Impact Study of Measures (Community and National) Concerning the Promotion of Distribution and Production of TV Programmes Provided for Under Article 25(a) of the TV Without Frontiers Directive

Final Report

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for

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Glossary

A la carte channel	A pay TV channel to which a viewer can subscribe directly without subscribing to a bundle of channels.
Acquisitions	Programmes purchased for rebroadcast by a channel that have previously been shown on another channel. Acquired programmes – particularly from the USA – are cheaper than original programmes because the production costs have already been amortised over previous showings.
Advertising minutes	Article 18 of The Directive states that "the transmission time for advertising spots shall not exceed 15 per cent of the daily transmission time" and "the proportion of advertising spots...within a given clock hour shall not exceed 20 per cent". This sets a limit of 12 minutes per hour on the amount of advertising permitted, subject to an overall limit of 216 minutes per day.
Article 4	Article 4 of The Directive requires that broadcasters reserve a majority proportion (more than 50%) of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, to European works.
Article 5	Article 5 requires that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, to European works created by independent producers. Article 5 also permits Member States to require broadcasters to allocate at least 10% of their programme budget to independent productions.
Audience share	Total hours of viewing of a channel divided by the total hours of viewing of all TV channels in that market; expressed as a percentage for a particular time period – in this report the audience shares are for the calendar year 2002.
Audiovisual works	Content consisting of moving pictures and sound. In France, audiovisual content refers specifically to the following: material that is shown on television that was not produced for showing first in the cinema ("cinematographic works" – see below): fiction, animation, current affairs documentaries produced mainly outside the studio, music videos, scientific programmes,

	concerts and retransmissions of theatrical, lyrical or choreographic programmes.
Basic tier	The entry level package of pay TV channels available to subscribers, which typically contains a news channel, music and kids channels, and maybe a basic sports and classic movies channels.
Cable relay	A cable platform for which households pay a small subscription. We do not classify cable relay as a pay TV platform because none of the subscription income is payable to the channels that are carried.
Commercial free TV channel	Advertising funded channels with no other major source of income – an important economic model for TV channels in Europe. See table at end of glossary for full channel segmentation.
Commissioned programmes	Programmes ordered and funded or co-funded by a broadcaster in return for certain exclusive rights to first showings. Also called originated programmes.
Cinematographic works	A definition unique to France that refers to audiovisual works first produced for cinema exhibition. The national regulator places certain requirements on public service broadcasters and film channels with regard to the broadcasting of cinematographic works.
Channel	A linear schedule of commissioned or acquired programmes compiled for transmission, branded and marketed by a broadcaster. Channel creation also usually involves promotional inserts to inform viewers of upcoming programmes, a station on-screen ident for the channel and, in the case of advertiser funded broadcasters, the insertion of pre-recorded product advertisements.
Confidence interval	A measure of the accuracy of a sample-based estimate defined in terms of a percentage probability. A simple rule of thumb is that, with 95% probability, the true value will be within plus or minus two standard errors of the estimate, with the limits of this range being known as the upper and lower bounds of the confidence interval respectively.
Content	Audiovisual and cinematographic works.
Critical T-value	The critical t-value is the value of the t-distribution as a function of the probability and the degrees of freedom (i.e. for a 95%

	confidence interval this is 2.5% in each tail = 5% in total).
Degrees of freedom	Statisticians use this term to describe the number of values in the final calculation of a statistic that are free to vary. In basic statistical calculations the ‘degrees of freedom’ are normally the sample size minus one.
The Directive	Council Directive 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 (89/552/EEC). Amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997.
Encryption	Encryption is the process of ‘scrambling’ a broadcast signal so it can only be watched by viewers with a decoder (normally a set top box). Encryption is used by pay TV operators to prevent channels being viewed by households without a subscription; it is also used by free TV channels broadcasting by satellite to limit access to films and movies to the territory in which the content is licensed.
European Economic Area	The Member States of the European Union plus Iceland, Liechtenstein and Norway.
European Union	From 1 May 2004, there are twenty five Member States in the European Union. This study covers only the fifteen Member States pre-enlargement: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, and the United Kingdom.
European work	Article 6 of The Directive defines European works as (a) productions originating in Member States, (b) in countries that are signatories to the European Convention on Transfrontier Television or have concluded a bilateral trade agreement with the EU; or (c) co-productions where European producers supply a majority of the budget and workforce, and exercise control over the production. (b) and (c) are conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.
Factual magazine	As defined in this study, a genre of programmes that consist of multiple items but containing less than 50 per cent documentary footage. The majority time of a factual magazine may consist

	of studio-based links, panel discussions, interviews, reports of topical events, etc. While magazines may get narrative repeats, the majority of the items covered will be topical and not therefore of long-term interest.
Fiction	The fiction genre includes soaps, drama series and serials, single dramas, situation comedies, TV movies and animation.
Flow	Stock and flow are terms to indicate whether or not a programme has long-term value. Nowhere are the terms tightly defined but the basic principle is that a stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing.
Free TV	Channels that do not charge the viewer a subscription to watch.
Games	Television shows in which participants compete for a prize. Game shows and quiz shows are staples of the early evening schedule in many Member States.
Genre	A category of programme classification based on the programme content. This study uses eight genre categories: News, Sport, Games, Documentary, Factual magazine, Entertainment, Fiction, Cinema Film.
Implementation modes	A means of defining Member State approaches to promoting European and independent production. Member States are allocated to one of four implementation modes according to: (a) the strictness or flexibility with which they apply Articles 4 and 5 of The Directive; and (b) the additional requirements they place on national broadcasters to promote European and independent production.
Independent producer	Article 5 of The Directive requires broadcasters to allocate at least ten per cent of qualifying hours to "European works created by producers who are independent of broadcasters". It is left to Member States to define 'independent producer' but Recital 31 of the 1997 Directive states that the definition should take account of criteria such as "ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights". Where we refer to 'independent producer' in this report we mean a European producer who is independent of broadcasters; where we refer to 'independent

	production' we mean an audiovisual work by an independent producer.
Interactive TV	Digital transmission permits interactive enhancements to be added to the broadcast signal, allowing the viewer to access a range of extra information and services provided by channels, platform operators and advertisers. The electronic programme guide (EPG) is the most important enhancement, giving an onscreen summary of all programmes available for viewing.
Member State	In this report, used to mean the fifteen members of the European Union plus three members of the European Economic Area – Iceland, Liechtenstein and Norway.
Narrative repeat	A repeat on a home or secondary channel within a short period of time (usually one week) of the first transmission.
Non-domestic European work	A European work broadcast in a Member State but produced in another Member State.
Non-linear	The availability of audiovisual content on demand so the viewer picks what they want to watch and when. Non-linear viewing may be achieved by a variety of means including the personal video recorder, which enables the viewer to store and recall programmes, and video-on-demand services via cable networks and the internet, where material is stored remotely and delivered to the viewer on-demand (see also channel).
Non-slipback clause	A requirement in some Member State legislation that, where a channel is unable to meet the requirements of Articles 4 and 5, they should at minimum show no less European and independent works than in the previous year.
P-Statistic	In assessing whether or not the coefficients of an estimated regression equation are statistically significant we perform statistical significance tests (generally called t-tests) for each of the coefficients which assess the statistical probability (given a coefficients estimated value and the standard error of the estimate) that it might be zero – i.e. we are calculating the probability that there is no relationship between the dependent variable and the independent variable whose estimated coefficient is under consideration. The p-value gives the statistical probability that the estimated coefficient under consideration is zero. The Hypothesis that the

	estimated coefficient is zero is generally known as the Null Hypothesis and if the p-value is greater than 0.05 (i.e. there is a more than 1 in 20 chance – i.e. 5% probability – that the coefficient could be zero) we cannot reject (i.e. must accept) the Null Hypothesis and the independent variable under consideration is removed form the regression equation (this does not as a rule apply to the constant in a regression equation). If, on the other hand, the p-value is less than 0.05 (i.e. there is less than 5% probability that the coefficient is zero) we reject the Null Hypothesis and the regression coefficient is deemed to be statistically significant and retained in the regression equation. The choice of using 5% probability as the threshold for rejecting or accepting the Null Hypothesis is based on a long standing statistical convention.
Premium pay TV	A bundle of channels (normally sport and movies) for which the household pays an additional subscription on top of a basic tier subscription to access.
Primary channel	As defined in this study, a channel with audience share equal to or greater than 3%.
Pay channel	A channel for which consumers pay a subscription to view.
Peak time	The period of every day when there is the highest audience – which we have defined as 18:00 to 23:00 in all Member States.
Platform	The distribution technology – analogue terrestrial, digital terrestrial, cable and satellite are the main platforms in Europe. Analogue and digital terrestrial spectrum is licensed by Member State authorities. Cable and satellite are proprietary platforms that are commercially controlled and access to them is regulated.
Programme	A discrete part of the transmission schedule.
Public service broadcaster	A broadcaster that is largely non-commercially funded (either directly through a licence fee or indirectly through privileged access to spectrum) and has certain programming requirements placed on it as a consequence.
Qualifying hours	A channel's transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping.

R-Square	The total variation in the dependent variable that is explained by the regression. It is a value between 0 and 1 and provides a summary measure of the goodness of fit of a regression line.
Recent works	Article 5 requires that an adequate proportion of European independent works should be recent works – that is, less than five years old.
Secondary channel	A channel with audience share less than 3%.
Standard deviation	The standard deviation is one of several indices of variability that statisticians use to measure of the spread of the data. For example, the numbers 3,7,1,17,2 are more spread out (scattered) than the numbers 5,6,6,7,6. Both sets of data have mean 6, but the first one has higher standard deviation. Thus low standard deviation indicates that the data were generated by a very consistent process, while high standard deviation implies great difference from case to case.
Standard error	The standard error, or standard error of the mean, is an estimate of the standard deviation of the means, based on the data from one or more random samples. For any given population, the larger the sample the smaller the standard error of the estimate.
Stock	See definition of flow above.
Supply chain	The sequential steps involved in the production process from the raw materials to distribution of the finished article.
T-distribution	Like the normal distribution (which is represented by a bell-shaped curve) the t-distribution is a symmetric distribution and its shape depends on the degrees of freedom, and it is used to calculate confidence intervals for smaller samples. However, the t-distribution has thicker tails than the normal distribution but, as the degrees of freedom increase, the t-distribution approximates the normal distribution.
Teleshopping	Extended advertising windows in which goods are demonstrated by a studio host and viewers are invited to call a number displayed on the screen to purchase the articles. Article 18a of The Directive requires that, where a channel is not devoted exclusively to teleshopping, the teleshopping windows should last a minimum of 15 minutes. The maximum number of teleshopping windows permitted per day is

	eight and their overall duration should not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.
Teletext	Text based information transmitted alongside the broadcast stream. Some channels with a schedule less than 24 hours a day will revert to Teletext when the channel itself is off-air.
Value chain	Identification of the value created or destroyed at each stage in the supply chain (see above).

Executive Summary

(The figures in brackets refer to the relevant section in the report).

Introduction

Articles 4 and 5 of the TV Without Frontiers Directive ('The Directive') place requirements on Member States to ensure that broadcasters under their jurisdiction devote a majority proportion of transmission time to programmes produced in Europe and at least 10 per cent of transmission time (or programme budget) to European works made by independent producers. Article 5 also requires that an 'adequate' proportion of independent productions should be recently produced – that is, less than five years old. The Directive was adopted in 1989 and Member States were required to meet the terms of The Directive from October 1991 (1.1).

Article 25(a) of The Directive provides for an independent study on the impact of Articles 4 and 5. The study is for the period 1993 to 2002 and covers the fifteen Member States of the European Union as at 2002 plus the Member States of the European Economic Area (Iceland, Liechtenstein and Norway) (1.1).

This report addresses five broad themes (1.1):

Theme one: How Articles 4 and 5 have been implemented

The report identifies how Member States have implemented Articles 4 and 5 in national legislation and describes the additional content requirements that some Member States place on broadcasters (Chapter 6).

Theme two: Impact of Articles 4 and 5 on TV schedules

It provides an evaluation of the impact of Articles 4 and 5 on TV schedules, based on an analysis of a sample of the transmission hours of channels in each Member State (Chapter 7) and interviews with industry stakeholders (Chapter 9).

Theme three: Impact on cultural objectives

It provides an evaluation of the impact of Articles 4 and 5 on cultural objectives of The Directive (Section 4.6).

Theme four: Impact on the economic performance of the European audiovisual industry

The report provides an evaluation of the indirect impact of Articles 4 and 5 on the economic performance of European broadcasters and producers (the economics of the European TV supply chain and content production are described in Chapter 3; in Section 8.5 we explain that we have been unable to identify relationships between Articles 4 and 5 and economic performance).

Theme five: Future Challenges

The report offers an assessment of the challenges facing Europe's broadcasters and content producers from audience fragmentation, new media (non-linear audiovisual services, interactive TV and mobile), and the general move towards digital TV across the EU in the coming years, together with their implications for European audiovisual policy (Section 4.7).

The study is based on: a review of officially published compliance data on the application of Articles 4 and 5; a review of national measures to implement Articles 4 and 5; an economic analysis of the European TV and audiovisual content creation sectors and an assessment of recent economic and financial performance; a bespoke survey of channel output in four sample years between 1993 to 2002; a multivariate regression analysis; and a programme of information gathering from industry experts using a combination of questionnaires, interviews and a workshop (2.0).

Context

TV industry revenue in the EU totalled €61.1 billion in 2002 – equivalent to 0.66 per cent of EU GDP. Over 90 per cent of this revenue – €56.8 billion – came from three main sources: Licence fees (€15.2 billion); advertising and sponsorship revenues (€22.6 billion); and consumer payments (€19.0 billion for pay-TV services and cable relay). The remaining €4.3bn was miscellaneous other broadcaster and platform revenues (such as revenues from publishing activities and programme sales) (3.2.1).

About 300,000 people were employed in the TV sector in the EU in 2002, including TV content production (3.3.4).

The UK (€13.9 billion of revenue in 2002) and Germany (€13.6 billion in 2002) are the two largest TV markets in Europe; France and Italy are somewhat smaller. The UK and Italy have the most developed advertising markets among the larger nations, while France and the UK have the largest proportionate pay TV markets. Public funding through licence fees is highest In Germany and the UK. (3.2.1).

Free TV is available in some form or other to all 156 million TV households in the EU. Subscription pay TV is taken by 40 million TV households – a penetration rate of 25 per cent. Pay TV penetration varies widely between countries, with over 35 per cent penetration in the UK, France and Portugal, and less than 10 per cent penetration in Belgium, the Netherlands and Greece (3.2.2).

For the purposes of this analysis we have segmented the TV channels which are covered by Articles 4 and 5[1] of The Directive according to audience share into primary channels (audience share above 3 per cent) and secondary channels. 86 primary channels shared revenues totalling €35.7 billion in 2002. There were 432 secondary channels in 2002 generating total commercial revenues of €19.1 billion (the difference between the sum of these revenues – €54.8bn – and the €61.1bn total TV industry revenue is accounted for by fees of €6.3bn in 2002 paid by viewers for cable relay services, which are retained by the cable operators) (3.2.3).

In general, primary channels tend to use more originally commissioned output while secondary channels tend to use more archive material and imported acquired material, mainly from the US. Premium secondary channels tend to use a mix of acquired feature films (mostly, but not solely, US films) and sports rights (3.2.4, 3.3.1).

Approximately €15.8 billion was invested in content creation for TV in 2002. Of this, €14.0 billion came from commissions by primary channels, €1.1 billion from commissions by secondary channels, €0.3 billion from direct subsidies available to programme makers, and the remaining €0.4 billion from direct income to producers from ancillary rights (3.2.5).

1 Articles 4 and 5 apply to **all** channels broadcasting from an EU Member State except local channels (according to Article 9 of the Directive), channels that do not broadcast in a Community language (recital 29 of the 1997 Directive), and channels broadcast exclusively for reception outside the EU and not received in the EU (Article 2 (6) of the Directive).

Of this €15.8 billion, about €2.8 billion was spent on national and local news and sports programmes (spending on sports rights is excluded). Of the remaining €13 billion, approximately 35 per cent (€4.5bn) was spent on commissioning programmes from independent producers (3.2.5).

We estimate that European broadcasters spent €3.0 billion on feature films and €2.25 billion on TV programmes imported from the US in 2002. Exports of TV programmes from the EU to the US were €500 million in 2002; the EU deficit in the import and export of TV programmes was therefore approximately €1.75 billion in 2002 (3.3.1).

The development of what is loosely termed 'new media' – internet, interactive TV and the latest mobile phone technologies that can support transmission of audiovisual images – has occurred within the time frame of this study. In 2002, 138 million EU citizens (over a third of the population) had internet access, 300 million (79 per cent) owned a mobile phone, and over 17 million EU households had interactive TV (2003) (3.5.2).

Legislation

There is a high level of regulatory intervention in European TV markets: Either in the form of direct public subsidy, the promotion of a mandatory licence to fund one or more broadcasters or the allocation of scarce analogue frequencies to commercially funded broadcasters often with attached conditions on output and spending (4.1).

The TV Without Frontiers Directive was implemented to facilitate the free movement of TV broadcasts while introducing minimum provisions which apply to all TV channels operating in the EU and safeguard national measures to promote cultural objectives. The rules were also designed – where possible – to encourage trade between Member States, and create a strong, internationally competitive European TV sector (4.3.1).

The Directive is implemented through separate national legislation in each Member State. The Directive provides some guidance to Member States on how to frame national legislation – Article 6 of The Directive, for example, contains a detailed definition of what qualifies as European production – but other important terms are not defined. As a consequence, there are material differences in the way in which Articles 4 and 5 have been implemented in national legislation (5.1, 6.2). There are also differences between Member States in the way in which adherence by broadcasters to Articles 4 and 5 is monitored (6.3).

Member States may place additional requirements on broadcasters to increase the quantity, or enhance the quality, of European works and independent production. Examples of additional requirements include the 60 per cent European works quota in France, the language and cultural requirements applied to broadcasters in a majority of Member States (in Greece, for example, 25 per cent of qualifying transmission time should be for works produced in Greek) and the support for domestic film production that public service broadcasters in France, Austria and Finland are required to provide (6.1, 6.3).

Key findings

Theme one: How Articles 4 and 5 have been implemented

The TV Without Frontiers Directive is an instrument to create minimum standards for national measures in the internal market. Member States have transposed Articles 4 and 5 into national law using a combination of primary legislation and secondary regulation (6.1).

The Directive defines total qualifying hours as a channel's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping". A majority of Member States have transcribed the definition directly into national legislation; however, France and Germany apply stricter definitions. France distinguishes between audiovisual works and cinematographic works. Germany defines what is included as qualifying hours: feature films, television movies, series, documentaries and comparable productions (6.2.1).

Articles 4 and 5 of The Directive contain the qualifying term 'where practicable'. Certain Member States – for example Austria, Belgium, Luxembourg, Spain and Sweden – have incorporated the wording 'where practicable' into national legislation, which we consider to be a more flexible interpretation of The Directive than when this phrase is absent (6.2.3).

The standard methodology employed by Member States to monitor adherence to Articles 4 and 5 is to require broadcasters to submit transmission returns, giving the volume of European works and independent productions they broadcast. Some Member States take additional steps to verify the accuracy of the data; in France, the Conseil Supérieur de l'Audiovisuel categorises every programme broadcast on public service TV to check the broadcasters' statements. Regulators in Ireland, Greece, the Netherlands and the United Kingdom perform additional monitoring or sampling to check returns. In Spain and Portugal, the regulator retains a research organisation to verify the returns from broadcasters (6.3.1).

In certain Member States – Austria, Germany, Iceland and Ireland – the regulator has no legal powers to apply sanctions. In Sweden, the regulator has powers to act where a broadcaster fails to submit returns, or where those returns are falsified. In the remaining Member States, regulatory authorities have a range of powers at their disposal to encourage adherence to The Directive, from warnings to the imposition of fines and – in some Member States, and for the most serious cases – regulatory authorities can shorten or revoke a broadcaster's licence (6.3.2).

Article 3 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" (6.4.1).

Six Member States – Finland, France, Italy, The Netherlands, Spain and the United Kingdom – apply higher percentage requirements than those contained in The Directive on some or all of their broadcasters. For example, in Italy, public service broadcaster RAI is required to reserve at least 20 per cent of qualifying hours for independent productions. In the Netherlands, the percentage for the public primary channels is 25 per cent, and re-runs may only be counted towards the measure when they are shown in peak time, to prevent the measure being met by broadcasting re-runs in non-peak time (6.4.2).

Almost all Member States place additional content requirements on broadcasters to reflect linguistic or cultural specificities in a Member State. However, such policies may, intentionally or otherwise, act as barriers to cross-border trade in programmes and channels because they set conditions on programme content that only domestic programme producers can meet; and they lead to channel schedules that are specific to a Member State, thereby limiting the appeal of these channels in other markets (6.4.3).

The application of Articles 4 and 5 (whether the measures are applied flexibly or prescriptively), and the additional requirements placed on broadcasters in national legislation (low or high additional requirements), define four 'implementation modes' (6.5). Each Member State's implementation mode is given below:

Implementation Modes

		Application of Directive	
		Flexible	**Prescriptive**
Additional Requirements	**High**	Netherlands Norway Spain Sweden	Belgium Finland France Italy Portugal United Kingdom
	Low	Austria Denmark Germany Iceland Ireland	Greece Luxembourg

There are significant gaps and inconsistencies in the reporting by Member State authorities of adherence by broadcasters to Articles 4 and 5. The problem of incomplete reporting is particularly acute with regard to secondary channels broadcasting via satellite or cable, as recognised by the Commission itself[2]. Without full reporting of secondary channels by Member States, successive Commission Communications are reporting on a shrinking proportion of total TV viewing (5.2.1).

The methodology for calculating the average proportion of European works in each Member State excludes channels with shares of below 3 per cent, though together these may account for over a quarter of viewing in certain Member States. On the other hand, the Independent works ratio is calculated using all channels (5.2.2).

Our survey of channel output was consistent with the data reported to the Commission in respect of European hours but not in respect of Independent hours. This suggests that the definition of "Independent" used in this report was stricter than that used by Member States. The fact that the Directive does not contain a standard definition of an independent producer is problematic (Appendix III, 3.1).

A majority of producers and broadcasters do not believe that Articles 4 and 5 are strictly monitored by the regulatory authorities in their Member State or that sanctions will be applied against channels who fail to meet the requirements of Articles 4 and 5. In particular, 67% of broadcasters and 28% of producers believed that compliance was left up to broadcasters, while a further 33% of producers and 22% of broadcasters thought the rules were only applied to primary channels (9.6).

2 Sixth Communication from the Commission to the Council and the European Parliament on the Application of Articles 4 And 5 Of Directive 89/552/EEC "Television Without Frontiers", As Amended By Directive 97/36/EC, for the Period 2001-2002

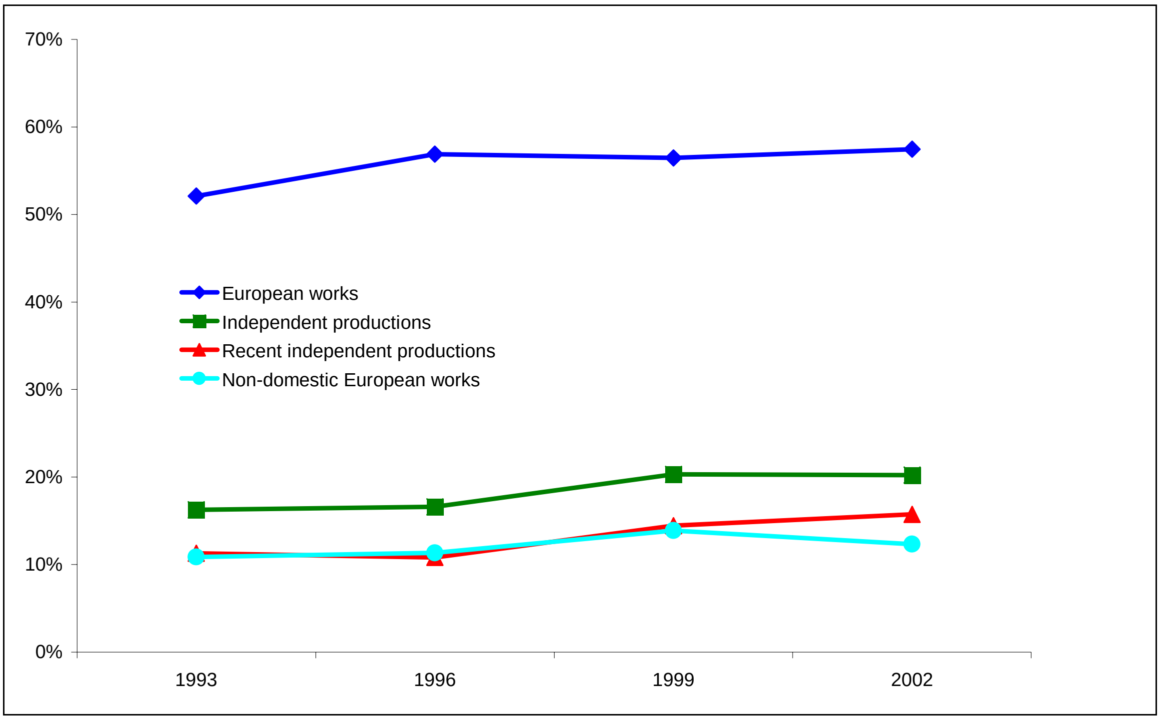
Theme two: Impact of Articles 4 and 5 on TV schedules

The number of channels covered by Articles 4 and 5 and the increase in the length of average daily transmission time means that, even if there has been no continuous improvement in the performance by channels against the requirements of Articles 4 and 5, there has been a significant increase in the volume of European works and independent productions that are broadcast in the EU (5.3.1).

The average ratio of European works in qualifying transmission time of the channels in our sample has risen from 52.1 per cent in 1993 to 57.4 per cent in 2002. The average proportion of independent productions in qualifying transmission time for the channels in our sample has increased from 16.2 per cent in 1993 to 20.2 per cent in 2002. The share of recent independent productions as a proportion of total qualifying transmission hours for the channels in our sample has increased from 11.3 per cent to 15.7 per cent. The share of qualifying transmission time devoted to works made in another European country (we call them "non-domestic European works") increased from 10.9 per cent in 1993 to 13.9 per cent in 1999; it has subsequently fallen to 12.3 per cent in 2002 (7.2.1).

This is illustrated in the chart below (Figure 27 reproduced from Chapter 7).

Summary chart showing averages for all channels in our sample (1993-2002)

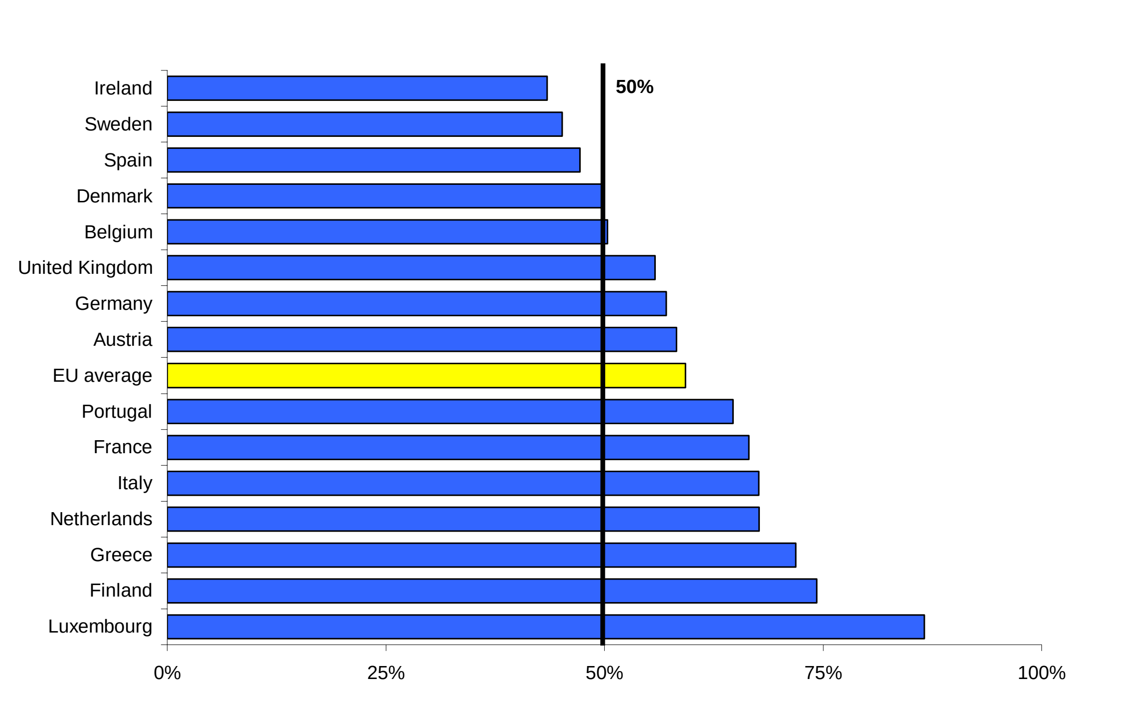


The proportion of European works in the schedule

The average ratio of European works in qualifying transmission time of the channel sample in our bespoke survey has risen from 52.1 per cent in 1993 to 57.4 per cent in 2002. In 2002, all Member States but Ireland, Sweden and Spain surpassed, on average, the majority proportion of qualifying European works (7.2.3).

This is illustrated in the chart below (Figure 33 reproduced from Chapter 7).

Qualifying European works as a percentage of qualifying hours (2002)



There is some evidence that primary channels have reduced the proportion of European works that are stock programmes (generally more expensive) and increased the proportion of (generally cheaper) flow programmes (7.3.4).

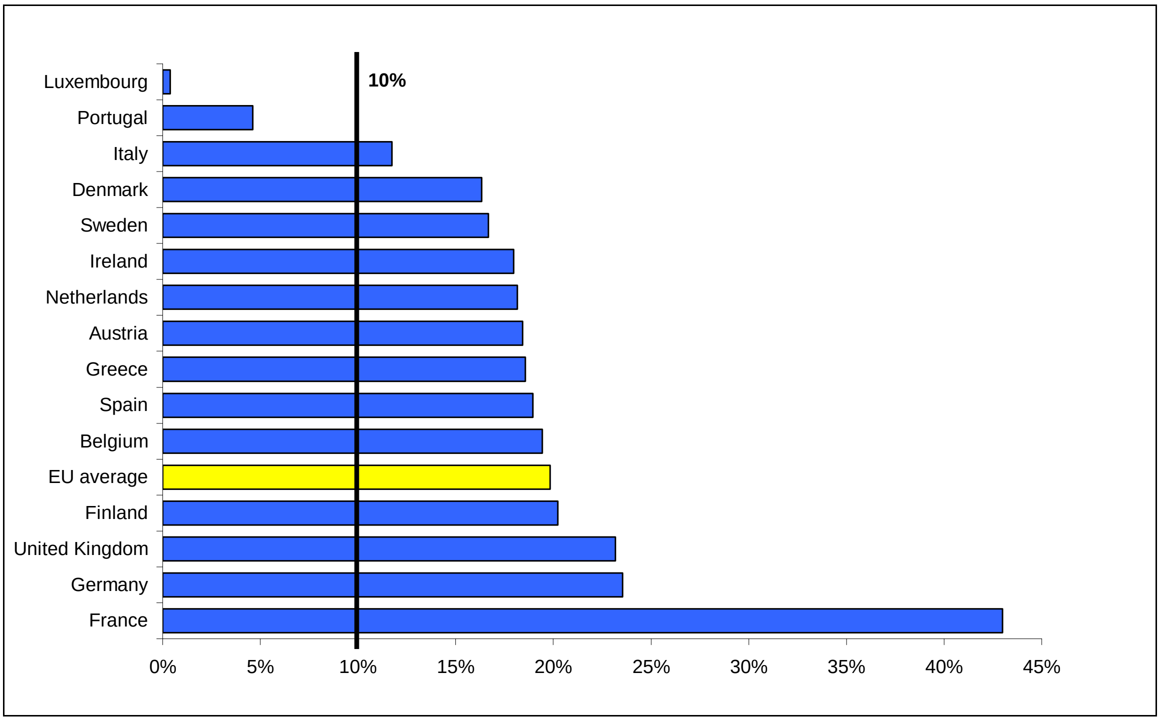
We found from our survey that secondary channels reserve a significantly smaller proportion of qualifying transmission hours for European works than do primary channels, and the average share of European works on secondary channels was less than 50 per cent in every sample year. There is also evidence from our sample that the proportion of European works on secondary channels has actually fallen (from 41.2 per cent in 1993 to 34.0 per cent in 2002), although this may be a consequence of the limited data available before 2002 (7.4.2).

The proportion of Independent productions in the schedule

The average proportion of independent productions in qualifying transmission time for all channels in our survey has increased from 16.2 per cent in 1993 to 20.2 per cent in 2002. The share of recent independent productions as a proportion of total qualifying transmission hours for the channels in our sample has increased from 11.3 per cent to 15.7 per cent – equivalent to 77.8 per cent of all independent productions (7.2.1).

The chart below (Figure 35 reproduced from Chapter 7) shows the average proportion of qualifying transmission time devoted to European-made independent productions by Member State in 2002, calculated using the channels in our sample. (7.2.3).

Qualifying independent productions as a percentage of qualifying hours (2002)



The proportion of qualifying transmission time in France devoted to independent production was 43.0 per cent in 2002, which is significantly higher than the average of all Member States. We identify in Chapter 6 that France is highly prescriptive in the way that Articles 4 and 5 are applied; in section 8.2.3 we find a positive relationship between the strictness with which Articles 4 and 5 are applied and the proportion of independent works in the schedule (6.2.4, 6.2.5, 7.2.3, 8.2.3).

The average proportion of qualifying transmission time that primary channels devote to independent productions has grown from 16.3 per cent in 1993 to 20.0 per cent in 2002. This is an increase of 22.8 per cent in the period under review (7.3.6).

The average proportion of independent productions on primary channels that are less than five years old has grown from 68.7 per cent in 1993 to 80.0 per cent in 2002 – i.e. four out of every five independent productions are less than five years old (7.3.8.).

On secondary channels, we found from our survey that the average proportion of qualifying transmission time devoted to independent productions has grown from 15.9 per cent in 1993 to 21.3 per cent in 2002 (7.4.3). Independent productions comprise about 60% of their European output. The average proportion of independent productions on secondary channels that are less than five years old has fallen from 77.3 per cent in 1993 to 67.9 per cent in 2002 (7.4.4).

Evidence that Articles 4 and 5 have had an impact on TV schedules

We have found evidence from 1993 of a significant number of primary channels immediately above the 50 per cent minimum necessary for the achievement of Article 4, which implies that the measure influenced behaviour in that year resulting in channels being at, or around, the threshold. In particular, a large number of commercial primary channels were clustered around the 50 per cent European works level, which suggests that the impact of Article 4 was most pronounced on commercial channels (7.3.2).

The more prescriptive a Member State is in the way that it implements Articles 4 and 5, the higher the average ratio of European works to qualifying transmission hours in that country. Member States with a national average for European works greater than the EU average – such as Finland, France, Greece, Italy and Luxembourg – are also among the most prescriptive in the way that they apply Articles 4 and 5 (8.1).

The change in the national average proportion of European works in the schedule between 1993 and 2002 is related to the strictness with which Articles 4 and 5 have been applied by Member States. In Member States where Article 4 has been strictly applied, there has been a greater increase in the European works ratio than in Member States where Article 4 has been implemented flexibly. This is a strong indication that Article 4 has had an appreciable impact on the scheduling of European works (8.1).

The proportion of European works during qualifying transmission hours can be expected to be higher where a Member State places significant additional requirements on channels, such as a higher percentage target for the proportion of European works or programming requirements relating to the promotion of national languages and culture (8.2.4).

The ratio of European works on a primary channel is also positively correlated with its audience share and the number of other primary channels in its market; taken together, these two findings suggest that a degree of competition encourages the use of European works but that, if competition creates too much audience fragmentation, it may leave channels with insufficient budgets with which to commission European works (8.2.3.).

The ratio of European works on a primary channel also tends to be higher if the channel is publicly funded (8.2.3.).

Channels will tend to show a higher share of independent productions in Member States where Articles 4 and 5 are applied strictly (8.2.3).

The ratio of independent productions on primary channels is positively correlated with the size of the commercial sector, a finding which might mean that it was the growth of commercial primary channel television in the 1990s that helped the independent sector, with many of the publicly funded channels continuing to source much of their programming in-house (8.2.3).

Theme three: Impact on cultural objectives

Inasmuch as we have found evidence that Articles 4 and 5 have increased the proportion of European works and independent productions broadcast by channels in the EU, we can say that this has contributed to the cultural objective of increasing the total volume of European works and creating new outlets for the creative works of those active in the cultural field (4.6.3).

Article 5 – in some case independently of and, in other cases, in association with national legislation – has helped bring into being a European independent production sector, the volume of whose output has increased over the survey period (4.6.3).

Member States have taken advantage of their freedom to pursue national cultural objectives by applying additional requirements on broadcasters such as specific language requirements and investment in regional production. These may, however, have acted as barriers to cross-border trade, thus possibly inhibiting cultural exchanges among Member States (6.4.3).

While the hours of non-domestic European works (that is works made in another European country) have grown, there has not been a significant shift in the tastes and viewing habits of Europeans towards the development of a more pan-European cultural identity. From our discussions with broadcasters, it was apparent that there is a greater appetite for US programming among European audiences than for programmes produced in other Member States. It was suggested to us that US programme storylines have broad appeal, whereas European production has a national cultural appeal which does not travel well (9.3.3).

Theme four: Impact on the economic performance of the European audiovisual industry

It is not possible to isolate the impact of Articles 4 and 5 on the economic performance of primary channels (whether publicly funded or advertising funded) from other factors. However, we have concluded that larger primary channels have absorbed the requirements of Articles 4 and 5 relatively easily. Smaller primary channels have struggled to achieve Article 4 and we conclude tentatively that this is because of the higher cost of commissioning European works compared to the prices of non European stock programmes and the lack of supply of ready-made European programmes (9.3.3, 9.5).

It is not possible to isolate the impact of Articles 4 and 5 on the economic performance of secondary channels. However, we note that secondary channels have also struggled to achieve Article 4 and we conclude tentatively that this is because of the cost of commissioning European works and the lack of supply of ready-made European programmes (9.3.3, 9.5).

Producers argue that commissioning broadcasters have little incentive to release content for exploitation by rival channels. The retention of rights by broadcasters may act as an impediment to trade in programmes between Member States, and as a barrier preventing secondary channels from meeting the requirements of Articles 4 and 5 (9.5).

The increasing demand for European programming does not seem to have been reflected in the financial performance of most programme makers. The turnover of the TV production sector grew from €6.5bn in 1997 to €11.0bn in 2001 but typical EBIT margins (EBIT – earnings before interest and tax) have fallen to between 1 to 2 per cent (3.3.2).

The acquisition and retention of programme rights was widely identified by producers as a means of improving the returns from production (9.5).

We have been unable to identify the impact of Articles 4 and 5 on extra-Community trade in programmes. It is possible that, in the absence of Articles 4 and 5, the trade deficit with the US would have been larger and that measures to promote the circulation of programmes within the EU have promoted exports, but this is unproven (8.5).

In relation to the objective of a common production and distribution market, the share of qualifying transmission time of the channels in our sample devoted to works made in another European country ("non-domestic European works") increased from 10.9 per cent in 1993 to 13.9 per cent in 1999; it has subsequently fallen to 12.3 per cent in 2002. Generally we find that smaller Member States that share a language with a larger neighbour (Ireland, Austria and Belgium) have the highest proportion of imported European works; and the largest TV markets (France, Germany, Italy, Spain and the UK) have the smallest proportion (7.2.1, 7.2.3).

Theme five: Future Challenges

There is a real possibility that audience fragmentation will put significant pressure on the commercial revenues of primary channels (especially advertising funded primary channels) and undermine support for public funding of publicly funded channels. Downward pressure on channel share and the audience concentration could in turn put pressure on the proportion of European works that primary channels broadcast and the proportion of European stock programmes in the schedule (3.5.5).

Articles 4 and 5 could have more impact if they were applied with greater rigour and consistency by Member States. Measures to support the strict application of the Articles would include the creation of standard definitions of terms such as 'independent producer' and the 'games' genre, the meaning of which is not obvious (8.2).

If the production of stock programmes is deemed particularly desirable on the grounds of higher economic and cultural value, longer shelf life and greater potential for circulation, there may be the need for further intervention to aid the commissioning of such programming (8.2.3).

The "where practicable" requirement (described in Section 6.2.3) offers a general exemption from the requirements of Articles 4 and 5. The use of the exemption may have to be reviewed as secondary channels take more share and become, in many cases, part of larger multi-channel owning groups whose underlying economics are improving rapidly (8.2.5).

Further consideration could also be given to the application of Articles 4 and 5 to pan-European channels which, while having a small share of each national market, may have as large a share across Europe as some primary channels in Member States (3.2.3).

The acquisition and retention of programme rights was widely identified by producers as a means of improving the returns from production and enabling them to build an asset base that they could borrow against to invest and grow. Research should be conducted in Member States such as France and the UK that have introduced regulations that are more favourable to producers to identify whether the benefits producers claim, such as increased exports, have been realised (9.5).

New technologies could open up new opportunities for European content creators to tap into new markets and revenue streams. In theory, content producers could bypass domestically focused TV channel operators and offer material directly to consumers in other Member States or outside of Europe. However, the availability of content does not guarantee its visibility and consumption. Without the type of marketing, promotion and distribution now provided by a broadcaster, a platform operator or a major internet portal, the consumption of such material is likely to remain low (3.5.5).

The internet is unlikely to be exploited fully as a means of distributing content until Digital Rights Management (DRM) solutions are fully effective. Initiatives to reduce piracy by educating European citizens and through measures by the Commission to introduce effective DRM will help to maintain the returns to producers from their creative efforts (3.5.5).

Policy interventions to regulate internet content will be difficult to define and implement. For example, measuring and enforcing a target for the proportion of European works in the schedule for material that is viewed on-demand over broadband networks (as opposed to a linear broadcast) is problematic because viewers choose what they want to watch. The target of future regulatory actions may therefore need to shift from hours of programme output to measures of financial inputs – for example through an obligation to invest a proportion of turnover in European and independent works. Positive intervention to market and promote European-made content to consumers inside and outside the EU may also be desirable (3.5.5).

1 Introduction

1.1 The Remit

Article 25(a) of the TV Without Frontiers Directive (referred to throughout this report as 'The Directive') makes provision for "an independent study on the impact of measures concerning the promotion of distribution and production of television programmes at Community and national levels".

The Education and Culture Directorate of the European Commission conducted a selection process by competitive tender and appointed David Graham and Associates Limited (DGA) to carry out this study in November 2003. DGA led a consortium of companies to conduct the project: Oliver & Ohlbaum Associates Limited (O&O), Arena Audiovisual and Carat Expert. DGA directed the project and took lead responsibility for the channel survey and regression analysis. O&O project managed the study and led on the market and economic analysis and review of performance, the analysis of official data, the review of implementation modes and national regulation, and writing up the final report. Carat Expert took on much of the survey work across the EU and conducted the bulk of the interviews. Arena Audiovisual took specific responsibility for analysis and interviews covering Spain and Portugal. All four member companies of the consortium had an input to the final analysis and report structure.

The measures at Community level to promote programme making and programme distribution are contained in Articles 4 and 5 of The Directive. Articles 4 and 5 place requirements on Member States to ensure that broadcasters under their jurisdiction devote a majority of transmission time to programmes made in Europe and at least 10 per cent of transmission time (or programme budget) to independent productions.

Article 4(1) states:

> "Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria."

Article 5(1) states:

> "Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternatively, at the discretion of the Member State, at least 10 % of their programme budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production."

The Directive was adopted in 1989 and Member States were required to meet the terms of The Directive from October 1991. The remit of the study covers the period

1993 to 2002. The remit covers the fifteen Member States of the European Union as at 2002 and the Member States of the European Free Trade Association who participate in the European Economic Area – Iceland, Liechtenstein and Norway. For ease we refer to these collectively throughout this report as the Member States (of the European Union, EU).

This report addresses five broad themes:

Theme one: How Articles 4 and 5 have been implemented

The report identifies how Member States have implemented Articles 4 and 5 in national legislation and describes the additional content requirements that some Member States place on broadcasters.

Theme two: Impact of Articles 4 and 5 on TV schedules

It provides an evaluation of the direct impact of Articles 4 and 5 on TV schedules, based on an analysis of a sample of the transmission hours of channels in each Member State.

Theme three: Impact on cultural objectives

It provides an evaluation of the impact of Articles 4 and 5 on cultural objectives of The Directive.

Theme four: Impact on the economic performance of the European audiovisual industry

The report provides an evaluation of the indirect impact of Articles 4 and 5 on the economic performance of European broadcasters and producers.

Theme five: Future Challenges

The report offers an assessment of the challenges facing Europe's broadcasters and content producers from audience fragmentation, new media (non-linear audiovisual services over the internet, interactive TV and mobile), and the general move towards digital TV across the EU in the coming years, together with their implications for European audiovisual policy.

1.2 The Challenge

The European TV and audiovisual content creation markets are complex and have changed rapidly in the last decade. The period 1993 to 2002 saw a more than four-fold increase in the number of TV channels, the full establishment of pay TV for the first time in many countries, the launch of digital and interactive TV toward the late 1990s and an advertising boom, followed by a deep advertising recession. Attempting to ascertain the specific impact of Articles 4 and 5 in such circumstances is likely to be difficult.

The EU TV and audiovisual sectors also display a high degree of vertical integration, including broadcasters with their own production units and delivery systems with their own channels. This can make it particularly difficult to ascertain the size and economic health of individual activities along the supply chain, such as programme making and channel creation.

Perhaps the greatest challenge, however, is that, even when information is available, it is often not comprehensive and lacks consistency between countries and over a given time period. Even official figures on compliance with Articles 4 and 5 are produced using different interpretations and definitions of the legislation (see Chapter 5).

Beyond these officially monitored figures, comparisons across countries of the types of programmes transmitted by different channels, the level of spending on programming and the profitability of different activities along the supply chain are all made more difficult by a lack of consistency over definitions and sampling methodology.

More generally, any comprehensive or consistent figures for years prior to 1993 – in terms of providing evidence of industry structure and behaviour before The Directive came into force – are almost impossible to obtain[3].

Lastly, and on a more mundane level, we faced the inevitable time and budgetary constraints limiting the extent to which we could address the above problems with new bespoke surveys and research.

1.3 Our Broad Response

Our overall response to this challenging remit has been to conduct original research in specific areas and to combine this with a sophisticated understanding of published data, in order to provide as comprehensive a review of the status and impact of Articles 4 and 5 as possible. The analysis and assessment in the report fits broadly into six categories covered in the following Chapters.

First, we provide a detailed review of the sector's economics and performance and the policy issues involved. This provides a framework within which to understand the objectives of Articles 4 and 5 in the overall context of the broader arguments for regulatory intervention in national TV and audiovisual markets which have been a part of the European TV landscape for over 50 years.

We show how the different activities of TV delivery, channel creation and TV production inter-relate, indicating their relative scale, value and performance across all Member States and within each country. We attempt to map out the different sub-segments involved and the economics and performance of each – primary channels[4] versus secondary channels, independent production versus in-house and so on.

This analysis draws mainly on published sources such as the yearbooks produced by OBS and company accounts. But it also uses elements of the specially commissioned output survey conducted for this report.

This analysis of the EU TV market and the policy framework is covered in Chapters 3 and 4 of the report. Chapter 3 also puts the TV sector in the context of the broader audiovisual content creation sector and tries to look forward as to how the sector might develop in the coming years and determine what economic issues this might raise.

Second, we review the current status of compliance with Articles 4 and 5 along with an assessment of the different modes of implementation adopted in each Member State. We then go on to review the additional requirements some states make for

3 Our study includes those Member States that joined the EU in 1995. These countries provide a sub-sample of channels that were not covered by The Directive in 1993 but were in 2002.

4 Channels with 3 per cent audience share or more – see Chapter 3

European works and for works by independent producers. This work is covered in Chapters 5 and 6 of the report.

Third, we provide an independent and internally consistent assessment of the proportions of European works and independent productions broadcast by a sample of channels in each Member State. We then break down this performance by broad channel type, and by broad type of programming, in order to provide further potential insight into what might determine different levels of achievement.

This analysis is summarised in Chapter 7. The prime purpose of this analysis was to provide a consistent and more detailed comparison between channels across Europe than is provided by official data. It did not aim to provide new compliance data for each Member State or to "audit" the published data. However, we do try to reconcile the differences between the official data and our own survey data at the end of Chapter 7 – and the survey did help highlight errors in some of the official data.

Fourth, we use all the preceding analysis to try to establish causal statistical relationships between various market and regulatory factors on the one hand, and the levels of European and Independent works and the health of the market on the other hand. More specifically, we take market variables such as the size of the TV advertising market and the level of market concentration and combine them with regulatory factors such as the existence of significant public funding, the strength of national content regulations and the mode of implementation for Articles 4 and 5, in order to determine what is likely to explain different levels of European works and Independent productions among channels and within different national markets.

This multivariate regression[5] analysis helps determine whether it is Articles 4 and 5 – or indeed their mode of implementation – which most explains differences, or whether it is market and/or additional national regulatory factors. This assessment is in Chapter 8.

Fifth, we summarise the results of an interview programme covering 70 producers, broadcasters, regulators and experts across Europe – combined with the feedback received at a workshop in Brussels in late October 2004 – that was designed both to help test out some of the causal relationships in the previous section, and to help identify some of the important economic performance issues of concern to industry participants. This analysis is in Chapter 9.

Sixth, we take material from the output survey, the multivariate regression analysis, the interview programme and the analysis of producer and broadcaster performance, in order to determine the extent to which Articles 4 and 5 have or have not impacted schedule output and the overall economic performance of the TV and the broader audiovisual content creation sector.

We go on to draw out the main conclusions from the report, the likely future challenges to the European TV and content creation sectors and any outstanding issues. This is covered in Chapter 10 of the report.

The next Chapter sets out our approach and methodology in each specific areas of analysis in more detail.

[5] A methodology to find statistical relationships between a number of independent variables and the target variable.

2 Approach And Methodology

The previous Chapter outlined our broad approach to the report. This Chapter sets out our specific approach to, and the methodology adopted in, the separate pieces of bespoke analysis, namely:

- First, a review of officially published compliance data on the application of Articles 4 and 5;
- Second, a review of implementation modes for Articles 4 and 5 and extra national legal measures affecting European works and Independent works;
- Third, an economic analysis of the European TV and audiovisual content creation sectors and an assessment of recent economic and financial performance;
- Fourth, a bespoke survey of channel output from 1993 to 2002;
- Fifth a multivariate regression analysis; and,
- Sixth, a programme of information gathering from industry experts using a combination of questionnaires, interviews and a workshop.

2.1 A review of published compliance data

Article 4 (3) of The Directive requires Member States to provide the Commission every two years with a statistical statement on the application of Articles 4 and 5. The Member State reports are collated and published accompanied by an opinion from the Commission in a Communication to the Council and European Parliament. The Directive requires Member States to submit data on every channel falling within their jurisdiction unless it is exempted. Exempted channels are local channels (according to Article 9 of the Directive), channels that do not broadcast in a Community language (according to recital 29 of the 1997 Directive), and channels broadcast exclusively for reception outside the EU and not received in the EU (according to Article 2 (6) of the Directive).

The reports are a quantitative statement of the ratios of European works and independent productions in the transmission schedule of broadcasters in the preceding two years. Hence the reports allow the reader to identify whether or not a channel has met the requirements of Articles 4 and 5. These Communications are the main source of publicly available information and data on the performance of channels measured against Articles 4 and 5 in the period between 1993 and 2002.

The Commission documents were an important source of information for this study, but there are certain limitations associated with the reports which we describe in Chapter 4 and which meant we could not rely solely on the data contained in them. In order to supplement the information contained in the Commission Communications, we conducted our own bespoke survey of channel transmission schedules.

2.2 A review of implementation modes and extra national legal measures

As with all EU Directives, the provisions of the TV Without Frontiers Directive are implemented through separate national legislation in each Member State, cf. Article 249 (3) TEC. Differences in the way in which national legislation is framed and the way in which key terms are defined in national legislation can make adherence to Articles 4 and 5 more or less onerous for broadcasters. Also, Article 3 (1) of the Directive expressly provides that Member States remain free to apply more detailed or stricter rules in the area covered by the Directive. Consequently, Articles 4 and 5 constitute the minimum standards with which Member States and third parties directly affected (broadcasters) have to comply effectively.

We looked at how The Directive was transposed into national legislation in each Member State to determine whether it was more or less prescriptive or flexible. We looked particularly at the way in which key terms (such as 'independent producer') are defined and the use of 'slip-back clauses' to prevent broadcasters reducing the proportion of European and independent productions in their schedule. We also looked at whether or not national legislation contains the 'where practicable' clause in framing the requirements of Articles 4 and 5. The phrase, which is contained in The Directive, is a more flexible transposition of The Directive because it potentially exempts those channels that are unable to meet the requirements of Articles 4 and 5.

We also reviewed the measures in place in each Member State to monitor adherence by broadcasters to the requirements of Articles 4 and 5, and the sanctions (warnings or fines, for example) applied by national authorities when these requirements are not met. The classification of the above allowed us to test the hypothesis that adherence to the requirements of Articles 4 and 5 was greater in Member States where the performance of broadcasters is carefully monitored, and where there are significant sanctions (for example fines or other financial penalties) for failing to meet the required proportions of European and independent works. This hypothesis is tested in Chapter 8.

Having reviewed the implementation of The Directive – the way in which Articles 4 and 5 are transposed into national legislation and monitored – we then looked at any additional requirements placed on broadcasters by national legislation to increase the quantity or enhance the quality of European and independent production. Examples of additional requirements include, inter alia, the 60 per cent European works quota in France, the language and cultural requirements applied to broadcasters in many Member States, and the support for EU and domestic film production that public service broadcasters in France, Austria and Finland are required to provide.

Taken together, the transposition of Articles 4 and 5 (whether the measures are transposed into national legislation flexibly or prescriptively), their application and the additional requirements placed on broadcasters in national legislation (low or high additional requirements) define four 'implementation modes' which we use to test relationships between national legislation and the proportion of European and independent programmes on TV. This is all described in more detail in Chapter 6.

The data for the review of national legislation was collected from national regulatory authorities using a combination of interviews and a questionnaire. We also used the European Media Institute Study of Member State legal provisions conducted on behalf of the European Commission and published in 2001.

2.3 An economic analysis of the European broadcasting market and an assessment of recent economic and financial performance

We collected and integrated a wide range of financial and economic data, from the early to mid 1990s up to 2002, to build a picture of the broadcasting and content creation industry supply chains in the EU and in each Member State. Our primary analysis is for the year 2002, as budgetary constraints prevented us from collecting data back to 1993 (the starting year of our study) in every case.

The primary source of data was the OBS Yearbooks. We also made use of data collected by national regulatory authorities and research institutes; the published accounts of major companies in the media sector; commercially produced data and forecasts; and investment bank reports on individual companies. The data was integrated into a consistent dataset for each Member State, enabling like-for-like comparisons between markets.

Similar sources were also used to judge financial performance of primary and secondary broadcasters and producers, and the overall economic performance of the sector in terms of trade and employment.

We collected and analysed profit and loss accounts and balance sheet data for roughly one hundred producers and broadcasters across the EU for the period 1993 to 2002. The data was sourced from company accounts and annual reports and, from the Amadeus database of company information provided by Bureau van Dijk Electronic Publishing.

Developing a reasonably consistent picture of the market and recent economic performance was not an easy task, and the numbers provided – especially those that look at activities along the supply chain separately – are clearly just best estimates given the partial nature of published information and the degree of vertical integration present.

This analysis is contained in Chapter 3, which also includes a brief look into the future of the sector, and the challenges it might pose for participants.

2.4 A bespoke survey of channel output from 1993 to 2002

To overcome some limitations of the published official data and to obtain a more detailed dataset that included information about programme genres, etc., we conducted a bespoke survey of the output of 83 channels broadcasting in the EU and EEA Member States. The channels we sampled were selected to provide wherever possible 70 to 75 per cent of viewing in each Member State and to provide robust data at Community level for each channel segment.

We sampled each channel for a two week period in each of four years – 1993, 1996, 1999 and 2002. Our sample contained ten secondary channels (channels with audience shares less than three per cent).

To classify the programme schedule of each channel we applied a standard definition of European works and independent production in each Member State. We also created a standard genre set for the study consisting of eight genres – entertainment, fiction, factual magazine, documentary, cinema film, news, sport and games.

Classifying programmes by genre has enabled us to conduct a more sophisticated analysis of European works and independent productions on TV than would be possible using the published compliance data alone. We have been able, for example, to quantify the proportion of fiction and cinema film of European origin that is broadcast, and the balance between stock and flow programmes in the schedule[6]. The fact that we applied a consistent methodology to classify the schedule also enables us to make comparisons between channels in different Member States.

[6] The definitions of stock and flow programmes are covered in Chapter 3.

We are confident that the sample data is representative of each channel segment at EU level. However, the survey size was limited by the study budget and by the availability of channel transmission data, and there are consequent limitations in the survey outputs.

The sample data does not allow us to replicate exactly the average performance against the key ratios by all channels in a Member State, because we have not sampled every channel in every Member State. In Ireland, for example, we did not sample TG4, which has a significant output of European works.

We have also identified a number of discrepancies between our estimation of the proportion of European works and independent works in the schedule of some channels in our survey and the ratios reported by Member States. We highlight significant discrepancies where they arise in the text and we have conducted a statistical analysis of the discrepancies between the reported and sample estimates in Appendix IV. The overall survey results and a summary of the discrepancies with the official data are contained in Chapter 7.

Overall, our use of the survey is valid because we are not seeking to audit the data supplied by Member States to the Commission. Rather, the survey provides information that is not available from other sources, it enables direct comparisons between Member States, and – used alongside other data sources including the published data – provides a fuller picture than would be provided by the Commission Communications alone.

The survey provides a comprehensive view of the performance of different types of channel from 1993 to 2002. Although the sample had to start after the Articles were implemented in most Member States (3 October 1991, cf. Article 25 (1) of the Directive) – as data prior to 1993 does not exist – and therefore does not provide a complete "before and after" picture, the survey results for 1993 provide some important clues about the initial impact of the Articles when they were first introduced.

2.5 A multivariate regression analysis

We conducted a regression analysis of data collected by the different methods described above to identify statistically significant relationships between them. Our objective was to identify variables that explained the behaviour of three indicators:

- the proportion of European works in qualifying transmission time (Article 4)
- the proportion of European stock programmes in qualifying transmission time (stock programmes are a proxy measure for the 'quality', or cost per hour, of production)
- the proportion of independent productions in qualifying transmission time (Article 5)

We tested a range of variables related to the broadcasting market size and structure together with the nature of regulation in each Member State which we believed might influence the three indicators, including: the size of the broadcasting market, market concentration, and the implementation mode reflected in national legislative measures and their application. We also tested channel specific data including channel funding.

We conducted the analysis at two levels – at Member State level and at channel level. In the former we attempted to identify whether a combination of variables could explain average performance by all the channels in a Member State against the above indicators; in the latter we sought to establish a causal relationship between the unique variables for a channel and for the Member State in which it broadcast, and the channel broadcast output measured against the above indicators.

No single variable proved to be decisive in determining any of the three ratios analysed. In each case the analysis suggested a combination of variables was likely to drive the different levels across countries and channels.

The analysis is covered in Chapter 8.

2.6 Questionnaire, interviews and workshop

To capture the views and opinions of experts in the audiovisual sector we distributed questionnaires to more than 100 individuals and organisations, and received responses from more than 70. Replies were received from broadcasters, producers, and national regulatory authorities. A significant number of questionnaires were completed in face to face interviews with respondents conducted between May and December 2004.

The questionnaires were structured to identify the factors which affect programme purchasing decisions – for example, the balance between commissioned and acquired programmes – and the proportion of programmes that are commissioned from independent producers. We asked broadcasters and producers about co-production in the EU and intra-community trade in European works, and about access to programme rights. We asked their opinions on the implementation of Articles 4 and 5 and any changes to these measures that they would recommend.

A further opportunity for interested parties to contribute was provided by a workshop in Brussels towards the end of the study, when we presented our preliminary findings and invited participants to comment on them and ask questions. A number of organisations accepted our invitation to submit supplementary information after the workshop.

The questionnaires, interviews and workshop provided quantitative and qualitative information that adds significant depth and colour to our picture of the sector. It enhanced our understanding of the commercial imperatives under which the broadcasting and production industries operate, and the views of the different constituencies affected by Articles 4 and 5 of The Directive. The findings from the questionnaires, interviews and workshop are reported in Appendix V, but the information and insights gained are reflected throughout the report and summarized in Chapter 9.

3 The European TV Supply Chain And Audiovisual Content Creation

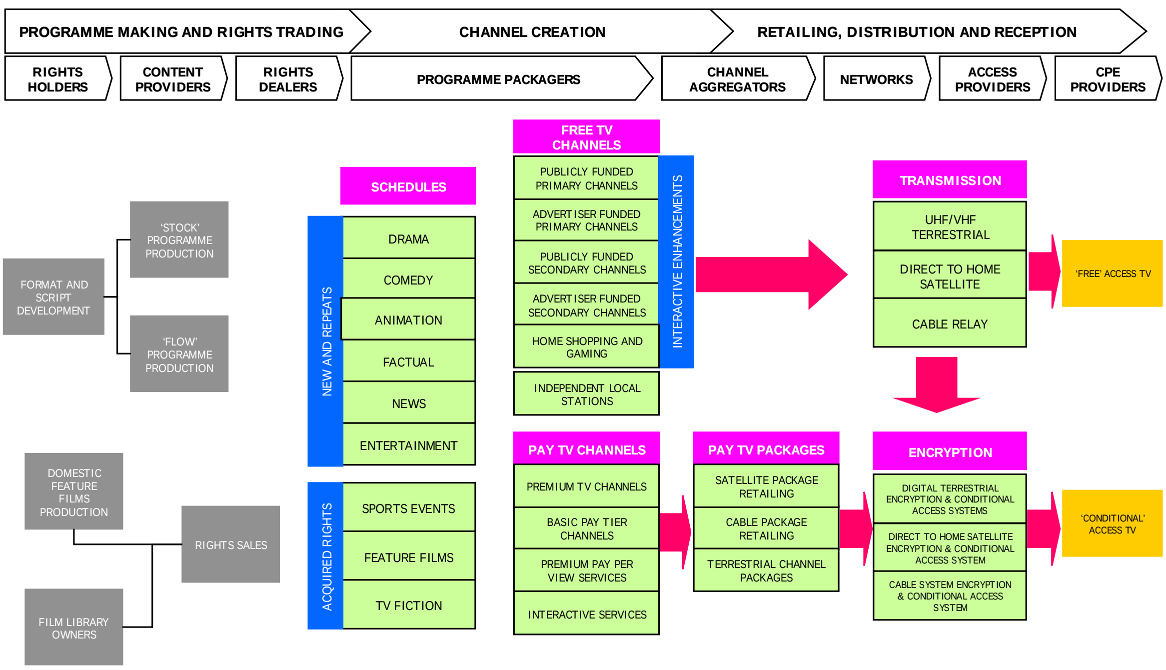
This Chapter provides an overview of the current market structure and revenue of the EU TV sector and the flow of funds through the European TV supply chain. It uses a combination of well known industry sources, such as the OBS, Screen Digest and the TVI Yearbook; plus access to company accounts and investment bank reports; studies by key national regulators such as Ofcom and the CSA; and some of the bespoke channel survey and interview programme data covered in Chapters 7 and 9. These are combined to get as accurate a picture as possible of the whole sector and its three main component parts – content creation, channel creation and TV delivery.

This Chapter also reviews key recent trends, growth rates and sector performance as well as looking forward to likely future trends.

3.1 Market Structure and the Supply Chain Framework

The supply of TV services to viewers is made up of three broad and interrelated functions (See Figure 1). First, the creation of new content, such as news, documentaries, game shows, dramas, entertainment programmes. Second, the creation and packaging of individual TV channels, made up of a mixture of: commissions of new programmes; acquired rights to ready-made feature films or existing libraries of ready-made TV programmes; and various promotional and interstitial material, such as programme trails, station idents and advertising breaks. Third, the distribution of a channel or a group of channels to viewing households by either terrestrial, satellite or cable delivery systems.

Figure 1: European value chain by function



Source: Oliver & Ohlbaum analysis

Sources of value added along the supply chain vary considerably. Distribution may be simply a technical transmission service, where the viewer receives TV signals free of charge in unencrypted form. Conversely, pay TV distribution can involve the packaging, retailing and marketing of a group of TV channels in encrypted form, where monthly charges are made for reception, with all the associated subscriber management and billing functions provided.

Similarly, channel management can involve the large scale commissioning of new programming and the acquisition of ready-made programming from a large number of sources, the heavy promotion and marketing of the channel to viewers, and significant investment in a station's brand image through TV and other media promotions. Alternatively, it can involve the use of a limited number of available programme libraries or the commissioning of a single continuous studio-based programme strand.

Original content creation can range from a continuous studio-based programme with a handful of contributors, to a full action drama made on multiple locations, with a large cast and crew and significant investment in script development.

3.1.1 TV Content Creation and Related Rights Trading

Creating new TV content usually involves a three-stage process. Some initial planning and development (known as pre-production), the recording of the programmes (production), and the editing of the material into its final form (post production).

Once made, an original commissioned programme can be shown a number of times on TV and/or exploited on DVD/VHS. In general – although not always – those programmes with the most effort made in creation are the ones that can be exploited again and again on TV channels or video. Programmes with high initial production effort (or values) that can be reused are sometimes termed "stock" programmes. Programmes that use less initial production effort and which are less repeatable are sometimes termed "flow" programmes. Drama, narrative comedy and well-researched and filmed documentaries are good examples of stock programmes, while game shows, chat shows and quizzes are good examples of flow programmes.

Some programme types or genres have elements of both stock and flow programmes. For instance, a reality show – often involving guests in a series of challenges and adventures – often has high production values but limited repeat potential. While the idea and structure of the programme can be exploited again – perhaps for a subsequent series or a new version in another country – the programme itself has limited repeat value.

In general, typical stock programmes cost more to originate than flow programmes. New drama series and mini series, situation or sketch comedy shows and original documentaries (where a large amount of original material rather than archive material is used) can cost between €250K and €1 million per hour (and occasionally well in excess of this). In contrast, typical flow programmes such as quiz shows, chat shows or even compilation factual programmes, cost less than €100K per hour, and can cost as little as €5K to €10K an hour if produced in volume.

Added value in TV programme making comes from meeting the demands of the viewers and subscribers targeted by the channel owners. Programmes that appeal to more than one channel owner will strengthen the producer's negotiating position. Risks in programme making are high, with perhaps one in eight dramas or comedies becoming a long run success. In general, risks for stock programmes are higher than for flow programmes.

Risks are reduced for the producer when the commissioning channel pays a fixed fee that includes a profit margin, but in return takes the upside should the programme become a success. The channel enjoys unlimited rights to repeat the programme at low (or no cost) and the rights to sell the programme to other channels in the home market and internationally.

Rights trading is done either by a subsidiary of the commissioning broadcaster – if they retain the rights – or an independent rights distribution company (which may be linked to the independent producer), if the independent has chosen to own the rights but accept a smaller upfront fee from the broadcaster. Rights trading companies often have to pre-invest in a new programme in return for the rights. This helps compensate for the lower fees from commissioning broadcasters when they do not retain all rights.

A typical programme contains a large number of rights including, but not limited to: the rights to the first few transmissions; the rights to subsequent repeats on specific channels for a nominated period of time (often perpetuity); the rights to sell on to other broadcasters in the same national market (often with a hold back to allow the original broadcaster a unique period of use); the rights to sell the programme on video; the rights to sell the programme internationally; the rights to exploit the format of the programme (its basic structure and script) in the domestic market and overseas; the rights to exploit the programme brand and characters in merchandising and licensing deals; and, the rights to use the programme name and excerpts for internet and mobile clip services.

3.1.2 Channel Creation

Channel creation involves the commissioning of new programming either from external producers or in-house departments, the acquisition of ready-made TV programmes and feature films, the commissioning of station idents and promotions and, in the case of commercially funded channels, access to relevant advertising tapes. The channel is then run from a play-out centre that mixes together all the different forms of output – commissions, acquisitions, promotions and adverts and then transmits a broadcast stream to the relevant delivery platform or platforms.

Added value is generated in channel creation and management in three main ways: first, commissioning and acquiring the best mix of programmes for its target audience, and then scheduling these programmes optimally; second, creating a brand image for the channel, or selecting a specific niche audience that creates viewer loyalty to the channel over and above the appeal of the individual programmes; and third, gaining access to relevant distribution systems – especially unique or privileged access to distribution.

3.1.3 Aggregation and Distribution

There are two distinct value added activities in distribution and aggregation. The first is simply the successful delivery of TV signals to the viewer, of a sufficient quality and standard and with minimal interruption. In the case of pay TV this also includes the prevention of unauthorized reception, which requires an effective encryption and authorization system.

The second area of value added only applies when a delivery system is also the retailer of a combination of channels or packages. Added value is being created by the mix of channels, the branding and image of the channel package, the pricing of the packages and customer support services such as billing and call centres. These services are often collectively referred to as aggregation.

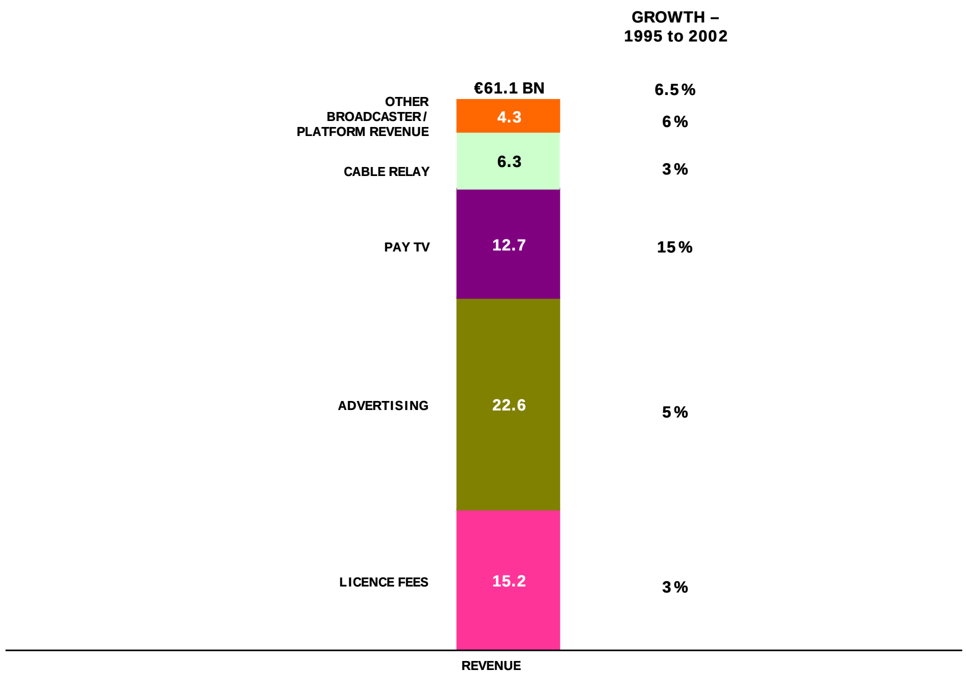
While free TV distribution usually only involves the first of these value added activities, pay TV often involves both, which makes it a larger and potentially riskier activity – especially where pay TV providers decide to discount the costs of the receiver box technology in order to drive take-up, hoping to recoup the losses from future subscriptions.

3.2 Current Market Structure and Flow of Funds Along the Supply Chain

3.2.1 Industry Income

TV industry revenue in the EU totalled just over €61 billion in 2002[7] – equivalent to 0.66 per cent of EU GDP. Over 90 per cent of this revenue – €56.8 billion – came from three main sources: licence fees; advertising; and consumer payments. The remaining €4.3 billion revenue came from a mixture of ready-made programme sales by broadcasters, publishing and licensing activities, such as listings magazines, merchandising and DVDs, TV related telecom and interactive services and the hire of technical facilities to non-broadcast users[8] (see Figure 2).

Figure 2: TV revenue by source in the European Union (2002)



Sources: OBS, TBI Yearbook, Company accounts, national regulators, O&O analysis

Licence fee/grants in aid to channels were worth €15.2 billion in 2002 and have been growing at about 3 per cent a year since 1995, helped to grow at a rate just above inflation by general household growth (licence fees tend to be charged per

7 This includes revenue direct to delivery platforms and broadcasters. There are some additional revenues direct to producers that do not come through broadcasters, such as direct subsidies from targeted production funds and earnings from rights separately controlled and exploited, which amount to about another €0.7 billion a year in total. These are dealt with more directly in the supply chain analysis later in this Chapter.

8 There is also another €1 billion of home shopping revenue – net of cost of sales – but home shopping has been excluded from this analysis.

household), and the occasional one-off rise mandated by Governments. Generally, all this revenue – other than collection costs – goes direct to relevant broadcasters. According to OBS data for 2000, the licence fee per household is typically between about €114.40 (France) and €253 (Denmark).

Advertising and associated sponsorship revenues totalled €22.6 billion in 2002 – after advertising agency commission – and had been growing at about 5 per cent a year on average across the EU from 1995 to 2002. Again, advertising and sponsorship revenue is sold directly by broadcasters.

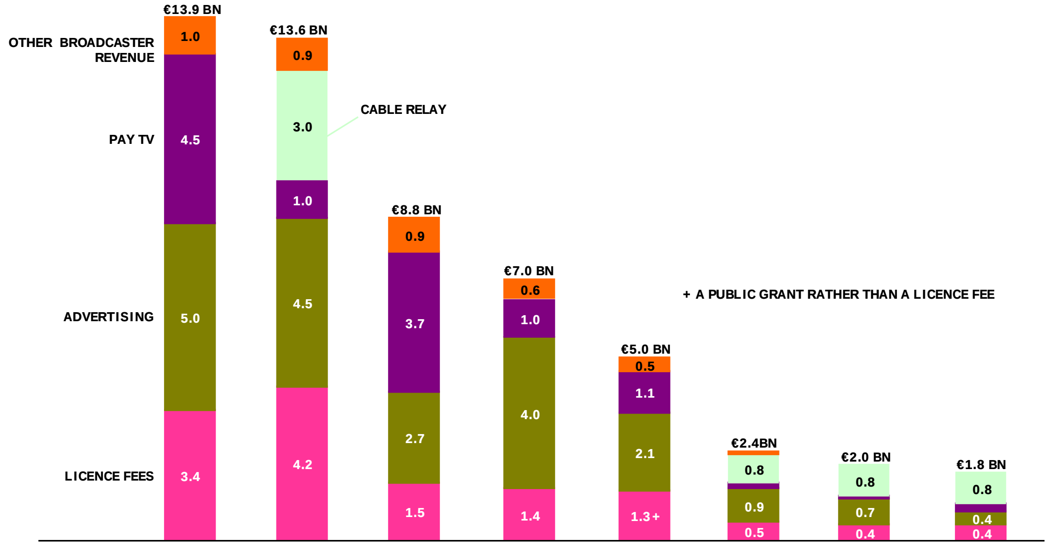
Consumer payments totalled €19.0 billion in 2002 and fall into two very distinct categories. First, small monthly payments of €5 to €8 a month for access to low capacity cable relay services – usually 20 to 40 channels – which were built to supplement the terrestrial over-the-air distribution of the main channels in certain countries such as Germany and the Netherlands, and which have subsequently been used to deliver a small number of extra, more specialist channels. Total revenue from this source was €6.3 billion in 2002, and had only grown by 3 per cent a year between 1995 and 2002. All this revenue goes to the delivery system itself and is not shared with broadcasters. [9] Second, larger monthly payments for subscription pay TV services – either packages of specialist channels or specific high-value premium sports and movie channels. Revenue from subscription pay TV totalled €12.7 billion in 2002 and had been growing by 15 per cent a year since 1995, as direct-to-home pay TV satellite services, and higher capacity pay cable TV, were rolled out across various Member States (this is covered in more detail below).

Generally, revenue from pay TV is shared between the delivery systems and the broadcast channels.

While all Member States generate some level of income from all three main sources of revenue, the mix of revenue streams and total amounts of revenue vary considerably – a pattern of variation which can only partially be explained by variations in GDP. (See Figure 3 and Figure 4).

[9] In fact, in some limited instances, broadcasters pay cable relay systems for access.

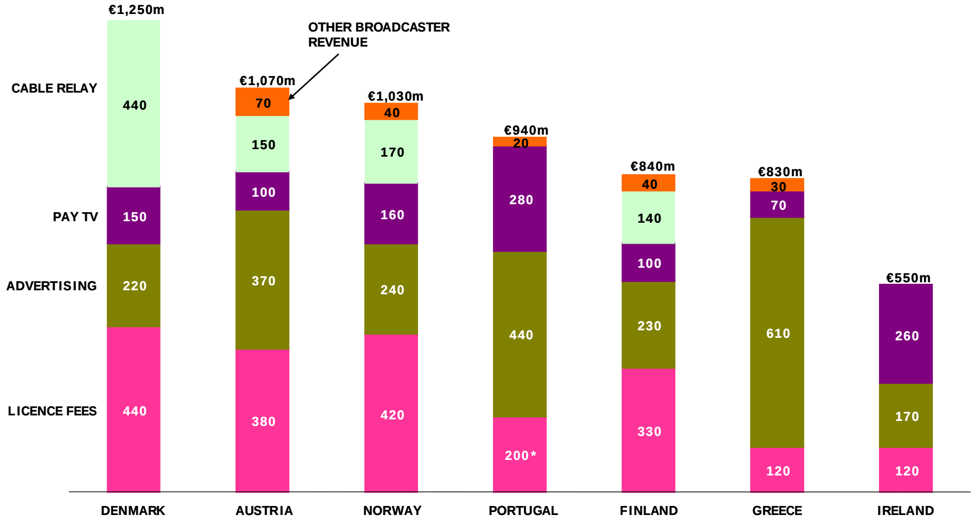
Figure 3: TV revenue by Member State (2002, larger markets)



	UK	GERMANY	FRANCE	ITALY	SPAIN	NETHERLANDS	BELGIUM	SWEDEN
SHARE OF GDP	0.85%	0.64%	0.59%	0.55%	0.73%	0.53%	0.76%	0.71%
REVENUE/TV HOUSEHOLD €s	542	361	390	315	364	352	476	418

Sources: OBS, TBI Yearbook, Company accounts, national regulators, O&O analysis

Figure 4: TV revenue by Member State (2002, smaller markets)



	DENMARK	AUSTRIA	NORWAY	PORTUGAL	FINLAND	GREECE	IRELAND
SHARE OF GDP	0.68%	0.49%	0.52%	0.73%	0.60%	0.59%	0.43%
REVENUE/TV HOUSEHOLD	520	334	515	261	365	208	425

Sources: OBS, TBI Yearbook, Company accounts, national regulators, O&O analysis

The UK and Germany are the two largest TV markets in Europe; France and Italy – which are similar sized economies to the UK – are somewhat smaller. The UK and Italy have the most developed advertising markets among the larger nations, while France and the UK have the largest proportionate pay TV markets. Public funding through licence fees is highest In Germany and the UK.

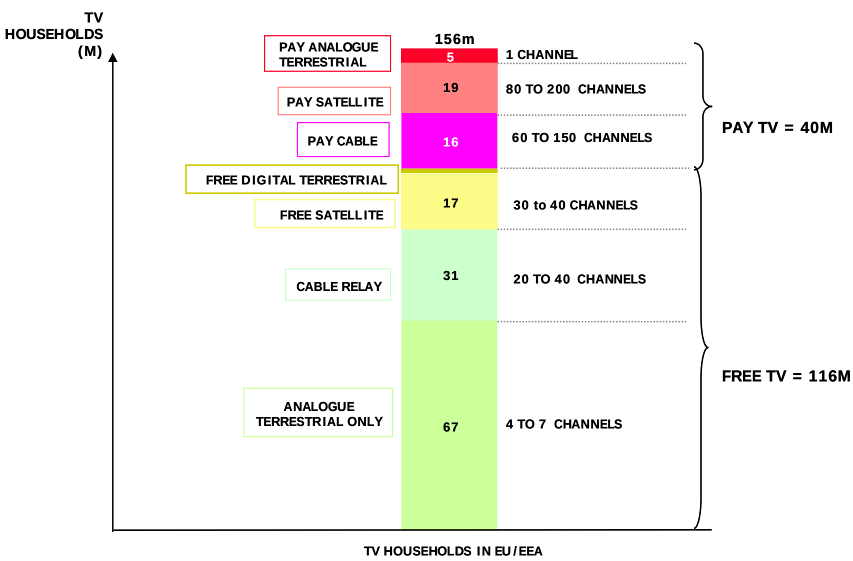
Among the smaller markets, Portugal and Greece have very developed advertising markets but less public income, while Scandinavian countries have more public funding support and significant levels of cable relay revenue.

Overall, the TV sector in the UK is the largest in proportion to GDP – at 0.85 per cent, followed by Belgium, Sweden and Spain. The lowest levels compared to GDP are to be found in Austria, Ireland and Luxembourg (all of which have larger, culturally close neighbours). Among the largest nations, Italy has the smallest sized sector in proportion to GDP, at 0.55 per cent.

3.2.2 TV Distribution and Delivery

TV across Europe is delivered to the home through a complex combination of different systems. Each system in turn varies in the degree to which it provides delivery for free or extracts a monthly charge. Both these dimensions of delivery are dealt with in turn below (See Figure 5).

Figure 5: TV household by reception method in the European Union (2002)



Sources: OBS, TBI Yearbook, Company accounts, national regulators, O&O analysis

The three main delivery systems are UHF/VHF terrestrial frequencies, direct-to-home satellite, and cable. A fourth TV delivery system – local telecom networks using compression technology called a digital subscriber line (DSL) – is only just beginning to develop and, for the most part, still operates at transmission speeds that are insufficient for broadcast-quality TV services[10].

Since 1997, each of the three main delivery systems has been upgrading from analogue to digital transmission. Digital technology increases the number of channels that can be carried within a given capacity by about 8 to 10 times, but in order to receive digital signals consumers have to upgrade their TV and/or set top receiver box. In the case of cable and terrestrial TV systems, the transmission network to the home also has to be upgraded. This means that the conversion to digital takes time and is often expensive – not only do operators often have to subsidize new digital receivers, but they also have to maintain their analogue services for viewers who have not yet converted.

Cable systems in both France and the UK were built in the 1980s and 1990s, and tend to have capacity for 50 to 60 analogue channels and 200 to 300 digital channels simultaneously. Cable systems in Germany, Benelux and Scandinavia were built earlier and often only have capacity to carry 20 to 40 analogue channels and a similar number of digital channels simultaneously. In many cases, regulation of these older cable relay systems severely restricts any reduction in the number of analogue services in order to introduce even a minimal number of new digital services. These networks need significant upgrading if they are to offer a full digital service of 100 plus channels.

The lack of cable infrastructure in countries such as Italy has encouraged the development of TV delivery through DSL telecom lines as an alternative fixed line system.

Direct-to-home satellite systems have existed in Europe since the late 1980s. Up to the late 1990s they were primarily analogue systems that, through a series of co-located satellites, could offer 50 to 80 channels targeted at individual national markets. The transfer to digital has increased this number to well over 200 channels for the main national markets. By 2002, digital satellite had more or less completely replaced analogue satellite services in countries such as the UK, France and Spain.

In contrast, at the end of 2002 most terrestrial UHF/VHF TV reception was still analogue rather than digital. In most European countries, analogue frequencies were allocated to ensure individual channels achieved high reach, which limited the average number of channels available to between 4 and 7 across the country. Within this overall trend, some countries, such as Italy, sacrificed reach for more channel choice, while the UK went for high reach at the expense of choice. In countries with high coverage of older cable relay systems, analogue terrestrial systems play a much lesser role in ensuring high reach, as this can be achieved through cable delivery.

Terrestrial delivery has also been converting to digital, but in general later than either satellite or cable: most countries in the EU were only at the planning stage in 2002, with full systems only operating in the UK, Sweden, Finland and Spain. Digital terrestrial can deliver 30 to 40 new channels, in addition to maintaining transmission of the 4 to 7 analogue services in most Member States.

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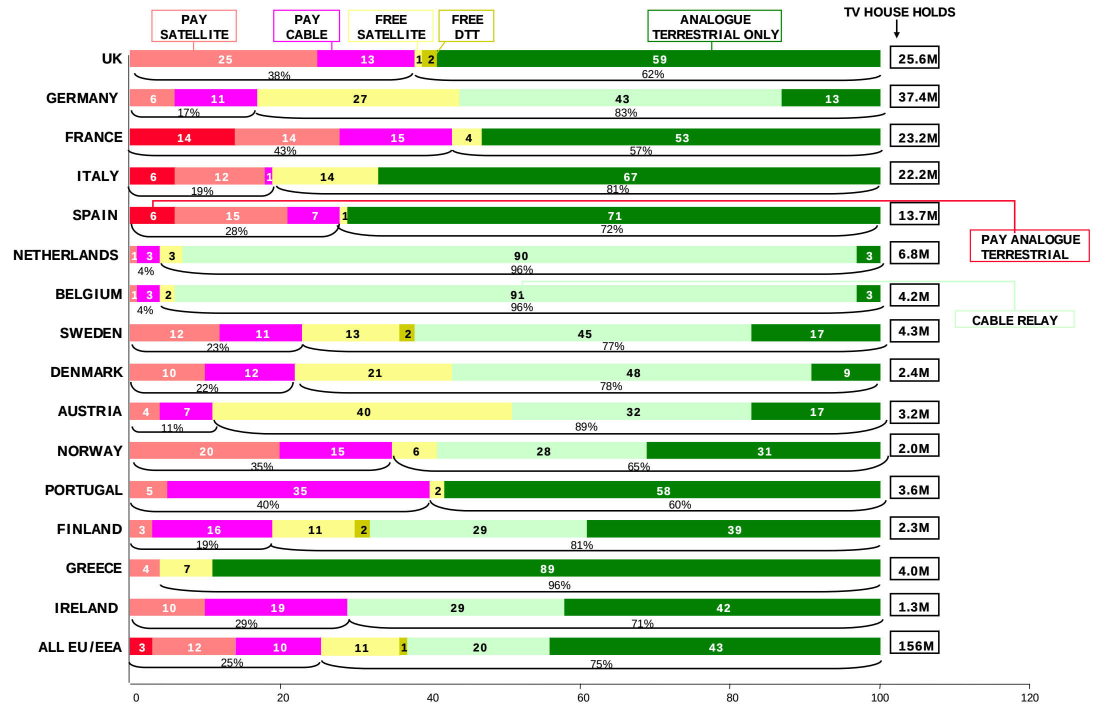
10 In this context, TV delivery is the ability to deliver full motion continuous video to broadcast quality standard. Broadband internet connections of 512Kbit/sec or above are capable of delivering video clips of a reasonably acceptable standard for intermittent consumption – but this is really the delivery of video material rather than of TV services. Currently, 4 Mbit/sec is needed to deliver good quality continuous TV signals to the home, but such systems were hardly developed across Europe in 2002, although they have started to become important in countries such as Italy in 2004.

The technical mix of distribution systems across Europe is, however, perhaps less important than the business models adopted across and within different TV systems (See Figure 6).

Figure 6: TV household by reception method by country (2002)



Source: OBS; Oliver & Ohlbaum analysis

Free TV, where the signal is available to the consumer for no extra monthly charge once they have bought the necessary reception equipment, is available via satellite and terrestrial TV systems throughout Europe. Free TV signals may still be encoded (or "encrypted") to prevent reception outside the target national market or markets, which is often demanded by rights holders who have made different rights deals in different national markets.

Cable relay services are not quite free as a small monthly charge is made – often through the local utility or housing association bill but – as they are charging just for technical delivery, rather than the TV channel or channels – it could be regarded as nearer free TV than pay TV.

The range of free TV (or near free TV) channels available varies considerably across Europe. Countries with high cable relay coverage, or high penetration of free-to-air satellite services, often provide well over 20 free TV channels to most of the population. Countries where analogue terrestrial TV is the only free TV outlet tend to offer just 4 to 7 free TV channels. In several countries with high penetration of 20 to 40 free TV channels, several of the free channels are overspill services from neighbouring countries. Cable relay systems in Belgium and the Netherlands tend to carry free UK, French and German channels; those in Ireland tend to carry free UK TV channels, and those in Austria free German channels[11].

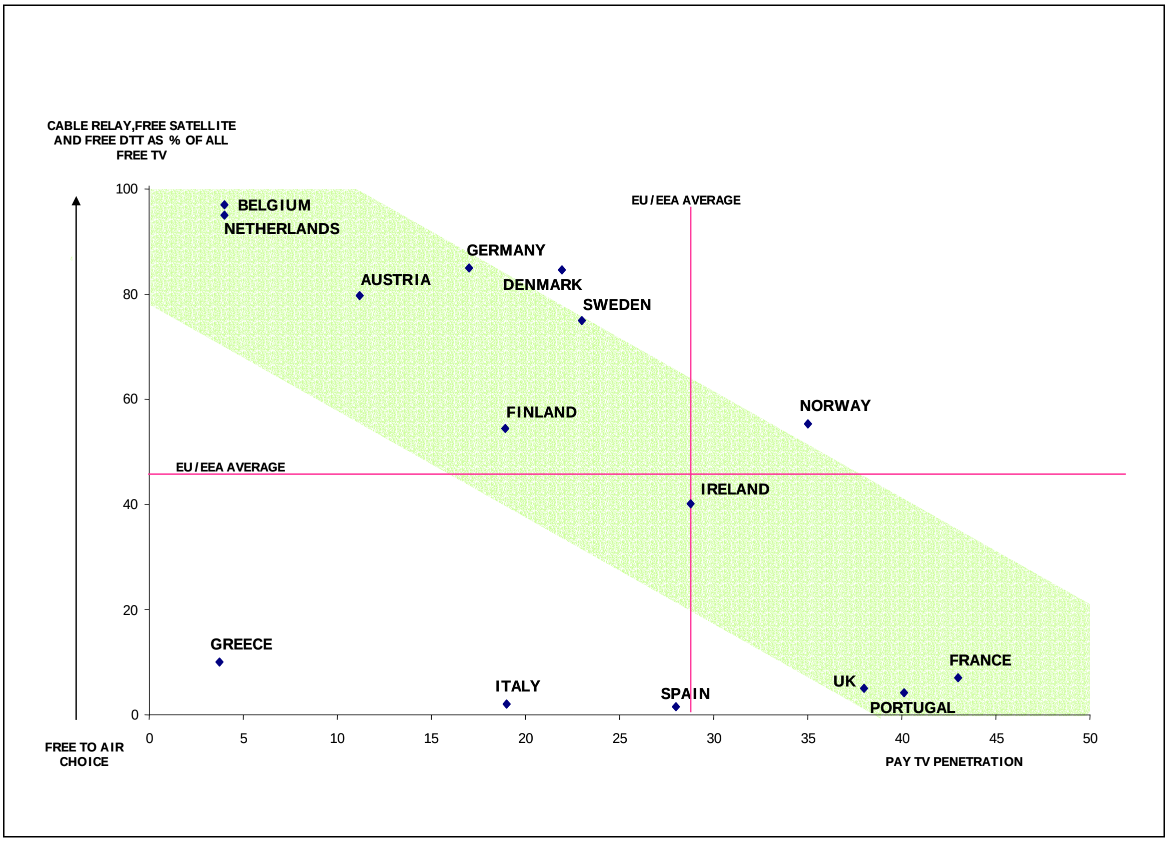
Subscription pay TV is, again, available through all types of delivery system – cable, satellite and terrestrial – throughout Europe, and in analogue and digital forms. Generally, pay TV consists of a basic package of news, children's, lifestyle, factual and specialist entertainment channels – anywhere from 30 to 200 – which cost between €15 and €25 a month, and a series of premium sports and movie channels which can be purchased on an à la carte basis – albeit with discounts for a larger number of channels. Typically, each additional premium channel costs between €5 and €10 extra. However, with analogue terrestrial pay TV, which existed in France, Spain and Italy in 2002, the service consists of one premium sport and movie channel available for €10 to €20 a month.

Free TV is available in some form or other to all the 156 million TV households in the EU. Subscription pay TV is taken by 40 million TV households – a penetration rate of 25 per cent. Among the 116 million free-TV-only homes, about 67 million only have access to 4 to 7 analogue terrestrial free TV services, while 39 million have access to 20 to 40 free channels through either cable relay, free satellite or digital terrestrial reception. The free TV choice available to pay TV homes also varies considerably, with some pay TV households accessing just the 4 to 7 free analogue terrestrial channels and some accessing 20 to 40 satellite and cable free TV channels.

Pay TV penetration varies widely between countries, with over 35 per cent penetration in the UK, France and Portugal, and less than 10 per cent penetration in Belgium, the Netherlands and Greece. Among the largest countries, Germany has the lowest pay TV penetration at just 17 per cent. Many of the states with low pay TV penetration are also those countries with more or less universal availability of 20 to 40 free TV channels (see Figure 7).

11 As we shall see in later Chapters, this can have an impact on the economics of the domestic TV channels.

Figure 7: Pay TV penetration versus free TV choice (2002)



In many countries the pay TV system operators are required to carry the main free-to-air channels and to make them available free of charge to their subscribing households – this is especially the case with digital pay TV systems, where governments are keen to encourage conversion to digital. These "must carry" provisions are often accompanied by a requirement that free TV channels are positioned high up on any digital channel menu offered to viewers.

In the pay TV sector the delivery system owners tend to be the retailers of the pay TV packages. In some cases, especially with satellite systems – they also own several channels themselves. However, several countries also have open access rules that are designed to allow any pay TV channel the right to retail themselves, while paying a regulated access fee to the delivery system operator. So in the UK, channels can sell themselves directly on the BSkyB satellite platform; and, in the Netherlands, channels or indeed satellite TV packagers and retailers, can gain access to the cable relay system.

These open access rules do not, however, apply equally to all systems. In most cases the rules are applied to systems seen to have a dominant position in the pay TV delivery market.

3.2.3 TV Broadcasting Market

The TV channel creation market (or broadcasting market, as it is often termed) can be broken down into three main types – primary TV channels (with audience share of 3 per cent or more), secondary TV channels (with audience share of less than 3 per cent) and interactive of enhanced TV services. Some countries also have a third type of broadcaster – the independent local or regional station – which may get more than 3 per cent share in a given region but tends to get less than 3 per cent share across the whole national market (see Figure 8).

Figure 8: Channel Segmentation

		FUNDING MODEL					
		FREE TV				PAY TV **	
		PUBLICLY FUNDED*		ADVERTISER FUNDED			
		BROAD	TARGETED	BROAD	TARGETED	PREMIUM	BASIC TIER
SHARE OF AUDIENCE	PRIMARY CHANNEL (AUDIENCE SHARE GREATER THAN 3%)	• ARD I • BBC 1 • FR2 • RAI 1	• BBC 2 • FR3 • NL3	• ITV • TF1 • ITALIA 1 • ANTENA 3	• C4 • M6 • YORIN • LA 2 • RETE 4	• CANAL PLUS	• NONE
	SECONDARY CHANNEL (AUDIENCE SHARE LESS THAN 3%)	• BBC CHOICE	• ARTE • KIKA	• VOX • RTL II • LA 7	• EURONEWS • FOX 8	• SKY SPORTS • CALCIO	• SKY ONE • PLANETE

* Substantial public funding (greater than 25% of income)

** Significant contribution to channel finances from pay TV (40% or more)

Home shopping channels and gaming channels – which derive their revenue from the sale of goods or telephone calls and participation fees – are not included within this framework

Source: OBS; Oliver & Ohlbaum analysis

Primary channels can be divided into publicly funded channels and commercially – or advertiser – funded channels. Secondary channels can be divided between premium sports and movie channels on the one hand, and basic-pay-tier and low-audience-share, free-to-air channels on the other. The low-audience, free-to-air channels can then also be split between advertiser and publicly funded channels.

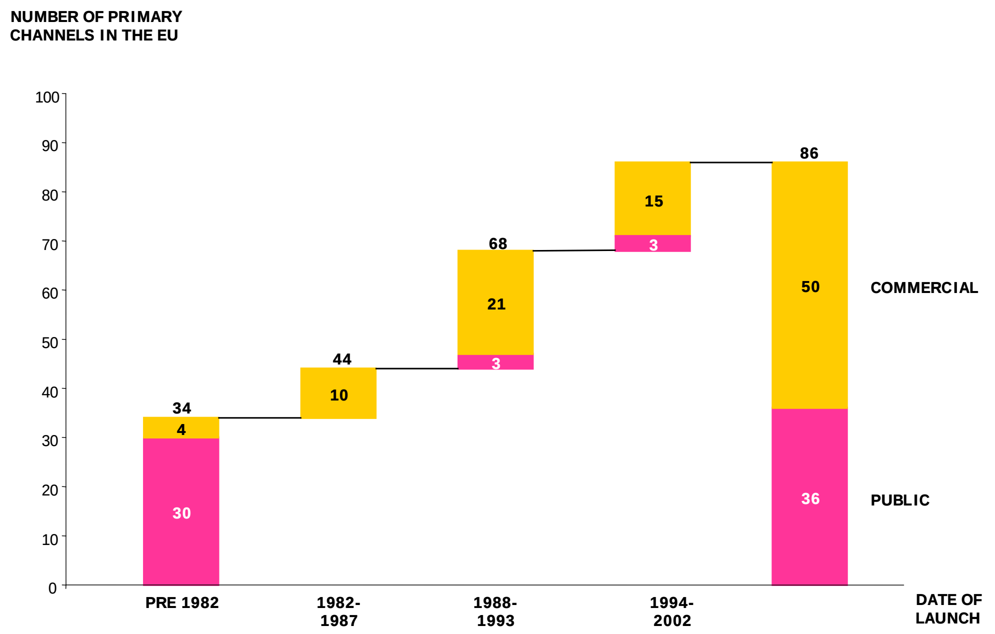
Within primary channels – public or commercial – it can be useful to distinguish between the leading or main primary channels, which tend to target a broad audience and typically obtain share of 10 per cent or more, and the more targeted or less ambitious primary channels, with shares between 3 and 10 per cent.

Primary channels display some common features to achieve a share of 3 per cent or more. They usually enjoy at least 70 per cent technical reach, and more often well over 90 per cent, reach of a given national market. This is often achieved through mandated access to analogue terrestrial and/or cable relay delivery.

Primary channels also tend to have mixed, but entertainment-based schedules, aimed at appealing to a wide enough spread of interests and tastes in order to obtain 3 per cent or more of the audience. They often have a mix of drama, comedy, sport, films and entertainment formats, supplemented by news, current affairs and factual/lifestyle output. Commercial channels tend to emphasise the main entertainment formats more than news, current affairs and factual, while publicly funded channels tend to emphasize news and factual programmes.

The number of primary channels in Europe increased from 34 to 86 between 1982 and 2002 (Figure 9). Primary channel revenues in the EU totalled €35.7 billion in 2002, of which €32.7 billion came from the main revenue sources of licence fees/grants in aid and advertising/sponsorship. Advertising was the largest source of finance at €17.9 billion with licence fees/grants in aid yielding €14.8 billion.

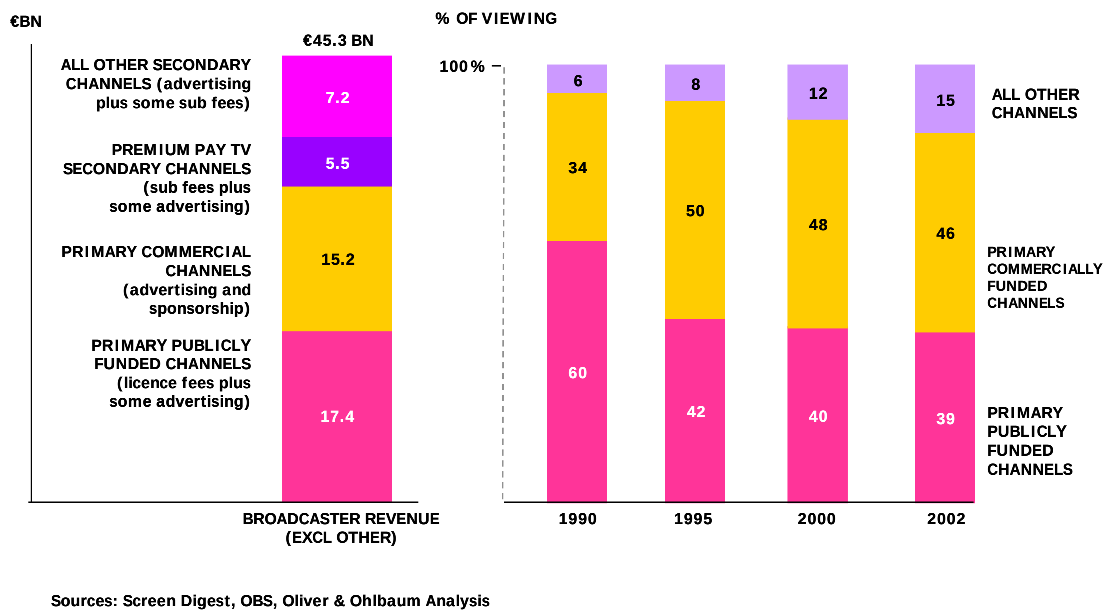
Figure 9: Growth of primary channels in the European Union (1982 to 2002)



Several publicly funded primary channels supplement their licence fee/grant in aid income with limited advertising. Overall, the primary publicly funded channels, therefore, generated a total income from licence fees and advertising of €17.4 billion, while commercially funded private channels earned €15.2 billion. The main commercial primary channels, targeting a broad audience and with share well over 10 per cent, such as ITV, TF1, Sat1, Antena 3 and Italia Uno, earned about €9.5 billion of this revenue, while the more niche primary channels and less ambitious ones such as Channel 4, FIVE, Pro 7, Rete 4 – earned about €5.7 billion.

So, despite 20 years of significant expansion in the number of commercial primary channels in the EU (from just 4 in 1982 to 25 in 1993 and 50 in 2002) the traditional public primary channels are still the largest providers in terms of revenue. Extra revenue sources of €3 billion from publishing, rights sales etc are split equally between public and commercial primary channels, yielding total income of €18.9 billion and €16.7 billion respectively (see Figure 10).

Figure 10: Revenue and audience share by type of channel (2002)



Between 1990 and 2002, primary channels' combined share of total audience fell from 94 per cent to 85 per cent. Overall, publicly funded primary channels have suffered less audience erosion from secondary channel growth than commercially funded primary channels.

The size and mix of funding within the primary market varies considerably across the EU. Germany has the largest primary channel market in the EU with €8.9 billion in revenue per year, and the UK the second largest with €7.7 billion. Italy's is the third largest but is much more dependent on advertising than the first two, and a good deal smaller at €4.8 billion.

As important as the size of the primary market are the number of primary channels and the revenue per primary channel. The UK, with 4.8 primary channels available across the country on average, has by far the largest average revenue per primary channel at €1.6 billion. Germany's large primary channel market is divided between 9.5 channels on average across the country, yielding average revenue of €0.9 billion each and, within this average, the public channels, with €1.6 billion each, do much better than the commercial channels, with €0.6 billion each. Of the rest of the EU, only France has an average revenue of €1 billion or more, with Italy and Spain at €0.7 billion and the Netherlands at €0.14 billion. In the rest of Europe, the revenue per primary channel is €0.3 billion or below (see Figure 11).

Figure 11: Primary channel market concentration and average channel revenue[12]

	NUMBER OF PRIMARY CHANNELS	CONCENTRATION RATIO MAX = 100	TOTAL PRIMARY CHANNEL REVENUE (ADVERTISER FUNDED)	REVENUE PER PRIMARY CHANNEL	REVENUE PER ADVERTISER FUNDED PRIMARY CHANNEL	COMMISSIONED PROGRAMME SPEND AS % OF INCOME
GERMANY	ARD/ZDF, SABAN, RTL — 9.5	67	8.9bn (4.0bn)	€0.9bn	€0.6bn	45%
NETHERLANDS	NOS, HMG/RTL, SBS — 9.0	69	1.2bn (0.7bn)	€0.14bn	€0.11bn	50%
ITALY	RAI, MEDIASET, La7 — 6.7	82	4.8bn (3.0bn)	€0.7bn	€0.8bn	30%
SPAIN	RTVE, A3, TV5, FORTA — 5.0	56	(3.4bn)	€0.7bn	€0.7bn	30%
UK	BBC, ITV, C4, C5 — 4.8	58	7.8bn (4.1bn)	€1.6bn	€1.5bn	50%
FRANCE	FRTV, TF1, M6 — 4.5	81	4.5bn (2.5bn)	€1.0bn	€1.1bn	30%

Source: Oliver & Ohlbaum analysis

Different levels of revenue per primary channel clearly have an influence on the ability of a channel to spend on new commissions, which are typically more expensive per hour than a reasonable quality US acquisition and which are more risky than acquiring a popular sports event. In general, those markets with the highest income per primary channel recycle the most money into new commissions and use the least programme imports, although there are exceptions – such as the Netherlands – where despite an average revenue per primary channel of €1.4 billion, 50 per cent of income is spent on new commissions[13].

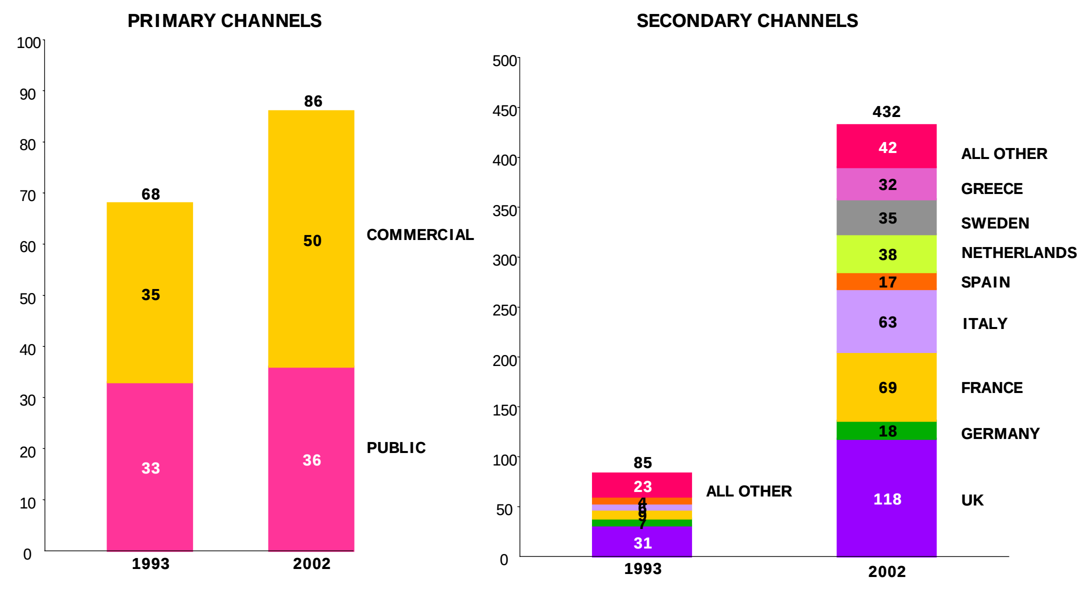
Alongside the 86 primary channels broadcasting in the EU, there are 432 secondary channels which broadcast qualifying output (i.e. excluding news, sports, games channels and home shopping). By far the largest number of channels – 118 – are based in the UK, while France and Italy each have more than 60 (see Figure 12)[14].

[12] For this particular analysis, the number of primary channels in each market is calculated by multiplying each channel by its reach and adding up the results. So, in the UK there are 4.8 primary channels because four of the primary channels have 100% technical reach and one (Channel Five) has 80% reach.

[13] This may be due in part to the high penetration of non-domestic channels from the UK, Germany and France in the Netherlands which means imports, both from other countries and the US are readily available on non-primary channels.

[14] The UK is the chosen base of a number of pan-European channels, or networks of channels, and is even the base of channels targeted at other countries, such as Denmark.

Figure 12: Primary and secondary channels in the European Union (1993-2002)



Source: OBS

With news, sport, games and home shopping channels, there are estimated to be over 800 secondary channels in Europe. The most popular genres – in terms of channel numbers across Europe – are news, sport, movies, music, children's, documentaries and travel/lifestyle[15]. There are also a number of demographically targeted general entertainment channels which, among the secondary channels, usually obtain the highest audience shares and therefore are closest in scale to the primary channels. They usually have a narrower focus and a smaller programme budget than primary channels, which often means they use more archive programming and imports.

Secondary channels, which accounted for 15 per cent of viewing across the EU in 2002, are funded from a mix of pay TV sub fees – paid to them by the pay TV platform aggregators – and advertising revenue. These channels generated total commercial revenues of €19.1 billion in 2002, of which €12.7bn was subscription fees, €4.7bn in advertising revenue and €1.6bn of other revenue (including licence fees). This revenue is split unevenly between the three main types of secondary channels – premium pay TV, basic-tier pay TV and free TV channels.

Free-to-air secondary channels tend to have a narrow genre focus – most specialize in news, non premium sports, children's, library films and music videos. Many, such as Euronews, Turner Classic Movies, CNN and Kindernet, operate in several Member States. Some, such as Eurosport, are free in some countries but in a basic pay tier in others.

15 Since 2002 there has also been a large-scale growth in interactive games, betting and dating channels in the UK and France.

As well as commercial free-to-air secondary TV channels, there are also licence fee-funded public channels such as BBC 4 in the UK (previously BBC Knowledge) and Kika in Germany.

The commercial free-to-air secondary channels depend on advertising and sponsorship. Overall, these free-to-air services earn €2 billion in advertising revenue and about €0.4 billion a year in licence fee income.

The basic pay tier secondary channels are the largest group among the secondary channels and are a mixture of demographically focused general entertainment channels, with drama, comedy, reality and format entertainment shows, and a host of thematic children's, documentaries, lifestyle, non-premium sports, games and news channels.

Within this mix of channels there are usually a few high-share channels and a host of channels with less than 0.5 per cent share within households that receive them. A typical pay TV package will have 50 such channels – although in some countries this rises to well over 100.

Overall, basic tier secondary channels earn about €5.2 billion in revenue: about €2.4 billion in advertising revenue; and €2.8 billion in sub-fee income from the pay TV platforms[16].

Premium pay TV services include movie, sports and pornography channels, and some other special interest ethnic channels. Together they received about €4.7 billion in sub fees from pay TV platforms and about €0.8 billion in advertising income[17].

Regional broadcasting exists within primary TV channel broadcasting, secondary channels and as stand-alone independent stations. Within primary channels, some act as federations of local TV companies and affiliates – such as ITV in the UK and ARD in Germany – while others establish centrally controlled but locally operated local news and regional programming centres, which then opt out of the main schedule at certain points in the day – such as the BBC and FR3. Even the affiliate channels tend to pool most of their monies in order to commission jointly a large proportion of the schedule.

Independent station structures – where each station is autonomous – are found in countries such as Spain, although even here they have formed an association, FORTA, which jointly acquires sport and movie rights. Very small scale local and regional stations do exist in Italy, France and the UK, but they concentrate mostly on local news supplemented by cheap acquisitions.

Secondary regional channels include TeleG and S4C in the UK, and TV Breizh in France[18].

There are two more features of channels in Europe that have an important impact on overall TV economics and competition. First, the overspill of channels from one

[16] This pay TV sub fee number comes from assuming that platforms on average make a 50 per cent margin from their basic tier package retail price on these channels, based in the accounts of companies such as UPC (now UGC), BSkyB, Sogacable, Viasat, NTL etc. This includes actual numbers on payments for third party channels and estimates for wholly owned channels. We were also able to draw on studies by Ofcom in the UK and the CSA in France on the economics of pay TV channels.

[17] This pay TV sub fee number is based on the assumption that platforms earn about a 30 per cent margin in premium channels – from similar sources named in the previous note.

[18] Articles 4 and 5 do not apply to "television broadcasts that are intended for local audiences and do not form part of a national network".

country to another – often from a large country to a smaller but culturally similar state (e.g. Germany and Austria, the UK and Ireland, and Southern and Northern Belgium and France and the Netherlands respectively). Second, the existence of pan European channels (CNN, CNBC and Turner Classic Movies) or networks of channels with slightly different versions for different territories (such as Discovery, Eurosport and MTV).

Overspill channels can impact significantly the ecology of the smaller receiving market, reducing the total audience available to primary and secondary channels in the market. Pan-European and European networked channels, while they only gain small audience share in each market – and therefore qualify as secondary channels in each – may actually have as large a combined audience across Europe as a primary channel has in an individual Member State – especially in smaller Member States[19].

3.2.4 TV Programming

TV channels have three basic choices when putting together their schedule:

- First, programme sourcing choices between especially commissioned programmes, repeats of their programmes, the use of TV programme archive libraries, or the acquisition of rights to show feature films, international ready-made programming or live events.

- Second, programme genre choices between, for example, drama and news, or comedy and factual programming. Different genres appeal to different tastes and also – especially if specifically commissioned – have very different cost characteristics. Stock programmes tend to cost a great deal more to commission than flow programmes.

- Third, even within genres there are different approaches and mixes of sub-genres to choose from: a drama soap opera versus a one-off film; or stand up comedy versus a situation comedy, etc.

For any channel, the cost of a schedule consisting only of new commissioned programmes is prohibitively expensive and not cost effective, as viewers tend to like to watch repeats and want a mix of home-grown and acquired material. The mix of programmes is driven primarily by the quality and price of programming, by audience tastes and by the programming decisions of competing channels.

In general, primary channels tend to use more originally commissioned output while secondary channels tend to use more archive and imported acquired material. Premium secondary channels tend to use a mix of acquired feature films and sports rights[20].

German primary channels spend about €3.8 billion on new commissions – including news – while UK channels spend about €3.3 billion between them. In Italy and France the primary channels' spend on commissions is €1.2 billion and €1.3 billion respectively. Across the rest of Europe, primary channel spending on new commissions rarely gets above €600 million in total.

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19 Both these types of channels raise issues in terms of the impact and implementation of Articles 4 and 5. Overspill channels can cause economic difficulties for domestic primary channels putting the proportion of European works under pressure, while pan-European channels, as secondary channels, are often treated more leniently than primary channels, even though their combined audience and revenues may be higher.

20 This trend is supported by the survey data in Chapter 7.

The average primary channel in the UK spends over €600 million a year on new commissions: in Germany this falls to about €400m; in France it is just over €300 million; and in Italy it is just €200m. Outside these countries, the average channel rarely spends much more than €150m on new commissions.

Total spending by primary channels across the EU on sports rights totalled about €2.2 billion in 2002, and spending on TV and film rights acquisitions was about €3.5 billion. Germany is the largest market for film and TV acquisitions, where the primary channels spent an estimated €1.3 billion between them in 2002. Spain also has a proportionately high spend on film and TV acquisitions at about €500 million – more than half that country's spend on commissions of about €900 million[21].

Primary channels can spend similar amounts on programming, but in very different ways. One might choose to have less new commissions, but mostly more expensive stock-type programmes, making up the difference with cheaper repeats and acquisitions. Another channel might choose to have a lot of commissions but mostly of cheaper flow programmes, and have less repeats and acquisitions in total.

The 600 or so basic-tier pay TV and free-to-air secondary channels in the EU (including news, basic sports and games channels) share €7.2 billion in revenue – just €12 million per channel. While some leading secondary basic, and secondary free-to-air channels might earn €50 million or more, and a handful might earn over €100 million (especially-pan European channels), even these channels are unlikely to be able to afford much more than €50 million to €90 million in programming spending, while the majority that have to exist on less than €10 million a year probably have programme budgets of less than €5 million, or less than €600 per broadcast hour. Even if they repeat each programme 10 times – as many do – this only allows them €6,000 per purchased or commissioned hour.

Premium pay-TV sport and movie channels earn more revenue per channel – about €150 million to €350 million – but most of this goes on purchasing premium film rights (mostly, but not solely, US films) and the rights to show top sports, rather than being invested in new commissions.

Overall, the secondary channel sector in the EU was estimated to have spent about €3 billion on film and TV acquisitions in 2002, and about €3.2 billion on sports rights, while only spending about €1.1 billion on new commissions – and much of that on news, sports coverage and talk shows.

3.2.5 TV Content Creation[22]

The European TV content creation was worth approximately €15.8 billion in 2002. Of this, €14 billion came from commissions by primary channels, €1.1 billion from commissions by secondary channels, €0.3 billion from direct subsidies available to programme makers, and the remaining €0.4 billion from direct income to producers

21 The likely split of EU spending between acquisitions of US feature films, acquisition of non EU TV programming and the acquisitions of domestic and EU film and TV library rights is covered in the Trade section later on in this Chapter.

22 The estimates in this section utilise some of the evidence from the bespoke survey in Chapter 7 such as the proportions of independent production, the mix of programme types produced in-house and independents. It also utilised more detailed analysis of the split between in-house, independent producer and third party producer conducted on the British, German, French, Spanish and Dutch TV markets.

from the exploitation of ancillary rights such as international programme sales, DVDs, licensing and merchandising[23].

Of this €15.8 billion, about €2.8 billion was spending on national and local news and sports coverage (spending on sports rights is excluded). Of the remaining €13 billion, about 35 per cent (€4.5bn) probably went on commissions from independent producers, about 50 per cent to in-house producers or subsidiaries and the remaining 15 per cent to works commissioned from suppliers external to the commissioning broadcaster but linked to another broadcaster.

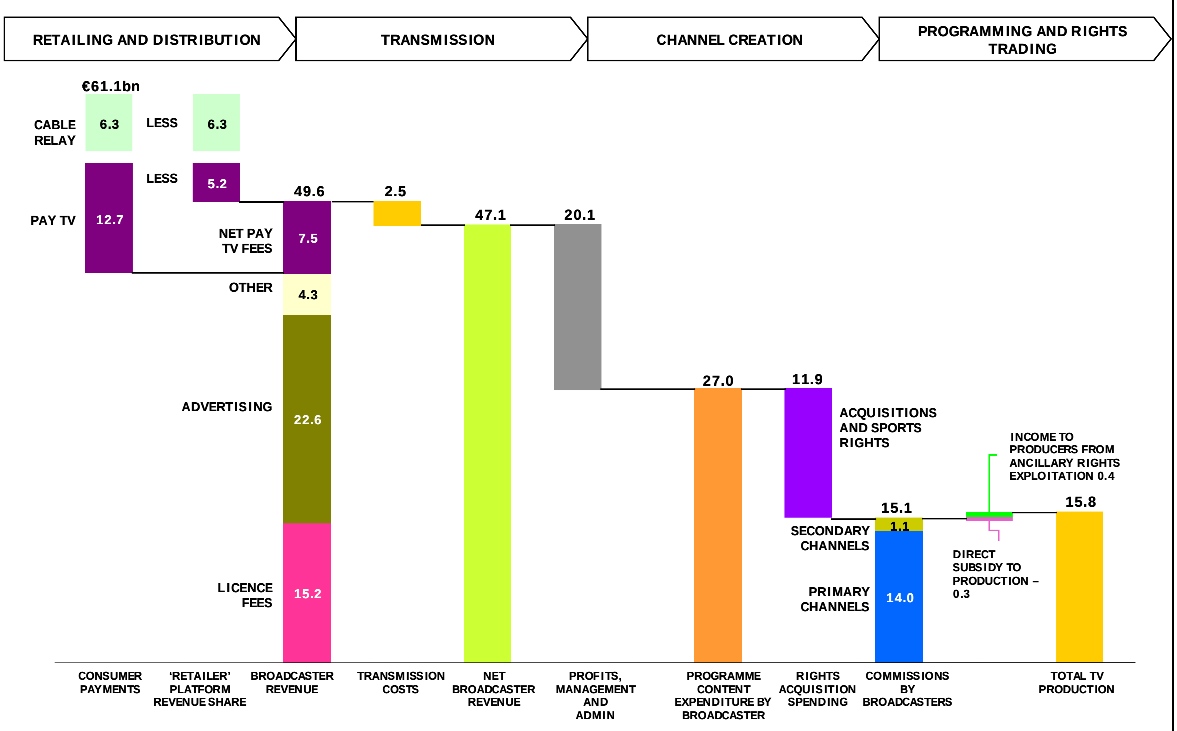
Of the €15.1 billion spent on new commissions by broadcasters, approximately 60 per cent was spent by publicly funded broadcasters and 40 per cent by commercially funded broadcasters – although publicly funded broadcasters spent disproportionately more on national and local news provision.

Primary channels account for about 55 per cent of gross industry revenue but over 90 per cent of all new commission spending. Secondary channels tend to be carried within pay TV packages, where a large proportion of revenues either go to the platform providers or is spent on premium acquisitions such as top feature films or sport.

3.2.6 Current Flow of Funds Along the Supply Chain

Having gone through each activity in the supply chain in turn we set out a reconciliation of the entire funds flow along the supply chain (Figure 13).

Figure 13: TV value chain in the European Union (€bn, 2002)



Sources: OBS, TBI Yearbook, National Regulators, Company Accounts Oliver & Ohlbaum Analysis

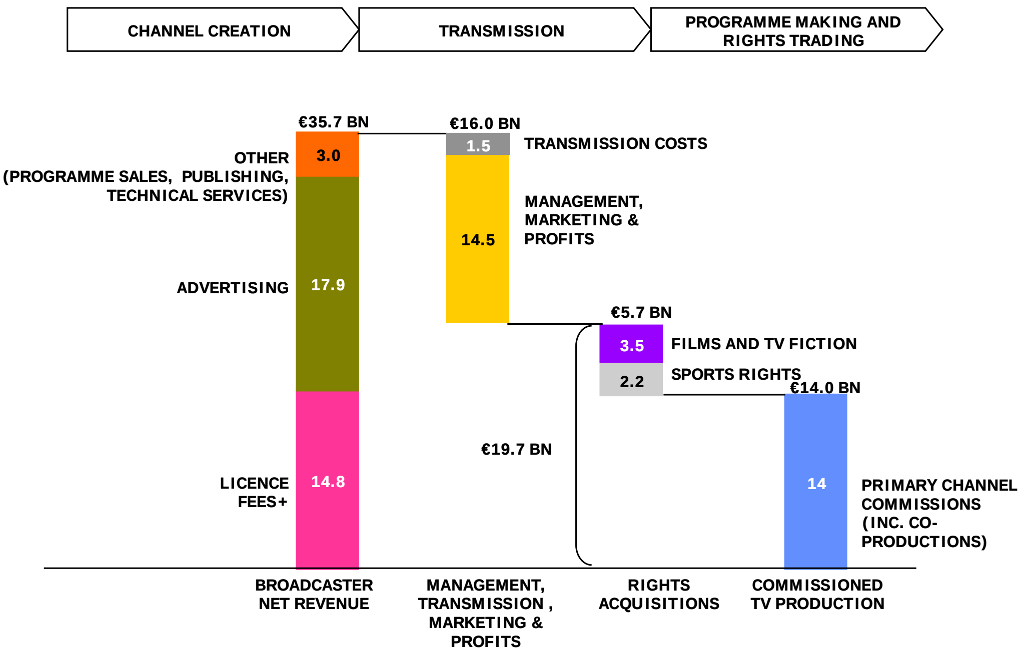
23 As Chapter 9 makes clear, most the income from such exploitation still goes to the commissioning broadcaster rather than the producer for most commissions.

Of the €61.1 billion in TV revenue, delivery platforms keep €11.5 billion, leaving broadcasters with gross income of about €49.6 billion. About €2.5 billion of this is spent on transmitting the channels and €27 billion on programming, leaving about €20 billion covering administration, marketing, promotion, playout and commissioning – plus any broadcaster profits.

Of the €27 billion programme spend, approximately €11.9 billion was spent on acquiring rights of various kinds – €5.4 billion on sports rights and €6.5 billion on film and TV acquisitions (domestic TV and film archive rights, acquisitions of films and TV programmes from the USA, acquisitions of TV programmes and films from other European countries, investment in domestic films in return for TV rights)[24].

The flow of funds differs quite markedly between the primary channel market and the secondary channel market. In the primary channel market, delivery platforms retain no revenue, leaving the channels with €35.7 billion of income. €1.5 billion of this income is spent on transmission, €19.7 billion on programming (which is 55 per cent of all income), and €14 billion on new commissions (about 40 per cent of all income and 70 per cent of all programming spend). (see Figure 14).

Figure 14: Primary channel TV value chain in the European Union (2002)



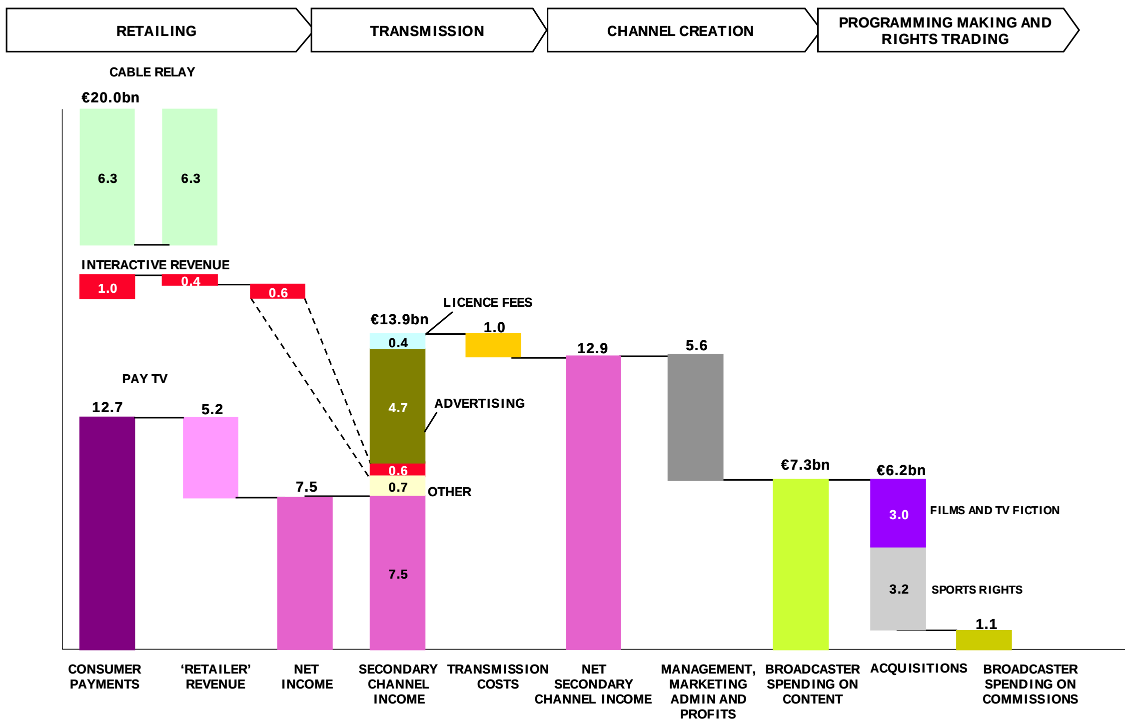
+ EXCLUDING LICENCE FEES FOR EXTRA SECONDARY CHANNELS

Sources: OBS, TBI Yearbook, National Regulators, Company Accounts Oliver & Ohlbaum Analysis

In the secondary channel market, the delivery platforms take €11.9 billion out of the total €25.4 billion gross income – more than half (if cable relay income is included). Of the €13.9 billion net income to secondary channels, about €1 billion is spent on transmission and €7.3 billion on programming (53 per cent of net income), but only €1.1 billion on new commissions (just 15 per cent of all programming spend and 8 per cent of net broadcaster income). (See Figure 15).

24 In practice, co-productions are probably split between the acquisitions total and the new commissions total.

Figure 15: Secondary channel TV value chain in the European Union (2002)



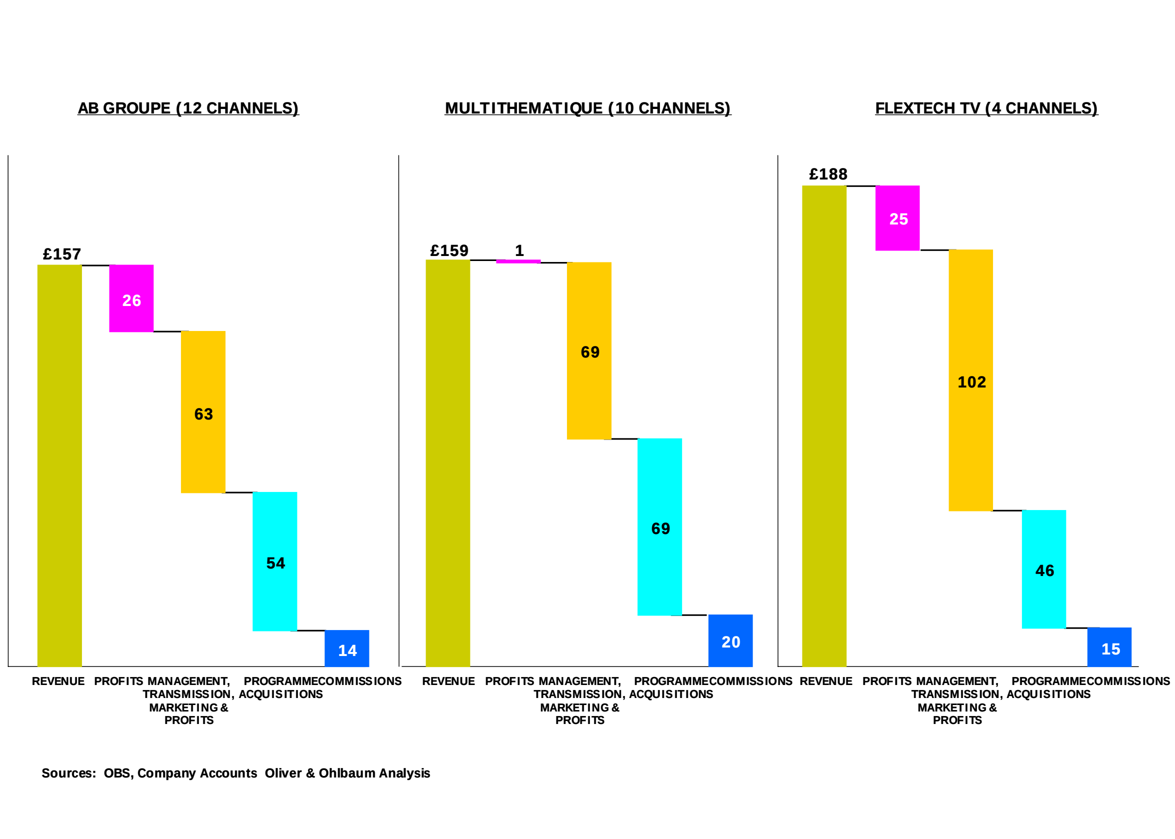
Sources: OBS, TVI Yearbook, National Regulators, Company Accounts Oliver & Ohlbaum Analysis

3.2.7 Vertical Integration Along the Value Chain

There is considerable vertical integration along the value chain. Analysis of the largest six markets suggests that 40 per cent of non-news programming is made by in-house departments within broadcasters, with another 25 per cent made by producers owned by third party broadcasters.

Similarly, a very high proportion of premium secondary channels are owned by pay TV platform owners, while both primary channel broadcasters and pay TV platform owners are the main owners of basic tier and free-to-air secondary channels across Europe. Even the more independent secondary channel owning groups such as AB Groupe in France, Flextech in the UK, and Multithematique across Europe, have links to primary channel broadcasters and platform owners. (See Figure 16 for their financial details).

Figure 16: The economics of secondary channel ownership (2002)



The other major owners of thematic channels are the US studios, who can link their ownership of film and TV archives and already established secondary channels in the USA with the launch of new focused European secondary channels, such as 13th Street (NBC/Universal) and Nickelodeon (Viacom).

There is also some cross-ownership between platform owners and primary channel broadcasters in markets such as France and Portugal.

There are significant competitive advantages to vertical integration between primary channels, pay TV platforms and secondary channels. Primary channels can cross-promote platforms and secondary channels. Secondary channels can access repeats of primary channels' original commissions. There are also considerable advantages in the integration of programme making and broadcasting – especially primary channel broadcasting. A regular flow of commissions from an associated primary channel can reduce the risks involved in programme making. For the primary channel, an associated production house can ensure regular access to new ideas and a better fit between the channel's positioning and style and the programmes produced for it.

However, there are also disadvantages in vertical integration. Primary channels can find that tied production houses may have less incentive to innovate. Primary channels might find it better to sell to independently owned secondary channels than to ones in their own group, while pay TV delivery platforms with an interest in primary free-to-air channels might have a conflict of strategic interests.

Competition policy issues may also be raised by vertical integration. Primary channels with ownership of production and rights libraries might use this to prevent the entry of new primary channels or secondary channels. Pay TV platform owners may favour their own secondary channels over those of rivals.

While many original, mostly publicly funded, primary channels in Europe began as vertically integrated producers and broadcasters out of necessity – there was no independent supply of programmes – most national markets now exhibit a mix of vertically integrated and independent programme supply, with broadcaster-owned producers also producing for rival broadcasters. This may suggest that the degree of vertical integration depends very much on specific factors in each market and on the specific competitive strategy of each broadcaster, platform and programme producer.

3.3 Current Performance

The European TV industry has been growing as a whole by 6.5 per cent year between 1995 and 2002, and was equivalent in size to 0.66 per cent of EU GDP in 2002. The analysis below provides further evidence of the overall performance of the TV sector in terms of its trade outside the EU, its levels of profitability and its contribution to employment.

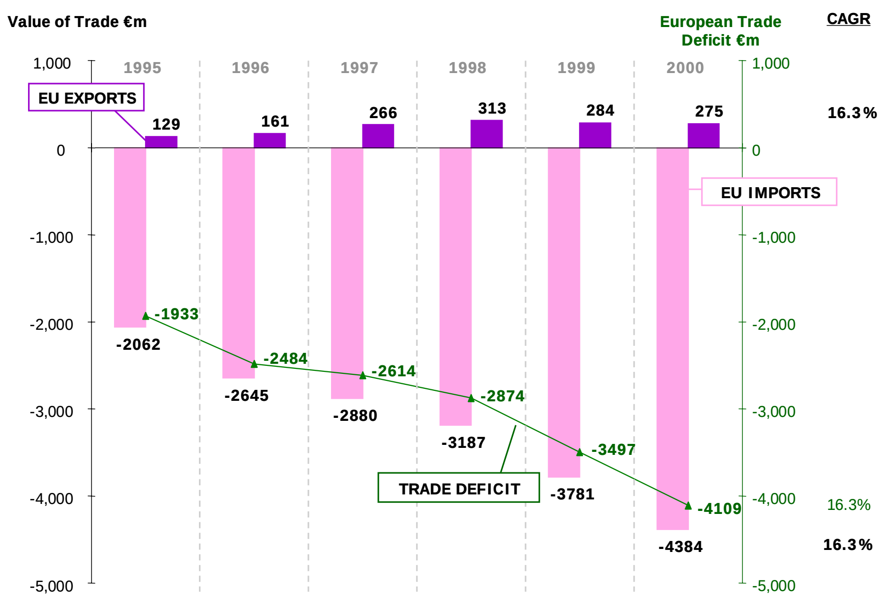
3.3.1 Trade[25]

Trade figures for the audiovisual sectors across the EU tend to be measured by type of company rather than type of output, so TV trade figures measure the imports and exports of companies involved in TV. This therefore includes the import and use of feature films by European broadcasters, but does not include the sale of films by European film companies to TV companies outside the EU.

The overall figures for trade between TV companies in the EU and US, summarized by OBS, show a substantial deficit, in the latest reported year of 2000, of about €4.1 billion with imports from the US totalling about €4.4 billion and exports just under €300 million (see Figure 17). Note that Figure 17 includes expenditure by TV channels in the EU on rights to show US feature films but does not include spending by US TV channels on EU feature films (in practice, this was probably negligible).

[25] Trade data is difficult to analyse consistently – the analysis here represents a broad estimate of the picture – no more. It provides a directional feel for the scale and trend in performance.

Figure 17: Trade in TV programmes and feature films for broadcast on TV between the EU and North America (1995-2000)



Source: OBS

Our own analysis of the TV supply chain (in section 3.2.6 above), suggested that total film and TV acquisitions were about €6.5 billion in 2002, of which about €1 billion to €1.5 billion was trade between Member States (including pre-sales and co-productions). This trade between Member States consists of the import of non-domestic European TV and films for showing on TV. This might suggest the total US import number has risen to about €5.25 billion in 2002, something confirmed by recent MPAA and AFMA figures suggesting exports to European TV companies by members of over €4.6 billion in 2002 (the remaining US imports probably coming mainly through the importation of material by global channel groups such as Discovery, MTV, CNBC etc, which are probably not included in the MPAA and AFMA figures).

Of this €5.25 billion total, about €3 billion is probably in feature films and €2.25 billion in TV programming[26].

OBS figures for EU TV exports in 2001, and reported figures on exports from the CSA in France and the BTDA in the UK, suggest that while French TV company exports to North America have been at best steady and, more probably, in decline since 2000, UK exports had increased to more than €300 million by 2002. Overall, TV exports by

26 This is based partially on the output analysis conducted in Chapter 7 which separately identified cinema films of non European origin shown on TV, and partially from analysis of company accounts of pay TV packagers which often separately state their spending on film. It is also consistent with recent analysis published in 'Rights of Passage', a report by Television Research Partnership (TRP) commissioned by the British Television Distributors' Association (now part of Pact) and sponsored by UK Trade & Investment. This sourced data from Wilkofsky Gruen that suggests total US TV programme exports to the rest of the world were about €2.7bn in 2002. International transactions by TV companies probably added another €1bn to this and Europe probably accounted for between 60 and 70 per cent of all worldwide sales.

the EU to North America could have been about €500 million in 2002 compared to the estimated €2.25 billion of TV programme imports from the US.

This suggests that the EU deficit in the import and export of TV programmes is probably around €1.75 billion. It is not possible to say whether this TV trade deficit has been increasing over the last five years as we are not able to repeat the analysis for the years prior to 2002. However, it is clear that it represents a significant deficit, even after feature films are eliminated from the calculation.

3.3.2 Profitability along the Value Chain [27]

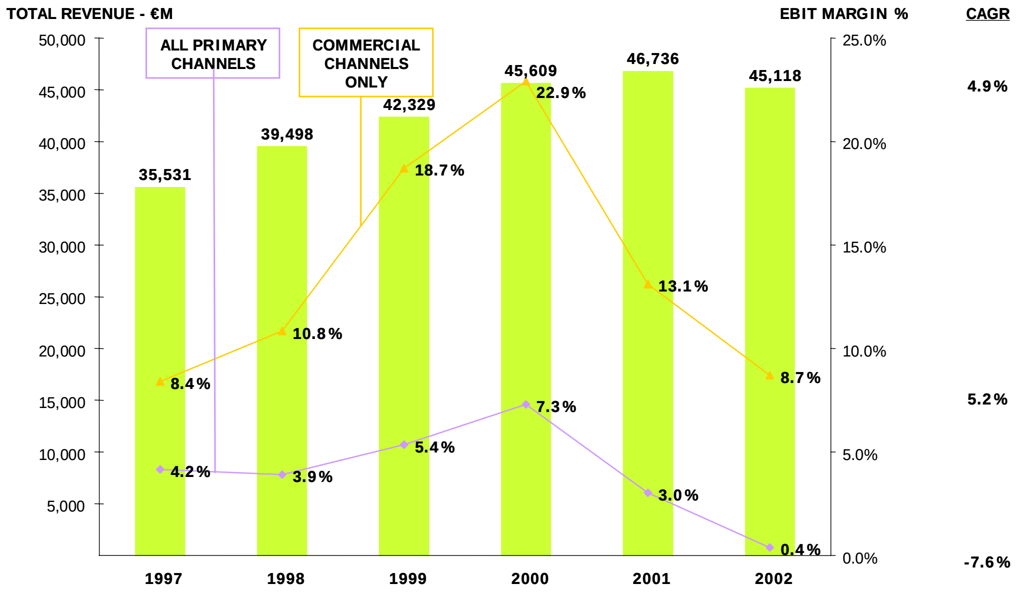
Vertical integration along the supply chain makes it difficult to gain a full picture of the profitability of different functions along it. However, there are a sufficient number of companies operating primarily in one part of the supply chain that, when combined with some analysis of separate activities within vertically integrated companies (by investment banking analysts and regulators), can give broad estimates for comparative profitability.

OBS figures covering a number of private primary channel broadcasters across the EU suggest that average EBIT (earnings before interest and tax) between 2000 and 2002 was about 14 per cent[28] (see Figure 18). More specific analysis of Europe's leading private primary channel broadcasters (looking at companies such as ITV, Mediaset, TF1, Sat1/Pro7 and Tele5/Antena 3) specifically strips out these channel operators' ancillary activities and secondary channel operation and suggests these operators made higher margins before payment of interest and tax (EBIT) than this across 2000 to 2002 – over 20 per cent on average – which might suggest the rest of the broadcasters in the OBS sample made lower margins.

27. A fuller discussion of which performance indicators to use over and above profitability is contained in Chapter 4.

28 We took an average of three years for private primary channel operators, as 2002 was the low point of a significant advertising recession.

Figure 18: Turnover and profitability of primary channels (1997-2002)



Source: OBS, company accounts, Oliver & Ohlbaum analysis

The publicly funded primary channel broadcasters across the EU, taken together, make a small deficit according to OBS figures – about 4 per cent on average between 2000 and 2002. However, these figures include radio activities and, perhaps most importantly, mix together genuine deficits – made after all income is included – and the deficits of organizations such as RTVE in Spain and RTP in Portugal. In these two cases, deficits are reported with only advertising revenue included; the government then provides grants and loans to cover these deficits. In our overall analysis of broadcasting we have included these annual grants as revenue – €1.3 billion in the case of Spain in 2002 and €200 million in the case of Portugal.

In any event, even adjusting for these changes, it would seem that publicly funded primary channel broadcasters (including ones that take advertising as well) were living slightly beyond their means in 2002.

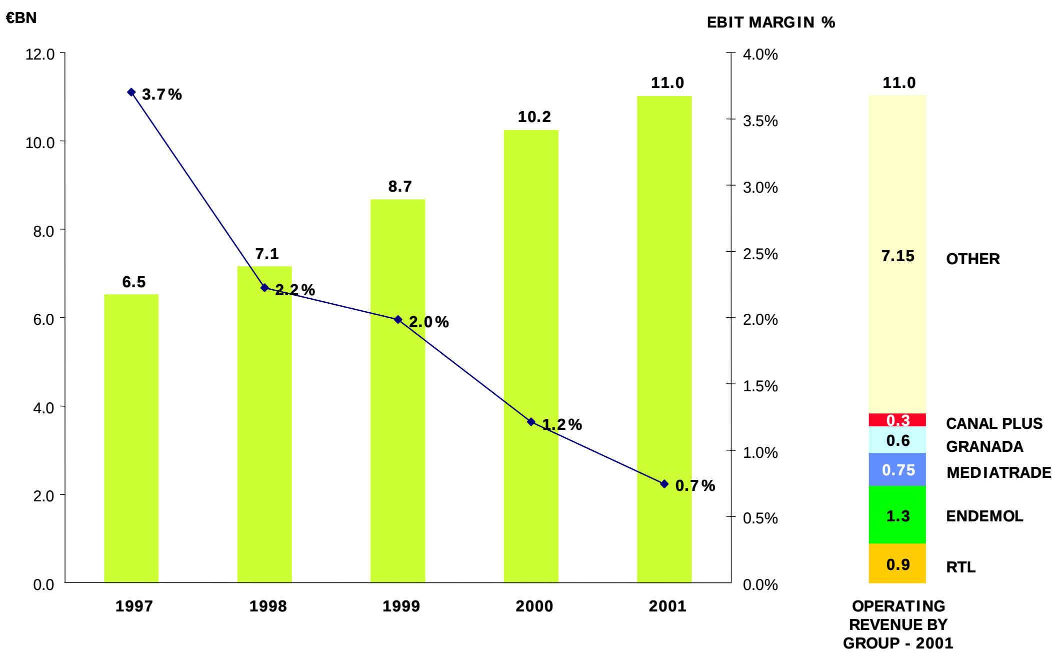
The profitability of secondary channel operators is more difficult to discern as many secondary channels are owned by pay TV platform owners such as BSkyB, Canal Plus and Telepiu (now part of Sky Italia), Premiere, Sogacable and TV Cabo. Some secondary channels are also operated by primary channel broadcasters.

OBS data on about 200 selected secondary channel owners that are not part of integrated entities, and our own analysis of some of the largest secondary channel owning groups such as Flextech in the UK, AB Groupe in France and Multithematique, do lead to some overall conclusions on profitability. The analysis suggests that, overall, these owners are still running deficits of between 5 and 10 per cent, but these deficits have been reducing as pay TV penetration and digital penetration increases, and the largest groups of all do now make positive margins of between 10 and 15 per cent.

Assessing the overall profitability of content creation companies is also complicated by the degree of vertical integration, but analysis of over 3,000 specialist production companies by OBS in 2001, and our own analysis of the top 50 independent companies across Europe in 2002 using the Amadeus database, again enables us to make some tentative conclusions on profitability.

The OBS data on all 3,000 companies suggests average EBIT margins of 1 to 2 per cent over the last two to three years, and show a consistent declining trend since 1997 (see Figure 19). Our own analysis of the 50 largest independents in 2002 initially suggested a negative EBIT of 1.8 per cent, but once account was taken of some large one-off write off's by German independents – especially those involved in rights trading – the average EBIT in 2002 rose towards 10 per cent. However, this was down on an average EBIT of about 11 per cent in 1997.

Figure 19: Turnover and profitability of TV production companies (1997-2001)



Source: Company accounts, Oliver & Ohlbaum analysis

Further analysis done to track the profitability of large independents that consistently produced accounts from 1997 to 2002, suggested these companies made a 6 per cent EBIT on average across 2001 and 2002 but that EBIT was again down on 1997 levels when it stood at 13 per cent.

Analysis, by investment banking analysts, of Granada production and RTL Fremantle in 2001, both part of larger broadcasting groups but which trade with non-owned channels – suggested that these two operators generated EBIT of about 10 to 12 per cent.

Finally, we looked at top independent producer profitability across the five main countries from 1997 to 2002, and by the main type of programming made by the producer. Top independent producers in Spain seem to do consistently the best with margins between 10 and 20 per cent from 1997 to 2002. (See Figure 20).

Figure 20: Top 50 independent producers in the five largest EU markets (1997-2002)

	COMPANIES IN EUROPEAN TOP 50	AVERAGE SALES PER COMPANY 2002	EBIT MARGIN %		
			1997	2001	2002
UK	19	€47m	5.0%	1.6%	3.8%
GERMANY	4	€39m	97.7%	7.5%	- 113%
FRANCE	15	€34m	- 0.3%	6.5%	7.6%
ITALY	7	€36m	11.5%	- 3.3%	8.8%
SPAIN	5	€45m	20.5%	12.2%	20.6%

Source: OBS, company accounts, Oliver & Ohlbaum analysis

In France they do reasonably well, with EBIT margins actually rising from 1997 to 2002, when they reached 7.6 per cent. Italy is more erratic, while the UK has low and declining returns.

The EBIT margins for the top 50 independent producers in Germany need some explanation. It will be observed in Figure 20 that the margins fluctuate between 97.7% in 1997 (implying almost no costs) and -113% in 2002 (implying that the companies recorded losses greater than their revenue in that year). We believe that these fluctuations reflect accounting policies and the large number of rights trading companies in the sample making large write-offs in 2002.

In terms of margins by genres we looked at the top 30 producers of TV fiction/film, where margins were down on 1997 but still positive, and the top 30 producers of TV animation/children's, where margins – before right-offs in Germany – remained strong to 2002 (see Figure 21).

Figure 21: Top 30 independent producers in fiction/film and children's animation (1997-2002)

	SALES PER COMPANY 2002	EBIT MARGIN %		
		1997	2001	2002
FILM AND FICTION TOP 30	€26m	18%	- 2.0%	5.4%
ANIMATION/ CHILDREN'S TOP 30	€25.8m	0.6%	8.1%	11.0% (less 23.7% including write- offs)

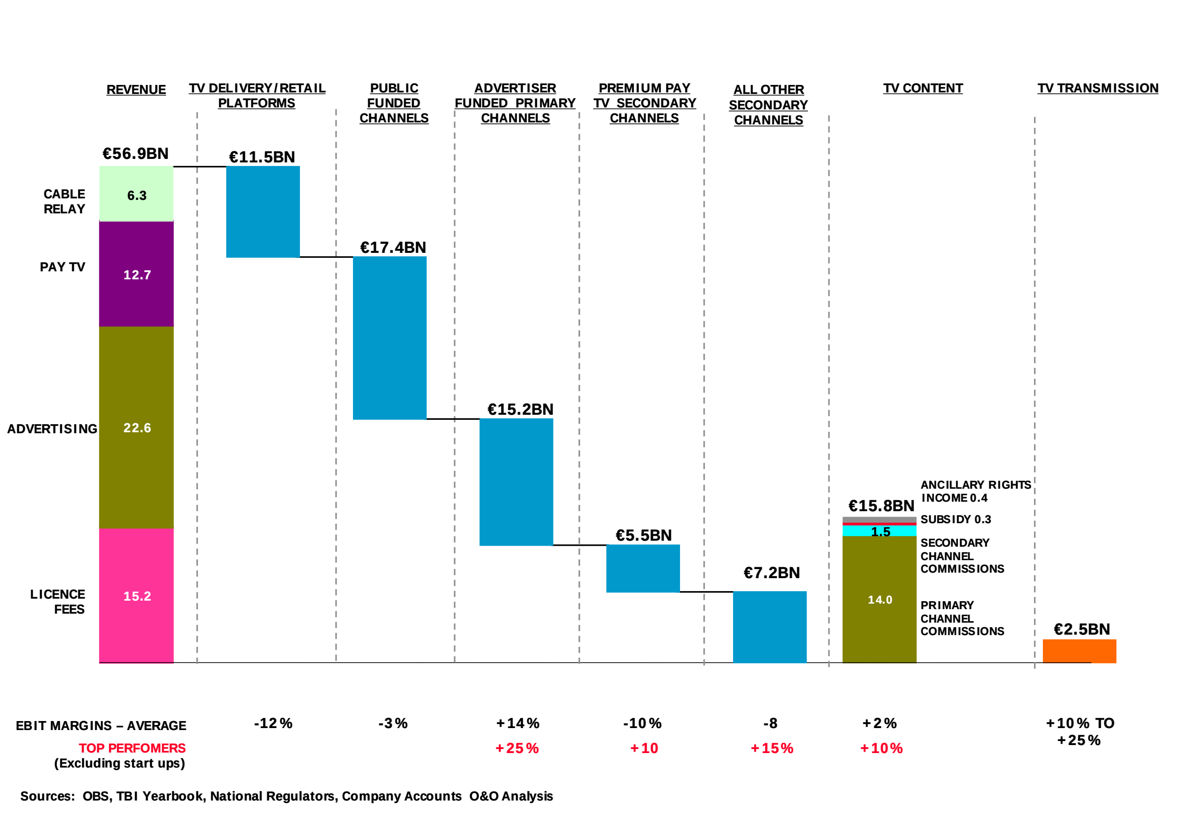
Source: OBS, company accounts, Oliver & Ohlbaum analysis

Analysis of the profitability of distribution and delivery is again hampered by the vertical integration of secondary channels and pay TV satellite and – to a lesser extent – cable operators. OBS analysis of integrated platform and channel owners (pay TV packagers in their terminology) suggested these companies were still making large deficits in 2002 of an average 13 per cent, but that this had improved on negative margins of 30 per cent or more in 2000.

From 1999 to 2001, most pay TV packagers were both trying to drive the transfer to digital and, in many markets, having to compete with rival systems. This actually led to a number of platform closures, mergers and bankruptcies from 2002 and 2004, so it is likely that the improvement in margins in 2002 is part of a general trend towards break-even and then subsequent profitability.

Overall profitability along the supply chain is summarized in Figure 22. The total on the left hand side (€56.9bn) is the sum of licence fee revenues, advertising, pay TV and cable relay fees. It excludes €4.3bn of miscellaneous other broadcaster and platform revenues (such as revenues from publishing activities and programme sales). Adding together €56.9bn and €4.3bn (and allowing for rounding) gives total revenues of €61.1bn identified in Figure 2 on page 32.

Figure 22: Estimated revenue and margins along the value chain (2002)



3.3.3 Growth Along the Value Chain

While we were able to identify headline industry revenue growth rates at about 6.5 per cent a year, growth rates along the value chain were difficult to analyse. OBS data on primary broadcasters suggests annual revenue growth for commercial channels has been about 4.5 per cent a year since 1997, with a decline in 2002 due to the general advertising recession. Despite losing share these channels have seen their revenue per share point rise by about 6 to 7 per cent as leading advertisers are forced to pay more for their shrinking mass audience. This affords these channels some protection against fragmentation.

Revenue for public broadcasters – which covers TV and radio – has been rising by about 5 per cent a year, with most their revenue – in the form of licence fees – protected from fragmentation.

Within pay TV, the revenue of premium pay TV secondary channels – which comes mainly from sub fees - has risen by about 10 per cent a year since 1997, while revenue for secondary basic and free channels – which comes from advertising and sub fees - has risen by 20 per cent a year. The difference in growth rates is explained, first, by the fact that premium channels led the way in European pay TV and therefore were already well established by 1997, and, second, by the fact that basic tier channels have benefited not just from pay TV growth by from gaining an increasing share of advertising revenue.

Pay TV packagers – who own premium and basic secondary channels and delivery platforms – have seen revenue grow by 26 per cent a year as the pay TV market has grown.

Figures for growth in programme spending and, in particular, of new commissions, are not directly available. OBS data on production companies – independent and in-house broadcaster subsidiaries that produce separate accounts – suggest that revenues have grown from €6.5 billion to €11 billion in the 4 years from 1997 to 2001, a growth of over 15 per cent a year (See Figure 19). However, this is probably misleading, as the sample of companies does not include all production – especially not integrated in-house production – and some companies are probably active in film work, animation, the exploitation of films on DVD and advertising production etc.

It is probably more accurate to assume that programme spending has been increasing by about the same amount as all industry revenue, at 6 to 7 per cent a year. While pay TV platforms have been taking an increasing share of revenue, therefore diverting funds away from channels, and increasing competition between primary channels has probably meant they themselves have been increasing spending faster than revenue – as confirmed by their declining margins even before the 2002 recession.

A study in the UK suggested programme spending in that market has grown by about 6 to 8 per cent from 1997 to 2003. Trade figures across the EU (See Figure 17) suggest US imports have been growing by about 15 per cent a year between 1997 and 2000, while sports rights grew by a similar rate between 1997 and 2001 before tailing off in 2002[29]. This suggests that spending on new commissions, including news, probably rose by less than the average 6.5 per cent, probably nearer to 4 per cent a year.

3.3.4 Employment

Estimating employment in the European TV and related audiovisual sectors is not helped by the practice of putting the same audiovisual activity in different sector categories in different Member States, and the lumping together of people who work in the theatre and performing arts etc with creatives in TV and film within certain employment categories. However, with these caveats in mind, EU figures suggest about 300,000 people work in the TV sector (excluding pure delivery and transmission businesses)[30]. Of these, approximately half are likely to work in broadcasting or integrated broadcaster/delivery companies, and about half in TV production. Of the 150,000 estimated to work in production, about 90,000 probably work on in-house production (which includes news and sport), and about 60,000 work in external production companies (some of these companies are involved in TV and film).

Perhaps not surprisingly, the largest TV workforces are in Germany (almost 60,000) and the UK (about 50,000).

3.4 TV Content in the Context of the Broader Audiovisual Sector

New TV programming is by far the largest audiovisual production sector in the Community, accounting for almost 60 per cent of all such spend. European feature film investment is the next largest at €3.7 billion, but sectors such as TV advertisement production and corporate video probably make significant contributions. Significant

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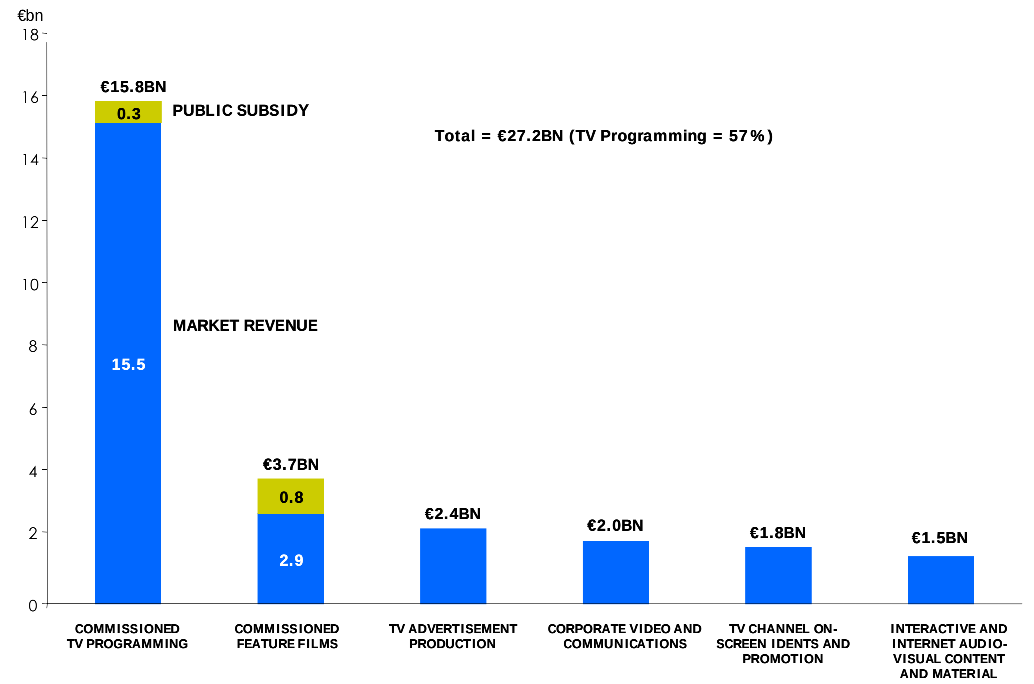
29 A separate report by Oliver & Ohlbaum has suggested that sports rights spending in 2002 was €5.4 billion in the EU and had been growing by 15 per cent a year between 1997 and 2001, but actually fell back by about 15 per cent in 2002/03, leaving average annual growth for the whole period at 10 per cent. A similar pattern was probably experienced by US imports in 2002, with the collapse of groups such as Kirch, which had been their largest customers.

30 This involves taking three NACE employment categories covering: motion picture and video production (NACE 9211); TV and Radio Activities (NACE 922); and artistic and literary creative and interpretation (NACE 9231) as a starting point and then using selected company account numbers to gain an understanding of normal staff/turnover ratios to adjust for radio, film and non-TV creative employment.

amounts has also started to be invested in audiovisual production of material for internet sites and interactive TV services by the end of 2002 - although at this time much of this was promotional and advertising based production – and associated with the advertising and corporate video sectors - rather than for consumer entertainment and information purposes (see Figure 23).

Figure 23: Estimated total spend on new audiovisual material in the European Union (2002)



Source: OBS , TVI Yearbook, Screen Digest, Oliver & Ohlbaum Analysis

Lastly, the estimated spending by primary channels and secondary channels on TV programme promotions and on-screen idents and links – at €1.8 billion in 2002 – is a more significant contribution to all audiovisual content creation than the spending of secondary channels on commissioned TV programmes.

3.5 Likely Future Developments and Challenges

There are three main forces for change in the TV market – technology, consumer tastes and regulation. Of these three factors, we would expect technology (and consumers' adoption of it) to have the most profound effects beyond 2004.

3.5.1 Digitisation and Channel Proliferation within the TV Market

We have already referred in this Chapter the growth of pay TV in Europe and the shift to digital transmission, which increases substantially the channel capacity of any given system. These trends have continued through to 2005 and are likely to continue over the next 10 years. We expect pay TV penetration to reach 40 per cent across the EU in the next decade from 25 per cent in 2002 (and about 28 per cent in 2004). Satellite platform mergers across the EU in 2002 and 2003 have helped create stronger pay TV operators able to fund continued digitisation and receiver box subsidies, while cable operators across the EU have emerged from recent financial problems to pursue "triple play" strategies of TV, telephony and broadband internet.

Digitisation will not only drive the take-up of pay TV; the upgrading of terrestrial networks to digital, plus the expansion of free satellite services, is likely to increase the number of households in the EU who receive between 20 and 40 free TV channels from current levels of 40 per cent to 80 per cent or more over the next 10 years. Several Member States have set target dates between 2010 and 2020 for complete digital conversion; once this happens, every household will receive between 20 and 40 free TV channels[31].

Digitisation also brings with it new types of consumer receiver features. Perhaps the most notable of these is the personal video recorder (PVR), or digital video recorder (DVR). This can effectively save, store and conveniently retrieve over 100 hours of programming, offering effective video-on-demand. They also enable viewers to skip the adverts in their favourite programmes.

Video-on-demand will also be stored remotely and accessed via cable and DSL, with both cable systems and DSL (digital subscriber line) upgraded telecom systems with 4 Mbit/sec capacity offering video-on-demand services[32].

Overall, effective channel choice is likely to grow significantly across Europe in the coming decade, which might well put pressure both on the total size of the primary channel market (as secondary channels increase their combined share), and the share of individual primary channels in each Member State (as new primary channels emerge on the back of high-reach, digitally delivered free TV).

Downward pressure on channel share and the audience concentration could put pressure on the proportion of European works that primary channels broadcast and, more probably, the proportion of European stock programmes in the schedule. Since the criteria for compliance with Article 4 are not genre specific, they allow a wide measure of flexibility to channels wishing to increase or defend their profitability.

At the same time, the growth of video-on-demand type services might mean that more and more of viewers' time is spent consuming TV services which are not channels in the traditional sense (and not, currently, covered by The Directive).

3.5.2 New Media Developing as an Audiovisual Platform

The development of what is loosely termed 'new media' – internet, interactive TV and the latest mobile phone technologies that can support transmission of audiovisual images – has occurred within the time frame of this study. In 1993 none of these technologies was available to consumers; by 2002, 138m EU citizens (over a third of the population) had internet access, 300m (79 per cent) owned a mobile phone, and over 17m EU households had interactive TV (2003).

According to the International Telecommunication Union, by the end of 2002 almost 140m EU citizens (36 per cent of the EU population) were internet users, as shown in Table 1. In Scandinavia and the Netherlands the proportion of internet users is above 50 per cent. This is remarkable growth in a period of approximately six years from the initial early adopter phase to mass market acceptance.

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31 Some countries are likely to allocate some digital terrestrial capacity to pay TV; others, such as France, want to use the system to introduce high definition TV, which will mean there will be capacity for fewer channels – 15 to 20 rather than 40.

32 Services such as Homechoice in the UK and Fastweb in Italy already offer TV through DSL.

Table 1: Internet users in the European Union (Thousands, 2002)

Member State	Internet users	Percentage of population
Austria	3,340	41%
Belgium	3,400	33%
Denmark	2,756	51%
Finland	2,650	51%
France	18,716	32%
Germany	36,000	44%
Greece	1,485	14%
Ireland	1,102	28%
Italy	19,900	35%
Luxembourg	165	37%
Netherlands	8,200	51%
Portugal	2,000	19%
Spain	7,856	19%
Sweden	5,125	58%
United Kingdom	25,000	42%
Total all Member States	137,695	36%

Source: International Telecommunications Union

A majority of European internet users have a dial-up connection offering data transfer speeds of up to 56 kilobytes (kb) per second. The second wave of internet penetration with be of high speed internet access – either through cable or asymmetric digital subscriber lines (ADSL) – offering speeds of between 512kb and 4 megabytes (mb). At speeds of 2.5mb and above, full audiovisual content offering an experience very similar to broadcast TV is possible.

So-called 'broadband' internet access is growing rapidly. In 2002 there were approximately 8.8m people with broadband internet access in the five largest European markets (France, Germany, Italy, Spain and the UK). By 2004 that figure had risen to 25.4m, growth of almost 70 per cent per annum (Table 2).

Table 2: Broadband Internet users in the European Union (thousands)

Member State	2002	2004	CAGR 2002-04	% of population
France	1,683	6,000	88.8%	10.1%
Germany	3,205	7,200	49.9%	8.7%
Italy	850	3,500	102.9%	6.2%
Spain	1,247	3,200	60.2%	7.9%
United Kingdom	1,821	5,500	73.8%	9.1%
Total all Member States	8,806	25,400	69.8%	6.7%

Source: International Telecommunications Union

Interactive TV is a second major technological development to have emerged in the content distribution sector over the period of the study. Essentially, interactive TV enables consumers to access a range of content and other services that are called up and paid for via a return path from the TV or set-top box. The interactive services that can be accessed range from video-on-demand (VOD) or near-video-on-demand (NVOD) content (films and programme libraries) to news, information and games. The development of interactive TV has been strongest in the UK and France where the Sky, Canalsatellite and TPS satellite platforms have driven penetration of interactive TV. OBS estimates that by 2003 there were 7.2m interactive TV households in the UK and 4.4m in France, out of 17.1m in the whole of the EU.

In 2004, mobile telecommunications operators began to launch third generation mobile networks in Europe (UMTS – Universal Mobile Telecommunications System) which provide significant additional capacity and broadband capabilities compared with existing networks and support streaming of audiovisual content to subscribers. As the price of 3G falls and operators migrate their customers to the new networks, more and more of Europe's consumers will be able to access content through mobile devices.

The broadband new media technologies described above not only allow VOD type services but also support access to new types of short-form audiovisual content and clips; a whole new audiovisual industry is likely to develop alongside the traditional one of narrative programming, which offers updates, outtakes and new material to enhance the consumption of TV programmes and film.

3.5.3 Piracy and Peer to Peer Consumption as A Threat

The music industry has already been through a period of destabilisation as – in the absence of effective digital rights management (DRM) – individual internet users have been able to create free copies of their material and distribute it globally, with no extra rights income to the creators of intellectual property. A similar impact is suggested for the film industry. The ability to retrieve and store TV programmes at will, and to distribute, with no payment to copyright holders, might also have a negative impact on the TV channels and production businesses.

3.5.4 Broadcasters, producers and regulators on the development of new media

As part of the interview and questionnaire phase of the project (which is reported fully in Chapter 9), we asked broadcasters, producers and regulators to tell us what impact they expected new media to have on the broadcasting and content creation industries in the medium term. We are reporting the findings that relate to new media here so that they can be considered in context; the rest of the findings are reported in Chapter 9.

The main area where opportunities were identified was the internet; respondents did not see transmission of content over mobile phones as a significant source of extra revenue so we do not consider it any further here. We have also looked at interactive TV.

Overall we found little support for the view that the internet or interactive TV technologies would alter radically the business model for programme production and TV distribution in the medium term.

Broadcasters expressed the view that broadband internet and interactive TV offered incremental revenue streams but that the existing broadcast model of TV distribution would remain by far the most important distribution mechanism in the medium term. Audiences would continue to watch a majority of their viewing on linear TV and therefore advertisers, it was anticipated, would continue to spend the bulk of their advertising budget with traditional broadcasters. Generally, broadcasters did not wish to see internet and video-on-demand content subject to the same content regulations as television broadcasts. The rationale for this argument was that content quotas cannot easily be applied or monitored to programming that is viewed on-demand; and regulation will tend to restrict innovation in relatively immature sectors.

We heard arguments from operators of NVOD services that regulators are drawing the line separating regulated and unregulated content between NVOD and true VOD. The result is that a film channel operator on cable or satellite that schedules the same movie across six channels starting at fifteen minute intervals to provide an NVOD service is subject to Articles 4 and 5 but the cable operator who provides a VOD library of movies is not subject to those regulations. While the dividing line may make sense in regulatory terms, in practice it is discriminating between two delivery systems that compete with each other for the same consumer spend.

Producers were mainly indifferent to the internet as a means of distribution because, without rights to exploit content over the internet, they will see none of the financial benefits that might accrue if the internet develops into a widely used means of accessing content. Several interviewees suggested that this is an appropriate moment to revise the terms of trade between broadcasters and producers to enable producers to retain – and therefore exploit – new media rights. Such a move may increase innovation in internet distribution of content for two reasons: First, broadcasters are not platform neutral and so may limit the availability of content to safeguard existing distribution channels and: Second, producers tell us they would exploit secondary rights more effectively than the broadcasters themselves.

Some producers we spoke to wanted to see content quotas applied to content distributed over the internet, although no practical proposals for how quotas may be applied to on-demand content were put forward.

Both broadcasters and producers expressed concern about piracy through the distribution of digital material over the internet. The internet is therefore unlikely to be exploited fully as a means of distributing content until DRM solutions are fully effective.

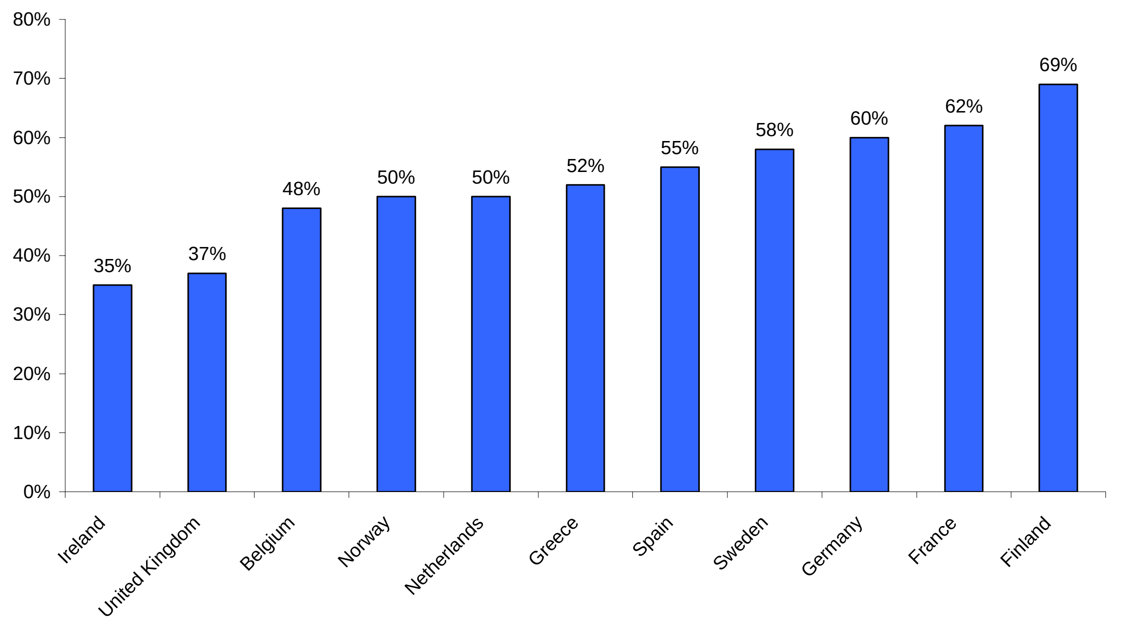
The comments we received from regulators to whom we spoke highlighted a divide between those that advocated a content based approach to regulation, where the same content is subject to the same regulation across all delivery platforms, and a technology based approach where regulation is applicable according to the delivery platform. In the former, the challenge is how to regulate on-demand services where a majority of European works may be offered but consumers can choose whether or not to view it; there is also a question about the appropriateness of regulating content that has been requested and delivered to a single consumer rather than broadcast to many. In the latter, a competitive advantage may be conferred on TV distribution via broadband internet if it is subject to a lighter regulatory regime.

3.5.5 Implications and Challenges

There is a real possibility that audience fragmentation – both across the whole TV market and within the primary channel market – will increase more rapidly than overall market revenue growth, putting significant revenue pressure on primary channels (especially commercial primary channels). Overall audience share erosion might also undermine the public funding levels of leading public primary channels.

Similarly, more and more viewer time could be spent viewing audiovisual content on PVRs, mobile devices, the internet and VOD TV systems. This will affect the exposure of European audiences to European works, and the effectiveness of any rules designed to influence schedules and schedule consumption. For example, research by the Technopolis Group suggests that between 30 per cent and 65 per cent of the fifty most-visited websites in selected Member States are not domestic sites (Figure 24); the penetration of US material is particularly high in English speaking countries. This trend may apply to audiovisual material as well when consumer use of broadband internet grows.

Figure 24: Domestic internet sites as a percentage of the top 50 websites (2003)



Source: Technopolis

Piracy, and rapid viewer fragmentation, together could undermine the funding of new content. This could in turn lead to increasing amounts of non-European content becoming available to viewers as channels rely more on US imports and as consumers increasingly access US film, TV and other content online. Initiatives to reduce piracy through education of European citizens and measures by the Commission to introduce effective DRM will help to maintain the returns to producers from their creative efforts.

At the same time, new technologies could open up new opportunities for European content creators to tap into new markets and revenue streams. In theory, content producers could bypass domestically focused TV channel operators and offer material directly to consumers in other Member States or outside of Europe. However, the availability of content does not guarantee its visibility and consumption. Without the marketing and promotion provided by a broadcaster, a platform operator or a major internet portal, the consumption of such material is likely to remain low.

Policy interventions to regulate internet content will be difficult to define and implement. For example, measuring and enforcing a target for the proportion of European works in the schedule for material that is viewed on-demand over broadband networks (as opposed to a linear broadcast) is problematic because viewers choose what they want to watch. The target of future regulatory actions may therefore need to shift from hours of programme output to measures of financial inputs – for example through an obligation to invest a proportion of turnover in European and independent works. Positive intervention to market and promote European-made content to consumers inside and outside the EU may also be desirable.

4 The Policy Impact Framework

Having set out the current structure and performance of the European TV and audiovisual content markets in Chapter 3, and before setting out to review broadcast schedules over the last 10 years in search of evidence that Articles 4 and 5 have influenced these schedules and the performance of the TV related sectors in the EU (Chapters 5 to 10), this Chapter sets out a conceptual framework for assessing the impact of Articles 4 and 5.

4.1 The case for intervention in TV markets

Chapter 3 suggested that there is currently a high level of government and/or regulatory involvement in TV markets. This is either in the form of direct public subsidy; or the promotion of a mandatory licence to fund one or more broadcasters; or the allocation of scarce analogue frequencies to commercially funded broadcasters – often with attached conditions on output and spending.

There are several reasons why European governments have found it necessary to make specific interventions in the European TV and audiovisual content creation markets over the last 20 years or so. We consider each in turn.

4.1.1 Economies of scale and scope in audiovisual content creation

Plenty of industries enjoy very significant economies of scale and are subject to very different national tastes in product design and style. In addition, plenty of sectors are dominated by a few companies that are run from even fewer individual countries. However, within the main audiovisual media sectors – film, games, TV, radio and music – the economies of scale can be even greater, and the marginal costs even lower than most industries. For example, a €50m budget film can be re-shown on a $200 negative re-production to a cinema audience, or sold to consumers on a €5 DVD.

However, differences in national tastes, cultures and languages throughout the developed world, and particularly within Europe, severely limit the transferability of audiovisual material made for one market in the world to another market. Mainstream German domestic films rarely transfer to the mainstream UK or Spanish markets. Similarly, popular local French music rarely makes it to the top of the Japanese hit parade.

Substantial economies of scale and scope, combined with the culturally specific nature of much TV and audiovisual content, leaves the USA – which has the world's most valuable domestic and culturally homogeneous audiovisual market – with an unbeatable competitive advantage when it comes to international trade in TV and related material. This in turn leads to persistent trade deficits in audiovisual activities for even the largest European countries.

The USA TV market – which is eight times the size of Europe's largest national markets of Germany and the UK – has the scale to fund large volumes of high-value drama and comedy. Although this output does not necessarily appeal directly to the various national cultures in Europe, high production values, plus the fact that most of the production cost has been recouped in the USA, means that such programming can prove extremely cost effective for commercially driven national European broadcasters.

Even though audiences and consumers in these foreign domestic markets may have a preference for home-grown material, the US material is still able to secure a high share of their domestic markets as it often contains 10 to 20 times the production value and creative endeavour of domestic content, while effectively being sold into the domestic market at the same, or an even lower, price than the domestic material. So a $5m Italian or UK film competes with a €50m US film in the domestic box office, which is only looking to recoup €3m from the Italian or UK markets. Similarly, a €5m per episode US TV comedy is competing against a €1m UK-made comedy, but the US episode is only looking to recoup €100,000 from the UK market.

Once such an advantage is established, it can reinforce itself. The US industry becomes commercially vibrant and actively seeks overseas appeal, while foreign markets struggle to find a business model that works – capital, quality commercial management and creative talent flow into the US industry and out of the domestic sectors, helping to reinforce the US advantage. Global centres of creative excellence quickly develop in such knowledge-based industries, concentrating resources and investment in specific cities and regions such as Hollywood.

Such dynamics may not be helped by various domestic government initiatives to subsidise and support the local industries. These policies can breed a culture of dependency and a self-fulfilling non-commercial attitude amongst those left in charge of the domestic industry. Not able to compete with the US industry on commercial terms, domestic sectors can, instead, focus almost exclusively on intellectual and social issues, reinforcing the USA dominance of the commercial sector and the flow of funds through the industry.

Not all nations outside the USA are impacted in the same way. US English-language TV programmes have not enjoyed huge success on South American network schedules, for example; and US films have not damaged significantly the distinct Indian and Hong Kong film markets.

There have also been signs recently that the TV market is becoming more open to ideas and formats from other countries – albeit mainly in reality and lifestyle genres and produced as local US versions. This may enable European TV producers to take advantage of the single largest cultural market, rather than simply having to deal with its negative consequences.

4.1.2 Market structure

Most broadcasting markets around the world first developed with a limited number of services available to all as a result of the scarcity of analogue terrestrial frequencies. This universal access tends to support primary channels with relatively high audience shares, a high advertising yield that reflects the value advertisers' place on high reach, and the ability to fund relatively large programme budgets. These primary channels often account for the vast majority of programme commissioning spend. As shown in Chapter 3, these primary channels are then supplemented by thematic secondary channels, largely delivered through lower-reach cable and satellite, and with lower audience shares, advertising yields and programme budgets.

Within the crucial primary channel market, the range and diversity of commercially funded services is likely to be a function of the number of channels licensed and number of channel owners allowed. Essentially, the more services licensed and the more liberal the rules on multi-channel ownership, the more diverse the commercial network market is likely to be. The economics of product differentiation would suggest that the more channels there are, the more likely it is that, at some point, one of the channels will decide to go after a niche audience demographic, creating a more diverse market structure.

Similarly, with any given number of primary channels, the fewer owners there are, the more likely they are to choose to broaden the range of the services they own, rather than compete head-to-head for the same audience.

However, within the market structure of TV broadcasting, there may well be a trade-off between, on the one hand, the diversity of channels that the commercial sector can offer and the concentration of channel ownership and, on the other, the amount invested by any one channel in high-budget programming[33]. While markets with many primary channels may provide a diversity of offering and demographic appeal, and markets with fewer owners may do the same with even fewer channels, both types of market may, left to themselves, also tend to invest less in programming.

Whereas markets with four main channels and four separate owners – as in the USA – are likely to see them compete head to head for a share of the most lucrative part of the mass audience while earning generally low margins, markets with four primary channels but just two owners are likely to see each owner choose to operate a primary channel in the main market, and another catering for a more niche market, while also enhancing overall margins at the expense of programming spend. Diversity amongst primary channels can often, therefore, be associated with lower network programme budgets.

There may even be an optimal number and ownership structure of primary channels for maximizing programme investment. If there are too few primary channels, or too few owners, either diversity is very limited or monopoly profits are high, reducing the investment in programmes – especially the more expensive commissioned programmes. Where there are too many primary channels, revenue is too fragmented to sustain both investment in new commissions and an acceptable level of profitability.

Furthermore, the optimal number of primary channels may vary by market size. Small national markets may have to make do with just one or two commercial primary channels, which in turn makes it difficult to deal with the problem of monopoly. Larger markets can sustain more primary channels and more independently owned channels.

Primary channel market entry is not the only structural feature that can influence investment in programming. The relative size of the primary and the secondary channel markets may also be important. While the high reach and share achieved by primary channels tends to protect them from too much revenue erosion from secondary channels, there may come a point where primary channel share is eroded by secondary channels such that the economics of primary channels starts to collapse, leading to huge fragmentation of revenue across all channels. This could seriously undermine investment in new commissions by primary channels.

In such circumstances, the overall impact on the European content creation sector would depend on how far secondary channel payments for repeat material, and international and ancillary exploitation of programming and programme rights by producers, could make up for any shortfall in investment levels from hard-pressed primary channels.

This in turn might well depend on the structure of pay TV markets across Europe. Many secondary channels rely on payments from pay TV platforms for at least part of their revenue. Monopoly pay TV platforms are unlikely to provide significant funding to

33 See Concentration and Public Policies in the Broadcasting Industry: The Future of Television – Massimo Motta and Michele Polo – NERA Economic Journal – European Competition Policy: Issues and Perspectives, Spring 2002.

secondary channels other than the film and sport channels that can clearly be seen to be directly generating new subscriptions – although the potential growth of digital free-TV channel choice might mean they have no choice but to re-invest in more compelling packages of secondary channels.

Both the tendency towards TV trade domination by the world's largest single cultural market – the USA – and the problems associated with TV market entry and revenue fragmentation, suggest that levels of European content might come under pressure in a free market. Why might this matter?

4.1.3 Safeguarding and promotion of culture

The promotion of national cultures and the protection of national languages has played a large part in national broadcasting policies. An underdeveloped European content creation sector could potentially increase trade deficits in audiovisual products and services with the rest of the world. The sourcing of material for TV broadcasting – which accounts for 20 to 30 hours of viewing per person per week in Europe – is also likely to have a significant impact on the cultural identity and reference points of the various national populations within Europe.

A reduced profile for European culture and attitudes may also have a negative impact on trade in other goods and services where an acquaintance with European national cultures helps to sell and promote these activities.

4.1.4 Encouraging pluralism

Intervention may be made to encourage pluralism – not just in terms of channel ownership or in reflecting the various different cultures and interests within a national society – but also in terms of the supply of programming. Therefore, even if a handful of broadcasters – public and private – could be shown to be providing a broad range of programming, true pluralism and diversity might only come through the use of a wide range of producers, directors and writers both within and outside the main broadcasting institutions.

4.1.5 Promoting independent production

A healthy independent production sector is a good way of ensuring both effective competition and plurality in the generation of programme ideas – especially in those markets traditionally categorised by a small number of vertically integrated primary channel owners.

More contentiously, it could also be a useful way of ensuring that the repeat rights to European works are made available to new channel providers – if the independent producers retain such rights – and that European programmes and formats are fully exploited internationally and across related media.

Broadcaster-owned producers might be less likely to sell repeat rights on the open market – being more concerned to protect the share and reach of their broadcast assets – and might be less focused on developing programmes with international and multimedia exploitation value, being primarily concerned with the interests of their own channel's viewers (these views emerge strongly from our interview programme covered in Chapter 9).

4.2 Types of National Market Intervention, Policy Trade-Offs and Incentives

There are three main types of national market intervention designed to help encourage either the commissioning of new domestic content or the transmission of specific public service programming genres – public funding, specific quotas and market entry restrictions.

The previous Chapter has shown that funding to channels through mandated household licence fees or public subsidies to channels already accounts for about one quarter of all broadcast revenue across the EU. Over and above this, specific programme by programme investment funds exist in countries such as France and Germany for targeted genres such as fiction, film and animations.

In many markets there are minimum requirements or quotas targeting the proportion of newly commissioned works and particular public service genres, and/or the spending on such material. (These are covered in more detail in Chapter 6).

National governments and regulators are also able to restrict or control access to scarce analogue frequencies and/or cable relay systems. This not only gives them the leverage needed to impose any minimum requirements and quotas on those channels that are granted privileged access, but can also help create the market structure most likely to encourage investment in newly commissioned production.

For instance, restricting the number of channels available may well limit revenue fragmentation and leave each channel with sufficient resources with which to commission new programming. Similarly, limiting the number of channels a single company can own, while it may impose higher running and administration costs, might facilitate the greater intensity of competition needed to encourage investment in programming.

Clearly there are trade-offs involved with these interventions. Restricting the number of channels with access to the whole national market may prevent revenue fragmentation but could also reduce diversity and viewer choice. Similarly, imposing high commissioned output and spending requirements might also effectively limit the number of channels and viewer choice, even if it ensured all the channels that were broadcasting had a large proportion of specially commissioned content.

In reality, most European nations use a combination of public funding – either to specific channels or for programming – output quotas for commercial channels, and a level of influence over the number and ownership of commercial channels in order to influence the competitive dynamics of the sector, and the broadcast output.

Whatever the form of intervention adopted, the impact of that intervention has to take into account the new incentives such interventions create, and how this affects behaviour. For instance, targeting specific definitions of output, or levels of output, as a means to achieving a given policy aim can sometimes distort broadcasters decisions, enabling them to comply with the provisions but often to frustrate the policy aim.

4.3 The Directive and Articles 4 and 5

4.3.1 The TV Without Frontiers Directive

The Directive was originally implemented at the end of a period of unprecedented growth in the number of commercially funded primary channels across Europe. The late 1980s had also seen the emergence of high powered telecommunications satellites, able to broadcast TV channels direct to TV homes across Europe (previously satellite distribution had been used to transmit signals between regulated broadcasters, or to fairly heavily controlled cable relay systems). For the first time it was possible that a channel in one Member State could broadcast direct to TV households in another Member State.

The Directive was designed to facilitate these developments which were clearly consistent with the free movement of goods and services across the EU. However, The Directive also contained certain minimum provisions which would apply to all TV channels operating in the EU. These were designed partly to ensure that channels operating from one Member State did not undermine the national broadcasting regime in another Member State that had been largely designed to help promote legitimate national cultural objectives.

At the same time, these rules were also designed – where possible – to encourage trade between Member States, and create a strong European TV sector able to compete with the USA.

4.3.2 Articles 4 and 5

In line with the general desire for freedom of expression and the free movement of information and ideas, The Directive aimed to stimulate "new sources of TV production from small and medium sized enterprises".

In this context, Article 4, which required a majority of European works, was designed both to prevent the emergence of channels broadcasting mostly non-European programming from one Member State into another, but at the same time to facilitate the general expansion in channels and competition and to develop more fully the potential for intra-Community programme distribution.

Article 5 was, again, designed in part to prevent national policies to promote independent production from being undermined, but mostly to promote new sources of production across the EU which, in turn, might facilitate new owners of TV channels and services (in so far as producers not owned by existing broadcasters might be more able and willing to supply new broadcast market entrants).

Overall Articles 4 and 5 were designed to strike a balance between the need to open up trade and competition in channels and programme supply across the EU to help promote the development of a strong European audiovisual sector, and the need to ensure legitimate national cultural objectives were not undermined.

4.3.3 An impact assessment framework for Articles 4 and 5

The preceding analysis suggests a three-stage approach to assessing the impact of Articles 4 and 5.

First, to measure the direct impact on channel schedules - specifically to see if there is any evidence to suggest that the Articles have helped:

- increase the ratio of European works and independent productions in the transmission schedules of European channels;
- develop an intra-Community trade in programmes; and,
- increase the proportion of independent productions that are recently produced – i.e. less than five years old.

Clearly, in making this assessment, we have to decide what the proportion of European works (domestic and non-domestic) and the proportion of independent works might have been without The Directives in place (or, at the very least, with less demanding requirements in place). Such an analysis would not simply involve reviewing pre-1991 and post-1991 data – even if pre-1991 data were available, which it is not - but rather trying to track all the factors that might influence the mix and sourcing of programming, and then determining how important each one seems to have been in explaining trends over the last 10 years or so.

Second, any assessment of impact also needs to look at the potential indirect effects Articles 4 and 5 might have had on broadcaster incentives and schedule decisions. For instance, is there any evidence that, in complying with the Articles, broadcasters have favoured output that does not qualify at all, such as games, sport and news, or have put particular emphasis on a less expensive type of qualifying output – e.g. flow programmes rather than stock programmes?

If such indirect effects are present, then even if the Articles have been shown to have increased headline European and independent schedule output, they may have had less of an impact on the overall performance and strength of the audiovisual content creation sector.

Last, in terms of the overall performance of the TV and content creation sectors, is there any evidence to suggest that either broadcasters have been harmed by the existence of the Articles' provisions, or that the content creation sector has benefited in terms of growth, trade, employment, profitability and general robustness and maturity – and the net impact on the sector as a whole.

4.4 Potential drivers of TV schedule output and sector performance

There are likely to be at least six main drivers of both schedule output and broadcaster and producer performance.

First, the size of each national TV market, both in terms of gross revenues and net income to broadcasters, is likely to have some impact on the ability of channels in that market to afford commissioned programmes (gross revenue includes advertising revenue, licence fees and subscription payments; net income takes account of the deductions made by TV distribution systems). It is also likely to affect the overall profitability of both broadcasters and producers – other things being equal.

Second, the structure of each broadcasting market – especially in terms of the number and concentration of primary channels – is likely to influence both each channel's ability to afford new commissioned programming and its incentives to commission them. The structure of the broadcasting market in relation to the programme supply market is also likely to influence terms of trade between producers and broadcasters. A market with few primary channel buyers of commissioned programming, a vertically integrated structure, and a fragmented and small independent sector, is probably going to offer tough terms of trade to independent producers, other things being equal.

Third, the existence and level of public funding also helps determine the level of new commissioning – especially where public subsidy and funding are distributed partly in return for commitments to the funding of new programming. In so far as public funding of broadcasters is often associated with vertically integrated supply chains, it may also influence the relative profitability and performance of production.

Fourth, different countries have particular and specific viewing tastes and habits; viewers like to hear their own language and see their own national landmarks

(Nelson's Column, the Eiffel Tower, the Colosseum, etc) in programmes. Some countries may have specific tastes and interests not well served by US imports, or cultural links with other Member States that make it more likely that they will view non-domestic European output. However, this, in turn, might make it more likely that their own programming does not sell internationally, which might then impact the performance of all those involved in production.

Fifth, extra national market requirements for new commissions in general, or for specific types, are likely to have an influence on the level of European works and, where separate national rules on independent production exist influence the proportion of independent works.

Last, Articles 4 and 5 themselves (and the way they are transposed into national legislation) may well have an influence on both schedules and performance, not just in terms of their existence, but also in terms of how they have been implemented – and in the case of Member States entering the community after 1993 – when they were implemented.

The influence of these factors is explored in Chapter 8.

4.5 Measures of the economic performance of the audiovisual sector

The analysis of current market performance in the previous Chapter has already provided a basis for a list of key performance indicators for the sector as a whole and the broadcasters and producers separately.

For private broadcasters – especially primary channels - the key headline indicators are likely to be growth, profitability and/or return on capital employed. Performance indicators for privately owned secondary channels, and secondary channel owners, would be similar to those for primary channels except that, in many cases, owners of secondary channels also have interests in delivery platforms. This may mean that their main motivation is to help drive subscribers to the relevant platform, rather than earn significant profits.

For publicly owned broadcasters, performance is probably best measured in terms of their audience reach.

More generally, the number and range of channels available, and the depth and breadth of the programmes offered, might be seen as a general performance measure for the broadcasting sector as a whole.

For the TV production sector as a whole, the overall levels and consistency of annual growth and the richness of the programme mix, are reasonable headline indicators of performance. Profit margins – especially for independent producers – and growth in secondary and ancillary revenue streams, especially internationally, are also useful measures of performance.

For the sector as a whole, overall international trade – both inside and outside the EU – overall growth levels, employment levels, overall profitability and some measure of total sector value, added to the EU economy would all be useful measures.

Not all these measures can be accurately obtained of course – especially for the whole period under review – and even where they can be obtained, establishing a link between Articles 4 and 5 and the observed pattern may prove difficult.

4.6 Cultural objectives of The Directive

4.6.1 What The Directive says about cultural objectives

Recital 18 of the 1989 Directive states that co-ordination of Member State television broadcasting activities is needed: "to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities". Recital 24 of the same Directive states that the promotion of independent producers will offer "new opportunities and outlets to the marketing of creative talents of employment of cultural professions and employees in the cultural field". Recital 31 of the 1997 Directive identifies "the protection of lesser used languages in the European Union" as an objective of The Directive; this can also be seen as a cultural objective.

Thus the original legislation contains cultural objectives alongside the economic ones. However, the conclusion can be drawn from the Recitals to the 1989 and 1997 Directives that cultural objectives are a lesser element of The Directive – which was introduced as single market legislation and therefore has an economic rationale. The economic and industrial objectives include "removing obstacles to freedom of movement for services" and "ensuring that competition in the common market is not distorted". Specifically, in connection with television, the legislation seeks to achieve a "common programme production and distribution market". The desire to achieve a common production and distribution market was, no doubt, influenced by the need for a better balance of trade with the US and less reliance on American programmes, thus making it a largely economic objective.

The tension between "the market" and "culture" has been a frequent topic of academic writing on European media policy. But we do not often find today assertions as sweeping as this one, from a research project supported by the Commission in 1989. "The growing commercialisation of the audiovisual sector is likely to progressively marginalize the cultural creation which, in Europe, since the second half of the 19th century has been trying to escape from the pressures of the market"[34]. And few would go so far as to oppose "creativity" in the audiovisual field to "production for commercial ends"[35]. Indeed, these views are at odds with the view, expressed in The Directive, that a Europe-wide market for creative work has the potential for greater plurality of expression.

4.6.2 Primacy of national measures to promote culture

The Directive emphasises the freedom permitted to Member States to develop their own national policies to support and encourage national cultures and cultural diversity. As Recital 13 of The 1989 Directive states, the provisions it contains do not affect "the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community". The 1989 recitals contain no definition of European cultural policy, which remains largely implicit.

Concern over the future of publicly regulated national TV services remains intense, and Member States have remained vigilant of their right to maintain national cultural policies. The later 1997 Recitals, while acknowledging that the primary objective of The Directive was to create a legal framework for the "free movement of services", enjoined the Commission to take into account the "cultural and sociological impact" of audiovisual programmes in their own countries.

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34 The future of the European Audiovisual Industry, André Lange and Jean-Luc Renaud, The European Institute for the Media, 1989.

35 See, for example, F. Rouet, Des Aides Ŕ La Culture, Pierre Mardaga, Brussels, 1986.

The Directive has thus placed no obstacles in the way of policies to support "public service broadcasting". These tend to put the emphasis on a mix of characteristics, which include universal availability and the coverage of public affairs, emphasising the role of the "citizen" rather than the "consumer". Such policies also emphasise the notion of national and regional identity through a significant proportion of home-produced programmes, the value of public education and the preservation of the cultural heritage. One writer has even compared public service broadcasting with the "streets and parks of a well-ordered city in the classical European tradition"[36].

In Chapter 6 we look at the ways in which Member States have taken advantage of their freedom to pursue national cultural objectives. Greece, the Netherlands and Portugal require a proportion of qualifying time to be broadcast in the national language, for example. France requires broadcasters to invest a proportion of their turnover in production in the national language, and Germany, the Netherlands and the UK insist on production in and for specific regions. Italy has adopted a narrower definition of qualifying programmes and thus taken steps to increase investment in "stock" programmes, which may be considered to have greater cultural value.

4.6.3 Cultural contribution of Articles 4 and 5

The Directive, in reality, reflects two cultural policies: one, largely implicit, which drives towards a European cultural identity; and another which protects national identities. Sometimes the two may be in conflict as where, for example, national regulations relating to programme production in indigenous languages act as a barrier to intra-Community trade in programme production.

There is an implicit cultural dimension in the economic objectives of The Directive, even if its development relies on the stimulus of market harmonisation. For common production and distribution, if they are to become established, imply a degree of change in the tastes and viewing habits of Europeans. The development of a European cultural identity is helped by access to programming from other European countries and, perhaps, by co-productions. From the data we have collected (and which is analysed in Chapter 7) we find that, while the total volume of European works has increased substantially over the period 1993 to 2002, the hours of non-domestic European works have increased more slowly, implying that channels are making, relatively, less use of programmes made in another Member State. As a proportion of qualifying hours, the broadcast of non-national European works, which increased in the middle of the 1990s, declined in the three years to 2002. However, over the total survey period, the proportion of non-domestic works has grown from 10.4% to 11.9% on all primary channels, with the majority of the growth on public channels.

Of the independent producers surveyed for this project, 72% said that they had experience of co-productions, but we were also told that, on average, genres like Fiction and Documentary recovered only about 5% of their costs from overseas rights. The genre most popular for co-production was, in fact, Fiction, the most expensive genre, and the countries in which European co-production was most frequent were France, Germany, Italy and UK. It is quite possible that independents have a greater incentive to co-produce than in-house producers but we have no data with which to test this possibility.

No doubt national preferences will remain strong and significant proportions of output will continue to address these. Nevertheless, the fact that the momentum towards a

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36 The characteristics of public service broadcasting, as identified in this paragraph, come from In Defence of Public Service Broadcasting, David Lipsey, in Culture or Anarchy, The Future of Public Service Broadcasting, Social Market Foundation 2002.

harmonised market has faltered should be a matter of concern, while acknowledging the importance of cultural diversity. A more integrated market could provide stronger competition for the US, by allowing for higher budgets and production values and stimulating the artistic exploration of a European identity.

A more integrated market could provide stronger competition for the US, by allowing for higher budgets and production values and stimulating the artistic exploration of a European identity but, as we report later, at 9.3.3, for the time being at least audience tastes are an impediment to this. Broadcasters reported that there was a greater appetite for US programming among European audiences than for programmes produced in other Member States. It was suggested to us that US programme storylines have broad appeal whereas European production has a national culture and appeal which does not travel well.

What, therefore has been the measurable cultural contribution of Articles 4 and 5? We have identified that the initial implementation of Articles 4 and 5 was associated with an increase in the ratio of European works. Thus the measures increased and have sustained a growing volume of indigenous European programming. We may also say that Article 5 – in some case independently of and, in other cases, in association with national legislation – brought into being a European independent sector, the volume of whose output has increased over the survey period.

4.7 Likely future challenges and relevance

The formal review period for this report ends in 2002, just 5 years into the development of digital TV, with the still fairly new pay TV industry experiencing some early growing pains, and just at the dawn of potentially significant developments such as interactive TV, digital TV recorders and the availability of audiovisual content on broadband internet and mobile systems.

The period since 2002 has also seen an unprecedented boom in reality TV and format-based entertainment shows – some of which have developed as global programme strands – albeit through a series of locally produced versions rather through traditional ready-made programme sales or co-productions. European based production groups have been some of the leading players in this market – selling ideas and formats to the main US networks for the first time.

In many respects the period from 1993 to 2002 has been marked as one where relatively new private primary channels reached maturity, and where full-scale multi-channel and pay TV had yet to arrive in force across most of the Europe. It has also been a period in which the independent production sector took time to consolidate and internationalise.

In so far as Articles 4 and 5 were put in place to deal with an era of increasing channel choice and audience fragmentation, the true test of their impact may be yet to come.

5 The Directive and Reporting on Articles 4 and 5

5.1 An overview of The Directive

The TV Without Frontiers Directive was adopted in October 1989; Member States were given two years in which to bring in national legislation to comply with the requirements of The Directive. The Directive defines a minimum set of criteria that broadcasters are required to meet in order to guarantee freedom of transmission and reception across the European Union. The Directive sets terms for the content and scheduling of advertising and teleshopping breaks, contains measures to protect minors and public order, and introduces a right of reply for anyone whose interests are damaged through inaccurate statements made in a television broadcast.

Articles 4 and 5 of The Directive require Member States to introduce measures to ensure that broadcasters devote more than fifty per cent of transmission time to programmes made by European producers, and at least ten per cent of the schedule (or ten per cent of the channel's programme budget) to European works by independent producers. The relevant portion of total transmission time to which Articles 4 and 5 apply excludes news programmes, sport, game shows, and the time devoted to advertising, teleshopping and teletext. Article 5 also requires that an 'adequate' proportion of independent productions should be recently produced – that is, less than five years old.

The provisions of The Directive are implemented through separate national legislation in each Member State. The Directive provides some guidance to Member States on how to frame national legislation – Article 6 of The Directive, for example, contains a detailed definition of what qualifies as European production – but other important terms such as 'independent producer' are not defined. As a consequence, there are material differences in the way in which Articles 4 and 5 have been implemented in national legislation, which we explore in more detail in this Chapter.

5.2 Reporting on Articles 4 and 5

Article 4 (3) of The Directive requires Member States to provide the Commission every two years with a statistical statement on the application of Articles 4 and 5. The Member State reports are collated and published accompanied by an opinion from the Commission in a Communication to the Council and European Parliament. These Communications are the main source of publicly available information and data on the performance of channels measured against Articles 4 and 5 in the period between 1993 and 2002. We provide a short analysis below of the reported data in each of the four sample years selected for this study – 1993, 1996, 1999 and 2002.

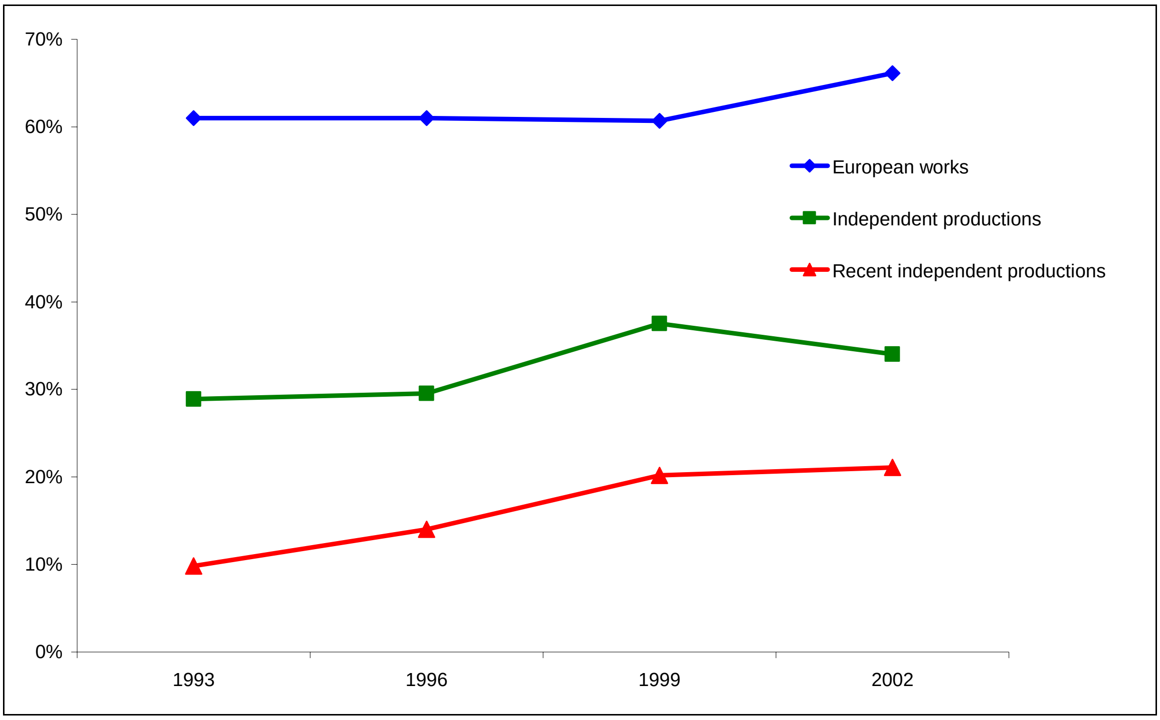
The Communications are a quantitative statement of the proportions of European works and independent productions in the transmission schedule of broadcasters in the preceding two years. Hence the reports allow the reader to identify whether or not a channel has met the requirements of Articles 4 and 5. The Directive requires Member States to submit data on every channel falling within their jurisdiction unless it is exempted. Exempted channels are local channels (according to Article 9 of the Directive), channels that do not broadcast in a Community language (according to recital 29 of the 1997 Directive), and channels broadcast exclusively for reception outside the EU and not received in the EU (according to Article 2 (6) of the Directive).

The average performance of the reported channels between 1993 and 2002 is given in Figure 25. It shows that the average proportion of European works on all channels across the EU has been above 60 per cent throughout the period of this study and grew to 66.1 per cent in 2002. It shows that the average proportion of independent productions has been above 25 per cent over the period and has increased from 28.9 per cent in 1993 to 34.0 per cent in 2002.

The proportion of independent productions that are recently produced (that is, less than five years old), has increased significantly over the period of review. In Figure 25 the proportion of recent independent productions is displayed as a percentage of all qualifying works; it has increased from 9.8 per cent in 1993 to 21.1 per cent in 2002. Figure 26 presents the same information but this time as a proportion of all independent productions; the proportion has risen from 34.0 per cent in 1993 to 62.0 per cent in 2002.

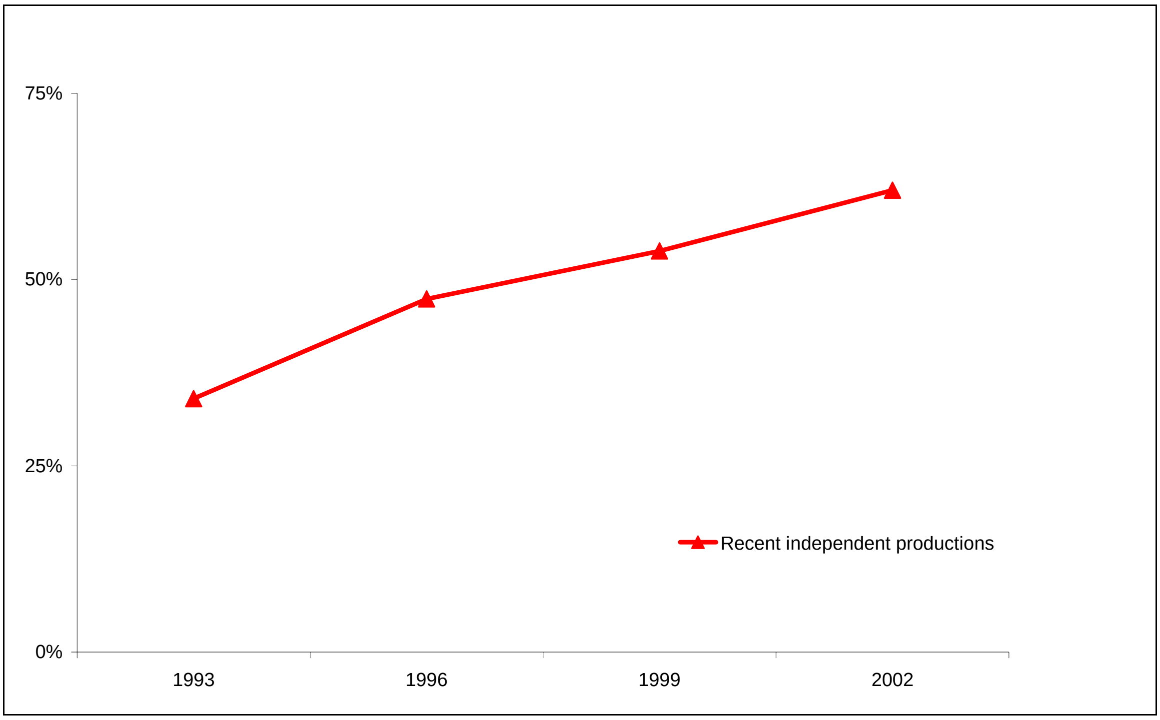
In this Chapter we look in more detail at the reported data to establish its accuracy and we identify certain limitations associated with its collection and reporting; in the remainder of the report we seek to establish the reasons behind the patterns identified from the reported data in Figure 25 and Figure 26. Articles 4 and 5 may be one element in the explanation, but there are a range of other factors – for example the market structure in each Member State (covered already in Chapter 3), the way in which Articles 4 and 5 are implemented by Member States and the additional requirements placed on broadcasters by national regulators (Chapter 6) – which also influence the pattern. As we will see, it is difficult to draw direct relationships between any single variable and the increase in the average proportion of European works and independent productions over the period; it is necessary to look at a range of variables to make sense of what is driving these trends.

Figure 25: Average reported[37] performance against Articles 4 and 5 (1993-2002)



[37] As reported by Member States and published by the European Commission in its six Communications on the application of Articles 4 and 5 of the Directive.

Figure 26: Average reported proportion of independent productions less than five years old in relation to all independent productions (1993-2002)



5.2.1 Problems with collection of data

The data has been constructed by Member States using their own definitions of key terms, which creates difficulties in comparing and interpreting data between Member States. For example, the way in which 'games' is defined affects the denominator in the calculation of performance by channels against Articles 4 and 5 of The Directive; the way in which 'independent producer' is defined will affect the numerator in the calculation of the achievement by broadcasters of Article 5.

There may also be differences in the way in which Member States calculate the ratios; in Italy, for example, talk shows are excluded and hence the reported ratios are not directly comparable with those of other Member States. We also found that, on occasion, Member States have applied an incorrect methodology to calculate the ratios, although with the publication of guidance to Member States in 1999 on how to monitor Articles 4 and 5, differences in the calculation of the data are reduced.

There are significant gaps in data collection, which means that the data provide an incomplete picture. The problem of incomplete reporting is particularly acute with regard to secondary channels broadcasting via satellite or cable. The latest Communication notes that the Netherlands (due to a change in the monitoring system in 2001) and Germany failed to report on a considerable number of channels and Italy systematically excluded satellite channels[38]. This omission occurs in each of the Communications but – as the number of secondary channels grows and they take a bigger share of all viewing – the omission becomes more significant. Without full reporting of secondary channels, successive Commission Communications are reporting on a shrinking proportion of total TV viewing.

[38] Sixth Communication from the Commission to the Council and the European Parliament on the Application of Articles 4 And 5 Of Directive 89/552/EEC "Television Without Frontiers", As Amended By Directive 97/36/EC, for the Period 2001-2002

5.2.2 Problems with reporting of data

There is a methodological break in the reporting of consolidated national statistics, which was introduced in the fifth report and so is available for two of the four sample years in this study. For the two earlier sample years – 1993 and 1996 – we have applied the same methodology to allow comparisons between Member States across all years.

The Commission's methodology for calculating the average proportion of European works in the schedule for each Member State excludes all channels below three per cent. This means that in Spain, for example, where the secondary channel audience share was 27 per cent in 2002, the calculation of the average proportion of European works in the schedule omits channels which, together, account for more than a quarter of all viewing.

Given that the data that does exist suggests that primary channels regularly exceed the requirements of Article 4, but channels with smaller audience share do not, the exclusion of channels with audience share less than 3 per cent may give a rosy picture of European production on TV. The 3 per cent cut-off point for the calculation of national averages may also be a contributory factor in explaining the poor reporting of secondary channel data by some national regulatory authorities, because the cut-off point may prompt them to take the monitoring and reporting of secondary channels less seriously than for primary channels.

The national average for independent production, however, is calculated using all reported channels. While using all data to construct the average is desirable, it is inconsistent with the reporting of national averages for Article 4. It may also give a higher average ratio for Article 5 than would the ratio calculated for primary channels only. This is because secondary channels (which often do not have in-house production capabilities, so buy all their programmes from outside) tend to commission a larger proportion of their new programmes from independent producers. A larger proportion of their independent production is also less than five years old, because many of these channels are less than five years old.

These limitations help to explain why we decided to conduct a bespoke survey of European channels to enable us to conduct like-for-like comparisons.

In the following sections we review what the compliance data tells us.

5.3 What the compliance data tells us

5.3.1 The Number of channels to which Articles 4 and 5 Apply

The European Commission reports suggest that total number of channels in the EU (inc. EEA) covered by Articles 4 and 5 has grown from about 145 in 1993, of which 58 (40 per cent) were primary channels, to 503 in 2002, of which 78 (16 per cent) were primary channels. So while the number of primary channels has grown by one third, there has been a five-fold increase in the number of secondary channels from 87 to 425.

The absolute growth in the total number of channels to which Articles 4 and 5 apply has been greatest in the UK, where the number of channels has grown from 35 to 123 between 1993 and 2002. France, Italy and Spain have also experienced a significant increase in the number of channels so that, today, these four markets between them account for over 300 (60 per cent) of the channels in the EU and EEA.[39] This is shown in Table 3.

Table 3: Number of channels to which Articles 4 and 5 apply (1993-2002)

Member State	1993	1996	1999	2002
Austria	2	2	3	7
Belgium	11	13	17	19
Denmark	3	6	5	6
Finland	3	3	4	4
France	14	18	54	75
Germany	14	19	23	26
Greece	8	11	10	35
Ireland	2	2	4	4
Italy	12	13	38	69
Luxembourg	7	8	10	10
Netherlands	5	9	18	41
Portugal	5	5	7	12
Spain	13	13	40	51
Sweden	11	11	22	21
United Kingdom	35	80	97	123
Total all Member States	145	213	352	503
Primary channels	58	68	71	78
Secondary channels	87	145	281	425

Source: European Commission

Incidentally, the substantial increase between 1993 and 2002 in the number of channels to which The Directive applies means that, even if there has been no improvement in the performance by channels against the requirements of Articles 4 and 5, there has been a significant increase in the volume of European works and independent productions that are broadcast in The EU.

5.3.2 Article 4 – the proportion of European works in the schedule

In this section we apply the Commission's methodology to calculate the national average for European works using primary channels only in 1993 and 1996, and put them alongside the reported data for 1999 and 2002. It shows that the average for all primary channels in the EU has remained stable at between 60 per cent and 65 per cent. We then look at a single Member State, The Netherlands, to identify some of the shortcomings in the methodology for calculating the average proportion of European works.

Average Performance by Member States

By applying the Commission's methodology to calculate the average proportion of European works in qualifying transmission time for each Member State in 1993 and 1996, we created a complete data set for the four years 1993, 1996, 1999 and 2002. We found that the European average for the proportion of European works in the

[39] It should be noted here that our own separate analysis of the market place suggests slightly different figures for the total number of channels and primary channels. Although the trend is similar to that reported by the Commission, we estimate, for example, that there were 86 primary channels in the EU (inc EEA) in 2002 rather than 78.

schedule has increased very slightly over the period, from 65.3 per cent in 1993 to 66.1 per cent in 2002. This is encouraging, given the increase in the number of primary channels over this period from 58 to 78 (and the commensurate increase in the amount of transmission time to which the ratios relate). There was a drop in the average ratio for Article 4 of 4.5 percentage points, from 65.2 per cent in 1996 to 60.7 per cent in 1999, but a recovery of 5.4 percentage points to 66.1 per cent in 2002.

The average proportion of European works in the schedule has increased over the period in seven Member States: France, Spain, the UK, Belgium, Austria, Greece and Luxembourg. It has declined by more than five percentage points in four: Ireland, Sweden, Germany and Denmark.

A major explanation of the movement in the average percentage in most of the Member States that have recorded a decline is the emergence of new primary channels between 1993 and 2002; in general, we find that smaller or younger primary channels show a lower proportion of European works than larger, longer established (and often publicly funded) primary channels. The data is presented in Table 4.

Table 4: Ratio of European Works to Total Qualifying Works (1993-2002)

Member State	1993	1996	1999	2002
Austria	65.9%	60.2%	56.6%	79.1%
Belgium	60.2%	55.4%	59.3%	68.4%
Denmark	70.0%	61.0%	60.7%	64.6%
Finland	70.0%	71.3%	66.3%	66.3%
France	68.1%	69.5%	67.4%	71.7%
Germany	69.4%	66.3%	60.2%	59.8%
Greece	56.3%	64.1%	71.5%	73.5%
Ireland	68.0%	88.0%	54.2%	48.7%
Italy	61.9%	60.4%	65.9%	60.7%
Luxembourg	54.0%	100.0%	100.0%	80.0%
Netherlands	75.7%	63.8%	68.0%	73.8%
Portugal	50.0%	56.0%	48.7%	49.8%
Spain	57.5%	51.5%	52.9%	61.7%
Sweden	75.7%	72.7%	73.8%	59.5%
United Kingdom	68.5%	66.8%	64.0%	73.8%
Average all Member States	65.3%	65.2%	60.7%	66.1%

Source: European Commission

Share of viewing on primary channels in Europe: 1993 to 2002

As more households get access to multi-channel TV, the share of viewing on primary channels has tended to fall. As a consequence, the calculation of Article 4 using only primary channels captures less and less of the total share of viewing.

The proportion of viewing on primary channels in each Member State in the period 1993 to 2002 is given in Table 5.

Table 5: Primary Channel Share of All Viewing (1993 to 2002)

Member State	1993	1996	1999	2002
Austria	66.0%	61.5%	57.5%	53.2%
Belgium (Flemish)	67.8%	72.1%	71.9%	74.1%
Belgium (French)	36.1%	36.7%	43.4%	43.0%
Denmark	85.8%	84.6%	82.5%	82.4%
Finland	92.0%	87.0%	95.0%	93.9%
France	91.5%	89.2%	87.3%	91.6%
Germany	85.9%	90.2%	83.4%	86.1%
Greece	77.9%	82.7%	83.4%	86.1%
Ireland	57.0%	53.1%	54.4%	52.7%
Italy	89.9%	90.2%	90.2%	89.4%
Luxembourg	78.0%	77.5%	75.6%	76.5%
Netherlands	73.7%	76.6%	73.3%	74.7%
Portugal	100.0%	100.0%	94.4%	89.3%
Spain	81.9%	81.2%	76.8%	72.8%
Sweden	91.0%	91.6%	90.9%	85.9%
United Kingdom	93.9%	90.0%	86.1%	78.0%
Average all Member States	86.4%	86.4%	83.4%	82.6%

Source: OBS Yearbook (average is weighted by population)

An example: The Netherlands

Primary channel viewing in the Netherlands in 2002 is given in Table 6.

Table 6: Share of Viewing on Primary Channels in the Netherlands (2002)

Ned1	11.1%
Ned2	17.2%
Ned3	7.6%
RTL4	15.8%
RTL5	4.6%
Veronica/Yorin	4.9%
SBS6	9.3%
Net5	4.2%
Total Primary Channel Viewing	74.7%

Source: TAM

Table 6 shows that over a quarter of viewing in The Netherlands is on secondary channels. An added complexity in the Netherlands is that RTL4 and RTL5, which together account for over 20 per cent of all viewing, are regulated in Luxembourg (Article 2 of The Directive determines that broadcasters are regulated in the Member State in which they are established and not the Member State where the transmission is received, i.e. the "country of origin principle"). Hence, only about 55 per cent of viewing in the Netherlands is captured by channels that are included in the calculation of the national average for Article 4.

If we recalculate the average performance of channels in the Netherlands measured against Article 4, but this time include secondary channels, the average for Article 4 in 2002 falls from the reported figure of 73.8 per cent (in Table 4 above) to 57.2 per cent. This illustrates how significant the choice of channels is to the calculation of the performance indicators reported in the Communication although, in the case of the Netherlands, it is encouraging to see that, even with the inclusion of secondary channels, the average is still greater than 50 per cent.

5.3.3 Article 5 – the proportion of independent European works in the schedule

The average proportion of the schedule devoted to independently produced European works has grown from about 29 per cent in 1993 to 34 per cent in 2002. There has been a decline in the ratio in four Member States – Denmark, Greece, Italy and Portugal. All Member States are reporting proportions of independent production in the schedule above the ten per cent de minimis stipulated in Article 5 for every year of reporting.

The Italian data for 1999 was incorrectly reported.

Table 7: Ratio of Independent productions to Total Qualifying Works (1993-2002)

Member State	1993	1996	1999	2002
Austria	14.7%	16.8%	40.6%	61.4%
Belgium	23.3%	20.4%	35.6%	41.3%
Denmark	39.0%	54.3%	40.2%	28.0%
Finland	14.0%	21.3%	23.0%	25.5%
France	34.6%	37.3%	59.0%	46.3%
Germany	40.9%	48.1%	46.3%	41.6%
Greece	44.6%	22.4%	21.2%	29.3%
Ireland	11.0%	16.0%	29.0%	26.8%
Italy	19.3%	17.5%	68.1%	18.8%
Luxembourg	20.0%	27.6%	29.9%	27.5%
Netherlands	31.0%	25.8%	52.0%	33.5%
Portugal	48.0%	22.1%	25.0%	26.9%
Spain	12.8%	14.2%	36.4%	34.5%
Sweden	37.7%	31.3%	27.9%	37.9%
United Kingdom	26.8%	25.5%	28.4%	31.4%
Average all Member States	28.9%	29.5%	37.5%	34.0%

Source: European Commission

Table 8 shows the ratio of recent independent European works to all independent European works.

Table 8: Ratio of recent independent European works to all independent European works (Article 5)

Member State	1993	1996	1999	2002
Belgium	16.3%	50.1%	59.0%	59.7%
Denmark	77.0%	22.1%	81.4%	82.9%
Germany	71.8%	57.7%	60.3%	77.4%
Greece	41.6%	-	45.5%	31.9%
Spain	8.2%	9.0%	20.8%	23.8%
France	-	100.0%	60.7%	62.0%
Ireland	11.0%	100.0%	100.0%	98.8%
Italy	-	33.2%	58.5%	76.6%
Luxembourg	9.6%	10.7%	13.5%	16.5%
Netherlands	22.5%	83.1%	80.0%	89.3%
Austria	7.2%	44.3%	46.1%	69.3%
Portugal	91.4%	73.3%	25.0%	74.3%
Finland	14.1%	74.0%	80.0%	76.8%
Sweden	-	-	54.0%	65.5%
United Kingdom	30.8%	24.0%	22.4%	24.8%
Average all Member States	34.0%	47.4%	53.8%	62.0%

Source: European Commission

The reported proportion of Independent European works that are less than five years old that is contained in the Commission Communication varies between 7.2 per cent in Austria in 1993, and 100 per cent in France in 1996, and Ireland in 1996 and 1999. The significant variance in individual Member States between years is a noteworthy feature of the reported data. There are significant variations between the highest and lowest proportions over the four sample years in Ireland, the Netherlands, Portugal and Austria, for example. This variance invites doubts about the veracity of the reported data.

5.4 Implications of the analysis of official data

Definitional differences between countries, the omission of data from channels with less than 3 per cent, and potentially inconsistent and erroneous reporting by Member States over the period from 1993, implies that the official data does not provide an adequate basis from which to analyse the impact of Articles 4 and 5. Before going on to outline how we went about commissioning a bespoke survey of channel output, and what the results were, in Chapter 7, we first assess how each Member State implements Articles 4 and 5, and what additional national requirements are made of broadcasters in terms of the sourcing of their programming.

6 Modes of Implementation

6.1 Introduction

The provisions of The Directive are implemented through separate national legislation in each Member State. This Chapter reviews how The Directive has been transposed into national legislation in each Member State, looking particularly at the way in which key terms (such as 'independent producer') are defined. We also look at whether or not national legislation contains the phrase 'where practicable' in framing the requirements of Articles 4 and 5. The phrase, which is contained in The Directive, allows for a more flexible transposition of The Directive because it potentially exempts those channels that are unable to meet the requirements of Articles 4 and 5.

We also review the measures in place in each Member State to monitor adherence by broadcasters to the requirements of Articles 4 and 5, and the sanctions applied by national authorities when these requirements are not met. We hypothesised that adherence to the requirements of Articles 4 and 5 might be greatest in Member States where the performance of broadcasters is carefully monitored and where there are significant sanctions (for example fines or other financial penalties) for failing to broadcast the required proportions of European and independent works. In Member States where monitoring is less rigorous, or there are no powers to penalise broadcasters who fail to meet the requirements of Articles 4 and 5, we figured that the impact of Articles 4 and 5 could be reduced.

Having reviewed the application of The Directive – the way in which Articles 4 and 5 are transposed into national legislation and monitored – we then looked at any additional requirements placed on broadcasters (frequently on primary channels but sometimes on all channels) by national legislation to increase the quantity, or enhance the quality, of European and independent production. Examples of additional requirements include the 60 per cent European works quota in France, the language and cultural requirements applied to broadcasters in many Member States[40], and the support for domestic film production that public service broadcasters in France, Austria and Finland are required to provide.

Taken together, the application of Articles 4 and 5 (whether the measures are applied flexibly or prescriptively), and the additional requirements placed on broadcasters in national legislation (low or high additional requirements), define four 'implementation modes', which we use to test relationships between national legislation and the proportion of European works and independent productions on TV in Chapter 8.

Information about the laws and regulations in place in each Member State to implement Articles 4 and 5 was collected from national regulatory authorities, using a combination of interviews and a questionnaire. We also conducted our own research in Member States and used the European Media Institute Study (EIM) of Member State legal provisions, conducted on behalf of the European Commission and published in 2001[41]. Our understanding of the legal position in each Member State from these sources was distributed to the each country's representative on the Contact Committee for comment and verification. A summary of the provisions in each Member State is contained in Appendix V.

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40 For example, Greek broadcasters are required to allocate 25% of qualifying time for works produced in Greek; in Finland, YLE is required to reflect minority languages in the schedule.

41 Pertzinidou, Eleftheria; Study on the provisions existing within the Member States and the EEA States to implement Chapter III of the 'Television without Frontiers Directive' (Directive 97/36/EC of the European Parliament and the Council of 30 June 1997 amending the Council Directive of 3 October 1989); The European Institute for the Media; May 2001.

6.2 Transposition of Articles 4 and 5

Member States have transposed Articles 4 and 5 into national law using a combination of primary legislation and secondary regulation. The degree to which Member States are flexible or prescriptive in transposing The Directive can be determined with reference to certain key terms and phrases.

6.2.1 Total qualifying hours

The Directive defines total qualifying hours as a channel's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping". A majority of Member States have transcribed the definition directly into national legislation; however, France, Germany, Italy and the UK have adopted approaches significantly different to The Directive.

France and Germany define what is included in qualifying transmission time. EIM describes the French position thus:

> 'France is a special case, being the only country that distinguishes between audiovisual works and cinematographic works. Audiovisual works are considered to be: fiction programmes, animation programmes, current affairs documentaries produced mainly outside the studio, music videos, scientific programmes, concerts and retransmissions of theatrical, lyrical or choreographic programmes. Consequently, entertainment programmes, current affairs programmes, and talk shows in all their forms are also excluded from the 'relevant transmission time'.

Germany also defines what is included as qualifying hours: feature films, television movies, series, documentaries and comparable productions.

Italy excludes talk shows, making the achievement of a majority proportion of European works more difficult, because it excludes programming that is likely to be made domestically and that would otherwise count as a European work. The UK excludes acquisitions and repeats, leading to a higher volume of European commissioned programmes.

By defining what is included in the qualifying hours, France and Germany apply a stricter definition of audiovisual works than The Directive because they exclude programming – particularly current affairs programmes and talk shows – that tends to be produced domestically. The measures contained in Article 4 applying to European production must therefore be achieved in the categories of programme included in the definition, without the benefit of a high proportion of European qualifying programming in other excluded programme strands.

We can see, therefore, that France, Germany and the UK apply a strict interpretation of Article 4, which requires all broadcasters to show more original European works, than a more flexible application of The Directive (a path followed by the majority of Member States) would require. France and Germany in particular, by defining what is included rather than what is excluded, are prescriptive in their definition of total qualifying hours.

6.2.2 Qualifying European hours

Article 6 of The Directive provides a detailed definition of 'European works' as (a) productions originating in Member States, (b) in countries that are signatories to the European Convention on Transfrontier Television or have concluded a bilateral trade agreement with the EU; or (c) co-productions with European third countries with which co-production agreements exist and where European producers supply a majority of the budget and workforce, and exercise control over the production. (b) and (c) are conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned. The existence of a full definition in European law means that this is the key term that varies least in its application across different Member States.

6.2.3 The 'where practicable' clause

Articles 4 and 5 of The Directive contain the qualifying term 'where practicable'. Certain Member States – for example Austria, Belgium, Luxembourg, Spain and Sweden – have incorporated the wording 'where practicable' into national legislation, which we consider to be a more flexible interpretation of The Directive than when this phrase is absent.

In Austria, Belgium (French community), France, Luxembourg and Spain a 'non-slipback' clause has been incorporated, meaning that broadcasters cannot show a lower proportion of European works than in the previous year. The phrase 'where practicable' offers Member States flexibility in their interpretation of the requirements, although the non-slipback clause limits that flexibility. By this reckoning, Sweden is the most flexible because it has 'where practicable' but no slip-back clause. Austria, Belgium, Luxembourg and Spain offer some flexibility, and the remainder of countries offer no flexibility in the achievement of Article 4.

6.2.4 European works by independent producers

The Directive does not contain a definition of 'independent producer', but Recital 31 of the 1997 Directive states that the definition should take account of criteria "such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights".

No definition of 'independent producer' exists in national legislation in Austria, Denmark, Germany, Norway, Portugal and Sweden. The remaining Member States utilise a combination of four main elements to define 'independent producer', as summarised in Table 9:

Table 9: Criteria for definition of independent producer

Member State	Criteria for definition of independent producer			
	Ownership	Autonomy	Programme supply	Secondary rights
Belgium (Flemish)	✔			
Belgium (French)	✔		✔	
Finland	✔		✔	
France	✔		✔	✔
Greece		✔		
Iceland	✔		✔	
Ireland	✔	✔		
Italy	✔		✔	
Luxembourg	✔			
Netherlands	✔			
Spain	✔			
United Kingdom	✔	✔		

Source: Member State regulatory authorities

Ownership is the most commonly used criterion for defining whether or not a producer is independent. Independence is defined by placing a maximum holding by a broadcaster, or broadcasters, in a production company, or by a production company in a broadcaster, or both.

In the Netherlands, for example, a broadcaster must hold less than 25 per cent of the share capital in an independent production company and a combination of broadcasters must hold less than 50 per cent of the share capital.

In France the rules are more restrictive; a broadcaster may hold no more than 15 per cent of the share capital of an independent producer and a production company that wishes to qualify as independent may hold no more than 15 per cent of the share capital of a broadcaster.

The autonomy criterion relates to the extent to which an independent producer may conduct his business unhindered by intervention by a broadcaster. For example, in Ireland an independent producer is defined by his capacity to exercise control over the actors, production staff, equipment and facilities used in the production.

The programme supply criterion captures the extent to which a producer's independence may be compromised if too great a proportion of his output is supplied to one broadcaster. In Finland, for example, to qualify as independent a production company cannot have produced more than 90 per cent of its programmes for one broadcaster in the previous three years. In France, an independent producer may supply no more than 80% of programmes, by turnover or hourly volume, to a single broadcaster.

France is the only Member State to apply a rights-based definition of independence. Under Decree 2001-1329 an independent producer may not license rights to first showing of a programme to a broadcaster for a period longer than eighteen months; the maximum duration that repeat rights may be licensed is 42 months and 3 broadcasts.

We have allocated Member States to one of three categories of approach to defining 'independent producer' – the categories are shown in Table 10. Where no definition exists in Member State law, the decision as to whether a producer is independent or not rests on practice, and on the non-binding guidance of the Contact Committee[42]; here there is greatest flexibility in the definition of independent producer. At the other extreme, those Member States that apply a series of definitions related to ownership, performance, programme supply and secondary rights have implemented a strict interpretation of The Directive, and there is less flexibility for broadcasters and producers to interpret the provisions to their advantage.

Table 10: Member State approaches to defining independent producer

No definition	Flexible definition	Strict definition
Austria	Belgium (Flemish)	Belgium (French)
Denmark	Greece	Finland
Germany	Ireland	France
Iceland	Luxembourg	Italy
Norway	Netherlands	United Kingdom
Portugal	Spain	
Sweden		

6.2.5 Independent works – a percentage of turnover or programme hours?

Only two countries – France and Portugal – apply the ten per cent requirement for independent works to the programme budget of a broadcaster as opposed to programme hours. In both cases it is public service broadcasters, France 2 and France 3, and RTP. Most Member States apply a flexible definition that enables broadcasters to choose between adherence to a percentage of turnover, or a percentage of transmission time.

6.3 Application of Articles 4 and 5

In section 2, above, we looked at substantive issues relating to how Articles 4 and 5 have been transposed into national law. Now we turn to procedural measures

[42] Suggested Guidelines for the Monitoring of the implementation of Articles 4 and 5 of the "Television without Frontiers" Directive; ibid.

relating to how adherence to Articles 4 and 5 is monitored, and the sanctions that are applied when broadcasters do not achieve the requirements.

We explore two differences in the way Member States monitor the application of Articles 4 and 5: First, the independent evaluation of broadcaster outputs and: Second, the sanctions that may be applied for non-adherence.

6.3.1 Monitoring and verification of channel outputs

The standard methodology employed by Member States to monitor adherence to Articles 4 and 5 is to require broadcasters to submit transmission returns, giving data on the volume of European works and independent productions they broadcast.

Some Member States take additional steps to verify the accuracy of the data provided by broadcasters. In France, the Conseil Supérieur de l'Audiovisuel categorises every programme broadcast on public service TV to check the broadcasters' own statements of performance against the measures. The CSA also randomly samples cable and satellite channels to check performance. Checking of national terrestrial TV in Italy is wholly independent of the broadcasters themselves as the regulator (AGCOM) has commissioned independent monitoring and analysis.

Regulators in Ireland, Greece, the Netherlands and the United Kingdom perform additional monitoring or sampling to check returns. In Spain and Portugal, the regulator retains a research organisation to verify the returns from broadcasters.

6.3.2 Sanctions

The sanctions contained in law that may be applied to broadcasters who fail to meet the requirements of Articles 4 and 5 vary between Member States. In certain Member States – Austria, Germany, Iceland and Ireland – the regulator has no legal powers to apply sanctions. In Sweden, the regulator has powers to act where a broadcaster fails to submit returns, or where those returns are falsified.

In the remaining Member States, regulatory authorities have a range of powers at their disposal to encourage adherence to The Directive, from warnings to the imposition of fines and – in some Member States, and for the most serious cases – regulatory authorities can shorten or revoke a broadcaster's licence. These sanctions are listed in Table 11.

In interviews with regulators we inquired about the frequency with which sanctions were applied to broadcasters who failed to meet the requirements of Articles 4 and 5 of The Directive. Of the 13 regulators who gave us an answer to this question, three stated that sanctions are applied "frequently", four said "sometimes" and four said "never". As we report later (in section 9.6), there is some scepticism among broadcasters and producers about sanctions, with 59 per cent of broadcasters and 79 per cent of producers believing that sanctions are never applied.

Table 11: Member State sanctions

Member State	Sanction		
	Warning	Fine	Licence conditions
Austria	✗	✗	✗
Belgium	✔	✔	✗
Denmark	✔	✗	✔
Finland	✔	✔	✔
France	✔	✔	✗
Germany	✗	✗	✗
Greece	✔	✔	✔
Ireland	✗	✗	✗
Italy	✗	✔	✗
Luxembourg	✔	✗	✔
Netherlands	✗	✔	✗
Norway	✔	✗	✔
Portugal	✗	✔	✗
Spain	✗	✔	✗
Sweden	✔	✗	✗
United Kingdom	✔	✔	✔

Source: Member State regulatory authorities

6.4 Stricter measures applied to broadcasters

6.4.1 Introduction

Article 3 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."

Member States have applied Articles 4 and 5 of The Directive more strictly than required by The Directive by setting the percentage requirements for European works and independent production higher than those required by The Directive. Higher requirements are generally applied only to public service broadcasters – in Italy, the Netherlands and the UK, for example. These interventions can be grouped under the general heading 'Measures to increase the Quantity of Production'.

Member States place other requirements (either legislative or administrative) on broadcasters that are not related to Articles 4 and 5 of The Directive, but which affect the output of broadcasters in their jurisdiction. These requirements take two forms:

- Member States impose additional requirements on the content of European and independent productions relating, for example, to the original language of productions, or the portrayal of national or regional cultures. These interventions are often achieved through licence agreements or other administrative arrangements with broadcasters, and can be grouped under the general heading 'Measures to enhance the Quality of Productions'.

- Some Member States increase production by requiring broadcasters (usually the public service broadcasters) to allocate a proportion of their income to, for instance, film production. These interventions can be grouped under the general heading 'Additional funding to Promote European and Independent Production'.

6.4.2 Measures to increase the quantity of production

Six Member States – Finland, France, Italy, The Netherlands, Spain and the United Kingdom – apply higher percentage requirements than those contained in The Directive on some or all of their broadcasters.

Proportion of European works

In France, legislation requires all broadcasters to reserve at least 60 per cent of their qualifying hours to European audiovisual and cinematographic works. Cable, satellite and digital terrestrial channels are permitted to meet the 60 per cent provision progressively, but the minimum proportion of European works should not be less than 50 per cent of qualifying hours.

Proportion of independent works

France requires public broadcasters France 2 and France 3 to allocate 11.5 per cent of their turnover to independent productions.

In Italy, public service broadcaster RAI is required to reserve at least 20 per cent of qualifying hours for independent productions. In the Netherlands, the percentage for the public primary channels is 25 per cent, and re-runs may only be counted towards the measure when they are shown in peak time, to prevent the measure being met by broadcasting re-runs in non-peak time.

In the UK, Channel Four is required "comfortably to exceed" the minimum requirement for the proportion of European programmes. All the primary channels are required to reserve at least 25 per cent of qualifying transmission time to independent productions.

Finland applies a 15 per cent requirement on all broadcasters.

6.4.3 Measures to enhance the quality of productions

Almost all Member States place additional requirements on broadcasters regarding the content of European and independent productions. These generally require broadcasters' programming to reflect linguistic or cultural specificities in a Member State. Intentionally or otherwise, they act as barriers to cross-border trade in programmes and channels because (a) they set conditions on programme content that only domestic programme producers can meet; and (b) they lead to channel schedules that are specific to a Member State, thereby limiting the appeal of these channels in other markets.

For example, in Greece, 25 per cent of qualifying time should be for works produced in Greek. Additionally, public service broadcaster ERT is required to broadcast programmes showing the correct use of the Greek language. In the Netherlands, public service broadcasters must dedicate 50 per cent of transmission time to programmes in Dutch or Friesian, and for private channels the percentage is 40 per cent. In Portugal, national channels must broadcast programming originally produced in Portuguese for 50 per cent of qualifying hours. Swedish public broadcaster SVT is required to spend 55 per cent of its programme budget with producers based in Sweden.

French legislation requires that at least 40 per cent of terrestrial broadcasters' audiovisual and cinematographic output was originally produced in French. Cable and satellite channels are subject to the same requirement, but it can be achieved progressively. Additionally, all terrestrial channels are required to invest 16 per cent of turnover in original production in French (channels are required to provide 120 hours of European or French Language works that have never previously been broadcast; these programmes must start between 8 and 9 p.m. and cannot account for more than 180 min per night). Canal+ is required to invest 20 per cent of its turnover in film rights.

Germany, the Netherlands, Spain and the UK also apply regional requirements on broadcasters, either through an extra layer of requirements for linguistic or cultural programming applied at regional level (Germany and Spain), or for a requirement on national broadcasters to reflect regional differences (The Netherlands and the UK).

6.4.4 Additional funding to promote European and independent production

The primary means whereby Member State governments promote additional domestic production is through subsidies and tax breaks for TV and film production, which we examine separately. In this section we look at the requirements placed on broadcasters that relate primarily to the funding of indigenous film production, either directly, or through a contribution to centrally administered film funds.

Examples where broadcasters are required to contribute directly to film production include France, where terrestrial free-to-air channels must invest a minimum of 3.2 per cent of net turnover on films, of which 75 per cent should be by independent producers; and Canal+ analogue terrestrial pay TV channels must invest 20 per cent of net turnover in domestic films. Both terrestrial free TV and pay TV operators, are required to spend 16 per cent of turnover (not program budget) on production, of which two thirds must be in independent production (equivalent to 10%). In Sweden, the primary channels are required to contribute to Swedish film production; in 2002, SVT1 contributed €4.3m and TV4 €0.8m.

Examples of Member States in which broadcasters contribute to a centrally administered film fund include Austria, where public service broadcaster ORF is obliged to provide financing to the Austrian film industry through the Film-Television Treaty with the Austrian Film Institute[43]. Finnish state broadcaster YLE contributed €1.45m in 2002 to the Finnish Film Foundation to support independent film production in Finland. In France, a 5.5 per cent levy on all broadcasters' revenues from advertising contributed €315m to film and TV programme production in 2002, through

43 Bundesgesetz über die Einrichtung einer Kommunikationbehörde Austria und eines Bundeskommunikationssenates (KommAustria-Gesetz, KOG). Ref: BGBl. I Nr. 32/2001.

a fund administered by the CNC. Portugal places a 4 per cent tax on the sale of television advertising, raising €13.4m in 2002 for film production.

6.5 Implementation modes

Based on the preceding analysis, we can create indices to rank Member States according to: first, the strictness or flexibility with which they apply Articles 4 and 5 of The Directive; and second, whether or not they place additional requirements on national broadcasters to promote European and independent production.

These indices are given for each Member State in Table 12.

Table 12: Index of Implementation Modes

Member State	Application of Articles 4 and 5		Additional Requirements	
	Index	Implementation Mode	Index	Implementation Mode
Austria	5	Flexible	1	Low
Belgium	11	Prescriptive	3	High
Denmark	10	Flexible	2	Low
Finland	15	Prescriptive	3	High
France	17	Prescriptive	5	High
Germany	7	Flexible	2	Low
Greece	15	Prescriptive	1	Low
Iceland	7	Flexible	1	Low
Ireland	7	Flexible	2	Low
Italy	12	Prescriptive	4	High
Luxembourg	11	Prescriptive	0	Low
Netherlands	10	Flexible	5	High
Norway	10	Flexible	3	High
Portugal	11	Prescriptive	4	High
Spain	10	Flexible	3	High
Sweden	4	Flexible	4	High
United Kingdom	15	Prescriptive	5	High

The second column of the table contains a score that reflects how flexible or prescriptive Member States are in their application of Articles 4 and 5. The score for each Member State has been constructed using the information summarised in sections 2 and 3 above. Scores in the index range from four points (Sweden) as the Member State that has implemented Articles 4 and 5 of The Directive with greatest flexibility for broadcasters; and 16 points (France) as the Member State with the strictest application of The Directive. The theoretical maximum score is 20. The third column categorises each Member State as either flexible or prescriptive in its application of Articles 4 and 5, based on whether it has a score of above or below ten.

Columns 4 and 5 of the Table summarise the additional requirements in each Member State, referred to in section 4 above, to increase the quantity and enhance the quality of European and independent production. Scores range from zero (Luxembourg) to five (France, Netherlands and the UK), with a theoretical maximum score of seven.

France, Italy, the Netherlands and the United Kingdom place the most additional requirements on broadcasters. In French Belgium, Finland, Norway, Portugal, Spain and Sweden, some extra requirements are placed on broadcasters. These do not (except in Finland and Portugal) relate to the quantity of European or independent works broadcast. They are measures to influence the quality of qualifying output. However, they also have broadcaster-funded film subsidies. The remainder of Member States have fewest requirements over and above those in The Directive.

Column 5 categorises Member States according to whether they place few or many additional requirements on broadcasters. A score of between zero and two is categorised as low, a score of three or more is categorised as high.

Using these dimensions enables us to locate each Member State within a matrix that describes four implementation modes:

Table 13: Implementation modes

		Application of Directive	
		Flexible	**Prescriptive**
Additional Requirements	**High**	Netherlands Norway Spain Sweden	Belgium Finland France Italy Portugal United Kingdom
	Low	Austria Denmark Germany Iceland Ireland	Greece Luxembourg

Member States in the bottom left-hand corner of the matrix are characterised as having a flexible approach to implementing Articles 4 and 5 of The Directive, and they do not apply substantial additional requirement on broadcasters.

In the bottom right-hand corner, there are Member States that apply The Directive strictly, but do not place significant additional content production requirements on broadcasters. Luxembourg, for example, has implemented Articles 4 and 5 of The Directive strictly – it has powers to revoke a channel's licence where a broadcaster fails to meet the provisions of these Articles – but it places no additional requirements on broadcasters as regards the content of qualifying programming or film funding. In Greece, the wording of The Directive is closely followed in national legislation, but the only content-based requirement relates to the use of the Greek language.

In the top left-hand corner are Member States that have adopted a flexible approach to the implementation of The Directive, but do place significant additional requirements on broadcasters. In the top right-hand corner of the matrix we identify Member States that have adopted a strict implementation of Articles 4 and 5 of The Directive, and that also place significant additional requirements on broadcasters. Finland, for example, places a requirement on its broadcasters that they show at least 15 per cent independent productions. Italy, Portugal and the United Kingdom place significant additional requirements to show independent productions on their public service broadcasters, and France has the widest range of measures to encourage the production and distribution of European and independent works.

The implementation modes are considered in Chapter 8 when we conduct a multivariate regression analysis to establish statistically significant relationships between the modes of implementation and performance by channels against the requirements of Articles 4 and 5.

7 Channel Output Survey

This Chapter outlines our approach to a bespoke survey of channel transmissions in 17 Member States covering the period 1993 to 2002, and then summarises its main findings. It then seeks to reconcile some of the differences between the survey data and the officially reported figures.

7.1 The channel sample

In Chapter 5 we examined the data contained in the biennial reports from the Commission to the Council and Parliament on the application of Articles 4 and 5 of The Directive. We identified certain limitations resulting from the way in which the data is collected and reported. To overcome the limitations of the published compliance data – and to obtain a more detailed dataset that included information about programme genres, etc – we conducted a bespoke survey of the output of 83 channels (73 primary channels and 10 secondary channels) broadcasting in the EU and EEA Member States for a two-week period in each of four years – 1993, 1996, 1999 and 2002. The channel sample base is shown in Table 14.

Table 14: Channel Survey sample base

	Publicly Funded	Advertising Funded	Pay TV	Total
Primary Channels	31	40	2	**73**
Secondary Channels	1	1	8	**10**
Total	**32**	**41**	**10**	**83**

Appendix I describes how the sample was selected and how the survey of channel transmissions was conducted. The survey covers 17 Member States – there are no channels based in Liechtenstein, so there is no population to sample. The channels we sampled were selected to provide, where possible, 70 to 75 per cent of viewing in each Member State. Our methodology was designed to provide robust data for the period 1993-2002, while working within the budgetary constraints of the project and taking account of the availability of archive transmission data back to 1993. Appendix I contains a list of all channels sampled in each Member State, together with the channel segment to which they belong and the audience share in 2002.

Appendices II and III describe our approach to classifying the programme schedule of each channel sampled in the survey. We applied a standard definition of European works and independent production in each Member State. We also created a standard genre set for the study, consisting of eight genres – entertainment, fiction, factual magazine, documentary, cinema film, news and sport and games.

Classifying programmes by genre has enabled us to conduct a more sophisticated analysis of European and independent productions on TV than would be possible using the published compliance data alone. The fact that we applied a consistent methodology to classify the schedule also enables us to make comparisons between channels in different Member States. The remainder of this Chapter describes our findings.

7.2 Overall findings

7.2.1 All channels in our sample

Figure 27 shows the average performance by the channels in our sample against Articles 4 and 5 of The Directive and also the average proportion of qualifying programmes that are non-domestic European works. The estimates have been constructed by calculating a simple average of the primary and secondary channels in our sample (see Table 14 above); as such, the averages are influenced by our channel selection process (described in Section 7.1 and Appendix I). The averages take no account of the number of primary and secondary channels actually broadcasting in the EU or the share of viewing on primary and secondary channels. In order to reach a more differentiated picture, we examine primary and secondary channels separately as presented in Sections 7.3 and 7.4 below.

Figure 27 shows that the average ratio of European works in qualifying transmission time of the channels in our sample has risen from 52.1 per cent in 1993 to 57.4 per cent in 2002.

The average proportion of independent productions in qualifying transmission time for the channels in our sample has increased from 16.2 per cent in 1993 to 20.2 per cent in 2002. The share of recent independent productions as a proportion of total qualifying transmission hours for the channels in our sample has increased from 11.3 per cent to 15.7 per cent – equivalent to 77.8 per cent of all independent productions.

These estimates are lower than the performance against Articles 4 and 5 that is reported by Member States and summarised in Figure 25 above. Some of the problems associated with the data collected by Member States which may contribute to this discrepancy are described in Section 5.2.1; in Appendix IV we report that, in the case of the independent production ratio, our estimated averages are consistently around 11% lower than the corresponding reported figures. In applying a consistent definition across all Member States, we may have applied a stricter definition of an independent producer than that used in many Member States.

Figure 27 shows that the share of qualifying transmission time devoted to works made in another European country (we call them "non-domestic European works") increased from 10.9 per cent in 1993 to 13.9 per cent in 1999; it has subsequently fallen to 12.3 per cent in 2002.

The recent independent works ratio can also be expressed as a proportion of independent productions. The ratio was 69.5 per cent in 1993, falling to 65.2 per cent in 1996 and thereafter rising to 71.1 per cent in 1999 and 77.8 per cent in 2002. This is presented in Figure 28. These proportions are higher than the reported average for each sample year presented in Figure 26 (and repeated as a grey line in Figure 28); the discrepancy is particularly large in 1993, which could be explained by the fact that – in order to identify what was a recent production in 1993 – we needed production data going back to 1988, which was difficult to obtain in some cases.

Figure 27: Summary chart showing averages for all channels in our sample (1993-2002)

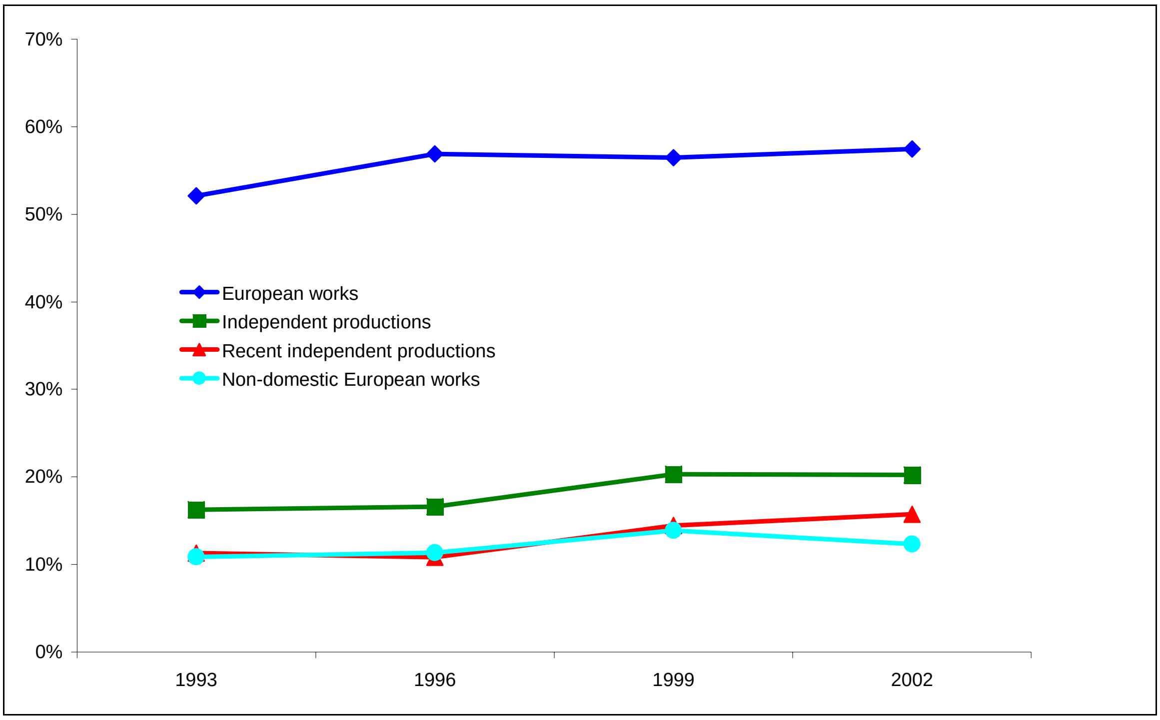
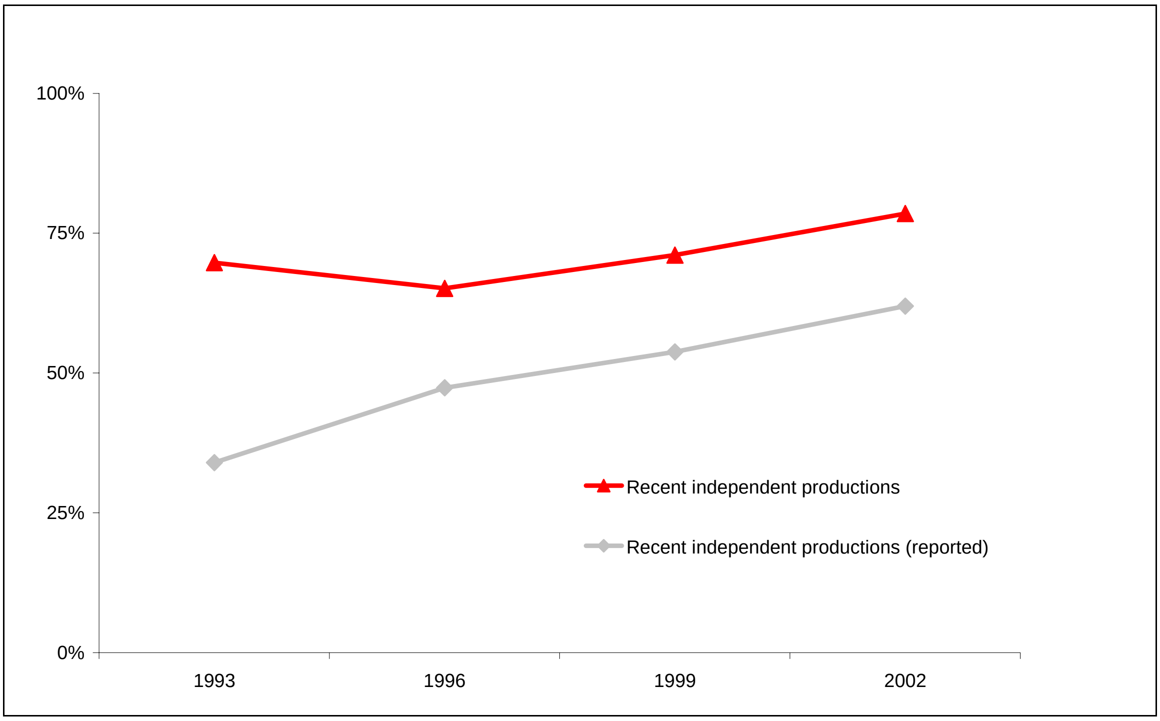


Figure 28: Average proportion of independent productions less than five years old in relation to all independent productions (1993-2002)



7.2.2 Average daily transmission time

The average daily transmission time of the channels in our sample has increased in the period under review. The daily transmission time of primary channels has increased from 17 hours in 1993, to 22¼ hours in 2002 (Figure 29). However, the share taken by advertising, non-qualifying programmes and qualifying programmes has been stable over the period (see Figure 30).

Figure 29: Average daily transmission time on primary channels (1993-2002)

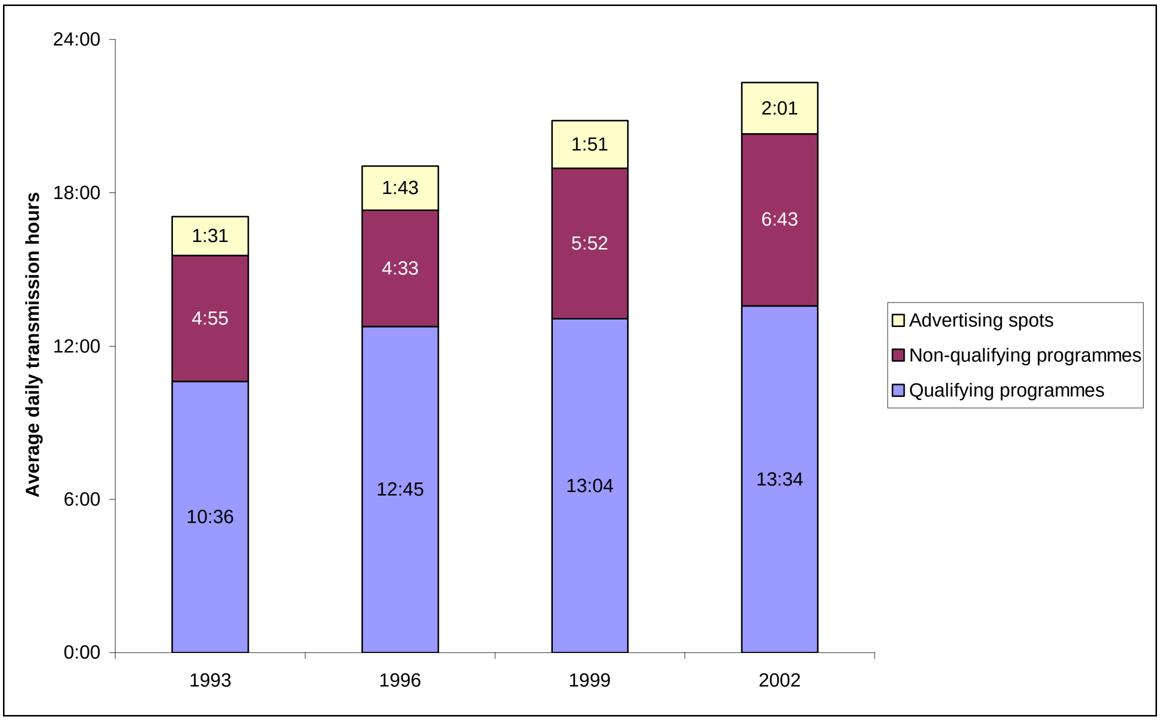
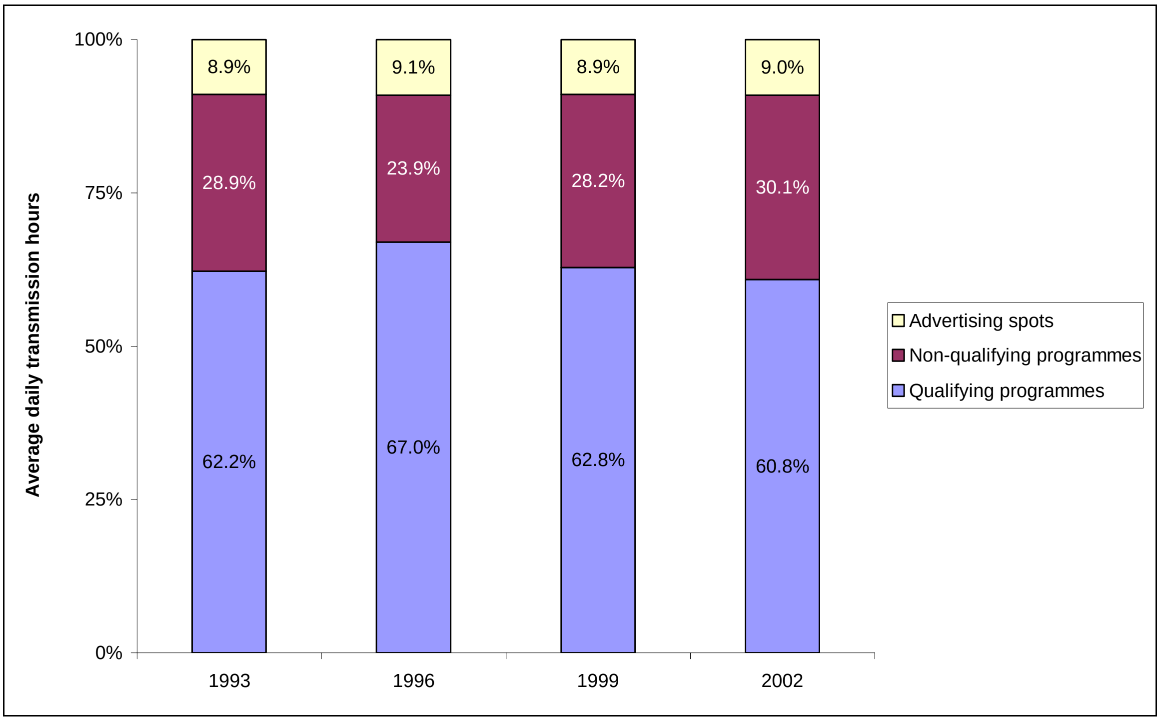


Figure 30: Average percentage breakdown of transmission time on primary channels (1993-2002)



In the period 1993 to 1999, secondary channels (Figure 31) broadcast for a longer period of each day than primary channels – 23½ hours in 1999, for example – but there was a reversal of this trend in 2002, with primary channels broadcasting for 22¼ hours, compared with 20¾ hours for secondary channels. There has been a small decrease in the proportion of qualifying hours in the schedule, caused by an increase in the time devoted to adverts and – to a lesser extent – a growth in the share of the schedule devoted to non-qualifying programmes (Figure 32).

Figure 31: Average daily transmission time – secondary channels (1993-2002)

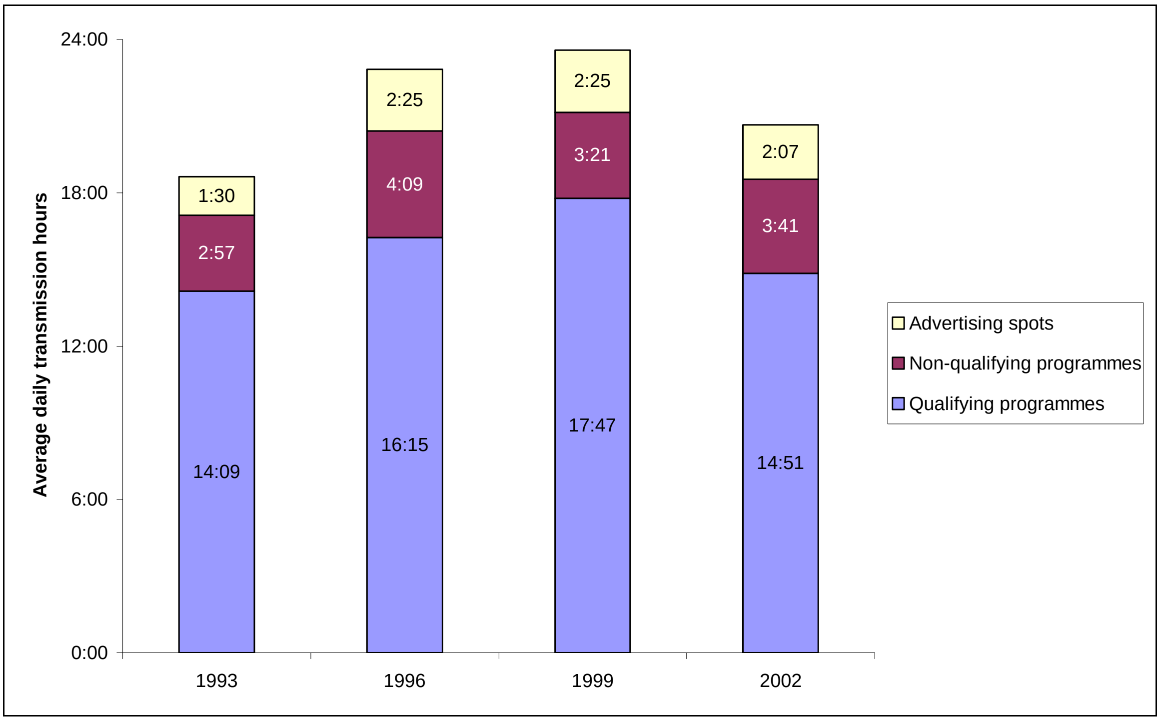
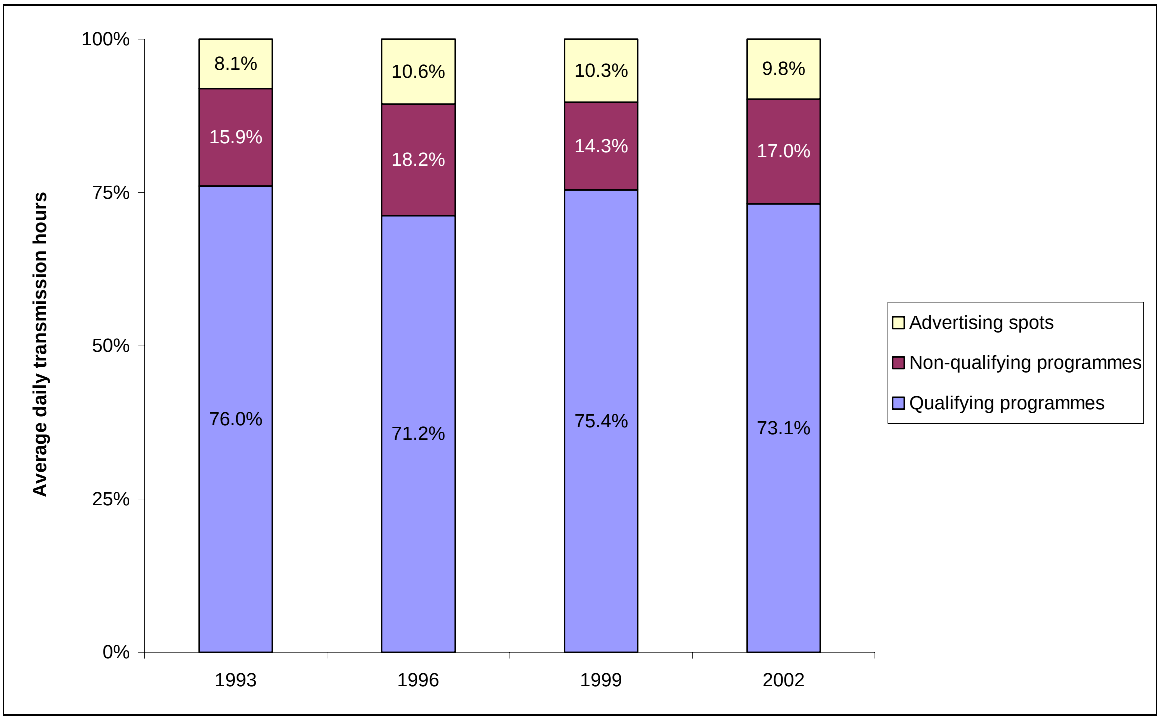


Figure 32: Average percentage breakdown of transmission time on secondary channels (1993-2002)



Publicly funded channels tend to have a shorter average daily transmission time than advertising or subscription funded channels. In 2002, for example, publicly funded channels broadcast on average almost 22 hours per day, compared with 22¼ hours for advertising funded channels and 22½ hours for pay TV channels. The average transmission time set aside for adverts on advertising funded channels has grown from 2¼ hours per day in 1993, to 3 hours per day in 2002 (7½ minutes per hour).

The average daily hours of qualifying programmes (that is, programmes belonging to the following genres – cinema film, documentaries, entertainment shows, factual magazines and fiction) on primary channels has increased from about 10½ hours per day in 1993, to 13½ hours per day in 2002. On secondary channels, the average daily qualifying hours have increased from about 14 hours per day in 1993 to over 14¾ hours per day in 2002.

The increase of 27.9 per cent in the average qualifying hours per day on primary channels and 4.9 per cent on secondary channels between 1993 and 2002 means that, even if there has been no improvement in the performance by channels against the requirements of Articles 4 and 5, there has been a significant increase in European works and independent productions broadcast in the EU.

7.2.3 Member State averages

We have constructed national averages for the proportion of qualifying transmission time devoted to European works and independent productions in 2002, the share of non-domestic European works in qualifying transmission time, and the change in these sets of variables between 1993 and 2002. These estimates are reproduced in Figure 33 to Figure 38 below. It should be noted that these estimates are simple averages of our sample data for each Member State and not an average of all channels broadcasting in that Member State. The limitations of the methodology used to construct these figures are set out in Section 7.2.4.

European works

Figure 33 shows that the average proportion of qualifying transmission time devoted to European works across the EU was 57.4 per cent in 2002. A majority proportion of qualifying works are of European origin in every Member State except Ireland, Sweden and Spain. Figure 34 shows the percentage point change in the average proportion of qualifying works between 1993 and 2002. So in Ireland, for example, the share of qualifying hours devoted to European works in 1993 was 57.0 per cent and in 2002 it was 43.5 per cent – a fall of 13.5 percentage points between the two dates. Our data tells us that there has also been a fall in the share of European works in the period 1993 to 2002 in Sweden, Luxembourg and Austria. Across the EU as a whole the average has increased by five percentage points, from 52.1 per cent in 1993 to 57.4 per cent in 2002; this is a greater increase than we found in the reported data (see Figure 25 and Table 4 in Chapter 5).

In Section 8.1 we find evidence of a strong relationship between the strictness with which Articles 4 and 5 are applied and the rate of change in the ratio of European works to total qualifying transmission time between 1993 and 2002. This is an important finding because it tells us that, in Member States where Article 4 has been strictly applied, there has been a greater increase in the European works ratio than in Member States where Article 4 has been implemented flexibly.

Figure 33: Qualifying European works as a percentage of qualifying hours (2002)

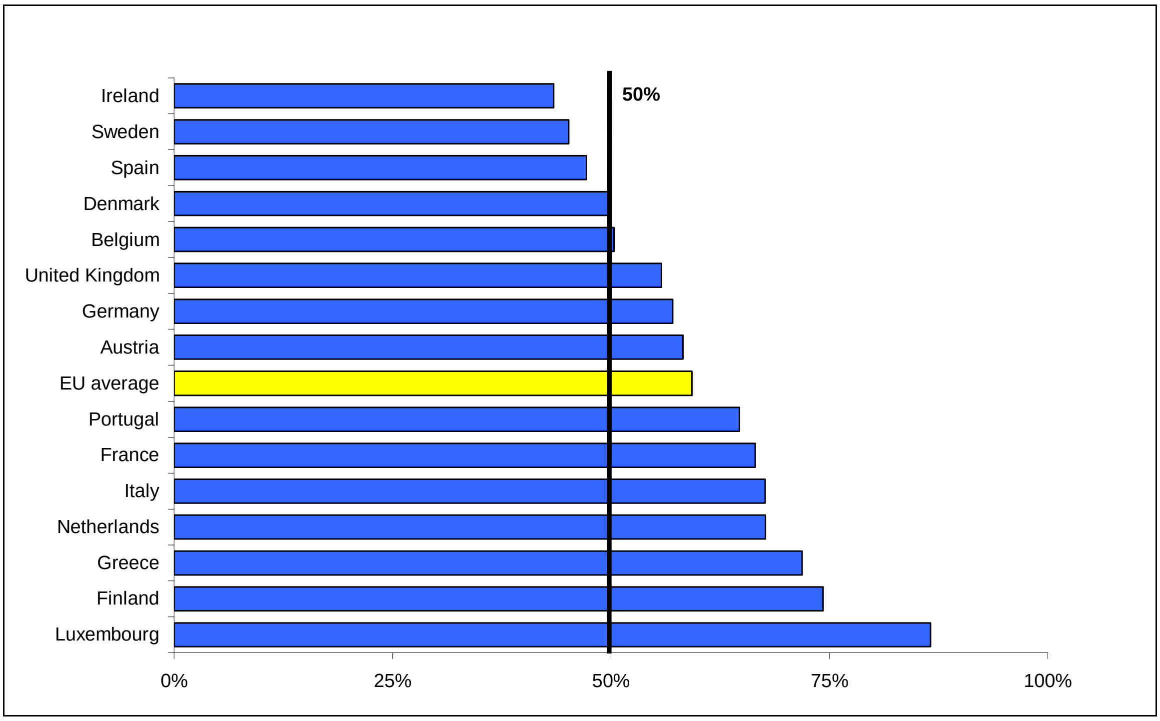
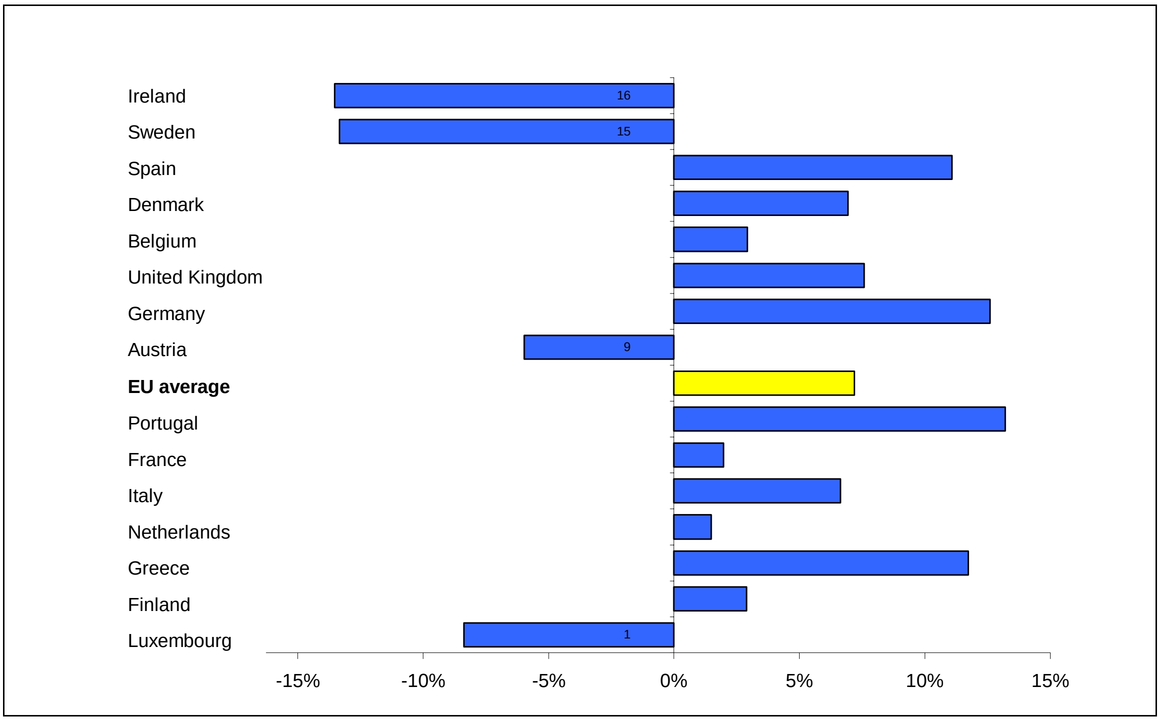


Figure 34: Change in the percentage of Qualifying European works (1993-2002)



Independent productions

Figure 35 shows that the average proportion of qualifying transmission time devoted to European-made independent productions was 20.2 per cent in 2002, with only Luxembourg and Portugal failing to meet the requirement. As Figure 36 shows, the average proportion of qualifying transmission hours devoted to European-made independent productions across the EU has increased by 4 percentage points between 1993 and 2002, from 16.2 per cent (this is close to the 5 per cent increase from the reported data (see Figure 25 and Table 7 in Chapter 5). The proportion has also increased in all Member States except Italy, Portugal and Austria.

The proportion of qualifying transmission time in France devoted to independent production was 43.0 per cent in 2002, which is significantly higher than the average of all Member States. We have noted already in Chapter 6 that France is highly prescriptive in the way that Articles 4 and 5 are applied, and it places significant additional requirements on broadcasters, such as targets for the share of budget as well as share of transmission time devoted to independent productions (for more information see Table 50, Appendix V). We have also noted (in 6.2.4) that, in the period of our study, France is the only Member State which includes retention of secondary rights as one of the criteria for defining an independent producer. In section 8.2.3 we find a positive relationship between the strictness with which Articles 4 and 5 are applied and the proportion of independent works in the schedule.

Figure 35: Qualifying independent productions as a percentage of qualifying hours (2002)

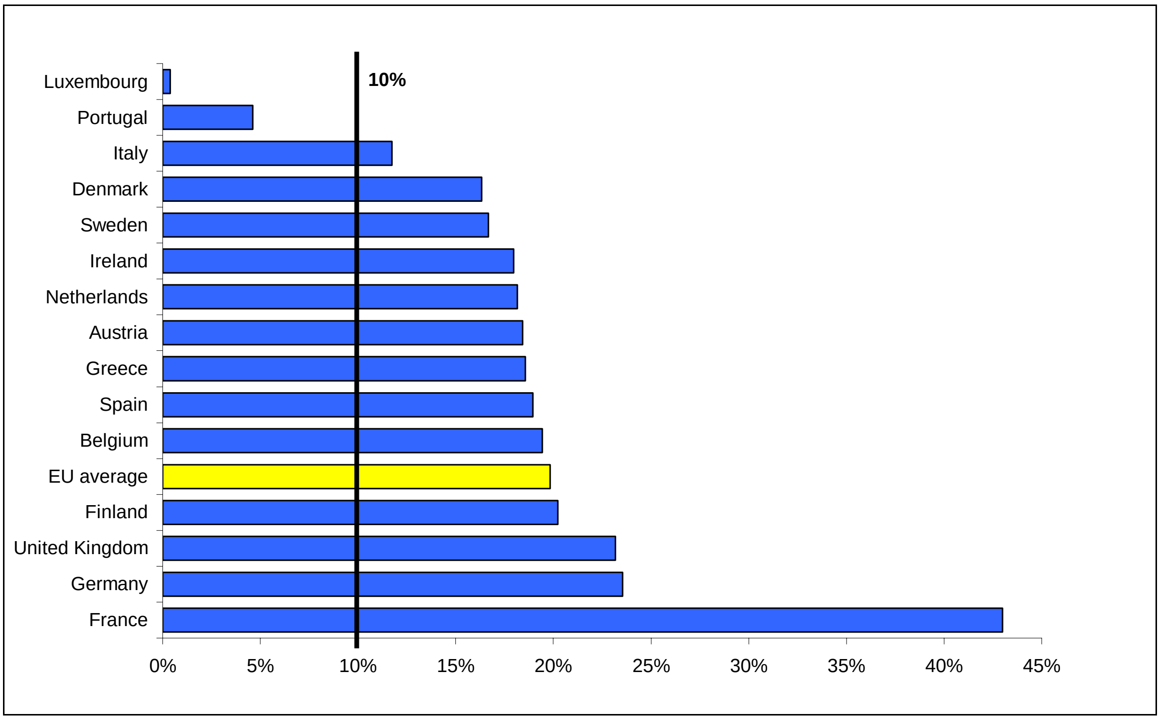
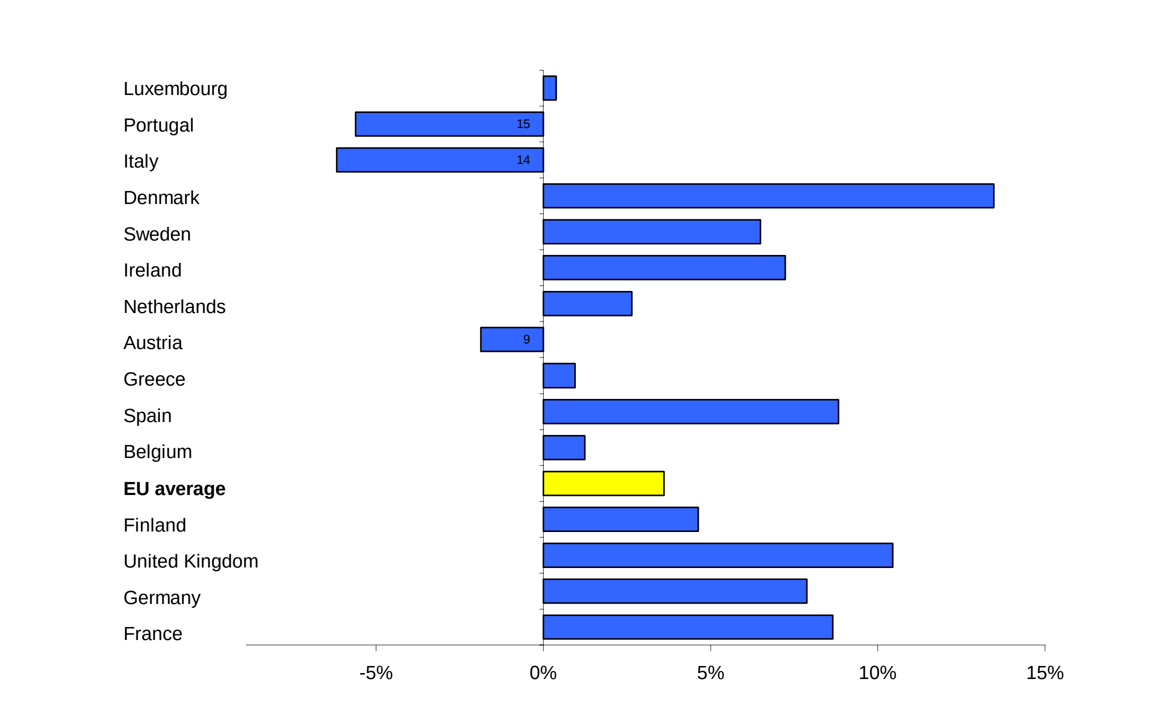


Figure 36: Change in the percentage of Qualifying independent productions (1993-2002)



Non-domestic European works

The proportion of qualifying European works broadcast in each Member State that are produced in another country varies between zero per cent (in the UK and – based on a restricted channel sample selection – Luxembourg[44]) to a majority (53.3 per cent) in Ireland. Generally we find that smaller Member States that share a language with a larger neighbour (Ireland, Austria and Belgium) have the highest proportion of imported European works; and the largest TV markets (France, Germany, Italy, Spain and the UK) have the smallest proportion. This is illustrated in Figure 37.

Between 1993 and 2002, the share of qualifying programmes that are non-domestic European works grew in those Member States where the proportion was already high (Ireland, Finland and Sweden, for example). This trend may reflect the price and quality of imported works from larger neighbouring countries relative to domestic productions, which makes it more cost effective for broadcasters in these Member States to meet the requirements of Article 4 using non-domestic European works. It also suggests that audiences in these Member States are happy to see non-domestic European works fill a growing proportion of the schedule (Figure 38).

Conversely, the share of qualifying programmes that are non-domestic European works has fallen in those Member States where it was historically low (the UK, Spain, Italy and Germany), implying that audiences in these markets favour domestic production, and broadcasters are responding to this demand.

[44] Our sample for Luxembourg comprises one channel – Tele Luxembourg – which broadcasts a mix of news and factual magazine programming for domestic consumption and occasional US fiction imports.

Figure 37: Non-domestic European works as a percentage of qualifying hours (2002)

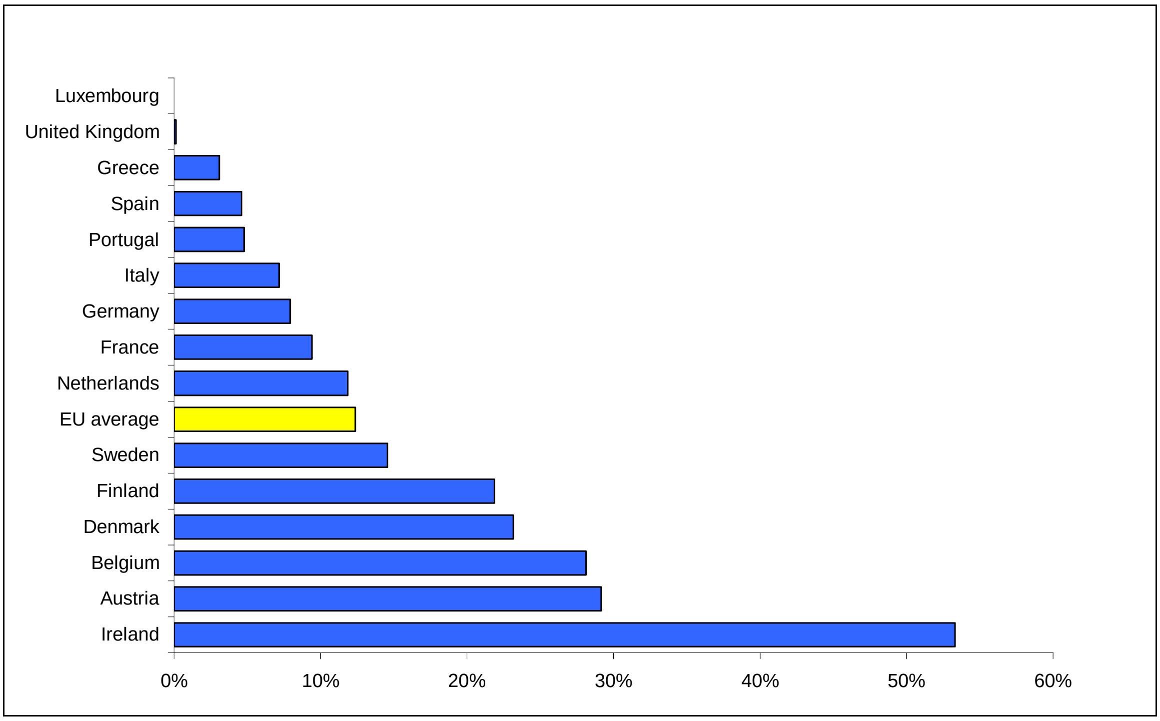
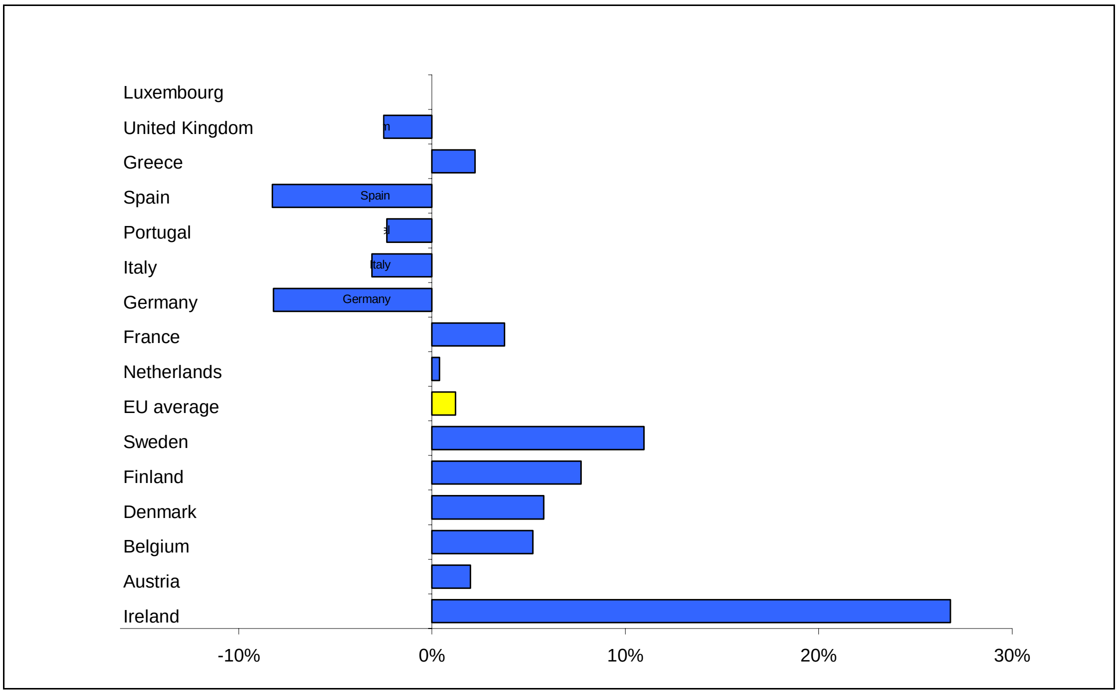


Figure 38: Change in non-domestic European works as a percentage of qualifying hours (1993-2002)



7.2.4 Why we have decided to analyse our data by channel group and not by Member State

While the Figures in Section 7.2.3 provide a useful snapshot of the position in each Member State at a point in time and of changes over the period 1993 to 2002, but there are limitations in the way that the figures have been derived which mean they should be treated with caution.

The national averages have been constructed using channels which, together, account for less than 100 per cent of viewing in each Member State, so, for example, in Ireland we have not sampled TG4, which broadcasts a substantial majority of European works and would therefore improve the overall national average. In the UK we did not sample Five, which is a channel without an in-house production capability, so it makes extensive use of the independent production sector; its exclusion reduces the UK's average for independent productions. These factors are a consequence of data and budgetary constraints in the conduct of the survey.

In the case of Denmark, Sweden and The Netherlands, the national averages include channels which broadcast from outside the Member State (TV3 in Denmark, TV3 in Sweden and RTL4 and RTL5 in the Netherlands); the channels have been included because they attract a significant proportion of viewing in the respective markets. However, a more accurate reflection of the application of Articles 4 and 5 by the Danish or Dutch regulatory authorities would be gained by excluding these channels from the calculation of the national averages. We analyse the performance of channels regulated in another Member State in Section 7.6.

Our sample of ten secondary channels for 2002 draws disproportionately on a few countries – especially the UK – which tends to bring down the UK's average. Also, data for secondary channels is not available in all cases back to 1993 (or the channels were not broadcasting then) so comparisons across time are imperfect.

In the remainder of this Chapter we use our channel segmentation into primary and secondary channels as the main basis for analysis. This provides more robust results than looking at each national market in isolation, because findings are based on a larger channel sample and they are more representative for each channel segment than the data presented above for individual Member States.

7.3 Primary Channel Trends

7.3.1 Qualifying transmission hours

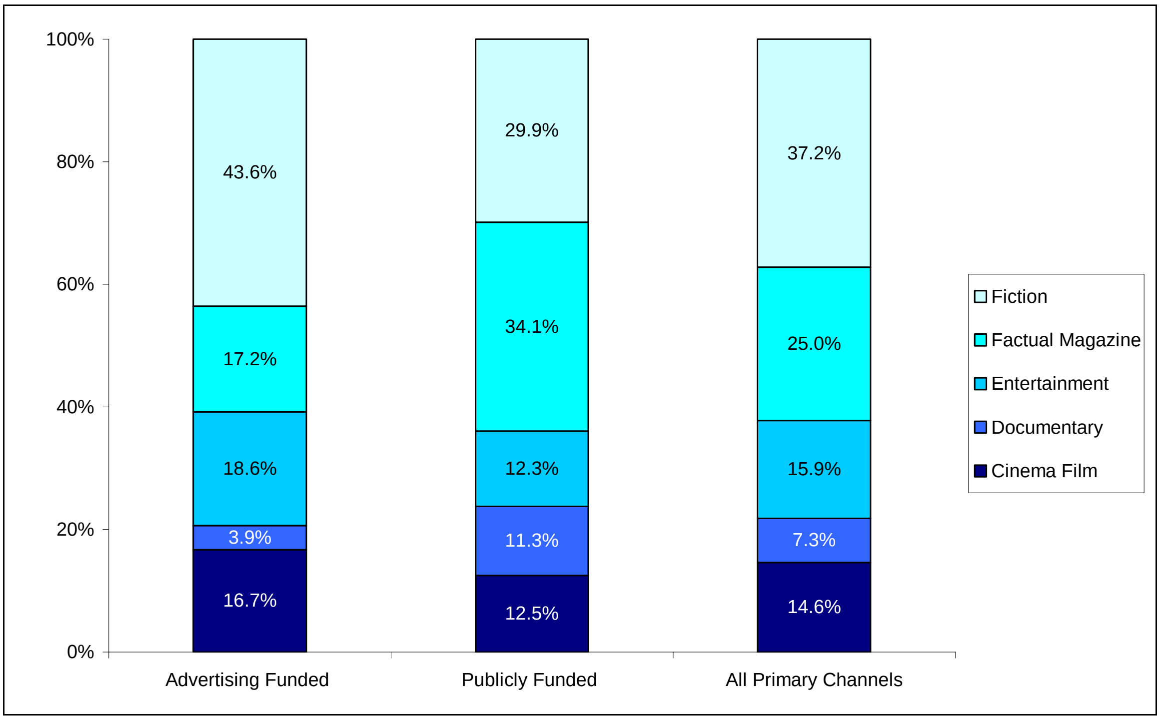
Qualifying programmes filled, on average, approximately two thirds of the total transmission hours of the primary channels in our sample. The average proportion for primary channels varied between 60.8 per cent (2002) and 67.0 per cent (1996) but there is no discernable trend in the data.

Primary channels typically rely heavily on fiction and factual magazine programmes. Fiction programmes make up the largest share of all qualifying transmission hours in the schedule of a typical advertising funded channel – 43.6 per cent according to our sample. Entertainment shows, factual magazine programmes and cinema films fill 18.6 per cent, 17.2 per cent and 16.7 per cent of qualifying transmission hours respectively. Advertising funded primary channels devote only 3.9 per cent of qualifying transmission hours to documentaries.

Publicly funded primary channels have a different schedule, with more documentaries (11.3 per cent of a typical schedule), more factual magazine programmes (34.1 per cent of the schedule) and less fiction, entertainment and cinema film.

This is illustrated in Figure 39.

Figure 39: All qualifying transmission hours by genre (average of all primary channels in our sample, 1993-2002)



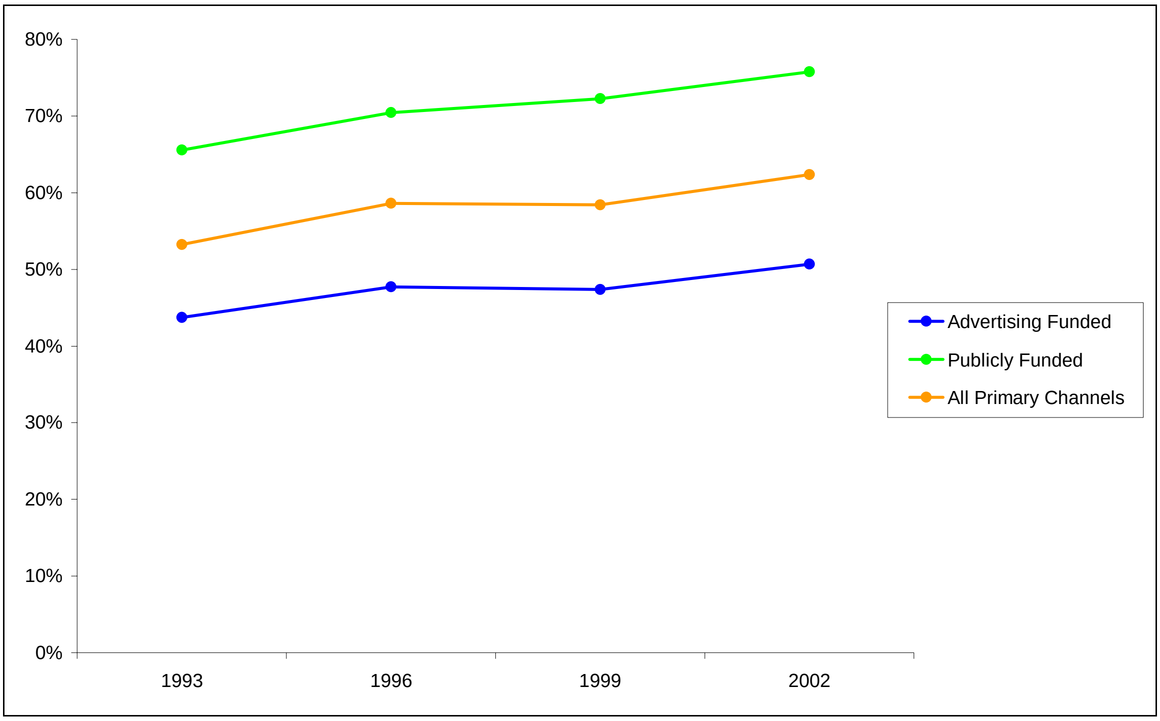
7.3.2 The share of European works in qualifying transmission hours

Primary channels reserved a majority proportion of qualifying transmission hours to European works in each of the four sample years. Also, the proportion of European works has grown between 1993 and 2002.

On primary channels, the proportion of qualifying transmission hours that are filled with programmes of European origin has increased by more than 17 per cent over the period under review – from 53.2 per cent in 1993 to 62.4 per cent in 2002.

Primary channels that are publicly funded devote the highest proportion of qualifying transmission hours to European works and again this proportion has grown between 1993 and 2002 – from 65.6 per cent in 1993 to 75.8 per cent in 2002. Advertising funded primary channels devote a smaller proportion of qualifying transmission hours to European works than do publicly funded channels; however, the proportion has grown at a faster rate than that of the publicly funded channels between 1993 and 2002. The average for advertising funded primary channels was less than 50 per cent at the beginning of our study – 43.7 per cent in 1993 – but has increased to represent a majority of qualifying transmission hours – 50.7 per cent – in 2002.

Figure 40: European works as a proportion of qualifying transmission hours (1993-2002)



Averages can be misleading if there is significant bunching, or a small number of channels that perform significantly better – or worse – than the average. We have plotted a distribution chart to show the distribution of primary channels along an axis from 0 per cent to 100 per cent European works in each sample year. The distribution charts for 1993 and 2002 are given as Figure 41 and Figure 42.

Figure 41: Distribution chart for primary channels (European works, 1993)

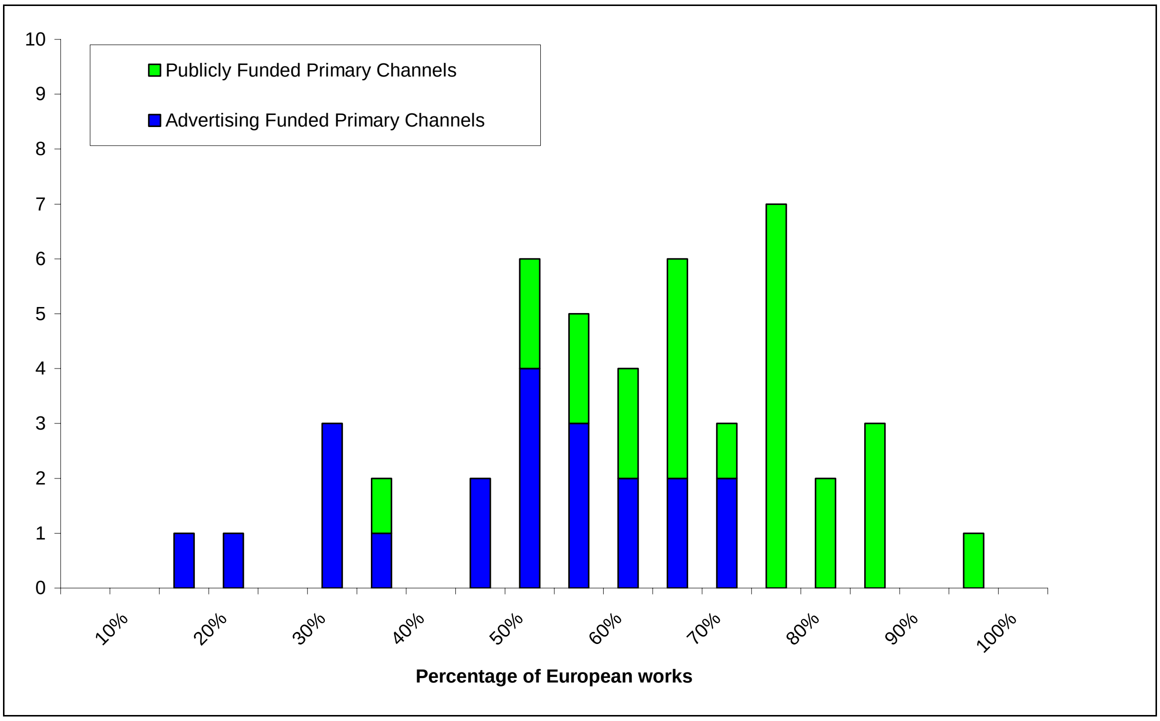


Figure 42: Distribution chart for primary channels (European works, 2002)

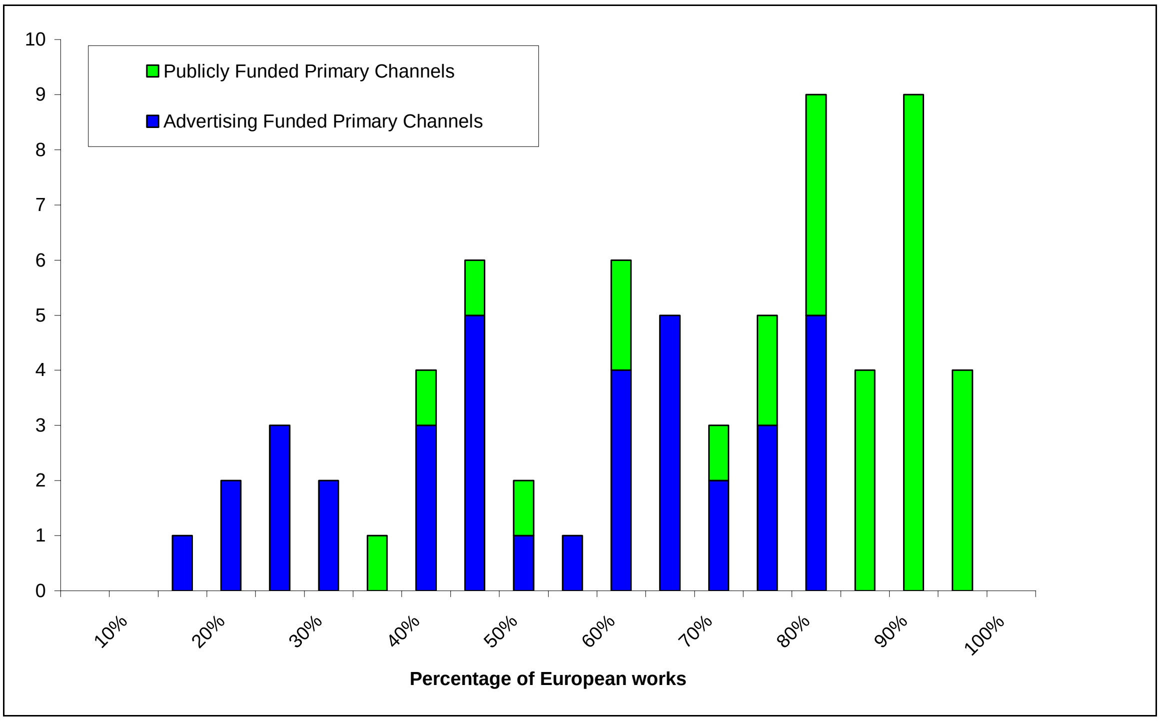


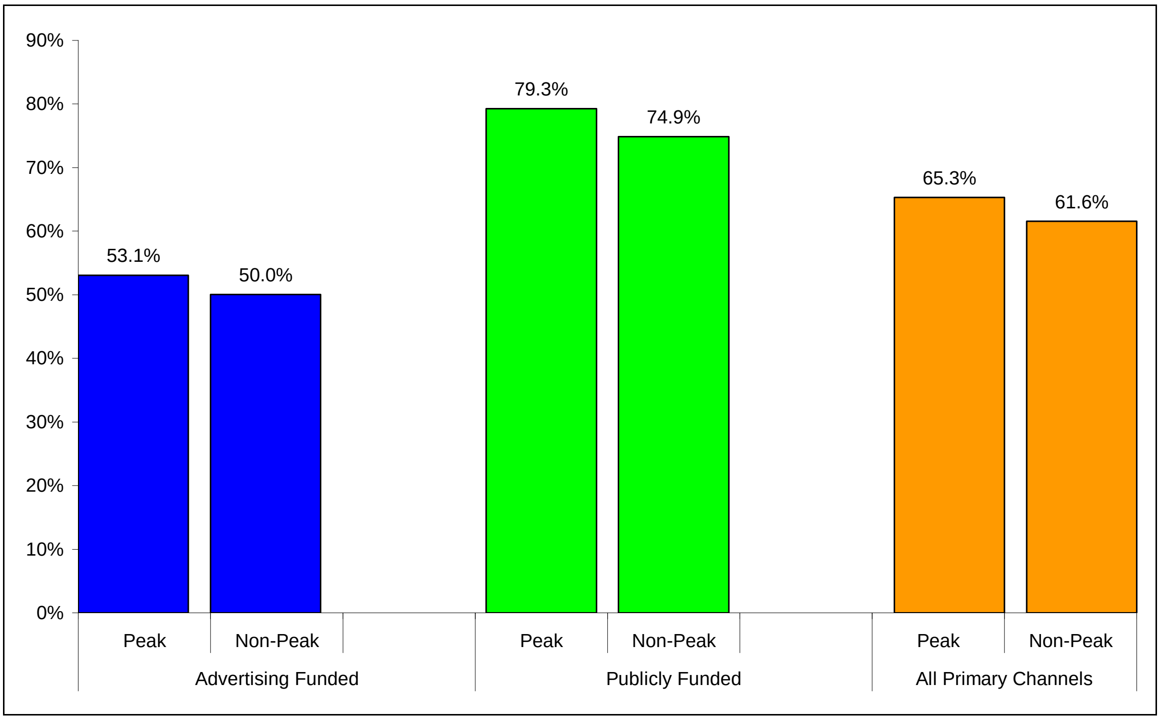
Figure 41 shows a distinct bunching of channels immediately above the 50 per cent minimum necessary in 1993 for the achievement of Article 4, which implies that the measure could have influenced behaviour in that year, forcing a large number of channels to be at, or around, the target percentage. The effect is not visible in Figure 43 covering European works in 2002, which exhibits a strong rightward skew – with a significant number of channels comfortably exceeding the 50 per cent requirement of Article 4 – particularly publicly funded primary channels. Nearly all the channels below 50 per cent are commercial primary channels – especially those at 30 per cent or below.

7.3.3 European works: peak time

Primary channels tend to show a higher proportion of European works in peak time than in the schedule as a whole (we have defined peak time as 18:00 to 23:00 for this study). The average proportion of European works on primary channels in peak time in 2002 was 65.3 per cent, compared with 61.6 per cent in non-peak. This is shown in Figure 43, together with comparisons for the advertising funded and publicly funded primary channel segments.

This is a significant finding because it shows that European works are being broadcast in peak time. It rebuts any suggestion that primary channels are meeting the requirement of Article 4 by showing European works at times of the day when there is less viewing. We found the same pattern of more European works in peak time than in non-peak in each of our sample years.

Figure 43: European works in Peak and Non-Peak (2002)



7.3.4 European works: stock and flow programmes

The division of all qualifying genres into either stock or flow programmes is an approximate measure of the quality of a production, or of the cost per hour of programmes. Stock programmes tend to be more expensive and are made to be repeated, whereas flow programmes have lower production costs and tend to be shown only once. Hence, the balance between stock and flow programmes in the schedule gives some sense of the programme spend of a channel and the quality of its output.

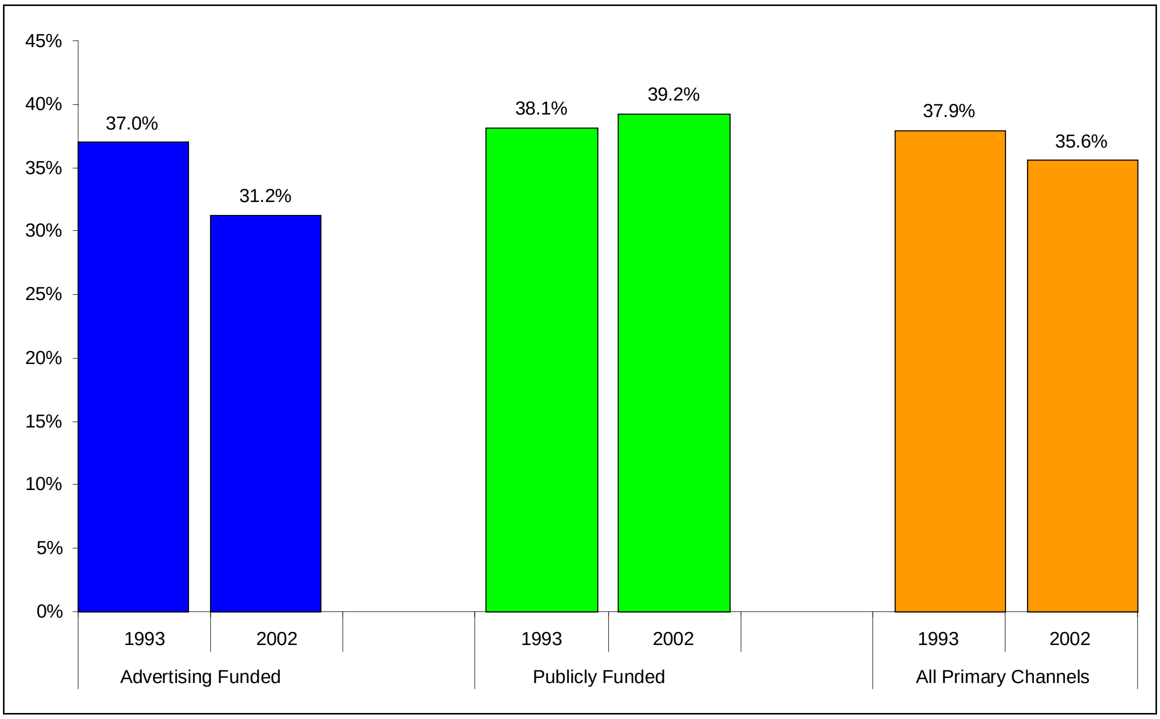
Overall, we find that the proportion of European qualifying programmes on primary channels that are stock programmes has decreased slightly between 1993 and 2002 – from 37.9 per cent in 1993, to 35.6 per cent in 2002. Primary channels have reduced the proportion of (generally more expensive) stock programmes that are European-made, and increased the proportion of (generally cheaper) European flow programmes.

Looking at publicly funded primary channels, we find that the proportion of European stock programmes has increased slightly between 1993 and 2002. In 1993, 38.1 per cent of all qualifying European works broadcast on publicly funded channels were stock programmes: by 1999 this share had grown to 42.3 per cent; it fell slightly to 39.2 per cent in 2002 but is still higher than in 1993.

The proportion of European stock programmes on advertising funded channels is falling; a growing proportion of European works are flow programmes – magazine programmes and entertainment shows – which tend to be cheaper to produce than stock programmes. In 1993, 37.0 per cent of qualifying European works on advertising funded primary channels were stock programmes: by 2002, the share had declined to 31.2 per cent.

These points are illustrated in Figure 44.

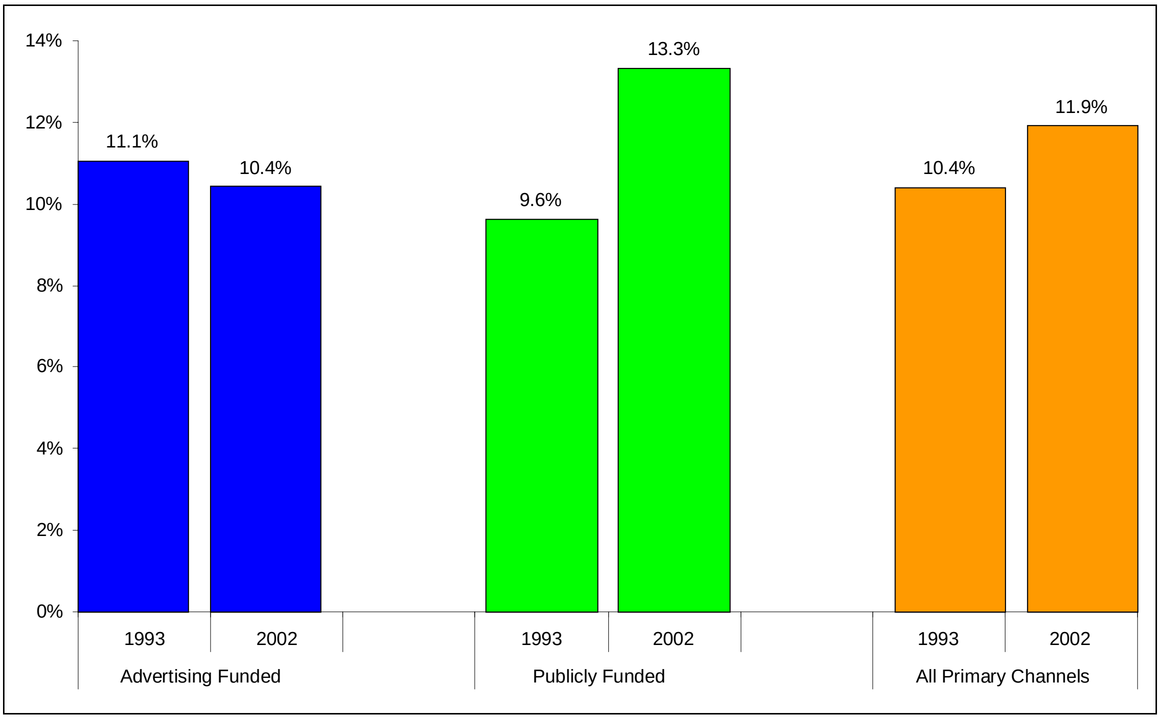
Figure 44: European stock as a proportion of all qualifying European works (1993-2002)



7.3.5 European works: non-domestic qualifying production

The proportion of non-domestic qualifying European works (that is, programmes made in another European country) broadcast by primary channels gives some measure of intra-Community trade in programmes. We found that the average proportion of non-domestic European works, as a share of all qualifying transmission hours, on primary channels has grown by 15 per cent between 1993 and 2002. In 1993, the proportion was 10.4 per cent; in 2002 it was 11.9 per cent. The proportion of European works made in another European country has grown faster on publicly funded channels – from 9.6 per cent in 1993, to 13.3 per cent in 2002. However, it fell on advertising funded channels, from 11.1 per cent in 1993, to 10.4 per cent in 2002. This is shown in Figure 45.

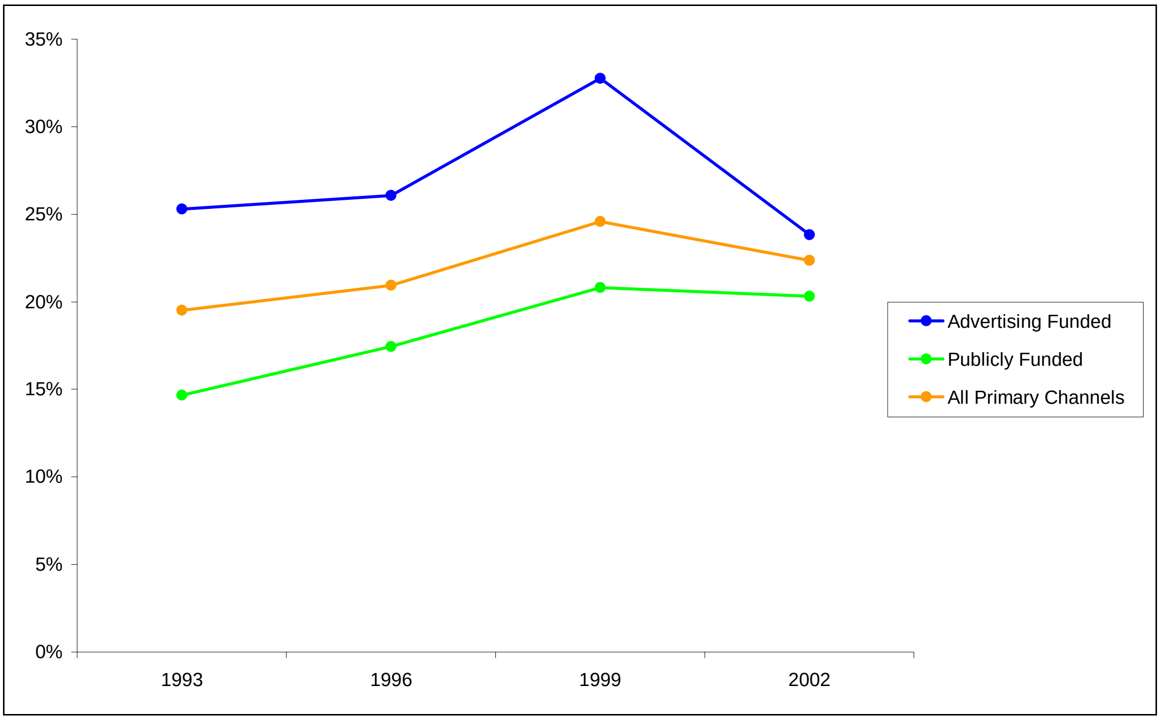
Figure 45: Non-domestic European works as a proportion of qualifying transmission hours (1993-2002)



An alternative way of presenting the amount of non-domestic qualifying European works is to express it as a proportion of all qualifying European works in the schedule. Expressing the proportion in this way provides a measure of the importance of non-domestic works to meeting Article 4. What we find is that the proportion of qualifying European works that are non-domestically produced has increased on publicly funded channels quite considerably, from an average of 14.7 per cent in 1993, to 20.3 per cent in 2002. For advertising funded channels, the proportion increased from 25.3 per cent in 1993 to 32.7 per cent in 1999, before dropping quite considerably to 23.8 per cent in 2002. The average for all primary channels increased from 19.5 per cent in 1993 to 24.6 per cent in 1999, before falling to 22.4 per cent in 2002. This is shown in Figure 46.

The fact that the great majority of non-domestic European works are likely to be stock programmes (flow programmes such as magazine programmes, talk shows, current affairs programmes, etc tend not to be of interest to audiences outside their domestic market) means that the increase, despite being small, is noteworthy.

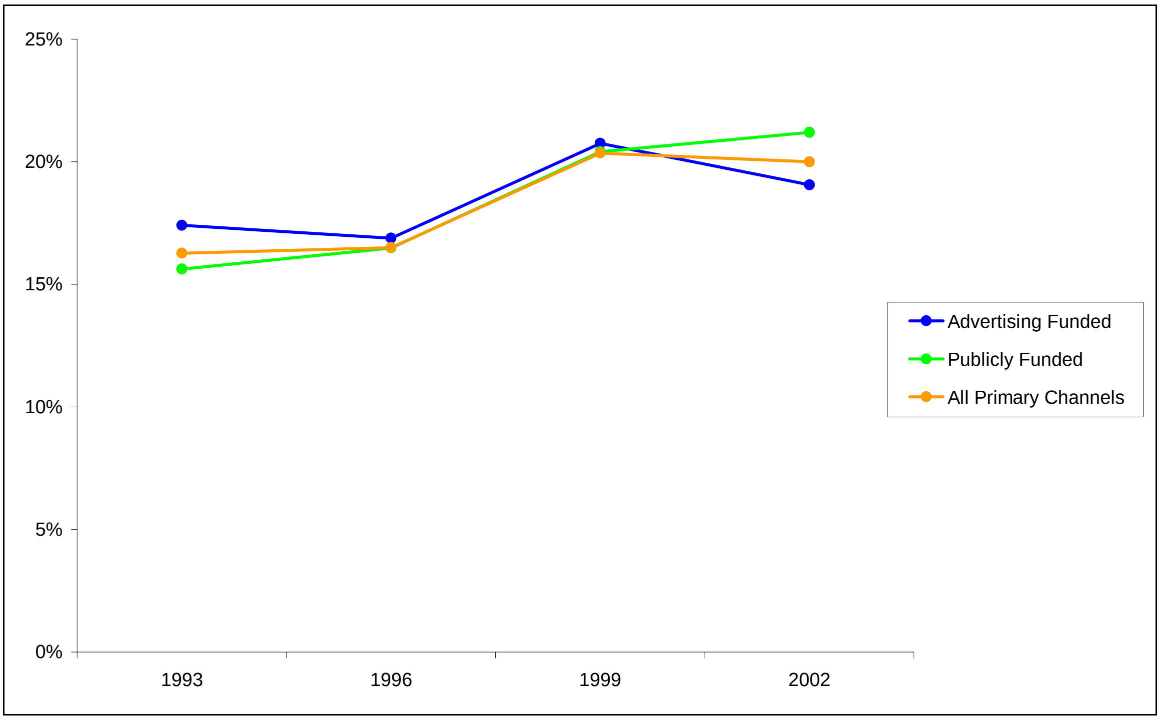
Figure 46: Non-domestic European works as a proportion of qualifying European works (1993-2002)



7.3.6 Independent productions

The average proportion of qualifying transmission time that primary channels devote to independent productions has grown from 16.3 per cent in 1993 to 20.0 per cent in 2002. This is an increase of 22.8 per cent in the period under review. Publicly funded channels have increased the proportion of independent productions in qualifying transmission hours most, from 15.6 per cent in 1993 to 21.2 per cent in 2002, an increase of more than a third (35.7 per cent) in the period 1993-2002. This is shown in Figure 47.

Figure 47: Independent productions as a proportion of qualifying transmission hours (1993-2002)



We have constructed distribution charts to show the distribution of primary channels along an axis from 0 per cent to 50 per cent independent productions as a proportion of qualifying transmission hours in each sample year. The distribution charts are given as Figure 48 to Figure 51.

Figure 48 and Figure 49 show a distinct bunching of channels immediately above the 10 per cent minimum necessary for the achievement of Article 5, which implies that the measure could have influenced behaviour initially, forcing a large number of channels to be at, or around, the target percentage.

The charts show that a majority of channels devote 20 per cent or less of their qualifying transmission hours to independent productions. The charts have a long tail of channels that significantly exceed the ten per cent minimum required by Article 5 – 30 per cent or more of qualifying programme hours on these channels are independent productions. These channels increase the average for all primary channels. In 1993, the median channel has a ratio of just less than 12.5 per cent – in other words, half of all primary channels in our sample had less than 12.5 per cent independent productions during qualifying transmission hours. In 2002, the median was 18.2 per cent.

Figure 48: Distribution chart for primary channels (independent productions, 1993)

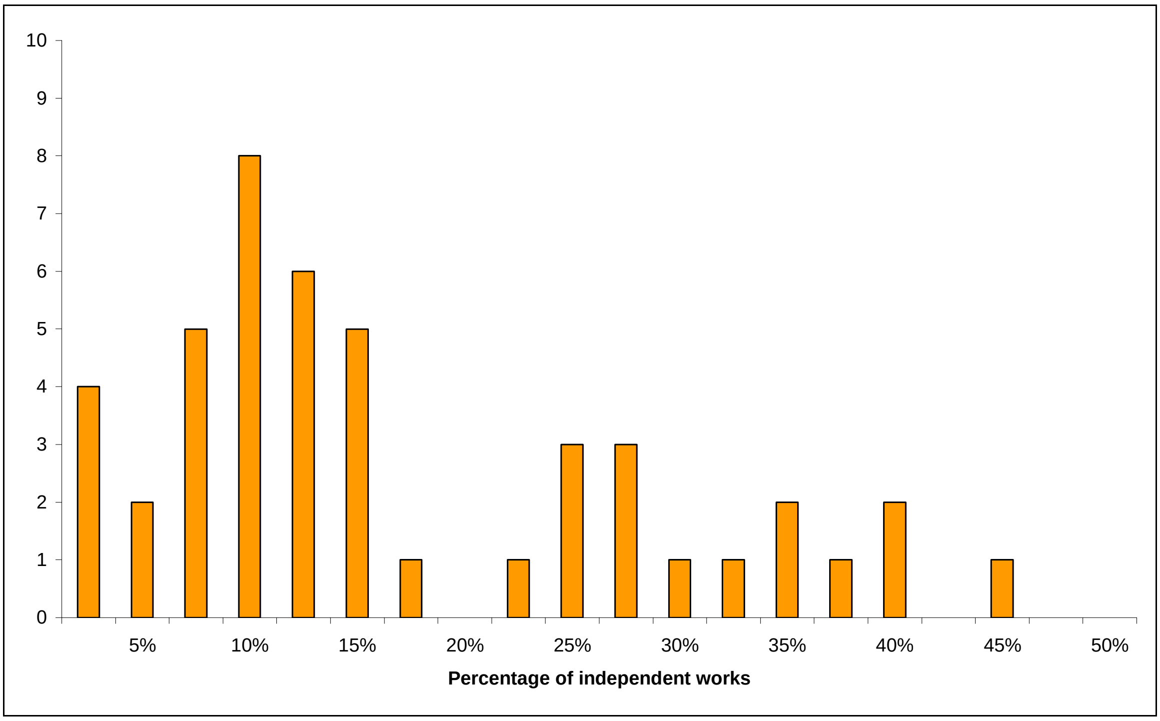


Figure 49: Distribution chart for primary channels (independent productions, 1996)

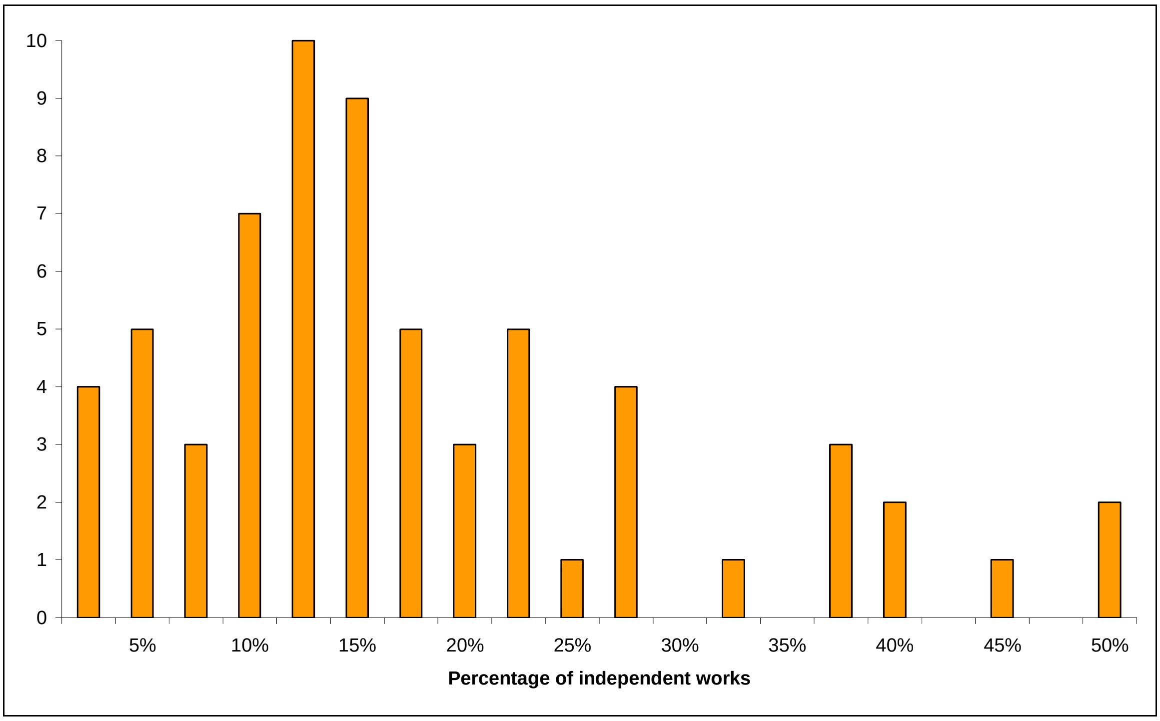


Figure 50: Distribution chart for primary channels (independent productions, 1999)

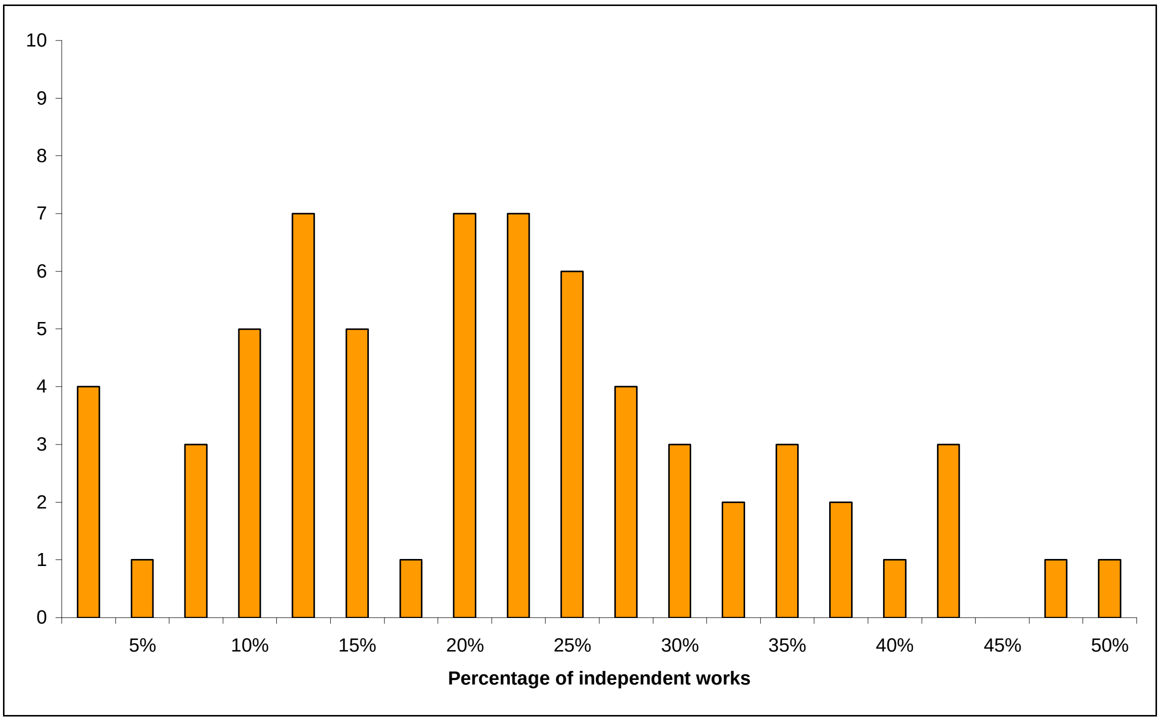


Figure 51: Distribution chart for primary channels (independent productions, 2002)

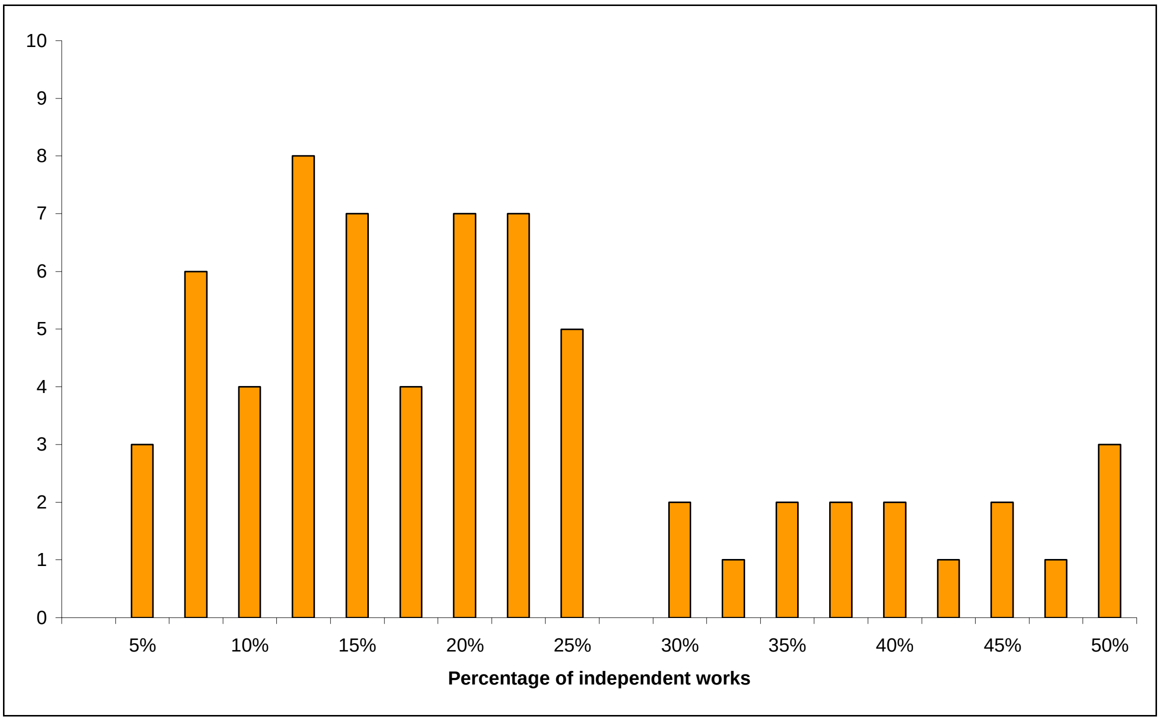


Figure 52 shows that primary channels broadcast, on average, a higher proportion of European-made independent productions in peak time than in non-peak time. We have found that advertising funded channels have consistently shown a higher proportion of European works by independent producers in peak time than in non-peak time in each of the four sample years. In contrast, publicly funded channels showed a lower proportion of independent productions in peak time than in non-peak in 1993 and 1996. This pattern was reversed in 1999 and 2002 (see Figure 53).

Figure 52: Independent productions in Peak and Non-Peak on primary channels (2002)

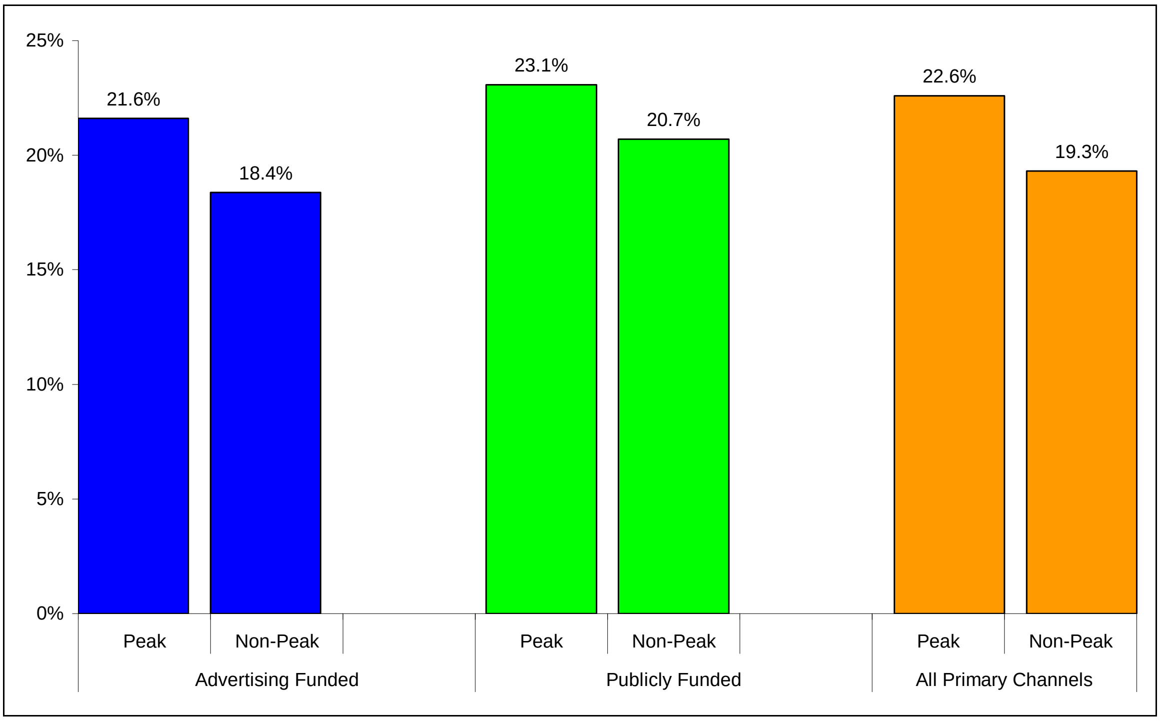
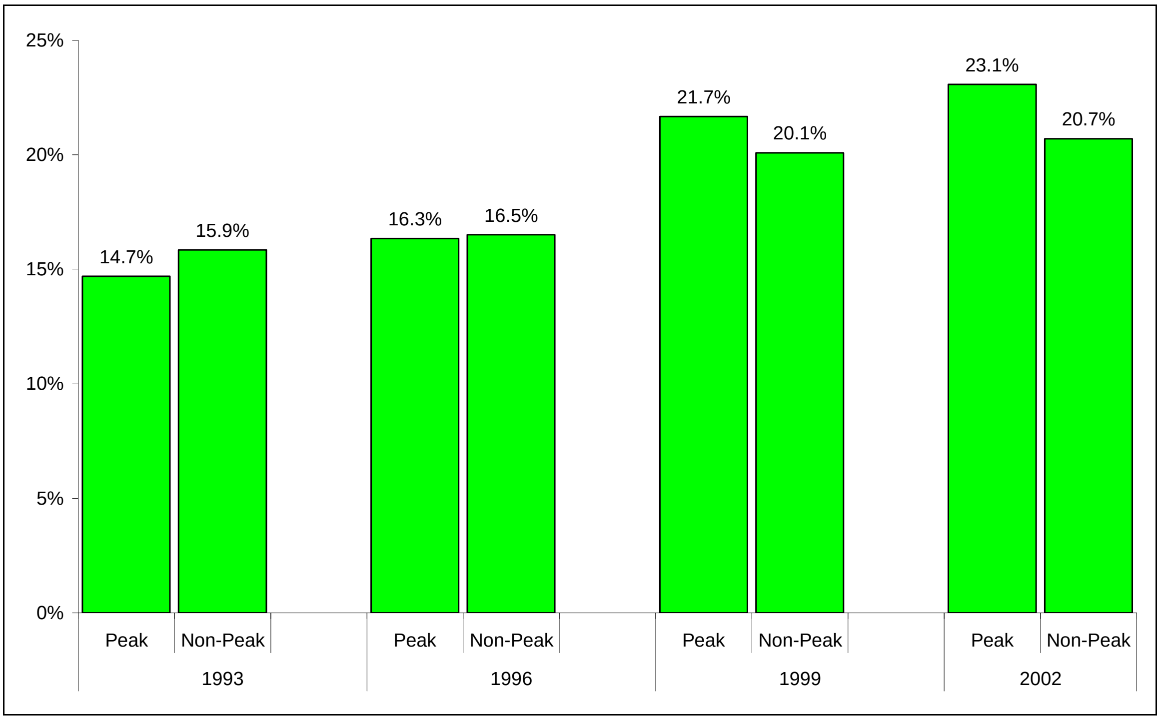
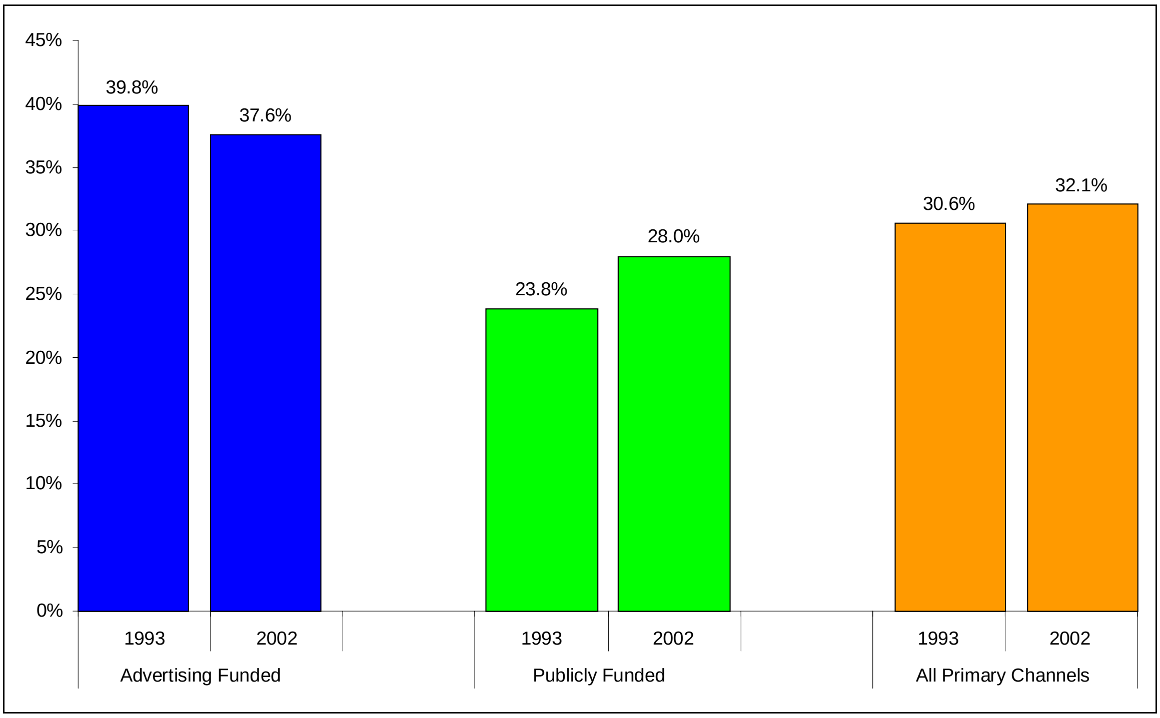


Figure 53: Independent productions in Peak and Non-Peak on publicly funded primary channels (1993-2002)



The volume of independent productions in the schedule can be expressed as a proportion of qualifying European works, rather than of all qualifying programmes. This enables an analysis of the importance of programme supply by independent producers to the fulfilment by broadcasters of Article 4. We find that, for primary channels, the average proportion of European works supplied by independent producers has increased somewhat – from 30.6 per cent in 1993 to 32.1 per cent in 2002. This is largely explained by the behaviour of publicly funded primary channels, which have been sourcing a growing proportion of European works from independent producers – 23.8 per cent of European works in 1993, and 28.0 per cent in 2002. Given that publicly funded broadcasters tend to have large in-house production capabilities, this increase is probably explained by regulatory interventions at national level.

Figure 54: Independent productions as a proportion of qualifying European works (1993-2002)



7.3.7 Independent production on primary channels by genre

Our sample suggests that a high proportion of the programmes that primary channels commission from independent producers are in expensive genres (particularly fiction and cinema film). In 2002, an average of 28.8 per cent of independent productions broadcast on primary channels were fiction programmes: more than any other genre. An additional 12.6 per cent of programme hours by independent producers were documentaries, and 11.0 per cent were cinema film. This is an important finding given that fiction, documentaries and cinema film tend to have a higher cost per hour of production than other genres.

The qualifying European works produced in-house by primary channels tend to be lower cost per hour production – for example factual magazine programmes and entertainment programmes. Over half – 52.8 per cent – of the programmes produced in-house and broadcast on primary channels in 2002 were factual magazine programmes: 24.6 per cent were entertainment programmes. Only 13.6 per cent of in-house production was of fiction and cinema film; documentaries accounted for nine per cent of the programme hours produced in-house. This is shown in Figure 55.

Figure 55: Qualifying European works by genre: independent and in-house production (1993-2002)

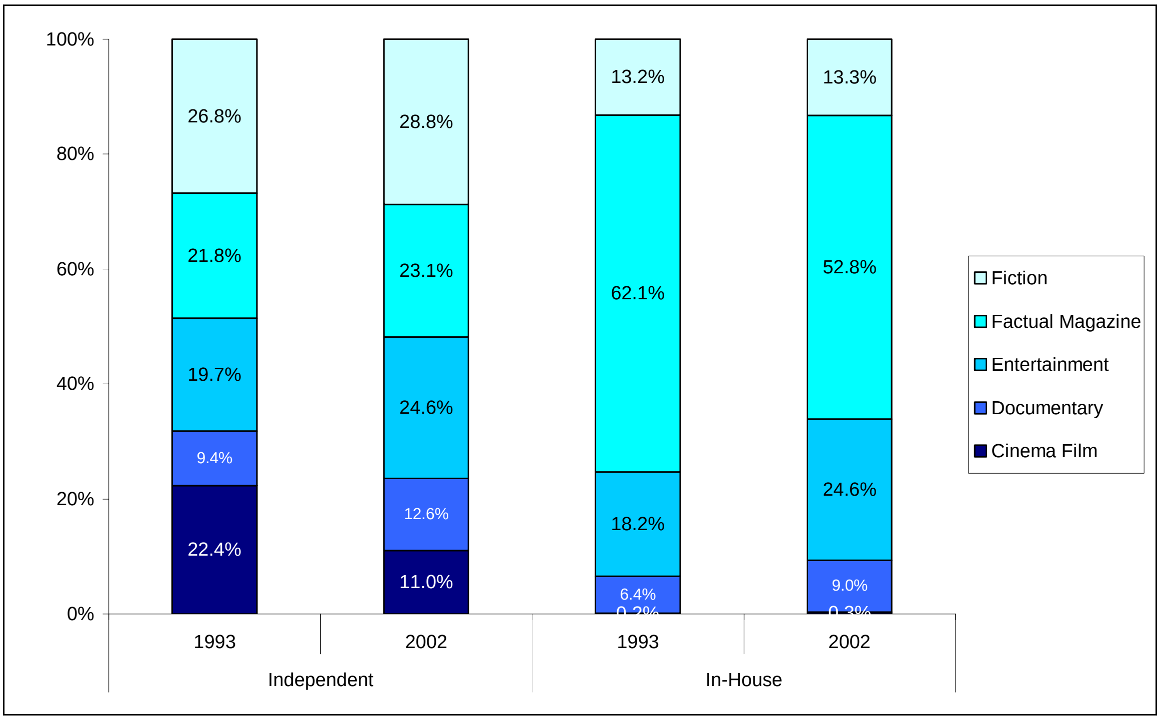


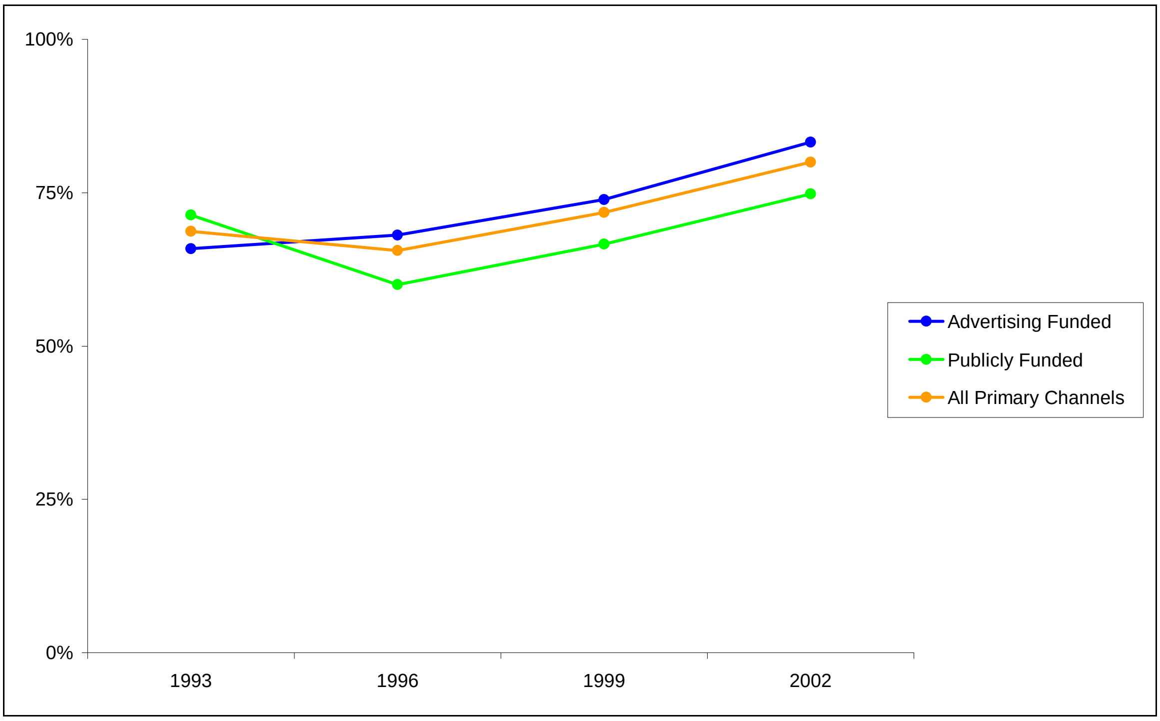
Figure 55 illustrates a second important finding – that the proportion of programme hours that are cinema and fiction by independent producers on primary channels has declined between 1993 and 2002. In 1993, almost half (49.2 per cent) of the programme hours on primary channels by independent producers were either cinema or fiction (22.4 per cent and 26.8 per cent respectively). By 2002, 39.8 per cent were cinema film or fiction. There has been no corresponding growth in the proportion of fiction and cinema film produced in-house, which indicates that these expensive genres form a smaller proportion of total output than they did in 1993.

7.3.8 Recent independent productions

Article 5 of The Directive requires that an adequate proportion of independent productions should be recently produced – that is, less than five years old. Overall the picture is a positive one; in our sample, on primary channels, the average proportion of independent productions that are less than five years old has grown from 68.7 per cent in 1993, to 80.0 per cent in 2002 – i.e. in the qualifying genres, four out of every five European-made independent productions are less than five years old.

The proportion of independent productions less than five years old on advertising funded primary channels has grown from an average of 65.9 per cent in 1993, to 83.3 per cent in 2002. There has been a more modest growth in the proportion on publicly funded channels – from 71.3 per cent in 1993 to 74.8 per cent in 2002.

Figure 56: Proportion of independent productions less than five years old (1993-2002)



7.4 Secondary channel trends

7.4.1 Qualifying transmission hours

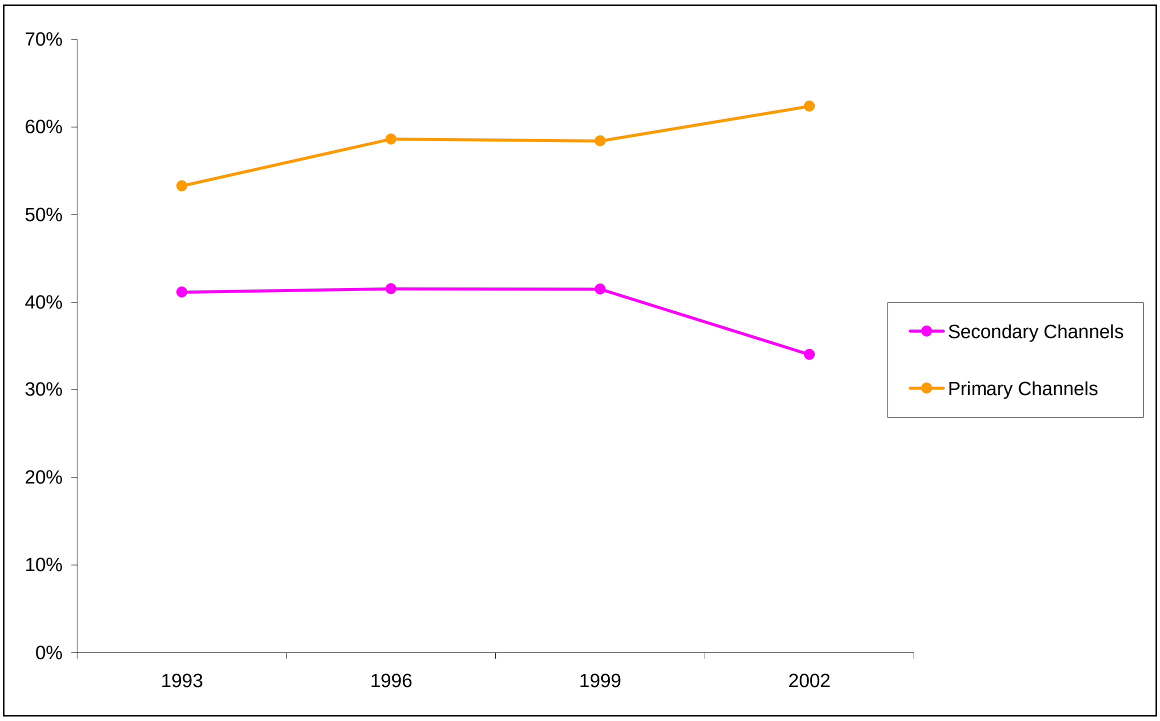
In 2002, the sample year when our data is strongest, the average ratio of qualifying transmission hours to total transmission hours was 73.1 per cent for secondary channels, and 63.2 per cent for primary channels. The proportion is higher on secondary channels than on primary channels because primary channel schedules tend to be wider, and include non-qualifying genres (particularly sport and news), which the secondary channels in our sample do not provide (we have excluded specialised news and sports channels from our analysis because the majority of their transmission schedule is made up of non-qualifying programmes).

7.4.2 The share of European works in qualifying transmission hours

Secondary channels reserve a significantly smaller proportion of qualifying transmission hours for European works than do primary channels, and the average share of European works on secondary channels was less than 50 per cent in every sample year. There is also evidence from our sample that the proportion of European works on secondary channels has actually fallen (from 41.2 per cent in 1993 to 34.0 per cent in 2002), although this may be a consequence of the limited data available before 2002.

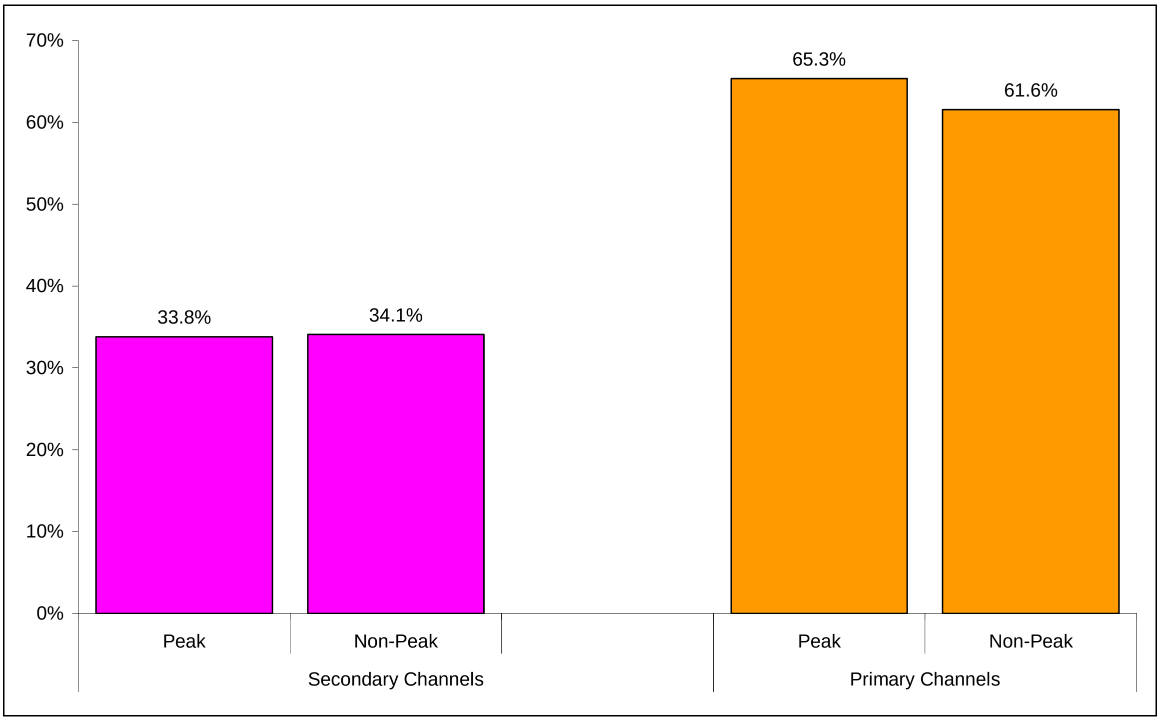
The comparison of performance by primary and secondary channels against Article 4 is shown in Figure 57.

Figure 57: European works as a proportion of qualifying transmission hours (1993-2002)



Unlike primary channels, which tend to show a higher proportion of European works in peak time than in the schedule as a whole, there is little difference between the peak and non-peak ratios on secondary channels. The average proportion of European works on secondary channels in peak time in 2002, was 33.8 per cent, compared with 34.1 per cent for non-peak. This is shown in Figure 58, together with a comparison for primary channels. Our data suggest that, historically, secondary channels have devoted a smaller share of their peak time schedule to European works than in non-peak time, but the data are not strong enough to confirm this.

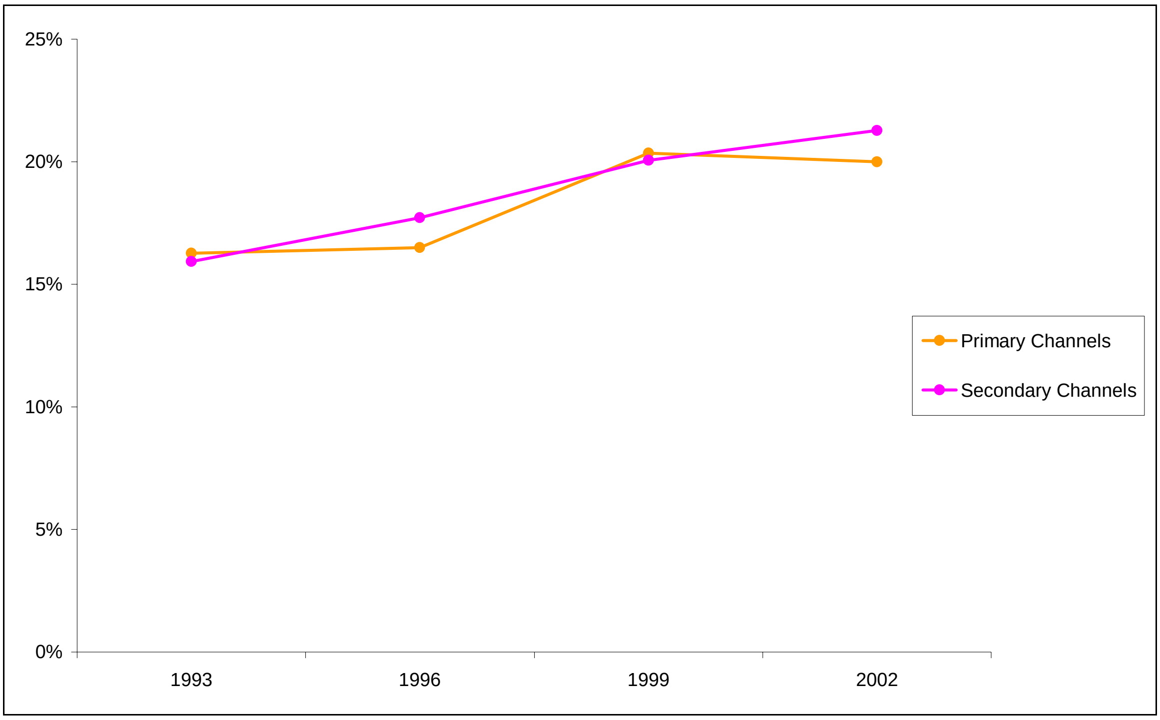
Figure 58: European works on secondary channels in peak and non-peak time (2002)



7.4.3 Independent productions

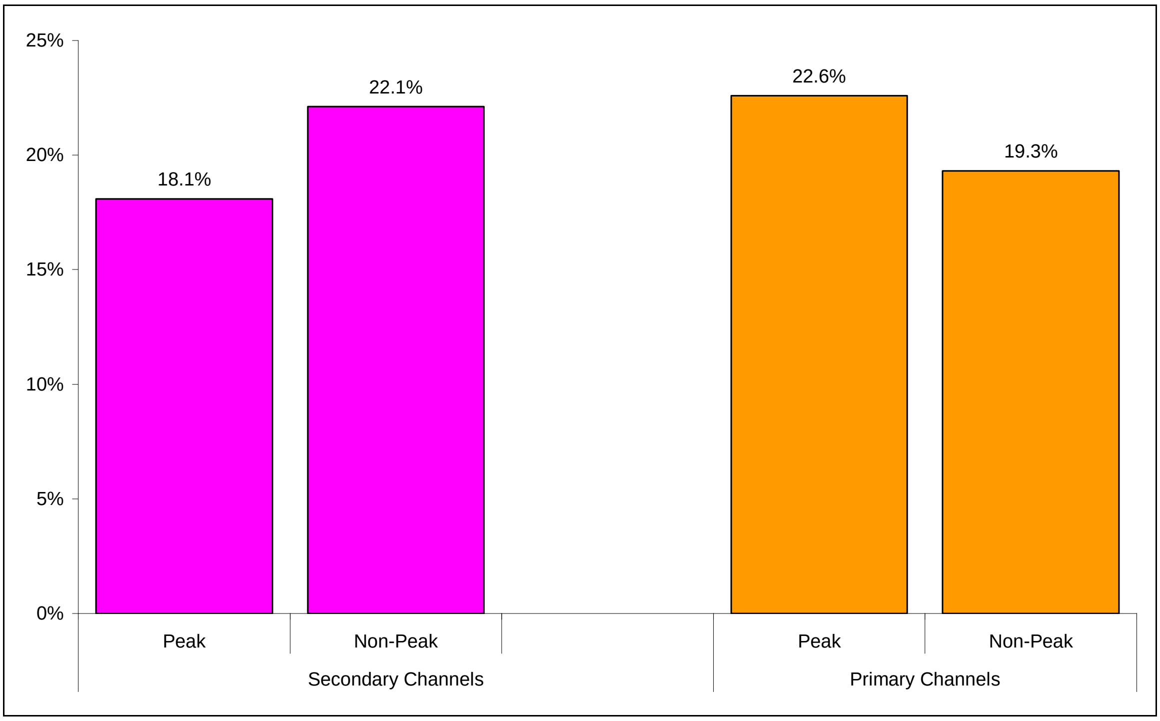
The average proportion of qualifying transmission time that secondary channels devote to European works by independent producers has grown from 15.9 per cent in 1993, to 21.3 per cent in 2002. Secondary channels now devote a higher proportion of qualifying transmission time to independent productions than primary channels. This is shown in Figure 59, together with the average primary channel performance for comparison.

Figure 59: European works by independent producers as a proportion of qualifying transmission hours (1993-2002)



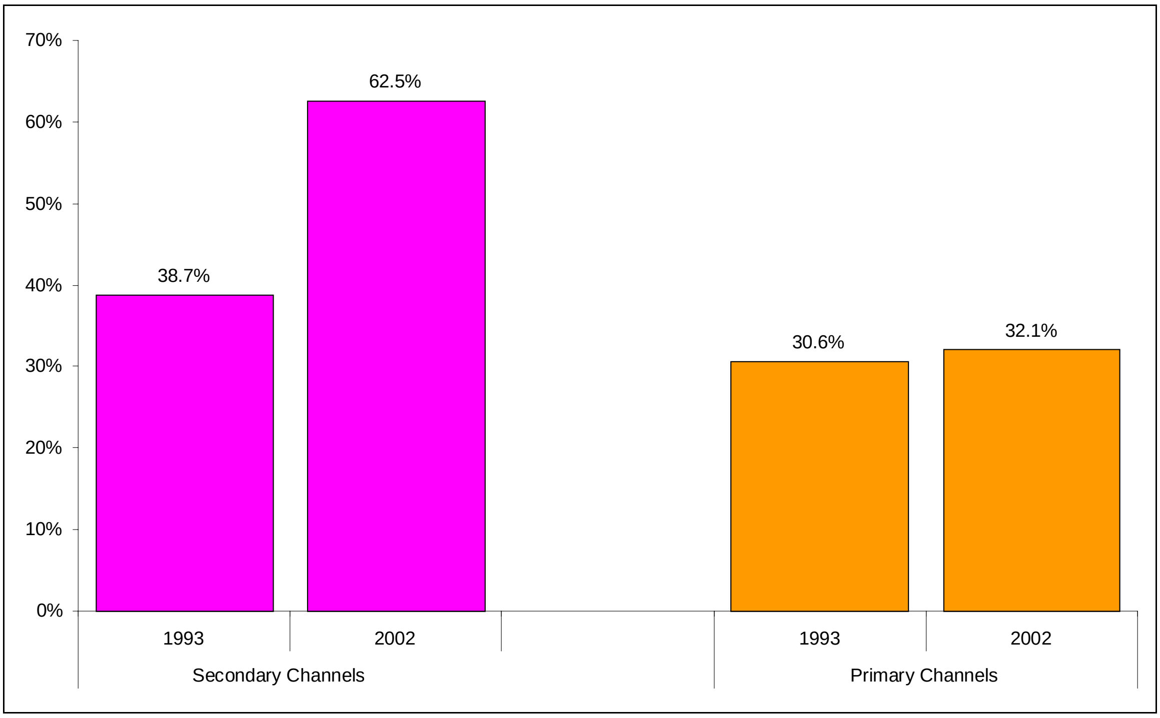
Unlike primary channels, however, secondary channels broadcast, on average, a lower proportion of European-made independent productions in peak time than in non-peak time, as shown in Figure 60. Our data suggest that this was true also in 1996 and 1999, but the data is not strong enough to draw firm findings.

Figure 60: Independent productions in peak and non-peak time (2002)



As explained above, the volume of independent productions in the schedule can be expressed as a proportion of qualifying European works, to tease out the importance of programme supply by independent producers to the fulfilment by broadcasters of Article 4. We find that, for secondary channels, the average proportion of independent productions was 62.5 per cent in 2002, which is substantially above the independent producers' share of European works broadcast on primary channels. This is probably explained by the fact that secondary channels tend not to have in-house production facilities, and primary broadcasters are not always willing to supply programmes to competitors. Hence the only source of programmes for secondary channels is frequently independent producers. Given the recent growth in the number of secondary channels it does, however, point to the importance of secondary channels as an outlet for independent productions.

Figure 61: Independent productions as a proportion of qualifying European works (1993-2002)



7.4.4 Recent independent productions

On secondary channels in our sample, the average proportion of independent productions that are less than five years old has fallen from 77.3 per cent in 1993 to 67.9 per cent in 2002. However, this is still notable given that one might expect secondary channels to meet Article 5 by broadcasting repeat showings of independent productions, rather than new productions.

Figure 62: Proportion of Independent productions less than five years old (1993-2002)

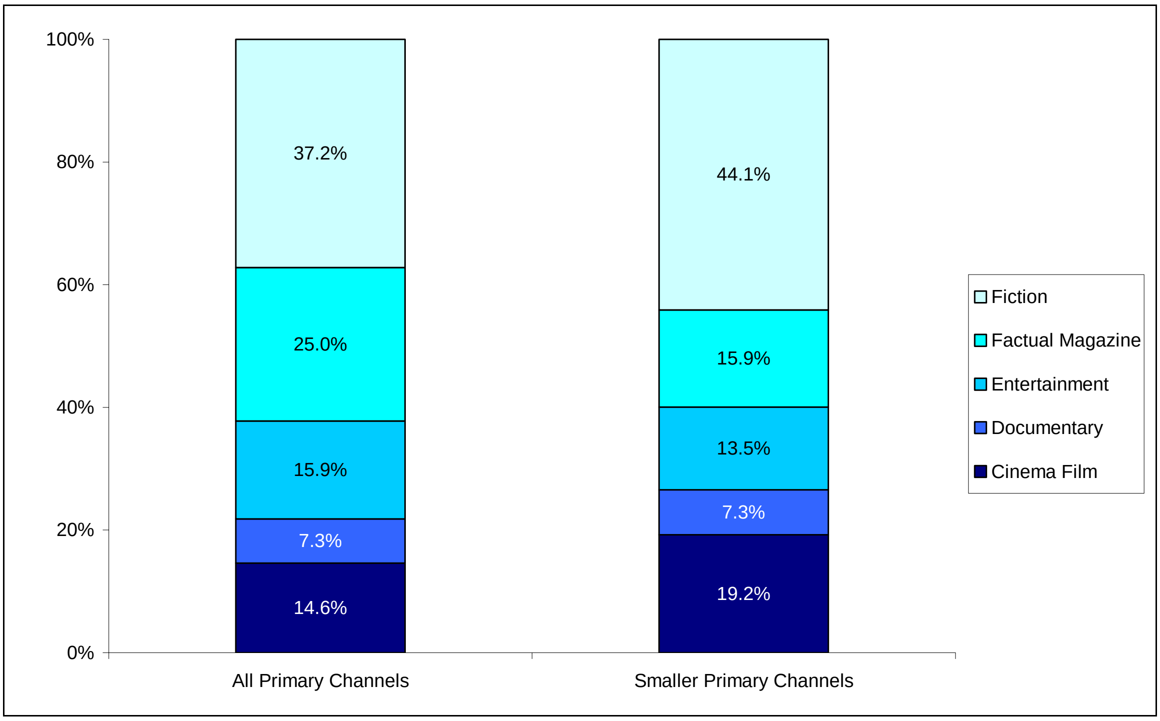
7.5 Smaller primary channels

The above analysis uses a dividing line based on a viewing share of 3 per cent in its market to determine whether a channel is a primary or secondary channel. Channels with audience share above 3 per cent but less than 8 per cent form an interesting sub-set of primary channels which we analyse briefly here.

7.5.1 Qualifying transmission hours

Smaller primary channels tend to rely more on fiction and cinema film than larger primary channels – mainly because they make greater use of acquired stock programmes, particularly from the US. They make less use of factual magazine programmes and entertainment programmes than larger primary channels. This is illustrated in Figure 63.

Figure 63: All qualifying transmission hours by genre (1993-2002)



7.5.2 The share of European works in qualifying transmission hours

The first important observation to make is that less than 50 per cent of the qualifying output of these smaller primary channels is European – 35.0 per cent in 1993 and 47.7 per cent in 2002. However, the growth in the proportion of qualifying transmission hours reserved for European works is more rapid than that demonstrated by all primary channels, or by secondary channels (where the share actually fell), over the period. Whereas the average for all primary channels grew by 17 per cent between 1993 and 2002, the average for the smaller primary channels grew at a rate more than twice as fast – 36 per cent. This is shown in Figure 64.

Figure 64: European works as a proportion of qualifying transmission hours (1993-2002)

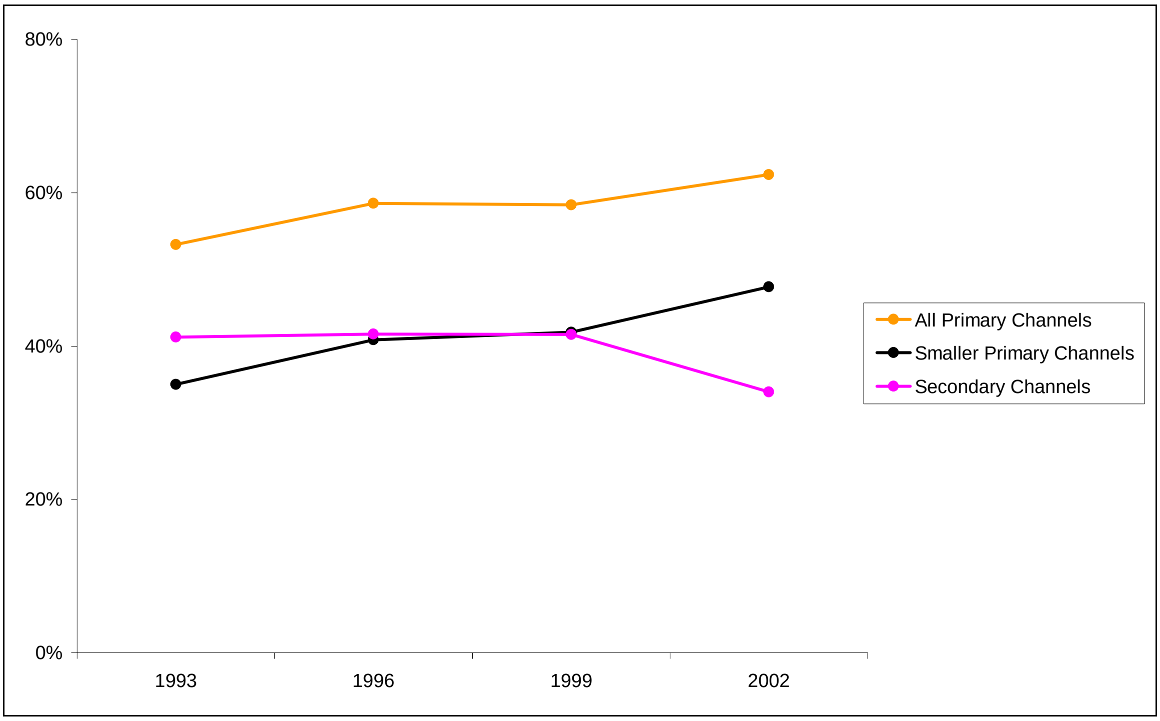
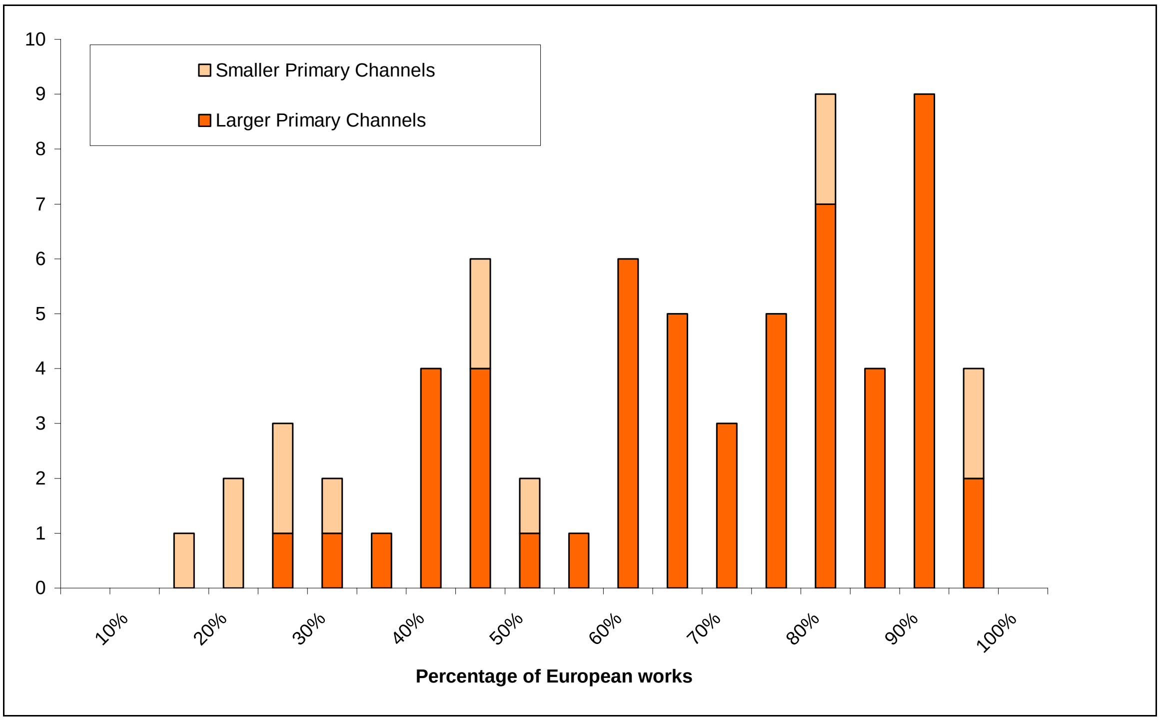


Figure 65 shows that smaller primary channels tend to show a lower proportion of European works in the qualifying schedule than do those primary channels with audience share above 8 per cent. Indeed, 9 of the 13 smaller primary channels in our sample did not meet the 50 per cent requirement of Article 4 in 2002: Kanal 2 and VT4 (Belgium), RTL2, KABEL1, Vox and Pro7 (Germany), TV3 (broadcasting in Denmark but regulated in the UK), LA2 (Spain) and Yorin (The Netherlands).

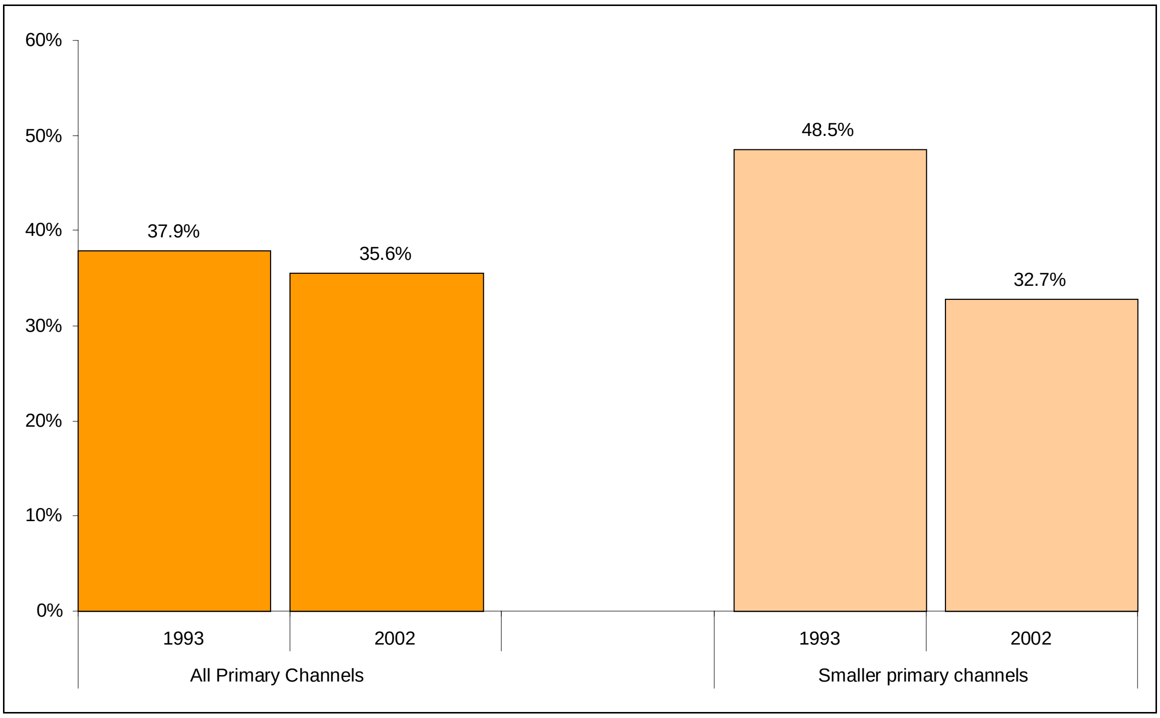
Figure 65: Distribution chart for primary channels (European works, 2002)



7.5.3 European works: stock and flow programmes

Stock programmes make up a smaller proportion of qualifying European works on smaller primary channels than on larger primary channels. In 2002, less than one third (32.7 per cent) of qualifying European works on smaller primary channels were stock programmes, compared with 35.6 per cent for all primary channels. This is a reversal of the position in 1993, when almost half (48.5 per cent) of qualifying European works on smaller primary channels were stock programmes, compared with 37.9 per cent of qualifying European works on all primary channels. This is illustrated in Figure 66.

Figure 66: European stock as a proportion of all qualifying European works (1993-2002)



7.5.4 Independent productions

Smaller primary channels perform less well than either primary or secondary channels in terms of the proportion of independent productions they broadcast. As Figure 64 shows, smaller primary channels showed the lowest proportion of independent productions in every sample year. However, in every year the 10 per cent requirement contained in Article 5 was achieved on average, and in 2002 the proportion was 18.7 per cent. This is shown in Figure 67.

Figure 67: Independent productions as a proportion of qualifying transmission hours (1993-2002)

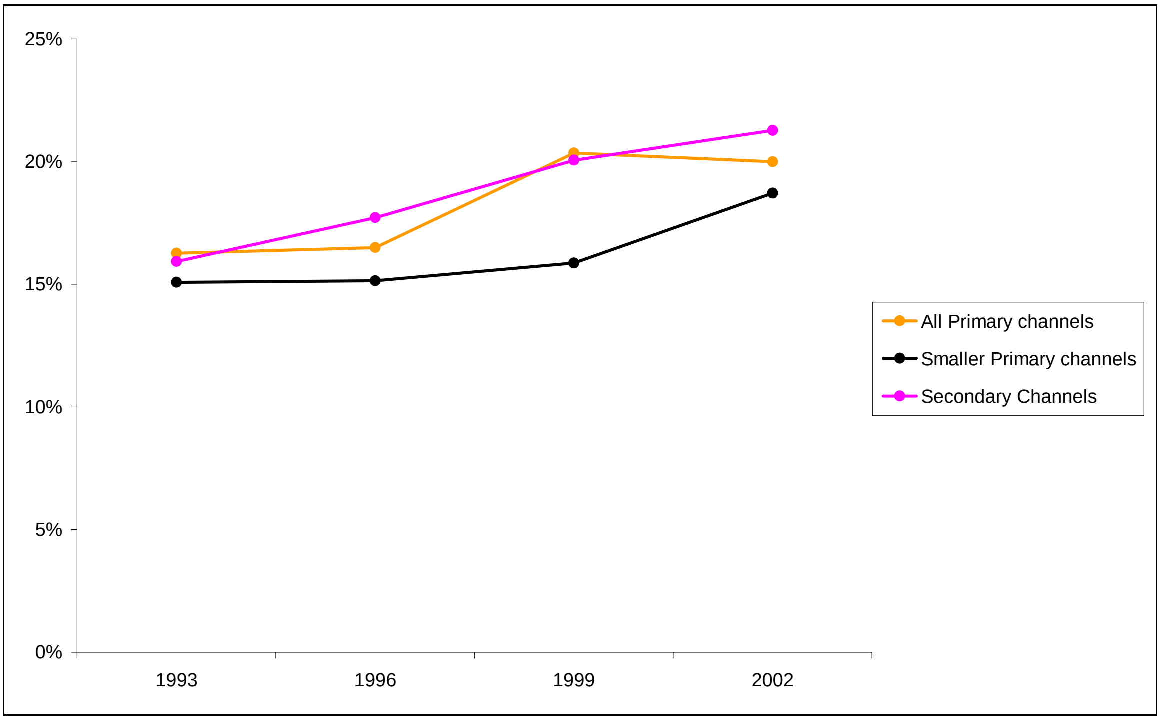
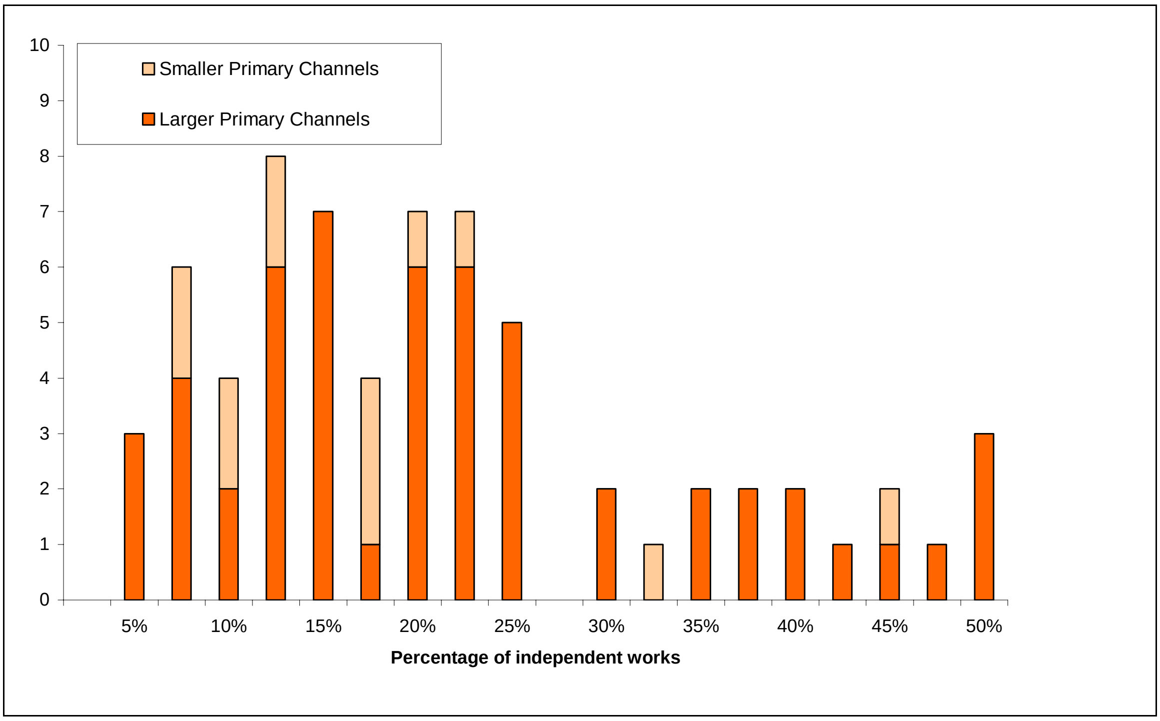


Figure 68 shows that the smaller primary channels tend to commission between 10 and 20 per cent of their qualifying European works from independent producers.

Figure 68: Distribution chart for primary channels (independent productions, 2002)



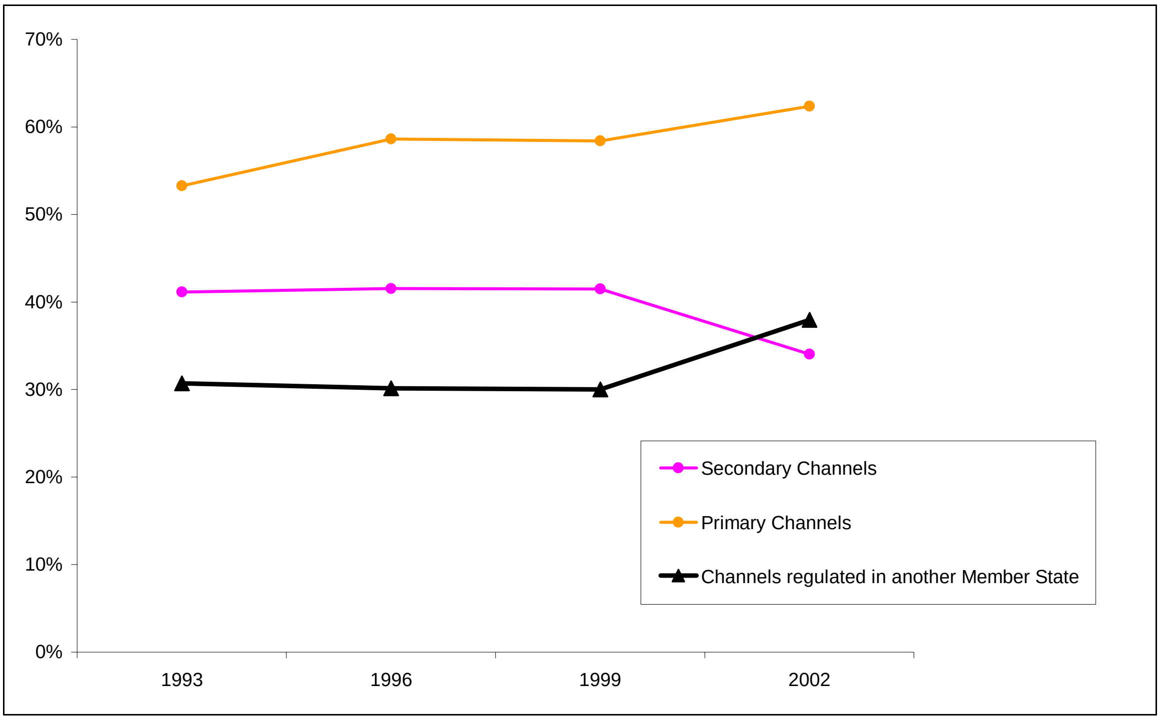
7.6 Channels regulated in another Member State

Our channel survey contains a number of channels that are watched in one Member State but regulated in another – the relevant channels are TV3 in Denmark and TV3 in Sweden (which are both regulated in the UK) and RTL4 and RTL5 in the Netherlands (regulated in Luxembourg). The are all advertising funded primary channels.

It is interesting to note from our analysis of the implementation of Articles 4 and 5 of The Directive (Chapter 6 of this report) that both the UK and Luxembourg apply the Directive more strictly than either Denmark or the Netherlands. The fact that broadcasters choose to locate in these Member States suggests either that the regulatory authorities do not apply Articles 4 and 5 equally to domestic and non-domestic channels, or that there are strong economic or social reasons for locating in these Member States that outweigh the extra regulatory burden.

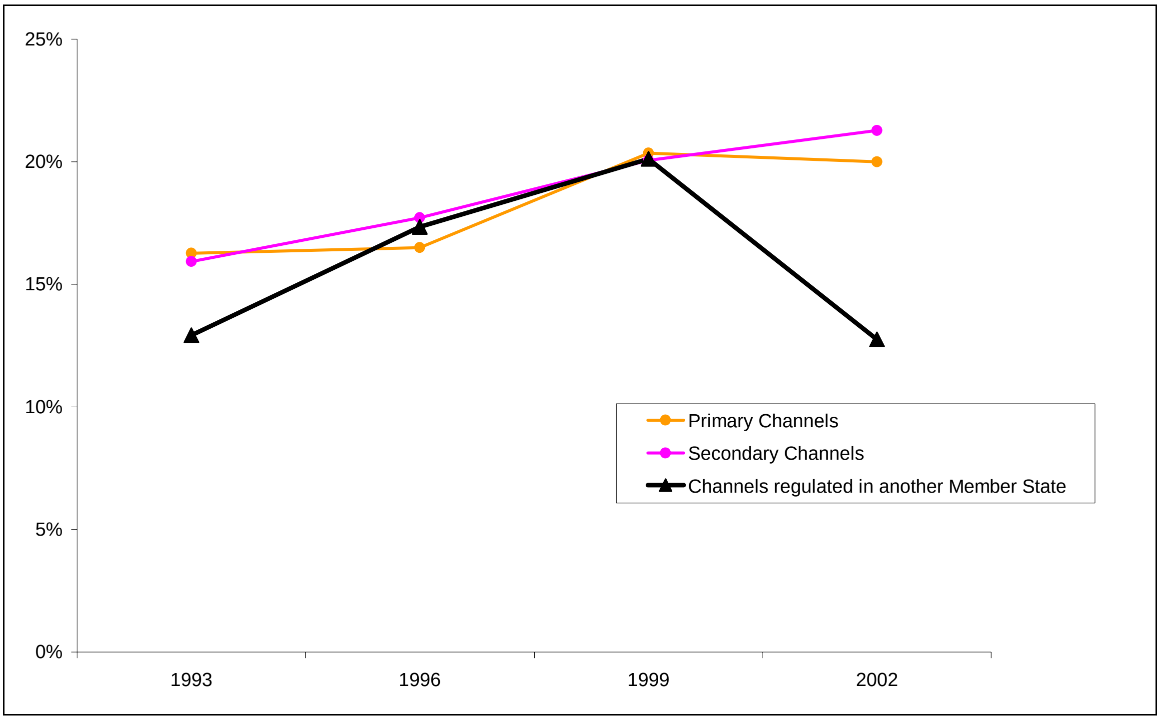
These channels perform poorly against Article 4. Figure 69 shows that European works make up less than half of qualifying programmes on these channels – this is significant given their audience shares in the Member States where they are received – TV3 Sweden had an audience share of 9.2 per cent in 2002, for example; and RTL4 and RTL5 in the Netherlands had a combined audience share of 21 per cent in 2002.

Figure 69: European works as a proportion of qualifying transmission hours on channels regulated in another Member State (1993-2002)



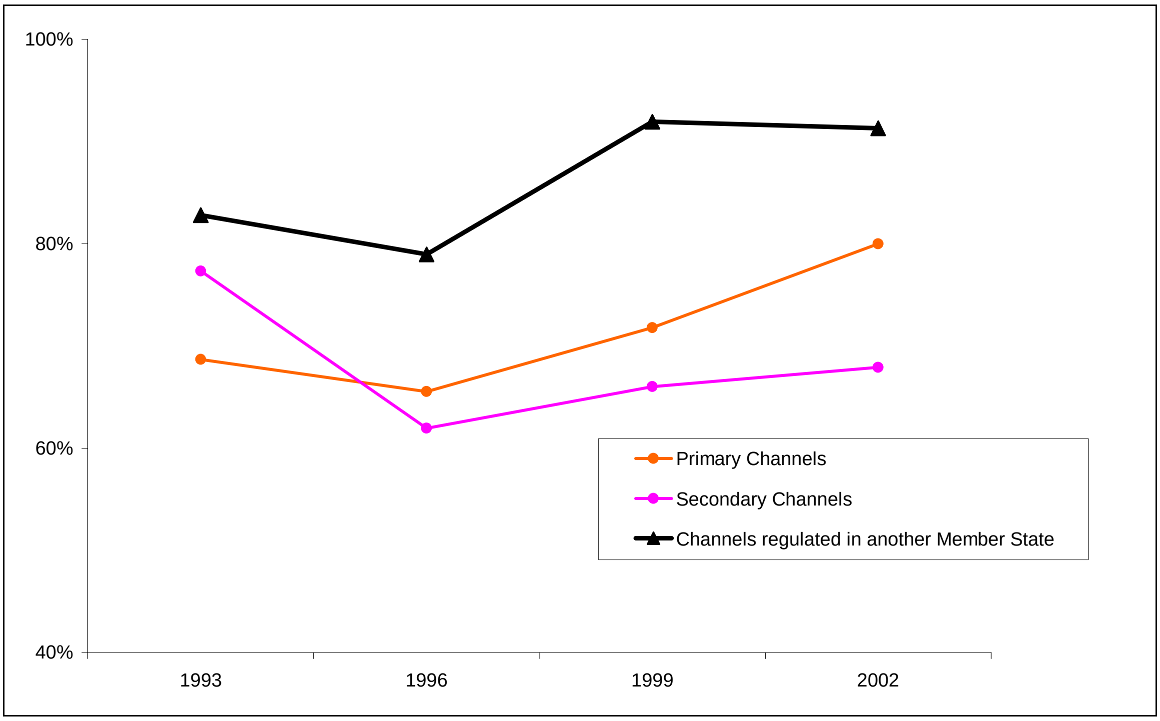
Channels regulated in another Member State exceed the 10 per cent minima for independent productions (Figure 70). However, after rising between 1993 and 1999, the percentage share of independent productions fell from 20.1 per cent in 1999 to 12.8 per cent in 2002.

Figure 70: Independent productions as a proportion of qualifying transmission hours on channels regulated in another Member State (1993-2002)



Although these channels do not make extensive use of independent productions, the proportion of works that are recently produced (i.e. less than five years old) has exceeded 80 per cent in each sample year (Figure 71).

Figure 71: Proportion of independent productions less than five years old on channels regulated in another Member State (1993-2002)



7.7 Reconciling survey data with reported data

The bespoke survey of channel transmissions on which the preceding analysis is based was not designed as an audit of the figures that Member States report to the Commission biennially. Some divergence between the reported data and our sample estimates based on the survey data is to be expected, resulting mainly from our decision to adopt a standard methodology for programme classification in each Member State (described in Appendices I to III). Also, our samples are representative but they are relatively small and one would expect a certain amount of divergence between individual channel estimates and the reported figures in any given year due to sampling error.

We have conducted a statistical analysis of our sample dataset to identify whether there is any statistically significant divergence between the reported figures and our sample data for Articles 4 and 5. This analysis is set out in Appendix IV.

To summarise, we found no statistically significant difference between the reported and estimated figures for Article 4. This suggests that we have selected a representative sample and that our methodology for calculating Article 4 is very close to that used by Member States. The fact that The Directive contains an exhaustive definition of a European work is also probably an important factor in explaining the goodness of fit between our estimates and those reported by Member States.

We performed the same analysis to establish where there was a significant divergence between the reported figures and sample estimates of the proportion of independent productions in the qualifying schedule (Article 5). We found a consistent gap between the reported and estimated figures for European productions. The reported averages exceed the sample estimates by around 11% in each of the four sample years; this gap is statistically significant.

The most likely explanation for the fact that, in every sample year, our estimated averages are consistently lower than the corresponding reported figures, is that we have adopted a stricter definition of what constitutes an independent producer than that used by Member States to produce the reported figures. The fact that The Directive does not contain a standard definition of an independent producer is probably significant in this regard.

8 Looking for relationships

8.1 Bivariate regression analysis

In the preceding Chapters we have analysed the TV supply chain and audiovisual content creation in Europe (Chapter 3), we have examined how Member States have implemented Articles 4 and 5 of The Directive and we have looked at the additional measures that some Member States have introduced to increase European production or promote national cultural objectives (Chapter 6), and we have reviewed the findings from our bespoke survey of channels to identify the proportion of European works and independent productions in the qualifying transmission time of the channels in our sample (Chapter 7).

We have presented a complex picture in which there are a range of factors at work which might explain the transmission schedules of European broadcasters – programme budgets, competition between channels for audience share, consumer tastes, and regulatory requirements are all elements in the decisions made by channel managers that determine what we see on TV. In this chapter we use formal statistical techniques of regression analysis as a means to identify important relationships between these factors and the proportion of European works and independent productions in the schedules of the channels in our sample.

Some terminology first: the factors above (programme budgets, consumer tastes etc) are called independent variables – we want to test the impact that they have on a dependent variable. We have two dependent variables in this analysis – the ratio of European works to qualifying transmission time (Article 4) and the ratio of independent productions to qualifying transmission time(Article 5). In a regression analysis we test one dependent variable at a time, but we may explain its behaviour with reference to a single independent variable (bivariate regression) or to many independent variables (multivariate regression).

Below we provide an example of a bivariate regression, where we attempt to explain the national averages for Article 4 (identified in Chapter 7, Figure 33) with reference to how flexible or prescriptive the Member State is in the way it applies Article 5 (see Table 12 from Chapter 6). In this example, the dependent variable is the data set of the report national averages for Article 4 in 2002 and the independent variable is the index of implementation mode. This data is reproduced in Table 15.

The relationship between the dependent and independent variables is plotted in Figure 72. It shows that the best fit line has a slight upward gradient, which implies that the more prescriptive a Member State is in the way that it implements The Directive, the higher the average ratio of European works to qualifying transmission hours. However, there is not a strong relationship that describes fully the variation in the dependent variable.

In Figure 73 we have plotted the change in the national average proportion of European works between 1993 and 2002 (taken from Figure 34) against the index of the application of Articles 4 and 5; it shows a positive relationship between the strictness with which Articles 4 and 5 are applied and the rate of change in the ratio of European works to total qualifying transmission time between 1993 and 2002. This is an important finding because it tells us that, in Member States where Article 4 has been strictly applied, there has been a greater increase in the European works ratio than in Member States where Article 4 has been implemented flexibly. This is a strong indication that Article 4 has had an appreciable impact on the scheduling of European works.

This example illustrates a general point that we have deduced from the data and from a series of other bivariate analyses we have conducted to try and explain the proportion of European works and independent productions in the schedule – that no one independent variable fully explains the ratios. We need to adopt a more sophisticated approach in which we acknowledge that it is not possible to establish simple relationships between a single independent variable such as programme budget or regulatory requirements and performance against Articles 4 and 5.

Table 15: Data for bivariate regression analysis

Member State	Index (application of Articles 4 and 5)	Ratio of European works to total qualifying works (2002)	Change in European works ratio (1993-2002)
Austria	5	58.2%	-6.0%
Belgium	11	50.4%	2.9%
Denmark	10	49.9%	6.9%
Finland	15	74.3%	2.9%
France	17	66.5%	2.0%
Germany	7	57.1%	12.6%
Greece	15	71.9%	11.7%
Ireland	7	43.5%	-13.5%
Italy	12	67.6%	6.6%
Luxembourg	11	86.6%	-8.4%
Netherlands	10	67.7%	1.5%
Portugal	11	64.7%	13.2%
Spain	10	47.2%	11.1%
Sweden	4	45.2%	-13.3%
United Kingdom	15	55.8%	7.6%

Figure 72: Relationship between implementation mode and average national proportions of European works (2002)

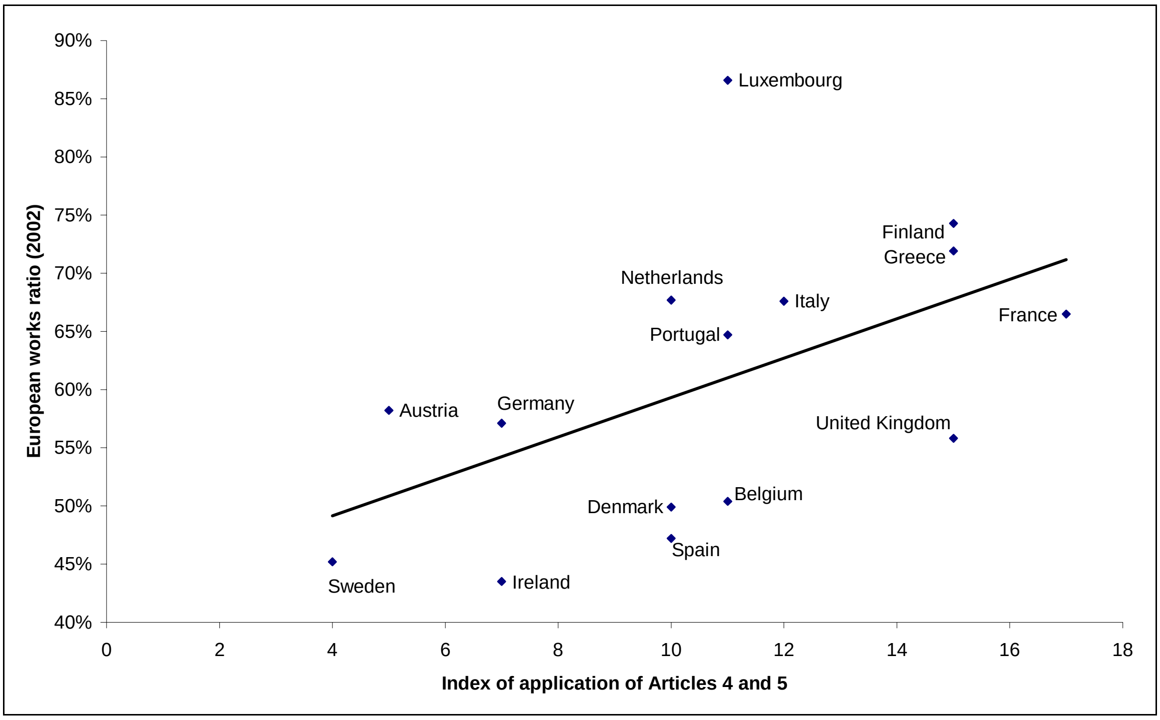
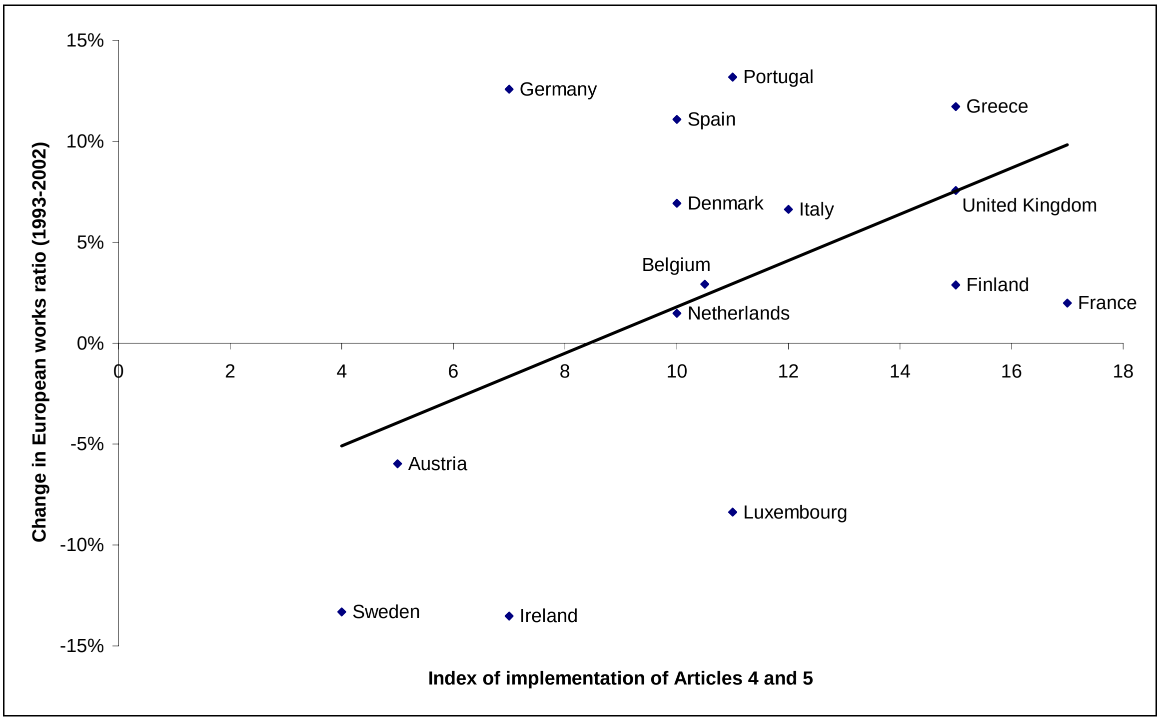


Figure 73: Relationship between implementation mode and the change in the average national proportions of European works (1993-2002)



8.2 Looking for more complex relationships

8.2.1 Multivariate regression analysis

In order to measure the impact of a range of independent variables on the ratios of European works and independent productions we conducted a cross-sectional multivariate statistical regression. This uses the same approach as a bivariate regression but measures the relationship between a dependent variable and a series of independent variables simultaneously. We also added to the sophistication of the analysis by using data from the entire period of the sample – that is, 1993 to 2002.

In addition to conducting the analysis at a country level (as in the bivariate regression analysis described above), we repeated the analysis for the channels in our sample – i.e. to track the determinants of the performance of individual channels (in practice we used only primary channels because there were only 5 secondary channels measured over the entire period 1993 to 2002).

We also identified another dependent variable whose behaviour we wished to understand – the ratio of European stock programmes to qualifying transmission time. We were interested in this variable because the proportion of stock programmes in the schedule may be regarded as a proxy for the quality of the broadcast output because stock programmes tend to have a higher production budget than flow programmes.

The country level regressions – one for European works and one for independent productions – used 72 data points (4 years of data covering 18 countries), while the channel-level information used 292 data points (4 years of data covering 73 primary channels). The variables used in each equation – set out below – were broadly similar in both the country and channel equations, except that, in the channel-based regression, we added the audience share of the relevant channel in each year as a proxy measure for the channel's size and financial resources.

The channel-based regression provides the more robust result of the two approaches for two reasons: first, with 292 data points versus 72 data points, the model has more "degrees of freedom"; and, second, as mentioned in Chapter 7, the national average figures we constructed from our sample are only indicative as they do not cover all the channels in every market.

8.2.2 Independent variables

We used 18 independent variables in total, roughly divided into the following categories:

- The size of the national TV market; we used the total funding of all primary channels in the relevant market in the relevant year. We also measured the size of commercial primary channel funding.

- The structure of the national TV market (e.g. levels of ownership concentration). we used three measures of concentration: First, the number of primary channels; second, the level of audience share concentration among primary channels as measured by the Hirshmann-Herfindahl (HH) concentration ratio and, third, the level of audience share concentration among owners of primary channels – again by the HH ratio[45]. This latter measure captures the potential impact of

[45] The HH index is calculated by measuring the sum of the squares of the market (audience) share of each primary channel. The maximum is 10,000 (100 squared) which would be one channel having

multiple primary channel ownership – which the framework in Chapter 4 suggested might be important. For the channel-based regression, we also noted the audience share of the relevant channel in the relevant time period.

- The existence and level of public funding through licence fees and grants in aid; we noted both the level of public funds and those channels which are publicly funded.

- The mode of implementation of Articles 4 and 5 and other, stricter national content requirements; we used dummy variables to denote those Member States that have adopted a prescriptive approach to the implementation of The Directive and those Member States with significant additional national content regulations. We also noted those Member States that were not members of the EU in 1993.

We had to use dummy variables of the one-zero type to cover the different levels of regulation, despite the fact that the analysis in Chapter 6 provides a more variable scale for both implementation and national regulations, as we had to track the nature of regulation through time – 1993 to 2002 – and we did not have sufficient information to know how implementation modes and national regulations had changed – if at all – over the period. The potential implications of this for the results of the regression are discussed below in section 8.5.

We would not expect these variables to explain all the observed differences between channels and Member States because different national tastes, which we have not measured, could have an influence. However, we would expect these variables in combination to explain a large proportion of the observed differences.

8.2.3 Channel-based regressions results

Three separate regressions were carried out on a channel basis, focused on the three dependent variables – the ratio of European works, the ratio of European stock works and the ratio of independent productions in qualifying transmission time. In each case, we put all the independent variables into the regression and then sought out that combination of independent variables that best explained the pattern of the dependent variable.

European works as a proportion of qualifying transmission time

The best fit equation to explain the ratio of European works as a proportion of qualifying transmission time is shown in Table 16. This analysis suggests that the significant independent variables to explain the ratio are:

- the number of primary channels in a given channel's market (the more channels there are, the higher the European works ratio for the channels in that market), which suggests that competition between primary channels for audience share is a significant determinant of the proportion of European works in the schedule.

- the audience share of the specific channel (the higher the share the higher the ratio); a channel's revenue roughly equates with audience share so this

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all the audience. A market with 4 equal channels each with a 25 per cent share would score 2,500. The HH measure, not just the number of participants and their size but also their relative size.

finding suggests that channel revenue is a significant determinant of the proportion of European works in the schedule[46],[47].

- whether or not the Member State in which the channel operates has adopted a prescriptive approach to implementing The Directive (stricter regimes resulted in higher ratios); and,

- whether or not the channel was publicly funded (publicly funded channels would have higher ratios).

Table 16: Determinants of the ratio of European works (Channels Regression)

Independent Variables	Estimated Regression Coefficients	p-statistic
(Constant)	-4.198	0.431
Channel Share	0.802	0.000
No of Primary Channels	5.926	0.000
DUMMY Publicly Funded	27.993	0.000
DUMMY Strict Regulations	11.106	0.000

R Square	Std. Error of the Estimate
53.6%	14.475

European stock programmes as a proportion of qualifying transmission time

We then attempted to find relationships to explain the ratio of stock programmes as a proportion of qualifying transmission time (Table 17). Generally, the overall regression was a less good explanation of this trend than for all European works, with an R-square of 36.3 per cent compared with one of 53.6 per cent for the previous regression[48].

Again, we found that channel share was an important factor (there is a positive correlation between a channel's audience share and its ratio of stock programmes). We also found that whether or not a channel was publicly funded is significant. Market concentration is also important; we found that the more concentrated the primary channel market is, the higher the predicted ratio of European stock programmes.

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46 Taken together, these two findings suggest that a degree of competition encourages the use of European works but that, if competition creates too much audience fragmentation, it may leave channels with insufficient budgets with which to commission European works.

47 It is tempting also to infer from this result that a high proportion of European works in the schedule produces a higher audience share. However, causality does not necessarily work both ways and caution should be exercised when assessing whether a two-way causality is plausible. Just because an independent variable seems to be a determinant of the dependant variable does not mean the relationship works the other way. For example, rainfall will be a determinant of crop yield but no would seriously suggest that crop yield was a determinant of rain fall.

48 The measure of the general goodness of fit of the whole equation is the R squared, which essentially measures what degree of variance in all the data is explained by the whole equation. The strength of the relationship between a specific independent variable and the dependent variable in any given equation is given by the P-statistic – generally we can be confident that a relationship exists where the P-statistic is 0.05 or less. The coefficient then shows the precise nature of this relationship. See glossary for a more detailed definition.

This might explain why, over the period from 1993 to 2002 when market size actually grew but channel concentration declined, European stock programmes declined on commercially funded primary channels. However, this may also be a result of changes in consumer taste. Stock covers the most valuable forms of programming, such as films and dramas, which also have a high repeatability and a long shelf life. During the period under review, "reality" shows became popular, and displaced some drama in peak time.

How prescriptively or flexibly Member States implemented The Directive did not seem to be a factor in the ratio of European stock programmes, which is perhaps not surprising given that Articles 4 and 5 do not address this ratio[49].

The level of commercial funding for primary broadcasters was an important factor, suggesting that channels with higher revenues can commission more of the comparatively expensive stock programming.

If the production of stock programmes is deemed particularly desirable on the grounds of higher economic and cultural value, longer shelf life and greater potential for circulation, there may be the need for further intervention to aid the commissioning of such programming.

Table 17: Determinants of the ratio of European stock programmes (Channels Regression)

Independent Variables	Estimated Regression Coefficients	p-statistic
(Constant)	-13.212	0.015
Channel Share	0.150	0.024
HH Index Channel Concentration	0.004	0.000
Funding Commercial Primary Channels	0.004	0.000
DUMMY Publicly Funded	11.813	0.000
DUMMY Has Primary Commercial Sector	12.914	0.000

R Square	Std. Error of the Estimate
36.3%	9.803

Independent production as a proportion of qualifying transmission time

Finally, we looked at the determinants of the ratio of independent production as a proportion of qualifying transmission time on the primary channels in our sample. Overall the independent variables provided a poor explanation of this dependent variable - which suggests that there are a variety of institutional or historical factors behind the ratio of independent productions which we have not captured.

There were just two significant factors that emerged: First, the strictness of the implementation mode of Article 5, and: Second, the size of the commercially funded primary channel sector. This finding suggests that a more developed commercial primary sector is good news for independents. However, of all the multivariate

49 At least there was no negative relationship. A negative relationship between the nature of implementation of Article 4 and the stock ratio might have meant that, in stimulating channels to comply, implementation forced them to cheapen the mix of programmes.

regression analysis we have conducted, this is the regression which explains the behaviour of the dependent variable least effectively.

Table 18: Determinants of Independent Works Ratio (Channels Regression)

Independent Variables	Estimated Regression Coefficients	p-statistic
(Constant)	14.630	0.000
Funding Commercial Primary Channels	0.002	0.000
DUMMY Strict Regulations	2.787	0.059

R Square	Std. Error of the Estimate
7.8%	11.490

8.2.4 Country-Based Regression Results

The country-based regression results are not based on full information from each Member State – this is because our survey of channel transmission data covers a sample of primary channels in each Member State but it does not include every primary channel[50]. This, together with the limited "degrees of freedom" in the country-based regression because it is based on 72 data points (4 years of data covering 18 countries), probably makes it less reliable than the relationships described in 8.4 above.

European works as a proportion of qualifying transmission time

The size of the commercially funded primary sector was again found to be important – as with the European stock ratio in the channel-based regressions. But the share taken by the commercial sector, and the level of concentration of ownership within the whole market, also seemed to be important suggesting that markets with large commercial sectors (The UK, Greece and Spain, for example) and markets that are less fragmented (examples include Austria, Belgium and Italy) tend to have higher ratios of European works.

The existence of additional national content-based regulations was also a significant factor, which seems to make sense given that a majority of national regulations are applied to all primary channels in the relevant national market.

50 Appendix 1 contains an explanation of our survey methodology and sample selection.

Table 19: Determinants of European Works Ratio (Country Regression)

Independent Variables	Estimated Regression Coefficients	p-statistic
(Constant)	-1.507	0.906
HH Index Group Concentration	0.006	0.000
Share Commercial Primary Channels	0.616	0.000
Funding Commercial Primary Channels	0.003	0.001
DUMMY High Additional Requirements	8.109	0.001

R Square	Std. Error of the Estimate
36.2%	8.187

European stock programmes as a proportion of qualifying transmission time

The second regression was on the ratio of European stock works (Table 20). This suggested almost exactly the same drivers as the overall European works levels identified above – i.e. ownership concentration, the size of commercial sector and the existence of extra national regulations. However, within these three variables it was the overall level of commercial funding that seemed to be more important than ownership concentration, or national regulations when it came to the ratio of European stock works.

Table 20: Determinants of European Stock Works Ratio (Country Regression)

Independent Variables	Estimated Regression Coefficients	p-statistic
(Constant)	2.245	0.511
HH Index Channel Concentration	0.004	0.000
Funding Commercial Primary Channels	0.005	0.000
DUMMY High Additional Requirements	4.869	0.003

R Square	Std. Error of the Estimate
47.6%	5.460

Independent production as a proportion of qualifying transmission time

Lastly, we reviewed the determinants of the ratio of independent production as a proportion of qualifying transmission time at a country level. We could only find a significant bivariate relationship with the size of the commercial primary sector (Table 21).

Table 21: Determinants of Independent Works Ratio (Country Regression)

Independent Variables	Estimated Regression Coefficients	t-statistic
(Constant)	14.887	0.000
Funding Commercial Primary Channels	0.003	0.000

R Square	Std. Error of the Estimate
20.4%	7.716

8.2.5 Conclusions from the regression analysis

We can draw the following conclusions from the regression analysis:

The size and structure of the national TV market is significant

The regression analysis suggests that the size and structure of national markets has an important impact on European works ratios and the ratio of European stock works.

We found that the larger the market – and the larger the commercial market in particular – the higher the ratios for European works and European stock works are likely to be. The largest primary channel markets in the EU (measured by total revenue) are Germany, the UK, France, Italy and Spain; these countries also have the largest commercial sectors (the Member States where the commercial sector takes the largest share of revenue are the UK, Greece and Spain). these findings apply across markets and within individual markets over time.

Public funding of broadcasters does have a positive impact on European works and stocks, but mostly at an individual channel level rather than on the market as a whole.

Overall, higher levels of concentration seem to be associated with higher proportions of European works, and even more so with higher European stock ratios, although within the channel regression there was a suggestion that the number of competitors had a positive impact. This might mean that, to drive up overall European works, one needs to have a degree of competition, but to afford stock programmes there needs to be some concentration of ownership.

Channel size is significant

The second set of findings is perhaps more important; that the larger the individual channel, the higher the European works and stock ratios are likely to be – something that reflects the observations on the sub-sample of 3 to 8 per cent share channels made in Chapter 7 (these smaller primary channels generally perform less well against the requirements of Articles 4 and 5 than larger primary channels with audience share greater than 8 per cent).

Regulation is significant

Lastly, whether the Directive is implemented flexibly or prescriptively has an impact on the ratio of European works and on the ratio of independent productions at channel level. At a country level, the existence of stricter additional content requirements on channels has an impact on the ratio of European works and European stock programmes.

In Section 8.1 we found that the more prescriptive a Member State is in the way that it implements Articles 4 and 5, the higher the average ratio of European works to qualifying transmission hours in that country. In Section 8.2.3 we made a similar finding as part of our multivariate regression analysis – that the ratio of European works to qualifying transmission hours tends to be higher for channels in Member States where Articles 4 and 5 are applied strictly.

In Section 8.2.4 we found that the proportion of European works during qualifying transmission hours can be expected to be higher where a Member State places significant additional requirements on channels.

We found in Section 8.1 that those Member States that are prescriptive in the way that they implement Articles 4 and 5 have experienced greater increases in the average proportion of European works to qualifying transmission hours than the average in those Member States that have implemented Articles 4 and 5 flexibly.

In Section 8.2.3 we found that channels will tend to show a higher share of independent productions in Member States where Articles 4 and 5 are applied strictly.

These findings support the conclusion that Articles 4 and 5 could have more impact if they were applied with greater rigour and consistency by Member States. Measures to support the strict application of the Articles would include the creation of standard definitions of terms such as ‘independent producer’ and the ‘games’ genre, the meaning of which is not obvious.

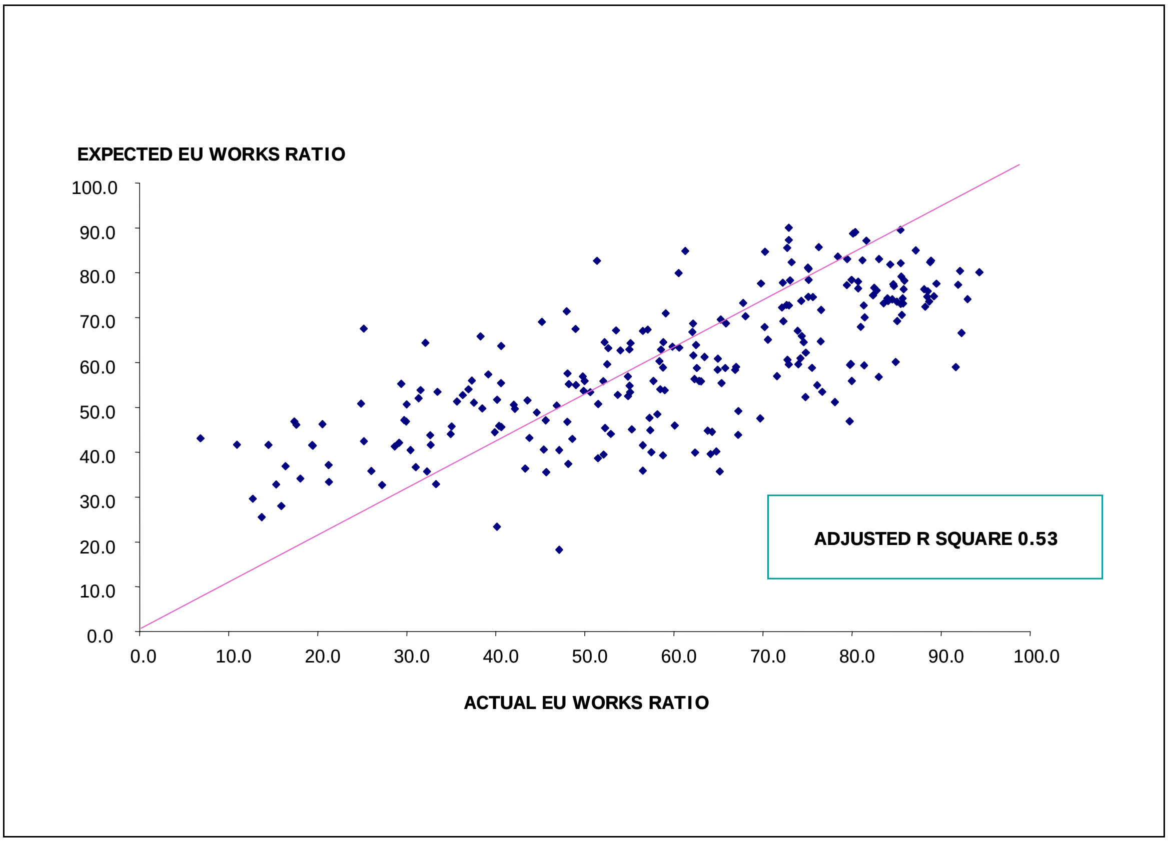
The "where practicable" requirement (described in Section 6.2.3) offers a general exemption from the requirements of Articles 4 and 5. This approach compares unfavourably with other legislation (the Copyright Directive, for example) where general rules are established and exemptions clearly defined, leaving less room for avoidance of the requirements of the legislation. The use of the exemption may have to be reviewed as secondary channels take more share and become, in many cases, part of larger multi-channel owning groups whose underlying economics are improving rapidly.

8.3 Analysis of actual versus expected predictions of the best fit regressions

We have identified a series of factors that explain the behaviour of our dependent variables at channel and Member State level. However, there is still a significant amount of unexplained variance; we can analyse this unexplained variance between the expected and actual behaviour of the dependent variables in an attempt to find out what is causing it.

To look at the unexplained difference we have used the best fit equations outlined above to analyse, for each channel or country in each year, the actual European works and European stock ratio, versus what the best fit regression suggested the ratio should have been in that year for that country or channel. Figure 74 summarises the ‘actual versus expected’ pattern for European works at a channel level.

Figure 74: Actual v expected European works ratio – channel level (4 sample years for the period 1993-2002)



The distance of each data point from the diagonal line suggests how far the expected number generated by our regression equations is above or below the actual figure.

The pattern of actual versus expected values seems to suggest that our regression tends to over-predict the expected ratio for channels which achieve a low ratio of European works as a proportion of qualifying transmission time, and to under-predict the ratio for channels which perform well in practice against this measure.

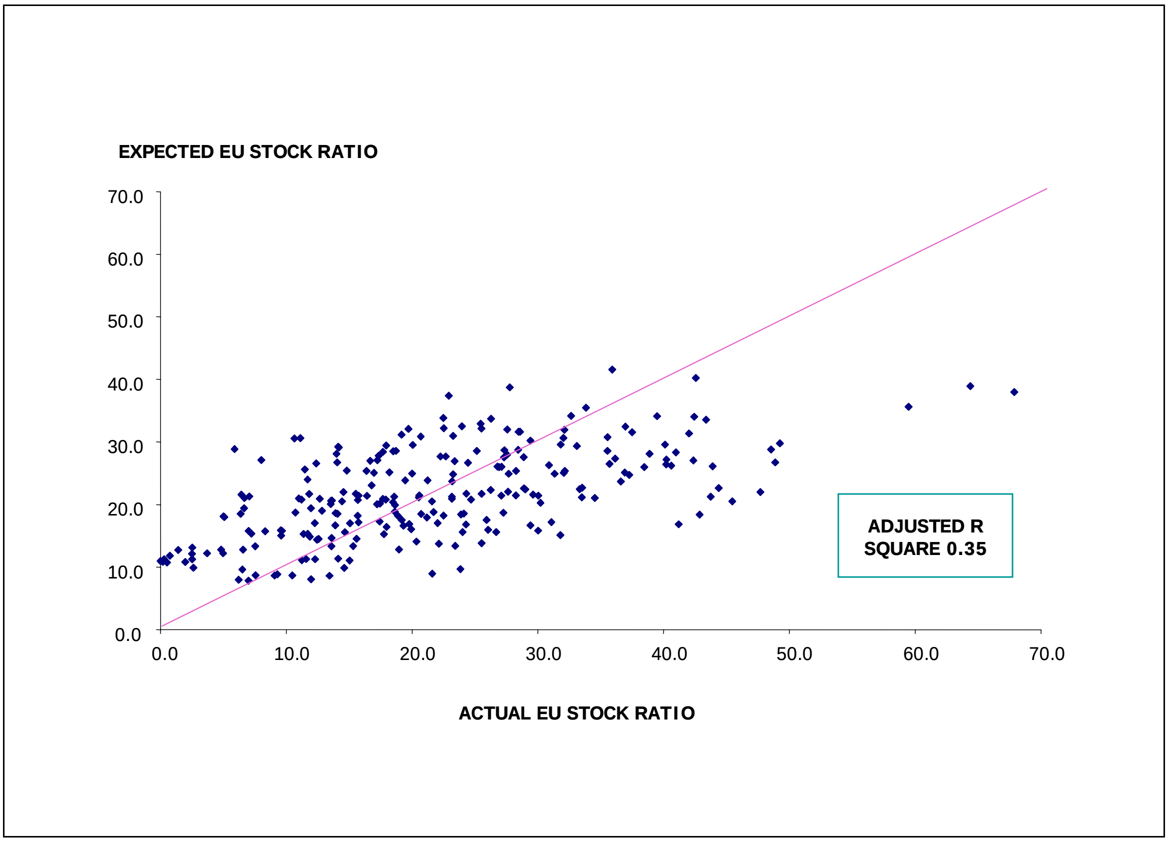
This might be explained by the existence of a "tipping point" in the market that occurs at a high level of market fragmentation, so that those channels which we would expect to perform poorly do even worse in practice. This would be consistent with the existence of significant fixed costs in broadcasting where, below a certain audience share and revenue, primary channels have to reduce their programme spending dramatically in order to break even. Figure 74 shows a number of channels performing well below the compliance level of 50 per cent – channels which our best fit regression predict would meet the 50 per cent requirement.

Figure 74 also shows that our best fit regression equation under-predicts the performance of channels that achieve a high ratio of European works in practice (greater than about 65 per cent). This might be explained by the fact that our dummy variable on national regulations – being a one-zero type variable – fails adequately to reflect the strictness of additional measures applied in some Member States (France, the Netherlands and the United Kingdom, for example, apply strict additional requirements).

Figure 75 shows the pattern of actual versus predicted numbers for the ratio of European stock programmes. Again it shows that, below levels of about 20 per cent, our regression analysis expects the values to be higher than those values actually achieved. Above levels of 30 per cent, our regression analysis expects values to be lower than actually achieved. This could be for similar reasons to the pattern observed above, namely: that below a certain critical mass, primary channels have to cut back radically their provision of stock programmes, while specific and targeted national regulations encourage some channels to achieve levels of stock programmes well above that which would be predicted by economic factors alone.

Actual versus expected data from the country analysis and the independent works ratio shows no particularly interesting patterns or trends.

Figure 75: Actual v expected European stock ratio – channel level (4 sample years for the period 1993-2002)



8.4 Overall conclusions

The regression analysis on the primary channel data from the survey suggests that a large part of the pattern can be explained by:

- The size and structure of the national TV market – particularly the size of the commercial sector, public funding of broadcasters, and the level of market concentration;
- Channel size; and
- Regulations – particularly whether The Directive is implemented flexibly or prescriptively and the existence of stricter additional content requirements at

national level. The on-going impact of Articles 4 and 5 themselves – rather than the mode of their implementation – is less easy to discern.

In the case of the ratio of independent production, the regression analysis clearly suggests that the size of the commercial sector is important, which might mean that it was the growth of commercial primary channel television in the 1990s that helped the independent sector, with many of the public channels continuing to source much of their programming in-house.

8.5 Limitations of regression analysis

We have been unable to establish a causal link between Articles 4 and 5 and the trends we identified in extra-Community trade in Section 3.3.1. It is possible that, in the absence of Articles 4 and 5, the trade deficit with the US would have been larger and that measures to promote the circulation of programmes within the EU have also promoted exports, but this is unproven.

It is possible that, without Articles 4 and 5, production sector turnover growth would have been less strong or the EBIT margins of the independent sector would have been lower, but this cannot be proven.

9 Views from inside the Audiovisual Industry

9.1 Interview sample

To capture the views and opinions of experts in the audiovisual sector we distributed questionnaires to more than 100 individuals and organisations, and received responses from 71. Replies were received from broadcasters, producers, and national regulatory authorities, and from every Member State. A significant number of questionnaires were completed in face-to-face interviews with respondents, conducted between May and December. The categories of organisation with whom interviews were conducted or questionnaires returned is given in Table 22. A further opportunity for interested parties to contribute to the study was provided by a workshop in Brussels towards the end of the study, when we presented our preliminary findings and invited comments from participants. A number of organisations accepted our invitation to submit supplementary information after the workshop. A list of the organisations whom we interviewed or who contributed information is provided in Table 23.

Table 22: Interview Sample

Organisation	**Interviews conducted / questionnaires returned**
Public service broadcaster	11
Primary commercial channel	7
Secondary pay TV channel	6
Independent producer	19
National authority	20
Trade association	8
Total	**71**

Table 23: List of organisations we interviewed or who contributed information

Member state	Classification	Company or organisation
Austria	National authority	KommAustria (RTR)
	Public service broadcaster	ORF
	Trade Association	Fachverband der Audiovisions und Filmindustrie
	Trade association	Austrian Film Association
Belgium	Independent producer	Skyline Film and Television
	Independent producer	Studio 1000
	National authority	CSA
	National authority	Min Vlaamse Gemeenschap Administratie Media
	National authority	VCM
Denmark	Independent producer	Koncern TV & Filmproduktion
	National authority	Radio and Television Board, Ministry of Culture
	Public service broadcaster	DR TV
Finland	National authority	TAC
	Public service broadcaster	YLE Finland
France	Independent producer	Marathon Productions
	Independent producer	TelFrance
	National authority	CSA
	National authority	DDM-CNC
	Public service broadcaster	France Television
	Secondary pay TV channel	13eme Rue
	Trade association	Ideale Audience
	Trade association	Union Syndicale de la Production Audiovisuelle
Germany	Independent producer	Bavaria Film
	Independent producer	EMTV
	National authority	ALM
	Primary commercial channel	ProSiebenSat.1
	Primary commercial channel	RTL Television
Greece	Independent producer	Petritsis
	National authority	General Secretariat for Communication
	Public service broadcaster	ERT
Ireland	Independent producer	AGTEL
	National authority	Commission for Communication Regulation
	Public service broadcaster	RTE

Member state	Classification	Company or organisation
Italy	Independent producer	Mondo TV
	National authority	AGC
	Primary commercial channel	Mediaset
Liechtenstein	National authority	Amt für Kommunikation
Luxembourg	Independent producer	Luxanimation
	National authority	SMA
	Primary commercial channel	RTL / de Holland Media Groep
Netherlands	Cable TV operator	United pan-Europe Communications
	Independent producer	Endemol BV
	National authority	Commissariaat voor de media
	Primary commercial channel	SBS Broadcasting BV
	Public service broadcaster	Netherlands Public Broadcasting
Norway	National authority	Statens Medieforvaltning
Portugal	National authority	Instituto da Comunicação Social
	Primary commercial channel	Sociedade Independente de Comunicação
	Public service broadcaster	RTP
Spain	Independent producer	CTV
	Independent producer	Filmax
	Independent producer	Lolafilms
	Independent producer	Trivision
	National authority	Prime Minister's Office
	Public service broadcaster	TVE
Sweden	National authority	GRN RTV
	Public service broadcaster	SVT - Sveriges Television
United Kingdom	Independent producer	Diverse
	Independent producer	Mentorn
	Independent producer	Monkey Productions
	National authority	OFCOM
	Primary commercial channel	ITV plc
	Public service broadcaster	BBC
	Secondary pay TV channel	Artsworld
	Secondary pay TV channel	Discovery
	Secondary pay TV channel	History Channel
	Secondary pay TV channel	Nickelodeon
pan-EU	Trade association	Association of Commercial Television
	Trade association	CEPI
	Trade association	European Broadcasting Union
	Trade association	Le Club des Producteurs Europeens

9.2 Objectives of qualitative information gathering

The objectives of the qualitative information gathering were:

9.2.1 To identify the determinants of programme sourcing decisions:

- How broadcasters decide on the balance between commissioned and acquired programmes in the schedule;
- How broadcasters decide from whom they are going to commission new programmes; and
- Why broadcasters typically acquire more ready-made programming from the US than from other Member States

Many factors influence these decisions and the questionnaire was set up to permit a ranking to be created of the influences on broadcasters' programme decisions.

9.2.2 To find out what co-production takes place between Member States and intra-community trade in European works

We asked producers to tell us about the nationality of companies with whom they co-produce and the impediments to intra-community trade in European works.

9.2.3 To find out more about the economic performance of the audiovisual sector and content producers

The interviews also contributed information and data about the economic performance of the independent production sector that we have used in our analysis of the Economic Performance of the European Audiovisual Sector (Chapter 3). We report below the findings that relate to the terms of trade between producers and broadcasters.

9.2.4 To find out how Articles 4 and 5 are implemented in each Member State

We interviewed national regulatory authorities to obtain information about how Articles 4 and 5 are implemented in each Member State. The information collected has informed Chapter 4 and 5 of this study and is not reported separately here. We also asked broadcasters and producers to tell us what they thought of the implementation and monitoring of Articles 4 and 5 in their Member State, and the impact of the Articles.

9.2.5 To discover the impact of Articles 4 and 5

We asked broadcasters to tell us what impact Articles 4 and 5 had on their programme sourcing decisions.

9.2.6 To obtain expert opinion about the future of Articles 4 and 5

We invited comments on the changes that respondents would like to see in Articles 4 and 5 of the Directive, and the reasons behind the changes they proposed. We also asked them to tell us what impact they thought interactive or new media would have on content production and distribution in Europe; we have reported these findings already in Chapter 3.

The questionnaires, interviews and workshop provided quantitative and qualitative information that add significant depth and colour to our picture of the sector. It enhanced our understanding of the commercial imperatives under which the broadcasting and production industries operate, and the views of the different constituencies affected by Articles 4 and 5 of The Directive.

9.3 Determinants of programme sourcing decisions

There are three important sets of decisions made by broadcasters that we wanted to explore. The first of these is the balance between commissioned and acquired programmes in the channel schedule; this is influenced by the cost of commissioning programmes compared with the cost of acquiring ready-made programmes, and by audience tastes and the editorial profile of the channel. The second decision is from whom broadcasters commission new programmes; the and third decision is the source of acquired programmes (particularly the balance between European-made programmes and programmes from the US).

9.3.1 The balance between new and acquired programmes

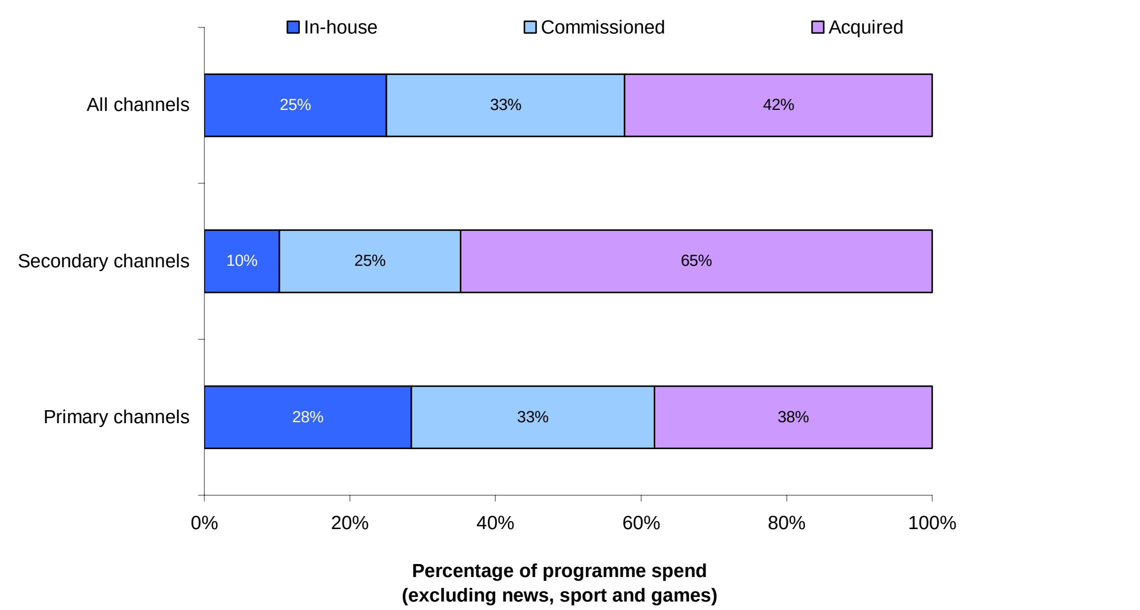
We asked broadcasters what proportion of their programme budget (excluding news, sport and games) was spent on acquisitions and commissions. We found that broadcasters spend a majority – 58 per cent – of their programme budget on commissioned programmes. The remainder of their spending – 42 per cent – goes on the acquisition of ready-made programmes.

A majority – 57 per cent – of the commissioning budget is spent on in-house production and the remainder on external commissioned programmes. The latter category includes both productions by independent producers and productions by the production facilities of other broadcasters – which do not count as independent productions.

Secondary channels allocate a higher proportion of their programme budget – 65 per cent – to acquired programmes, and a lower proportion of their programme budget – ten per cent – to in-house production. The low in-house production figure reflects the fact that many secondary channels have no in-house production capability. Secondary channels spend a lower proportion of their programme budget on commissioned programmes – 25 per cent compared with 33 per cent by primary channels.

The data is summarised in Figure 76 below.

Figure 76: Channel Programme Spend Allocation (2002)



We then asked broadcasters to tell us the price differential between acquired programmes and commissioned programmes in a variety of genres. We found that the per-hour cost of acquired programmes is between 13 per cent and 36 per cent of the per hour cost of commissioned programmes. The cost of acquired programmes, expressed as a percentage of the cost of commissioned programmes in the same genre, is given in Table 24.

Table 24: Cost per hour of acquired programmes as a percentage of the cost per hour of commissioned programmes (2002)

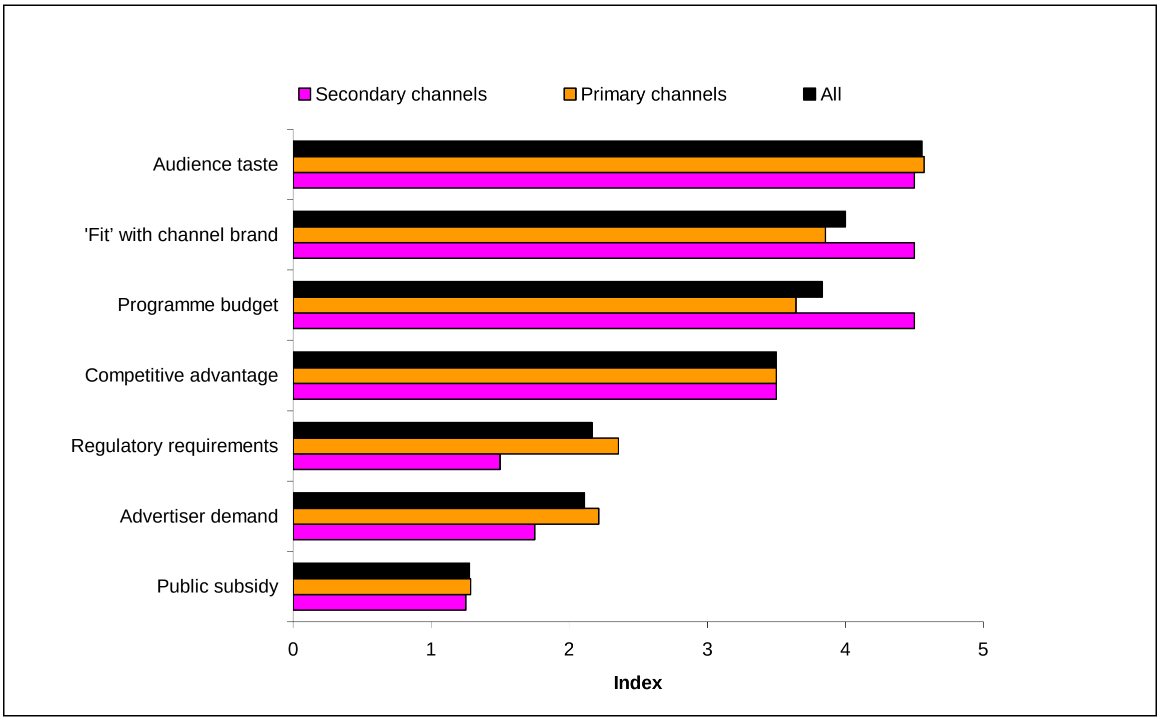
Genre	%
Cinema film	36%
Documentaries	24%
Entertainment	13%
Factual magazine programmes	23%
Fiction	30%

We asked broadcasters to rank the importance of the factors that determine the balance between commissioned and acquired programmes in the schedule. Broadcasters told us that the three most important factors that determine the balance between commissioned and acquired programmes in the schedule are audience tastes, the extent to which programmes fit with the channel's brand and editorial policies, and the size of a channel's programme budget. But while the first of these was clearly the most important for primary channels, all three were ranked as highly important for secondary channels.

Both primary and secondary channels rank competitive advantage as the fourth most important factor. By 'competitive advantage' we mean the extent to which programming attracts audiences away from other channels, or prevents audiences defecting to those channels.

Primary channels ranked regulatory requirements only fifth in the list of factors; for secondary channels it was ranked sixth, below advertiser demand[51]. Figure 77 summarises these findings using an index to rank the factors (the index is calculated by reference to the answers given by broadcasters; we asked them to give the factors a ranking between zero (unimportant) and 5 (very important). The index is the average of the replies).

Figure 77: Ranking of factors affecting spending on commissioned and acquired programmes (2002)



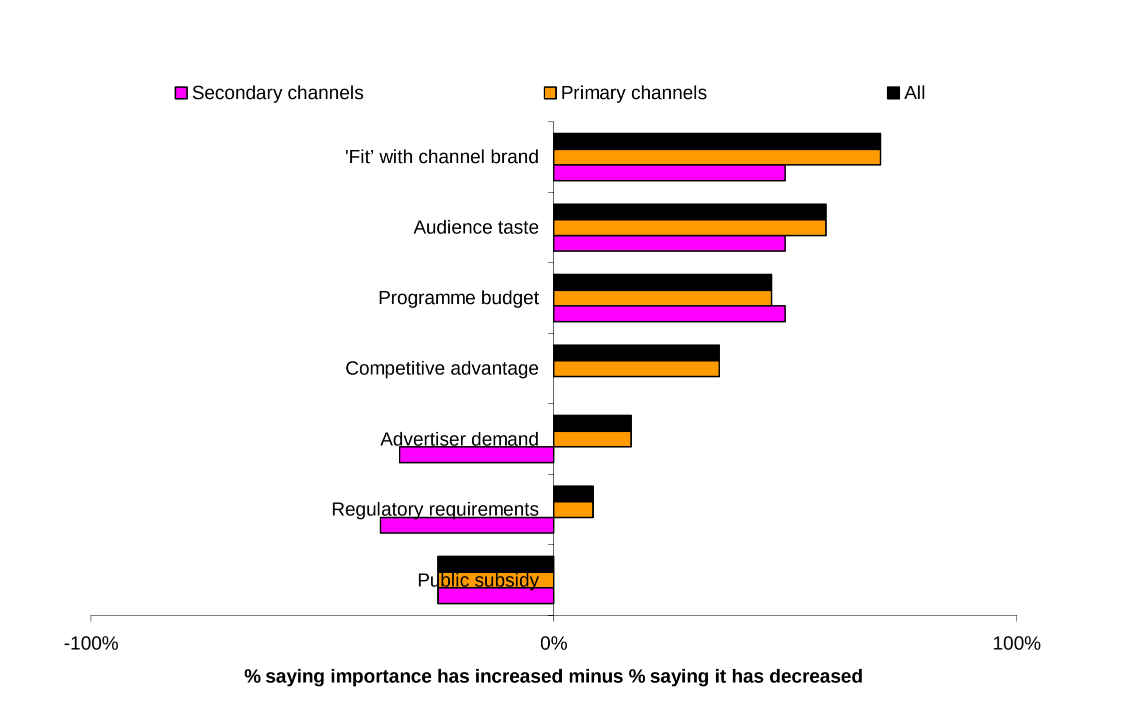
We then asked broadcasters to tell us how the influence of these factors had changed in the period 1993 to 2002. Broadcasters told us that factors to do with the channel brand, audience taste and programme budgets had grown in importance, which suggests an increase in competition between broadcasters for audience and revenue.

The influence of regulatory requirements has grown somewhat for primary broadcasters but declined significantly for secondary broadcasters. Regulation is a less important factor in decision making by secondary broadcasters in 2002 than it was in 1993. The most likely explanation of this finding is that regulatory requirements are not applied strictly on new secondary channels and so the impact of these regulations is less significant than commercial considerations such as programme budget and audience.

Figure 78 summarises these findings.

51 We have decided not to report separately the influence of national regulations and the requirements of Articles 4 and 5 on broadcaster decision making. This is because the requirements of Articles 4 and 5 are implemented by national regulation and it is sometimes hard to separate the impact of these and any additional national content requirements on decision making

Figure 78: Changes in the Importance of factors affecting spending (1993-2002)



9.3.2 Commissioning new programmes

We then asked broadcasters to focus on their decisions about commissioning programmes, and specifically the decision-making processes which determine the mix of programmes produced in-house and commissioned externally.

Broadcasters have three basic sources of new programmes. Established broadcasters (particularly publicly funded channels) have an in-house production capability from which they have traditionally commissioned the majority of new programmes. A broadcaster may commission programmes from the in-house production unit of another broadcaster, which is the second source of new programmes. The third source of new programmes is from a producer that is independent of a broadcaster (we described how an independent producer is defined in Chapter 5).

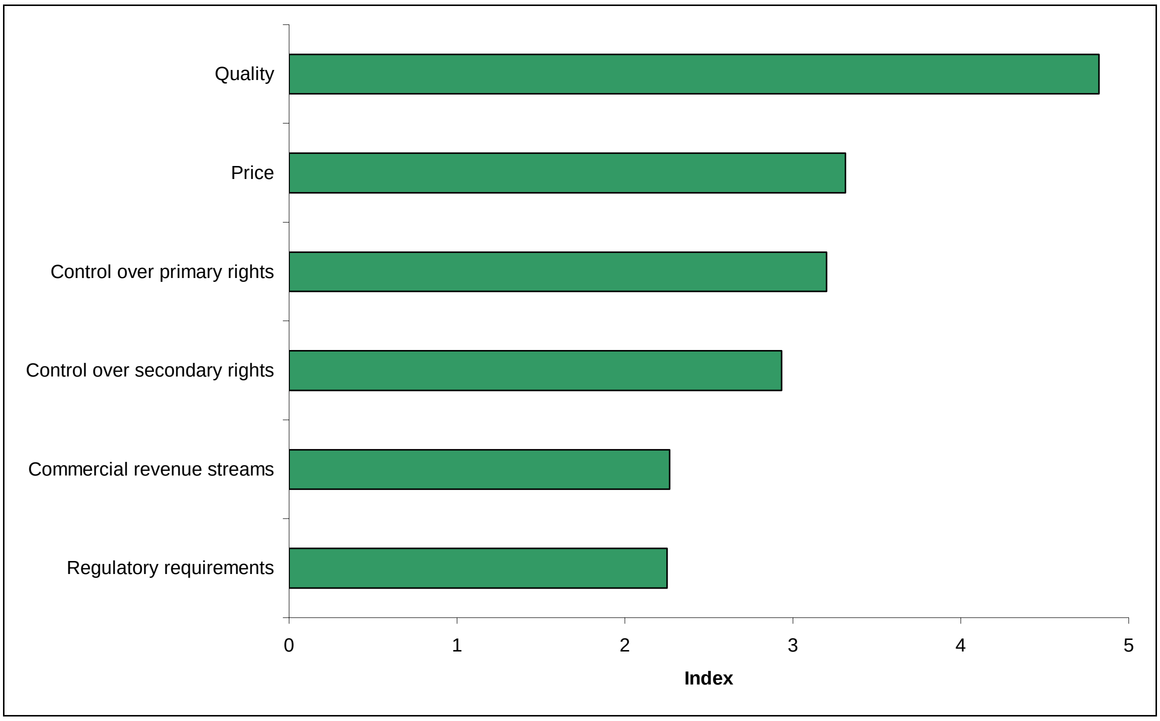
In this analysis we do not differentiate between primary and secondary channels because the number of secondary channels commissioning new programmes in significant volume is small.

Not surprisingly, broadcasters told us that the quality of the programme (as measured by indicators such as programme ideas, script, production values, talent etc) and price are the main influences on the commissioning process. Essentially there is a trade-off between quality and price which commissioning editors are constantly attempting to optimise within the restrictions of programme budget.

Broadcasters ranked control over primary and secondary rights next in order of importance. Primary rights are the exclusive rights to an agreed number of broadcasts. Secondary programme rights might include exploitation of a programme on pay TV or in foreign markets.

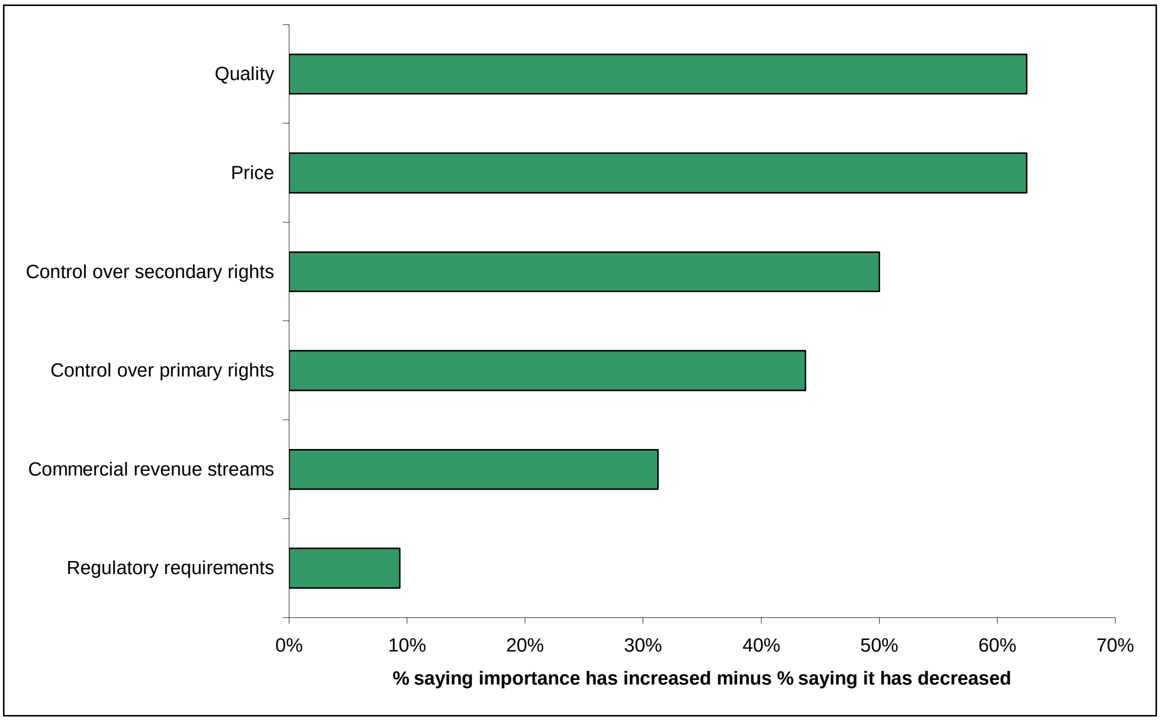
Broadcasters attached least importance to access to commercial revenue streams (merchandising, video sales etc) and regulatory requirements in their decision-making. Figure 79 summarises these findings.

Figure 79: Influences on Commissioning decisions (2002)



We find also that the most important influences are also those that have grown in importance between 1993 and 2002. Figure 80 summarises this finding.

Figure 80: Changes in Influences on Commissioning Decisions (1993-2002)



We then asked broadcasters to tell us what proportion of programmes are commissioned internally and externally in a range of genres (by internal commissioning we mean programmes made by the production arm of the commissioning broadcaster; by external commissioning we mean programmes made by the production arm of another broadcaster or by an independent producer). We also asked broadcasters to tell us for each genre whether it was cheaper to produce internally or commission from outside. We found a clear relationship between price differentials and whether a programme is commissioned internally or externally.

Four out of five broadcasters told us that factual magazine programmes are cheaper to provide in-house than to commission externally. A majority – 55 per cent – of factual magazine programmes are produced in-house. At the other end of the spectrum, only 30 per cent of broadcasters reported that films were cheaper to produce in-house than externally. 95 per cent of films commissioned by broadcasters are commissioned from external producers. These relationships are illustrated in Figure 81 and Figure 82.

Figure 81: Price differentials for commissioned programmes (2002)

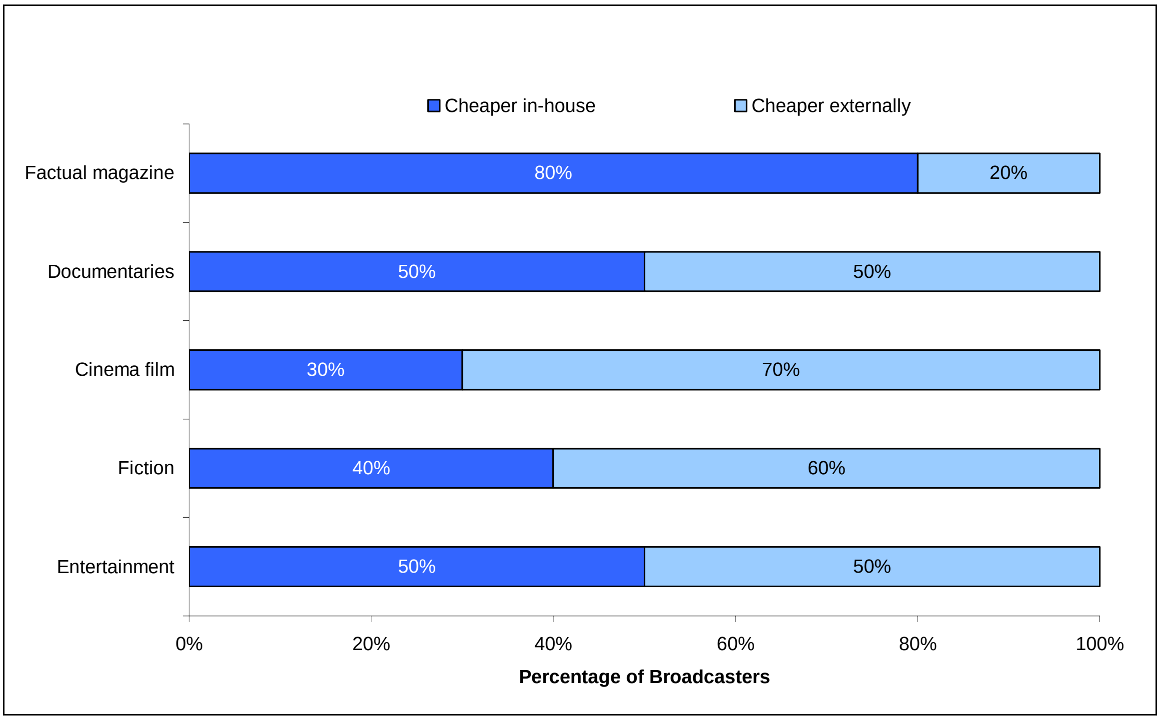
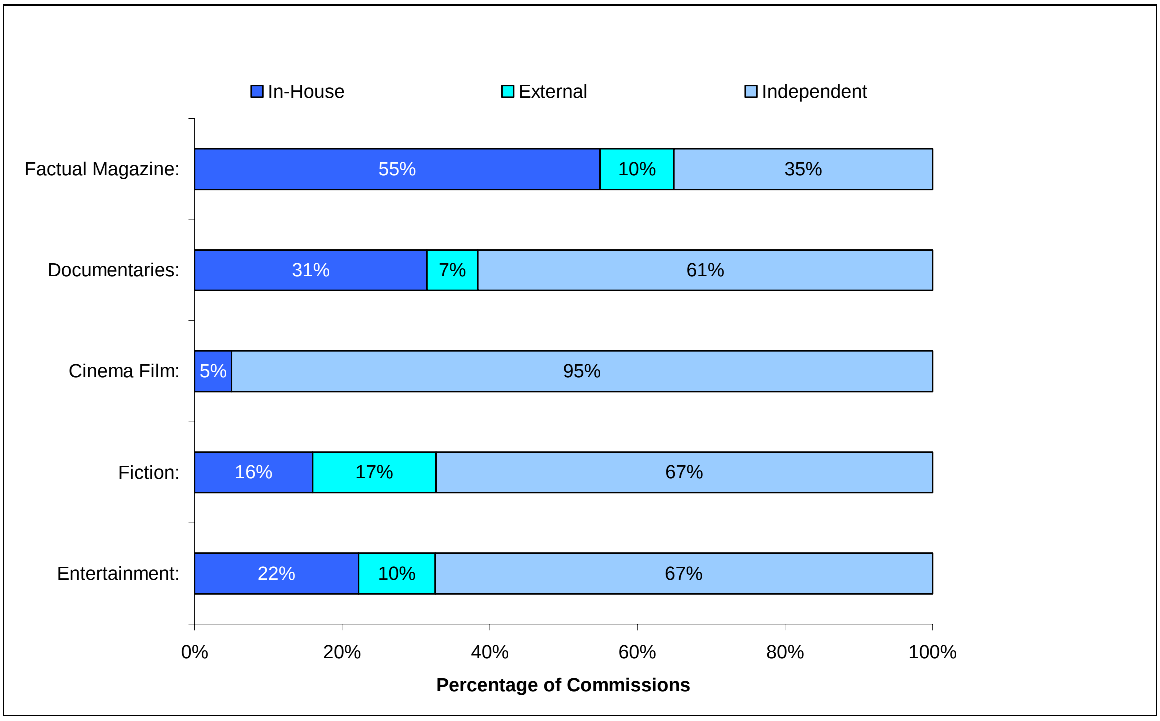
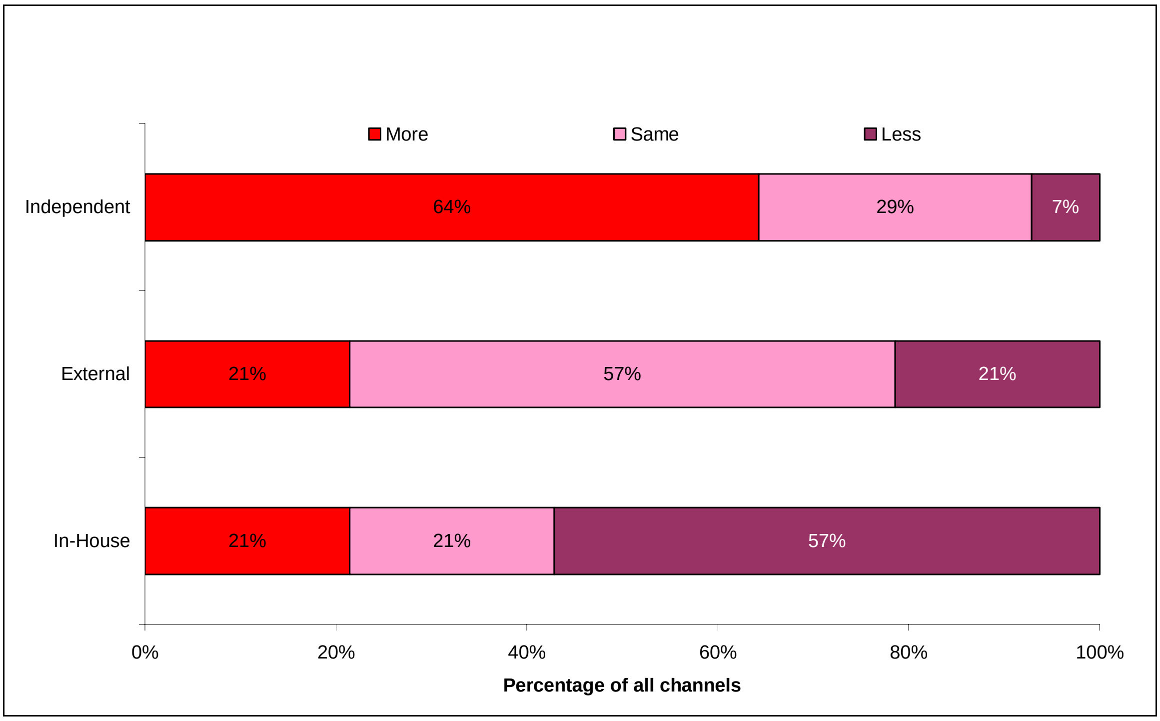


Figure 82: Commissioned programmes by producer (2002)



We then asked broadcasters to tell us whether the proportion of the commissioning budget spent in-house and externally changed between 1993 and 2002. 64 per cent of broadcasters told us that they spend a greater proportion of their commissioning budget on independent productions in 2002 than they did in 1993. Only seven per cent of broadcasters reported spending a smaller proportion of their budget on independent production than in 1993. A majority of broadcasters – 57 per cent – reported spending a smaller proportion of their budget internally than in 1993. These findings are summarised in Figure 83.

Figure 83: Changes in commissioning budget allocations (1993 to 2002)



9.3.3 Decisions about programme acquisitions

The broadcasters contributing to the study purchased almost half – 47 per cent – of their programme acquisitions from outside the EU in 2002. Of this, 41 per cent was from the US and 6 per cent from outside the US. This is greater than the proportion of acquisitions from the home market or the rest of the EU.

Table 25: Source of acquired programmes (2002)

Source of Acquired Programmes	%
US broadcasters or producers	42%
Broadcasters or producers in another European country	24%
Domestic producers	22%
Broadcasters or producers outside Europe and the US	6%
Other domestic broadcasters	6%

We asked broadcasters to rank a series of factors according to their influence on the decision to purchase programmes from the US. Audience taste was found to be the most important factor. From discussions with broadcasters it was apparent that there is a greater appetite for US programming among European audiences than for programmes produced in other Member States. It was suggested to us that US programme storylines have broad appeal whereas European production has a national culture and appeal which does not travel well. There is also a familiarity with US programming that does not exist for programmes made in other Member States.

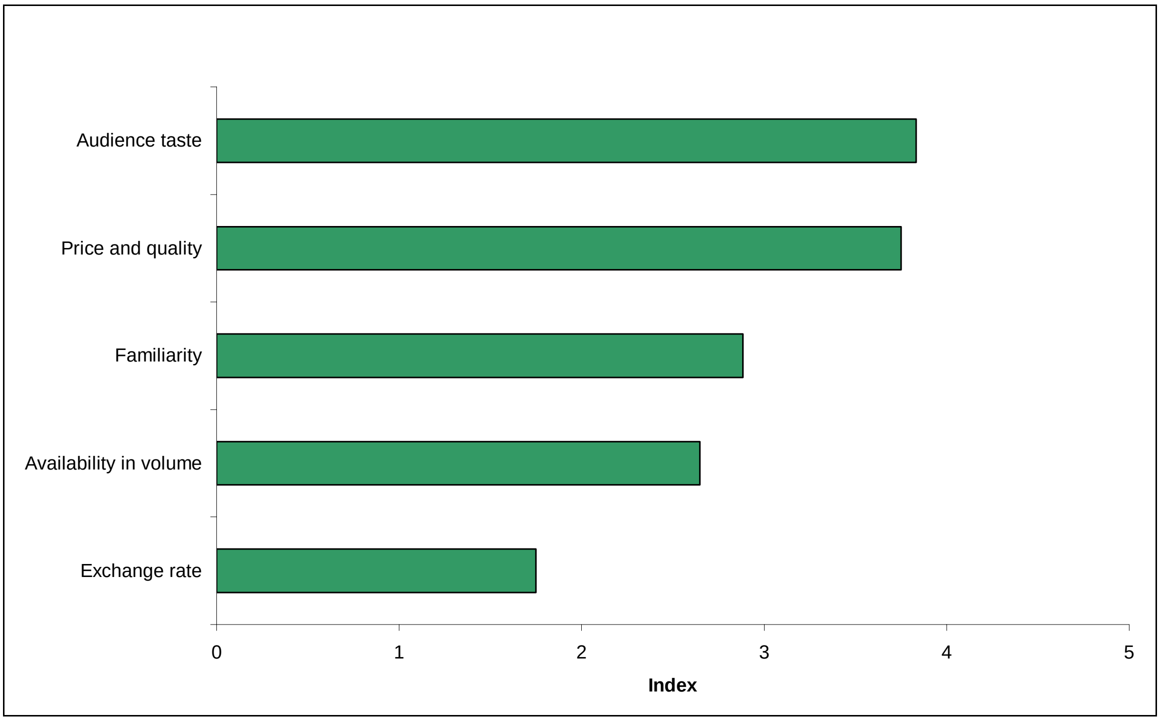
US programming is more attractive than European programming in terms of price and quality (or put another way, the US product is of a higher quality than European output for any given price point). European broadcasters also told us that the US can supply programmes in volume – which helps fill the schedule (particularly outside peak time) and creates continuity and consistency in the schedule. However, at least one primary broadcaster found that the practice of bundling programmes by the studios was an impediment to acquiring programming from the US because it forces broadcasters to pay for unwanted content.

Another primary broadcaster pointed out to us that a majority of European production is commissioned by broadcasters, who hold the programme libraries and have little incentive to release content for exploitation by rival broadcasters. This is also an impediment for secondary channels who cannot acquire programming from primary broadcasters and so have little other supply except the US.

Exchange rate movements were found to have the least impact on decisions (although the present weakening of the dollar is a greater exchange rate movement than occurred in the period of review of this study – that is 1993 to 2002 – and the relationship may not hold true in extremis).

This information is presented in Figure 84.

Figure 84: Reasons for acquiring US acquisitions (2002)



9.4 Co-production between Member States and intra-community trade in European works

We asked independent producers to tell us whether or not they are involved in co-production of new programmes and, if so, the location of co-production partners.

We found that 12 of the 20 producers we spoke to (60 percent) are involved in co-productions with other production companies based in the EU. Eight companies are involved in co-productions with partners in their own Member State and other Member States. Co-production partners are mainly located in the larger European TV markets – France, Germany, Italy and the UK. There are also cultural and linguistic links that encourage co-production – for example between the Netherlands and Belgium, and Germany and Austria.

Four producers (20 per cent) are involved in co-production in the EU but not in their domestic market, and two producers (10 per cent) are involved in domestic co-production only.

One of the respondents was only involved in co-production outside of Europe (in Canada), bringing the total number of producers engaged in co-production to 13 (65 per cent).

Eight of the 12 producers involved in European co-production also did co-productions outside Europe – mainly in the US, Canada and Latin America.

Despite the majority proportion of producers involved in co-production, revenues are still concentrated in the domestic market. 70 per cent of the revenues of the producers we spoke to was earned in the domestic market, with 20 per cent from other Member States and only 10 per cent of revenue from outside Europe.

Primary broadcasters are the main source of funding for programme production, providing between 75 per cent (fiction) and 100 per cent (factual entertainment) of the production cost. The replies we received from broadcasters and producers confirms that co-production is an important element in funding for the more expensive genres (documentaries and fiction, particularly animation and cinema film) at typically about 15 per cent of funding. Producers reported a funding gap of up to 10 per cent in fiction, which is deficit funded from their own resources.

We asked producers to tell us which genres of programme could be exported to another European Member State. The genres that travel best are the higher cost-per-hour productions – documentaries, feature film and fiction. Producers told us that there is little cross-border trade in factual magazine programmes and entertainment programmes, which are culturally specific. Overall this supports the view that stock programmes export better than flow programmes. Formats also travel well. Producers reported a similar picture in trade outside Europe, with greater demand for documentaries, fiction and feature films than entertainment and factual magazine programmes.

9.5 Terms of trade

The acquisition and retention of programme rights was widely identified by producers as a means of improving the returns from production and enabling them to build an asset base that they could borrow against to invest and grow.

Producers told us that the broadcaster typically has control of the domestic broadcast rights to a programme it has funded in perpetuity. Broadcasters also typically control secondary and ancillary rights for up to six years. We found that producers tend to retain more programme rights than they did ten years ago – but 83 per cent told us that the margins they received on rights obtained by the funding broadcaster had shrunk over the same period and 88 per cent of producers told us they could extract more value from the rights if they exploited them themselves. 87 per cent of producers told us they wanted a statutory limit on the period that a broadcaster can have exclusive use of primary rights to a programme it has funded.

As well as limiting the ability of independent producers to maximise revenue, the retention of rights by broadcasters may act as an impediment to trade in programmes between Member States, and also act as a barrier preventing secondary channels from meeting the requirements of Articles 4 and 5. A majority of European production is commissioned by primary broadcasters; while they hold the programme rights they can control the way in which a programme they have commissioned is exploited.

Independent producers argue strongly that broadcasters do not exploit their productions as effectively as they would do themselves, implying that export opportunities are not currently fully exploited, because broadcasters do not pursue these opportunities as energetically as producers would do. As a follow-up to this study, research should be conducted in Member States that have introduced revised terms of trade that are more favourable to producers to identify whether the benefits producers claim, such as increased exports, have been realised.

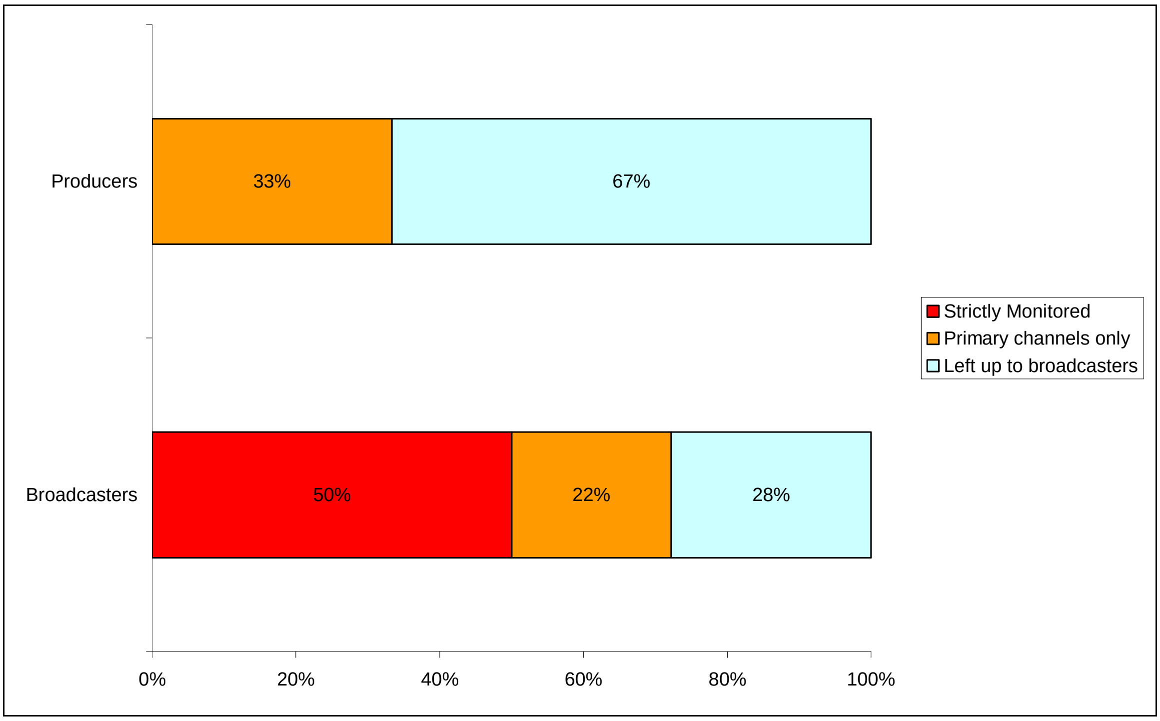
In their domestic market, commissioning broadcasters have little incentive to release content for exploitation by rival channels. This limits the availability of European-made programmes for acquisition, particularly by secondary channels who may not have the programme budget to support new production in significant volume. Consequently, secondary channels have few other sources of supply for acquired programmes except the US.

Broadcasters countered these arguments by pointing out that it is they who take the initial risk by funding production and providing airtime and promotion; it is only appropriate, they argue, that they should be the primary recipient of the resulting revenues.

9.6 Implementation of Articles 4 and 5

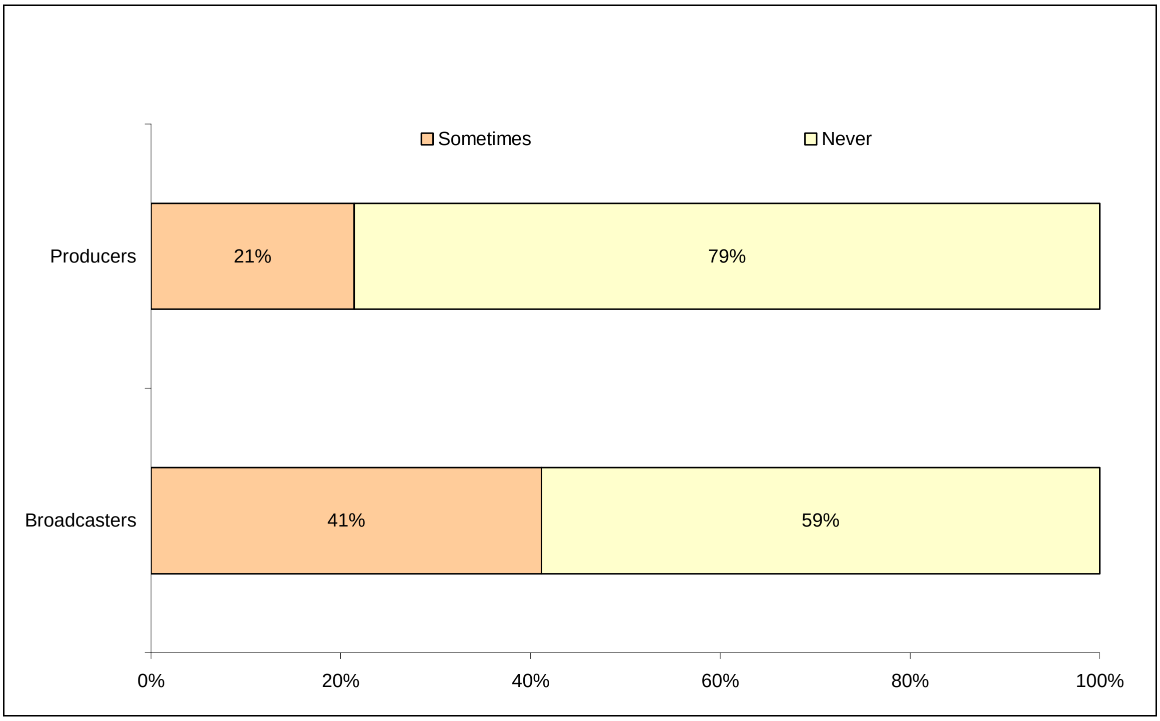
We asked both broadcasters and producers to give us their opinions about how Articles 4 and 5 are implemented and monitored in their Member State. We first established that our interviewees were familiar with the requirements of Articles 4 and 5. We then asked how they would characterise the approach adopted by the regulatory authority to monitoring the achievement by broadcasters of the requirements of Articles 4 and 5 of the Directive. A clear majority – 67 per cent – of producers felt that the monitoring of Articles 4 and 5 was largely self-regulated by the broadcasters themselves. None of the producers we spoke to believed that the requirements of Articles 4 and 5 were strictly monitored by the regulatory authorities, compared with half – 50 per cent – of broadcasters who believed this to be so. This is summarised in Figure 85.

Figure 85: Monitoring of Articles 4 and 5



There was more agreement on the question of sanctions, with neither producers nor broadcasters reporting that sanctions were applied frequently by national regulators against channels who failed to meet the requirements of Articles 4 and 5. A majority of both broadcasters and producers agreed that sanctions are never applied. Only 26 per cent of broadcasters and 10 per cent of producers said they believed that the sanctions were an effective means of securing adherence by broadcasters to the requirements of Articles 4 and 5. This is summarised in Figure 86.

Figure 86: Application of Sanctions for Failure to achieve Articles 4 and 5

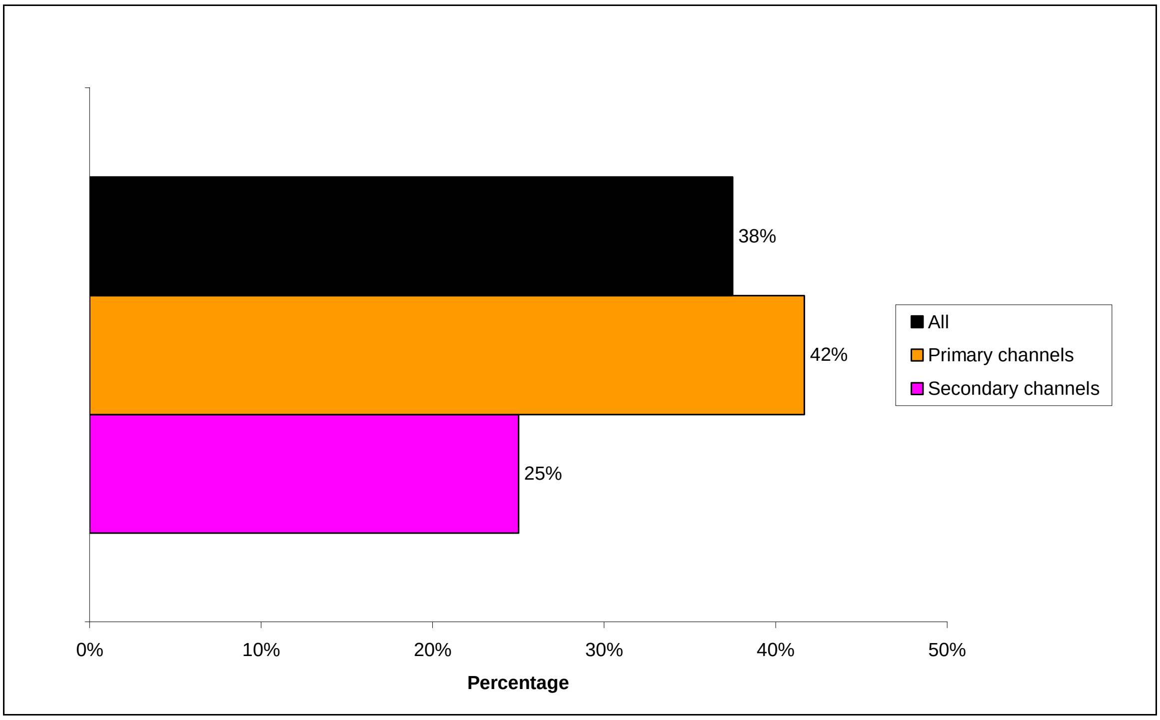


9.7 Impact of Articles 4 and 5

Referring back to the three sets of programme sourcing decisions confronting broadcasters which we identified above, we would expect Article 4 to have an effect on programme acquisition decisions – particularly whether to acquire European-made programmes in preference to US programmes – and Article 5 to have an effect on programme commissioning decisions – particularly whether to commission from an independent producer.

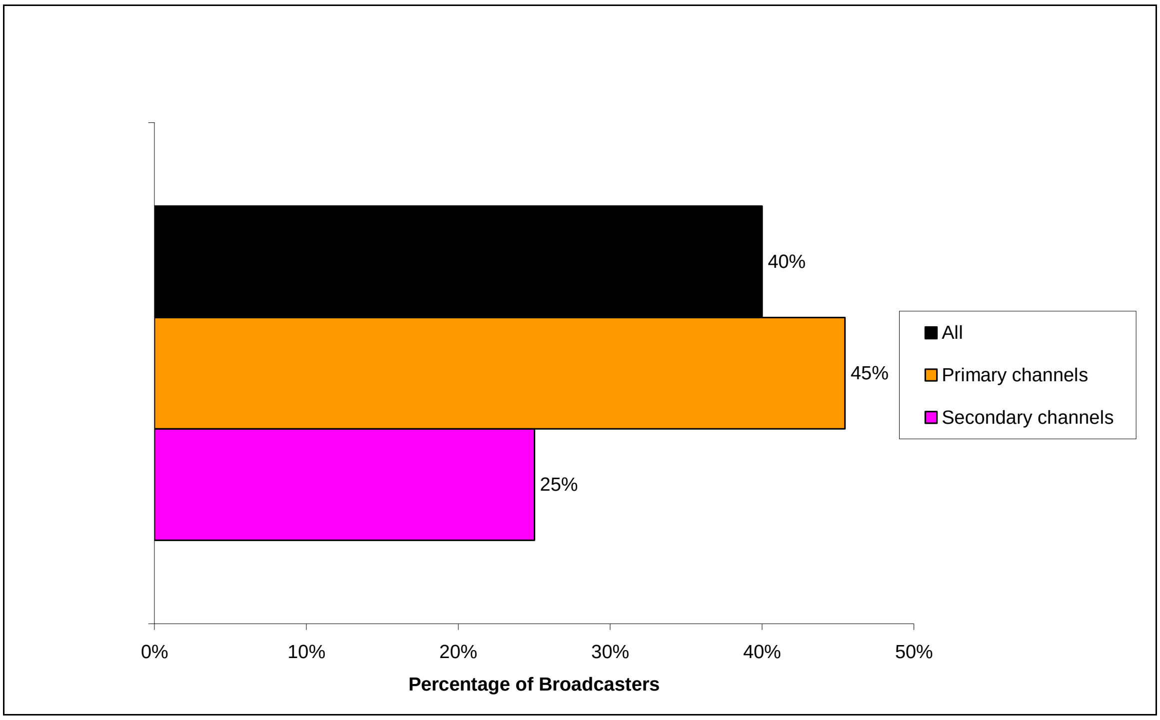
We asked broadcasters whether Article 4 affected the decision on where to source acquired programming. We found that Article 4 was a consideration for 42 per cent of primary broadcasters when considering the sourcing of acquisitions. Only a quarter – 25 per cent – of secondary broadcasters reported that Article 4 had an effect on decision making. Overall, 62 per cent of broadcasters reported that Article 4 had no effect on their decision making. This information is presented in Figure 87.

Figure 87: Proportion of Broadcasters who told us Article 4 was an influence when deciding to acquire Programmes from the US or Europe



We asked broadcasters to tell us whether Article 5 influences their commissioning decisions: 45 per cent of primary broadcasters told us that Article 5 had a material effect on their commissioning decisions; but only 25 per cent of secondary broadcasters considered it a significant influence on decision-making. Overall, 60 per cent of broadcasters reported that Article 4 had no effect on their decision making. Figure 88 summarises this finding.

Figure 88: Proportion of broadcasters who told us Article 5 was an influence on Commissioning Decisions



9.8 To obtain expert opinion about the future of Articles 4 and 5

We asked broadcasters and producers to propose any changes to Articles 4 and 5 that they would like to see, and the reasons for the changes they proposed.

Broadcasters argued that Articles 4 and 5 were disproportionate interventions in their scheduling freedom and should be abolished.

Primary broadcasters told us that audience tastes drive programme-making decisions and that this alone was sufficient to ensure that channel schedules contain a majority of European programming. It was also pointed out to us that national requirements are frequently higher than those contained in the Directive, rendering Articles 4 and 5 irrelevant.

Secondary channels argued that the requirements of Articles 4 and 5 were onerous for channels with a small audience share and a business model based on serving targeted audience segments. It was suggested, for example, that Articles 4 and 5 should be applied progressively to reflect audience share – it is often difficult to meet requirements in the early life of a channel because secondary channels have small commissioning budgets and much domestic product is withheld by terrestrial broadcasters.

Producers tended to argue for the retention of Articles 4 and 5 – possibly with higher thresholds – and intervention to give them greater control over programme rights.

For example, it was put to us that the independent production requirement contained in Article 5 should be raised from ten per cent to 25 per cent or 30 per cent – and the requirement applied to production spend rather than programme hours – in order to achieve a balance in the market between producers and broadcasters. Producers also told us that Articles 4 and 5 do not take into account production budgets and whether or not programmes are shown in peak time.

Producers also tended to argue that the "where practicable" requirement offers a general exemption from the requirements of Articles 4 and 5. This approach was contrasted unfavourably with other legislation (the Copyright Directive, for example) where general rules are established and exemptions clearly defined, leaving less room for avoidance of the requirements of the legislation.

10 Key Findings and Conclusions

10.1 The Remit

In Chapter 1 we set out the remit of the study and identified the five broad themes that we set out to address:

Theme one: How Articles 4 and 5 have been implemented

How Member States have implemented Articles 4 and 5 in national legislation and the additional content requirements that some Member States place on broadcasters.

Theme two: Impact of Articles 4 and 5 on TV schedules

The direct impact of Articles 4 and 5 on TV schedules.

Theme three: Impact on cultural objectives

The impact of Articles 4 and 5 on cultural objectives of The Directive.

Theme four: Impact on the economic performance of the European audiovisual industry

The indirect impact of Articles 4 and 5 on the economic performance of European broadcasters and producers.

Theme five: Future Challenges

The challenges facing Europe's broadcasters and content producers from audience fragmentation, new media and the general move towards digital TV, together with their implications for European audiovisual policy.

In this Chapter we pull together the key findings from Chapters 2 to 9 under these headings, and draw out our conclusions; the figures in brackets refer to the paragraph in the report from where the finding is sourced.

10.2 Theme one: How Articles 4 and 5 have been implemented

10.2.1 Implementation of Articles 4 and 5 by Member States

The TV Without Frontiers Directive is an instrument to create minimum standards for national measures in the internal market. The provisions of The Directive are implemented through separate national legislation in each Member State. Member States have transposed Articles 4 and 5 into national law using a combination of primary legislation and secondary regulation (6.1).

The Directive defines total qualifying hours as a channel's transmission time "excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping". A majority of Member States have transcribed the definition directly into national legislation; however, France and Germany apply stricter definitions. France distinguishes between audiovisual works and cinematographic works. Germany defines what is included as qualifying hours: feature films, television movies, series, documentaries and comparable productions (6.2.1).

Articles 4 and 5 of The Directive contain the qualifying term ‘where practicable’. Certain Member States – for example Austria, Belgium, Luxembourg, Spain and Sweden – have incorporated the wording ‘where practicable’ into national legislation, which we consider to be a more flexible interpretation of The Directive than when this phrase is absent (6.2.3).

France is the only Member State to apply a rights-based definition of what constitutes an independent producer; an independent producer may not license rights to first showing of a programme to a broadcaster for a period longer than eighteen months; the maximum duration that repeat rights may be licensed is 42 months and 3 broadcasts (6.2.4).

The standard methodology employed by Member States to monitor adherence to Articles 4 and 5 is to require broadcasters to submit transmission returns, giving the volume of European works and independent productions they broadcast. Some Member States take additional steps to verify the accuracy of the data; in France, the Conseil Supérieur de l’Audiovisuel categorises every programme broadcast on public service TV to check the broadcasters’ statements. Regulators in Ireland, Greece, the Netherlands and the United Kingdom perform additional monitoring or sampling to check returns. In Spain and Portugal, the regulator retains a research organisation to verify the returns from broadcasters (6.3.1).

In certain Member States – Austria, Germany, Iceland and Ireland – the regulator has no legal powers to apply sanctions. In Sweden, the regulator has powers to act where a broadcaster fails to submit returns, or where those returns are falsified. In the remaining Member States, regulatory authorities have a range of powers at their disposal to encourage adherence to The Directive, from warnings to the imposition of fines and – in some Member States, and for the most serious cases – regulatory authorities can shorten or revoke a broadcaster’s licence (6.3.2).

Article 3 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” (6.4.1).

Six Member States – Finland, France, Italy, The Netherlands, Spain and the United Kingdom – apply higher percentage requirements than those contained in The Directive on some or all of their broadcasters. For example, in France, legislation requires all broadcasters to reserve at least 60 per cent of their qualifying hours to European audiovisual and cinematographic works (6.4.2).

Almost all Member States place additional content requirements on broadcasters to reflect linguistic or cultural specificities in a Member State. Intentionally or otherwise, they act as barriers to cross-border trade in programmes and channels because (a) they set conditions on programme content that only domestic programme producers can meet; and (b) they lead to channel schedules that are specific to a Member State, thereby limiting the appeal of these channels in other markets (6.4.3).

Member States can be divided into two groups according to whether they adopt a flexible or a prescriptive approach to implementing Articles 4 and 5. The following Member States adopt a prescriptive approach to implementation: Belgium, Finland, France, Greece, Italy, Luxembourg, Portugal and the United Kingdom (6.5).

Member States can divided into two groups according to whether they place many or few additional content-based requirements on broadcasters, particularly with regard to national language and culture. The following Member States put significant additional requirements on broadcasters: Belgium, Finland, France, Italy, Netherlands, Norway, Portugal, Spain, Sweden and the United Kingdom (6.5).

We call these two dimensions 'implementation modes'; they are presented below (6.5):

Implementation Modes (Table 13 reproduced from Chapter 7)

		Application of Directive	
		Flexible	**Prescriptive**
Additional Requirements	**High**	Netherlands Norway Spain Sweden	Belgium Finland France Italy Portugal United Kingdom
	Low	Austria Denmark Germany Iceland Ireland	Greece Luxembourg

10.2.2 Reporting on Articles 4 and 5

There are significant gaps in the data on the application of Articles 4 and 5 that is collected by Member State authorities and published by the Commission; the problem is particularly acute with regard to secondary channels broadcasting via satellite or cable. As the number of secondary channels grows and they take a bigger share of all viewing, the omission becomes more significant (5.2.1).

The exclusion of channels with audience share less than 3 per cent from the calculation of the average proportion of European works in the schedule for each Member State may give a rosy picture of European production in the reported figures. The 3 per cent cut-off point for the calculation of national averages of the transmission of European works may also be a contributory factor in the poor reporting of secondary channels by some national regulatory authorities (5.2.2).

10.2.3 Monitoring of Articles 4 and 5

A majority of producers and broadcasters do not believe that Articles 4 and 5 are strictly monitored by the regulatory authorities in their Member State (9.6).

A majority of producers and broadcasters believe that the regulatory authorities do not apply sanctions against channels who fail to meet the requirements of Articles 4 and 5 (9.6).

10.3 Theme two: Impact of Articles 4 and 5 on TV schedules

10.3.1 Market developments

The European TV industry has grown by 6.5 per cent year between 1995 and 2002 (3.3).

The number of channels covered by Articles 4 and 5 has grown from about 145 in 1993 to 503 in 2002, which means that, even if there has been no improvement in the performance by channels against the requirements of Articles 4 and 5, there has been a significant increase in the volume of European works and independent productions that are broadcast in the EU (5.3.1).

The increase of 27.9 per cent in the average qualifying hours per day on primary channels and 4.9 per cent on secondary channels between 1993 and 2002 means that, even if there has been no improvement in the performance by channels against the requirements of Articles 4 and 5, there has been a significant increase in European works and independent productions broadcast in the EU (7.2.1).

10.3.2 The proportion of European works in the schedule

All channels

The average proportion of qualifying transmission hours devoted to European works for the channels in our sample has risen from 52.1 per cent in 1993 to 57.4 per cent in 2002 (7.2.1).

In 2002, a majority proportion of qualifying works were of European origin in every Member State except Ireland, Sweden and Spain (7.2.3).

Primary channels

The proportion of qualifying transmission hours devoted to European works has increased by more than 17 per cent over the period under review – from 53.2 per cent in 1993 to 62.4 per cent in 2002 (7.3.2).

Primary channels that are publicly funded devote the highest proportion of qualifying transmission hours to European works and the proportion has grown from 65.6 per cent in 1993 to 75.8 per cent in 2002. Advertising funded primary channels devote a smaller proportion of qualifying transmission hours to European works than do publicly funded channels; however, the proportion has grown at a faster rate than that of the publicly funded channel. The average for advertising funded primary channels was less than 50 per cent at the beginning of our study – 43.7 per cent in 1993 – but has increased to represent a majority of qualifying transmission hours – 50.7 per cent – in 2002 (7.3.2).

Primary channels account for about 55 per cent of gross industry revenue but over 90 per cent of all new commission spending (3.2.5).

Primary channels tend to show a higher proportion of European works in peak time than in the rest of the schedule (the average proportion of European works on primary channels in peak time in 2002 was 65.3 per cent, compared with 61.6 per cent in non-peak). This rebuts any suggestion that primary channels are meeting the requirement of Article 4 by showing European works at times of the day when there is less viewing (7.3.3).

There is some evidence that primary channels have reduced the proportion of European works that are stock programmes (generally more expensive) and increased the proportion of (generally cheaper) flow programmes (7.3.4).

Smaller primary channels

Less than 50 per cent of the qualifying output of smaller primary channels (with audience share between 3 and 8 per cent) is European – 35.0 per cent in 1993 and 47.7 per cent in 2002. However, the growth in the proportion of qualifying transmission hours reserved for European works is more rapid than that demonstrated by all primary channels (7.5.2).

Stock programmes make up a smaller proportion of qualifying European works on smaller primary channels than on larger primary channels. In 2002, less than one third (32.7 per cent) of qualifying European works on smaller primary channels were stock programmes (7.5.3).

Secondary channels

Secondary channels reserve a significantly smaller proportion of qualifying transmission hours for European works than do primary channels, and the average share of European works on secondary channels was less than 50 per cent in every sample year. There is also evidence from our sample that the proportion of European works on secondary channels has actually fallen (from 41.2 per cent in 1993 to 34.0 per cent in 2002), although this may be a consequence of the limited data available before 2002 (7.4.2).

10.3.3 The proportion of Independent productions in the schedule

All channels

The average proportion of independent productions in qualifying transmission time for all channels has increased from 16.2 per cent in 1993 to 20.2 per cent in 2002 (7.2.1).

In 2002 only Luxembourg and Portugal failed to meet the requirement of Article 5 (7.2.3).

Primary channels

The average proportion of qualifying transmission time that primary channels devote to independent productions has grown from 16.3 per cent in 1993 to 20.0 per cent in 2002. This is an increase of 22.8 per cent in the period under review. Publicly funded channels have increased the proportion of independent productions in qualifying transmission hours most, from 15.6 per cent in 1993 to 21.2 per cent in 2002, an increase of more than a third (35.7 per cent) in the period 1993-2002 (7.3.6).

Primary channels broadcast, on average, a higher proportion of independent productions in peak time than in non-peak time. Advertising funded channels have consistently shown a higher proportion of European works by independent producers in peak time than in non-peak time; publicly funded channels showed a lower proportion of independent productions in peak time than in non-peak in 1993 and 1996. This pattern was reversed in 1999 and 2002 (7.3.6).

A high proportion of the programmes that primary channels commission from independent producers are in expensive genres (particularly fiction and cinema film). In 2002, an average of 28.8 per cent of independent productions broadcast on primary channels were fiction programmes; 12.6 per cent were documentaries, and 11.0 per cent were cinema film. Fiction, documentaries and cinema film tend to have a higher cost per hour of production than other genres. This propensity has been declining as the sector grows in size (7.3.7).

Smaller primary channels

Smaller primary channels perform less well than either primary or secondary channels in terms of the proportion of independent productions they broadcast. However, in every year the 10 per cent requirement contained in Article 5 was achieved on average, and in 2002 the proportion was 18.7 per cent (7.5.4).

Secondary channels

The average proportion of qualifying transmission time that secondary channels devote to independent productions has grown from 15.9 per cent in 1993 to 21.3 per cent in 2002. Independent productions comprise about 60% of their European output (7.4.3).

Secondary channels now devote a higher proportion of qualifying transmission time to independent productions than primary channels. This is probably explained by the fact that secondary channels tend not to have in-house production facilities, and primary broadcasters are not always willing to supply programmes to competitors. Hence the only source of programmes for secondary channels is frequently independent producers. Given the recent growth in the number of secondary channels it does, however, point to the importance of secondary channels as an outlet for independent productions (7.4.3).

Recent independent productions

The average share of recent independent productions as a proportion of total qualifying transmission hours for all channels has increased from 11.3 per cent to 15.7 per cent. Expressed as a proportion of all independent productions, the ratio was 69.5 per cent in 1993, falling to 65.2 per cent in 1996 and thereafter rising to 71.1 per cent in 1999 and 77.8 per cent in 2002 (7.2.1).

The average proportion of independent productions on primary channels that are less than five years old has grown from 68.7 per cent in 1993 to 80.0 per cent in 2002 – i.e. four out of every five independent productions are less than five years old (7.3.8).

On secondary channels, the average proportion of independent productions that are less than five years old has fallen from 77.3 per cent in 1993 to 67.9 per cent in 2002. However, this is still notable given that one might expect secondary channels to meet Article 5 by broadcasting repeat showings of independent productions, rather than new productions (7.4.4).

10.3.4 Evidence to explain these findings

The proportion of European works in the schedule

The ratio of European works on a primary channel is positively correlated with the number of other primary channels in its market, which suggests that competition between primary channels for audience share is a significant determinant of the proportion of European works in the schedule (8.2.3).

The ratio of European works on a primary channel is positively correlated with the audience share of that channel; a channel's revenue roughly equates with audience share so this finding suggests that channel revenue is a significant determinant of the proportion of European works in the schedule[52] (8.2.3).

Taken together, these two findings suggest that a degree of competition encourages the use of European works but that, if competition creates too much audience fragmentation, it may leave channels with insufficient budgets with which to commission European works (8.2.3).

52 It is tempting also to infer from this result that a high proportion of European works in the schedule produces a higher audience share. However, causality does not necessarily work both ways and caution must be exercised when assessing whether a two-way causality is plausible.

The ratio of European works on a primary channel tends to be higher if the channel is publicly funded (8.2.3).

The proportion of independent productions in the schedule

The ratio of independent productions on primary channels is positively correlated with the size of the commercial sector, a finding which might mean that it was the growth of commercial primary channel television in the 1990s that helped the independent sector, with many of the public channels continuing to source much of their programming in-house (8.4).

10.3.5 Evidence that Articles 4 and 5 have had an impact

Article 4

We have found evidence from 1993 of a significant number of primary channels immediately above the 50 per cent minimum necessary for the achievement of Article 4, which implies that the measure influenced behaviour in that year resulting in channels being at, or around, the threshold. In particular, a large number of commercial primary channels were clustered around the 50 per cent European works level, which suggests that the impact of Article 4 was most pronounced on commercial channels (7.3.2).

The more prescriptive a Member State is in the way that it implements Articles 4 and 5, the higher the average ratio of European works to qualifying transmission hours in that country. Member States with a national average for European works greater than the EU average – such as Finland, France, Greece, Italy and Luxembourg – are also among the most prescriptive in the way that they apply Articles 4 and 5 (8.1).

Member States – such as Finland, Greece, Italy and the United Kingdom – that are prescriptive in the way that they implement Articles 4 and 5 have experienced greater increases in the average proportion of European works than those Member States that have implemented Articles 4 and 5 flexibly (8.1).

The ratio of European works on a primary channel tends to be higher if the channel is regulated in a Member State that has adopted a prescriptive approach to implementing The Directive (8.2.3).

The proportion of European works during qualifying transmission hours can be expected to be higher where a Member State places significant additional requirements on channels (8.2.4).

Article 4 was a consideration for 42 per cent of primary broadcasters when considering the sourcing of acquisitions. Only a quarter – 25 per cent – of secondary broadcasters reported that Article 4 had an effect on decision making (9.7).

Given that few secondary channels meet the majority proportion of European works required by Article 4, it is difficult to conclude that it has had an impact or that the channels would change their programme mix in its absence (7.4.2).

Article 5

We have found evidence from 1993 of a distinct bunching of primary channels immediately above the 10 per cent minimum necessary for the achievement of Article 5, which implies that the measure could have influenced behaviour in that year resulting in channels being at, or around, the threshold. In particular, a large number of publicly funded primary channels were clustered around the 10 per cent minima, which suggests that the impact of Article 5 was most pronounced on public channels (7.3.6).

Channels tend to show a higher share of independent productions in Member States where Article 5 is applied strictly (8.2.3).

45 per cent of primary broadcasters told us that Article 5 had a material effect on their commissioning decisions; but only 25 per cent of secondary broadcasters considered it a significant influence on decision-making (9.7).

The absence of a standard definition of what is meant by an independent producer does seem to have compromised the effectiveness of Article 5 somewhat. We used a standard definition across all Member States and obtained results for the ratio of independent productions in qualifying transmission hours consistently about ten per cent below the officially reported data (Appendix IV).

10.4 Theme three: Impact on cultural objectives

The objectives of The Directive are primarily economic but the Recitals to the legislation do make reference to the creation of new outlets for the creative works of employees in the cultural field and the protection of lesser used languages in the European Union. The provisions of The Directive do not affect “the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community” (4.6).

Member States have taken advantage of their freedom to pursue national cultural objectives by applying additional requirements on broadcasters such as specific language requirements, investment in regional production, etc (6.4).

Inasmuch as we have found evidence that Articles 4 and 5 have increased the proportion of European works and independent productions broadcast by channels in the EU, we can say that this has contributed to the cultural objective of creating new outlets for the creative works of employees in the cultural field (4.6.3).

Article 5 – in some cases independently of and, in other cases, in association with national legislation – has helped bring into being a European independent sector, the volume of whose output has increased over the survey period (4.6.3).

10.5 Theme four: Impact of Articles 4 and 5 on the economic performance of the European audiovisual industry

10.5.1 Economic impact of Articles 4 and 5 on broadcasters

The average EBIT margin of commercial primary channels in the EU was between 14 per cent and 20 per cent for the period 2000 to 2002 (EBIT margin is calculated by dividing the earnings before interest and tax by total revenue). Publicly funded primary channels had an average EBIT margin close to zero over the same period (3.3.2).

It is not possible to isolate the impact of Articles 4 and 5 on the economic performance of primary channels. However, we have concluded that larger primary channels have absorbed the requirements of Articles 4 and 5 relatively easily. Smaller primary channels have struggled to achieve Article 4 and we conclude tentatively that this is because of the cost of commissioning European works and the lack of supply of ready-made European programmes (9.3.3).

The profitability of secondary channels is harder to estimate – but EBIT margins are probably between minus 5 per cent and minus 10 per cent. Secondary channel deficits are declining as pay TV penetration and digital penetration increases, and the largest groups of all do now make positive EBIT margins of between 10 and 15 per cent (3.3.2).

It is not possible to isolate the impact of Articles 4 and 5 on the economic performance of secondary channels. However (as for the smaller primary channels) we note that secondary channels have struggled to achieve Article 4 and we conclude tentatively that this is because of the cost of commissioning European works and the lack of supply of ready-made European programmes (9.3.3, 9.5).

10.5.2 Economic impact of Articles 4 and 5 on independent producers

The increasing demand for European programming does not seem to have been reflected in the financial performance of most of those who make the programmes. The turnover of the TV production sector grew from €6.5bn in 1997 to €11.0bn in 2001 but typical EBIT margins have fallen to between 1 to 2 per cent. The 50 largest independent producers in 2002 had an average EBIT margin of about 10 per cent. However, this was down from an average EBIT of about 11 per cent in 1997 (3.3.2).

Most independent producers cede most of the rights in their programmes to the commissioning broadcaster in return for a small margin on the original commission. Broadcasters' main motivation for holding on to the rights seems to be to protect their position in their own domestic broadcasting markets rather than to earn revenue from the sale of these secondary and ancillary rights (9.3.2)

Article 5's limited impact on independent producers' ownership of rights may have made it difficult for secondary channels – especially those not owned by primary channel owners – to obtain repeats of recent European works at a reasonable price. This would make it harder for them to comply with Article 4 (9.5).

It is possible that, without Articles 4 and 5, production sector turnover growth would have been less strong or the EBIT margins of the independent sector would have been lower, but this cannot be proven (8.5).

As a follow-up to this study, research should be conducted in Member States that have introduced revised terms of trade that are more favourable to producers to identify whether the benefits producers claim, such as increased exports, have been realised (9.5).

10.5.3 Impact of Articles 4 and 5 on trade in European works

Intra-Community Trade

A majority proportion of European producers are involved in co-production with a producer in another Member State, but revenues are mainly earned in the domestic market. 70 per cent of the revenues of the producers we spoke to was earned in the home market, with 20 per cent from other Member States and only 10 per cent of revenue from outside Europe (9.4).

Almost all Member States place additional requirements on broadcasters regarding the content of programming to reflect linguistic or cultural specificities. Intentionally or otherwise, they act as barriers to cross-border trade in programmes because (a) they set conditions on programme content that only domestic programme producers can meet; and (b) they lead to channel schedules that are specific to a Member State, thereby limiting the appeal of these channels in other markets (6.4.3).

The share of qualifying transmission time devoted to works made in another European country ("non-domestic European works") increased from 10.9 per cent in 1993 to 13.9 per cent in 1999; it has subsequently fallen to 12.3 per cent in 2002 (7.2.1).

The proportion of qualifying European works broadcast in each Member State that are produced in another country varies between zero per cent (in the UK and Luxembourg[53]) to a majority (53.3 per cent) in Ireland. Generally we find that smaller Member States that share a language with a larger neighbour (Ireland, Austria and Belgium) have the highest proportion of imported European works; and the largest TV markets (France, Germany, Italy, Spain and the UK) have the smallest proportion (7.2.3).

There has been an increase in the average proportion of non-domestic European works on primary channels; in 1993, the proportion was 10.4 per cent; in 2002 it was 11.9 per cent (7.3.5). However, the share of qualifying transmission time devoted to European works on primary channels has grown at a faster rate (17.1 per cent compared with 14.6 per cent), which means that non-domestic European works now form a slightly smaller proportion (19.1 per cent) of the European works broadcast by primary channels than they did in 1993 (7.3.2).

Most broadcasters felt European programming was generally too tied to a specific national culture and taste to appeal beyond its home market, while US material tended to appeal to a global audience (9.3.3).

Extra-community Trade

The overall figures for trade between TV companies in the EU and North America, summarized by OBS, show a substantial deficit of about €4.1 billion in 2000, with imports from North America totalling about €4.4 billion and exports just under €300 million (3.3.1).

The USA TV market has the scale to fund large volumes of high-value drama and comedy. Although this output does not necessarily appeal directly to the various national cultures in Europe, high production values, plus the fact that most of the production cost has been recouped in the USA, means that such programming is cost effective for commercially driven national European broadcasters (4.1.1).

There have been signs recently that the US is becoming more open to programme ideas and formats from other countries – albeit mainly in reality and lifestyle genres and produced as local US versions. This may provide an opportunity for European producers (4.1.1).

We have been unable to establish a causal link between Articles 4 and 5 and the trends we identified in extra-Community trade. It is possible that, in the absence of Articles 4 and 5, the trade deficit with the US would have been larger and that measures to promote the circulation of programmes within the EU have also promoted exports, but this is unproven (8.5).

[53] Our sample for Luxembourg comprises one channel – Tele Luxembourg – which broadcasts a mix of news and factual magazine programming for domestic consumption and occasional US fiction imports.

10.6 Theme five: Future challenges

10.6.1 Developments in broadcasting

We expect pay TV penetration to reach 40 per cent across the EU in the next decade from 25 per cent in 2002 (3.5.1).

Digitisation will drive the take-up of pay TV and it will increase the free TV choice of European households. Several Member States have set target dates between 2010 and 2020 for complete digital conversion; once this happens, every household will receive between 20 and 40 free TV channels (3.5.1).

The growth in channel choice will reduce the total audience share of primary channels and the share of individual primary channels in each Member State (3.5.1). There is a real possibility that audience fragmentation will put significant revenue pressure on primary channels (especially commercial primary channels) and undermine the public funding of leading public primary channels (3.5.5).

In the medium to long term, new media of distribution, such as broadband, some of which fall outside the regulatory scope of Articles 4 and 5, will draw consumers away from traditional entertainment media, further reducing the audience share of primary channels (3.5.1).

Downward pressure on channel share and the audience concentration could in turn put pressure on the proportion of European works that primary channels broadcast and, more probably, the proportion of European stock programmes in the schedule. Since the criteria for compliance with Article 4 are not genre specific, they allow a wide measure of flexibility to channels wishing to increase or defend their profitability (3.5.1).

10.6.2 Developments in New Media

Broadband internet and interactive TV offer incremental revenue streams but the existing broadcast model of TV distribution is likely to remain the most important distribution mechanism for European content in the medium term (3.5.4).

New technologies could open up new opportunities for European content creators to tap into new markets and revenue streams. In theory, content producers could bypass domestically focused TV channel operators and offer material directly to consumers in other Member States or outside of Europe. However, the availability of content does not guarantee its visibility and consumption. Without the marketing and promotion provided by a broadcaster, a platform operator or a major internet portal, the consumption of such material is likely to remain low (3.5.5).

Revising the terms of trade between broadcasters and producers to enable producers to retain – and therefore exploit – programme rights may increase innovation in internet distribution of content for two reasons: First, broadcasters may limit the availability of content to safeguard existing distribution channels and: Second, producers may exploit secondary rights more effectively than broadcasters (3.5.4).

10.6.3 The future of EU content regulation

These findings support the conclusion that Articles 4 and 5 could have more impact if they were applied with greater rigour and consistency by Member States. Measures to support the strict application of the Articles would include the creation of standard definitions of terms such as ‘independent producer’ and the ‘games’ genre, the meaning of which is not obvious (8.2.5).

The "where practicable" requirement (described in Section 6.2.3) offers a general exemption from the requirements of Articles 4 and 5. This approach compares unfavourably with other legislation (the Copyright Directive, for example) where general rules are established and exemptions clearly defined, leaving less room for avoidance of the requirements of the legislation. The use of the exemption may have to be reviewed as secondary channels take more share and become, in many cases, part of larger multi-channel owning groups whose underlying economics are improving rapidly (8.2.5).

If the production of stock programmes is deemed particularly desirable on the grounds of higher economic and cultural value, longer shelf life and greater potential for circulation, there may be the need for further intervention to aid the commissioning of such programming (8.2.3).

The growth of video-on-demand services and personal video recorders will mean that more time is spent consuming TV services which are not channels in the traditional sense and not, currently, covered by the provisions of The Directive. This will affect the exposure of European audiences to European works, and the effectiveness of any rules designed to influence schedules and schedule consumption (3.5.1, 3.5.5).

The internet is unlikely to be exploited fully as a means of distributing content until DRM solutions are fully effective (3.5.4). Initiatives to reduce piracy through education of European citizens and measures by the Commission to introduce effective DRM will help to maintain the returns to producers from their creative efforts (3.5.5).

Policy interventions to regulate internet content will be difficult to define and implement. For example, measuring and enforcing hours or content spend quotas for material that is viewed on-demand over broadband networks (as opposed to a linear broadcast) is problematic because viewers choose what they want to watch. This may suggest an emphasis on positive intervention to help in the marketing and promotion of European-made content in order to bring it to the attention of consumers inside and outside the EU, rather than a reliance on output or spending targets (3.5.5).

The acquisition and retention of programme rights was widely identified by producers as a means of improving the returns from production and enabling them to build an asset base that they could borrow against to invest and grow (9.5).

In many respects the period from 1993 to 2002 has been one where new commercial primary channels reached maturity, and where full-scale multi-channel and pay TV had not yet matured. In so far as Articles 4 and 5 were put in place to deal with an era of increasing channel choice and audience fragmentation, the true test of their impact may be yet to come (4.6.1).

Appendix I: Sample Methodology

1 Introduction

This appendix describes the methodology employed to obtain a representative sample of TV schedules in each Member State (Our sample covered 17 Member States – there are no channels based in Liechtenstein so there is no population to sample). The sample forms the basis for analysis of the impact of Member State measures to promote the production and distribution of audiovisual works. Our methodology is designed to provide robust data for the period 1993-2002 while working within the budgetary constraints of the project and taking account of the availability of archive transmission data for channels back to 1993.

2 Data sources

To monitor transmission time we needed an accurate transmission log that lists programmes by duration. This data is collected for commercial purposes – for example to enable broadcasters to monitor audience share and enable advertisers to track the effectiveness of their advertising spend. We used three main sources of data to obtain the sample schedules:

2.1 Television Audience Measurement (TAM) data

The post-transmission files from television ratings companies were used to obtain data such as programme name, channel, transmission time and duration. In some Member States these files also contain local genre classifications.

These files offered the best means of achieving consistency across all markets. They provide verified logs of programme transmissions, with timings to the nearest minute, enabling us to check and audit the data. The use of these data sets also meant that our databases were consistent with the standard industry data for each market.

2.2 Infomedia

Infomedia S.A. is a Luxembourg-based international TV listings company with a database covering over 350 channels. Infomedia is a subsidiary of Gemstar-TV Guide International. Where available, detailed schedules for all channels were obtained from Infomedia. These files contain information on genre, programme description, country of origin and production company.

2.3 Essential Television Statistics

Essential Television Statistics (ETS) is a United Kingdom based company specialising in the analysis of television fiction broadcasts on more than 200 channels in Europe, the Far East and Australasia. ETS clients include the OBS. ETS has supplied data files giving information on non-domestic programmes shown in each country. This information includes genre classifications and country of origin.

We developed extensive data-matching processes to join these datasets (and data from other sources such as The Wit and locally collected information) to create a master spreadsheet for each Member State.

3 Sample selection for programme data

3.1 Sample week selection

To examine trends in programme production and distribution over the ten-year period 1993-2002 we decided to sample channel transmission schedules at three-year intervals – 1993, 1996, 1999, and 2002. We selected weeks 12 and 13 as representative sample weeks. At two weeks (14 Days) per year for four years, our sample contained 56 days' worth of transmission data for each channel. The sample weeks for each channel are given in Table 26.

Table 26: Dates for channel transmission sampling

Year	Week	Date	Start day	Day No.
1993	12	19-25 March	Friday	78-84
	13	26 March - 1 April	Friday	85-91
1996	12	18-24 March	Monday	78-84
	13	25-31 March	Monday	85-91
1999	12	19-25 March	Friday	78-84
	13	26 March - 1 April	Friday	85-91
2002	11	18-24 March	Tuesday	71-77
	12	19-25 March	Tuesday	78-84

(2002 sample is adjusted to take account of Easter – see below).

3.2 Variations in sample selection

In collecting the channel transmission data from national data sources, we found that the majority (51.1%) of our yearly channel samples were exactly two weeks long, as stated in the methodology. A substantial minority (47.9%) had slightly more than two weeks (almost always 15 days) of transmission data and a small minority (1%) had slightly less (either 12 or 13 days). This was due to the different date-time formats employed by the various data suppliers, which meant that slight over-sampling was quite common in order to ensure that we got at least 14 days in the vast majority of cases. Rather than discarding usable data to homogenize sample sizes we adopted a policy of always using all available data to maximise the accuracy of our estimates.

Some channels in our sample were launched after 1993. In these instances there was no data available in earlier years.

3.3 Major events

To avoid sampling error it is important that our sample weeks were representative and did not coincide with any significant national or international event that might cause the sampled transmission schedule to deviate significantly from the normal output of that channel. We therefore compiled a list of events which, if they were to coincide with our sample weeks, could potentially invalidate their usefulness as representative samples:

- Major sports events (principally the Football World Cup and European Championships, and the Summer and Winter Olympics)
- Major World events (For example the United Nations action in Somalia in 1993, NATO action in Serbia in 1999, and a terrorist attack in Bali in 2002)
- National holidays (such as Easter Sunday, which falls in week 13 in 2002. For this reason we used weeks 11 and 12 in all Member States in 2002).

- National General Elections. Elections took place in two Member States in our sample weeks. Table 27 identifies these Member States and the change of sample week we made to remove the bias.

Table 27: Sample adjustments dues to General Elections

Country	Year	Election date	Sample Adjustment
Finland	1999	21 March 1999	Use weeks 9 and 10 (week 14 clashes with Easter and weeks 11-12 are still too close to the election)
France	1993	21-28 March 1993	Use weeks 9 and 10 (week 14 clashes with Easter and weeks 11-12 are still too close to the election)

Out of 126 sample weeks (two sample weeks in four sample years in 17 Member States), we substituted a different week in 21 cases (one week in each Member State in 2002 due to Easter Sunday and two weeks in two Member States due to elections). Thus we substituted a different week in only 16.7 per cent of all sample weeks.

4 Channel selection

Channel selection was based on two main criteria: First, to sample channels in each Member State which together accounted for at least 75 per cent of viewing in that market, and: Second, to obtain a representative sample of each channel segment at European Union level. We sampled 83 channels in total.

Our channel segmentation is presented in Table 28. Table 29 presents our final channel selection and data availability for each.

Table 28: Channel Segmentation

		FUNDING MODEL		
		Publicly funded public service channel	**Advertising funded Free TV channel**	**Pay TV channel**
SHARE OF AUDIENCE	**Primary Channel (Audience share greater than 3%)** **Sample Base: 73**	**Examples: ARD1 BBC1** **Sample Base: 31**	**Examples: TF1 Rete4** **Sample Base: 40**	**Examples: Canal Plus (France)** **Sample Base: 2**
SHARE OF AUDIENCE	**Secondary Channel (Audience share less than 3%)** **Sample Base: 10**	**Examples: BBC Choice** **Sample Base: 1**	**Examples: LA7** **Sample Base: 1**	**Examples: Sky One Plus (Spain)** **Sample Base: 8**

Table 29: Channel Selection and data availability

Member State	Country Name	Channel Name	2002 Share	2002 Total Share	Channel Type:		DATA AVAILABILITY			
					Funding Model	Size	1993	1996	1999	2002
AT	Austria	ORF1	23.1%	55.4%	Publicly Funded	Primary	●	●	●	●
AT	Austria	ORF2	32.3%		Publicly Funded	Primary	●	●	●	●
BE	Belgium (N)	KAN2	6.4%		Advertising Funded	Primary	○	●	●	●
BE	Belgium (N)	KET/CAN (TV2)	8.7%		Publicly Funded	Primary	●	●	●	●
BE	Belgium (N)	TV1	27.3%	74.2%	Publicly Funded	Primary	●	●	●	●
BE	Belgium (N)	VT4	5.9%		Advertising Funded	Primary	○	●	●	●
BE	Belgium (N)	VTM	25.9%		Advertising Funded	Primary	●	●	●	●
BE	Belgium (S)	LA1	18.1%	41.5%	Publicly Funded	Primary	●	●	●	●
BE	Belgium (S)	RTLTVI	23.4%		Advertising Funded	Primary	●	●	●	●
DE	Germany	ARD	14.7%		Publicly Funded	Primary	●	●	●	●
DE	Germany	KABEL1	4.6%		Advertising Funded	Primary	●	●	●	●
DE	Germany	PRO7	7.0%		Advertising Funded	Primary	●	●	●	●
DE	Germany	RTL	14.7%	72.1%	Advertising Funded	Primary	●	●	●	●
DE	Germany	RTL2	3.5%		Advertising Funded	Primary	○	●	●	●
DE	Germany	SAT1	10.0%		Advertising Funded	Primary	●	●	●	●
DE	Germany	VOX	3.3%		Advertising Funded	Primary	●	●	●	●
DE	Germany	ZDF	14.3%		Publicly Funded	Primary	●	●	●	●
DK	Denmark	Discovery	<3.0%		Pay TV	Secondary	○	○	○	●
DK	Denmark	DR1	27.8%	71.2%	Publicly Funded	Primary	●	●	●	●
DK	Denmark	TV2	36.2%		Advertising Funded	Primary	●	●	●	●
DK	Denmark	TV3	7.2%		Advertising Funded	Primary	●	●	●	●
ES	Spain	A3	20.4%		Publicly Funded	Primary	●	●	●	●
ES	Spain	Cinemania Azul	<3.0%		Pay TV	Secondary	—	○	○	●
ES	Spain	LA2	7.8%	76.3%	Publicly Funded	Primary	●	●	●	●
ES	Spain	PLUS	2.3%		Pay TV	Secondary	●	●	●	●
ES	Spain	T5	21.0%		Advertising Funded	Primary	●	●	●	●
ES	Spain	TVE	24.8%		Publicly Funded	Primary	●	●	●	●
FI	Finland	MTV3	37.0%		Advertising Funded	Primary	○	●	●	●
FI	Finland	Nelonen	11.6%	94.7%	Advertising Funded	Primary	—	—	●	●
FI	Finland	TV1	23.6%		Publicly Funded	Primary	○	●	●	●
FI	Finland	TV2	22.5%		Publicly Funded	Primary	○	●	●	●
FR	France	13eme Rue	<3.0%		Pay TV	Secondary	○	○	○	●
FR	France	C+	3.6%		Pay TV	Primary	○	○	●	●
FR	France	F2	22.0%		Publicly Funded	Primary	●	●	●	●
FR	France	F3	16.6%	87.0%	Publicly Funded	Primary	●	●	●	●
FR	France	M6	12.5%		Advertising Funded	Primary	●	●	●	●
FR	France	Paris Premiere	<3.0%		Pay TV	Secondary	○	○	○	●
FR	France	TF1	32.3%		Advertising Funded	Primary	●	●	●	●
GR	Greece	ALPHA	13.5%		Advertising Funded	Primary	—	—	●	●
GR	Greece	ANTENA	21.8%		Advertising Funded	Primary	●	●	●	●
GR	Greece	ET1	5.8%	77.4%	Publicly Funded	Primary	●	●	●	●
GR	Greece	MEGA	20.2%		Advertising Funded	Primary	●	●	●	●
GR	Greece	NET	5.2%		Publicly Funded	Primary	●	●	●	●
GR	Greece	STAR	10.9%		Advertising Funded	Primary	○	●	●	●
IE	Ireland	NET2	13.9%		Publicly Funded	Primary	●	●	●	●
IE	Ireland	RTE1	27.2%	53.6%	Publicly Funded	Primary	●	●	●	●
IE	Ireland	TV3	12.5%		Advertising Funded	Primary	—	—	●	●
IS	Iceland	CHAN2	29.4%		Pay TV	Primary	—	○	●	●
IS	Iceland	RUV	41.2%	91.0%	Publicly Funded	Primary	○	○	●	●
IS	Iceland	SCR1	20.4%		Advertising Funded	Primary	○	○	●	●

● Data Available
○ No Identified Source
— Not Broadcasting

Channel Selection and data availability (cont.)

Member State	Country Name	Channel Name	2002 Share	2002 Total Share	Channel Type: Funding Model	Channel Type: Size	DATA AVAILABILITY 1993	1996	1999	2002
IT	Italy	Can5	22.8%	91.3%	Advertising Funded	Primary	○	•	•	•
IT	Italy	Ita1	10.1%		Advertising Funded	Primary	○	•	•	•
IT	Italy	LA7	2.0%		Advertising Funded	Secondary	—	—	•	•
IT	Italy	Rai1	24.4%		Publicly Funded	Primary	○	•	•	•
IT	Italy	Rai2	13.0%		Publicly Funded	Primary	○	•	•	•
IT	Italy	Rai3	9.6%		Publicly Funded	Primary	○	•	•	•
IT	Italy	Rete4	9.4%		Advertising Funded	Primary	○	•	•	•
LU	Luxembourg	TeleL	50.8%	50.8%	Advertising Funded	Primary	•	•	•	•
NL	Netherlands	NL1	11.6%	71.9%	Publicly Funded	Primary	•	•	•	•
NL	Netherlands	NL2	17.8%		Publicly Funded	Primary	•	•	•	•
NL	Netherlands	NL3	7.2%		Publicly Funded	Primary	•	•	•	•
NL	Netherlands	RT4	16.2%		Advertising Funded	Primary	•	•	•	•
NL	Netherlands	RTL5	4.8%		Advertising Funded	Primary	—	•	•	•
NL	Netherlands	SBS6	9.5%		Advertising Funded	Primary	—	•	•	•
NL	Netherlands	Yorin	4.8%		Advertising Funded	Primary	—	•	•	•
NO	Norway	NRK1	39.2%	71.4%	Publicly Funded	Primary	•	•	•	•
NO	Norway	TV 2	32.2%		Advertising Funded	Primary	•	•	•	•
PT	Portugal	RTP1	20.1%	86.0%	Advertising Funded	Primary	•	•	•	•
PT	Portugal	SIC	34.0%		Advertising Funded	Primary	•	•	•	•
PT	Portugal	TVI	31.9%		Advertising Funded	Primary	•	•	•	•
SE	Sweden	Kanal5	7.8%	86.5%	Advertising Funded	Primary	•	•	•	•
SE	Sweden	SVT1	26.0%		Publicly Funded	Primary	•	•	•	•
SE	Sweden	SVT2	17.4%		Publicly Funded	Primary	•	•	•	•
SE	Sweden	TV3	9.7%		Advertising Funded	Primary	•	•	•	•
SE	Sweden	TV4	25.6%		Advertising Funded	Primary	•	•	•	•
UK	UK	BBC CHOICE	0.3%	75.2%	Publicly Funded	Secondary	—	—	○	•
UK	UK	BBC1	26.2%		Publicly Funded	Primary	•	•	•	•
UK	UK	BBC2	11.4%		Publicly Funded	Primary	•	•	•	•
UK	UK	CH4	9.8%		Advertising Funded	Primary	•	•	•	•
UK	UK	E4	0.8%		Pay TV	Secondary	—	—	—	•
UK	UK	ITV1	24.1%		Advertising Funded	Primary	•	•	•	•
UK	UK	Living	0.6%		Pay TV	Secondary	—	•	•	•
UK	UK	Sky1	2.0%		Pay TV	Secondary	•	•	•	•

•	Data Available
○	No Identified Source
—	Not Broadcasting

5 Content of sample data set

Table 30 identifies the fields we populated using the data sources described above. The extensive exercise of analysing and classifying each programme in the sample using local knowledge to determine its genre, whether it is a stock or flow programme, and whether or not it qualified as an independent production, is considered in Appendix II.

Table 30: Data fields populated using external data sources

Field	Description
Channel Name	Channel on which the programme was broadcast
Transmission Title	Programme name as transmitted
Original Title	The original title of the programme in its country of origin
Date	Date of transmission
Time	Start-time of transmission
Duration	Duration of transmission (usually excludes end-break ad slots)

6 Sample statistics

Using the sample methodology described above, Table 31 gives the principal sample statistics for an average channel in our sample (we have based the number of qualifying transmissions on a sample of UK public primary channels BBC1 and BBC2). For illustration we have assumed that the channel complies with Article 5 of the Directive and that independent productions comprise ten per cent of qualifying hours.

A sample size of 400 qualifying transmissions (the total number of qualifying programmes broadcast in the two-week sample period in a single year) gives 399 degrees of freedom. A standard error of 1.50 per cent is considered acceptable in the context of a predicted mean of ten per cent. The confidence intervals tell us that, given a sample mean of ten per cent, we can be 95 per cent confident that the mean of the population we are sampling is between 7.05 per cent and 12.95 per cent[54].

[54] The Critical t-value (t.025) is the value of the Student's t-distribution as a function of the probability (for a 95% confidence interval this is 2.5% in each tail = 5% in total) and the degrees of freedom. The Degrees of Freedom are simply the sample size minus 1. The Standard Error (SE) is given by the formula:

$SE = \sqrt{\frac{P(1 - P)}{n}}$, where P is the Sample Proportion and n is the Sample Size.

The 95% Confidence Interval is given by the formula: $P \pm t_{.025} \times \sqrt{\frac{P(1 - P)}{n}}$.

Table 31: Channel Sample Statistics

Time Frame	one year
Expected sample size (no. of transmissions)	400
Expected degrees of freedom	399
Expected sample proportion (Ratio of independent productions to total qualifying transmission time)	10%
Standard error	1.50%
Critical T-value	1.97
95% confidence interval (lower bound)	7.05%
95% confidence interval (upper bound)	12.95%

These statistics are based on the assumption that the sample is made up of transmissions that have been randomly drawn from a year's programming. We have adopted the sample methodology described above because a random sample of four years' output would be prohibitively expensive to conduct. We have taken steps to identify and avoid extreme systematic fluctuations in the underlying data that could bias our sample, and we are confident that our sample methodology achieves approximately the same precision as simple random sampling. This enables us to employ the same statistical formulas as would be used to analyse a random sample.[55]

Our sample of channels in each Member State gives a more precise estimate of the population mean at national level than we can obtain for individual channels. Table 32 gives the principal sample statistics for each Member State in a given year, assuming again a sample size of 400 qualifying transmissions. Our confidence intervals improve so that, for the five biggest Member States – France, Germany, Italy, Spain and the UK – we can be 95 per cent confident that when our sample return for all channels in that Member State shows that ten per cent of qualifying transmission time is reserved for independent productions, the actual proportion of independent productions in the qualifying schedule is between 8.96 per cent and 11.04 per cent.

55 It is important to acknowledge, however, that any significant divergence between our estimates and published country-specific results may, to some extent, be caused by the fact that our sample estimates and statistics are based on the assumption of random sampling which cannot be achieved under existing budgetary and data availability constraints. Nevertheless, as we have made every effort to ensure representative sampling, we are justified in analysing the data as if it were random. This is in line with standard statistical practice.

Table 32: Sample Statistics by Member State

Member State	Total Channels Analysed	Expected Sample Size Per Year	Expected Degrees of Freedom	Expected Sample Proportion*	Standard Error	Critical t-value (t.025)	95 % confidence interval	
							Lower Bound	Upper Bound
Austria	2	800	799	10%	1.06%	1.96	7.92%	12.08%
Belgium	7	2,800	2,799	10%	0.57%	1.96	8.89%	11.11%
Denmark	4	1,600	1,599	10%	0.75%	1.96	8.53%	11.47%
Finland	4	1,600	1,599	10%	0.75%	1.96	8.53%	11.47%
France	7	2,800	2,799	10%	0.57%	1.96	8.89%	11.11%
Germany	8	3,200	3,199	10%	0.53%	1.96	8.96%	11.04%
Greece	6	2,400	2,399	10%	0.61%	1.96	8.80%	11.20%
Iceland	3	1,200	1,199	10%	0.87%	1.96	8.30%	11.70%
Ireland	3	1,200	1,199	10%	0.87%	1.96	8.30%	11.70%
Italy	7	2,800	2,799	10%	0.57%	1.96	8.89%	11.11%
Liechtenstein	0	0	-	-	-	-	-	-
Luxembourg	1	400	399	10%	1.50%	1.97	7.05%	12.95%
Netherlands	7	2,800	2,799	10%	0.57%	1.96	8.89%	11.11%
Norway	2	800	799	10%	1.06%	1.96	7.92%	12.08%
Portugal	3	1,200	1,199	10%	0.87%	1.96	8.30%	11.70%
Spain	6	2,400	2,399	10%	0.61%	1.96	8.80%	11.20%
Sweden	5	2,000	1,999	10%	0.67%	1.96	8.68%	11.32%
United Kingdom	8	3,200	3,199	10%	0.53%	1.96	8.96%	11.04%
Total sample	**83**	**33,200**	**33,199**	**10%**	**0.16%**	**1.96**	**9.68%**	**10.32%**

* The ratio of Qualifying-European-Independent to Total Qualifying Hours in Sample

Appendix II: Classifying the Transmission Schedule

1 Initial sub-division of sample transmission schedules

The first step in classifying the transmission schedules captured in our sample was to allocate every portion of the schedule to one of the following categories of programming:

- Programmes: scheduled broadcasts which provide entertainment and information to viewers and which can be classified by genre (see below).

- Teleshopping: defined in Article 1 of the Directive as: 'direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment'.

- Teletext: some channels default to teletext for periods of the broadcast day.

Once this initial sub-division of the sample transmission schedule was conducted, teleshopping and teletext were immediately classified as 'non-qualifying programming' under Articles 4 and 5 of the Directive. No further classification of these components of overall programming was required by the study.

2 Genre classification of programmes

Commercial genre classifications (used, for example, to match advertising spend with target demographics) may have many genre sub-categories. The ETS data we are using for our sample data, for example, divides programmes into 20 genres.

We designed a simplified genre classification scheme to allow us to identify whether a programme was a qualifying programme under Articles 4 and 5 of the Directive. The simplified genre classification could be explained clearly to our researchers in each Member State who carried out the programme classification, which assisted in the delivery of consistent programme classification across every Member State.

Our classification scheme contained eight genre categories, which are presented below in two groups that correspond to the definition of qualifying and non-qualifying programming for the purposes of Articles 4 and 5 of the Directive.

2.1 Non-Qualifying programmes

2.1.1 News

News was defined as separate programmes containing reports of the most important recent events in summary form. A summary of sports results and recent sports news qualified as news, but a programme of information confined to one particular sport would not qualify. Feature programmes, current affairs programmes or news magazines were also excluded.

2.1.2 Sport

Sport was defined as live or recorded coverage of sporting events or significant parts of such events. Magazine programmes about sports, even though such programmes may well contain excerpts of live events, were not included in this category.

2.1.3 Games

Defining the games genre offers specific challenges because it is a term that loosely defines a broad range of popular programmes. We sought to identify clearly the boundaries of the term – which is not defined in the Directive – to assist our researchers in each Member State to apply the term consistently.

We therefore defined games as television shows focusing primarily on participants competing for a prize and where the competitive character outweighs the entertainment value of the programmes. Game shows and quiz shows are staples of the early evening schedule in many Member States.

Table 33 provides an example of a game show from the UK.

Table 33: Example of a game show

TITLE: The Weakest Link	**COUNTRY: UK**
Nine contestants are given the opportunity to play for a potential 15,000 euros, until just two contenders are left to battle it out. They have to work as a team but only one can win the cash prize.	

We decided to classify reality shows as entertainment – and therefore as qualifying programming. Many reality shows generate high levels of human interest in the interactions between individuals, and the competition often offers a framework for entertainment-style material. Another indicator that would separate a reality show from a game show is that, where a traditional game show offers a prize every episode, reality shows only generate a winner in the final episode of the series.

2.2 Qualifying programmes

2.2.1 Documentary

The genre comprises: all factual programmes consisting mainly (i.e. more than 50 per cent) of documentary footage; 'demonstration' programmes covering subjects such as cooking, do-it-yourself and gardening; 'Docusoaps' (for example, fly-on-the-wall documentaries); and traditional observational documentaries. This category may include magazine programmes if more than half the inserts are considered to have long-term interest.

Table 34 gives examples of different styles of documentary.

Table 34: Examples of documentaries

TITLE: Brandweer	**COUNTRY: Belgium**
Docusoap following the lives of fire-fighters in six Antwerp fire stations.	
TITLE: Biker Jens	**COUNTRY: Denmark**
Biker Jens sets out to discover the most extreme aspects of the USA. He becomes acquainted with eccentric people and tries to adopt their lifestyles.	
TITLE: Anni '90	**COUNTRY: Italy**
Documentary series on the historical and social events that marked the 1990s in Italy and worldwide: from the fall of the Berlin Wall in 1989 to the attacks on the Twin Towers in New York City on September 11, 2001.	
TITLE: Changing Rooms	**COUNTRY: UK**
Two sets of neighbours transform a room in each other's home, with only two days and a set budget. They are helped by a top interior designer and a DIY expert.	

2.2.2 Factual magazine

All programmes in this genre feature multiple items within the same programme and contain less than 50 per cent documentary footage. The majority time of a factual magazine may consist of studio-based links, panel discussions, interviews, reports of topical events, etc. While magazines may get narrative repeats, the majority of the items covered will be topical and not therefore of long-term interest. Sports magazine programmes, current affairs programmes and news magazines that we excluded from the sport and news genres above also belong in this category.

Table 35 provides examples of factual magazine programmes from Sweden and the Netherlands.

Table 35: Examples of factual magazines

TITLE: Avatopia	**COUNTRY: Sweden**
Political magazine made by politically aware teenagers. Three idealistic teenagers – Elias, Linn and Moa – address political issues and questions that they ask themselves.	
TITLE: Spoorloos	**COUNTRY: The Netherlands**
Magazine searching for missing people or people their friends or relatives have lost track of. Two reporters investigate throughout the world to find the missing people. On the set, their findings are presented and reunions are very emotional.	

2.2.3 Entertainment

The entertainment genre includes talk shows, studio-based comedies, reality shows and panel games where there is no prize on offer. It does not include situation comedies (sitcoms) that should be coded as fiction. Table 36 gives examples of entertainment programmes from France, the UK and the Netherlands.

Table 36: Examples of entertainment programmes

TITLE: Scruples	**COUNTRY: France**
Talk show in which ordinary people who have, at some time in their lives, acted in a way that could shock others, explain whether they have scruples or not. In order to follow changes in opinion, the studio audience is split into two groups: 'in favour' or 'against'. After the debate, each member of the audience is free to change their mind – and change seats.	
TITLE: Senkveld med Thomas og Harald	**COUNTRY: Norway**
Late-night variety show presented by two young hosts, featuring showbiz guests and music and song performances.	
TITLE: Big Brother	**COUNTRY: The Netherlands**
Five men and five women agree to be locked up in a house, cut off from the rest of the world, for 100 days. Cameras film them and 47 microphones record their conversations at all times. Each week one contestant is eliminated by a viewers' vote, and the eventual winner gets a cash prize.	
TITLE: They Think It's All Over	**COUNTRY: UK**
Two teams of celebrities compete in a sports-themed panel game. No prize is on offer, and comedy is more important than which team 'wins'.	

2.2.4 Fiction

The fiction genre includes soaps, drama series and serials, single dramas, situation comedies, TV movies and animation.

2.2.5 Cinema Film

This genre comprises only those films that have had, or were intended to have, a cinematic release. Made for TV movies are included under fiction. For the purposes of the segmental analysis of fiction works that we will carry out later in the project, we shall treat cinema films as a sub-section of the fiction genre described above. This ignores the small number of films with a cinema release that are documentaries – such as One Day in September or Touching the Void.

3 Further programme classification

Having defined programmes by genre, we then conducted two further rounds of programme classification:

3.1 Stock and Flow programmes

Stock and flow are terms applied to programmes to indicate whether or not they have long-term value. Nowhere are the terms tightly defined but the basic principle is that a stock programme has repeat value and can be shown again at a later date, while flow programmes have little or no further value after the first showing (narrative repeats excluded).

For most programmes, the genre defines whether it is a stock or a flow programme. All programmes in the non-qualifying genres – news, sport and games – are flow programmes. We also classified the other non-qualifying programming – teletext and teleshopping – as flow programmes for the stock and flow analysis of the total transmission schedule.

Of the qualifying genres, factual magazines are flow programmes; more than 50 per cent of their transmission time consists of studio-based links, panel discussions, interviews etc with limited potential for re-use. Documentaries are clearly stock programmes – unlike magazine programmes, they are not specific to the time they were made and can be shown again and again. Fiction – drama, sitcoms, TV movies and animation – and Cinema film are also clearly stock programming.

Entertainment is the only genre that we cannot categorise ex ante as either stock or flow. We relied on judgements by our researchers to decide for each entertainment programme whether it was a stock or a flow programme.

It should be noted that our definition of stock and flow applies to the programme and not to the programme format – the intellectual property – that may have considerable value in other territories. For example, Who Wants to be a Millionaire is a game show format developed by Celador that has been licensed extensively across the World. Each episode of the show is a flow programme but the format itself has considerable value.

Table 37: Stock and flow programmes by genre

Genre		Stock or Flow programme
Non-qualifying	**News**	Flow
	Sport	Flow
	Games	Flow
Qualifying	**Documentary**	Stock
	Factual magazine	Flow
	Entertainment	Stock or flow
	Fiction	Stock
	Cinema Film	Stock

3.2 Programmes made for children

Such is the importance of children's programmes to total audiovisual production (and particularly to the independent production sector) that we wanted to be able to identify and analyse children's programmes separately. To do this, we identified for each programme whether it was made for children (viewers aged 0-13).

All programmes that we classified as children's programmes were already classified by genre and classified by whether they were a stock or flow programme. This approach enabled us to analyse children's programmes as a discrete sub-set.

4 Treatment of advertising breaks in programmes

Advertising time is not recorded consistently in the raw data sources across the different channels and countries sampled. Ideally, all advertising slots would be logged separately, making them easy to identify, but this was often not the case. Many data sources only identified end-breaks (mid-breaks being included in programme durations) and others included both mid- and end-breaks as part of the durations of the listed programmes.

To create a consistent treatment of advertising breaks we used published information (annual reports, regulatory submissions etc) to determine the average advertising minutes per hour on each channel in our sample. This information was then used to construct an adjustment algorithm such that:

- If, for a given channel, all advertising breaks were logged separately, the programme durations were left unchanged.
- If, for a given channel, only mid breaks were included in programme durations, programme durations were multiplied by: [60 – (Average Advertising minutes per hour of given Channel)/2]/60
- If, for a given channel, both mid and end breaks were included in programme durations, then we multiplied programme duration by: [60 – (Average Advertising minutes per hour of given Channel)]/60

Having identified and removed any advertising time included in programme durations, we were able accurately to divide our sample hours into qualifying and non-qualifying programme hours, with any advertising time which was not separately logged simply constituting the difference between total adjusted programme durations and total transmission time.

Appendix III: Further classification of the Transmission Schedule

1 Classification of qualifying programmes according to origin

Using the genre classification of programmes described in Appendix II, we can identify 'qualifying programmes' – the proportion of the transmission schedule to which Articles 4 and 5 of the Directive apply. To recap, programmes in the following genres are 'qualifying programmes': Documentary, Factual Magazine, Entertainment, Fiction and Cinema Film.

Further analysis of qualifying programmes was conducted by researchers in each Member State to determine which productions were European works and which of these were independently produced.

Infomedia and ETS were our primary sources of data to determine where a programme was made and whether or not it was made by an independent producer. Additional research was conducted locally where geographical origin or the production company was not determined from these sources.

2 Definition of a 'European Work'

Article 4 of the Directive requires broadcasters to reserve a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, for European works. Article 6 of the Directive contains a set of four definitions to determine whether a production qualifies as a European work. These are:

- Geographical requirements;
- Workforce requirements;
- Requirements related to the control of production; and
- Co-production requirements.

We referred to this set of definitions when determining whether or not a programme qualified as a European work. Each definition is examined in more detail below.

2.1 Geographical requirement

Paragraph 1 of Article 6 of the Directive requires that, to qualify as a European production, a programme must 'originate' from a European country that belongs to one of three categories:

- It is one of the 15 European Union Member States; *or*
- It has ratified the Council of Europe treaty on Transfrontier Television[56] ; *or*
- it is a European third country with which the Community has concluded agreements related to the audiovisual sector, cf. Art 6(1) and (3).

The countries that qualify on the geographical definition are listed in Table 38.

[56] European Convention on Transfrontier Television (Convention européenne sur la télévision transfrontière). Reference: ETS 132. Treaty open for signature by the member States and by the other States Parties to the European Cultural Convention and by the European Economic Community.

Table 38: Definition of European works

Member State	Countries that have ratified the European Convention on Transfrontier Television	Other
Austria	Bulgaria	Iceland (EEA country)
Belgium	Croatia	
Denmark	Liechtenstein	Acceding countries:
Finland	Macedonia	Cyprus
France	Moldova	Czech Republic
Germany	Norway	Estonia
Greece	San Marino	Hungary
Ireland	Switzerland	Latvia
Italy	Turkey	Lithuania
Luxembourg		Malta
Netherlands		Poland
Portugal		Slovakia
Spain		Slovenia
Sweden		
United Kingdom		

2.2 Workforce requirement

Paragraph 2 of Article 6 contains a workforce requirement: a majority of the writers and production staff employed on a production must live in a Member State or, in cases where the production qualifies under the European Convention on Transfrontier Television or a bilateral Treaty, one of the other qualifying countries.

2.3 Control of production

Under paragraph 2 of Article 6, programmes that originate from an Member State or country that has ratified the European Convention on Transfrontier Television are subject to additional controls on production in order to qualify as a European work:

- The programme must be made by a production company or companies located in one of the qualifying countries; or

- The production must be controlled by a production company that is located in one of the qualifying countries.

2.4 Co-production requirements

In the case of co-productions with producers not located in a qualifying country, paragraph 2(c) requires that the European co-producer provides a majority of the financing and retains control of the production process if the production is to qualify as a European work.

There is an additional complexity: where a co-production does not qualify as European (for example, where a US producer provides a majority of the finance) but a majority of the writers and production staff employed on the project are resident in a Member State, the programme qualifies as a European work if the work is produced in the framework of a bilateral co-production treaty (paragraph 4) and the production is controlled by a producer established in one of the Member States. The contribution such programmes make to total European production is in proportion to the contribution of the EU co-producers to total production costs.

3 Definition of an independent production

Article 5 of the Directive requires broadcasters to allocate at least ten per cent of qualifying hours to 'European works created by producers who are independent of broadcasters'. Alternatively, Member States are permitted to require broadcasters to reserve 'at least ten per cent of their programming budget' for European works created by independent producers.

We used transmission time and not programme budget as the unit of analysis: Effective monitoring of programme budgets would require verifiable data on the direct costs of every programme or series in a channel's schedule, and payments for production can be manipulated for reporting purposes and may be structured so payments are received in stages, distorting the true value of production.

3.1 Definition of independent

It is left to Member States to define 'independent producer', but Recital 31 of the 1997 Directive states that the definition should take account of criteria such as 'ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights'.

In order to create a single definition of 'independent producer' that could be applied by our research team in each Member State, we used an ownership criterion. This is the definition that is most widely used in practice, with eleven of the twelve Member States who define independent producer in national law using this definition.

We defined an independent producer as 'A production company which is not directly or indirectly controlled by a broadcaster'. Control could be defined by ownership, voting or seats on the management board. The use of a single definition minimised subjectivity in the classification process, leading to consistent results across Member States. The test was applied for each year in our sample because the status of a producer may change over time.

We defined each production company according to its status in its domestic market and applied this definition in every Member State. The effect is that a number of producers that may qualify as independent in certain Member States will not qualify using our methodology. We believe that our approach reflects the objectives of Article 5 to promote independent production. It is also practical because the independent status of each production company was defined only once for each year of the sample.

4 Adequate proportion of recent works

Article 5 also requires that an 'adequate proportion' of the transmission time devoted to European independent productions should be of recent works – that is, 'works transmitted within five years of their production'. To evaluate this requirement we identified the date of production of each independent programme and recorded whether or not the programme was a recent work when broadcast. Obviously, this varied through our sample years, as illustrated in Table 39:

Table 39: Production dates of recent works in each sample year

Sample year	**Earliest production date of 'recent work'**
1993	1988
1996	1991
1999	1994
2002	1997

Appendix IV: Statistical analysis of survey and reported data

1 Introduction

The purpose of this Appendix is to compare our estimates of Articles 4 and 5 for the channels in our sample with the figures reported by Member States and published by the Commission in the biennial Communication to the Council and Parliament on the application of Articles 4 and 5. The analysis covers those channels where we have both an estimated and a reported figure for Articles 4 and 5.

The bespoke survey of channel transmissions which we conducted was not designed to act as the basis for an audit of the reported figures; the purpose of our survey was to create a homogenous data set that supports comparisons of channel schedules in different Member States. The survey also enabled us to obtain information about programme genres and stock and flow programming that is not reported by the Commission.

Some divergence between the reported data and our sample estimates is to be expected. In order to create a homogenous data set we have used a standard methodology in each Member State, which will cause variations between our sample estimates and the reported figures, where Member States employ a different methodology. We have made every effort to ensure that our samples are representative but they are relatively small and one would expect a certain amount of divergence between our individual channel estimates and the reported figures in any given year due to sampling error.

A channel-by-channel review of the gap between the reported and sample estimates would reveal quite large discrepancies in a small number of cases; this is to be expected due to the limitations of the sample methodology we employed, and it is not necessarily evidence that either the reported data or the sample estimate is 'wrong', or that the methodology employed to calculate them is flawed.

We have identified a couple of examples where Member States have incorrectly calculated the reported data. A very large discrepancy between one of our sample estimates and the reported figure for TV3 (which broadcasts into Denmark but is regulated by OFCOM in the UK) led to a more detailed investigation, which showed that the reported figure was erroneous. Portuguese channel SIC reported an Article 5 ratio of 100 per cent in 1993. As the corresponding Article 4 ratio was only 31 per cent, the true Article 5 figure (even if all qualifying European programmes also happened to be independent productions) could not, by definition, have been higher than 31 per cent.

Rather than conduct a channel-by-channel comparison it is more instructive to take the whole dataset and look for any statistically significant divergence between the reported and sample figures. That would suggest significant biases in sampling, or flaws, in our methodology. If there is no statistically significant divergence then this is strong evidence that we have succeeded in drawing a representative sample and that the way we have calculated the ratios is similar to that employed by the Member States. If, on the other hand, there is a statistically significant divergence (i.e. greater than that which can be attributed to natural sampling error) then this may be evidence of a significant bias in our sample, or a significant divergence between our monitoring methodology and that of the various countries, or a combination of both. The latter scenario would need further investigation to determine the exact cause of the divergence.

2 Article 4: Reported figures versus sample estimates

To establish whether or not there is a notable divergence between the reported figures and our sample estimates for the proportion of the qualifying schedule devoted to European works (Article 4), we performed an independent sample t-test to determine whether the difference between the average of the reported figures and the average of the sample estimates in each of our sample years was statistically significant. The details of our analysis (including descriptive statistics for the reported and sample estimate based figures) are given in Table 40 and Table 41 below.

Table 40: Descriptive Statistics for Reported and Sample Estimates of Article 4

	TWF Article 4 Ratio (Qualifying European to Total Qualifying Hours)							
	Reported				*Sample Estimate*			
	1993	*1996*	*1999*	*2002*	*1993*	*1996*	*1999*	*2002*
Average	59.5%	61.6%	61.2%	62.2%	54.3%	60.6%	60.1%	60.9%
Standard Deviation	19.3%	20.1%	17.9%	19.1%	19.5%	20.2%	19.7%	23.4%
Sample Size (no. of channels)	42	67	71	69	42	67	71	69
Standard Error	3.0%	2.5%	2.1%	2.3%	3.0%	2.5%	2.3%	2.8%
95% Confidence Interval (±)	6.0%	4.9%	4.2%	4.6%	6.1%	4.9%	4.7%	5.6%

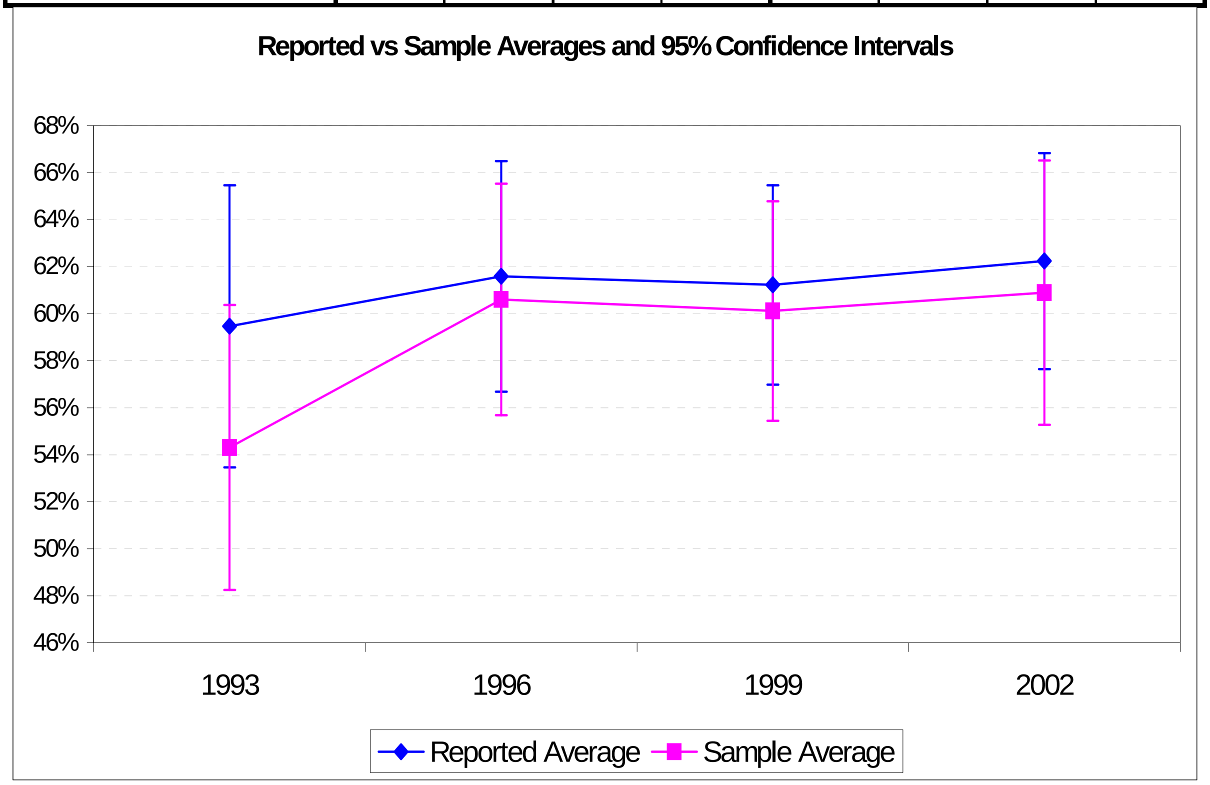


Table 41: T-test for Statistically Significant Divergence Between Reported and Sample Estimates of Article 4

	Difference (Reported minus Sample Estimate)			
	1993	***1996***	***1999***	***2002***
Mean Difference (Reported minus Sample Estimate)	5.2%	1.0%	1.1%	1.3%
Standard Deviation	19.4%	20.2%	18.8%	21.4%
Sample Size	84	134	142	138
Standard Error	4.2%	3.5%	3.2%	3.6%
95% Confidence Interval (±)	8.4%	6.9%	6.3%	7.2%
T-test for equality of Sample Means (t-statistic):	1.22	0.28	0.35	0.37
p-value (difference between sample means is significant if p-value < 0.05):	0.23	0.78	0.73	0.71
Reject Null Hypothesis that Means are equal at 5% significance level:	No	No	No	No

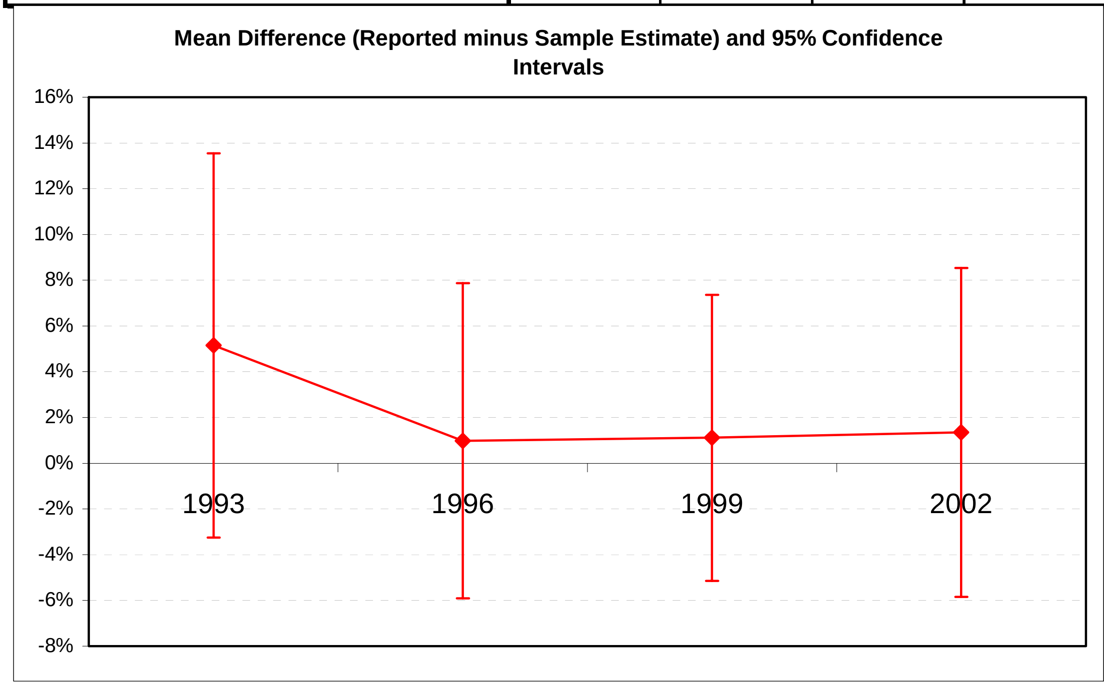


Table 40 shows that the estimated and reported averages are a close match, particularly for the latter three sample years. The averages for the reported data and sample estimates differ by no more than 1.5 per cent in any year except 1993, and in no sample year was there a statistically significant difference between the reported and estimated figures. Table 41 shows that 95 times out of a 100 the reported average for Article 4 lies within the normal distribution of the average of the sample estimate. This suggests that we have succeeded in drawing a representative sample. The fact that The Directive contains an exhaustive definition of a European work is probably also an important factor in explaining the goodness of fit between our estimates and those reported by Member States.

3 Article 5: Reported figures versus sample estimates

We performed the same analysis to establish where there was a significant divergence between the reported figures and sample estimates of the proportion of independent European works in the qualifying schedule. The details of our analysis (including descriptive statistics for the reported and sample estimate based figures) are given in Table 42 and Table 43 below.

Table 42: Descriptive Statistics for Reported and Sample Estimates of Article 5

	TWF Article 5 Ratio (Independent Qualifying European to Total Qualifying Hours)							
	Reported				*Sample Estimate*			
	1993	*1996*	*1999*	*2002*	*1993*	*1996*	*1999*	*2002*
Average	29.1%	26.9%	32.6%	32.7%	18.3%	17.3%	20.6%	20.4%
Standard Deviation	22.8%	15.9%	32.5%	22.0%	15.9%	11.8%	11.5%	12.6%
Sample Size (no. of channels)	42	66	71	69	42	66	71	69
Standard Error	3.5%	2.0%	3.9%	2.6%	2.5%	1.4%	1.4%	1.5%
95% Confidence Interval (±)	7.1%	3.9%	7.7%	5.3%	5.0%	2.9%	2.7%	3.0%

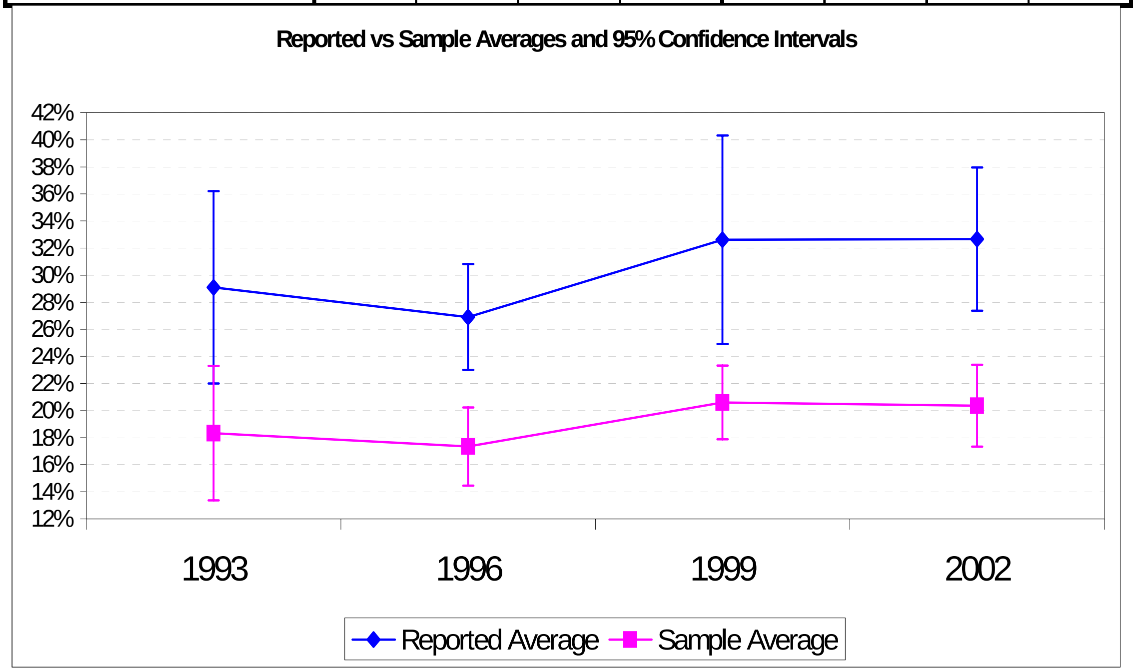
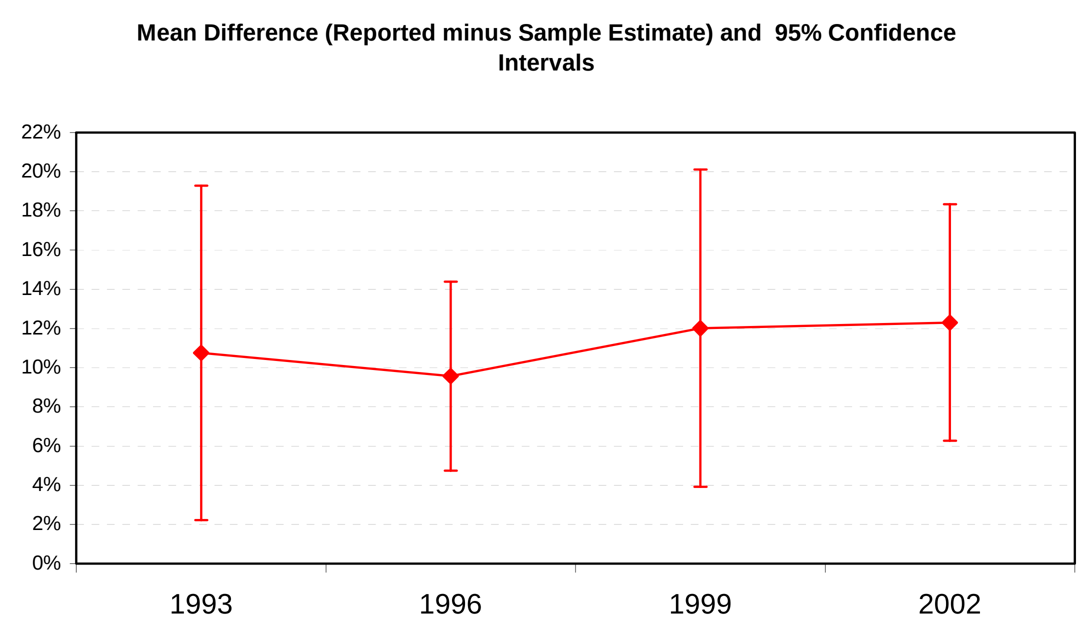


Table 43: T-test for Statistically Significant Divergence Between Reported and Sample Estimates of Article 5

	Difference (Reported minus Sample Estimate)			
	1993	***1996***	***1999***	***2002***
Mean Difference (Reported minus Sample Estimate)	10.8%	9.6%	12.0%	12.3%
Standard Deviation	19.7%	14.0%	24.4%	17.9%
Sample Size	84	132	142	138
Standard Error	4.3%	2.4%	4.1%	3.1%
95% Confidence Interval (±)	8.5%	4.8%	8.1%	6.0%
T-test for equality of Sample Means (t-statistic):	2.51	3.92	2.94	4.03
p-value (difference between sample means is significant if p-value < 0.05):	0.01	0.00	0.00	0.00
Reject Null Hypothesis that Means are equal at 5% significance level:	Yes	Yes	Yes	Yes



What is striking about Table 42 is the consistent gap between the reported and estimated figures for the proportion of European works by independent producers. The chart shows that there is no overlap between the 95% confidence intervals of the averages of the reported data and the sample data in any of our sample years except 1993. The reported averages exceed the sample estimates by around 11% in each of the four sample years; this gap is statistically significant.

What might have caused this statistically significant gap? One possibility is that, despite our best efforts, we have largely failed to make representative sample draws. However, since our samples proved to be representative in terms of the proportion of qualifying European works, it seems unlikely that they would then prove to be particularly unrepresentative in terms of the proportion of independently produced works.

The fact that the gap between the reported and estimated ratios hardly varies over time is further evidence that non-representative sampling is not the cause of the divergence, both the estimated and reported series following virtually identical trends. If faulty sampling were to blame, one would not only expect the gap to be statistically significant but also highly erratic.

The most likely explanation for the fact that, in every sample year, our estimated averages are consistently around 11% lower than the corresponding reported figures, is that the interpretation of what constitutes an independent producer is generally much stricter in our homogenised monitoring methodology than in the monitoring methodologies used to produce the reported figures by the various states covered in our study. The fact that The Directive does not contain a standard definition of an independent producer is probably significant in this regard.

Appendix V: National Implementation of Articles 4 and 5; and other national language and production requirements

The following tables have been constructed with reference to national legislation. Information about the laws and regulations in place in each Member State to implement Articles 4 and 5 was collected from national regulatory authorities, using a combination of interviews and a questionnaire. We also conducted our own research in Member States and used the European Media Institute Study (EIM) of Member State legal provisions, conducted on behalf of the European Commission and published in 2001[57]. Our understanding of the legal position in each Member State from these sources was distributed to the each country's representative on the Contact Committee for comment and verification. A summary of the provisions in each Member State is contained in Appendix V.

[57] Pertzinidou, Eleftheria; Study on the provisions existing within the Member States and the EEA States to implement Chapter III of the 'Television without Frontiers Directive' (Directive 97/36/EC of the European Parliament and the Council of 30 June 1997 amending the Council Directive of 3 October 1989); The European Institute for the Media; May 2001.

Table 44: National Measures to implement Articles 4 and 5 and other national language and production requirements in Austria

National Measures	Austria	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law "Where practicable"	
Independent Production	10% of qualifying transmission time	
Language requirements	None	
Contribution to production	PSB ORF obliged to provide financing to the Austrian film industry through the Film-Television Treaty with the Austrian Film Institute.	
Legislation	Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks – Rundfunkgesetz – RFG. Ref: BGBI. Nr 379/1984 idF BGBI I Nr 32/2001.	Bundesgesetz, mit dem Bestimmungen über den Kabel- und Satellitenrundfunk erlassen weden – Kabel und Satelliten-Rundfunkgesetz. Ref: BGBI Nr 42/1997 idF BGBI I Nr 32/2001

Table 45: National Measures to implement Articles 4 and 5 and other national language and production requirements in Flemish Belgium

National Measures	Flemish Belgium	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law "Where practicable"	
Independent Production	10% of qualifying transmission time	
Language requirements	"A considerable proportion of European works should be works originally produced in the Dutch language."	
Contribution to production		
Legislation	Decreten Betreffende De Radio-Omroep En De Televisie, Gecoördineerd Op 25 Januari 1995	

Table 46: National Measures to implement Articles 4 and 5 and other national language and production requirements in French Belgium

National Measures	French Belgium	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law "Where practicable"	
Independent Production	10% of qualifying transmission time "in principle"	
Language requirements	Proportion of works originally produced in French to reach progressively one third of the European works	
Contribution to production		
Legislation	Décret du 17 Julillet 1987 sur l'audiovisuel	

Table 47: National Measures to implement Articles 4 and 5 and other national language and production requirements in Denmark

National Measures	Denmark	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law	
Independent Production	10% of qualifying transmission time	
Language requirements	DR and TV2 are required to pay special attention to Danish and other Nordic languages	
Contribution to production		
Legislation	Lov nr. 1052 af 17 December 2002 Lov om radio- og fjernsynsvirksomhed Bekendtgørelse om lokal radio- og fjernsynsvirksomhed Bekendtgørelse nr. 1173 af 17 December 2002	

Table 48: National Measures to implement Articles 4 and 5 and other national language and production requirements in Finland

National Measures	Finland	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law	
Independent Production	15% of qualifying transmission time or programme budget for PSBs	10% of qualifying transmission time or programme budget.
Language requirements	Legal requirement on YLE to reflect minority languages in the schedule.	
Contribution to production	Agreements between YLE and the Association of Independent Producers in Finland and the Finnish Film Foundation to support film and independent production	
Legislation	Act on Television and Radio Operations (744/1998).	

Table 49: National Measures to implement Articles 4 and 5 and other national language and production requirements in France (cinematic works)

National Measures	France (cinemato- graphic works)	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	60% of broadcast films [Applies to peak hours as well – 20:30-22:30]	CANAL+, Pay-Per-View and film channels: Peak hours are 18:00-02:00 New pay TV channels have 5 years to comply with the requirements.
Independent Production	75% of contribution to Production [<2.4% of turnover]	
Language requirements	40% of films [Applies to peak hours as well – 20:30-22:30]	
Contribution to production	3.2% of turnover on European films 2.5% of turnover on French Language films	For CANAL+ : 20% of turnover on acquisitions of film rights (12% for European Films, 9% for French Language films) For other film channels (other than old movies), the requirements can be met on the number of different long duration films broadcast during the year – but European films must represent at least 50% (and French language films 35%) of total runs and re-runs, during peak time as well
Legislation	Décret n° 90-66 du 17 janvier 1990 Décret n° 2001-609 du 9 juillet 2001 Décret n° 2001-1333 du 28 décembre 2001	Décret n° 90-66 du 17 janvier 1990 Décret n° 2001-1332 du 28 décembre 2001 Décret n° 2002-140 du 4 février 2002

Table 50: National Measures to implement Articles 4 and 5 and other national language and production requirements in France (audiovisual works)

National Measures	France (audiovisual works)	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	60% of AV broadcast time [Applies to peak hours – 18:00-23:00 plus 14:00-18:00 on Wednesdays – as well]	Peak hours are 20:30-22:30 for film channels. For pay TV channels, requirements may be set below 60% BUT: European works must represent at least 50% of broadcast time of audiovisual works AND the broadcasters must invest in a minimum number of original independent French Language audiovisual works.
Independent Production	2/3 of the expenses on French language audiovisual production [ie 10.67% of turnover]	For CANAL+, 2/3 of the 4.5% of the revenues devoted to audiovisual works [ie 3% of turnover] For pay TV channels, at least 2/3 of production expenses
Language requirements	40% of audiovisual broadcast time	Set individually for pay TV channels BUT: must amount at least to 75% of time devoted to European works
Contribution to production	16% of turnover to French language production 120 hours of European or French Language works never previously broadcast. Must start between 8 and 9 p.m. and cannot account for more than 180 min per night.	CANAL+, 4.5% of turnover For pay TV channels, minimum of 13% of turnover
Legislation	Décret n° 90-66 du 17 janvier 1990 Décret n° 2001-609 du 9 juillet 2001 Décret n° 2001-1333 du 28 décembre 2001	Décret n° 90-66 du 17 janvier 1990 Décret n° 2001-1332 du 28 décembre 2001 Décret n° 2002-140 du 4 février 2002

Table 51: National Measures to implement Articles 4 and 5 and other national language and production requirements in Germany

National Measures	Germany	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Legislation refers to "main part"	
Independent Production	Legislation says "significant part"	
Language requirements	"Presentation of the diversity of the German speaking regions"	
Contribution to production		
Legislation	Rundfunkstaatsvertrag (RStV) vom 31. August 1991 in der Fassung des fünften Rundfunkänderungsstaatsvertrags, in Kraft seit dem 1 Januar 2001.	

Table 52: National Measures to implement Articles 4 and 5 and other national language and production requirements in Greece

National Measures	Greece	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law	25% rising to 45%
Independent Production	10% of qualifying transmission time	
Language requirements	25% of qualifying time should be for works produced in Greek. Also requirement to show correct use of Greek.	
Contribution to production		
Legislation	Presidential Decree 100/2000 Law 2328/1995	Presidential Decree 100/2000 Law 2644/1998 for the provision of pay TV and radio services

Table 53: National Measures to implement Articles 4 and 5 and other national language and production requirements in Iceland

National Measures	Iceland	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Act refers to "greater part of transmission time is reserved for Icelandic and other European material"	
Independent Production	"Where applicable" 10% of qualifying transmission time or 10% of annual programme budget	
Language requirements	General formulation to encourage Icelandic culture and language.	
Contribution to production		
Legislation	Broadcasting Act 53/2000. Regulation on Broadcasting Activities, January 16, 2002.	

Table 54: National Measures to implement Articles 4 and 5 and other national language and production requirements in Ireland

National Measures	Ireland	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	"Reasonable proportion"	
Independent Production	"Reasonable proportion"	
Language requirements	General requirement to reflect Irish culture and language	
Contribution to production	RTE has financial targets for spending on independent productions.	
Legislation	Radio and Television Act 1988 Broadcasting Act 1990 Broadcasting Act 2001	

Table 55: National Measures to implement Articles 4 and 5 and other national language and production requirements in Italy

National Measures	Italy	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law. Applicable to monthly transmission time and in peak time (18:30-22:30). Talk shows are excluded.	Thematic channels (70% of output devoted to a particular theme) can apply for a derogation.
Independent Production	20% of qualifying transmission time for PSBs	10% of qualifying transmission time
Language requirements	None	
Contribution to production	10% of profit from advertising must be devoted to European productions of which 40% should go to film.	
Legislation	Legge 30 Aprile 1998, n 122, differimento di termini previsti dalla legge 31 luglio 1997, n 249, relativi all'Autorità per Le Garanzie nelle Comunicazioni, nonché norme in materia di programmazione e di interruzioni pubblicitarie televisive, pubblicata nella Gazzetta Ufficiale n 99 del 30 aprile 1998. Deliberazione No 9/99, Approvazione del regolamento concernente la promozione della distribuzione e della produzione di opere europee, pubblicata nella Gazzetta Ufficiale n 1198 del maggio 1999.	

Table 56: National Measures to implement Articles 4 and 5 and other national language and production requirements in Luxembourg

National Measures	Luxembourg	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law "Where practicable"	
Independent Production	Wording of Directive incorporated directly into national law	
Language requirements	None	
Contribution to production		
Legislation	Loi du 2 Avril 2001 portant modification de la loi du 27 Juillet 1991 sur les médias électroniques et transposition de la directive 97/36/CE du Parlement Européen et du Conseil du 30 Juin 1997, publié au Mémorial A No 42 du 17 Avril 2001. Règlement grand-ducal du 5 Avril 2001 fixant les règles applicables en matière de contenu en oeuvres Européen et en oeuvres de producteurs indépendents des programmes de télévision réputés relever de la compétence du Luxembourg conformément à la directive Européen “Télévision sans frontières”.	

Table 57: National Measures to implement Articles 4 and 5 and other national language and production requirements in the Netherlands

National Measures	Netherlands	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	At least 50%. Applies to each public service channel	Exemptions subject to a 10% minima.
Independent Production	25% of qualifying transmission time for PSBs (with each channel broadcasting a minimum of 17.5%).	10% of qualifying transmission time
Language requirements	Public service channels must dedicate 50% of transmission time to programmes in Dutch or Friesian (Commercial channels 40%)	Temporary exemptions from language requirements for certain secondary and pay TV channels.
Contribution to production		
Legislation	Media Act of 21 April 1987 as amended (Staatsblad 249 of 1987).	Media Decree of 19 November 1987 as amended (Staatsblad 573 of 1987).

Table 58: National Measures to implement Articles 4 and 5 and other national language and production requirements in Norway

National Measures	Norway	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	50% of qualifying transmission time.	
Independent Production	10% of qualifying transmission time	
Language requirements	Licence conditions on TV2 to contribute to "the preservation and promotion of Norwegian language, culture and identity"	
Contribution to production	TV2 contributes to film and TV through funding for Norwegian Film Fund.	
Legislation	Act No 127 of 4 December 1992 relating to broadcasting with subsequent amendments, most recently by Act No. 6 of 14 January 2000, with effect from 20 January 2000. Broadcasting Regulation 153 of 28 February 1997 (Forskrift om Kringkasting) pursuant to the Act No 127 of 4 December 1992.	

Table 59: National Measures to implement Articles 4 and 5 and other national language and production requirements in Portugal

National Measures	Portugal	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law	
Independent Production	10% of qualifying transmission time (10% of programme budget for RTP)	
Language requirements	Channels must broadcast programming originally produced in Portuguese for 50% of transmission time excluding ads, teleshopping and teletext.	
Contribution to production	all terrestrial channels pay a 4% tax on advertising income to fund Portuguese cinema.	Requirement does not apply to pay TV channels.
Legislation	Lei No 31-A/98 de 14 de Julho	

Table 60: National Measures to implement Articles 4 and 5 and other national language and production requirements in Spain

National Measures	Spain	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	51% of annual transmission time. "Where practicable"	
Independent Production	10% of qualifying transmission time	
Language requirements	A majority of European works should be in one of the official Spanish languages	
Contribution to production	5% of annual income to be allocated to European film	
Legislation	Ley 25/1994 de 12 de Julio, publicada en el BOE Núm. 166, de 13 de Julio de 1994, por la que se incorpora al ordenamiento jurídico español la directiva 89/522/CEE, sobre la coordinación de disposiciones legales, reglamentarias y administrativas de los estados miembros, relativas al ejercicio de actividades de radiodifusión televisiva, modificada por la ley 22/1999, de 7 de junio, publicada en el BOE Núm. 136, de 8 de Junio de 1999.	

Table 61: National Measures to implement Articles 4 and 5 and other national language and production requirements in Sweden

National Measures	Sweden	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	Wording of Directive incorporated directly into national law "Where practicable"	
Independent Production	10% of qualifying transmission time or 10% of programme budget	
Language requirements	General requirement to broadcast a significant proportion of programmes in Swedish. Public service broadcaster SVT is required to reflect linguistic and ethnic minorities	
Contribution to production	SVT is required under its charter to contribute to Swedish film production through funding of the Swedish Film Institute.	
Legislation	Radio and Television Act (SFS 1996:844)	

Table 62: National Measures to implement Articles 4 and 5 and other national language and production requirements in the United Kingdom

National Measures	United Kingdom	
	PRIMARY FREE TV REQUIREMENTS	HOW PAY TV DIFFERS
European Works	"Proper proportion"	"Where practicable"
Independent Production	25% of qualifying transmission time	10% of qualifying transmission time.
Language requirements	S4C and ITV licensees in Scotland have Welsh and Gaelic requirements respectively.	
Contribution to production		
Legislation	BBC Licence Agreement Broadcasting Act 1990	Broadcasting Act 1990 Broadcasting Act 1996