

## *The revision of the TWF directive*

The Commission presented its draft for the revised TVWF Directive on 13 December 2005. The proposal is for an update of the current rules to take account of technological and market developments in the European audiovisual sector.

The main aim of the revision is to relax the current rules on advertising. Another is to draw a distinction between "linear" services (conventional television, Internet, mobile telephony) and "non-linear" services (on-demand television and information).

This proposed Directive from the Commission, as all legislative proposals, needs to be adopted jointly by the European Parliament and the Council (co-decision procedure), requiring qualified majorities in both institutions.

### *The revision proposal: the main points*

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The review by the Commission concerns mainly the following issues:

#### A new definition of the "audiovisual media service"

The Commission has included some commercial services on the internet into the scope of the directive, going as far as to propose renaming it as the **Audio-Visual Media Services Directive**. The extension of the scope concerns mainly on-demand content such as shows, movies, serials, sports events and news reports, including the advertising therein. It does not concern video clips and animations in news and press websites, nor blogs, video podcasts, picture telephony over the internet and other non-commercial content.

#### The distinction between the linear audiovisual media services and the non-linear services

The Commission proposal for a modernised TV without Frontiers Directive distinguishes between "linear" services (e.g. scheduled broadcasting via traditional TV, the internet, or mobile phones, which "pushes" content to viewers), and "non-linear" ones, such as on-demand films or news, which the viewer "pulls" from a network.

The linear/non-linear or push/pull distinction ultimately depends upon who decides when a specific programme is transmitted and whether schedules exist. Linear services are those "pushed" sequentially by broadcasters on the basis of a time schedule. Non-linear services are defined as "any audiovisual media service where the user decides upon the moment in time when a specific programme is transmitted on the basis of a catalogue of content selected by the media service provider".

The obligations for digital "pull", "on-demand" or "non-linear" are different from those for television, the reason being, among other things, that it cannot be controlled as easily. The negative content regulation obligations are:

- to respect protection of minors,
- not to incite to hatred,
- to identify the media service provider,
- to identify advertising and other forms of commercial content,
- not to use surreptitious advertising,
- to respect rules on product placement and sponsoring,
- to respect some restrictions on advertising (e.g. not to advertise alcoholic beverages in programmes for minors).

### The revision of the rules concerning "linear" audiovisual services

"Linear" audiovisual services would be subject to second-level obligations similar to those set out in the TVWF Directive, but simplified and updated.

- **New rules on advertising:** First, advertising breaks in "films made for television (...), cinematographic works, concerts, theatre plays and operas" would be limited to every 35 minutes (rather than every 45 minutes in the actual TVWF Directive). Moreover, the daily limit of advertising time (average of 9 minutes per hour) would be suppressed but the current rule regarding advertising per hour (there must not be more than 12 minutes of advertising per hour of broadcasting) will remain valid.
- **Product placement:** Product placement - the paid-for placement of goods in movies, shows and even news programmes - would be authorized. Product placement is currently illegal in most EU member states, but is a major source of income in the US, where almost 3.5 billion dollars were spent on it in 2004. The Commission wants to leave the choice to member states whether to authorise product placement, but the proposal says it must be subject to some obligations: The product placement must be made clear in some way at the beginning of the broadcast concerned, the goods may only be placed, not praised, product placement must not take place in programmes for children, and some goods, like tobacco and prescription medicines, may not be placed.

### *The European Parliament's action*

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In the Council, a lot of work has already been done on the Directive. In May 2006, the Culture Council Meeting held a first policy debate on the proposed Directive based on a progress report presented by the Austrian presidency summarising delegations' positions on the main issues.

Regarding now the European Parliament, it is the Media & Culture Committee that has taken the lead in considering the Commission proposal. And exactly one year after the presentation of the revised directive - on 13 December 2006 - the Parliament's Plenary voted on the Committee's report. It adopted a watering-down of the rules limiting advertisements. The most important changes adopted are the following:

- The scope of the directive is widened to cover all audiovisual media services. Consequently, the directive's colloquial name will in the future be "Audiovisual without Frontiers".
- Non-TV audiovisual services, including so-called non-linear or on-demand services will be made subject to some content regulation, including an obligation to promote European content.
- Product placement - the placing of branded goods in TV productions, paid for by advertisers - will be allowed in Europe. TV producers must make clear "at the start and the end of the programme and by a signal at least every 20 minutes during the programme" when products have been placed in their productions. No product placement can take place in news, current affairs programmes, documentaries and children's TV.
- TV broadcasts can be interrupted by advertising every 30 minutes instead of every 45 minutes under the present rules.
- An amendment to ban advertising for junk food (food high in fat, sugar or salt) to children was watered down, making the restriction subject to a voluntary code of conduct.