



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2003  
COM(2003) 784 final

**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL,  
THE EUROPEAN PARLIAMENT, THE EUROPEAN ECONOMIC AND  
SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**THE FUTURE OF EUROPEAN REGULATORY AUDIOVISUAL POLICY**

## TABLE OF CONTENTS

|       |                                                                                |    |
|-------|--------------------------------------------------------------------------------|----|
| 1.    | Introduction .....                                                             | 3  |
| 1.1.  | Description of the audiovisual landscape in Europe .....                       | 3  |
| 1.2.  | Recent technology and market developments in the audiovisual sector.....       | 5  |
| 1.3.  | Main audiovisual policy actions by the Commission, Parliament and Council..... | 6  |
| 2.    | Audiovisual Policy in Community context.....                                   | 7  |
| 3.    | Towards a new governance for European audiovisual media.....                   | 12 |
| 3.1.  | Definitions and basic concepts.....                                            | 13 |
| 3.2.  | General rules .....                                                            | 14 |
| 3.3.  | Right to information.....                                                      | 15 |
| 3.4.  | Promotion of production, chronology .....                                      | 17 |
| 3.5.  | Commercial communications.....                                                 | 18 |
| 3.6.  | Protection of minors and public order.....                                     | 20 |
| 3.7.  | Right of reply .....                                                           | 21 |
| 3.8.  | Institutional aspects .....                                                    | 21 |
| 3.9.  | The Recommendation on the protection of minors and human dignity.....          | 22 |
| 3.10. | Co- and self-regulation.....                                                   | 23 |
| 4.    | Conclusions and timetable .....                                                | 24 |

## **1. INTRODUCTION**

The audiovisual media play a central role in the functioning of modern democratic societies and in the development and transmission of social values. They have a major influence on what citizens know, believe and feel. For this cultural industry par excellence, it is of vital importance that the operators in this sector benefit from a clear and predictable policy environment in which to plan investment and develop their business strategies.

This Communication is intended to contribute to that predictability by setting out the priorities for Community regulatory policy for the sector in an enlarged Europe in the medium term.

Community policy in the audiovisual sector is aimed at promoting the development of the audiovisual sector in the Union, notably through the completion of the internal market for this sector, while supporting paramount objectives of general interest, such as cultural and linguistic diversity, the protection of minors and human dignity and consumer protection. To achieve these objectives the Community uses two categories of complementary and interrelated actions, which characterise this policy since inception, regulatory measures and support mechanisms. During 2003 the regulatory framework and the support instruments, namely the MEDIA programmes, were subject to a wide public consultation and review. This Communication presents the Commission's conclusions on the regulatory framework. In the first quarter of 2004 the Commission will propose a new generation of programmes in a separate document which will follow the present MEDIA programmes.

### **1.1. Description of the audiovisual landscape in Europe**

According to recent evaluations,<sup>1</sup> in 2001 the European audiovisual market at large, i. e. including all audiovisual activities and delivery modes, represented nearly 95 billion €, with a 5.2% increase compared to 2000. This increase confirms a constant positive trend (+35% at current prices since 1997).

Of the two main industry areas, TV and cinema, the first one represented about two thirds of the market in 2001, while cinema, including video, covered about 15% of the market, the balance being covered by recorded music and leisure software. The sale and rental of DVD software was the most dynamic sector, ahead of cinema theatrical release. The DVD sector confirmed its importance in 2002 when its turnover from retail sales equalled sales of traditional VHS cassettes, against the background of an overall increase in sales of recorded audiovisual products.

Development of the TV market slowed in 2001 (+4% compared to 2000, +40% compared to 1997), mainly due to unsatisfactory results (-2.1% in 2001 compared to 2000) from traditional commercial free-to-air broadcasters suffering from a global crisis in the advertising market. The overall pay-TV sector (packagers, thematic channels, TV premium and home shopping companies) confirmed its dynamism with a yearly increase of about 13% (+100% compared to 1997). Public service broadcasters (including radio) recorded a total turnover of about 27 billion € (28% of the total market, +4% compared to 2000; +20% compared to 1997).

---

<sup>1</sup> Source: European Audiovisual Observatory - Yearbook 2003, volume 1.

Preliminary indications of the overall trends for 2002 in the EU confirm negative growth for free-to-air broadcasters (an estimated -3.5 % compared to 2001) and point out a reduced pace of development for the pay-TV sector (+6% compared to 2001).

The trade balance in the audiovisual sector, and in particular for broadcasting, theatrical release and video distribution rights for films, is constantly negative, due to a large imbalance with the US amounting to more than eight billion USD in 2000 (according to estimations by the European Audiovisual Observatory<sup>2</sup>).

The audiovisual sector continued to diversify the supply of audiovisual services in the first years of the new millennium. According to certain estimates,<sup>3</sup> the traditional EU analogue terrestrial broadcasting sector included 40 public service and 47 commercial national channels at the beginning of 2003.

At the same time, 35 channel packagers were active, and 69 public service channels and 584 channels from private operators were distributed at national level via means other than the traditional analogue terrestrial techniques. About 100 regional channels, both public service and private, were regularly broadcast while the number of local stations reached 2 000.

Almost all EU households are equipped with TV sets<sup>4</sup>; many have two sets or more. Cable and satellite transmission penetration differs widely from country to country, as does the structure of the industry (over 6 000 operators). On average, in 2002, over half of EU households had access to cable networks, but only 31% of TV households actually subscribe to cable services. The expansion compared to 2001 is quite low, at about 2.5%. According to data released by the companies in the satellite transmission industry, a combined estimate of households directly receiving satellite broadcasts indicates a total of about 38 million in 2002, with a rather dynamic expansion rate of about 14% over 2001.

Digital broadcasting reached almost 18% of EU households (27.4 million) at the end of 2002, an increase of about 15%. This covers mainly satellite transmission. Over 22 million households were using this mode at the end of 2002, while only in a few countries has digital transmission via cable become popular (3.5 million households EU-wide at the end of 2002). Digital terrestrial television is operational only in a few Member States (UK, Germany, Spain, Sweden and Finland). The provision of television services over DSL is technically feasible but these services are not yet ready for full operational deployment. With the re-launch of digital terrestrial broadcasting in the UK and the first switch-off of analogue broadcasting in some areas of Germany, by mid-2003 this mode of broadcasting covered 2.1 million households in the EU.

The average television daily viewing time in 2002 remained significant across all the Member States, with marginal changes over 2001. Austria remains the country where people watch TV the least (153 minutes), while Spain is the country where TV is most popular (262 minutes). The acceding countries have similar patterns of viewing time ranging from 165 minutes in Slovenia to 256 minutes in Hungary.

---

<sup>2</sup> Source: European Audiovisual Observatory - Yearbook 2003, volume 1.

<sup>3</sup> Source: European Audiovisual Observatory - Yearbook 2002, volume 5.

<sup>4</sup> Source: European Audiovisual Observatory - Yearbook 2003, volume 2.

The EU confirmed its leading role in the production of feature films, with 630 productions in 2002 (almost unchanged compared to 2001, +13% compared to 1997) compared to about 450 units in the United States. However, it must be pointed out that a significant part of the European production does not attract a critical mass of audience (i. e. audiences of 100 000 cinema spectators or higher). In this context, it should be noted that in terms of financial investment in film production, US filmmakers continue to enjoy production budgets several times higher than those for EU productions and to benefit from much higher marketing expenditure. The recent wave of European co-productions, involving in particular some of the largest Member States, could be an answer to such an imbalance. In 2002, over 250 films were released as pan-European co-operations.

In the acceding countries, 86 feature films were produced in 2002. Co-productions remain rare, both with Member States and with other acceding countries. Several acceding countries have nevertheless developed a significant production infrastructure.

## **1.2. Recent technology and market developments in the audiovisual sector**

The main patterns of the audiovisual sector: business models, transmission modes, consumer behaviour, consumer electronic goods, etc., have remained largely constant in recent years after undergoing deep changes in the 1990s. With the exception of events affecting the life of operators, no dramatic changes in market patterns are foreseen as a natural evolution of the present landscape. More important developments could result from commercial exploitation of a number of technologies which are already available, but remain largely unused because of a lack of clear added value for the consumer or uncertainties concerning the supporting business models.

Apart from *digital television* the main technical innovations which could contribute favourably to the development of the audiovisual sector are:

- Flat panel displays;
- High Definition TV (HDTV);<sup>5</sup>
- Interactive television.

The *Internet*, with the development of graphic browsers on the World Wide Web, has dramatically changed the way people communicate and has opened up new access to audiovisual content. However, the Web is still used by substantially fewer people than the TV viewing public and with different motivations.<sup>6</sup> Industry is also exploring use of the internet protocol for digital broadcasting. The Internet protocol (IP) facilitates the bundling of different types of service, including Information Society services, and would inaugurate a new phase of convergence at service level, according to technologists.

---

<sup>5</sup> A forthcoming Commission Services Working Document will examine the role of screen formats – wide-screen and high definition – in stimulating the consumer take-up of digital television.

<sup>6</sup> In order to be able to view audiovisual content via the Web a broadband connection (via cable or *Digital Subscriber Line* (DSL)) is required. In 2002, according to Screen Digest, around 13 million households had a broadband Internet connection in the EU.

### 1.3. Main audiovisual policy actions by the Commission, Parliament and Council

The Commission's Communication on the "Principles and Guidelines for the Community's Audiovisual Policy in the Digital Age" in 1999<sup>7</sup> outlined the five principles for regulatory intervention in the sector. According to these principles, regulatory intervention should be the minimum necessary to achieve a clearly defined policy goal, guaranteeing legal certainty and technological neutrality, and enforced as closely as possible to the operators concerned.

Adopted in 1989, the "television without frontiers" (TVWF) Directive<sup>8</sup> ("the Directive") was revised in 1997 to take account of technological and market developments. As confirmed by the review in 2003,<sup>9</sup> the Directive has provided a stable and secure legal framework for broadcasting services in the Community ever since. The fourth report on the application of the directive, adopted by the Commission on 6 January 2003<sup>10</sup>, concludes that the Directive is generally being applied satisfactorily, the free movement of television broadcasting services within the Community having essentially been ensured. The "Report on Television without Frontiers" by the European Parliament<sup>11</sup> shares this assessment, as does the Opinion of the Committee of the Regions of 3 July 2003 on the fourth application report. The Council Conclusions of 19 December 2002<sup>12</sup> on the Directive point to the implications of new means of delivery of audiovisual content, for example interactive media.

The Council Recommendation on the protection of minors and human dignity<sup>13</sup> of 24 September 1998 is the first legal instrument - at EU level - concerning the content of online audiovisual and information services available on the Internet. The report on the application of this Recommendation,<sup>14</sup> published in 2001, showed that its overall application was already quite satisfactory. Hotlines and awareness campaigns have been launched in nearly all Member States, and codes of conduct have been established. The industry has worked on the creation of reliable Internet filters and the Commission has intensified international co-operation in this field, as much illegal and harmful content originates outside the European Union.

---

<sup>7</sup> COM(1999) 657 final.

<sup>8</sup> Council Directive 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and of the Council.

<sup>9</sup> See chapter 3 of this Communication in detail.

<sup>10</sup> COM(2003) 778 final. See also point 5 of the Application Report, which refers to earlier work by the European Parliament and the Council.

<sup>11</sup> A5-0251/2003.

<sup>12</sup> OJ C 13, 18. 1. 2003, p. 1.

<sup>13</sup> Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (published in the Official Journal L 270, 7.10.1998, p. 48).

<sup>14</sup> COM(2001) 106 final.

The Commission Communication on certain legal aspects related to cinematographic and other audiovisual works<sup>15</sup> explained the criteria under which state aid to support audiovisual production may be compatible with the EC Treaty. In addition, it examined the legal deposit of audiovisual works as one of the possible ways of conserving and safeguarding the European audiovisual heritage. The Council Resolution on the deposit of cinematographic works in the European Union<sup>16</sup> invites Member States to put in place efficient systems for the deposit and preservation of cinematographic works.

## **2. AUDIOVISUAL POLICY IN COMMUNITY CONTEXT**

The European audiovisual sector is not only affected by the Community's content regulation and support mechanisms. A great number of Community policies have a significant impact on media enterprises, making a coherent approach all the more essential.

### *Competition*

The Commission monitors compliance with the competition rules, which play a major role in the audiovisual sector. Competition law contributes to two fundamental goals of the EC. First, it contributes to open markets in each sector, including the field of audiovisual services, by preventing illegal restrictions of competition. If necessary, the Commission helps opening up markets that are characterised by no, unfair or distorted competition. Secondly, with these instruments the Commission fulfils one of the purposes of the EU in establishing a common market according to Art 2 TEC by ensuring undistorted competition in the internal market (Article 3 lit g). The rules applicable to the control of mergers are designed to make it possible for the Commission to check that mergers do not endanger competition, which is vital to the single market. In this connection, the Commission examined, for example, the proposed acquisition of the Italian pay-TV company Telepiù by the Australian media group NewsCorp<sup>17</sup>. Moreover, the rules of Community law on restrictive agreements also have a very considerable impact in the audiovisual sector.

State aid that distorts competition by supporting certain enterprises or the production of certain goods is, in principle, prohibited by the Treaty. However, the application of the provisions of the Treaty to the granting of State aid to public service broadcasting must take account of the provisions of Article 86(2) of the Treaty and of the Communication clarifying the application of State aid rules to public service broadcasting<sup>18</sup>. The Commission applied them in several individual cases in 2003<sup>19</sup>.

---

<sup>15</sup> COM(2001) 534 final of 26.9.2001, OJ C 43, 26.9.2002, p. 6. The Commission is planning to follow up the Council Resolution with a proposal for a Council Recommendation on cinematographic heritage.

<sup>16</sup> Adopted on 24.11.2003.

<sup>17</sup> This operation paved the way for Telepiù to be merged with Stream, the other pay-TV company operating on the Italian market, which, at that time, was owned 50:50 by NewsCorp and Telecom Italia. NewsCorp henceforth has control of the new company, with Telecom Italia holding a minority share. Although the transaction has resulted in a quasi-monopoly for pay-TV on the Italian market, the Commission nevertheless took the view that authorising the merger, subject to appropriate conditions, would be more beneficial to consumers than the disruption that would have been caused by the likely closure of Stream.

<sup>18</sup> OJEC (2001/C 320/04)

<sup>19</sup> The Commission notified Denmark, in a letter dated 21 January 2003, of its decision to initiate proceedings under Article 88(2) of the EC Treaty concerning the public funding of the Danish public broadcaster TV2 through the licence fee and other measures. It takes the view, at this stage of the procedure, that the Danish authorities provided more compensation than was strictly necessary for the

With the adoption of the cinema Communication in September 2001<sup>20</sup>, the Commission made public the criteria for declaring State aid to cinema and TV productions compatible with the EC Treaty in accordance with Article 87(3)d). This Communication was a major step towards providing legal security for the cinema sector and ensuring the continuation of support schemes while respecting the functioning of the internal market. The clear rules spelt out in the Communication have allowed a uniform assessment of the national State aid schemes notified to the Commission<sup>21</sup>. The Commission Services are working on a new cinema communication, which should be adopted before June 2004, in order to guarantee legal security in line with state aid rules over a longer period of time.

### *Media pluralism*

Measures to ensure media pluralism typically limit maximum holdings in media companies and prevent cumulative control or participation in several media companies at the same time. Further to such rules, a wide number of other measures - ranging from competition policy to measures promoting culturally and linguistically diversified content - can contribute to media pluralism. The aim of all measures in favour of media pluralism is to protect freedom of expression and to ensure that the media reflect a spectrum of views and opinions characteristic of a democratic society. In the Commission's Green Paper on services of general interest<sup>22</sup> dated 21 May 2003, it was noted that the protection of media pluralism is primarily a task for the Member States. At present, secondary Community legislation does not contain any provisions specifically aimed at safeguarding the pluralism of the media. But Community law allows the application of national safeguards with regard to media pluralism. However, a number of existing Community law instruments contribute directly or indirectly to the aim of preserving media pluralism. Whilst the primary objective of Community competition law is an economic one, i. e. to ensure a workable competition between market operators, it also helps preventing a degree of cumulative control or participation in media companies which might endanger the existence of a wide spectrum of views and opinions in the media markets<sup>23</sup>. The "television without frontiers" Directive contributes to the safeguarding of media pluralism through a number of content related provisions, in particular through its provisions on the promotion of European works, and of works by independent producers.

---

net costs of public service broadcasting payable by TV2, thereby running the risk of creating a cross-subsidy of the commercial activities of TV2 and of distorting competition. Moreover, the Commission has decided to close the investigation proceedings relating to Italy and Portugal concerning the arrangements for financing the public broadcasters RAI and RTP.

<sup>20</sup> OJ C 45, 16.2.2002.

<sup>21</sup> Latest cases: N 410/02 (Belgium "tax-shelter"), N 261/03 (German FFG). They can be consulted at: [http://europa.eu.int/comm/secretariat\\_general/sgb/droit\\_com/index\\_en.htm#aides](http://europa.eu.int/comm/secretariat_general/sgb/droit_com/index_en.htm#aides)

<sup>22</sup> COM(2003) 270 final.

<sup>23</sup> See also the specific Protocol on the system of public broadcasting in the Member States appended to the Amsterdam Treaty.



## *Copyright*

Copyright protection plays an important role for the development of the audiovisual sector. The legal framework establishing these rights is set out in Directive 2001/29/EC on the harmonisation of copyright and related rights in the Information Society<sup>24</sup>. On 30 January 2003 the Commission presented a Proposal for a Directive on measures and procedures to ensure the enforcement of intellectual property rights<sup>25</sup>. The objectives of the proposal are to harmonise national laws on the means of enforcing intellectual property rights and to establish a general framework for the exchange of information between the responsible national authorities. The proposed Directive would ensure a level playing field for right holders in the EU, reinforce measures against offenders and thus act as a deterrent to those engaged in counterfeiting and piracy.

## *Electronic communications networks and services and Information Society services*

In 1999 the Commission launched a major review of existing EU telecommunications law which resulted in the adoption of a new regulatory framework for electronic communications in 2002, to be applied as of July 2003. The new framework applies to all transmission infrastructures while regulation of content of broadcast over electronic communications networks remains outside the scope. The new framework includes in particular provisions on access to spectrum, authorisation of providers of electronic communications networks and services including those used for transmitting broadcasting programmes; provisions on must-carry obligations, access rules for networks, conditional access systems and associated facilities. The main objectives of the review were to create a set of rules that would be simple, aimed at deregulation, technologically neutral and sufficiently flexible to deal with fast-changing markets in the electronic communications sector. The goals of the new framework are to encourage competition in the electronic communications markets, to improve the functioning of the internal market and to guarantee basic user interests that would not be guaranteed by market forces.<sup>26</sup>

---

<sup>24</sup> OJ L 167, 22. 6. 2001.

<sup>25</sup> Proposal for a Directive of the European Parliament and of the Council on measures and procedures to ensure the enforcement of intellectual property rights COM(2003) 46 final.

<sup>26</sup> The Telecoms package includes the following elements:

- a directive on a common regulatory framework for electronic communications networks and services (framework directive);
- an authorisation directive;
- an access & interconnection directive;
- a directive on universal service and users' rights relating to electronic communications networks and services;
- a decision on a regulatory framework for radio spectrum policy.

The Directive on electronic commerce<sup>27</sup> provides a light and flexible legal framework for e-commerce and addresses only those elements which are strictly necessary in order to ensure the proper functioning of the internal market in e-commerce. It was drafted in a technologically neutral way to avoid the need to constantly adapt the legal framework to new developments.<sup>28</sup> It covers a wide variety of services provided online (so-called "information society services") ranging from online newspapers and specialised news services (such as business or financial information), distance selling of various products (books, computer hardware and software, pharmaceuticals, etc.) to the online provision of financial services (online banking, online investment). The latter are of particular importance as they are particularly suitable for cross-border delivery, which the Commission has recognized in its Communication on e-commerce and financial services<sup>29</sup>. The Directive applies horizontally across all areas of law which touch on the provision of information society services, regardless of whether it is a matter of public, private, or criminal law.

The Commission Communication on barriers to widespread access to new services and applications of the information society through open platforms in digital television and third generation mobile communications<sup>30</sup> concerns the interoperability of information society services. With the more general aim of detecting the barriers to broad access to new technologies, it addresses the issue of promoting open technological platforms for third-generation mobile communications (3G) and digital television. These technologies could play a complementary role to the PC in future in providing widespread access to the Internet and to interactive services. The Communication identifies follow-up measures for Member States. It also foresees in the long term a "multi-platform environment" emerging which will deliver advanced information society services in a complementary way.

The Commission Communication on digital switchover ("transition from analogue to digital broadcasting, from digital switchover to analogue switch-off")<sup>31</sup> sets out guidance for Member States on the difficult task of migrating to digital radio and television transmission, and ultimately switching off analogue transmission, in a consumer-friendly fashion. It also launches a policy debate on how to make best use of the radio spectrum made available after analogue broadcasting is switched off. The eEurope 2005 Action Plan requires Member States to publish their switchover plans, including a possible date for ending analogue television, by the end of 2003. This will ensure that consumers have enough information and adequate warning to become acquainted with all the possibilities of new digital TV services and to upgrade their equipment. The Communication advises Member States on the policy pitfalls to avoid and identifies items that should be part of national switchover plans. National measures should be transparent, proportionate, timely, and technologically neutral so as to avoid unduly discriminating against certain parties and distorting competition in the market.

---

<sup>27</sup> OJ L 178, 17. 7. 2000.

<sup>28</sup> For instance, technological applications (WAP or PDA-sets) enabling the content to be accessed by a specific device do not constitute "modification of information" within the meaning of Article 12, but merely "technical specification of content".

<sup>29</sup> COM(2001) 66 final, 7.2.2001.

<sup>30</sup> COM(2003) 410 final.

<sup>31</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on the transition from analogue to digital broadcasting (from digital 'switchover' to analogue 'switch-off'), COM(2003) 541 final.

### *Accessibility for people with disabilities to television*

Although the issue of accessibility for people with a disability *to television* does not fall within the remit of the TVWF Directive, the Commission will promote accessibility matters with Member States to co-ordinate and complement national actions and measures in the Contact Committee established by the TVWF Directive. In particular, enriching content with audio description, audio subtitling, subtitling and sign language will be further discussed.

### *Consumer protection*

All EU consumer protection rules apply to the audiovisual sector as to any other. These include the general provisions on advertising which apply to all sectors contained in the Misleading Advertising Directive, and the recent proposal for a framework directive on unfair business-to-consumer commercial practices. The framework directive takes a technology-neutral approach and is also based on the country of origin principle, making it compatible with the approach of the existing TVWF Directive. The proposal makes clear that in case of conflict with sector-specific EU rules which also regulate this area, it is those sector-specific rules which apply.

The Commission proposal for a Regulation on consumer protection cooperation of 17 July 2003<sup>32</sup> aims to establish a network of national enforcement authorities in the field of consumer protection laws. Among other provisions, the Regulation sets up a Standing Committee on Consumer Protection Cooperation. However, matters regulated by the TVWF Directive will continue to be examined only by the Contact Committee established by the TVWF Directive.

### *Law applicable to non-contractual obligations*

The Commission Proposal for a Regulation on the law applicable to non-contractual obligations (“Rome II”) of 22 July 2003<sup>33</sup> lays down that, as a general rule, “the law applicable to a non-contractual obligation shall be the law of the country in which the damage arises or is likely to arise, irrespective of the country in which the event giving rise to the damage occurred and irrespective of the country or countries in which the indirect consequences of that event arise”. Nevertheless, the right of reply is regulated by a specific provision in Article 6: “The law applicable to the right of reply or equivalent measures shall be the law of the country in which the broadcaster or publisher has its habitual residence”.

### *Trade policy*

On audiovisual services, the European Community and its Member States have not made commitments and have taken exemptions to the Most Favoured Nation clause in the last multilateral trade negotiations Round, known as the “Uruguay Round”. By doing so, the EU benefits from room for manoeuvre in the audiovisual sector, which secures the possibility both to maintain existing national and Community measures in this sector and to further develop national and Community policies and instruments, in response to developments in the sector.

---

<sup>32</sup> COM(2003) 443 final.

<sup>33</sup> COM(2003) 427 final.

This freedom of action is at the heart of the conclusions of the EU Council of 26 October 1999 regarding the negotiations on the General Agreement on Trade in Services (GATS) for the forthcoming WTO (World Trade Organization) Round, which is now under way and known as the DDA (Doha Development Agenda) Round. These conclusions, call upon the Union “to ensure that the Community and its Member States maintain the possibility to preserve and develop their capacity to define and implement their cultural and audio-visual policies for the purpose of preserving their cultural diversity”. The Community’s position in the DDA negotiations is fully in line with these conclusions.

### *Promotion of cultural diversity in external relations*

The European Union is open to trade and co-operation in audiovisual services, the promotion of exchanges in those services being a necessary component of its cultural diversity objective. Such objectives are pursued through the development of the cultural and audiovisual dimension of existing partnerships between the EU and third countries, for example in the framework of the Cotonou Agreement with African, Caribbean and Pacific countries or the Euromediterranean partnership.

Furthermore, in August 2003 the Commission adopted a Communication entitled "Towards an international instrument on cultural diversity" in which it supported the opportunity to develop a new international instrument on cultural diversity in the framework of UNESCO. The UNESCO General Conference (29 September–17 October 2003) decided to begin working towards a Convention on cultural diversity, entailing the submission of a draft Convention to the next General Conference in 2005.

## **3. TOWARDS A NEW GOVERNANCE FOR EUROPEAN AUDIOVISUAL MEDIA**

The “television without frontiers” Directive<sup>34</sup> is the main legislative instrument at EU level concerning audiovisual services. The Directive has been complemented in particular by Council Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market (the e-commerce Directive)<sup>35</sup> and by Council Directive 1993/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission<sup>36</sup> (“cable and satellite Directive”). In relation to the TVWF Directive the e-commerce Directive clarifies some legal concepts and harmonises certain aspects enabling information society services to benefit fully from internal market principles, while the cable and satellite Directive aims to facilitate cross-border transmission of audiovisual programmes by satellite and retransmission by cable.

The Annex to the fourth report on the application of the "Television without Frontiers" Directive<sup>37</sup> set out the work programme for 2003 for the review of the Directive. The work programme announced a public consultation with the aim of providing the Commission with the information necessary to assess whether there is a need to update or adapt the Directive.

---

<sup>34</sup> Council Directive 89/552/EEC as amended by Directive 97/36/EC of the European Parliament and of the Council.

<sup>35</sup> Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000.

<sup>36</sup> OJ L 248 , 6. 10. 1993, pp. 15-21.

<sup>37</sup> COM(2002) 778 final.

The consultation was based on discussion papers published on the Commission's website<sup>38</sup>. Two series of public hearings were organised in Brussels, on 2-4 April and 23-25 June 2003. Interested parties were also invited to transmit their written contributions by 15 July 2003. The Commission received more than 150 submissions (around 1 350 pages). All relevant parties (private and public broadcasters, regulators, producers, rights holders, artists) and most Member States made contributions. Most submissions agree that the Directive has provided a flexible and adequate framework for regulation by Member States and support the Commission's pragmatic approach. Overall, the Directive has made a positive contribution to enabling free movement of broadcasting services within the EU. But the contributions also highlighted where further thinking is needed.

The results of this public consultation (written comments and public hearings) were discussed with the members of the Contact Committee established by the TVWF Directive and with the national regulatory authorities.

### **3.1. Definitions and basic concepts**

The “Television without Frontiers” Directive lays down the minimum standards which regulation of the content of television broadcasts by the Member States must guarantee. Television broadcasts from broadcasters that are subject to the jurisdiction of a Member State and meet the legal requirements applying in that Member State may be freely received and retransmitted throughout the Community. In accordance with the initial focus on the importance of the media and communication for a free, democratic and social society, these minimum standards essentially comprise the obligation to adopt measures:

- to ensure that events of major importance for society are not broadcast on the basis of exclusivity in such a way that significant sections of the public in the relevant Member State are prevented from following the event in a freely accessible television broadcast;
- to promote the production and dissemination of European television programmes;
- to protect consumers as regards advertising, sponsorship and teleshopping, including in respect of unfair commercial practices;
- to protect minors and public order;
- to protect the right of reply.

The Directive contains fundamental principles which could be seen as policy objectives valid for any kind of delivery of audiovisual services (rules on the protection of minors, separation between content and advertising, clear identification of advertising, ban on certain products) Some of the detailed rules in the TVWF Directive are specifically focused at traditional linear television programming (for instance the provisions on duration and insertion concerning advertising and teleshopping spots).

---

<sup>38</sup>

[http://europa.eu.int/comm/avpolicy/regul/review-twtf2003/consult\\_en.htm](http://europa.eu.int/comm/avpolicy/regul/review-twtf2003/consult_en.htm)

Community law at present distinguishes between "television broadcasting services" subject to the "television without frontiers" Directive, and "information society services", subject to the "e-Commerce-" Directive. The regulatory approach of the TVWF Directive is more detailed than the regulatory approach of the "e-commerce-" Directive. This is mainly due to the paramount importance and the unparalleled impact of television broadcasting on our societies through the effect it has on the way people form their opinions.

For the time being, no information society service has reached an importance and an impact similar to television broadcasting services. The take-up of broadband services has been slower than initially expected and it would seem that developments are difficult to predict in a radically altered economic environment. The results of the consultation process confirm this assumption. Some contributions (especially from Member States) have demanded the extension of the scope of the Directive. The proposals themselves differ in scope (from non-traditional television services only to any form of audio-visual content) and are opposed by others that consider horizontal content regulation premature since full media convergence has not been reached yet.

**In the medium term, nevertheless, the Commission considers that a thorough revision of the Directive might be necessary to take account of technological developments and changes in the structure of the audiovisual market. The Commission will therefore reflect with the help of experts (in focus groups) whether any changes to content regulation for the different distribution channels for audiovisual content would be necessary at Community level in order to take account of media convergence at a technical level and any divergence of national regulation which affects the establishment and the functioning of the common market. The mandate of the group shall be based on the existing framework. Any intervention would have to ensure the proportionate application of content rules and the coherent application of relevant policies considered to be connected to this sector, such as competition, commercial communications, consumer protection and the internal market strategy for the services sector.**

### **3.2. General rules**

The "Television without Frontiers" Directive includes a basic principle of the internal market, namely the application of the law of the country of origin, which allows hardly any exceptions. In this connection, the Directive lays down a number of criteria designed to establish which Member State has jurisdiction in order to avoid a situation in which a given programme is subject to the jurisdiction of several Member States. When the Directive was amended in 1997, certain criteria were added in order to establish exhaustively which Member State has jurisdiction over which television broadcasting organisation. Lastly, the Directive stipulates that if jurisdiction cannot be established using the criteria set out in Article 2(3), the Member State with jurisdiction can be established on the basis of Articles 52 (new Article 43) *et seq.* of the Treaty. The public consultation also concerned these provisions referred to in Article 2 of the Directive.

While most Member States and most of the people who contributed thought that the rules were appropriate, other Member States and consumer protection associations expressed their concerns about the diversity of national laws and the resulting risk of the establishment of broadcasters in the States with the least stringent legislation. Moreover, the problem of area-specific advertising was raised by certain Member States. This is a practice whereby broadcasters, using a channel intended for viewers in their country of origin, reach audience areas in different countries – usually neighbouring countries – via the same channel, but with programmes in which the initial advertising screens are replaced by advertising screens specifically targeting people in these additional audiences. These contributions maintain that this is a practice which could undermine the financial health of the broadcasting organisations and therefore of the audiovisual industry of the neighbouring countries. However, it should be pointed out that this practice is in keeping with the principle of freedom to provide services<sup>39</sup> or freedom of establishment<sup>40</sup> as expounded by the Court of Justice.

Moreover, the rules of the directive have, on occasion, caused certain problems of application, witness the infringement proceedings initiated against the Netherlands concerning the programmes RTL4 and RTL5. However, the Commission dropped this case following a judgement issued by the Dutch Council of State<sup>41</sup>.

**As in the past, the Commission will examine any questions that arise concerning these principles through the contact committee, with the participation of the national regulators, where appropriate.**

### **3.3. Right to information**

In the consultation process, the right to information was discussed in relation to two aspects. The first discussion paper asked questions on the adequacy and appropriateness of the present provisions in Article 3a of the Directive (events of major importance for society). Discussion paper 6 deliberated the need to introduce for the future a right to short extracts of events subject to exclusive rights and the granting of “access” to these events.

---

<sup>39</sup> CJEC, 26 April 1988, case 325/85, ECR I-02085

<sup>40</sup> Concerning this principle, see the Guide to the Case Law of the European Court of Justice on Articles 43 *et seq.* of the EC Treaty: freedom of establishment, 01/01/2001, [http://europa.eu.int/comm/internal\\_market/en/services/establ/art43\\_en.pdf](http://europa.eu.int/comm/internal_market/en/services/establ/art43_en.pdf)

<sup>41</sup> The Commission initiated infringement proceedings against the Dutch authorities following the decision of the Dutch Media Commission (*Commissariaat voor de media*) to grant itself jurisdiction for the programmes RTL 4 and RTL 5 put out by a broadcaster falling under the jurisdiction of the Luxembourg authorities. Without calling into question the analysis made on the issues by the *Commissariat voor de media*, a judgment by the Council of State has nonetheless annulled the decision taken, considering that this body could not grant itself jurisdiction in this way and trigger a situation of dual jurisdiction which was contrary to the Television without Frontiers Directive. In the light of this judgment, the Dutch authorities acknowledge, as the Commission maintained in this case, that the Directive prohibits any situation in which a broadcaster comes under the jurisdiction of more than one Member State. The Commission has therefore decided to close this dossier.

The majority of contributions received consider Article 3a of the Directive to be useful, necessary, effective and proportionate. Some contributions, notably from German private broadcasters, are more critical in this respect. Regarding possible extensions of these provisions, the idea of having a European list of events of major importance for (European) society was suggested by certain public service broadcasters, mainly with the aim to overcome the practice of marketing certain rights on a territorial basis, but met with widespread scepticism. Though different improvements were suggested in the contributions no consensus emerged on whether to define at a European level the notion of “a substantial proportion of the public” or the need to review the Directive with regard to reference dates. Some Member States and stakeholders would welcome the inclusion of a positive decision by the Commission on the compatibility of the proposed measures (lists) with Community law. This could provide more legal certainty compared to the present situation where the Commission has to open an infringement procedure if it finds the national measures disproportionate to the objective sought.

The consultations showed that there is no urgent, pressing need for a revision of this provision of the Directive. As mentioned in some contributions the forthcoming ruling of the Court of First Instance<sup>42</sup> in relation to Article 3a might provide new elements that could necessitate a further discussion of “guiding principles” or the role of the Commission. The Commission will discuss these issues in the Contact Committee in the second half of 2004. Possible guidelines would provide specific information for Member States on the choice and implementation of national measures. The Commission considers that the concept of European list would have no value added as the present concept of the Directive leaves it to the Member States to designate events of major importance owing to national and regional cultural and societal specificities. A radical overturning of this concept to oblige Member States to designate events of major importance for society could not be seen to be in conformity with the principle of subsidiarity. Furthermore the suggestions would not contribute to overcoming the practice of marketing certain rights on a territorial basis. Public service broadcasters and some Member States consider that a statutorily harmonised right to access newsworthy events should be established at European level. Current disparities between national laws on this issue create distortions. Other Member States are more sceptical; private broadcasters and right holders consider this to be a matter for voluntary codes and firmly reject any notion of right of “access” to such content.

**The Commission considers that the issue of right to access to newsworthy events needs further attention<sup>43</sup> and will invite experts to further discuss this matter (in a focus group). The issues at stake have to be dealt with in conjunction with copyright regulation. Three main questions have to be answered: to what extent does the copyright Directive provide an adequate solution through its “fair dealing” provision? Do the general policy objectives at stake (pluralism of information sources, etc.) require the statutory definition of a “right to access” for broadcasters and news agencies? What type of intervention should be provided for?**

---

<sup>42</sup> Kirch Media, T-33/01 CFI.

<sup>43</sup> See also Petition Nr. 1358/2002 to the European Parliament.



### 3.4. Promotion of production, chronology

#### *Broadcasting of a majority proportion of European works (Articles 4 and 6 of the TVWF Directive)*

Article 4 of the TVWF Directive provides for the introduction of measures to promote “European works”. These “European works” are defined in Article 6.

The majority of stakeholders are in favour of the status quo. Some requested the strengthening of the requirements, while others proposed replacing the existing requirements with other instruments such as investment obligations or specific support programmes for European production. A minority of stakeholders continues to question the need and/or the proportionality of such requirements.

Proposals for the strengthening of the current requirements included:

- introducing an explicit quantitative objective instead of the expression “a majority proportion of its transmission time”. The proposed minimum figure ranged from 51% to 75%;
- clarifying the obligation by deleting the wording “*Where practicable and by appropriate means*”. This proposal was backed by a large number of producers, scriptwriters and distributors.

Only a few submissions asked for new sub-objectives or quotas for national productions, non national European works, cinematographic works and “regional” programmes with special language inter-connections. The introduction of an investment obligation was also proposed, complementary to the transmission time measures.

Some asked for the improvement of the monitoring system used by the European Commission in relation to this article, by re-issuing guidelines on the collection and validation of data or by organising the monitoring at Community level.

Stakeholders were sharply divided concerning the need for further harmonisation of the definition of European works provided in Article 6. Those in favour of harmonisation proposed following the definition contained in the European Convention on Cinematographic Co-production.

#### *European works by independent producers (Article 5 of the TVWF Directive)*

Article 5 establishes a 10% objective in terms of transmission time or programming budget for European works by independent producers. A majority of stakeholders were in favour of the status quo. Here again, there were also proposals for increasing the figure to 25% and/or for removing the sentence “where practicable and by appropriate means”. But there were also some voices requesting that the existing requirements be removed or replaced by other mechanisms.

The majority considered that the absence of a definition of the notion of “independent producer” is not an obstacle to the circulation of works within the EU. In other words, there is broad support for the status quo. However, several stakeholders favour the introduction of a harmonised definition. They provided a long list of key criteria for independent productions for the purposes of the Directive. One possible action would be to make this list of criteria available to Member States in the form of guidelines.

### *Provisions common to Articles 4, 5 and 6 of the TVWF Directive*

There were minority requests for excluding from the measures to promote European works thematic channels, television shopping, countries with a low audiovisual production capacity or restricted language area, small and medium-sized broadcasters and channels with low audience (the “de minimis criterion”). Some demanded special provisions for ‘new’ broadcasting organisations and new forms of programme provision and access, such as *pay per view* or *video on demand*. However, any exception to the application of the measures to promote European works should be thoroughly defined and described in the Directive.

### *Media chronology (Article 7 of the TVWF Directive)*

The large majority of stakeholders were in favour of the status quo in relation to the media chronology established in Article 7. **The public hearings and the contributions to the review process showed that chapter III of the Directive represents a well-balanced compromise in promoting a diverse European audiovisual landscape. Therefore, the Commission does at this stage not intend to propose amendments to the relevant provisions. The Commission will further monitor its application in the light of the study provided for in Article 25a of the TVWF Directive.**

## **3.5. Commercial communications**

Chapter IV of the Directive lays down a series of rules for advertising, sponsorship and teleshopping, including rules concerning advertising targeted at minors. It stipulates rules concerning the amount of advertising that may be broadcast on screen (daily and hourly limits, Article 18), the number of advertising breaks and the rules pertaining thereto (Article 11) and the rules pertaining to the content and presentation of advertising messages (Articles 10, 12, 13, 14, 15 and 16). Specific rules (Article 17) apply to sponsorship.

The Directive seeks to protect the interests of television viewers, e.g. by drawing a clear distinction between editorial content and advertising, and to protect the integrity and value of audiovisual works and holders of rights, e.g. by avoiding excessive disruptions. In the public consultation, the Commission invited interested parties to send it their contributions, particularly on the relevance of these provisions, having regard to developments on the markets and technological progress. One of the questions asked was whether the rules limiting the amount of advertising could be made more flexible to take account of the degree of user choice and control, and whether the new advertising techniques were compatible with the provisions of the Directive.

The positions expressed on the various points examined can be summarised as follows:

Concerning the concepts and definitions set out in Article 1 of the Directive, most of the positions expressed are in favour of retaining the existing definitions. There is little support for changes, and the general feeling is that it is too early to define the new advertising techniques in the Directive.

While most of the contributions consider the provisions on the protection of minors (Article 16) and human dignity (Article 12) to be adequate and are in favour of maintaining the status quo, there are nevertheless some associations representing consumers and families which would like to see the provisions protecting minors tightened up to some extent. This is an area which the Commission has recently addressed in its proposal on unfair commercial practices.

Most of the contributions sent to the Commission would like to see the existing provisions on the form and presentation of advertising (Article 10) maintained. While supporting the principle of the separation of editorial and advertising content, some operators, particularly advertisers, marketers and commercial broadcasters, would nonetheless welcome some degree of flexibility with regard to the implementation arrangements, particularly as regards the exceptional nature of isolated spots or the banning of surreptitious advertising.

The provisions governing the insertion of advertising and teleshopping spots are generally considered adequate. While acknowledging that advertising spots must in theory be inserted between programmes and that insertions during programmes must not affect the value or integrity of the programmes themselves, many contributions call for a simplification of the rules, particularly with regard to sports programmes and the rule whereby 20 minutes must elapse between each advertising spot.

Tobacco products and medicines obtainable only on prescription are covered by television advertising bans and there are certain restrictions where alcoholic beverages are concerned. While these provisions are generally supported by the interested parties, one Member State and some associations would nevertheless like to see stricter provisions on the advertising of alcoholic beverages.

The majority of Member States support the provisions on duration, but certain Member States, most commercial broadcasters and some advertising agencies would like some degree of flexibility in the rules. In general, the opinions expressed are not in favour of modulating the rules as a function of programme type or audience. A number of commercial broadcasters and advertising agencies would like to see more extensive use of self-regulation or co-regulation, but other contributions suggest that the use of these mechanisms is not effective for the provisions on duration.

Many contributions consider the rules on sponsorship to be appropriate, but there are also calls for clarification, particularly on whether these provisions authorise the presentation of products.

As for the new advertising techniques, a substantial majority takes the view that, subject to certain conditions, the split screen, interactive advertising and virtual advertising are compatible with the terms of the Directive. Nevertheless, for reasons of legal security and in order to ensure even treatment of these techniques in the different Member States of the European Union, many interested parties asked the European Commission to specify how the rules of the Directive apply to these new techniques by producing an interpretative communication.

**The Commission has therefore decided to adopt, in the near future, an interpretative Communication setting out how the provisions of Chapter IV of the Directive apply, especially with regard to the new advertising techniques. Moreover, the Commission will contemplate, with the help of experts (through a focus group), how the rules on insertions and duration could develop, notably to take account of the degree of control exercised by viewers and the wider choice of programmes on offer. This examination will also take account of the results of the independent study ordered by the Commission on the impact of measures to regulate advertising markets<sup>44</sup> and the proposal for a Directive on unfair commercial practices.**

---

<sup>44</sup> See OJ S107-95378

### 3.6. Protection of minors and public order

The comments expressed in the public consultation show that there is a general consensus among the stakeholders that the provisions laid down in the Directive on the protection of minors are satisfactory and adequate. Some stakeholders considered that it should be desirable to have the application of these provisions extended to the Internet.

Article 22 of the Directive distinguishes between programmes which might seriously impair the development of minors (Article 22(1)) and programmes which are likely to impair the development of minors (Article 22 (2)). Many stakeholders consider that this provision should be maintained as it stands and that there have been no problems with the application of this Article. However, some would support an attempt to clarify the precise meaning of the provisions in Article 22(1) and (2).

Most stakeholders who commented on the subject of prohibition of broadcasts containing incitement to hatred for reasons of race, sex or nationality are satisfied with the provision as it stands and are not aware of any problems. Some stakeholders argued that co-regulation or self-regulation would be inappropriate in this area. A number of stakeholders called for further reflection on appropriate measures against discrimination for reasons of race, sex or nationality, whilst other stakeholders emphasised the need to carefully balance the fundamental right to free speech with measures taken in this regard.

The contributions received show that co-regulatory models work very well in some Member States, but some stakeholders argued that simple codes of conduct without control by public authorities are not sufficient.

The general feeling is that while the rules applicable are quite clear, the effective enforcement of these rules might pose increasing problems, especially in a digital and online environment. In this respect, the benefits stemming from effective self- and co-regulatory models were particularly stressed. Much interest was expressed in deepening the exchange of best practices and the networking between different bodies.

Article 2a of the Directive allows a “derogation from the obligation to ensure freedom of reception” for content which could impair the development of minors. Most of the stakeholders who commented on this subject consider that the provision of Article 2a is adequate and proportionate for ensuring the protection of the general interest involved. However, some consider that the procedure could be made simpler or that the possible application of this provision should be clarified, for instance in an interpretative communication.

**As a result of the consultation, and taking into account the preoccupation expressed by many stakeholders over the effectiveness of the enforcement of the rules applicable, the Commission will as a first step propose the update of the Recommendation on the protection on minors and human dignity centred on the development of self- and co-regulatory models (see chapter 3.10), in particular with a view to the online environment, so as to contribute to the effective respect of the principles of protection of minors and public order that have been recognised as being of universal importance irrespective of the nature of a service or of its delivery mode.**

### 3.7. Right of reply

Most of the stakeholders who commented on the right of reply in respect of television services find that the provision as it stands is appropriate and that no additional regulation is necessary. Some stakeholders considered that a right of reply applicable to all electronic media should be developed.

As mentioned earlier, the Commission takes the view that the law applicable to the right of reply or equivalent measures should be the law of the country in which the broadcaster is established.

**As suggested in the consultation process, the Commission will take up the idea that the right of reply should be applicable to all media. As a first step, the right of reply could be enshrined in the Recommendation on the protection of minors and human dignity. The Commission will also be actively involved in the work of the Council of Europe concerning the right of reply in the online environment.**

### 3.8. Institutional aspects

The consultation process focused on the functioning of the Contact Committee and how national regulatory authorities could better be integrated in the work at European level. Another idea addressed in the discussion papers was overcoming the disadvantages of co-regulatory models (fragmentation of markets, etc.) through different forms of co-operation between co-regulatory bodies.

The Contact Committee is widely seen in a positive light as a sensible and helpful institution. There is less agreement on how national regulatory authorities should be better involved at European level. The majority of regulators and some Member States are in favour of establishing a regulatory committee at European level, while some other Member States are against a duplication of committees.

A certain number of contributions also suggested that the proceedings of the Contact Committee should be made public, to make its work more transparent. Private broadcasters asked for observer status in the Contact Committee.

**The contributions to the consultation process lead the Commission to the conclusion that the composition and tasks attributed to the Contact Committee should not be changed. In response to the demand for more transparency the Commission will, at the first meeting of the Contact Committee in 2004, propose a change to Article 7 of the "Rules of Procedure of the Contact Committee", which at present declare the proceedings of the Contact Committee confidential. The Commission will propose that, in line with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>45</sup>, the rules of procedure should allow the publication of the agenda, documents and minutes of the Contact Committee, except for the exemptions mentioned in the Regulation. These documents would be published on the Commission's website.**

**The Commission will, as has been the case in the past, invite industry representatives on an occasional basis when the subjects on the agenda recommend their presence, but does not consider it appropriate to have broadcasters represented on a permanent basis.**

---

<sup>45</sup> OJ L 145, 31.5.2001, p. 43.

The Commission will continue its practice of inviting the chairmen and directors of national regulatory authorities to meetings on an ad hoc basis. Two such meetings took place in 2003. If experience with these meetings continues to be as satisfying in the future as it has been in the past, the Commission will consider establishing a permanent “European regulators group for audiovisual services” in the second half of 2004. A possible Commission decision to that effect would clearly state that the tasks of the regulators’ committee are confined to exchange of views on operational and technical issues, whereas the Contact Committee remains the committee responsible under the provisions of the Directive.

### **3.9. The Recommendation on the protection of minors and human dignity**

The Recommendation on the protection of minors and human dignity<sup>46</sup> is the first legal instrument – at EU level – concerning the content of online audiovisual and information services on the Internet. The Recommendation offers guidelines for the development of national self-regulation regarding the protection of minors and human dignity. In particular, it requests online Internet service providers to develop codes of conduct so as to better apply and clarify current legislation.

The second report on the application of the Recommendation concludes that the application of the Recommendation by the *Member States* (as well as the *Acceding States* and the other *States* who replied to the questionnaire) is still heterogeneous. However, the number of hotlines and codes of conduct has increased significantly and the fact that two of the *Acceding States* who replied to the questionnaire have established hotlines is also a positive sign.

Rating or classification of audiovisual content performs an essential role in the protection of minors. In a number of contributions it was considered that – rating system should take into account the cultural and social diversities between *Member States*. Nevertheless there could be a EU system of common, descriptive symbols to help viewers assess the content of programmes. This could be reached in a bottom up approach through the cooperation of co-regulatory bodies in the *Member States* and the exchange of best practices. Taking into account the cross-media approach of the Recommendation the Commission envisages proposing an update of the Council Recommendation on protection of minors and human dignity to include a call for the harmonisation of such descriptive symbols.

The changing media landscape, resulting from new technologies and media innovation makes it necessary to teach children (and parents) to use the media effectively. To know where to find information and how to interpret it nowadays represents an essential skill. A number of stakeholders who participated in the public consultation concerning the TVWF Directive also suggested – besides the issues mentioned earlier on – to include media literacy among the subjects of the Recommendation. This is an issue that the Commission will carefully consider in the light of the envisaged proposal for an update of the Council Recommendation.

---

<sup>46</sup> Council Recommendation of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity (published in Official Journal L 270, 7.10.1998, p.48).

**The Commission intends following-up the comments relating to the protection of minors by proposing an update of the Recommendation. This could cover issues relating to media literacy, the right of reply, and measures against discrimination or incitement to hatred on the grounds of race, sex or nationality in all online media. This proposal will build upon the conclusions of the second report on the implementation of the Recommendation.**

### **3.10. Co- and self-regulation**

The Communication on audiovisual policy in 1999<sup>47</sup> stressed the importance of co- and self-regulatory instruments. Based on the European Commission's White Paper on European Governance<sup>48</sup> and the Better Legislation Action Plan<sup>49</sup> in the Fourth Application Report on the TVWF Directive<sup>50</sup> the Commission recalled the basic principles for regulation: Directives must revert to being instruments which define a legal framework and the objectives to be achieved. Co-regulation allows for the implementation of the objective defined by the Community by means of measures taken by the recognised stakeholder in a given area. The legislature decides to what extent the design and application of implementing measures may be entrusted to stakeholders on account of their recognised experience on the issue. Where this mechanism fails to produce the expected results, the legislature reserves the right to directly employ statutory measures.

The contributions to the consultation process clearly show that notions like self-regulation, self-control or co-regulation are used in different ways in the Member States. Regulatory models that are called "self-regulation" in one Member State would be clearly qualified as "co-regulation" by others. A great number of examples given show the large extent to which co-regulatory models are already applied in the present framework. They seem to be especially successful with respect to the application of rules on advertising and the protection of minors.

Given the terminological problems many stakeholders still have with these notions, they call for more clarity. The Commission considers that the White Paper on European Governance and the Better Legislation Action Plan already provide the key elements for the present discussion. To attain better and faster regulation, the paper outlines the different factors that allow improvements to be achieved and defines the conditions for the use of co-regulation. The contributions to the consultation process show that co-regulatory models have been established in a number of Member States without conflicting with the Directive. But they also show that many stakeholders think self-regulation is not an appropriate solution for ensuring the fulfilment of all the policy objectives enshrined in the Directive.

In this context, it must also be examined how best to ensure that the development of national co- and self-regulatory models do not disturb the functioning of the internal market by a re-fragmentation of markets.

---

<sup>47</sup> Principles and guidelines for the Community's audiovisual policy in the digital age - COM(1999) 657 final.

<sup>48</sup> COM(2001) 428 final, 25.7.2001.

<sup>49</sup> COM(2002) 278 final.

<sup>50</sup> COM(2002) 778 final, 6.1.2003, Annex point 2.1.2.

**The Commission intends to launch a study of co-regulatory models in the media sector. This analysis should provide the full picture of co-regulatory measures taken to date in Member States and acceding countries, as well as of research already done. The study should state in which sectors these measures mainly apply, their effect and their consistency with public interest objectives.**

#### **4. CONCLUSIONS AND TIMETABLE**

Even though the effect of technological change on the development of the audiovisual market has been slower than was expected only a few years ago, digital technologies and convergence will increasingly involve new forms of content, new means of providing it and new business models to finance it. Regulatory policy in the sector has to safeguard certain public interests, such as cultural diversity, the right to information, the protection of minors and consumer protection now and in the future. The wide-ranging consultation confirmed that these objectives are not called into question by technological or market developments. What is questioned are the means by which these objectives can be achieved in a changed environment.

With regard to regulation, the Commission will proceed in a two step approach. In the short-term perspective more legal certainty can be provided by an interpretative Communication on television advertising in so far as no revision of the Directive is required. This interpretative communication will clarify in particular to what extent the present Directive applies to new advertising techniques. The Commission also will propose an update to the Recommendation on the protection of minors and human dignity.

In the medium term, a number of issues need further thought and discussion, which could lead to amendments of the TVWF Directive at a later stage. The issues will either be analysed by the Commission taking the advice of experts (focus groups) or the Commission will order or has already ordered independent studies on the respective subjects.

Meeting of focus groups will be organised in 2004 on the following subjects:

- regulation of audiovisual content;
- the level of detail in the regulation of advertising;
- the right to information and right to short reports.

Studies will be available on the following issues:

- Comparative study on the impact of control measures on the television advertising markets in European Union Member States and certain other countries
- Study on the impact of measures concerning the promotion of the distribution and production of TV programmes (Community and national) provided for under Article 25(a) of the TVWF Directive
- Study on co-regulatory measures in the media sector
- Study on the regulatory treatment of interactive television

The plan for action is set out in the Annex.



**Annex**

| <b>Action</b>                                                                                                                                                                                                     | <b>Completion Date</b>       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| Interpretative Communication of the Commission on advertising                                                                                                                                                     | 1 <sup>st</sup> quarter 2004 |
| Proposal for an update of the Council Recommendation on the protection of minors and human dignity                                                                                                                | 1 <sup>st</sup> quarter 2004 |
| Proposal for a Council Recommendation on cinematographic heritage                                                                                                                                                 | 1 <sup>st</sup> quarter 2004 |
| Proposal for an update of the Commission's Cinema Communication                                                                                                                                                   | 1 <sup>st</sup> quarter 2004 |
| Report on the application of Articles 4 and 5 of the TVWF Directive                                                                                                                                               | 1 <sup>st</sup> half 2004    |
| Meeting of focus groups (regulation of audiovisual content, level of detail in regulation of advertising, right to information)                                                                                   | 2004                         |
| Possibly Commission decision on AV regulators group                                                                                                                                                               | 2 <sup>nd</sup> half 2004    |
| Presentation of the study on the impact of measures concerning the promotion of the distribution and production of TV programmes (Community and national) provided for under Article 25 (a) of the TVWF Directive | Around the end of 2004       |
| Presentation of the comparative study on the impact of control measures on the television advertising markets in European Union Member States and certain other countries                                         | Around the end of 2004       |
| Fifth Commission's report on the application of the TVWF Directive                                                                                                                                                | 2005                         |
| 3 <sup>rd</sup> European Audiovisual Conference                                                                                                                                                                   | 2005                         |
| Presentation of study on co-regulatory measures in the media sector                                                                                                                                               | 2005                         |