

**Television without Frontiers Directive  
European Commission issues paper on  
Commercial communications –  
RTL Group comments.**

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RTL Group welcomes the opportunity offered by the European Commission to comment on the issues papers drawn by the European Commission 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 to this issues paper encompass the views of RTL Group television channels and radio stations, as well as from FremantleMedia, RTL Group's content division.

As a pan-European broadcaster operating locally in many countries of the EU, RTL Group believes that the TVWF Directive has been a useful legal instrument for the building of a European internal market for television broadcasting since 1989. However, provisions of TVWF's chapter IV on advertising have become obsolete and have even lead to counterproductive results in light of the objectives it should achieve.

**Executive summary**

Television should be regulated in context. Its regulation should be adapted to developments in the field of television broadcasting. The text of the Directive expressively underlines this necessity (Art.26) in providing that *“the Commission shall (...) if necessary, make further proposals to adapt (this Directive) to developments in the field of television broadcasting, in particular in the light of recent technological developments”*.

RTL Group believes that both past and forthcoming market and technological developments, which have and will occur in the TV broadcasting and communications areas, render necessary to modify the TVWF directive. We therefore support the European Commission in its attempt to propose a revision of this text.

RTL Group channels witness profound evolutions of the broadcasting landscape:

- A strong increase in the number of channels available to viewers following the large development of cable and satellite distribution, resulting in market fragmentation.
- In coming future, market fragmentation will rise substantially further, due to the transition towards digital switchover;
- The switchover to digital broadcasting will request substantial investments from the broadcasters;
- The emergence and rapid takeoff of new platforms able to deliver TV content;
- The development of new advertising techniques;

- The emergence of new technical devices, such as PVR, which render possible to skip advertising from TV programs.
- A substantial empowerment of TV viewers.

Further market fragmentation, due to the digital switchover and to the rapid development of platforms able to deliver TV content will enhance competition both vertically (more channels) and horizontally (more platforms). While we see competition as beneficial for the viewers, the challenge is posed for broadcasters to be able to finance more creative content that would differentiate them from each of their competitors.

The most important and first driver of RTL Group television channels is programme offer. To be able to finance quality programme offer, both for all the viewers and for free, advertising is the essential resource. Without advertising, investment in quality and varied programmes cannot be made. Without investment in content, advertising revenues cannot be generated and, further, be re-invested in programming.

The revision of the TVWF directive should be the occasion to modernise and to soften excessively detailed qualitative rules on advertising with the aim to provide for a new regulatory regime adapted to new paradigms. Regulation should enable broadcasters to explore new, creative and less disturbing ways of bringing advertising to television to enable them to continue to bring – for free – a varied programme offer to all the viewers.

We assume that, following the European legislative process and delay for implementation in Member States, the revised Directive will be applicable around 2010. For the new European legislation to remain efficient well beyond 2010, it should:

- Simplify and modernise current complicated and over-detailed quantitative rules on advertising. Insertion rules should be simplified for most programmes genres, including films, with proportionate limitations for news, religious and children's programming. Volume limits should also be modernised to allow for more flexible allocation of advertising over a day.
- Prove economically beneficial, be proportionate and be carefully checked against the European criteria for better law-making and governance;
- Secure the legality of new advertising techniques in providing for an express reference to Commission's recent interpretative Communication in the new regime;
- Recognise the prevalence of the principle of identification;
- Provide for consistent rules on product placement, with due respect of broadcasters editorial independence and programme integrity;
- Maintain qualitative rules protecting minors, human dignity and public health;
- Ask Member States to take full account of co- and self-regulatory developments;
- Avoid quantitative rules on advertising being imposed to on-demand services, should it be decided to extend the scope of the Directive;

The revision of the TVWF Directive should enable the TV viewers – as well as viewers from TV content on new delivering platforms – to continue to access to a range of creative and diversified programmes for free. It should also allow the TV industry to seize the opportunities offered by convergence and by the progressive switchover to the digital era, to enable it to fully contribute to the renovated Lisbon agenda for growth and jobs.

## RTL GROUP'S COMMENTS

### I. RULES COMMON TO ALL AUDIOVISUAL COMMERCIAL COMMUNICATIONS.

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#### 1) Audiovisual commercial communications. (Issue 1)

We view the issues paper's suggestion to adopt a new definition of "audiovisual commercial communications" as a sensible one. We regret, however, that the issues paper makes no reference to the Interpretative Communication adopted by the European Commission in April 2004. This document is indeed referring to commercial communications, which would be encompassed by the new definition of "audiovisual commercial communications", and very usefully clarifies that these are to be seen as lawful in regard to the current TVWF directive. To enhance legal certainty and to avoid that issues of interpretation lessen the efficiency of the internal market, ***RTL Group would suggest that the future proposal expressively recognises the legality of new advertising techniques and makes explicit reference to European Commission's Communication***, which has been adopted following full consultation with Member States and national regulatory authorities.

#### 2) Rules relating to the human dignity, the protection of minors and to public health. (Issues 2 and 3)

In the issues paper, the European Commission is asking about the advisability – in relation with the issue of extending TVWF Directive's scope to non-linear services – of applying current TVWF qualitative rules to all audiovisual services and is suggesting to this end the adoption of a new definition of "audiovisual commercial communications".

- RTL Group has never questioned the relevance of TVWF qualitative rules aiming at protecting human dignity, public health and minors as well as at ensuring non-discrimination and does not wish to do so. ***We therefore agree that these rules should continue to apply to television linear services.***

We also believe that, if it would be decided to extend the scope of the Directive to on-demand services, we would not oppose these basic principles to be applied to these services. We would however point out that this might lead to practical problems and that considerable thought should hence be given to transpose these rules to non-linear services in order for them to be effective.

- Relating to public health, the Commission states (on page 3) that "private broadcasters believe that audiovisual commercial communications on demand require less consumer protection". In addition to the general view expressed above, RTL Group wishes to point out that while we believe, as a general statement, that on-demand services should be much less rigorously regulated than linear services, we are not sure that this view can be transposed to public health-related consumer protection requirements, such as those enshrined into, e.g. Articles 13 and 15 of TVWF and would not advocate for their loosening to on-demand services.

#### 3) Identification of commercial communications (issues 4 and 5)

- ***The principle of identification should become prevalent.*** RTL Group channels have constantly underlined that the general objective pursued by the provisions of Article 10.1 of current TVWF Directive is that advertising shall be "recognisable as such", that is, that the viewers clearly identify what is a commercial message and what is editorial content. The principle of separation should be seen as one of the means to enable viewers to identify commercial content and to distinguish it from editorial content. ***RTL Group therefore agrees with the suggestion made in the issues paper to give priority to the principle of identification and to abandon the requirement of separation.***

- ***The new regime should provide for consistent regulation of product placement.*** This useful clarification would also render possible to consider authorising product placement. As the Commission points out in the issues paper, the concept of "legitimate product placement" is already referred to in other EU legislative instruments<sup>1</sup> and product presentation allowed by the Communication interpreting the TVWF Directive. ***RTL Group would take the view that in order to stop European programmes to be discriminated against, e.g. US content, product placement should be allowed and operate within a regulated environment.***

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<sup>1</sup> Directive on "unfair commercial practices", adopted in May 2005.

- If product placement is to be authorised, it should comply with the principle of identification. In addition, RTL Group considers that *product placement regulation in regard to public health is legitimate and would support extending the public health principles*, i.e. prohibiting tobacco and prescription medicines, and regulating the presentation of alcohol. *We would also favour the application of rules on human dignity and protection of minors. Finally, we would not oppose to the Commission's position that product placement should not be implemented in news, religious and children programmes.*

We would however question why the ways to implement the requirement of product placement to be identified – which we support - should be set at European level (in providing that product placement be identified at the beginning of the programme). We would rather suggest that the ways to implement such a principle should be left to the national authorities, should they find necessary to lay down specific requirements in this respect.

- RTL Group wishes to stress that advertising spots will remain the most important source of broadcaster's revenues and that product placement would provide for additional ancillary income only.
- Finally, RTL Group voices shared concerns of broadcasters and producers, stressing that they should retain ability to refuse product placement in cases it would damage broadcaster's editorial freedom or programme integrity.

#### 4) Application of the rules should take full account of co- and self-regulatory developments. (Issue 6).

- Preliminary remark - The issue paper seems to differentiate between self-regulation and co-regulation backed-up by the public authorities. While we acknowledge that both notions are not entirely comparable, we would point out that, given that broadcasting is a licensed activity, based on the notion of a license being granted by a national authority, we are not sure that there will be a huge difference in practical terms.
- RTL Group would support the option suggested in the issue paper to ask the Member States to take fuller account of co. and self-regulatory developments when transposing the new Directive. We believe indeed that co/self-regulation should be given a greater role for the future text to remain effective in the future. Specific implementation of the rules should be able to vary, both from country to country and over time. In addition, EU-wide over-detailed regulation would hamper broadcasters' ability to remain competitive in the digital era.

## II. Quantitative rules on television advertising

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### 1) Hourly and daily limit of advertising (Issue 1)

- RTL Group stresses that the issues paper is wrongly referring to "a balance between the revenue needs of some broadcasters, on the one hand, and the need to maintain programme integrity and quality, on the other". This presentation is misunderstanding the economics of television. *Advertising revenue is far from being in contradiction to programme quality and is, on the contrary, an essential guarantee for programme quality.* We underline, in addition, that this is not only the case for "some broadcasters" but for almost all of them and particularly free-to-air broadcasters, due to the prevalence the dual financing model for most of the public broadcasters.
- It should also to be pointed out *that advertising revenues generated from investment in content are further re-invested in programming.* We believe that free-to-air broadcasters are therefore in a strong position to contribute to a content-driven, creative and innovative Information Society.
- Volume limits should be modernised to allow for more flexible allocation of advertising over a day. For this contribution to be fully delivered in the incoming digital age, the European quantitative rules on television advertising should stop to be excessively rigid. They should allow for some flexibility. The issues paper suggests removing the present daily limit and leaving in place the hourly limit. RTL Group is not questioning the relevance of a volume limit being imposed on advertising minutage, we

rather strongly stress that it should not be excessively rigid. The new regime should allow a broadcaster, while respecting an overall limit on advertising, to have the possibility to schedule advertising minutes per hour on the model of 11/13/12 minutes per hour, rather than a rigid 12/12/12 minutes model, under the control of national regulatory authorities.

- RTL Group would agree with the option suggested in the issues paper that, should the new Directive cover non-linear audiovisual content services, there is no need to subject them to quantitative limits, which indeed make little sense for “on-demand” services.

## 2) Hourly and daily limit applied to teleshopping (Issue 2)

- RTL Group welcomes the issues paper’s option to consider the abolition of the daily limit on time devoted to teleshopping spots and of the restrictions enshrined in Article 18a.2. We regard the minimum duration of 15 minutes for teleshopping windows as no longer relevant and agree with the suggested option for channels exclusively devoted to teleshopping, to be exempted from the application of quantitative rules from Articles 18 and 18a.
- Teleshopping channels should remain subject to “qualitative” advertising restrictions and teleshopping assimilated to other forms of audiovisual commercial communications.

## 3) Insertion of advertising (Issue 3)

- **RTL Group strongly calls for simplification and softening of current advertising insertion rules.** In addition to the fact that these rules are excessively complicated, they have become:
  - Obsolete and outdated. Insertion rules have been elaborated during the 1980’s, when only few channels existed in each EU country and when the viewers had little choice between a limited number of channels. They are based on a traditional view that advertising can only be delivered in the form of three-minute commercial breaks in and around programmes, which have been a standard part of TV viewing for 50 years. We believe this model should be able to evolve;
  - Counterproductive. As a result of these rules, RTL channels are driven to interrupt programmes according to fixed intervals rather than according to natural programmes flow. They also hinder broadcasters’ capacity to build innovative programme grids. They are not in the interests of viewers as they result in artificially favouring long advertising breaks.
  - Disproportionate. The objectives of protection of the viewers and of rightsholders can be achieved with less detailed rules. New advertising technologies emerge which allow for creative ways to deliver commercial messages with less disturbance for viewers, which would achieve these objectives more efficiently.
- These elements lead RTL Group to consider necessary to modernise insertion rules on advertising to provide for more flexibility as regards advertising insertion. Free-to-air television operators will need to evolve rapidly in the years ahead, to respond to the new competitive environment. Greater flexibility than at present is essential to finance free programme offer.
- In addition, it is important to recall that broadcasters are dependent on the tolerance of the viewers as regards advertising: in case of excessive adverts or excessive breaks than tolerated by the viewers, the latter would switch to the other (numerous) channels available.
- RTL group channels therefore strongly support the move suggested in the issues paper towards a modernisation of insertion rules. **In this context, we also consider that Article 10 (2) on isolated spots is no longer relevant and would call for its re-examination to allow the use of isolated spots,** which would help in cases where broadcasters do not have sufficient advertising orders to air a group of spots.
- We also recognise the merit for a new Directive to contain specific limitations for news, religious services and children’s programmes. However, we strongly regret that the issues paper fails to consider any simplification of present rules for films. **RTL Group believes that insertion rules should also be modernised and simplified for films, which should not be excessively discriminated against other content genres.** The new regime should avoid lessening the opportunities for films to be showed for free and for all on free-to-air television. This cannot be in the interests of viewers, who would be

denied opportunities to watch films, nor would it be in the interests of the film industry, which would be deprived of potential additional revenues.

The debate on advertising and commercial communication should not be about whether or not it produces a short-term revenue boost for television. Rather, it is about ensuring the long-term competitiveness of the European media in the face of profound technological and market changes. We hope that this forward-looking approach will prevail in the new regime.

RTL Group  
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