

**EUROPEAN ECONOMIC AREA**  
**STANDING COMMITTEE**  
**OF THE EFTA STATES**

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**WORKING GROUP ON AUDIOVISUAL SERVICES**

**Comments by the EEA EFTA States on a possible revision  
of the Television Without Frontiers Directive**

**EXECUTIVE SUMMARY**

The EEA EFTA States, Iceland, Liechtenstein, Norway, welcome the Commission's Work Programme on the review of the Television Without Frontiers Directive (TWF Directive) and appreciate the opportunity to comment on a possible revision of the Directive. The essential views of the EEA EFTA States are that they in general do not see any immediate reason to expand the scope of the TWF Directive to cover services that presently are not regulated by this Directive. The EEA EFTA States also consider it of essential importance that the basic principle of minimum regulation in Article 3 (1) in the Directive is maintained as it secures the opportunity for Member States to develop national regulation based on national diversities in culture, media plurality and other general interest objectives. It is essential for the EEA EFTA States that the current regulation in Articles 22 and 2a concerning the protection of minors is kept. It is also vital to maintain special protection of minors with respect to advertising. Furthermore, the EEA EFTA States are of the opinion that the present legislation in Chapter IV on the advertising and sponsoring of the Directive to a large extent should be maintained. At the same time, the EEA EFTA States support a cautious approach in the regulation of new advertising techniques, taking in consideration, i.a., that these techniques have not matured yet in a way that renders it necessary or adequate to develop specific regulation within the framework of the Directive.

**I INTRODUCTION**

1. The EEA EFTA States welcome the Commission's work programme on the review of the Television Without Frontiers Directive<sup>1</sup> and appreciate the opportunity to comment on a possible revision of the Directive<sup>2</sup>. The EEA EFTA States would at this stage address general comments and highlight issues of essential importance for the EEA EFTA States, and reserve the right to come back with more specific comments on a possible proposal for a revision of the Directive.

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<sup>1</sup> COM (2002) 778 final

<sup>2</sup> 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, as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997

## **II THE SCOPE OF THE DIRECTIVE SHOULD BE MAINTAINED**

2. Television media still possess a unique position as the most influential media in Europe. Historically, the sector-specific regulation of broadcasting has been based on the need to administrate usage of radio-spectrum frequencies and the fact that broadcasting has been regarded as an especially powerful media. Such justifications do not have the same validity for services that the user herself actively initiates. However, as long as the qualitative differences between respectively television and information society services remain, the EEA EFTA States find it adequate to regulate the services in two different directives.

3. In the Work Programme, the Commission states that it does not aim at challenging the distinction made in the *acquis communautaire* between information society services and services covered by the Television Without Frontiers Directive. The EEA EFTA States support this approach and do not see at present any reason to expand the scope of the Directive to cover services that presently are not regulated by it.

4. However, the EEA EFTA States would suggest that the scope of the TWF Directive be clarified. It is a challenging task to draw a precise line between television and information society services, and it may prove difficult to eliminate all doubts concerning the actual scope of the Directive. One possible line of action might be that the Commission clarifies the definition of television broadcasting in Article 1 (a) of the Directive. Norway recently amended the definition of “broadcasting” in order to state that “broadcasting” shall mean any transmission of content intended for direct *and simultaneous* reception by the public. The requirement for simultaneous reception was included to clarify that the act does not cover services where the user initiates the transmission.

## **III THE TWF DIRECTIVE SHOULD STILL BE A MINIMUM REGULATION**

5. Article 3 (1) of the Directive states that Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive. The EEA EFTA States consider it of essential importance that this basic principle of minimum regulation is maintained. This principle provides the Member States with an opportunity to develop domestic regulations based on national diversities in culture, media plurality and other general interest objectives. In the cultural area, including the broadcasting sector, there will necessarily be more distinct variations between the Member States than in many other areas. Consequently, there are well-grounded reasons for “cultural derogations” on some issues. The EEA EFTA States find it neither possible nor desirable to have a completely harmonised legislation at Community level in this area. In this context, we also find it relevant to refer to the Communication on the application of state aid rules to public service broadcasting<sup>3</sup>. In this Communication, the actual definition of the public service remit is left to the Member States recalling the affirmation of competence of the Member States on this matter.

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<sup>3</sup> Official Journal of the European Union 2001/C320/04

#### **IV RULES ON THE PROTECTION OF MINORS SHOULD BE KEPT**

6. 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 minors. The EEA EFTA States would underline that these rules are even more important in a digital environment and should be kept.

7. In addition, the EEA EFTA States find that Articles 2a and 22(2) of the Directive strike an appropriate balance between the freedom to provide television services and the right of each Member State to protect minors. Accordingly, the possibility to take measures against such programmes should be maintained.

8. The EEA EFTA States would also emphasise the need to maintain special protection of minors with respect to advertising, particularly because minors do not have the same ability as adults to differentiate between commercial and editorial content. In the assessment of advertising rules, children's susceptibility needs to be taken into account.

#### **V A CAUTIOUS APPROACH TO THE REGULATION OF NEW ADVERTISING TECHNIQUES**

9. There is in general a risk tied to all types of regulation that it might stifle the innovation of new services. The television sector is presently moving from analogous to digital technology. In this situation, it is especially important to avoid superfluous regulation. When the regulation of the broadcasting sector is under revision, one important question must be how far the authorities should go in anticipating possible future changes regarding developments in markets and technology. In general, the EEA EFTA States find that the regulatory framework as far as possible should be in correspondence with the requirements of the present environment. Correspondingly, regulations should not be designed to meet the requirements of some anticipated future. This is an important consideration, having in mind the aim to encourage new entrants on the market and stimulate innovation.

10. New advertising techniques (interactive, split screen and virtual advertising, etc.) are developing fast in a number of Member States. However, it is too early to assess what kind of impact these techniques may have on the future television market. These techniques have not matured in a way that renders it necessary or adequate to develop specific regulations within the framework of the Directive.

11. Furthermore, we have noticed that the different national regulatory authorities have chosen differing approaches to the regulation of these new techniques. This might impede the free movement of services across the borders and reduce the transparency of the regulations. Seen in this context, the EEA EFTA States welcome the Commission's intention to issue interpretative guidelines on the relationship between the provisions of the Directive and the new techniques of advertising.

12. As to the precise content of the interpretative guidelines, the EEA EFTA States look forward to taking part in the development of these at a later stage, possibly within the context of the Contact Committee. At this point, they would like to underline the importance of preserving and promoting the vital general interest

objectives underlying the Directive. The new techniques should in general not be allowed to develop in a way that might undermine these objectives, i.e., the protection of minors, the respect for human dignity, the integrity of audiovisual works, etc. On the other hand, some of these techniques might be to the benefit of the viewers. Split screen advertising might constitute an illustration of this, as the technique challenges the principle of a firm separation of advertising and editorial content. The viewers might still find the split screen advertising technique preferable in some types of programmes, particularly in some sports programmes, to the present insertions of advertising spots.

13. Furthermore, the EEA EFTA States are of the opinion that the interpretative guidelines should not deal too much in detail with these new techniques. As these new techniques are “a moving target”, we would suggest that the guidelines primarily focus on the more fundamental principles for the application of the Directive on the new services. One example might be to focus on what implications split screen advertising might have for the protection of minors. As small children cannot be expected to understand the difference between advertising and editorial content, split screen advertising should probably be restricted in connection with programmes targeting children. A similar restriction should also be considered in respect to other types of programmes (e.g., religious services, news, movies, etc.) to protect the editorial or artistic integrity of these.

## **VI CURRENT RULES ON TELEVISION ADVERTISING SHOULD NOT BE CHANGED**

14. In the report, the Commission indicates that it will examine certain rules limiting the quantity of advertising to see whether these might be relaxed in the light of the degree of user choice and control. Once again, the EEA EFTA States would stress the importance of regulations addressing the requirements of the present broadcasting market. Although consumer choice to a certain degree has been widened over the last ten years, the EEA EFTA States are of the opinion that the present legislation in Chapter IV of the Directive to a large extent should be retained. The EEA EFTA States oppose a liberalisation and possible withdrawal of the obligations concerning the amount of advertising permitted and the number and form of advertising interruptions, because this would lead to an undesirable increase in the quantity of advertising and interruptions in the programmes.

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