EFTA AELE
EUROPEAN FREE TRADE ASSOCIATION
ASSOCIATION EUROPEENNE DE LIBRE-ECHANGE

Brussels, 28 July 2006
Ref.no. : 1068016

EEA EFTA POSITION ON THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 89/552/EC; TELEVISION WITHOUT FRONTIERS DIRECTIVE (TVWF DIRECTIVE)

Dear Mr Paulger,

I have the pleasure of submitting the EEA EFTA comments on the proposal for a Directive of the European Parliament and of the Council amending Directive 89/552/EC; Television without Frontiers Directive (TVWF Directive).

As we welcome the proposal, we would once again like to express our satisfaction with the consultation process and look forward to continuing our co-operation in this area.

Yours sincerely,

PP. Hans-Peter Walch

Mr Hans Peter Walch
EFTA Chairman of Subcommittee II

Enclosure

Mr Gregory Paulger,
Director, DG INFSO, A.
European Commission
B-1049 Brussels

CC: Mr Jean-Eric De Cockborne, Head of Unit, DG INFSO, A.1.
Mr Harald Trettenbrein, DG INFSO, A.1.
Mr Matthias Brinkmann, European Commission, DG RELEX
Ms Ruth Hieronymi, Rapporteur European Parliament, Rue Wiertz ASP 15E261 BE-1047 Bruxelles
Mr Olli-Pekka Rantala, Councellor, Finnish Presidency, Rue de Trèves 100 BE-1040 Bruxelles

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE
OF THE EFTA STATES

Brussels, 26 July 2006

Ref. No.: 1067857

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA POSITION ON THE PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 89/552/EC; TELEVISION WITHOUT FRONTIERS DIRECTIVE (TVWF DIRECTIVE)

Executive Summary

In this paper the EEA EFTA States will present the following recommendations:

- **Gambling services should be derogated from the scope of the Directive**
- **It is necessary to find an appropriate solution for cases where an audiovisual media service is particularly targeting the public in another Member State. A provision in line with the existing Article 16 of the European Convention on Transfrontier Television might be included, to address the problem.**
- **The proposal regarding product placements is inadvisable. The proposals regarding insertion of advertisements should be reconsidered, based on an evaluation of how the proposals have an impact on the interest of the viewers.**
- **Regulation on qualitative restrictions for commercial communications should be adapted in full to all audiovisual services.**
- **A clarification should be added to Article 3 no 1 to the TVWF Directive that stresses that Member States maintain their liberty to impose rules that are stricter than the minimum regulations of the TVWF Directive even when the same matter is also regulated in the UCP Directive.**

I Introduction

1. The EEA EFTA States refer to the legislative proposal for the revision of the Television without Frontiers Directive from the Commission of the European Communities (COM(2005) 646 final), dated 13 December 2005. Furthermore the EEA EFTA States refer to the prior EEA EFTA Comments on 24 July 2003 on the possible revision of the TVWF Directive, and 14 September 2005 on the Issue Papers

for the Liverpool Audiovisual Conference 21/21 September 2005, which are enclosed (Annex 1 and 2).

II Material competence

2. In general, the EEA EFTA States support the establishment of a comprehensive legal framework for all audiovisual media services. The EEA EFTA states support the proposal to introduce basic principles for all audiovisual media services, whilst at the same time differentiating the level of regulation in accordance to the degree of user control. The new Directive should create a more level playing field for service providers that provide similar kinds of audiovisual content over different platforms. We will particularly welcome the possible establishment of a pan-European set of basic rules, e.g. the provisions on the protection of minors and incitement to hatred.

3. The proposal for amendments to the TVWF Directive does not contain any limitations or derogations from the scope of the directive with regard to the marketing and promotion of gambling activities. In the EEA EFTA States, gambling has traditionally been regulated within a stringent framework with the objective to uphold legitimate interests of public policy and order, consumer protection, and to avoid damaging social consequences such as problem gambling and fraud.

4. At present, the marketing and promotion of gambling activities are not derogated from the scope of the prevailing TVWF Directive. The proposed expansion of the directives scope would allow for the marketing and promotion of gambling services on a wider scale than at present. Gambling activities are permanently derogated from the scope of the e-Commerce directive and the current draft Service Directive. Gambling services should also be permanently derogated from the Television without Frontiers Directive. This would be in conformity with regard to the regulation of gambling services within secondary EU-legislation.

III Territorial competence

5. The EEA EFTA States recognises the importance of the "country of origin" principle. However, we share the concerns expressed by several Member States regarding the regulation of broadcast services that are established in one Member State, but primarily targeting the audience in one or more other Member States. These concerns should be carefully addressed without undermining the "country of origin" principle.

6. The EEA EFTA States support the assessments and intentions of the proposal in the letter dated 9 December 2005 from the Government of Sweden on behalf of 13 Member States.

7. The EEA EFTA States fear that the proposal of the Commission is inadequate to address this issue since it will in practice be nearly impossible to prove that the establishment of the service provider is based on fraudulent circumvention of local legislation. The EEA EFTA States consider it necessary to find an appropriate solution for cases where an audiovisual media service is particularly targeting the public in another Member State.

8. A possible solution to the challenge from targeted services could be to include a provision in the TVWF Directive in line with the existing Article 16 of the European

Convention on Transfrontier Television. The first paragraph of this article reads:

> *" In order to avoid distortions in competition and endangering the televisions system of a Party, advertising and tele-shopping which are specifically and with some frequency directed to audiences in a single Party other than the transmitting Party shall not circumvent the television advertising and tele-shopping rules in that particularly Party."*

9. In line with this proposal, we also support the proposal of Latvia to establish an obligatory consultation procedure between the NRAs of the countries involved.

IV Commercial communications – liberalising the advertising rules for television broadcasts

10. The EEA EFTA States strongly emphasise the essential importance of the principle of separation between advertising and editorial content. They are concerned that the introduction of provisions on product placements could undermine this principle.

11. Furthermore, the authorisation of product placement might affect the broadcasters' editorial decisions on content programming and the commissioning of programmes. They are concerned that there could be a reduced interest among broadcasters to invest in programmes where product placement will be prohibited; news, current affairs, documentaries and children's programmes. In addition, the proposal is based on the argument that the identification of product placement in the beginning of the programme makes it transparent for the viewers. Recognising this principle, the EEA EFTA States are however concerned that these identifications are either not efficient or primarily serving promotional purposes.

12. The EEA EFTA States recognise the need for a flexible framework for commercial broadcasters. Adequate regulations may help to preserve free-to-air broadcasters in Europe. However, the framework must strike a balance between the interests of the broadcasters and the interests of the viewers. In general, we cannot see that the present legislative proposal addresses the interests of the viewers in a sufficient manner. Our main concern is that more flexible or liberal insertion rules might expose viewers to the more intrusive commercial breaks in programmes. Secondly, more liberal insertion rules could conflict with right holder's interests. Thirdly, there is a risk that more liberal rules for specific categories of programmes could provide broadcasters with an incentive to give lower priority to children's programmes, current affairs programmes and news, as these might be perceived as less profitable. Consequently, the EEA EFTA States are of the opinion that the proposed amendments of Article 11 should be reconsidered based on an evaluation of how the proposal has an impact on the interest of the viewers.

V Commercial communications – qualitative restrictions for non-linear services

13. The EEA EFTA States welcome the establishment of a basic tier of qualitative rules applicable to all audiovisual communications. Consequently, we support the proposal that the regulation of the present directive related to alcohol, tobacco products, the protection of minors and human dignity should be adapted to cover all audiovisual services.

14. However, some parts of the regulation in the present TVWF directive have not been proposed to be adapted in full to all audiovisual media services, namely on respect for human dignity and on alcohol and pharmaceutical products cf. articles 12, 14 and 15. In the view of the EEA EFTA States, general interest objectives imply that these articles could be applied in full to all audiovisual media services.

VI Commercial communications – the relationship with the Unfair Commercial Practices Directive

15. The EEA EFTA States are pleased that the Commission has stressed that the Unfair Commercial Practices Directive ("the UCP Directive") is a general act that does not replace sector-specific regulation. In case of conflict of this general regulation with sector-specific EU regulation such as the TVWF Directive, the sector-specific regulation applies. However, as the UCP Directive is a total harmonisation directive while the TVWF Directive is a minimum harmonisation directive, the question arises whether Member States may still apply regulations that are stricter than the minimum regulation in the TVWF Directive when the same matter is also regulated in the UCP Directive. One example is the prohibitions in both the TVWF Directive and the UCP Directive on commercial communications targeting minors. The EEA EFTA States are concerned that the rules in the UCP Directive may force Member States such as Norway and Sweden to liberalise their regulations.

16. The EEA EFTA States consider that a requirement to liberalise national regulation would be in discord with the fundamental principle of the TVWF Directive as a minimum harmonisation directive for the internal market. One solution to this problem could be to add the following paragraph to Article 3 no 1 to the TVWF Directive:

> *"Member States maintain their liberty to impose rules that are stricter than the minimum regulations of this Directive even when the same matter is also regulated in the Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer practices in the internal market."*

* * * * * *

2/AV/W/003
24 July 2003
Brussels

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND 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 Directive1 and appreciate the opportunity to comment on a possible revision of the Directive2. 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.

---

[1] COM (2002) 778 final

[2] 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

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[3]. 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.

---

[3] 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.

* * * * * *

Brussels, 9 September 2005

Ref. No.: 1058037

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA COMMENTS ON THE ISSUE PAPERS FOR THE LIVERPOOL AUDIOVISUAL CONFERENCE CONCERNING A FUTURE REVIEW OF THE TELEVISION WITHOUT FRONTIERS DIRECTIVE

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 extending existing rules on the protection of minors and human dignity to all types of audiovisual services. A subset of rules derived from the TVWF Directive would only apply to linear services. The 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 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.

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 TVWF Directive still to be 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.

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 on a broad public and the general interest objectives attached to it. They however recognize 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 oppose to the authorisation of product placement in television programmes.

Concerning the issue paper on the protection of minors and human dignity, 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 i.e.

I GENERAL REMARKS

The EFTA EEA 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 us.

17. In general, the EFTA EEA states would like to emphasize that the aim of TWF 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 promotion of European productions.

18. The EFTA EEA states recognise that the technological developments and the globalisation of the economy make a revision of the TWF Directive necessary. These developments create challenges for the regulation on the audiovisual sector that it is essential to deal with.

II SPECIFIC REMARS ON THE ISSUE PAPERS

Issue Paper on Rules Applicable to Audiovisual Content Services

1. Material competence (Issue 1)

19. 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 subset of these services, the linear audiovisual services, would be subject to rules derived from the TVWF Directive.

20. The widening of the scope might 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 might 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 consumers.

21. Although the distinctions between linear and non linear services might be blurred, the differences can not be expected to completely disappear in the foreseeable future. Studies of media consumption patterns indicate that non linear services are of 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 strengthens this conclusion.

22. The EEA EFTA States are of the opinion that the five general rules for the basic tier of obligations mentioned in the issue papers[4] 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.

23. Although the EFTA Member 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 considerations 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 vs co- or self-regulation) to be applied to non linear services.

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

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

2. Territorial competence (Issue 2)

26. The EFTA EEA states share the concerns expressed by several 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 might disturb the broadcasting system of the receiving state and hinder the development of strong national broadcasters,

[4] In the Issue Papers also referred to as "public policy objectives" or "general interest objectives".

- 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 provided by the national legislation,
- it is likely that 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.

27. 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.

Issue Paper 3: Cultural Diversity and the Promotion of European and Independent Audiovisual Production

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

29. 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. Presently, the EEA EFTA States do not see a need for any alterations of 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.

30. 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 EFTA EEA states recommend that the experiences made by France and the UK in this field are thoroughly evaluated, before a possible introduction of new regulations on an European level.

Issue Paper 4: Commercial Communication

31. 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 liberalising of the regulations. Having said this, the EFTA ESA states recognize 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.

32. The EFTA EEA states would welcome an 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. On this background we 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 directive[5], we do not se it as advisable to adapt these to non linear services.

33. The principle of a clear separation between advertising and editorial content is one of the fundamental principles underlying the regulation of the audiovisual sector. On this background, the EEA EFTA States are concerned with 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.

34. 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.

Issue Paper 5: Protection of Minors and Human Dignity and Right of Reply

35. 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 EFTA EEA States emphasize that these rules are as important in the digital environment as in the analogue. Thus we will support that the current wording of Article 22 should be maintained for linear audiovisual services. We 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 i.e.

* * * * * *

[5] Issue 1: hourly and daily advertising limits.