



GSME response on EC Consultation on Revision of the TVWF Directive
Issues Paper on Commercial Communications

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Introduction

GSM Europe (GSME) is the European Interest Group of the GSM Association, the premier global body behind the world's leading wireless communications standard. Today GSM Europe represents around 148 operators in 50 countries/areas in Europe and counts around 480 million subscribers.

GSME has reviewed the Issue Papers published by the European Commission for the audiovisual conference in Liverpool, concerning the review of Directive 89/522/EEC as modified (hereafter, the "**TVWF Directive**"). We welcome this opportunity to participate in the debate expected to lead to the adoption of a new Directive on audiovisual content services.

Mobile operators provide electronic communications services and also information society services (content such as ringtones, wallpapers, logo, music, games, news texts...). Certain mobile operators are also now distributing audiovisual content (TV programmes and video). An increasingly wide range of types of content – and means of accessing them – will be made available over the coming years. Not all so-called 'mobile TV' channels are likely to replicate identically the programming approach of a TV broadcaster. Access may be on a free-to-air or on a subscription basis, may consist of on-demand access to specific events or short-clips (pay-per-view), on-demand behind age controls etc.

The adoption of a new Directive on audiovisual content services is therefore relevant to mobile operators in so far as the scope as currently defined seems likely to:

- Duplicate regulation of information society services as defined by Directive 98/34/EC¹; and
- potentially increase regulation of audiovisual content services more broadly, specifically of non-linear services.

The stated objectives underlying the revision of the TWF Directive is to protect the general public interest and at the same time promote an internal market for audiovisual content. Nevertheless, the extent to which the revision will actually contribute to achieving these objectives is currently

¹ 1) Any service normally provided for remuneration, at a distance¹, by electronic means¹ and at the individual request of a recipient of services¹



not clear from the Issues Papers. The regulatory exercise undertaken should now be an opportunity to assess:

- 1) the current audiovisual landscape and need for change;
- 2) the relationship between the range of measures regulating the provision of digital content, including:
 - a. eCommerce Directive (2000/31/EC)
 - b. Framework Directive (2002/21/EC)
 - c. Recommendation on Minors Protection of 1998
 - d. Directive 1998/34/EC as amended by 1998/48/EC on information in the field on technical standards & regulations

With a view to avoiding duplication; as well as

- 3) undertake a thorough impact assessment of the consequence of any move.

This would be in line with the Commission's commitment to '**Better Regulation**'.

Legal certainty is also critical for the industry and the development of the audiovisual market in Europe. This requires that:

- 4) the scope of the new Directive, including that of the suggested two tiers, be clearly defined, including with respect to the instruments noted above; and
- 5) an assessment be made of the potential consequences this extended new scope may have on the applicability of rules such as Conditional Access.

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It is important to ensure that there is no contradiction between the new TVWF Directive and the existing e-commerce Directive. This would otherwise create legal uncertainty which would be detrimental to the development of the audiovisual content service market.

We also support the reference to 'application rules commensurate with each category of audiovisual content service'. This provides some proportionality.

For the quantitative rules, we agree with the suggestion in the paper that it makes no sense indeed for on-demand services (non-linear).

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