

**Television without Frontiers Directive**  
**European Commission issues paper on Cultural**  
**diversity and the promotion of European and**  
**Independent Audiovisual production –**  
**RTL Group comments.**

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RTL Group welcomes the opportunity offered by the European Commission to comment on the issues papers drawn in the context of the review of the Television without Frontiers directive (TVWF).

**About RTL Group**

RTL Group has been pioneering in radio since 1931 and in television as early as since 1954. With 31 television channels and 33 radio stations in 10 European countries - Luxembourg, the UK, Germany, France, Belgium, the Netherlands, Spain, Portugal, Hungary and Croatia - RTL group is European largest TV and radio company.

RTL Group is also, with FremantleMedia, one of the largest television producers, with more than 8,000 hours of programming produced in over 40 countries.

Most of RTL Group television channels are positioned as leading generalists channels, providing the viewers with a diverse schedule, comprising all the major genres of TV programmes: news, dramas, series, entertainment, documentaries, children programmes, shows, films and TV films, sports events. Most of RTL Group channels programmes are offered to viewers on a free basis, as advertising finances them. More than 50 % of this programming is original EU production. The media company Bertelsmann has a 90.4 % interest in RTL Group.

Comments made to this issues paper encompass the views from RTL group television and radio stations as well as from FremantleMedia, RTL Group's content division.

The European Commission's issues paper on "Cultural diversity and the promotion of European and Independent audiovisual production" appeals from RTL Group the following comments.

**Preliminary comments.**

- As the issues paper writes, broadcasters – and so is it for RTL Group channels – view the European quotas enshrined in TVWF Directive as disproportionate restrictions of their scheduling freedom.
- We would also recall that offering - for free - programmes, which respond to viewer demand, implies for broadcasters to ensure a high level of European domestic content on screen (assuming that this is affordable, as advertising markets must sustain such a level of investment).
- The transition towards digital switchover will entail a substantial increase of the number of channels and therefore further market fragmentation than today. As pointed out by the impact study, these evolutions are likely to render more difficult for broadcasters to respect European quotas in the future<sup>1</sup>.

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<sup>1</sup> « Downward pressure on channel share and the audience concentration could in turn put pressure on the proportion of European works that primary channels broadcast ». Impact study of the measures concerning the promotion of distribution and production of TV programmes – D. Graham and Associates Ltd – 24.05.2005, p. 184.

- We doubt that the European quotas are, according to the European Commission's own criteria of regulation, "the minimum necessary" to achieve a given policy goal. We also question whether the European quota on independent producers is still necessary at European level. The impact study shows that this quota is exceeded in almost all covered countries. Therefore, the independent production quotas seem to have served its purpose. Given that this provision constitutes, as such, a market distortion, there is no reason to maintain it longer than necessary at European level. However, should political balance dictate that quotas should be maintained, RTL Group takes the view that the text must preserve the important safeguards according to which European quotas are applied "where practicable and by appropriate means".
- Finally, RTL Group is pleased to read in the impact study that the growth of commercial primary channels in the 1990's contributed to help the independent sector<sup>2</sup>.

### **1) Non-Linear services.**

- ❑ RTL Group believes that, in case current TVWF scope would be extended to cover non-linear services, the provisions of Articles 4 and 5 should not be applied to non-linear services. This would be, as records the issues paper, "premature at this stage".
- ❑ As RTL Group underlined in the comments to the first issues paper on the "rules applicable to audiovisual content services", regulation should be consistent with technological neutrality and similar services be regulated the same way. We believe this should be the case for European quotas provisions.

### **2) Monitoring the application of articles 4 and 5 in the Member States.**

- ❑ The issues paper suggests a range of options for how to monitor the quota provisions. RTL Group channels are pleased to read (on page 4) that the current system is described as a heavy administrative burden for broadcasters, Member States and the European Commission. RTL Group would indeed oppose any scheme, which would increase the already significant administrative burden on broadcasters in implementing the existing rules. Every euro, which a broadcaster is obliged to spend on administrative compliance is a euro not available to the programming budget.
- ❑ We would also strongly object to the suggestion that national statistical reports, compiled by independent regulators and involving broadcasters in onerous reporting burdens, should then be subject to preview by organisations representing producers. This will only lead to yet more bureaucracy, cross-checking of data and categorisation of programmes. But, more importantly, there is also an essential point of principle. The content of a broadcaster's schedule is a matter for the broadcaster to decide, subject to scrutiny only from the national regulatory authorities, who grant our licences, and from the EU Commission and the Contact Committee. It would be inappropriate to allow third parties – and especially ones representing companies with which broadcasters have or may have contractual relationship - to "preview" independent regulators' data on the content of our schedules, nor examine or query the details of our quota compliance. The monitoring of quota compliance should be exercised, at national level, by objective and independent authorities.

### **3) Production and distribution of European co-productions.**

<sup>2</sup> Impact study of the measures concerning the promotion of distribution and production of TV programmes – D. Graham and Associates Ltd – 24.05.2005, p. 17.

- RTL Group believes that it would be inappropriate to introduce legislative measures to encourage the production and distribution of European co-productions. Imposing sub-quotas on European non-domestic works would create excessive editorial constraints and further jeopardise programming independence of broadcasters. Additionally, we believe that in small countries, with linguistic specificities, imposing a sub-quota on European non-domestic works may endanger efforts taken by national authorities, broadcasters and producers to ensure sufficient level of programming made in the local language and potentially threat the domestic industry.
- Other EU regulatory instruments could, in our view, reach this objective more efficiently and proportionally. European financial support programmes, such as the Regional funds, which scope of application could usefully be opened to be accessible to broadcasters, could contribute to help the production and distribution of European co-productions.

4) **The concept of “independent producer.”**

- Both RTL channels and Freemantle media, RTL Group TV production branch, would disagree with attempts to give a uniform, harmonised and rigid definition of the concept of “independent producer” at European level. A uniform definition of an “independent producer” would only make sense if broadcasting and production markets were similar across the EU. But our experience is that markets are heterogeneous, with significant variations between large and small markets and between widely or lesser-spoken languages. This diversity precludes therefore the elaboration of a uniform concept of independent producer at European level.
- RTL Group considers, therefore, that building a European harmonised definition of the notion of the “independent producer”, based on the criterion of ownership of secondary rights is equally inappropriate, for the following reasons:
  - A European definition of independent producer is not appropriate and could not possibly take account of the diversity of each national markets,
  - The elaboration of a European harmonised definition of the concept of “ownership of secondary rights” would encounter the same difficulties: national broadcasting and production markets in Europe are very different,
  - In addition, outright ownership of secondary rights is not necessary to define an independent producer. The mere fact that a producer does or not owes secondary rights does, and should not, preclude it to be qualified as being independent. Also, before the adoption in the UK of the 2003 act, which allowed producers to retain secondary rights, there was an expanding independent production sector in the country; there was no doubt that they were genuinely independent companies.
  - The secondary rights retention/release issues are commercial issues and should be treated as such. Both RTL Group broadcasters and producers believe that uniform, and hence inadapted, European definitions are not a relevant way to draw the balance between the interests of producers and those of the broadcasters.

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