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Annex to the

Proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING COUNCIL DIRECTIVE 89/552/EEC**

**on the coordination of certain provisions laid down by law, regulation or administrative
action in Member States concerning the pursuit of television broadcasting activities**

Impact Assessment – Draft Audiovisual Media Services Directive

{COM(2005) 646 final}

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Lead DG: Directorate-General for Information Society and Media

Other services involved: no other service is involved in the legislative proposal; DG INFSO liaised with relevant services through Impact Assessment Interservice Steering Group (see below, point 1.1)

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Executive summary

The “Television without Frontiers” Directive provides for minimum harmonisation of national legislations applying to television broadcasting services across the European Union, in order to serve two primary and interconnected objectives:

- (1) Facilitating the free movement of television broadcasting services within the EU internal market through the application of the country of origin principle;
- (2) Ensuring the protection of fundamental public interest objectives, through minimum harmonisation of existing regulations.

In addition it contributes to the fulfilment of wider complementary cultural, social, and economic aims while contributing to the protection of fundamental human rights and pluralism.

Since the adoption of the Directive in 1989, the audiovisual landscape has changed substantially, in respect of the technologies used, the number of operators and the business models. Fundamental changes have modified how viewers have access to the audiovisual content and in particular the “push” vs. “pull” balance between broadcasters and viewers.

A large consultation process was launched in 2003 based on a mix of conferences, focused workshops, written contributions around issues for which the revision of the Directive was felt necessary. It culminated with a major conference in Liverpool in September 2005.

The present Impact Assessment combines the outcome of the consultation process on specific issues around the three more likely options with an impact analysis on the main stakeholders. In order to facilitate the overall exercise of balancing risks and benefits of a legislative initiative, an analytical approach has been adopted. Therefore, the document includes tables summarising in few sentences the main consequences of the possible combinations of the measures under consideration.

The results of the analysis indicate that the status-quo option would have negative consequences on a considerable number of stakeholders and that only few stakeholders would clearly benefit from the maintaining of the Directive as it is.

A comprehensive legislative framework, with graduated treatment of linear and non-linear audiovisual media services, would provide a neutral or improved situation for a majority of stakeholders.

1. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

1.1. Organisation and timing

The legislative proposal for a Directive amending Directives 89/552/CEE and 97/36/CE is foreseen by the Commission Legislative and Work Programme under the chapter “Solidarity” with the reference 2005/INFSO/032.

The assessment of the impact of the possible modifications to the existing provisions of the “Television without Frontiers” Directive (“TVWF”) started at the beginning of 2003 with the Fourth Report on the application of the TVWF Directive (COM (2002) 778 final). The report set out a work programme, including a public consultation. The purpose of this exercise was to provide the Commission with the necessary input to evaluate the need to update or adapt the Directive in force. The Commission published some discussion papers on several themes on its website and invited interested parties to public hearings and to submit contributions in writing (see point 1.2 below).

More recently, in order to assure the maximum coherence with the Community policies in the preparation of the Impact Assessment, a steering group was set up and met twice in May and September 2005. The Secretariat-General of the Commission, the Legal Service, and the Directorate Generals Health and Consumer Protection, Internal Market and Services, Education and Culture, Enterprise and Industry, Justice, Freedom and Security, Competition and Trade, were parties to the steering group.

The Impact Assessment synthesises in key sentences the large array of impacts that the three regulatory options identified to be relevant are likely to have on the main stakeholders. Such assessments are based on the outcome of an extensive public consultation started in 2003, some specific studies, information collected from works available on the market, the work of a consultant and bilateral contacts with stakeholders. All quantitative data, where available, are included in the Statistical Annex.

2. CONSULTATION AND EXPERTISE

In consideration of the difficulties in collecting and elaborating economic data in sectors that are not fully developed yet, and that in some cases were still at an early stage in the years 2003/2004 (for most economic sectors, statistical information is only available with a delay of 1 or 2 years) a specialised consultant – Rand Europe¹ - was hired by Information Society and Media Directorate-General in order to co-operate on the finalization of this Impact Assessment. Studies had also been commissioned in the preceding years on the following issues:

- Comparative study on the impact of control measures on the television advertising markets in European Union Member States and certain other countries;²
- Study on the impact of measures concerning the promotion of the distribution and production of TV programmes (Community and national) provided for under Article 25(a) of the TVWF Directive;³
- Study on co-regulatory measures in the media sector.⁴

¹ Rand Europe is a not-for-profit research organisation based in the Netherlands, the UK and Germany.

² <http://europa.eu.int/comm/avpolicy/stat/2003/tpub/2003-carat-finalreport-draft.pdf>

³ <http://europa.eu.int/comm/avpolicy/stat/2003/4-5/27-03-finalreport.pdf>

Since the launch of the public consultation following the Fourth Report on the application of the TVWF Directive, two series of public hearings were held in April and June 2003. Discussions developed around more than 150 written contributions (around 1350 pages) provided by all relevant stakeholders (private and public broadcasters, regulators, producers, rights holders, artists, consumers, etc.) and most Member States.

Further to the 2003 Communication⁵ on the future of European regulatory audiovisual policy, the Commission considered as appropriate to deepen the discussions on certain major issues identified as relevant within “Focus and Experts Groups” whose members were chosen to ensure an adequate representation of all stakeholders and a geographical balance. The Focus and Experts Groups met several times between October 2004 and May 2005. They dealt with issues such as: the regulation of audiovisual content; the level of detail in the regulation of advertising; the right to information and to short extracts as well as the promotion of European and independent production and cultural diversity. The results of the Focus Groups were further discussed in the Contact Committee established by the TVWF Directive (April 2005) and with regulators in an ad hoc High Level Group (March 2005). In May 2005 The Luxembourg Presidency organised a seminar concerning “How to regulate Audiovisual Media in the convergence era: doing more with less?”.

Finally, in September 2005 the UK Presidency co-organised with the Commission a major conference in Liverpool in order to complete the almost three year consultation process. The Conference, which was attended by a highly qualified audience of over 400 law-makers, regulators and industry representatives, was preceded by an extensive collection of contributions from stakeholders during July to September 2005. All the contributions received (about 300) in response to detailed “Issue Papers” posted by the Information Society and Media Directorate-General on its web-site were put at the disposal of the general public.⁶

3. PROBLEM DEFINITION

3.1. Understanding the problem

The 1989 Television without Frontiers Directive was revised in 1997, in order to ensure greater legal certainty and to update its provisions in view of market developments. However, it has clearly appeared in the meantime that the 1997 Directive has been overtaken by technological and market developments and has to some extent become outdated. Hence, a need for a substantial revision of the existing EU rules has become apparent.

Given that the potential revised Directive can be expected to be implemented in the Member States in 2008/9 at the earliest, the internal market for broadcasting and audiovisual media services would be affected in the years 2009-2016 approximately. Therefore, the prospective Directive must be made as future-proof as possible.

3.1.1. The problem context - a changing landscape

Audiovisual markets in the European Union have changed very rapidly between 1989 enactment (and 1997 revision) of the TVWF Directive and today. Indeed, the changes in technology, business strategy and policy responses to audiovisual and multimedia convergence have been far-reaching within this time frame.

⁴ <http://europa.eu.int/comm/avpolicy/stat/2005/coregul/coregul-interim-report.pdf>

⁵ COM(2003)784 final, 15.12.2003.

⁶ http://europa.eu.int/comm/avpolicy/revision-tvwf2005/consult_en.htm

In 1989, when the TVWF Directive was first enacted, non-national satellite commercial television was in its infancy⁷ and ICT-based fixed-line methods of service provision were not ready for market. In 13 of the new Member States (both 1994 and 2004 enlargements) there were no commercial channels available nationally. By 1997, trans-frontier satellite commercial television was a common phenomenon and terrestrial commercial television held a greater share of viewing than public service broadcasters in most Member States. In 2005, trans-frontier satellite commercial television has become as popular as or even more popular than local terrestrial broadcasting (with cable systems carrying both).

This evolution has been accompanied by exponential change in channel capacity, especially via digital cable and satellite, increased market penetration of multichannel homes (using sports⁸ and feature film premium content), and an increasing number of platforms. There has been a vast increase in potential consumer choice. Cable and satellite television have multiplied the number of pan-European channels available to the average European consumer.⁹

Digital television was first introduced via satellite and cable in the mid-1990s, then by terrestrial in 1998. By 2010-14 (i.e. within the lifetime of the new/revised Directive), most Member States are expected to have switched off the analogue signal in favour of digital, permitting greater channel choice for all. In fact, the introduction of digital terrestrial television, largely driven by public service broadcasters, has been delayed but is now successful in Sweden, UK¹⁰, Italy and Germany, amongst others. Switching off the analogue signal will permit universal reception of digital terrestrial services.

The technological progress in the audiovisual media field has been not only rapid, but turbulent and multi-paced, towards a ubiquitous Information Society.¹¹ Rapid post-2003 expansion of fixed broadband, digital television and 3G networks has to some extent recovered the advantage lost in the period 2000-2002 when the investment and regulatory climate lost dynamism, and advertising and investment slumped. Europe now enjoys better domestic broadband penetration than the United States¹², with wider 3G deployment. Broadcasting and data casting over mobile networks has been taking place, and peer-to-peer exchanges have supplied the pent-up demand for multimedia content.

The multimedia environment has been changing rapidly, driven by user demands for greater interactivity and “pull” of content – notably in the use of SMS voting and competition participation in reality television shows, which can also be viewed via computer and mobile handset.¹³

As a result of new technologies, viewers ‘time shift’ their audiovisual viewing by using ubiquitous video recorders, DVD players and PVRs. Traditional revenues are increasingly

⁷ As opposed to reception of signals from neighbouring states via cable or terrestrial, as in the long-standing case of RTL’s transmissions.

⁸ See Table 3 in the Statistical Annex.

⁹ On development of TV revenues by some categories cf. Figure 2 in Statistical Annex.

¹⁰ For details see Figure 1 in Statistical Annex

¹¹ Also reflected in the Commission Communication: *i2010 – A European Information Society for growth and employment* COM(2005) 229 final

¹² Source: Rand Europe

¹³ There are many other important examples: selecting video music clips to play on the plethora of digital and satellite TV music channels, contributing to charities (i.e. ‘bidding’ for Live 8 tickets), Eurovision Song Contest voting, BBC Podcasting etc.

spread amongst multiple platforms and new income streams and business models have emerged.

In the field of Internet Protocol TV (**IPTV**), some market forecasts predict an increase in revenues from \$62 million in 2004 and \$262 million in 2005 to \$2.5 billion in 2009. IPTV penetration is expected to rise from less than 1 percent in 2004 to about 6 percent (c. 10 million households) in 2009. Moreover, France, Spain and Italy will account for 60 percent of the market.¹⁴ The European Information Technology Observatory (EITO) estimates¹⁵ that IPTV market in Western Europe will develop over tenfold between 2004 and 2008, from €166 million to € 1.87 billion.

The development of IPTV and other Internet-based methods of delivery is driven by the increasingly widespread availability and maturity of broadband, by demand for premium content for which consumers are willing to pay, and by the continuous search for new sources of revenue. The latter driver is one of the sources of the emergence of triple-play: the convergence of broadband, telephony, and video. The main obstacles to its growth are a lack of consumer awareness and consumer acceptance of IPTV as a viable alternative to incumbent channels of delivery and the strong market position and economies of scale of the incumbents.¹⁶

Video on Demand (**VOD**) is making inroads into the audiovisual market, whether delivered by cable, fibre or Digital Subscriber Line (DSL). For the moment, it can be expected to make a significant contribution to total audiovisual content revenues by 2009. By 2009 total VOD revenues in the EMEA region are expected to amount to US\$1.7 billion among 22 million households.¹⁷ A more conservative estimation¹⁸ by EITO indicates a Western European market worth € 235 million in 2008.

Indeed, new digital platforms are being increasingly used to launch VOD services, which are expected to take up rapidly, given that the digital platforms dramatically reduce the cost of acquiring a VOD customer. In the UK, for example, it costs now less than US\$100 to add a new VOD home while in 2001 it cost nearly US\$ 2000.¹⁹

Within the traditional scheduled (linear) services, which will continue to be a source of the bulk of television revenues, quite considerable compositional shifts will occur. Public licence fees used to account for the greater part of television revenues, but private television subscription spending is rapidly taking over, excluding advertising. Consumers are expected to support this kind of business models in the next years. Analogue technology will be replaced by digital technology. The incumbent position of linear television is reinforced by the rollout of HDTV, which offers consumers much higher quality than conventional technologies. Yet, HDTV is expected to comprise only a modest part of the television market, accounting for 8 out of 200 million European TV households by 2009.

These and other emerging markets, like the mobile streaming media market, although they are not expected to make a decisive impact on the aggregate audiovisual market before 2009, are changing the audiovisual media services market profoundly.

¹⁴ IDC Market Analysis Western Europe 2004-2009.

¹⁵ EITO 2005 Report, table 7

¹⁶ IDC Market Analysis Western Europe 2004-2009.

¹⁷ PricewaterhouseCoopers' Global Entertainment and Media Outlook: 2005-2009, June 2005, See Table 1 in the Statistical Annex.

¹⁸ EITO 2005 Report, see Table 7 in the Statistical Annex..

¹⁹ PricewaterhouseCoopers' Global Entertainment and Media Outlook: 2005-2009, June 2005.

In view of the immaturity of the on-demand markets, it is difficult to predict with any certainty what exact impact the streaming video, video-on-demand and mobile video markets will have on traditional broadcasting viewing and production in the medium and long-term. However, it is without any doubt that the developments in these new markets will be of considerable relevance for existing broadcasting markets.

The nature of the predictive challenge is due to the unusual volatility of content markets and citizen tastes in media consumption, which relies on network effects to a great extent (especially in non-linear / on-demand patterns) as well as having extreme economies of scale because of the perfect reproducibility of digital content. This latter factor can have both market-enhancing and market-delaying effects: the growth of music downloading has been driven by the peer-to-peer sharing of MP3 files. By contrast the growth of video peering has been slowed by producer actions designed to prevent reproduction without secure Digital Rights Management. The technical standard for MP3 encouraged distribution; the lack of a common standard and the preoccupation with security of the video industry, means that the path to consumer mass markets is indeterminate.

In the next ten years, the completion of digital convergence for platforms means that digital television will be available to all within the EU, that urban cable and telephone networks will be upgraded to carry digital video channels, and that mobile networks will carry multimedia content. It is however unclear what effect this will have on citizen use of communications media. There are several plausible scenarios:²⁰

- (1) Linear Continuum: citizen behaviour will change at the margin, but media consumption will remain a largely linear experience for most;
- (2) Digital Content Divide: the digital “haves” will experience greatly increased interactive media use, while an equal number of consumers will continue exactly as before, relying on traditional media and public service broadcasters;
- (3) Time Shifting Linear Consumers: the great majority of the population will use broadband mobile and in-home devices, time-shift their media to suit their schedule not that of the broadcaster, and fundamentally alter the media landscape.

It should be noted that there are two distinct versions of scenario 3 above. Either:

- (a) Consumers choose to “stream” linear video at alternative on-demand schedules, or;
- (b) Non-linear (on-demand) interactive users: they adopt an entirely ‘pull’-based behaviour, in which content is downloaded as if in a peer-to-peer music file-sharing network, for off-line consumption on demand.

It is extremely difficult to predict with any degree of accuracy which user group – or another yet undefined usage pattern - will be most accurate in which time period for which European Member State. However, the split in audiovisual viewing between multi-channel and analogue-only households appears to be a reality already.

²⁰ See for instance Arthur Andersen (2002) *Outlook of development of the Market for European audiovisual content and of the regulatory framework concerning production and distribution of this content* at http://europa.eu.int/comm/avpolicy/stat/tvoutlook/tvoutlook_finalreport.pdf

Forecasts for digital television (see Figure 3 in Statistical Annex) and pay TV show the steady decline of analogue TV, the rise of digital TV, and the rapid increase in digital pay-TV. The total number of digital pay-TV subscribers is expected to increase by more than 80% (from almost 30 million in 2004 to c. 54 million in 2008). Terrestrial and analogue pay-TV's are expected to decline between -25 and -30%. These developments are driven especially by the success of cable and satellite.²¹ Forecasts for total digital TV penetration (free and pay) between 2004 and 2009 predict an increase in the average penetration in the EU-15, Norway and Switzerland from 25.9% in 2004 to 62.1% in 2009. In the Czech Republic, Estonia, Hungary, and Poland the current rate of penetration stands at a mere 9.7% but is expected to increase to 26.6%.²²

In most EU-15 Member States the increase in television subscription spending per household is expected to be between 5 and 6 percent per year between 2004 and 2009 (see Figure 4 in Statistical annex). Only three countries will experience higher growth rates, while four countries score well below the EU-15 average. This may be a function of market maturity (product awareness and acceptance or willingness-to-pay).

The fall of analogue and rise of digital television make television operators increasingly aware of the value of free satellite (see Table 4 in Statistical Annex).

It is clear that different media are converging on broadband networks. In particular, video gaming, music distribution, streamed radio stations and online newspaper readership appear to be highly substitutable between their traditional analogue and new digital media of consumption. Internet users claim to use the Internet more than any other medium except television – which includes use of radio and print media via the Internet. Television use appears lower amongst Internet users, according to the World Internet Project.²³

However, Internet penetration has stabilized at about 65 % by household, with mobile phone penetration at about 85 %.²⁴ There is therefore a significant minority of the population that does not intend to use digital media platforms, and there is evidence that this group is both the most vulnerable in society and least likely to change (typically comprising the most elderly, non-formally educationally qualified and poorest quartiles). Against this background, any attempt to measure accurately the development of the non-linear (on-demand) audiovisual market over time will be fraught with difficulty. However, its growing importance, especially for carrying audiovisual media services, is beyond any doubt.

Internet revenues in the EU-15 are growing very rapidly (27% per annum in 2000-2004; an expected 12% per annum in 2004-2009). Broadband is the main driver of growth, while Internet advertising is growing rapidly from a low base (see Figure 6 in Statistical Annex).

As regards **advertising** markets, television and the Internet are gaining ground, both within Europe and on a global scale. The growth of Internet advertising is particularly vigorous (see Table 5 in Statistical Annex). The relative growth potential of the various media is related to the degree of technological innovation and the possibility of market expansion.²⁵

²¹ Screen Digest (October 2004).

²² Screen Digest (April 2005).

²³ Source <http://www.worldinternetproject.net/home.html> for October 2003, see Figure 5 in Statistical Annex.

²⁴ See Oxford Internet Survey (OXIS) February 2005 at <http://www.oii.ox.ac.uk>.

²⁵ PwC, *Global entertainment and media outlook 2005-2009*, p. 18.

- The growth of television advertising is mainly fuelled by the increase in the number of channels and the number of multichannel households.
- Out-of-home advertising grows especially on the basis of new billboard technologies and improved audience measurement. In addition, it has few natural competitors.
- Magazines continue to serve a steady market, based on economic growth and the introduction of new magazine titles.
- Newspapers and radio are somehow less innovative and have reached a high level of maturity and coverage.

The composition of European advertising revenues is changing accordingly (Figure 7 in Statistical Annex). As a result of the difference in growth rates, the market share of newspaper advertising will experience a certain decline. Advertising revenues will, however, continue to increase. Magazine, radio and out-of-home advertising revenues maintain a steady share. Terrestrial television advertising is still the newspaper's main competitor, but it is gradually being replaced by multichannel TV advertising (see Table 2 in Statistical Annex). Internet advertising is very much on the rise.

Newspaper advertising may be losing market share (a relative development), but after a decline between 2000 and 2002 its revenues have steadily increased and are expected to continue doing so until 2009 (see Figure 8 in statistical Annex). Terrestrial television advertising follows the same pattern, albeit at a slightly higher rate of growth. At a much lower level, multichannel TV advertising and Internet advertising are making headway, and will begin to make a significant impact on the advertising market after 2009, assuming that current conditions persist.

3.1.2. *The problem drivers*

The problems with the current regulatory framework of the TVWF are a direct result of the developments described above. To summarise, they are driven in particular by:

- Technological evolution (e.g. innovations in service delivery such as VOD);
- Convergence of technologies and services towards an Internet Protocol platform delivery with linear broadcast and non-linear video-on-demand interwoven in the same content display;
- Household proliferation of reception devices, including PVRs, Personal Computers, digital decoders, mobile handsets, games consoles;
- The evolution in advertising methods: support by search-related adverts (40 % of all Internet advertising)²⁶, direct response advertising (click-through), referral fees and other techniques that are more effective than broadcasting advertising on a cost-per-thousand basis;
- Social and cultural changes - new customer preferences in response to technological opportunities, like the use of remote controls, ubiquity of video

²⁶ See IAB/PWC (2005).

recorders, introduction of PVRs, and number of channels enabling consumers to make their own choice about which content to watch and whether to interact with content;

- Children are also increasingly controlling their own viewing, with the potential for adventure and resulting harm, age verification procedures and filtering being in place only in a minority of channels and households;
- Fragmentation of audiences, which is based on genre choice of viewing: sports, drama, news, documentaries, history, children's, archive, teleshopping, adult, music, fashion, consumer affairs, cinema.
- Finally, all these developments have to be seen in the context of a constant integration within the internal European television market through an enhanced transfrontier television viewing, which can be expected only to be enhanced by new modes of delivery. There has been a significant growth in non-national channels viewing in the EU Member States, which reach nowadays considerable audiences (see Table 6 in Statistical Annex).

Linear v. non-linear audiovisual media services on different delivery platforms

As a result of the changes described above, audiovisual media services are increasingly falling into two categories:

- Linear services. These are services that provide a linear schedule of programmes the order of which the viewer cannot change. "Traditional" television services, whatever the mode of delivery belong to this category.
- Non-linear services. These are services that provide audiovisual media programmes (e.g. films, sports or cultural events) on an on-demand basis.

The table below presents the different types of services on various of platforms²⁷ on which they are delivered, with examples of existing commercial services, where available.

Service / platform	Analogue Terrestrial TV Analogue cable Analogue satellite	Digital terrestrial TV	Digital Satellite	Digital TV cable	IP services via broadband connections on ADSL or Internet	Mobile phone Internet Protocol streaming	Digital broadcasting to mobile phones
Traditional TV (linear service)	PSB ²⁸ channels, free-to-air	PSB channels, free-to-	PSB channels, free-to-air	PSB channels, free-to-air	IPTV : PSB channels, free-to-air	PSB channels, free-to-air	PSB channels, free-to-air pay TV channels ³¹

²⁷ Source: European Audiovisual Observatory.
²⁸ Public service broadcasters.

	and some pay-TV's	air and some pay-TV's	and pay-TV's	and pay-TV's	and pay-TV's ²⁹	and pay-TV's ³⁰	
Pay-per-view (linear service)		Sport events, films and other events ³²	Sport events, films and other events ³³	Sport events, films and other events ³⁴	Sport events ³⁵		
Video-on-demand (non-linear service)				Films, TV programmes, and music (concerts, clips) ³⁶	Films, TV programmes, sport events, music (concerts, clips, tracks), videogames ³⁷	News, "mobisodes", reality shows, music and sport clips ³⁸	

3.2. Regulatory Challenges

The market for European television services has changed dramatically through the convergence of techniques and markets, as outlined above. These changes have been substantial.

Keeping the TVWF Directive as it stands now would aggravate increasingly unjustifiable differences in regulatory treatment between the various forms of distribution of identical or similar content. "Traditional" television broadcasting services would remain regulated on the basis of the regulatory approach of the 1980's and 1990's. At the same time, they are having to compete increasingly with other linear services on other platforms and non-linear (on-demand) services that offer the same or similar audiovisual media content in a different regulatory environment. This creates an un-level playing field on the basis, not of the subject of regulation (i.e. the content) but on the way it is delivered.

Maintaining the status quo would also mean that non-linear (on-demand) service providers would have to comply with different – and often diverging - national rules applying to the new services. This derives from the fact that the Electronic Commerce Directive does not deal with measures relating to cultural and linguistic diversity and pluralism and allows the Member States to derogate from the country of origin principle in view of other public policy

²⁹ Main operators/services : 26 operators, almost all Telcos and ISPs, as of 12/2005 in 18 MS among which: AON (A), Belgacom (B), T Online (D), TDC (DK), Free, MaLigneTV (FR), Fastweb (IT), KPN (NL), Fast, Teliasonera (SW).

³⁰ Main operators/services : SFR (FR), Vodafone (UK, D, GR,IT, NL, PO, ES, B, FR, A), Belgacom (B).

³¹ Not yet operational.

³² Main operators/services: Mediaset (IT), Setanta (UK).

³³ Main operators/services: Canal+, TPS (FR), Sky Italia (IT), BSkyB (UK), Premiere (D), Viasat (SW), Sogecable (ES).

³⁴ Main operators/services: BSkyB, Telewest (UK), Premiere, Kabelvision, Tividi (D), UPC Chello (NL), ONO (ES).

³⁵ Main operators/services: Belgacom (B).

³⁶ Main operators/services: Telewest, NTL (UK).

³⁷ Main operators/services: 35 services operational as of 12/2005 in most MS, among which: Telcos, ISPs, cable operators, broadcasters, specialised content providers, film archives, video publishers and Apple's iTunes Music store (FR,D,US).

³⁸ Main operators/services: Orange, SFR, Proximus, E-Plus, Cosmote, Endemol and some broadcasters.

objectives. As a result, on-demand audiovisual media services can be subject to different rules on contents delivered in different Member States. The costs of not having an efficient country of origin principle in the area of non-linear services would be significant if nothing is done to remedy this situation.

Indeed and more generally, the costs on no-action would increase with the foreseen technological and market development in the next years (confirmed by the industry dynamism in the last months of 2005). The fragmentation of the European market will ask for growing tolls to be paid by all stakeholders: traditional broadcasters as well as operators in new audiovisual media businesses, consumers and independent producers. All stakeholders are likely to suffer from reduced market opportunities and choice of services without no clear winner if the present regulatory environment perpetuates.

The following overarching issues/problems lie at the heart of the Impact Assessment's logical organisation.

3.2.1. Removing obstacles to free movement of audiovisual media services in the EU internal market

The main consequences of the market, technological and user behaviour developments as described above in the context of EU audiovisual regulation are of internal market nature.

Concretely, there is a growing concern in the field of emerging on-demand audiovisual media services that differences in national regulations applying to these services would create barriers to competition in the internal market. European regulation must address the issue of improving the conditions for the establishment and the functioning of the internal market so that the (existing or likely to emerge) obstacles to the exercise of the fundamental freedom to provide services resulting from national rules or appreciable distortions of competition resulting from the disparities between national rules concerning new (on-demand) services are eliminated.

The emergence of on-demand audiovisual services are regulated for the moment only by the Electronic Commerce Directive, which permits Member States to take measures to derogate from the country of origin principle for a wide range of public policy reasons, like “protection of minors”, “fight against any incitement to hatred” or “protection of consumers”,³⁹ with the effect that on-demand audiovisual services can be subject to disparate rules in different Member States. In practice, this may result in a situation where the new entrants in the audiovisual industry may be faced with the necessity of compliance with 25 different regulatory frameworks.

Indeed, divergent rules applying to on-demand audiovisual media services with regard to the main issues at stake exist in almost all Member States. The Commission has conducted a survey to the Member States (and Norway) through the TVWF Contact Committee in order to find out whether and how non-linear (on-demand) audiovisual media services are currently regulated in the Member States. All Member States responded to the survey. The questionnaire asked whether legislation currently provides for regulation of the non-linear services in various issue areas, most of which are subject to current TVWF regulation. In the questionnaire, the countries surveyed were asked to specify the applicable rules and quote, if necessary, the text in which these rules are contained as well as to specify for each quoted text

³⁹ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), Article 3.4.

if this regulation is specific to audiovisual services or whether this regulation is applicable to all contents irrespective of the media.

Nearly all respondents (except Cyprus, Malta, Slovenia and – apart from one aspect - Italy) have provided more or less exhaustive details on the rules in question, permitting the Commission to make an appreciation on the application of national laws to cross-border services, the intensity level of the potential barriers and the degree of their heterogeneity between Member States.

In particular, Member States were asked the following questions:

Advertising

- 1) Are non-linear audiovisual services subject to rules relating to advertising or to commercial communications?
- 2) Are non-linear audiovisual services subject to rules concerning the contents of advertising intended to protect consumers, e.g. rules guaranteeing the reliability of information?
- 3) Are non-linear audiovisual services subject to the rule of identification and/or of separation of advertising in relation to editorial contents?
- 4) Are non-linear audiovisual services subject to rules ensuring essential rights, such as the protection of minors, the respect of human dignity etc.?
- 5) Are non-linear audiovisual services subject to rules relating to the restriction of advertising for certain products, such as tobacco, alcohol, or medicinal products?
- 6) Are non-linear audiovisual services subject to rules on the total amount or on insertions of advertising?

Promotion of European Content

- 7) Have you introduced specific or general rules on the promotion of European (including domestic) audiovisual works which are (also) applicable to non-linear audiovisual services?
- 8) Have you introduced specific or general rules on the promotion of audiovisual works made by independent producers which are applicable to non-linear audiovisual services?

Protection of Minors and Human Dignity

- 9) Are non-linear audiovisual services subject to rules concerning the protection of minors and human dignity?

Right of Reply

- 10) Are non-linear audiovisual services subject to rules concerning the right of reply?

Need for basic rules on advertising, protection of minors and human dignity

The results based on all the 25 Member States (plus Norway) illustrate that the majority of the Member State impose various requirements on non-linear (on-demand) services providers regarding:

- basic rules on advertising or commercial communications (21 countries)
- rules concerning the contents of advertising intended to protect consumers, e.g. rules guaranteeing the reliability of information (21 countries)

- rules on identification and/or of separation of advertising in relation to editorial contents (17 countries)
- rules ensuring essential rights, such as the protection of minors, the respect of human dignity etc. in advertising (23 countries)
- rules relating to the restriction of advertising for certain products, such as tobacco, alcohol, or medicinal products (23 countries)
- general rules concerning the protection of minors and human dignity (23/24 countries) (see Figure 9 in the Statistical Annex).

As regards advertising, almost all Member States apply their general laws on advertising, marketing and consumer protection to audiovisual on-demand services. Some Member States provide for some specific regulations applying to on-demand (non-linear) services.

For example, in Germany, non-linear services can fall both under the definition of “Mediendienst” or “Teledienst” which are extensively regulated in respect of all the questions mentioned above, the former at the Laender level and the latter at the federal level.

Also France implements quite a detailed regulation specific to online services (“services de communication au public en ligne”), which would cover also on-demand services, as provided by a 2004 law (“loi relative a la confiance dans l’économie numérique”).

In the UK, non-broadcast media, including non-linear audiovisual services, are subject to a self-regulatory system overseen by the Advertising Standards Authority (ASA). In a number of cases, such codes (developed by the Committee of Advertising Practice - CAP) which the ASA enforces are the means by which, specific all-media regulations are implemented and provide legislative back-up to the codes. In other cases, notably in relation to matters of taste or offensiveness, the codes are entirely self-regulatory. Video-on-demand services in the UK are subject to self-regulation by the Association of Television on Demand (ATVOD), in accordance with an arrangement based on section 361 of the Communications Act 2003. Some other Member States, like the Flemish Community of Belgium provide for some flexibility in their broadcasting regulation that can potentially find application, apart from the general law, to on-demand services, provided these are notified as “other services” to Vlaams Commissariaat voor de Media.

Some countries declare to have no legislation applying to non-linear services concerning some aspects, e.g. Spain, Ireland and the Netherlands do not provide for identification of advertising rule in respect to such services. Some states do not implement any separation principle for on-demand services, e.g. Portugal, while many other do so, mostly on the basis of general legislation. The rules on advertising restrictions of certain products within on-demand services vary substantially between the Member States.

With regard to general rules on protection of minors and human dignity, the instruments applicable to on-demand services in that respect range from constitutional provisions and general penal laws to specific regulations on the subject matter applying to all media or sector-specific media instruments to most specific self-regulatory codes like the Dutch NICAM.

Consequently, it seems that, with regard to basic rules on commercial communications (i.e. advertising), including identification and fundamental consumer protection (reliability of

information and rules restricting advertising for certain products), protection of minors and human dignity in advertising, as well as general rules on protection of minors and human dignity, there is a high level of national regulation for on-demand services, which vary quite significantly on particular issues between the Member States.

In sum, action at the EU level in these identified fields would seem needed in view of the potential for enhancing legal certainty through minimum harmonisation of national regulations concerning on-demand services (for what is left open by the Electronic Commerce Directive) and for media operators to benefit fully from the internal market through a combination of the country-of-origin principle combined with minimum harmonisation.

Such harmonisation of relevant provisions at the EU level could have a positive impact on economic operators in the European markets by reducing the cost of complying with different national regulations. This is the case for example, with regard to rating systems for protection of minors. While in the public consultation on the Directive's revision and in an independent study on this matter, it was considered that at least for the time being – taking into account the subsidiarity principle and the cultural and social diversity between Member States – the rating of programmes should be carried out at Member State level, it was admitted that there could nevertheless be an EU system of common descriptive symbols which would help viewers to assess the content of programmes. Such a basic harmonisation in this field would remove one of the obstacles to development of pan-European VOD services.

Delivering cultural diversity in the internal market

Although only one Member State provides for specific rules on promotion of European productions for non-linear (on-demand) services for the moment⁴⁰ and only one provides for rules on promotion of independent productions for non-linear services,⁴¹ the lack of minimum harmonisation/coordination of future policies of Member States in the area creates a risk of fragmentation of the internal market because business models would consolidate at national level around uncoordinated national policies. In the case of absence of a relevant provision in this field, the issue would be left to the country-of-destination principle with negative impact in terms of legal uncertainty relating to likely future national rules and obstacles for the free cross border movement of media service providers. This results in particular from the fact that the Electronic Commerce does not affect measures promoting cultural and linguistic diversity.⁴²

Additionally, if the issue is not addressed at EU level, there will be an unjustified competitive advantage (lack of level playing field) for non-linear (on-demand) services vs. traditional linear services and linear services close to non-linear business models. However, it should be born in mind that any solution in this respect would have to take into account that non-linear (on-demand) audiovisual services are still nascent industries.

⁴⁰ Although not specified in the questionnaire, it seems that France does have some (para)fiscal provisions in respect of non-linear services, cf. Article 113, LOI n° 2004-669 du 9 juillet 2004 relative aux communications électroniques et aux services de communication audiovisuelle, JO n° 159 du 10 juillet 2004 page 12483, texte n° 1.

⁴¹ The UK, as specified in its reply to the Commission's questionnaire.

⁴² As provided for in Article 1.6 of this Directive.

3.2.2. Level playing field for audiovisual media service providers

Following the emergence of new services, there are growing concerns regarding potential distortion of competition between traditional broadcasting and new platforms of delivery for audiovisual media services.

This problem is twofold. First, there is a problem of unequal treatment of linear (thus similar in terms of content) services on different platforms between traditional broadcasting and the new delivery platforms. For the moment, audiovisual media service providers of similar (scheduled) media content on different platforms cannot compete on an equal footing across the EU given the regulatory inconsistencies. Second, the fact that there are no harmonised rules at EU level for providers of non-linear (thus similar in terms of content) services creates a risk of ineffectiveness of national rules for objectives of general interest and un-level playing field for competing on-demand services operators established in different Member States. This in turn leads to a fractioning of the internal market by national exceptions to the principle of regulation by the country of origin to avoid this effect.

Different regulatory approach towards linear and non-linear services is justified by different degrees of user control and media pervasiveness.

The challenge is thus to ensure technological neutrality and a level playing field for audiovisual media service providers, without discrimination between different platforms of delivery for a similar audiovisual media content, taking account however of different nature of linear and non-linear services.

Responding to Greater Consumer Choice and Empowerment

Consumers are now accessing content in more interactive and varied forms, whether:

- via television (using Personal Video Recorders - PVRs, digital television, subscription and pay-TV services),
- via broadband Internet (streaming, on-demand and other types of video including interactive games), and
- via mobile (where 3G networks now regularly offer a menu of streamed broadcasting as well as on-demand content).

This presents the regulators with a challenge: that of developing an approach that is graduated according to the degree of choice and the legitimate expectations of the user, rather than to regulate all audiovisual media content in the same way thus taking account of greater consumer choice and empowerment. At the same time, the regulatory burden on “traditional” television broadcasters is increasingly appearing ill-adapted to the 21st century.

3.2.4 Better regulation by reducing unnecessary regulatory burdens and responding to changing socio-economic conditions

New Advertising Techniques

The development of new advertising techniques and marketing innovations has created new effective opportunities for commercial communications in “traditional” broadcasting services, giving them the potential of being able to better compete on a level playing field with on-demand innovations. However, this potential cannot become reality within the current

regulatory framework. Product placement, in particular, could generate substantial additional resources for the audiovisual value-chain, starting from linear service providers. On the grounds of data referring to the US market⁴³ and statistics from the European Audiovisual Observatory⁴⁴, estimations indicate that such resources could amount to € 500 million.

Creating an Inclusive Audiovisual Landscape in line with i2010 Goals and the Lisbon strategy

A higher degree of harmonisation at the EU level of relevant provisions for on-demand (non-linear) services in the fields that are regulated by the Member States would have a positive impact on economic operators in the European markets in terms of their competitiveness and general economic efficiency as it would contribute to increasing and diversifying market opportunities while reducing the cost of complying with different national regulations. This would be in line with the Lisbon agenda and the i2010 policy strategy adopted by the Commission in June 2005.

One of the most important markets that is influenced by the delivery of audiovisual content is broadband.⁴⁵

Broadband saturation will be achieved by 2008-2010 for several Member States.⁴⁶ It is logical to deduce from this that the adoption of a revised Directive would either encourage or be neutral for broadband take-up.⁴⁷

3.2.5 Facilitating access to information within the internal market

Finally, in the field of linear services, another problem is the absence of provisions guaranteeing access to short extracts of events of high interest to the public. There is a risk that the actual or potential uncoordinated rules within the Member States on the subject matter could lead to internal market distortions. At the same time, it appears that non-national news suppliers and broadcasters tend not to make a compelling commercial offer to events' rights holders. As it cannot be expected that the market self-regulates in this area, current problems with access to short extracts for non-domestic linear services would persist, with the consequences that unequal market power would be affecting price and access and that a significant share of viewers would not be able to see recent reports of sport events and audiovisual news.

Indeed, the stakeholders stressed in the consultations that pan-European channels, in particular sport and news channels, cannot function without a transnational access to short extracts. The lack of harmonization leaves the issue of access in the hands of the national

⁴³ See Figure 13 in Statistical Annex

⁴⁴ Yearbook 2005

⁴⁵ See for example Oxford Internet Survey (2005) at http://www.oii.ox.ac.uk/research/oxis/oxis2005_results.pdf. This is part of the 24-country academic survey, the World Internet Project, led by the Pew Center: <http://www.pewinternet.org/trends.asp>

⁴⁶ Saturation of Internet population estimated at 1 citizen in 3 over the age of 18. In most European households, 2.4-2.7 adults inhabit. Taking account of the 10-20% of adults who have not used, nor intend to use the Internet, 1 in 3 is saturation of the adult Internet population (see Figure 10 in Statistical Annex).

⁴⁷ Broadband speed demand is impacted by rich media application use as well as other factors. A 1Mb/s connection is obviously less useful for video files than 100Mb/s. However, guaranteeing speed throughout the IP transport is a highly technically challenging task that head-end theoretical access speed only partially reflects.

regulators and national law. As a result, these laws are not always compatible with each other⁴⁸. Notwithstanding the fact that national laws have not hampered the emergence of a contractual practice permitting the acquisition of transnational or pan-European sports and news rights, the rules applicable to the access to short extracts are largely inconsistent from one Member State to another. These rules generally reflect national practices and are tailor-made for national television services.

3.3. Regulatory completeness

It is important to take into account the relationship of the possible revision of the Directive to other EU legal acts and initiatives. Several legislative instruments may find application to audiovisual media services, and the boundaries are not equally clear, and sometimes fading because of market and technology developments.

There are three most important legal areas to which reference has to be made in this context: the Electronic Commerce Directive, consumer protection (Unfair Commercial Practices Directive and Tobacco Directive) and the Charter of Fundamental Rights.

As regards the Electronic Commerce Directive, its Article 3.4, which also applies to on-demand services, allows the Member States to derogate from the country of origin principle in view of public policy objectives like “protection of minors”, “fight against any incitement to hatred” or “protection of consumers”. The effect is that on-demand audiovisual media services can be subject to different rules on contents delivered in different Member States. Furthermore, this Directive does not deal with public policy issues such as the protection of minors, the respect for human dignity, whereas the revision of the TVWF’s revision may include minimum coordination in these fields with regard to audiovisual media services.

As a result, a possible regulatory framework providing minimum rules for the delivery of audiovisual media services would not introduce a new layer of regulation, but provide basic harmonization for what is left open by the eCommerce Directive.

As until now there was a clear distinction between "television broadcasting services" subject to the TVWF Directive, and "information society services", subject to the Electronic Commerce Directive, it has to be ensured that the new rules do not create any overlap or confusion. In any case, the revised rules would gain character of “lex specialis” towards the Electronic Commerce Directive as “lex generalis”.

With regard to advertising rules, the Unfair Commercial Practices Directive is a general act that applies to aggressive and misleading practices except for particular commercial practices which are regulated in sector-specific legal acts. It does not replace sector-specific regulation - in case of conflict of this general document with sector-specific EU rules, the sector-specific rules, including the TVWF Directive, apply.

Surreptitious advertising and subliminal techniques would remain illegal, while product placement, as a form of commercial communication, would become legal to the extent that it

⁴⁸ The right to access short extracts of events can be based on “copyright” (but only for protected “works”), or more generally on a “right to information” derived from the constitutional principle of “freedom of expression” as enshrined in Art. 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR”), Art. 9 of the revised 1989 European Convention on Transfrontier Television, Art. 6 (2) on the Treaty on European Union and in most of the Constitutions of the Member States. In some countries national Codes of Conducts have been established (UK and France). In other countries television channels are (in principle) entitled to send camera crews to the venue (Germany and Spain);

complied with the provisions of the draft directive. For instance, product placement taking place without information of the viewers would constitute surreptitious advertising.

Sponsorship is a distinct form of commercial communication but there may be links with product placement since sponsored programmes may contain placement of the sponsor's or a third party's products.

Although the ban in Tobacco Directive applies across the board, the fields covered by the Television without Frontiers Directive were excluded from its scope. Thus, a specific ban would still be needed in the context of the proposed Directive.

In the field of fundamental rights, the current Directive establishes a delicate balance between the basic freedom of expression on the one hand and protection of human dignity, right to reply and protection of minors on the other. This balance must be maintained. The amended Directive would also have to continue to comply with the provisions of the Charter of Fundamental Rights relating to copyright and property rights.

4. OBJECTIVES

4.1. Basic aims

The TVWF Directive provides a minimum harmonisation of national legislations applying to television broadcasting services across the European Union, in order to serve two primary and interconnected objectives:

- (1) *Facilitating the free movement* of television broadcasting services within the EU internal market through the application of country of origin principle;
- (2) *Ensuring the protection of fundamental public interest objectives*, including protection of minors and human dignity (e.g. ban on incitement to hatred), right to reply and consumer protection through minimum harmonisation of existing regulations.

The core provision on the country of origin principle supports these primary aims by establishing jurisdiction over providers within the boundaries of the freedom of establishment. The country of origin principle and minimum harmonisation of existing national rules provide legal certainty and reduces compliance costs for trans-border and pan-European broadcasters.

In addition to the two primary aims of the Directive, which serve the goal of establishing a single European broadcasting market and the rights of individual viewers, TVWF contributes to the fulfilment of wider complementary cultural, social, and economic aims.

- (1) *Cultural and social aims*: protecting European cultural heritage and diversity, promoting European content and cross-cultural exchange as well as supporting the development of independent producers;
- (2) *Economic aims*: encouraging the growth of a strong, competitive and integrated European audiovisual industry, in line with the Lisbon agenda objectives.

TVWF contributes to ensuring the protection of fundamental human rights.⁴⁹ This concerns the basic right of freedom of expression, protection of minors, human dignity and public order, cultural diversity as well as access to information. Indeed, the Directive establishes a delicate equilibrium between the freedom of expression on the one hand and protection of human dignity, right of reply and protection of minors on the other. Also, freedom of information has to be balanced with property rights.

The basic internal market rationale and complementary cultural, social and cultural goals of European regulation in the audiovisual policy field remain essentially valid for the future.

4.2. Specific objectives

Generally speaking, future European audiovisual media content regulation should provide modern flexible rules that clearly spell out general and fundamental public interest objectives, while permitting opportunities for increased economic development and consumer choice.

In this respect, a series of specific objectives to be supported by the prospective EU regulation in the field of audiovisual media services can be identified.

4.2.1. Taking full advantage of the internal market for new services

For the moment, “traditional” television service providers profit fully from the country of origin principle within the EU. Thus, the objective would be to enable on-demand audiovisual media services providers within the Member States to also fully benefit from the internal market according to the principle of regulation by the country of origin. The result would be an overall enhanced legal certainty for all audiovisual media service providers within the EU.

This would be complementary to the existing EU law, in particular the Electronic Commerce Directive, as it would fill the gap for on-demand audiovisual media services by covering situations where Member States, according to the latter, can derogate from the country of origin principle for public policy reasons.

This would be also in line with the principle of technological neutrality. Indeed, modern rules in the audiovisual policy field should not discriminate between and within different delivery platforms and thus create a level playing field for fair and enhanced competition between different operators.

4.2.2. Ensuring minimum harmonisation of rules in support of certain public interests

In order to ensure an effective application of the country of origin principle, establishing minimum common harmonised standards for all audiovisual media services, including the on-demand services, at the EU level would be necessary.

However, given the varying degree of pervasiveness of audiovisual media services and of the viewers’ freedom of choice and control of their content, the harmonised standards for on-demand services would have to take adequate account of the different nature of these services.

⁴⁹ As laid down in Article 6 of the Treaty on European Union which stipulates that the Union respects the fundamental rights such as they are guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950. At the same time, the Charter of Fundamental Rights has been proclaimed in December 2000 and integrated in the text of draft European Constitution.

Thus, the public policy objectives to be ensured by EU regulatory intervention in the field of on-demand audiovisual media services would have to be confined to clearly defined subjects, including protection of minors, human dignity and safeguard of essential public interests in the area of commercial communications.

Protection of minors and human dignity

The following objectives have been identified in this field:

- To ensure compliance with policy objectives relating to the protection of minors against harmful audiovisual content and the protection of human dignity (e.g. ban on incitement to racial hatred). This is equally valid for the new audiovisual media services;
- To balance the fundamental right to freedom of expression with measures taken in the field of protection of minors and protection of human dignity;
- To ensure legal certainty and create a level playing field between operators on different platforms, which in turn should stimulate investment.

Commercial communications

The prospective EU rules on commercial communications should aim both at ensuring consumer protection (in terms of prevention of abuse of commercial communications as well as editorial abuse) and at supporting use of audiovisual media services as a carrier of commercial communications. For on-demand audiovisual media services, the objective would be to safeguard essential general interest objectives by subjecting them to basic rules.

4.2.3. Contributing to cultural diversity

The promotion of European works and works made by independent producers is held to be essential in order to contribute to cultural diversity within the EU, freedom of expression and pluralism. There is a general consensus not to change the rules relating to linear services. In the context of on-demand audiovisual media services, Member States should take necessary measures to ensure that media service providers promote access to European content, the Directive leaving them free to determine the means to attain this objective. Introducing some kind of regulation at the EU level to ‘encourage’ EU content would be likely to have positive impact on cultural diversity and on the development of the European audiovisual industry, a key driver of the knowledge economy.

Given the evolving nature of the market, the situation should be regularly monitored and, if appropriate, reviewed.

4.2.4. Fostering the right to information

There is currently no specific mechanism at the EU level with the objective to promote the right to information as a component of the freedom of expression. Recognition of the right of access to short extracts of events of high interest, transmitted outside the borders of the signal transmitting country, would thus aim at promotion of the right to information and contribution to the trans-frontier circulation of programmes on other Member States’ media events. This would apply only to linear audiovisual media services.

4.2.5. *Limiting regulation on commercial communications to what is indispensable*

The Directive's goal has always been to foster the development of a vibrant broadcasting sector and thus indirectly of the production industry, which is fully in line with the Lisbon agenda. Technological evolution requires a continuous evaluation of the means and methods used in the area of regulation of commercial communications so that they are always proportionate to the objectives to be reached. The objective would be that the rules are the least burdensome possible to achieve the fundamental public interest goals.

In light of developments in technology, in the market and users' behaviour (their increased choice and responsibility) and in order to remain proportionate with the goals of general interest, a certain degree of flexibility is needed in respect of the rules for linear audiovisual media services. More specifically, a global approach in this area has to prevail, including allowing (in certain circumstances) product placement and introducing more flexibility to the current quantitative rules.

5. POLICY OPTIONS

In addressing the review of the TVWF Directive five possible options exist:

(1) Repealing the Directive

From the perspective of the Internal Market for audiovisual services, protection of minors and human dignity, of consumers, public order as well as the promotion of cultural diversity the repeal of the Directive would imply that only national rules would be applied and that the principle of the country of origin would be lost for all broadcasters.

(2) No change to the Directive

Every impact assessment has to consider a scenario in which nothing is changed (the status quo). It provides a benchmark for the evaluation of differential impacts.

(3) Focused amendments and clarification of text

Revise the TVWF Directive to make the advertising rules more flexible and to update the definitions in order to clarify that all linear services similar to television are covered. The Directive would not encompass non-linear services.

(4) Comprehensive framework with graduated treatment of linear and non-linear services

The Directive would create a comprehensive framework for any form of electronic delivery of audiovisual content, but would treat different types of service (specifically linear and non-linear) differently. Non-linear services will be subject only to a basic tier of rules rather than to the entire body of Directive provisions.

(5) Full harmonisation with equal treatment of linear and non-linear services

Introduce an audiovisual content services Directive that treats all types of services on an equal basis. Every provision of the Directive –from the country-of-origin principle

to the requirements for European and independent production– will apply to every linear and non-linear provider alike.

The impact assessment will look comprehensively at options 2, 3 and 4.

The repeal of the Directive – option 1 - would benefit neither the operators, who could not work anymore in a co-ordinated and open pan-European market, nor the consumers, who would lose the safeguards of having access to audiovisual services respecting minimum qualitative standards independently of the MS of origin. Actually, in the course of the extensive public consultation recalled under chapter 1, none of the stakeholders tabled a proposal in these terms. For these reasons option 1 cannot be considered as a realistic one and the impact assessment will not cover it.

The 5th theoretical option considers full harmonisation in the entire audiovisual industry. It will not be taken into account either since pursuing this within the current context - a highly diverse, rapidly evolving industry exposed to a volatile mix of economic, political and socio-cultural interests– would prove impossible in the foreseeable future. Also none of the stakeholders has tabled a proposal in these terms.

6. ANALYSIS OF IMPACTS

Nine main groups of stakeholders have been identified as being directly or indirectly affected by regulation based on the TVWF Directive or its revision. For these stakeholders a detailed analysis of impact has been summarised in the tables below taking into account three policy options, as explained under point 4 above, and in respect of the main issues discussed during the public consultation. The tables also consider the impact on the Member States administrations, on the Commission services and on the respect of fundamental rights within the Union.

Consistent and exhaustive quantitative estimates of the risks, costs, opportunities and benefits of compliance and monitoring are, unfortunately, largely unavailable, which is why the analysis is restricted to an assessment of direction (plus or minus), where plus (+) indicates a positive global effect on stakeholder group and minus (-) a negative global effect.

6.1. Country of origin principle for non-linear services

Approach consisting of application of Country of origin principle coupled with basic tier rules consisting in the co-ordination of MS measures on protection of minors and human dignity; incitements to hatred; ban of certain discriminations, certain offences, certain prejudicial behaviours and restrictions on certain products for commercial communications (see also points 6.2 and 6.4)

Stakeholder	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to</i>

			<i>short extracts</i>
<i>Public service broadcasters</i>	= Remits generally focuses activity on domestic market. Non-linear and new services available in other MS face difficulties to enter the market since they have to cope with non co-ordinated national legislations in sensitive areas. PSBs face equivalent difficulties to develop their activity for new services and non-linear services in other MS (if their remit allows for).	= New linear services developed by PSBs would benefit from the country of origin principle for development in other MS and, in the domestic market, from the fact that non-linear services available in other MS would continue to face difficulties to enter the domestic market since they have to cope with non co-ordinated national legislations in sensitive areas. PSBs face equivalent difficulties to develop their activity for non-linear services in other MS (if their remit allows for).	= Country of origin principle for non-linear services applied in sensitive areas would provide the necessary legal certainty to develop business in other MS and thus improving competitiveness. PSBs could face growing competitions from non-linear services but could also develop their activity in other MS (if their remit allows for) and thus improving efficiency and competitiveness.
<i>Free-to-air commercial</i>	- Commercial TVs continue to benefit from a competitive advantage in domestic and pan-European operations vis à vis non domestic non linear and new services which have to cope with non co-ordinated national legislations in sensitive areas. Commercial TVs face equivalent difficulties to develop promising activities for new and non-linear services in other MS.	+ New linear services developed by commercial TVs would benefit from an easier access to non domestic markets and from the fact that non-linear services available in other MS would continue to face difficulties to enter the domestic market since they have to cope with non co-ordinated national legislations in sensitive areas	+ Commercial TVs would face increasing competition from non domestic non-linear services benefiting from the country of origin principle in sensitive areas; on the other hand a country of origin principle for non-linear services applied in sensitive areas would provide the necessary legal certainty to develop promising business in other MS and thus improving efficiency and competitiveness. Moreover, basic tier of public interest obligations will apply to all providers assuring a level playing field domestically
<i>Pay-TV</i>	- Pay-TVs continue to benefit from a competitive advantage in domestic and pan-European operations vis à vis non domestic non-linear and new services which have to cope with non co-ordinated national legislations in sensitive areas. Pay-TVs face equivalent difficulties to develop promising activities for new and non-linear services in	+ New linear services developed by Pay-TVs would benefit from an easier access to non domestic markets and from the fact that non-linear services available in other MS would continue to face difficulties to enter the domestic market since they have to cope with non co-ordinated national legislations in sensitive areas	+ Pay- TVs would face increasing competition from non domestic non-linear services benefiting from the country of origin principle in sensitive areas; on the other hand a country of origin principle for non-linear services applied in sensitive areas would provide the necessary legal certainty to develop promising business in other MS and thus improving efficiency and

	other MS		competitiveness. Moreover, basic tier of public interest obligations will apply to all providers assuring a level playing field domestically
<i>Written Press</i>	= No impact on present business	= No impact on present business	+ Increasing business opportunities for pan-European non-linear services could improve advertising investments by these providers.
<i>ISPs – cable companies, telecom companies,</i>	- Internet operators face difficulties to extend non-linear and new services business in other MS since service providers have to cope with non co-ordinated national legislations in sensitive areas.	+ Internet operators could more easily extend their business in other MS for new linear services since country of origin principle applies for these services in sensitive areas. Overall competitiveness and efficiency would improve thanks to larger and diversified markets and reduced administrative burdens	+ Internet operators could more easily extend their business in other MS for both non-linear and new linear services since country of origin principle applies for these services in sensitive areas. Overall competitiveness and efficiency would improve thanks to larger and diversified markets and reduced administrative burdens.
<i>IPTV linear</i>	- New linear service providers would continue develop in a restricted domestic context not stimulating efficiency but benefiting from a competitive advantage vis à vis non domestic non-linear and new services which have to cope with non co-ordinated national legislations in sensitive areas. Developing promising activities for main business and non-linear services in other MS would be hampered by non co-ordinated national legislations in sensitive areas	+ New linear services providers could more easily extend their main business in other MS since country of origin principle applies for them. Overall competitiveness and efficiency would improve thanks to larger and diversified markets and reduced administrative burdens.	+ New linear services providers could more easily extend their main business in other MS since country of origin principle applies for them. However, competition from non domestic new and non-linear services would increase in the domestic and foreign markets. Overall competitiveness and efficiency would improve thanks to larger and diversified markets and reduced administrative burdens
<i>VOD non-linear, incl. mobile services</i>	- Non- linear services providers cannot easily extend business in other MS since they have to cope with non co-ordinated national legislations (Costs of	- Non- linear services providers cannot easily extend business in other MS since have to cope with non co-ordinated national legislations (Costs of compliance remains disproportionate for activities	+ Non-linear services providers could more easily extend their business in other MS since country of origin principle applies for them in sensitive areas (costs of compliance with

	compliance remains disproportionate for activities at an early stage of development)	at an early stage of development)	different national regulations will be significantly reduced). Overall competitiveness and efficiency would improve thanks to larger and diversified markets and reduced administrative burdens. This would be particularly relevant for mobile services, providing mainly news and sports.
<i>Independent Producers</i>	- Since non-linear service and new linear service providers cannot easily extend business in other MS, potential revenues related to these new “windows” remain unexploited. However, copyright issues/problems for cross-border transmission remain unchanged. Non European content could be predominant in the market	+ New linear service providers could more easily extend business in other MS, potential revenues related to these new “windows” could materialize and overall competitiveness and efficiency would improve thanks to larger and diversified markets. However, copyright issues/problems for cross-border transmission remain unchanged.	+ Non-linear and new linear service providers could more easily extend business in other MS and effectively compete with non European content. Important potential revenues related to these new “windows” could materialize and overall competitiveness and efficiency would improve thanks to larger and diversified markets. However, copyright issues/problems for cross-border transmission remain unchanged.
<i>Consumers</i>	- Choice of non domestic non-linear and new linear services remains modest because these operators are hesitant to develop business in an uncertain legal framework. Non European content could be predominant in the market	+ Choice of non domestic new linear services could improve since these operators could develop their business thanks to the application of the country of origin principle	+ Choice of non domestic non-linear and new linear services could improve since these operators could develop their business thanks to the application of the country of origin principle
<i>Fundamental rights</i>	- Choice of audiovisual services (non-linear and new linear services) remains modest. Therefore negative effects for the freedom of expression and information (Art. 11 CFR) as well as on Freedom to conduct business (Art. 16 CFR)	+ Choice of new linear services would improve – positive effects (but still limited to linear services) on the freedom of expression and information (Art. 11 CFR) as well as on Freedom to conduct business (Art. 16 CFR) in the field of linear services but still no positive effects on non-linear services with respect to freedom of expression and information and freedom to conduct business	+ Choice of all audiovisual media services would improve therefore very positive effects on the freedom of expression and information (Art. 11 CFR). In addition positive effects on Freedom to conduct business (Art. 16 CFR) for all audiovisual service providers

<i>Regulators and MS administrations</i>	- Increasing costs for effectively monitoring a growing number of non-linear and new linear services from other MS in addition to the domestic ones.	- Monitoring of domestic new linear services will be carried out according to national rules. Monitoring costs for new services from other MS will be largely reduced since the country of origin principle applies	+ Monitoring of new and non-linear domestic services will be carried out according to national rules. Monitoring costs for new and non-linear-services from other MS will be largely reduced since the country of origin principle applies
<i>Commission</i>	= No monitoring for neither non-linear nor new linear services.	= Possibility to monitor new services	+ Possibility to monitor new and non-linear services

Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

6.2. Protection of minors, human dignity; Non- incitement to hatred for non-linear services

Stakeholder	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a rig to short extracts</i>
<i>Public service broadcasters</i>	= Public service broadcasters providing non-linear services deal with these issues within a domestic regulatory framework. No direct impact on present activities. Possibly in some MS there is more flexibility linked to self-regulation with regard to non-linear services.	= Similar to Option 2	= As yet, not very active in non-linear services and access to these services is frequently limited to the Member State. However, since most MS have already regulated these issues as to non-linear services, business models are not expected to need radical modifications. Potential increased consumer confidence in non-linear services will be beneficial to the take-up of these services. The risk of new fragmentation of EU market is also reduced.

<i>Free-to-air commercial</i>	= Commercial broadcasters providing non-linear services deal with these issues within a domestic regulatory framework. Possibly in some MS there is more flexibility linked to self-regulation with regard to non-linear services.	= Similar to Option 2	= Commercial broadcasters providing non-linear services will have to tailor their business model to an EU co-ordinated regulatory framework. However, since most MS have already regulated these issues as to non-linear services, business models are not expected to need radical modifications. Potential increased consumer confidence in non-linear services will be beneficial to the take-up of these services. The risk of new fragmentation of EU market is also reduced.
<i>Pay-TV</i>	= No direct impact on present activities. Possibly in some MS there is more flexibility linked to self-regulation with regard to non-linear services.	= Similar to Option 2	= Pay-TV operators offering non-linear services will have to tailor their business model to an EU co-ordinated regulatory framework. However, since most MS have already regulated these issues as to non-linear services, business models are not expected to need radical modifications. Potential increased consumer confidence in non-linear services will be beneficial to the take-up of these services. The risk of new fragmentation of EU market is also reduced.
<i>Written Press</i>	= No direct impact on present activities	= No direct impact on present activities	= No direct impact on present activities
<i>ISPs – cable companies, telecom companies,</i>	= No direct impact on present activities.	= No direct impact on present activities	= To the extent that they get involved in the provision of non-linear services they can benefit from increased consumer confidence
<i>IPTV linear</i>	=	=	=

	No direct impact on present activities	No direct impact on present activities	<p>Linear IPTV operators offering non-linear services will have to tailor their business model to an EU co-ordinated regulatory framework.</p> <p>However, since most MS have already regulated these issues as to non-linear services, business models are not expected to need radical modifications.</p> <p>Potential increased consumer confidence in non-linear services will be beneficial to the take-up of these services.</p> <p>The risk of new fragmentation of EU market is also reduced.</p>
<i>VOD non-linear, incl. mobile services</i>	<p>=</p> <p>No direct impact on present activities.</p> <p>Possibly in some MS there is more flexibility linked to self-regulation with regard to non-linear services.</p>	<p>=</p> <p>Similar to option 2</p>	<p>+</p> <p>Non-linear VOD operators offering non-linear services will have to tailor their business model to an EU co-ordinated regulatory framework.</p> <p>However, since most MS have already regulated these issues as to non-linear services, business models are not expected to need radical modifications.</p> <p>Potential increased consumer confidence in non-linear services will be beneficial to the take-up of these services.</p> <p>The risk of new fragmentation of EU market is also reduced.</p> <p>The cost of compliance with different national legislations would be significantly reduced for non-linear operators.</p>
<i>Independent Producers</i>	<p>=</p> <p>No direct impact on present activities.</p>	<p>=</p> <p>No direct impact on present activities.</p>	<p>=</p> <p>No direct impact on present activities.</p>
<i>Consumers</i>	<p>-</p> <p>Certain societal values as protection of minors/human dignity</p>	<p>-</p> <p>Similar to Option 2</p>	<p>+</p> <p>Creation of an environment of trust and consumer confidence.</p>

	<p>could not be as effectively protected of non-linear services as is the case for linear services.</p> <p>Emergence of national rules and fragmented self-regulation approach is likely.</p>		<p>In any case, measures taken in the field of protection of minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights</p>
<i>Fundamental rights</i>	<p>-</p> <p>Important societal values as protection of minors/human dignity could not be as effectively protected of non-linear services as is the case for linear services.</p> <p>Emergence of national rules and fragmented self-regulation approach is likely.</p>	<p>-</p> <p>Similar to Option 2</p>	<p>+</p> <p>Effective protection of important societal values as protection of minors/human dignity.</p> <p>In any case, measures taken in the field of protection of minors and human dignity are carefully balanced with the fundamental right to freedom of expression and information (Art. 11 CFR). The proportionality is respected.</p>
<i>Regulators and MS administrations</i>	<p>-</p> <p>Growing divergence in MS regulations.</p> <p>Increasing costs for effectively monitoring a growing number of non-linear and new linear services from other MS in addition to domestic ones</p>	<p>=</p> <p>No direct impact on present activities.</p>	<p>+</p> <p>Effective and efficient enforcement of basic shared rules.</p> <p>Monitoring costs on MS for non-linear services would be mitigated by co- and/or self-regulation.</p> <p>Monitoring costs for non-linear services from other MS will be reduced since the country of origin principle applies.</p> <p>In any case, measures taken in the field of protection of minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights</p>
<i>Commission</i>	<p>=</p> <p>No direct impact on present activities.</p>	<p>=</p> <p>No direct impact on present activities.</p>	<p>+</p> <p>Effective and efficient enforcement of basic shared rules.</p> <p>Possibility to monitor non-linear services.</p> <p>Potential increased</p>

			<p>consumer confidence in non-linear services will be beneficial to the take-up of these services.</p> <p>The risk of new fragmentation of EU market is also reduced.</p>
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Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

6.3. Encouragement to promote European works for non-linear services

The approach discussed would consist in encouraging measures by Member States by non-linear service providers to promote access of the public to European audiovisual content.

Stakeholder	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to short extracts</i>
<i>Public service broadcasters</i>	- In the long term PSBs are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services, if allowed by remits, in a fragmented EU market will remain a domestic marginal activity for PSBs.	- In the long term PSBs providing new linear services are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services, if allowed by remits, in a fragmented EU market will remain a domestic marginal activity for PSBs providing new linear services	+ In the long term PSBs would no more suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Fair competition conditions will likely stimulate efficiency and overall demand. Non-linear services, if allowed by remits, in an integrated EU market will have opportunities for growing.
<i>Free-to-air commercial</i>	- In the long term commercial TVs, notably the smaller operators, are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services in a fragmented EU market will remain a domestic minor activity for commercial TVs	- In the long term commercial TVs providing new linear services, notably the smaller operators, are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services in a fragmented EU market will remain a domestic minor activity for commercial TVs providing new linear	+ In the long term commercial TVs would no more suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Fair competition conditions will likely stimulate efficiency and overall demand. Non-linear services provided by commercial TVs in an integrated EU market will

		services	have opportunities for growing.
<i>Pay-TV</i>	- In the long term Pay-TVs are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services in a fragmented EU market will remain a domestic minor activity Pay-TVs	- In the long term Pay-TVs providing new linear service are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services in a fragmented EU market will remain a domestic minor activity for Pay-TVs providing new linear services	+ In the long term Pay-TVs would no more suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Fair competition conditions will likely stimulate efficiency and overall demand. Non-linear services provided by Pay TVs in an integrated EU market will have opportunities for growing.
<i>Written Press</i>	= No direct impact on present activity	= No direct impact on present activity	= No direct impact on present activity
<i>ISPs – cable companies, telecom companies,</i>	+ In some MS non-linear services, which are customers of carriers to deliver services, could develop rapidly in a low regulated environment choosing content on purely commercial considerations and benefiting from competitive advantage vis à vis linear services. However, in a fragmented EU market, activities would remain essentially domestic	+ Similar to Option 2	= In MS where this kind of policy is not already being pursued, development of non linear services, which are customers of carriers to deliver services, could be hampered by obligations concerning the offering of content. However, risk is low given the nature of the possible obligations (promote by appropriate means). On the other hand fair competition conditions will likely stimulate efficiency and overall demand
<i>IPTV linear</i>	- Similar to Option 3	- In the long term new services TVs, notably the smaller operators, are likely to suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Non-linear services in a fragmented EU market will remain a domestic minor activity for new service TVs.	+ In the long term new service TVs would no more suffer from the competitive advantage of non-linear service providers which are not submitted to content obligations. Fair competition conditions will likely stimulate efficiency and overall demand. Non-linear services provided by new services TVs in an integrated EU market will have opportunities for growing.

<i>VOD non-linear, incl. mobile services</i>	<p style="text-align: center;">+</p> <p>Non-linear service providers would develop rapidly in a low regulated environment choosing content on purely commercial considerations and benefiting from competitive advantage vis à vis linear services. However, in a fragmented EU market non-linear services would remain a domestic activity.</p>	<p style="text-align: center;">+</p> <p>Similar to Option 2</p>	<p style="text-align: center;">- / =</p> <p>In a first period, and only in MS where this kind of policy is not already being pursued, development of non linear services could be hampered by obligations concerning the offering of content. However, risk is low given the nature of the obligation (promote by appropriate means). On the other hand, fair competition conditions will likely stimulate efficiency and overall demand.</p> <p>The obligation would not concern news and sports services which are the most likely to develop on mobile platforms (provision “where applicable” read together with current Article 4 which excludes news and sports from the calculation).</p>
<i>Independent Producers</i>	<p style="text-align: center;">-</p> <p>In the MS where this kind of policy is not pursued, non-linear services providers, which are customers for content producers, could develop rapidly, in a first period, in a low regulated environment. However, content chosen by providers on purely commercial considerations would like benefit non-European producers. Moreover, in a fragmented EU market, activities would remain essentially domestic.</p>	<p style="text-align: center;">-</p> <p>Similar to Option 2</p>	<p style="text-align: center;">+</p> <p>Common minimum rules for non-linear services with respect to access to European works would provide an indirect non distortive support for EU content productions and would remove obstacles to the creation of an integrated pan-European market. The creation of a more competitive environment for all audiovisual services would stimulate the overall demand, notably for EU content and efficiency.</p>
<i>Consumers</i>	<p style="text-align: center;">-</p> <p>Cultural diversity is not enough supported by non-linear services. In a fragmented EU market, non-linear services will remain essentially domestic and choice for consumer limited.</p>	<p style="text-align: center;">-</p> <p>Similar to Option 2</p>	<p style="text-align: center;">+</p> <p>Content choice will improve as well as cultural diversity in a integrated pan-European market.</p>

<i>Fundamental rights</i>	= No direct impact on fundamental rights	= No direct impacts on fundamental rights	+ Right to property (Art. 17 CFR) as well as Freedom to conduct services (Art. 16 CFR) are not effected because of the nature of obligations (promote by appropriate means) Possible positive effects on the freedom of expression and information (Article 11 CFR) because of the availability of and access to new European content
<i>Regulators and MS administrations</i>	- Possible growing divergence in MS regulations	- Similar to Option 2	= Costs for monitoring according to national rules.
<i>Commission</i>	= No direct impact on present activity	= No direct impact on present activity	= Monitoring activity will be extended to cover this area.

Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

6.4. Identification rules, ban of certain discriminations, certain offences, certain prejudicial behaviours and restrictions on certain products for commercial communications for non-linear services

The approach would consist in the application of basic tier rules coupled with country of origin principle (see also point 6.1).

Stakeholder	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to short extracts</i>
<i>Public service broadcasters</i>	= Not very active in non-linear services, however, remits generally submit PSBs to stricter qualitative limits than foreseen in the TVWF Directive	= Similar to Option 2	= Not very active in non-linear services, however, remits generally submit PSBs to stricter qualitative limits than foreseen in the TVWF Directive
<i>Free-to-air commercial</i>	+ Commercial TVs providing non-linear	+ Similar to Option 2	= Commercial TVs providing non-linear services will

	services continue to develop their advertising/supported business models within a domestic regulatory framework.		have to tailor their advertising/supported business models to an EU co-ordinated regulatory framework. However, since most MS have already regulated non-linear service advertising and the existing self-regulatory codes of conduct contain such principles, business models are not expected to need radical modifications.
<i>Pay-TV</i>	+ Pay- TVs providing non-linear services continue to develop the part of their business model supported by advertising within a domestic regulatory framework.	+ Similar to Option 2	= Pay- TVs providing non-linear services will have to tailor the part of their business model supported by advertising to an EU co-ordinated regulatory framework. However, since most MS have already regulated non-linear service advertising and the existing self-regulatory codes of conduct contain such principles, business models are not expected to need radical modifications.
<i>Written Press</i>	= No direct impact on present business	= No direct impact on present business	= No direct impact on present business
<i>ISPs – cable companies, telecom companies,</i>	= No direct impact on present business.	= No direct impact on present business	= No direct impact on present business.
<i>IPTV linear</i>	+ Similar to Option 3	+ IPTVs linear providing also non-linear services continue to develop their advertising/supported business models within a domestic regulatory framework.	= IPTVs linear providing also non-linear services will have to tailor their advertising/supported business models to an EU co-ordinated regulatory framework. However, since most MS have already regulated non-linear service advertising and the existing self-regulatory codes of conduct contain such principles, business models are not expected to need radical modifications.
<i>VOD non-linear, incl.</i>	+ Non-linear service	+ Similar to Option 2	= Non-linear service providers

<i>mobile services</i>	providers continue to develop the part of their business model supported by advertising within a domestic regulatory framework		will have to tailor the part of their business model supported by advertising to an EU co-ordinated regulatory framework. However, since most MS have already regulated non-linear service advertising and the existing self-regulatory codes of conduct contain such principles, business models are not expected to need radical modifications.
<i>Independent Producers</i>	= No direct impact on present business	= No direct impact on present business	= No direct impact on present business.
<i>Consumers</i>	- Certain societal values could not be as effectively protected for non-linear services as the case is for linear services	- Similar to Option 2	+ Creation of an environment of trust and consumer confidence
<i>Fundamental rights</i>	- Important societal values as protection of minors and health protection could not be as effectively protected of non-linear services as is the case for linear services.	- Similar to option 2	+ Effective protection of important societal values as consumer protection and health protection. In any case, measures taken in these fields are carefully balanced with the fundamental right to freedom of expression and information (Art. 11 CFR) and the freedom to conduct business. The proportionality is respected.
<i>Regulators and MS administrations</i>	- Growing divergence in MS regulations	- Similar to Option 2	= Monitoring costs on MS for non-linear would be mitigated by co and/or self-regulation.
<i>Commission</i>	= No direct impact on present activity	= No direct impact on present activity	+ Possibility to monitor non-linear services

Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

6.5. Flexibility for insertion and presentation rules for linear service commercial communications

The approach would consist in a certain liberalization of advertising rules in linear services including the possibility of product placement and more flexible quantitative rules such as the suppression of the daily limit.

Empirical data from stakeholders regarding substitution effects in the global advertising market are often conflicting. Therefore, claims from different stakeholders must be treated with caution (see Figures 11 and 12 in the Statistical Annex). However, a certain consensus exists on the fact that the Internet advertising market is growing at rates which are multiples of the rates recorded in traditional markets such as broadcasting and the written press. More in particular, a study commissioned by the Commission⁵⁰ excludes for several reasons the existence of automatism in the re-allocation of advertising resources in case a softer regulation is introduced for linear audiovisual services.

Among the reasons explaining why a substitution effect among media in the global advertising market is improbable are the following:

- Print advertising revenue has declined from its historically high share of display advertising in the 1980s by about one-third in two decades. There is some evidence that television advertising may have reached its high point in the last five years, and that a similar slow decline in overall share may be occurring⁵¹. However, both sectors will continue to grow, if relatively more slowly than in the past;
- Broadcasting commercial communications are largely display, which can only be in competition with other display advertising;
- Outdoor advertising and radio are remarkably resistant to competition from other media, and some sources claim at least 35 possible competitors for display advertising;⁵²
- All forms of advertising markets are currently growing, reflecting consumption recovery from a deep 2001-3 advertising recession, especially in Germany;
- Internet advertising contains many sub-categories, the largest of which (40%) is search-engine related,⁵³ while the markets for Internet based audiovisual advertising are currently close to nil;⁵⁴
- Different national markets have very different characteristics. The most mature European market, UK, is seeing slow relative declines in TV advertising, France and Germany have seen declines based on structural economic problems, while much of Eastern and Central European media markets are extremely fast-growing.⁵⁵

If there is little or no measurable effect on other markets, and consumer harm can be avoided, there could be a case for some type of regulatory flexibility. This could be also beneficial to

⁵⁰ Carat and Koan, 2005 see chapter 9 “Bibliography”, page 53

⁵¹ Zenith Optimedia (2005)

⁵² Zenith (2005)

⁵³ See PWC/IAB (2005). The remarkable innovation achieved by Google should be noted in this regard.

⁵⁴ No data suggest that advertising directly linked to Internet video is a market which can be measured with any certainty in Europe.

⁵⁵ PWC (2005).

consumers in that greater advertising effectiveness produces more resources which may be invested in programming.

Stakeholder	Option 2 <i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	Option 3 <i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	Option 4 <i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to short extracts</i>
<i>Public service broadcasters</i>	= Remits generally submit PSBs to stricter quantitative limits than foreseen in the TVWF Directive	+ Increased flexibility could, if remits allow for it, increase revenues and improve overall competitiveness thanks to better economic effectiveness of advertising messages and reduced administrative burdens	+ Increased flexibility could, if remits allow it, increase revenues and improve overall competitiveness thanks to better economic effectiveness of advertising messages and reduced administrative burdens
<i>Free-to-air commercial</i>	- Commercial TVs are struggling to cope with the growing audiovisual market fragmentation, changing technical audiovisual landscape (new channels, new services) and the development of Internet as advertising media;	+ Increased flexibility should allow commercial TVs to effectively react to external threats and improve overall competitiveness by extracting a higher value from advertisement business and reduced administrative burdens	+ Increased flexibility should allow commercial TVs to effectively react to external threats and improve overall competitiveness by extracting a higher value from advertisement business and reduced administrative burdens
<i>Pay-TV</i>	= Business models only partially rely on strong advertising revenues; advertising quantity is often self-restricted	+ Though business models only partially rely on strong advertising revenues, increased flexibility and reduced administrative burdens could benefit the revenue stream.	+ Though business models only partially rely on strong advertising revenues, increased flexibility and reduced administrative burdens could benefit the revenue stream.
<i>Written Press</i>	= The impact of a growing commercial audiovisual sector in the years 1980/1990 has been absorbed since and the press business model can	= A better effectiveness and the possible extraction of a higher value from advertisement business by TVs do not imply automatically that advertising investments will be switched	= A better effectiveness and the possible extraction of a higher value from advertisement business by TVs do not imply automatically that

⁵⁶

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	be considered as “mature” now. Moreover, press is developing growing revenue streams through on-line services.	from the press to broadcasters ⁵⁶ .	advertising investments will be switched from the press to broadcasters ⁵⁷ .
<i>ISPs – cable companies, telecom companies,</i>	= Internet operators are effectively developing their business models benefiting from the possibility to integrate three steps of the sales circle: information, transaction and follow-up.	= A better effectiveness and the possible extraction of a higher value from advertisement business by TVs are not likely to affect substantially the growing importance of Internet as an advertising media.	= A better effectiveness and the possible extraction of a higher value from advertisement business by TVs are not likely to affect substantially the growing importance of Internet as an advertising media.
<i>IPTV linear</i>	= Advertising business, also in a market actually non-regulated, is presently minimal; however, legal uncertainty as for the application of the directive could hamper the development of the business model	= Given the ability to use new advertising techniques, broadcast-type services could find a way to support their nascent business model in a clear and simplified legal framework benefiting from the country of origin principle. This would offset the constraints linked to application of the Directive	= Given the ability to use new advertising techniques, broadcast-type services could find a way to support their nascent business model in a clear and simplified legal framework benefiting from the country of origin principle. This would offset the constraints linked to application of the Directive
<i>VOD non-linear, incl. mobile services</i>	= Not covered by the TVWF Directive. Business model not based on advertising resources	= Business model not based on advertising resources	= Business model not based on advertising resources
<i>Independent Producers</i>	= Audiovisual works integrity is safeguarded	+ Audiovisual works integrity is substantially safeguarded; possible increase of resources for audiovisual productions from larger TVs advertising budgets, product placement. Independence from advertisers is guaranteed	+ Audiovisual works integrity is substantially safeguarded; possible increase of resources for audiovisual productions from larger TVs advertising budgets, product placement. Independence from advertisers is guaranteed
<i>Consumers</i>	= Consumer is effectively protected from excessive advertising	= Main provisions protecting consumer from excessive advertising still apply; advertising market has effective self-regulating mechanisms	= Main provisions protecting consumer from excessive advertising still apply; advertising market has effective self-regulating mechanisms
<i>Fundamental</i>	-	-	+

⁵⁷

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<i>rights</i>	No change would mean that the existing rules are applicable which limits the freedom to conduct services (Art. 16 CFR) for linear services	Similar to option 2	Important positive effects for the freedom to conduct services (Art. 16 CFR) as well as the freedom of expression and information (Article 11 CFR)
<i>Regulators and MS administrations</i>	- Growing costs for monitoring a growing number of linear service providers according to national rules.	= Costs for monitoring non-linear service providers according to national rules, but simplified rules	= Costs for monitoring non-linear service providers according to national rules, but simplified rules
<i>Commission</i>	- Systematic monitoring carried out for linear services	+ Possibility to monitor new linear services and simplified rules	+ Possibility to monitor non-linear services and simplified rules

Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

6.6. Introduction of a right to short reporting for linear services

The approach would consist in ensuring that broadcasters and intermediaries established in other MS are not deprived of access of events of high interest for the purpose of short news reports.

Stakeholder	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>Clarify that TVWF Directive covers linear services on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services enhanced flexibility for advertising rules, introduction of a right to short extracts</i>
<i>Public service broadcasters</i>	- National conditions for short reporting of high interest events for non-domestic TVs will persist; unequal market power will still guide definition of prices and conditions of access also for PSBs.	- Similar to Option 2	+ Access to short reporting of high interest events will be easier for non-domestic TVs at fair conditions and in an environment of legal certainty. Overall efficiency and competitiveness conditions would improve
<i>Free-to-air commercial</i>	- National conditions for short reporting of high interest events for non-domestic TVs will persist; unequal market power will still guide definition of prices and conditions notably for smaller operators.	- Similar to Option 2	+ Access to short reporting of high interest events will be easier for non-domestic commercial TVs at fair conditions, notably for smaller operators, and in an environment of legal certainty. Overall efficiency and competitiveness

			conditions would improve
<i>Pay-TV</i>	= Pay-TVs would still be allowed not to give access for short reporting to non-domestic TVs since they got the broadcasting rights in exclusivity. To the contrary, Pay-TVs which do not have those rights will not have access for short reporting of information.	= Similar to Option 2	+ Access to short reporting of high interest events will be easier for non-domestic Pay-TVs at fair conditions and in an environment of legal certainty. Overall efficiency and competitiveness conditions would improve
<i>Written Press</i>	= No direct impact on present business.	= No direct impact on present business.	= No direct impact on present business.
<i>ISPs – cable companies, telecom companies,</i>	= No direct impact on present business.	= No direct impact on present business.	= No direct impact on present business.
<i>IPTV linear</i>	- No harmonized or no access to short reporting of high interest events for non-domestic IPTVs. will persist; unequal market power will affect price and access notably for smaller operators.	+ Access to short reporting of high interest events will be easier for non-domestic linear service providers at fair conditions, notably for smaller operators, and in an environment of legal certainty.	+ Access to short reporting of high interest events will be easier for non-domestic IPTVs. at fair conditions, notably for smaller operators, and in an environment of legal certainty. Overall efficiency and competitiveness conditions would improve
<i>VOD non-linear, incl. mobile services</i>	= No direct impact on present business.	= No direct impact on present business.	= No direct impact on present business.
<i>Independent Producers</i>	+ Content producers and rights owners in general will continue to exploit rights in view of maximising revenues	+ Similar to Option 2	- The possibility of content producers and rights owners in general to exploit rights would be marginally limited.
<i>Consumers</i>	- A significant share of viewers will not be able to see recent high interest reports of sport events and audiovisual news	- Similar to Option 2	+ A significant share of viewers will have access to recent high interest reports of sport events and audiovisual news
<i>Fundamental rights</i>	= Possible growing divergence in MS	= Similar to option 2	+ Positive effect on the freedom of expression and

	regulation could lead to a negative effect on the freedom of expression and information (Art. 11CFR)		information (Art. 11CFR). In any case, measures taken in these fields are carefully balanced with the right to property (Art. 17 CFR) as well as on freedom to conduct services (Art. 16 CFR). The proportionality is respected
<i>Regulators and MS administrations</i>	- Possible growing divergence in MS regulations	- Similar to Option 2	- Involvement in the adoption of a short reporting framework or modification of the existing rules Monitoring will be carried out according to national rules.
<i>Commission</i>	= No direct impact on present activity	= No direct impact on present activity	- Monitoring activity will be extended to cover this area.

Key to impact of proposed changes: + positive overall impact; = same impact; - negative overall impact

7. COMPARING THE OPTIONS

The table below recalls the main points treated under the analysis of impacts (point 6 above) highlighting overall risks and benefits of each of the three open options in respect of the main issues discussed during the consultation process.

The analysis carried out under point 6 has stressed that the status-quo option (option 2), while having a neutral impact on a majority of stakeholders (34 cases), would have negative consequences on a considerable number of other cases (31). Only in a few cases (7) stakeholders would clearly benefit from the maintaining of the Directive as it is.

According to the analysis done, option 3 would improve the balance risks/benefits of stakeholders in many cases (20). For most of them, this option would not result in any substantial modification of overall conditions (33 cases), while in a minority of cases (19) the current TVWF Directive represents a better scenario for stakeholders.

A comprehensive legislative framework, with graduated treatment of linear and non-linear services (option 4), would provide an almost reverse situation of the status-quo option in respect of the number of stakeholders benefiting or being negatively impacted by a comprehensive revision of the Directive. While many stakeholders (31 cases) would not have to face changed conditions, for a majority of stakeholders (38 cases) this option would represent a substantial improvement of scenario. Only in a very few cases (3) conditions could deteriorate if a series of hypotheses are met.

Option	Option 2	Option 3	Option 4
	<i>Status Quo: EU rules only for</i>	<i>Clarify that TVWF Directive</i>	<i>Country of origin principle</i>

Issue	<i>broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i>	<i>covers linear service on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i>	<i>coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to short extracts</i>
Country of origin for non-linear services	<p><u>Risks:</u> fragmented EU market of non-linear services as country of origin principle does not apply; legal uncertainty for non-linear services available in several MS prevent the development of effective pan-European business models.</p> <p><u>Benefits:</u> linear services continue to benefit from a competitive advantage in pan-European operations vis à vis non linear services for which the country of origin principle does not apply.</p>	<p><u>Risks:</u> Similar to option 2, for all linear services</p> <p><u>Benefits:</u> Similar to option 2, for all linear (including streaming)</p>	<p><u>Risks:</u> domestic linear and non-linear services will face increased competition from non-linear services based in other MS.</p> <p><u>Benefits:</u> legal certainty for non-linear service providers in non-national markets will open new business opportunities.</p>
Protection of minors, human dignity; Incitements to hatred for non-linear services	<p><u>Risks:</u> without minimum rules there is a risk of derogation to the principle of country of origin and thus no Internal Market for non-linear services (art.3 of the e-Commerce Directive); less protection of minors/human dignity on non-linear services</p> <p>Emergence of national rules and a fragmented self-regulation approach is likely.</p> <p><u>Benefits:</u> more flexibility linked to self-regulation and low enforcement costs; development of ad-hoc solutions;</p>	<p><u>Risks:</u> for non-linear services similar to option 2 and for new linear services similar to option 4</p> <p><u>Benefits:</u> for non-linear services similar to option 2 and for new linear services similar to option 4</p>	<p><u>Risks:</u> low risk of non compliance by service providers as effort is negligible and social acceptance/pressure based on shared values and norms is high. Non-compliance is likely to be caused by negligence.</p> <p><u>Benefits:</u> effective and efficient enforcement of basic shared rules; Potential increase in trust in non-linear services, reducing risk of new fragmentation of EU Market</p>
Encouragement to promote European works for non-linear services.	<p><u>Risks:</u> Fragmentation of Internal Market for lack of minimum harmonisation/coordination of MS policies, business models will consolidate at national level around uncoordinated national policies; possible long term unjustified competitive advantage (lack of level playing field) of non-linear services vs. traditional linear services and linear services close to non-linear business models</p>	<p><u>Risks:</u> Similar to option 2</p> <p><u>Benefits:</u> Similar to option 2</p>	<p><u>Risks:</u> in a first period, and only in MS where this kind of policy is not already being pursued, development of non linear services could be hampered by obligations concerning the carrying/offering of content. However, risk is low given the nature of the obligation (promote by appropriate means).</p>

	<p>(Mediakabel case) but expected to be low as obligations to carry/offer European content exist already or could be introduced in certain MS for non-linear services; non-linear services could not contribute substantially to the cultural diversity.</p> <p><u>Benefits:</u> in some MS non-linear services could develop in a low regulated environment relying for their business models on the supply of non European content chosen on purely commercial considerations;</p>		<p><u>Benefits:</u> Common minimum rules for non-linear services with respect to access to European works will remove obstacles to the creation of an integrated pan-European market for providers and an indirect and, non distortive support for content producers.</p> <p>Approximation, in perspective, of regulatory conditions for linear and non-linear services in respect of content offer might create a more competitive environment for all audiovisual services and stimulate demand for EU content.</p>
<p>Identification rules. Ban of certain discriminations, certain offences, certain prejudicial behaviours and restrictions on certain products for commercial communications for non-linear services</p>	<p><u>Risks:</u> no common conditions for the Internal Market could lead to growing divergence in national regulation in non-linear services, risking a further market fragmentation; no attempt to protect societal values in non-linear services as in linear services, however, other legal instruments apply in this area.</p> <p><u>Benefits:</u> in the short term non-linear services continue to develop in an established national regulatory environment ; no additional enforcement cost at MS level</p>	<p><u>Risks:</u> similar to option 2; <u>Benefits:</u> similar to option 2</p>	<p><u>Risks:</u> basic tier principles for non-linear services are likely to impact moderately current revenue stream of non linear service providers since most MS have already regulated non-linear service advertising and the existing self-regulatory codes of conduct contain such principles.</p> <p>Difficulty to monitor and enforce, increased administrative burden on MS would be mitigated by co and/or self-regulation within the framework of these principles.</p> <p><u>Benefits:</u> the establishment of minimum principles at EU level makes possible an effective country of origin principle; both are essential to ensure a functioning Internal Market; Enforcement of commonly shared principles can help create an environment of trust, and consumer confidence for non-linear services</p>
<p>Flexibility for insertion and presentation rules for linear service commercial communications,</p>	<p><u>Risks:</u> linear service providers are left with the current detailed and rigid rules preventing them from adequately tackling the growing audiovisual market fragmentation, a changing technical audiovisual landscape (new channels, new services) and the development of on-line services as advertising media; legal uncertainty for new linear services</p>	<p><u>Risks:</u> Similar to 4 for new and traditional linear services; <u>Benefits:</u> Similar to 4 for new and traditional linear services;</p>	<p><u>Risks:</u> Greater flexibility may lead to more total advertising time and a higher number of advertising breaks in some MS; product placement influencing content through financing. Some substitution effect with other media could materialize in the overall advertising market characterised by the growth of advertising investments in on-</p>

	<p><u>Benefits:</u> strong protection for consumers; new linear services can develop their business model in a low regulated legal framework; no additional enforcement cost at EU level</p>		<p>line services. Providers of new linear services will have to align their advertising business models with the traditional TVs. Costs for targeted monitoring at EU level</p> <p><u>Benefits:</u> Greater flexibility should allow service providers to extract higher value from advertising space; the European audiovisual content production sector could indirectly benefit from such increased financial resources of the downstream sectors. Compliance management costs should be reduced for linear services as the rules are simplified and made more flexible.</p>
Access to short extracts	<p><u>Risks:</u> The market will not self-regulate, therefore, current problems with access to short extracts for non-domestic linear services will persist; unequal market power will affect price and access; a significant share of viewers will not be able see recent reports of sport events and audiovisual news. Uncoordinated rules could be introduced by MS.</p> <p><u>Benefits:</u> right holders will continue to exploit rights in view of maximising revenues</p>	<p>Risks; As in option 2</p> <p>Benefits: As in Option 2</p>	<p><u>Risks:</u> Marginally limit the possibility of rights owners and content producers to exploit rights.</p> <p><u>Benefits:</u> access to short extracts will be easier for non-domestic linear services at fair conditions; a significant share of viewers will have access to recent reports of sport events and audiovisual news. Legal certainty will be enhanced</p>

The aggregate impacts on certain Economic, Social and Regulatory dimensions could also be summarised as follows:

<p style="text-align: center;">Option</p> <p style="text-align: center;">Issue</p>	<p style="text-align: center;">Option 2</p> <p style="text-align: center;"><i>Status Quo: EU rules only for broadcasting (TVWF Directive); only MS regulation for non-linear services (where applicable)</i></p>	<p style="text-align: center;">Option 3</p> <p style="text-align: center;"><i>Clarify that TVWF Directive covers linear service on all technological platforms (the so-called new linear services) and enhanced flexibility for advertising rules. No EU regulation for non-linear services but only MS regulation (where applicable)</i></p>	<p style="text-align: center;">Option 4</p> <p style="text-align: center;"><i>Country of origin principle coupled with basic tier and promotion of EU works rules for non-linear services. Application of EU rules for all linear services, enhanced flexibility for advertising rules, introduction of a right to short extracts</i></p>
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Economic impacts a) innovation and growth	- Lack of harmonisation in national rules and legal uncertainty will inhibit new services and market innovations.	+ Clear definition of scope will increase market confidence. Increased revenues from flexible advertising rules. Online linear services will benefit from country of origin principle.	+ Increased opportunities for cross-border non linear services. Increased consumer trust in social protection in relation to innovative non linear services will leading to increased consumption.
Economic impacts b) administrative and regulatory burden on business	- Burdens non linear service providers who have to work with different MS regulations. Current regulation on advertising restricts programming flexibility and caps revenues.	+ Simplified regulation for linear services. Reduced regulatory burden of current advertising rules.	+ Wider scope of regulation to non-linear services. Rules on short extracts will result in harmonization of current diverse practices and unlikely to add any administrative costs. Positive effect for the AV content industry.
Social impacts a) Human dignity, rights and consumer protection	- Social protections but not updated to reflect current social norms and high levels of public concern remain over harmful content	+ Stronger social provisions for disability, sexual orientation, age and ethnic origin. Greater 'respect for persons' requirements. Some increased advertising 'noise' for consumers	++ Application to all audiovisual services provides for an EU-wide harmonised level of protections in all linear and non-linear services.
Social Impacts b) cultural diversity	- Current provisions only apply to television broadcasting. Unclear jurisdiction rules may hinder the free movement of audiovisual works.	+ Country of origin rules applied to new linear services will increase volume of EU content and support cultural diversity.	++ Stronger cultural and social inclusion impacts. EU level discourse of 'encouraging' EU content likely to have positive impact on cultural diversity. Harmonisation in the field of short extracts enhances access to information and cross-border content.

8. MONITORING AND EVALUATION

Monitoring of implementation will be assured by DG Information Society and Media, on the basis of implementation reports provided by the Member States. Under Article 23a national regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.

The present Directive foresees biannual reports by the Commission, on the Directive as a whole, and, on the basis of national reports transmitted by the Member States, on the application of Chapter III, promotion of European works, in order to assess the evolution of

cultural diversity in the European audiovisual sector. More in general, the Commission reports on the application of the Directive in the framework of the general report on the application of Community Law.

Furthermore, the Commission will commission independent studies on the implementation of Chapter IV on television advertising. Additional studies will monitor the development of the *internal market* for audiovisual services and respect for the fundamental public interest objectives.

Information on the effectiveness and impact of the Directive will be provided through the active participation of the Commission services in public debates and in reaction to complaints from citizens and professionals. The Commission will report every 2 years to the European Parliament, the Council and the Economic and Social Committee on the application of the Directive as amended.

Finally, the work of the Contact Committee has established effective co-operation between national authorities and the Commission. On an informal basis, the Commission regularly meets the representatives of the regulatory authorities of the Member States in order to reinforce co-operation among regulators and with the Commission.

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