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*The European Consumers' Organisation*

## **BEUC Response to**

### **the Commission's Consultation on the Review of the "Television Without Frontiers" Directive**

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## **Executive summary**

BEUC very much welcomes this review of the “Television Without Frontiers” (TWF) directive. It is of critical importance because of the significance of television broadcasting for consumers, and the increasing complexity of the market. We look forward to a Communication from the Commission on interpretation of the directive in the light of recent changes, especially the spread of inter-active services and new advertising techniques. However, a comprehensive revision of the directive is also vital to take account of technological and market developments and to ensure that consumers’ interests are protected.

### **➤ Protecting consumers**

Digital technologies offer greater choice of channels and services but their introduction has made this sector more complicated and confusing, with greater possibility of consumer detriment. A prime aim of this review should be to ensure that consumers’ interests are effectively protected. Media literacy programmes, and the availability of filtering and ratings systems, should not be seen as justification for weak regulation or for allowing industry to abrogate responsibility. Consumer confidence is more likely to grow in an environment of effective and coherent consumer protection. Moreover, consumers need access to complaints-handling and redress systems that are clearly signposted and suit their needs.

### **➤ A horizontal approach**

Consumers need the same level of protection, regardless of the particular sector. The consumer protection aspects of this directive should be consistent with other EU measures, in particular, the forthcoming directive on Unfair Commercial Practices. The latter would provide the horizontal basis for consumer protection, with the TWF directive covering the sector-specific elements. The interactions between relevant directives and measures should be explicitly recognised. BEUC’s preferred approach is for an over-arching framework directive taking due account of such interactions.

### **➤ Protecting children**

Children are especially vulnerable and their interests too must be properly safeguarded in terms of programme content and exposure to commercial messages. Member States must be free to set stricter standards than those required in the directive to protect children’s interests. A horizontal EU approach is needed to protect children in relation to all forms of marketing, whatever the medium or sector.

### **➤ Regulation**

The Commission urgently needs to clarify what is meant by co- and self-regulation in the context of the TWF directive. The discussion documents for this review refer to these concepts in ways that are unclear and confusing as to their meaning, and the Commission’s intentions about their application. In BEUC’s view, the approach must be based on co-regulation, that is, on a statutory legal framework that encompasses monitoring, enforcement, sanctions and appeal mechanisms. Codes of conduct should be grounded in this statutory framework, and developed in consultation with consumer representative bodies. Given the fast-changing nature of this sector, the Commission should regularly review the state of play in Member States, especially regarding the nature of regulation, monitoring and enforcement.

The scope of the Contact Committee should be expanded to include national regulatory authorities (NRAs), rather than setting up an additional committee, as the latter course would potentially lead to confusion and duplication. Transparency and openness are prerequisites for

such bodies, together with responsiveness to consumer interests. The Commission should take immediate steps so that the proceedings and papers from the Contact Committee are publicly available on the Commission's website. In order for consumers to have confidence in regulation, NRAs should be required to be fully independent of the state and of industry.

### ➤ **Consumer representation**

The Commission will need to ensure that consumer bodies are involved and consulted as early as possible in the formulation of guidance and revisions to the directive. We urge the Commission to encourage Member States to promote the development of consumer representative bodies in this sector. The competent authorities in the Member States should also be encouraged to carry out regular consumer research on issues relating to the TWF directive, and to make the results publicly available.

### ➤ **Universal access and choice**

Broadcasting services play a fundamental role in terms of consumers' social, cultural, and economic interests. Guidance and revisions to this directive should reflect the importance accorded to public broadcasting in the Treaty of Amsterdam<sup>1</sup>, including the need to preserve media pluralism. The Commission needs to ensure that the rapid developments taking place in the audiovisual market, especially increasing concentration of media ownership and vertical integration, do not harm consumers' interests. Universal access to a wide range of content services on a free-to-air basis is essential, including plurality and diversity of content and sources.

We urge the Commission to carry out regular reviews of the implications of media concentration, particularly in terms of the wider social and cultural implications as well as economic and competition factors.

### ➤ **Recommendations**

**The following requirements should underpin the forthcoming Commission Communication on the TWF directive and any future revisions:**

- **Co-regulation, based on a statutory legal framework, as the basis for interpretation and implementation of the TWF directive.**
- **Consistency with other EU measures, including the proposed directive on Unfair Commercial Practices.**
- **Robust provisions for monitoring and enforcing the directive in the Member States.**
- **Representation and involvement of consumer representative bodies at EU and national level.**
- **Universal affordable access to a wide range of broadcasting content and services, including media pluralism and diversity.**
- **Clear separation of editorial programming content and of advertising content.**

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<sup>1</sup> Protocol on the system of public broadcasting in member states, Treaty of Amsterdam, 1997.

- **In this context special attention must be paid to developments that erode the distinction between programming and advertising, such as product placement, integrated marketing, sponsorship and "personalized" marketing.**
- **Clear identification of advertising, marketing and other commercial messages.**
- **Transparency for consumers about the nature of different aspects of the broadcasting environment and the level of regulatory protection.**
- **Advance provision of information for consumers about charges and other terms for accessing content and services, and the right to free itemised bills.**
- **Prohibition of the collection and use of personal data from consumers without their explicit agreement via an opt-in mechanism.**
- **Prohibition of collection and use of personal data about children without prior verifiable parental consent.**
- **Provision of services for disabled people so that they are able to access broadcasting services, including sub-titling, sign language and audio-description.**
- **Requirements for consumer-friendly complaints-handling, dispute resolution and redress systems.**
- **Separate consultation on the Recommendation on the protection of minors and human dignity.**
- **Regular reviews of the impact of media concentration, including the wider social and cultural implications.**

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## **I. Introduction**

BEUC welcomes the opportunity to respond to the Commission's consultation on the review of the "Television Without Frontiers" (TWF) directive. Broadcasting plays a profoundly important role in consumers' lives in social, economic and cultural terms. Television is a major source of information and entertainment, as well as providing a powerful instrument for advertising and marketing messages.

This review is urgently required because of the rapidly-changing nature of broadcasting technologies and markets, especially the spread of inter-active services. The broadcasting landscape is becoming more and more complex, with the proliferation of channels and services, and the expansion of opportunities for advertising, sponsorship and teleshopping.

Consumers are having to deal with an increasingly complicated range of delivery mechanisms and content services that can offer positive benefits by way of potentially greater choice but also bring the risk of consumer detriment. This risk is especially acute with regard to the interests of minors. It is unrealistic to expect individuals, especially those who are vulnerable or disadvantaged, to keep pace with developments. The "Television Without Frontiers" directive must provide a robust framework that effectively protects the interests of consumers, including children.

We strongly urge the Commission to ensure that this framework is firmly located within a broad horizontal approach so that this directive is consistent with existing and forthcoming EC measures, including the proposed directive on Unfair Commercial Practices.

We look forward to a Communication from the Commission regarding the interpretation of the existing TWF directive in the context of new advertising techniques and interactive services. However, BEUC considers that a thoroughgoing revision of the directive is required to take account of technological and market developments, especially to ensure that the directive effectively safeguards consumers' interests.

Below we set out the main areas of concern for consumers arising from this review and make recommendations for the future interpretation and revision of the directive. We go on to address the specific questions put forward in the discussion papers that are of most importance for consumers' interests.

## II. Changing nature of the sector

### ➤ The complex marketplace

The development of digital television – available through cable, satellite or terrestrial platforms - has profoundly affected the nature of the broadcasting sector. Although digital television is not yet widespread throughout Member States - and its rate of growth varies between individual countries - it is anticipated that digital broadcasting will eventually overtake and replace analogue television. Consequently, it is vital that the directive is interpreted and revised to take full account of the implications of this development.

In particular, the advent of digital television has resulted in the growth of interactive television services, which have fundamentally altered the television broadcasting environment. Viewers with digital equipment are able to interact with television programmes through a return path, normally via a telephone line, for instance: to take part in a competition, or to order a product. They are also able to change the content appearing on the TV screen: for instance, to obtain information or to view more than one picture at a time. Digital broadcasting services can also give viewers the means to access the Internet via their television sets.

Purchasing, accessing and using broadcasting services and equipment have become far more complicated tasks than was the case even just a few years ago.

### ➤ Media concentration

Universal affordable access to a wide and diverse choice of broadcast content and services is essential for consumers' social, economic and cultural needs. The Protocol to the Treaty of Amsterdam on public service broadcasting recognises the need to preserve media pluralism. However, one of the striking features of the audiovisual sector in recent years has been the growing concentration of media ownership. A small number of commercial enterprises are increasingly able to dominate the market-place, especially through vertically-integrated structures that offer the ability to control access to gateways and distribution rights to content of societal importance. It is essential the Commission regularly examines the implications of these developments, including wider social and cultural issues as well as economic and competition factors.

### ➤ Expansion of advertising techniques

The complexity of this marketplace has been compounded by the expansion of advertising techniques that offer different ways for marketers to reach consumers, and of different methods for consumers to order products and services via their TV sets. These are too numerous to list in full but they include teleshopping channels, sponsored programmes, virtual advertising, infomercials, self promotion, and split screen advertising, as well as promotion of merchandising linked to characters or other aspects of a television programme.<sup>2</sup> The use of integrated marketing and merchandising strategies, linked with editorial material, is a particular concern.

Interactive services have generated a massive increase in the ability of marketers to collect, process and cross-analyse data about consumers' use of broadcasting services, such as their viewing behaviour, participation in games and competitions, and teleshopping habits. Such information can be gleaned from consumers' use of interactive services, and by downloading information from set-top boxes. These developments have significant implications for personal privacy and data protection.

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<sup>2</sup> Study on the Development of New Advertising Techniques, Carat Crystal and Bird and Bird, 2002.

➤ Protection of minors

Over the last few years, children have become an increasingly important target for advertising and marketing. However, children are especially vulnerable to commercial communications, as they do not have the understanding necessary to differentiate between editorial content and advertising or the critical ability to evaluate commercial messages.

A European survey of children and advertising<sup>3</sup>, carried out some years ago by BEUC with Consumentenbond, pointed out that this ability does not develop among most children until the age of 6 to 8 years. However, even more importantly, it also stressed that children do not have adults' ability to have a critical questioning attitude to advertising. This requires extra, relatively sophisticated skills, and their acquisition is a gradual long-term process that varies between individual children. Even where children possess some critical facilities, being able to distinguish advertising from programming can be extremely difficult because of marketing techniques, such as linking product merchandising with programme characters, or the promotion of products within competitions.

The solution too often propounded by industry is that the responsibility rests entirely with parents to control their children's exposure to commercial communications. This is an abrogation of responsibility that must also rest with industry. The proliferation and complexity of broadcast services, and the frequently opaque nature of advertising and marketing techniques, make it unrealistic to expect parents to know about the myriad of communications to which their children may be exposed, let alone to be able to control their access to it.

It is essential that the TWF directive is interpreted and revised in ways that take full account of the vulnerability of children and effectively protect their interests. This should include safeguarding their interests in respect of data collection. Interactive services have brought a huge increase in the ability of marketers to collect, cross-process and analyse data about young children's interests, alongside those of adults.

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<sup>3</sup> Children and Advertising, BEUC and Consumentenbond, 1996.



### III. Implications for the EU framework

Whilst digital technologies are altering the broadcasting landscape, consumers continue to have a high level of trust in the services that are provided through the familiarity of their television sets. It is vital that such trust is maintained for the sake of consumer confidence.

The Fourth Report from the Commission on the application of this directive stated that: *'the removal of barriers to a free circulation of information has to take account of general interest objectives, such as pluralism, cultural diversity, protection of copyright, consumer protection and protection of minors.'*<sup>4</sup> To ensure this happens, the following basic principles should underpin any guidance from the Commission on the interpretation of the directive in its existing form and as a foundation for future revisions. The Commission should clarify that these principles apply to all types of advertising and marketing - including teleshopping – regardless of whether they emanate from linear broadcasting, interactive services, or electronic programme guides.

#### ➤ Separation of content

In order to retain trust in the medium of television, consumers need to be able to rely on the editorial content of television programming being free from commercial distortion or interference. They also need to know when content is being used in order to market or promote a product or service. In essence this means that consumers must be able to distinguish easily between editorial programming and commercial messages. The linking of merchandising and editorial content, as part of integrated commercial communications strategies, needs to be addressed as far as possible through this review but it also raises broader issues about merchandising techniques that go beyond the scope of the TWF directive.

#### ➤ Transparency

Consumers have expectations about the level of regulatory protection available via linear broadcasting, and need to know if this changes when they access a different service via the television set or electronic programme guide. Consequently, consumers must be able to identify easily where they are in the broadcasting environment and what regulatory protection applies.

#### ➤ Information

Consumers must be fully informed about any extra costs that would be incurred by accessing additional services, for instance, the rates for premium rate telephone charges. This information should be clearly visible and easily understandable. It should be provided before consumers use any services requiring additional payment.

Consumers should have the right to itemised bills free of charge so that they can monitor, verify and control their expenditure. This would complement the requirements in the electronic networks and services directive on "Universal Service and Users' Rights"<sup>5</sup> with regard to free itemised billing.

#### ➤ Universal access and choice

Consumers should have the right to universal affordable access to a wide range of broadcasting content and services. The directive should be interpreted and revised to take account of

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<sup>4</sup> European Commission, op.cit, p.8.

<sup>5</sup> Universal service and users' rights relating to electronic communications networks and services, Annex 1, COM (2000) 392 final.

growing media concentration and vertical integration to safeguard consumers' social, cultural and economic interests.

➤ Use of personal data

The use of personal data about consumers should be prohibited unless consumers have stated their express agreement to the collection and use of personal data through an opt-in mechanism. They should be fully informed about any possible use of that data beforehand.

➤ Protection of minors

The TWF directive should require advertisers and other marketers not to cause mental, moral or physical harm to children, nor should they encourage children to behave in such a way that could jeopardise their health, safety or general welfare, taking into account their age, knowledge and level of maturity. Member States must be free to adopt stricter provisions than those contained in the directive in order to safeguard children's interests, including measures to reduce the exposure of children to advertising and marketing. The Commission should encourage Member States to monitor the nature of advertising and marketing directed at children through the broadcast media, and to carry out regular research on the effects.

The collection of personal data from young children should be prohibited unless prior verifiable parental consent has been obtained. There must also be full disclosure of all techniques of targeted or personalised advertising directed at children.

BEUC has called for a horizontal piece of legislation at EU level to protect children in relation to all forms of marketing practices, whatever the medium, and covering all products and services. This should be cross-referenced with the TWF directive.

➤ Complaints-handling and redress

Consumers need easy-to-use and accessible complaints-handling mechanisms that are suitable for their needs, together with clear procedures for obtaining redress. Member States should be required to ensure that transparent and straightforward procedures are available to deal with unresolved disputes involving consumers, relating to issues covered by the TWF directive, as well as compensation and redress systems. This should complement the requirements of the directive on "Universal Service and Users' Rights" and be consistent with other relevant EU measures.

➤ Interests of disabled people

Disabled people, especially those with visual or hearing impairment, have specific needs regarding broadcasting services, so that they can fully access the available content. The report on the application of the directive by the Committee on Culture, Youth, Education, Media and Sport drew attention to the wide variations between Member States in levels of sub-titling and sign language interpretation for those with hearing difficulties, and of audiovisual description for people who are visually impaired<sup>6</sup>.

It is highly regrettable that the discussion papers for this review do not include issues specifically relating to the needs of disabled people in the audiovisual sector. BEUC urges the Commission to take action in this respect, ensure it consults adequately with disability organisations, and brings forward positive recommendations so that the TWF directive adequately addresses the needs of disabled people.

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<sup>6</sup> Report on Television Without Frontiers, Committee on Culture, Youth, Education, the Media and Sport, European Parliament, Final A5-0251/2003.

#### **IV. Regulation and consumer representation**

➤ Regulatory concepts

Consumers need to be confident that systems of regulation are sufficiently robust to protect their interests, independent of those being regulated, and contain adequate provisions for monitoring and enforcement. We are concerned that the discussion documents frequently refer to the concepts of co- and self-regulation in a confusing manner, and without clarifying the implications for the application of this directive and for consumers' interests. An exception is the description of the role and appropriateness of co-regulation in discussion paper 6 ("*Access to short extracts of events*") but it is regrettable that such clarity is confined to this very specific topic.

Co-regulation implies that any codes of conduct are based within a legal framework that allows for statutory enforcement. This accords with the definition given in the Commission's White Paper on European Governance<sup>7</sup>, which states that 'Co-regulation combines binding legislative and regulatory action with actions taken by the actors most concerned, drawing on their practical expertise.' Although BEUC has reservations about the adequacy of this definition, it explicitly refers to the binding nature of legislative and regulatory action. Moreover, the Commission's Fourth Report on implementation of the directive discusses the role of co-regulation as operating within the framework of a legislative measure. The Report also states that, unlike co-regulation, self-regulation does not necessarily imply legal measures.

It is imperative that Member States are clear about how the directive should be interpreted and implemented, including the need for sanctions to ensure compliance, and that consumers are clear about their rights. In BEUC's view, the application of the TWF directive must be based on co-regulation, that is, on a statutory legal framework that includes monitoring, sanctions and enforcement, and appeal mechanisms. Any codes of conduct should be backed up by this statutory framework. Member States should be required to ensure that there is effective involvement of consumer representative bodies in the development of codes of conduct.

➤ Regulatory systems

For consumers to have confidence in regulation, it is essential that regulatory systems are independent of government and of industry. We welcome the importance that the Commission attributes to the development of independent national regulatory authorities (NRAs) in the audiovisual field. We consider that the Commission should take this to its logical conclusion by requiring Member States to set up independent NRAs for the sector. This would be in line with similar requirements under the regulatory framework for electronic communications networks and services.

In addition, we propose that the Commission examines the systems for regulation established in the Member States, and makes its findings publicly available. This information is essential in order to see who is responsible for regulation of the sector across the EU and the robustness of provisions for monitoring and enforcement.

The Commission has suggested the possibility of establishing a committee comprising NRAs at European level. However, given the existence of the Contact Committee, which consists of representatives of competent authorities in Member States, we do not support this proposal, as it would be difficult to separate the remits and tasks of the two committees. Instead, the scope of the Contact Committee should be expanded to include NRAs.

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<sup>7</sup> European Governance – A White Paper, COM (2001) 428 final.

It is essential that there is the utmost transparency and openness surrounding regulation, including the work of the Contact Committee. We are surprised that the Committee does not have a website similar to that of the European Regulators' Group (set up under the electronic communications framework), and that its proceedings are not routinely published. We urge the Commission to take immediate steps to ensure that the Contact Committee publishes reports of its proceedings and any related documents, and has its own website. This should not have to wait for the results of this review.

➤ Consumer representation

In the light of the significance of television broadcasting services for consumers, it is vital that consumers' interests are prioritised in this review of the TWF directive. Consumer representative organisations should be fully consulted at European and Member State level regarding any future guidance from the Commission on the interpretation of the directive and possible revisions. The Commission should ensure that consumer bodies are involved and consulted as early as possible in the ensuing debate on this directive.

Consumers do not have the resources of industry, and require effective systems to represent their interests in the audiovisual sector. It would be extremely helpful if the Commission examined how consumer interests are represented within the Member States in this respect, and to what extent they are involved in the process of regulation, for instance, in helping to develop codes of conduct.

We urge the Commission to encourage Member States to ensure there are consumer representative bodies who are adequately resourced to represent consumers' interests in this complex and fast-moving sector. The competent authorities in Member States should also be encouraged to carry out regular quantitative and qualitative consumer research to find out consumers' views and experiences on issues relating to the directive's subject matter. The results of such research should be made publicly available as a matter of routine.

## **V. Inter-relationship with other EU policy**

The complexity of the audiovisual sector and the increasing overlaps between this and other sectors, such as e-commerce and information society services, need to be clearly recognised in EU policy and related instruments. It is our view that the best approach would be through an over-arching framework directive that takes due account of relevant interactions. The TWF directive should be revised to meet this objective. We note that the European Parliament Committee on Culture, Youth, Education, the Media and Sport has suggested the creation of a Content Framework Package, which would bring together the TWF directive and the directives on e-commerce and copyright related to satellite broadcasting and cable retransmission.

In the meantime, in relation to the forthcoming Communication on the interpretation of the TWF directive, it is essential that the Commission explicitly cross-references the directive with all other related directives and instruments, including the proposed directive on Unfair Commercial Practices, the directive on misleading advertising and the forthcoming proposal on administrative co-operation on the enforcement of consumer protection laws. The interactions between different directives and policies need to be inherently coherent and consistent, with clear cross-references to related measures. This is vital to ensure clarity regarding implementation of the directive, and to avoid consumers being subject to different and conflicting regimes.

From the consumer standpoint, it does not make sense for a different approach to apply to advertising and marketing practices in the broadcast sector, compared with other forms of consumer protection. Consumers need the same rights, regardless of the medium that advertisers and marketers use to promote products and services. The consumer protection aspects of the TWF directive should be located within a horizontal EC approach based on the concept of a duty to trade fairly.

## **VI. Recommendations**

The forthcoming Communication from the Commission on the interpretation of the directive and any future revisions should be based on the following requirements. The Commission should also clarify that they apply to all types of advertising and marketing delivered through the familiarity of television sets into people's homes.

- **Co-regulation**: interpretation and implementation of the TWF directive -including codes of conduct - should be based on a statutory legal framework.
- **Consistency**: the consumer protection aspects of the directive should be consistent with other EU measures, including the proposed directive on Unfair Commercial Practices and the forthcoming proposal on administrative co-operation on enforcement of consumer protection laws.
- **Application and compliance**: the Commission should examine the systems for regulation in the Member States, particularly monitoring and compliance mechanisms.
- **Consumer representation**: the Commission should examine how consumer interests are represented at a national level in this sector, and encourage Member States to ensure that consumer bodies are fully consulted and involved, including the preparation of codes of conduct.
- **Universal access**: the Commission should ensure that the directive safeguards universal access to a wide range of broadcasting content and services, and investigates the effects of media concentration, especially for pluralism and diversity.
- **Separation of content**: consumers should be easily able to distinguish between editorial programming and commercial messages.
- **Transparency**: consumers must be able to identify where they are in the broadcasting environment, for instance, when going from linear to inter-active services, and the level of regulatory protection.
- **Information**: consumers must have the right to clear information in advance about any potential costs for accessing services, including premium rate telephone charges, and the right to itemised bills free of charge.
- **Use of personal data**: collection and analysis of personal data derived from consumers' use of interactive services, should be prohibited unless consumers have opted-in to allow such use of their data.
- **Protection of minors**: Robust regulation continues to be required so that children are not exposed to harmful content. Member States should have the ability to set stricter national requirements on television advertising and marketing to protect children's interests. Collection of personal data from children should be prohibited without prior verifiable parental consent.
- **Interests of disabled people**: Member States should be required to ensure that disabled people are able to access broadcasting content and services, through suitable provision of services such as sub-titling and sign language interpretation.

- **Complaints-handling and redress:** Accessible procedures for complaints-handling and dispute resolution are essential that are clearly signposted and meet consumers' needs. Consumers also require easy-to-use redress and compensation mechanisms that provide proper redress.
- **Audiovisual and information society services:** the Commission should consult separately on the Recommendation on protection of minors and human dignity, together with up-to-date information on its application.
- **Media concentration:** the Commission should regularly review the social and cultural impact of growing media concentration in the EU, together with economic and competition implications.

Other recommendations are contained within the following responses to the questions posed in the discussion documents issued by the Commission, and listed at the end of this paper.

## **VII. Response to discussion documents**

### **❖ Theme 1: Events of major importance for society**

Article 3a of the directive allows Member States to take national measures to protect events regarded as being of major importance to society. The aim is to ensure that television providers do not broadcast such events on an exclusive basis, thus denying a substantial part of the public the opportunity to see them. Implementation of the article is mandatory for all Member States.

Universal access to broadcasts of major events is of utmost importance to help ensure full participation in society. No consumers should be excluded from the opportunity to view such events on free-to-air television. Article 3a is an appropriate and essential tool in this respect and must be retained. We also strongly support the existing approach that is based on a Community framework to avoid the possible circumvention of national measures to protect a legitimate general interest.

As the discussion paper states, this aspect of the directive only provides that Member States shall draw up a list of designated events in a clear and transparent manner and that, until now, it has not been considered necessary to co-ordinate at European level the procedures followed at national level for consultation of interested parties. However, the questions posed about consultation requirements do not include any reference to the need for adequate public consultation when Member States draw up lists of designated events.

This is a glaring omission and one that must be urgently remedied in any Communication on the interpretation of the existing directive and in any future revisions. We recommend that mandatory requirements are imposed on Member States to consult publicly before drawing up lists of events designated as of major importance to society, and prior to making any changes to those lists. This would be in line with the requirement in the "Universal Service and Users' Rights" directive<sup>8</sup> requiring Member States to ensure that national regulatory authorities take into account the views of consumers, among other parties, on all issues related to user and consumer rights concerning publicly available communications services.

The paper also asks whether it would increase legal certainty if the directive provided for a Commission decision on the compatibility of the measures proposed by Member States with Community law. Such a provision is included in Article 2a but not in Article 3a. Consequently if the Commission were to take the view that notified measures did constitute an infringement of Community law, and if informal discussions with Member States did not result in amendments desired by the Commission, the only course available would be the initiation of infringement proceedings pursuant to Article 226 of the Treaty (an administrative letter by which the responsible Director General informs the Member State in question that the Commission does not intend on the basis of facts available to object to the measures).

The point of Article 3a is to ensure that television providers do not broadcast events of major importance to society on an exclusive basis, and implementation of the article is mandatory for all Member States. This is couched within a Community framework. These provisions would be strengthened if the directive provided for a formal Commission decision on the compatibility of proposed measures with Community law. This should follow the precedent set out in Article 2a so that, if the Commission decides they are not compatible, the Member State will be required to put an end to the measures in question as a matter of urgency.

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<sup>8</sup> Universal service and users' rights relating to electronic communications networks and services, Article 29, op.cit.



## ❖ Theme 2: Promotion of Cultural Diversity and Competitiveness

BEUC has no specific comments on the questions posed in this discussion paper, beyond supporting the general aims of the subject matter.

## ❖ Theme 3: Protection of General Interests in Television Advertising, Sponsorship, Teleshopping and Self-Promotion

### 1. Concepts and definitions (Article 1 c) f))

Article 1 defines 'television broadcasting' in terms of transmission of television programmes intended for reception by the public, that is, linear audiovisual programmes. However, it is not clear to what extent the directive applies to interactive services. We note that a study carried out for the Commission<sup>9</sup> states that *'it seems that the said rules were only framed for linear televised programmes and do not apply to all the services offered on digital television.'* But the study also highlights that: *'In any event because of the very close coexistence between television programmes and the other interactive services available on digital television, audiovisual regulation is likely to interfere when the interactive commercial service is accessed from a linear television programme and commercial content or links are present simultaneously on the same screen (by means of the split screen technique).'*

This underlines the confusing state of affairs concerning the scope of the TWF directive, which needs to be addressed urgently. The Commission should make it clear that the directive is intended to include new advertising techniques and interactive services that are accessed via the television set. This would not prevent different sectoral rules being applied to the different services if relevant, for instance, rules specifying the maximum amount of advertising are not necessarily applicable when viewers are deliberately choosing to access commercial messages, or using teleshopping channels.

It would be helpful if it were clear that the directive is intended to cover the wide range of services that can be accessed via the television set. We recommend that the existing definition in the first sentence of Article 1(a) is replaced by text along the following lines:

*'television broadcasting services' means the initial transmission or electronic access, by wire, or over the air, including that by satellite, in unencoded or coded form, of television services intended for reception by the public.*

Article 1(c) to (f) provides definitions of 'television advertising' and of specific marketing practices, namely: 'surreptitious advertising', 'sponsorship', and 'teleshopping'. 'Surreptitious advertising' is prohibited but the line between this and other advertising techniques is not always clear. It is described in the directive as involving the representation of goods and services, trademarks etc in programmes when the intention is to serve advertising and might mislead the public. However, the issue can be clouded if broadcasters argue that the representation of goods and services can be justified as part of programming content. The linking of editorial content with merchandising of goods and services can also result in surreptitious advertising. The Commission needs to make it clear that surreptitious advertising is prohibited, whatever the intention, and seek ways of ensuring that this requirement can be implemented especially to take account of links between programme content and marketing.

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<sup>9</sup> Study on the Development of New Advertising Techniques, Carat Crystal and Bird and Bird, 2002.

Regarding the other definitions provided in the current text, the study carried out for the Commission<sup>10</sup> found a multiplicity of advertising or sponsorship formats in the various countries examined, including 'virtual advertising', 'breakbumper', 'infomercial' and 'splitscreen'. It is questionable whether all the traditional and newer forms of advertising and marketing techniques are captured within the existing definitions in the directive. We do not see a problem with retaining some definitions of techniques as long as the directive makes clear that it is not meant to be an exhaustive list and that the absence of a definition does not automatically imply that a specific technique is not covered.

## 2. General standards (Article 12) and for the attention of minors (Article 16)

We support the prohibitions listed in Article 12 regarding television advertising and teleshopping, for example with regard to prejudicing respect for human dignity. However, a significant omission is any mention of consumers' interests. This is strange, to say the least, as consumers are the prime focus of television advertising and teleshopping. The proliferation and complexity of these types of commercial communications make it especially vital that consumers are adequately protected against the possibility of unfair commercial practices. This would strengthen the directive's effectiveness in terms of consumer protection, and ensure a horizontal approach with the Commission's proposals on consumer protection. We recommend the inclusion of a new clause:

*Television advertising and teleshopping shall not...(f) 'use unfair commercial practices.'*

BEUC strongly supports the provisions of Article 16 on protection of minors. However, it should be enhanced by the following general requirement:

*(e) it must not encourage children to behave in such a way that could jeopardise their health, safety or general welfare, taking into account the age, knowledge and level of maturity of the intended audience.*

The study carried out for the Commission on the impact of advertising and teleshopping on minors<sup>11</sup> showed that there was a remarkable number of differences at member state level regarding the interpretation of the directive's provisions concerning minors, according to different cultures and traditions. The Commission should make it clear that individual Member States are free to establish and maintain standards in their own countries according to their own culture and traditions, and are able to apply those standards within reason to advertising and marketing originating from abroad.

In other respects, we do not consider that the provisions of this Article are sufficient, as they do not deal with the implications for children of issues arising from newer advertising and market research techniques, especially with regard to data collection. We recommend the inclusion of the following:

*No personal data from children shall be collected unless prior verifiable parental consent has been obtained on the basis of full prior disclosure of how the data will be processed and used.*

*No click stream data and other data relating to use of interactive services by children shall be collected, including anonymised data, without full disclosure.*

*All techniques of targeted and personalised advertising directed to children must be disclosed.*

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<sup>10</sup> Ibid.

<sup>11</sup> Study on the Impact of Advertising and Teleshopping on Minors, INRA, for the European Commission, 2001.

These provisions should be linked to the proposed framework directive on consumer protection in which the Commission is proposing an obligation regarding disclosure of information. BEUC has recommended that the framework directive should also include the prohibition for businesses to collect and process personal data from children without verifiable parental prior consent.

### **3. Form and presentation of television advertising and teleshopping (Article 10)**

Clear boundaries must be set as to what is acceptable in respect of advertising and marketing content. BEUC considers it essential that the existing requirements are retained in Article 10 concerning the separation of editorial content from the different means of advertising and also bans surreptitious advertising. Television advertising and teleshopping must be easily recognizable and kept separate from programmes by optical and other means.

However, difficulties arise with the existing text as it does not fully address new techniques, such as split screens which allow the presentation of editorial and commercial content simultaneously, with the TV screen being divided into two parts. The study for the Commission<sup>12</sup> states that 'This split screen technique could be considered to conflict with the principle of separating advertising from programmes.' Some Member States have banned the use of split screen advertising, whilst the UK and Germany have authorised it but within limits.

Any permitted use of split screen advertising should be required to adhere to the principles of transparency and of separation of advertising and content. The Commission should make it clear that split screen advertising is only permitted if it is clearly separated from the programme content visually, and the advertising content is identified as such on-screen. The duration of split-screen advertising must be included in full when calculating the overall amount of advertising. Split screen advertising should, however, be completely prohibited during programmes for children.

The Commission should also clarify that the ban on surreptitious advertising prohibits the branding of interactive icons and their use in ways that encourage undue prominence of a product appearing in a linear programme. (This stipulation is included in the ITC Guidance to Broadcasters on Regulation of Interactive Television Services in the UK.) Consequently the use of a commercially branded interactive icon during the course of editorial programming should be banned.

### **4. Insertion of advertising and teleshopping spots (Article 11)**

The Commission should make it clear that Article 11 is intended to apply to split screen and other forms of advertising techniques.

### **5. Advertising and teleshopping for certain products (Articles 13,14, and 15)**

The existing requirements in Articles 13, 14 and 15 must be retained (concerning prohibitions against advertising and teleshopping for cigarettes and other tobacco products, and limitations on advertising and teleshopping for medical products and alcohol). We recommend that the provisions are strengthened to ensure that such products are not advertised in or adjacent to programmes for children.

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<sup>12</sup> Study on the Development of New Advertising Techniques, op.cit.

These requirements should also apply to products and services that can be accessed through interactive services via the television set, and the Commission should clarify that this is the case.

## **6. Duration (Articles 18 and 19(a))**

Any split-screen advertising should count in full in calculating the transmission time devoted to advertising, as we state above.

It may be possible that proposals could be acceptable that would modulate the application of duration rules for teleshopping channels only. However, this should be on the basis that the nature of those channels is made clear to viewers, and that any modulation is not allowed to prejudice the primary task of broadcasting, that is, it should not affect non-teleshopping channels.

The discussion paper poses a question about the use in certain cases of self-regulation or co-regulation in order to facilitate the coherent application of the directive. We address these broader issues elsewhere (see comments on Discussion Paper 5 on 'Application') but would comment that the discussion paper does not explain how this would apply to the issue of the duration of advertising.

## **7. Sponsorship (Article 17)**

BEUC supports the requirements concerning sponsorship and the prohibition against sponsorship of news and current affairs programmes in order to guard against any distortion of news content. We would oppose any moves to weaken these requirements. Sponsorship must be explicit and not resemble advertisements, nor should it be allowed to influence programme content.

However, the directive needs to be updated to deal with new advertising techniques, such as 'virtual advertising' whereby advertising sponsorship or messages can be electronically inserted into programmes such as sports broadcasts. The study carried out for the Commission<sup>13</sup> stated that virtual sponsorship did not conflict with the directive. But it also found that the use of such a technique during sports broadcasts is generally contrary to national rules that are more detailed in relation to insertion of sponsorship messages. In Germany and the UK, it is permitted under certain specific conditions but virtual advertising is banned in some other countries.

The Commission should make it clear that Article 17 covers new advertising techniques such as virtual sponsorship. It should only be permitted if its use is counted as replacing an advertisement, and viewers should not be exposed to virtual sponsorship images for longer than people who are present at the event itself. Viewers must be informed about the nature of the insertion of electronic sponsorship images at the beginning and end of broadcasts in which they are used. Broadcasters should be prohibited from selling virtual sponsorship or virtual advertising as this could distort the way in which events are broadcast. Its use should also be prohibited in terms of product placement by electronic insertion of advertising or sponsorship messages in televised programmes or televised films.

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<sup>13</sup> Study on the Development of New Advertising Techniques, op.cit.

## 8. New advertising techniques

We have made comments on split-screen advertising in section 3 above. With regard to interactive services, we take the point that – in order to access these services – consumers have to make a deliberate decision to leave the linear television environment. However, these services are available through the familiar form of the television set, and could be regarded by viewers as extensions of programmes. Moreover, consumers have developed a significant level of trust about the general broadcasting environment within which they are provided.

First, the status of interactive services must be completely transparent to viewers. Secondly, clear and comprehensible information about any costs related to accessing interactive services must be provided to consumers on-screen before they choose to do so, for instance, charges for premium rate telephone calls. Advertising content must be clearly distinguishable from editorial content.

We support the recognition in the ITC in its Guidance<sup>14</sup> that a choice to interact is not the same as a choice to receive advertising or offers for sale. It makes it clear that no choice to interact with editorial programming is allowed to take a viewer at first click to a site dedicated to advertising content, that is, it must lead the viewer to a screen with at least 50% editorial content. There must be a clear indication that the next click will take them to a screen with advertisements or offers for sale. The Commission should explore this approach further.

Given the familiarity of the television set, it is vital that restrictions on advertising in linear programming are reflected in terms of interactive advertisements regarding children's programmes. In addition, interactive advertisements should be prohibited for news and current affairs programmes, and no direct offers for sale should be permitted for products or services reviewed during consumer advice programmes.

We give comments on virtual advertising above (question 7) and discuss co- and self-regulation in the section above on 'Regulation and consumer protection.'

### ❖ Theme 4: Protection of Minors and Public Order – Right of Reply

Article 22 contains provisions with regard to content of programmes and the possible effects on minors, including the possibility for programmes to be separated by selection of time of broadcast, commonly known as the 'watershed'. Member States have adopted different detailed rules in respect of this aspect of the TWF directive that reflect social and cultural differences.

The discussion paper draws attention to the complications raised by digital technologies for checking broadcast content by statutory bodies, for example, increases in the number of programme hours, the effects of pay-per-view channels on the watershed concept, and decoders that allow viewers to compile their own viewing schedule. It suggests the increased use of self-regulation as a possible solution to problems of lack of resources for classifying broadcasts and what it describes as 'the watershed problem'. The implication is that existing provisions would be weakened or abolished, and the paper refers to the tools available through digital television for parents and educators to filter content.

Television occupies a unique role in that content comes unbidden into people's homes, and it would mean exposing children to undue and unacceptable levels of risk if the existing protection

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<sup>14</sup> Guidance to Broadcasters on the Regulation of Interactive Television Services, ITC, 2001.

for children against harmful content was reduced or abolished. Lack of resources for statutory bodies is no justification for doing so, and BEUC would strongly oppose any moves in this direction.

We draw the Commission's attention to the Opinion of the Economic and Social Committee on the proposal for a Community action plan on promoting safer use of the Internet<sup>15</sup>. The Committee stated that it is sceptical about the sufficiency of self-regulation and recommended a background of legislation with supporting codes: co-regulation rather than self-regulation. As the Committee also stated: 'An overall coherent approach on children's issues is badly needed in Europe.' We agree: protection of minors is another area where a horizontal EC approach is essential.

The watershed time should not be abandoned simply because it can be circumvented in some circumstances. Broadcasters and other sections of the industry should be given a clear message about the standards that are expected of them. Moreover, although the technological means for home compilation of viewing schedules may have changed, this is not a new development - consumers have been able to view pre-recorded content on video for many years, and more recently through DVD.

The discussion paper also refers to the Council's Recommendation on the protection of minors and human dignity<sup>16</sup>, and asks whether it continues to constitute an appropriate instrument, taking into account commercial and technological developments.

The Recommendation calls for the establishment of national self-regulatory frameworks, supplementing regulatory frameworks, to enhance the protection of minors and human dignity in the broadcasting and Internet sectors. The Commission has produced an evaluation report on the application of the Recommendation<sup>17</sup> but this was based on a questionnaire to Member States in August 2000. Given the rapidity of developments in these sectors, it is essential that more regular monitoring is carried out of the effectiveness of measures adopted by all parties, including Member States, the industries and the Commission itself.

The discussion paper refers to the 2001 report as showing that the application of the Recommendation was already then overall quite satisfactory. However, a recent review by ERICA<sup>18</sup> (European Research into Consumer Affairs) of some of Europe's most popular ISPs' sites showed that, while a lot has been done by internet service providers to develop codes of conduct and many have introduced measures to protect children on-line, there is no co-ordinated and structured approach by ISPs to ensure on-line protection. For instance, only 9 of 17 ISPs reviewed had links to safety guidelines for parents and children from their sites and only 5 of these had links from their homepages. Only 5 had information about the potential dangers of chat rooms on chat room pages. Some ISP sites had no information about filtering and ratings systems.

Amongst the Commission's findings, its evaluation report stated that codes of conduct have been established, or were being finalised, in all Member States where associations of operators exist, with one exception. However, it is also apparent from the evaluation report that the extent of consultation with consumers has been most unsatisfactory. Although the Recommendation stresses that relevant parties - including consumers - should participate in the definition, implementation and evaluation of national measures, in the replies, only three Member States underlined that public authorities and/or consumers had been involved. The report mentions that interested parties and, in particular, consumers should have been more involved in the

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<sup>15</sup> Opinion of the Economic and Social Committee, COM(2002) 152 final – 2002/0071 (COD).

<sup>16</sup> Council Recommendation, 98/560/EC.

<sup>17</sup> Evaluation Report from the Commission to the Council and the European Parliament, COM(2001) 106 final.

<sup>18</sup> A Review of Internet Service Providers and how they protect children on-line, ERICA, 2003.

establishment of codes of conduct. We regard this with great concern, and urge the Commission to take immediate steps to encourage the direct participation of consumer representative bodies in drafting codes of conduct from an early stage.

As we mention elsewhere, codes of conduct are only useful if they are effective - it is essential to specify that there is a consequence if codes are not observed. There should be meaningful sanctions for transgressions.

We are also concerned at the report's findings that an obligation to inform users about filtering and rating systems and software existed in only one member state, at that time. The Commission should reinforce the need for such obligations.

The report on the Recommendation refers to the Commission's consultation with the Digital Video Broadcasting Consortium (DVB) on the operational requirement of technical devices to facilitate control over children's viewing. At that time, the DVB considered that the market would be unnecessarily distorted by the introduction of a new technical system to assist parental control that applied only to digital broadcasting. The DVB Consortium stated that it was willing to work with the Commission and others to investigate a "fair description" content rating system. We now need to know what has transpired since the publication of the evaluation report, which was over two years ago.

It is vital that more up-to-date information is made available on subsequent progress with rating and filtering systems to inform responses to the questions posed in this discussion paper. As this Recommendation covers Internet as well as broadcasting services, BEUC urges the Commission to consult separately on the effectiveness of the Recommendation and related measures, and provides information on current and likely future developments. In order to achieve a more co-ordinated and consistent approach by ISPs, the Commission should explore the possibility of a general duty on ISPs to protect children.

The Council's Recommendation also states that Member States take action to improve the level of awareness among parents, educators and teachers of the potential of new services and how they may be made safe for minors. BEUC agrees with the importance of encouraging media literacy so that consumers are not only able to develop technical skills but also have the ability to evaluate content, and make informed purchasing decisions. However, the promotion of media literacy should not be used as justification to downgrade consumer protection.

## ❖ Theme 5: Application

### 1. Determining the competent authority

Article 2 lays down the 'country of origin rule' whereby Member States are not allowed to restrict retransmission on their territory of television broadcasts from other Member States. This means that the competent authority is the Member State from which the broadcast originates, not the recipient country. An extremely restricted allowance is made for exceptions, or derogations, in Article 2(a) with regard to infringements of aspects of Articles 22 (provisions regarding programme content and minors) and 22a (incitement to hatred).

The country of origin principle in the TWF directive is also reflected in the e-commerce directive (2000/32/EC). BEUC considers that this rule is fundamentally flawed. It undermines the ability of Member States to enforce higher levels of consumer protection than may apply in the originating country, and is therefore inimical to consumers' interests. The argument most frequently put forward in its favour is that companies cannot be expected to adhere to different rules applied by individual Member States. However, this conveniently overlooks the reality of the situation: that it is even more difficult for consumers to find out what rules apply in the originating country or obtain redress. Consequently, the country of origin rule favours industry

interests at the expense of consumers. It is also in clear contradiction of the concept of minimum harmonisation established in Article 129a of the EC Treaty.

A particular concern with regard to television broadcasting is that companies can set up operations in countries with lower standards and thus bypass higher standards of consumer protection. We consider that Member States must be able to take action to preserve standards of consumer protection within their own territories.

However, it is essential that the TWF directive is not viewed in isolation in this and other respects. The country of origin rule should be revised as part of a horizontal approach on determination of the competent authority across the whole field of consumer protection, within the proposed framework directive on consumer protection, to which the TWF directive should be linked. (For further detail, see BEUC's comments on the Commission's Green Paper on Consumer Protection and BEUC's follow-up position paper.)

In order to protect consumers' interests, we recommend that:

- The TWF directive should be amended so that derogations are permitted for Member States to take measures against television advertising and teleshopping originating from other Member States to protect consumers' interests and the interests of minors.
- A horizontal approach should be adopted to harmonise the legal provisions and principles in relation to marketing regarding the determination of applicable law and determination of the competent authority, within a framework directive on consumer protection.

We would also like to draw the Commission's attentions to concerns from our Dutch member organisation - Consumentenbond. It has reservations about whether the Netherlands has fulfilled its obligations set out in Article 3.2 of the TWF directive, which requires Member States by appropriate means to ensure, within the framework of their legislation, that television broadcasters under their jurisdiction effectively comply with the provisions of the directive. We would be interested to know if the Commission considers the means taken by the Dutch government to be "appropriate".

## **2. Contact Committee (Article 23a)**

The TWF directive provided for the creation of a Contact Committee, comprising representatives of Member States under the aegis of the Commission. Its tasks include the facilitation of implementation; exchange of information, and to examine developments arising in this sector. Regarding the question about the appropriateness of the Committee's set of tasks, BEUC recommends that the Committee's specified range of tasks should include the implications for consumers of existing measures and developments arising in the sector.

However, further consideration of the Committee's tasks would be assisted if information were available as to how the Committee operates. This is essential in order to ensure transparency. The Commission should take immediate action so that the Committee's proceedings are made publicly available and that it has its own website, similar to that of the European Regulators' Group.

The paper mentions that one of the results of the ongoing review might be to strengthen the instruments for co- and self-regulation. It goes on to refer to the risks of co-regulation in terms of legal uncertainty, fragmentation of the internal market and difficulty of enforcement, and asks whether these can be overcome by co-regulatory models at European level or pan-European co-operation by co-regulatory authorities.



This is another illustration of the inherent confusion within the discussion documents about the nature of co- and self-regulation. Of necessity co-regulation means that compliance with rules and codes is anchored to a statutory legal basis, together with measures for monitoring and enforcement. The question of legal uncertainty should not arise, nor should issues about enforcement or fragmentation of the internal market, if there is effective co-regulation. We can only assume that co-regulation has been confused with self-regulation in this respect.

As we have stated earlier, the Commission needs to define the concepts of co- and self-regulation in the context of the TWF directive. We reiterate our view that the basis for interpretation and application of the directive should be one of co-regulation in which codes of conduct are underpinned by a statutory legal framework.

### **3. Role of the national regulatory authorities**

BEUC welcomes the particular importance that the Commission attaches to developing independent national regulatory authorities in the audiovisual sector. To enhance consumer confidence in regulation, we recommend that Member States are required to establish national regulatory authorities that are independent of state and industry.

We question the advisability of having two committees: in the shape of the existing Contact Committee and any committee of regulators, as it would be difficult to separate their roles and responsibilities, and there would be great scope for wasteful duplication of effort. It is also unclear how their membership would differ. The Contact Committee consists of representatives of the competent authorities of Member States – we assume that these will be normally be the national regulators.

We recommend that only one Committee exists to exchange information and to co-ordinate at Community level to achieve the aims of the directive. This Committee should operate transparently and openly, and its advice and opinions should be made available in the public domain. The Committee should be required to have effective processes for consulting consumer representative bodies.

### **❖ Theme 6: Access to Short Extracts of Events**

We welcome the Commission's recognition that the increased monetization of public events and the proliferation of exclusive broadcast deals for public events threatens the ability of non-rights holders adequately to cover certain newsworthy events. We share the concerns that this could enable the organisers to control, that is, censor coverage of an event so that unfavourable incidents may not be reported.

The lack of a harmonised right to access newsworthy events restricts the right of the public to receive information. We consider that a statutorily-based harmonised right is vital in this respect, and recommend that it should be introduced as soon as possible.

The paper also asks about whether a right to short reports should be established by legislation or by means of a co-and/or self-regulation. It is interesting that the paper quotes the European Commission's White Paper on Governance and states that co-regulation implies that a framework of overall objectives, basic rights, enforcement and appeal mechanisms is set in the legislation. It goes on to state that, according to this criteria, a right to short reports, which defines the exercise of basic rights, should be established by legislation. We agree. However, this welcome recognition of the meaning and appropriateness of co-regulation should extend to the entire approach to the review of the TWF directive, and not confined to this specific topic.

## **Recommendations on questions raised in the discussion documents:**

### **❖ Theme 1: Events of major importance for society**

- Member States should continue to be required to take national measures to ensure that such events are universally accessible.
- Member States should be required to consult publicly before drawing up lists of events of national importance, and prior to making any changes to existing lists.
- The directive should be revised to provide for a formal Commission decision on the compatibility of proposed measures within Community law.

### **❖ Theme 3: Protection of General Interests in Television Advertising, Sponsorship, Teleshopping and Self-promotion**

- The Commission should clarify that the directive is intended to include new advertising techniques and interactive services that are accessed via the television set. We propose a re-wording of Article 1(a) in this respect.
- Definitions of specific advertising and marketing techniques can be retained in the directive but the Commission should make it clear that this should not be interpreted as an exhaustive list.
- The consumer protection aspects of the directive should be consistent with other relevant EU measures, including the proposed directive on unfair commercial practices.
- The provisions for protection of minors should be strengthened, including the prohibition of collection of personal data from children without prior verifiable parental consent, on the basis of full disclosure as to how the data will be processed and used.
- Existing requirements on separation of editorial content from advertising should be retained. Split-screen advertising should be banned during children's programmes. Otherwise, it should only be permitted if the advertising is clearly separate from programme content visually, and easily identifiable as commercial messages. It should be counted in full in calculating the overall amount of advertising.
- The Commission should make it clear that surreptitious advertising is prohibited, and seek ways of ensuring that this can be effectively implemented to take account of linkages between programme content and merchandising. The use of commercially branded inter-active icons during editorial programming should be banned.
- The prohibitions on advertising and teleshopping with regard to cigarettes and tobacco products must be retained, along with restrictions regarding advertising for alcohol and medical products. These should be strengthened so that such products are not advertised in or adjacent to programmes aimed at children.

- BEUC opposes any moves to weaken requirements about sponsorship of news and current affairs programmes. The Commission should also clarify that virtual sponsorship is only permitted in broadcasts of events if its use counts as an advertisement, together with other restrictions. Its use for product placement during televised programmes or films should be prohibited.
- The status of interactive services must be made completely clear to viewers. Broadcasters should be required to ensure that viewers are not taken straight to sites dedicated to advertising content when they first choose to use interactive services.
- Consumers must be given clear information on charges and other terms prior to accessing services that require additional payments, and have the right to free itemised billing.

#### ❖ **Theme 4: Protection of minors and Public Order**

- Existing safeguards to protect children's interests, with regard to programming content, and advertising and marketing, must be retained and strengthened where necessary.
- Member States should be free to establish and maintain national standards for protection of minors, and able to apply those standards to advertising and marketing from other countries.
- A horizontal EC approach is required on protection of minors.
- The Commission should promote the direct participation of consumer representative bodies in drafting national codes of conduct, under the Recommendation on the protection of minors and human dignity.
- The Commission should reinforce the need for Member States to ensure that users are informed about filtering and ratings systems and software.
- The Commission should consult separately on the effectiveness of the Recommendation and related measures, and provide information on current and likely future developments.

#### ❖ **Theme 5: Application**

- Member States should be able to take measures against television advertising and marketing originating from other countries to protect consumers' interests, including children.
- A horizontal approach should be adopted to harmonise legal provisions and principles regarding the determination of applicable law and the competent authority, within a framework directive on consumer protection.
- The remit of the Contact Committee should be extended to include the implications for consumers of developments in the sector.
- Immediate steps should be taken to make the proceedings of the Contact Committee available publicly, including its own website.

- A requirement should be placed on Member States for national regulatory authorities (NRAs) to be established that are independent of state and industry.
- We do not support the setting-up of another committee but recommend that the remit of the Contact Committee is extended to include NRAs.

❖ **Theme 6: Access to Short Extracts of Events**

- There should be a harmonised right to access short extracts of newsworthy events, based on legislation.

END