material competence (Issue 1)

4. The EEA EFTA States generally support the idea to establish a comprehensive legal framework for all forms of audiovisual services, given the development towards an audiovisual sector comprehending both linear and non-linear services. This framework would include a basic tier of rules applying to all audiovisual content services. A sub set of these services, the linear audiovisual services, would be subject to rules derived from the TVWF Directive.

5. The widening of the scope could have a number of positive implications. Above all, it would help to safeguard vital public policy objectives, for example related to the protection of minors and qualitative obligations regarding advertisements. In addition, the inclusion of non-linear services might promote the cross-border movement of such services in Europe. Furthermore, a widening of the scope could create a level playing field for respectively linear and non linear services, i.e. services that to a growing extent are perceived as substitutes by the consumer.

6. Although the distinctions between linear and non-linear services might be blurred, the differences cannot be expected to completely disappear in the foreseeable future. Studies of media consumption patterns indicate that non-linear services are of a growing importance to society as an arena for information, debate and entertainment. On the other hand, the traditional linear television media has so far been able to preserve its role as a dominant and important media channel with its presence in almost all homes. The essential social role played by linear audiovisual services implies that a media specific approach to regulation of audiovisual services is still necessary. The fact that a number of the provisions of the present directive are not easily applicable to non-linear services only strengthens this conclusion.

7. The EEA EFTA States are of the opinion that the five general rules for the basic tier of obligations mentioned in the issue papers¹ shall apply to all audiovisual content services. They particularly highlight the desirability of adapting the existing regulation on the protection of minors and human dignity to cover all types of audiovisual services.

¹ In the Issue Papers also referred to as “public policy objectives” or “general interest objectives”.

8. Although the EEA EFTA States in principle support the idea of extending the material competence of the directive to cover all audiovisual services aimed at the general public, they however stress the need for further consideration and debate. As a number of non-linear services originate from countries outside the European Economic Area, aspects related to jurisdiction and enforcement need to be addressed. Furthermore, the choice of solutions in respect to jurisdiction and enforcement will have an impact on regulatory methods (regulation v co or self-regulation) to be applied to non-linear services.

9. The definition of non-linear audiovisual services implies that such services will also fall within the definition of information society services as these are defined in the E-commerce Directive. The relationship with the E-commerce Directive is barely discussed in the issue paper, but we assume that the intention is that the revised TVWF Directive will take precedence over the E-commerce Directive in the case of overlap or conflict. The EEA EFTA States therefore recommend that the internal relationship between the two directives is made subject to further study and consideration, and explicitly addressed in the revised TVWF Directive.

10. The EEA EFTA States also recommend further studies on how the means employed to protect the listed public policy objectives should vary according to the distinctive features of the service.

A) Territorial competence (Issue 2)

11. The EEA EFTA States share the concerns expressed by several EU Member States regarding the regulation of broadcast services that are established in one Member State, but primarily target the audience in one or more other Member States. This practice has a number of undesirable effects:

- it could disturb the broadcasting system of the receiving state and hinder the development of strong national broadcasters;
- it distorts competition between broadcasters within one geographical (national) market;
- the level of protection for the general interests in the Member State concerned will be lower than that provided by the national legislation;
- it is likely that the broadcasters that are under the jurisdiction of one Member State but targeting the audience of another Member State will be subject to a lenient supervision by national regulators.

12. Several solutions to this problem should be assessed. One alternative might be to establish the language of the programmes as a supplementary criterion for assessing territorial competence. Although the language criterion would not eliminate the problem of circumvention in all Member States, it might still solve the problem in some areas and thereby add to the success of the directive.

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SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

**EEA EFTA COMMENTS ON THE ISSUE PAPERS FOR THE LIVERPOOL
AUDIOVISUAL CONFERENCE 21/22 SEPTEMBER 2005**

<p>Issue Paper 3: Cultural Diversity and the Promotion of European and Independent Audiovisual Production</p>
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EXECUTIVE SUMMARY

The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive (TVWF Directive) which is a necessary step to deal with the challenges for the regulatory framework caused by the technological developments in the audiovisual sector and the globalisation of the economy.

Concerning the issue paper on Cultural Diversity and the Promotion of European and Independent Audiovisual Production, the EEA EFTA States find the quota provisions in Articles 4 and 5 of the TVWF Directive to be still valid and adequate for linear services but do not see a basis for introducing binding quotas to non-linear services.

Also, the EEA EFTA States regard it to be premature to include the retention of secondary rights as an element of the definition of independent producers, as this could be perceived as an interruption of the contractual relationship between broadcasters and producers.

I GENERAL REMARKS

13. The EEA EFTA states welcome the Commission's initiative to review the Television Without Frontiers Directive and appreciate the opportunity to comment upon the issue papers prepared by the Commission. The papers cover a wide range of topics and the EEA EFTA States will focus on those of particular importance to them.

14. In general, the EEA EFTA States would like to emphasise that the aim of the TVWF Directive is not solely to promote the internal market for television services within the EU, but also cultural policy objectives such as the protection of minors and the promotion of European productions.

15. The EEA EFTA States recognise that the technological developments and the globalisation of the economy make a revision of the TVWF Directive necessary. These

developments create challenges for the regulation of the audiovisual sector that must be dealt with.

II SPECIFIC REMARKS ON THE ISSUE PAPER (IP 3)

16. The EEA EFTA States consider it to be important that the future directive contains provisions promoting European and independent productions. In general, the EEA EFTA States find the quota provisions in Articles 4 and 5 to be still valid and adequate for linear services. Ideally, these provisions should also apply to non-linear services. However, the EEA EFTA States, at present, do not see a basis for introducing binding quotas to non-linear services. This is partly due to the risk of delocalisation and partly due to the fact that it will be difficult to adapt quota restrictions to 'on demand services' in an adequate manner.

17. The quota provisions illustrate the importance of preserving the TVWF Directive as a minimum directive. The directive aims at stimulating the independent production sector. Article 5 of the directive is an important tool in this context. The EEA EFTA States do not currently see a need for any alterations to these provisions. However, the possibility for Member States to adapt the level of the quota and the legal definitions to the specific characteristics of the national production sector should be maintained.

18. The retention of secondary rights is probably vital for the commercial viability of the independent producers. However, it seems premature to include the retention of secondary rights as an element of the definition of independent producers, as this could be perceived as an interruption of the contractual relationship between broadcasters and producers. The implications of such intervention are difficult to predict, and sometimes such measures might even defeat its own end. Thus the EEA EFTA States recommend that the experiences had by France and the UK in this field are thoroughly evaluated, prior to a possible introduction of new regulations on a European level.

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**EEA EFTA COMMENTS ON THE ISSUE PAPERS FOR THE LIVERPOOL
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Issue Paper 4: Commercial Communication

EXECUTIVE SUMMARY

The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive (TVWF Directive) which is a necessary step to deal with the challenges for the regulatory framework caused by the technological developments in the audiovisual sector and the globalisation of the economy.

With regard to the issue paper on Commercial Communications, the EEA EFTA States advocate for a stricter regulation of commercial communications of linear audiovisual services due the impact of television broadcasting to a broad public and the general interest objectives attached to it. They however recognise the need for an evaluation of these rules. The regulation of the present directive related to alcohol, tobacco products and pharmaceutical products, protection of minors and human dignity should be adapted to cover all audiovisual services. In order to protect the editorial integrity of audiovisual services, the EEA EFTA States are opposed to the authorisation of product placement in television programmes.

I GENERAL REMARKS

19. The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive and appreciate the opportunity to comment upon the issue papers prepared by the Commission. The papers cover a wide range of topics and the EEA EFTA States will focus on those of particular importance to them.

20. In general, the EEA EFTA States would like to emphasise that the aim of the TVWF Directive is not solely to promote the internal market for television services within the EU, but also cultural policy objectives such as the protection of minors and the promotion of European productions.

21. The EEA EFTA States recognise that the technological developments and the globalisation of the economy make a revision of the TVWF Directive necessary. These

developments create challenges for the regulation of the audiovisual sector that must be dealt with.

II SPECIFIC REMARKS ON ISSUE PAPER (IP 4)

22. The impact of television broadcasting and the public policy objectives attached to it justifies a stricter regulation of commercial communications of linear audiovisual services. The experiences with the present regulations do not support the view that the developments within the broadcasting sector have made these obsolete. Nor did the public consultation in 2003 disclose a clear sentiment in favour of an extensive liberalisation of the regulations. Having said this, the EEA EFTA States recognise the need for an evaluation of these rules, to ensure that the regulatory environment strikes a fair balance between the interests of the viewers, respectively, the commercial broadcasters.

23. The EEA EFTA States would welcome the establishment of a basic tier of qualitative rules applicable to all audiovisual commercial communications, as this would promote fair competition and better protection of the interest of the viewers. With this background, the EEA EFTA States support the idea that the regulation of the present directive related to alcohol, tobacco products and pharmaceutical products, protection of minors and human dignity should be adapted to cover all audiovisual services. As regards the quantitative provisions in the directive², we do not see it as advisable to adapt these to non-linear services.

24. The principle of a clear separation between advertising and editorial content is one of the fundamental principles underlying the regulation of the audiovisual sector. With this background, the EEA EFTA States are concerned in respect to a possible authorisation of product placement in television programmes, as this would represent a departure from this principle. They are of course aware of the fact that product placements are a common feature in many non-European/independent productions. The EEA EFTA States nevertheless see it as important to preserve regulations that are aiming to protect the editorial integrity of audiovisual services.

25. Furthermore, if product placements are authorised for all programmes other than news, religious services and children's programmes, broadcasters might be given an incentive to reduce the number of such programmes. Consequently, the authorisation of product placement in certain programmes might have undesirable implications for the programme schedules of the broadcasters.

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² Issue 1: hourly and daily advertising limits.

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**EEA EFTA COMMENTS ON THE ISSUE PAPERS FOR THE LIVERPOOL
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<p>Issue Paper 5: Protection of Minors and Human Dignity and Right of Reply</p>
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EXECUTIVE SUMMARY

The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive (TVWF Directive) which is a necessary step to deal with the challenges for the regulatory framework caused by the technological developments in the audiovisual sector and the globalisation of the economy.

Concerning the issue paper on the Protection of Minors and Human Dignity and Right of Reply, the EEA EFTA States advocate applying the wording of Article 22 of the present directive to all audiovisual services. Appropriate measures for non-linear services must also include the possibility for Member States to have legislation in addition to systems of co- or self-regulation as well as systems of filtering, age verification etc.

I GENERAL REMARKS

26. The EEA EFTA States welcome the Commission's initiative to review the Television Without Frontiers Directive and appreciate the opportunity to comment upon the issue papers prepared by the Commission. The papers cover a wide range of topics and EEA EFTA States will focus on those of particular importance to them.

27. In general, the EEA EFTA States would like to emphasise that the aim of the TVWF Directive is not solely to promote the internal market for television services within the EU, but also cultural policy objectives such as the protection of minors and the promotion of European productions.

28. The EEA EFTA States recognise that the technological developments and the globalisation of the economy make a revision of the TVWF Directive necessary. These developments create challenges for the regulation of the audiovisual sector that must be dealt with.

II SPECIFIC REMARKS ON ISSUE PAPER (IP 5)

29. The current directive obliges all Member States to ensure that television broadcasts by broadcasters under their jurisdiction do not contain programmes which might seriously impair the physical, moral or mental development of minors. The EEA EFTA States emphasise that these rules are just as important in the digital environment as in the analogue. Thus the EEA EFTA States will support that the current wording of Article 22 should be maintained for linear audiovisual services. The EEA EFTA States also support having the same principles as for linear audiovisual services transposed in adequate rules for non-linear services. Appropriate measures for non-linear services must also include the possibility for Member States to have legislation in addition to systems of co- or self-regulation as well as systems of filtering, age verification, etc.

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