

Economic Development & Transport Committee

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Date: Wednesday 29 March 2006

Time: 9.00am to 12.25pm

Venue: Committee Room 3, Senedd, Cardiff Bay

Title: Economic Development & Transport Minister's Report

Purpose

1. To provide an update to Committee on the Commission's proposal to amend the Television without frontiers Directive published on 13 December 2005.

Background

2. The 'Television Without Frontiers' Directive (TVWF), is the main legislative instrument at EU level concerning audiovisual services. It is a single market Directive, designed to facilitate the free movement of television services across Member States. It also aims to protect fundamental public interest objectives, like the promotion of cultural diversity, in terms of the content of TV programming and sets minimum standards in the areas of:

- Promoting the production and distribution of European and independently produced TV programmes (quotas);
- Access of the public to major (sports) events;
- Television advertising, sponsorship and teleshopping;
- Protection of minors;
- Right of reply.

3. The original intention behind the Directive was to increase the competitiveness of the European audio-visual sector. It was first negotiated in 1989, and revised in 1997 (89/552/EEC, 97/36/EU) to take account of technological and market developments.

4. In the light of the digitisation and the increasing convergence between television and other media, the Commission's Information Society and Media Directorate proposed a further amendment to the TVWF Directive on 13 December 2005. The Directive can be approved by majority voting and is subject to joint decision-making between the Council and the European Parliament. Given the complexity of the proposal and its controversial nature, it is unlikely that any agreement will be reached until the end of 2007 at the earliest. The UK and the other Member States would have three years to bring the Directive

into effect.

Key issues

5. There are three over-riding issues of concern for the UK, shared by the Welsh Assembly Government, as regards this proposal. The first concerns the retention of the Country of origin principle, where it is in agreement with the European Commission but likely to face opposition from several Member States. The second concerns the Commission's proposal to extend scope of this Directive to cover commercial Internet and all mobile networks as well as broadcasting services. The third concerns implementation.

Country of Origin

6. The Country of Origin (CoO) principle set out in the proposal provides a Single Market regime for TV broadcasting which means that each TV broadcaster falls under the jurisdiction of one Member State and one Member State only. It also means that Member states cannot block the transmission in their territory of television programmes emanating from another Member State as long as they comply with TVWF rules.

7. Thirteen Member States (including Belgium, Ireland and Sweden) have problems with this, however, because it means they cannot influence the content of broadcasting from other Member States. In Sweden for example advertising to children is prohibited and the Swedish government objects to having to accept programming from other Member States where there is no such prohibition. The Member States that object to CoO tend to have a high market share of foreign channels e.g. in Belgium the market share for foreign channels is 66% and approaching 30% in Sweden. The UK figure is 0.2%. Across the EU the foreign channel share is 10.2%, which shows that the pan-European market is significant though not enormous. (European Audio Observatory Yearbook, 2004 figures).

8. The UK is however strongly in favour of the Country of Origin principle, because:

- It provides clear jurisdiction, so that operators have no doubts about which country is regulating them;
- The UK has an important TV export sector – satellite broadcasters based in the UK and licensed here (by OFCOM), who transmit to other countries. If the Country of Origin principle was removed, broadcasters transmitting into more than one country might need to be regulated by more than one Member State which might encourage them to relocate outside the EU.

Scope

9. At present, TVWF applies to all television programmes however received. The Commission however propose that TVWF should become an "Audio-visual Media Services Directive" extending its scope to cover any commercial services which provide moving images (with or without sound) on the Internet, all Mobile networks, and all broadcasting networks. The Commission's rationale for this change is to

create more of a level playing field between television broadcasters and service providers providing television type content on demand via the Internet or mobile telephones.

10. How the Commission plans to proceed is as follows. The audio-visual media services would be divided into two categories, linear and non-linear. Within the basic scope of the Directive, non-linear services are defined as those in which "the user decides on the moment in time when a specific programme is transmitted". This definition covers a very wide range of services, including video on demand but also, for example (if they carry moving pictures)

- weblogs with charging mechanisms for access or which carry paid advertising
- news agency websites
- charity websites
- game websites if offered commercially or carrying advertising
- gambling websites; and
- online advertising services.

11. Linear services are not specifically defined, but would be broadly comparable to scheduled TV broadcasting.

12. The Commission's proposal is that all audio-visual media services, linear and non-linear, should be subject to a basic set of rules which would include:

- a requirement not to incite hatred
- a prohibition against impairing the "moral, mental or physical development of minors"
- an obligation to promote "where practicable and by appropriate means the production of and access to European works"
- restrictions on the content and nature of adverts

13. This is deeply problematic for four reasons. Firstly, the extension of the scope of the Directive in this way could stifle the growth of online, broadband and mobile sectors, which are vitally important and rapidly developing areas of our economies. Moreover, given that these industries are so easily portable, there is a fear that increasing the regulatory burden in this way could incite these companies to leave the EU thereby prejudicing the Union's ability to meet its i2010 (or European ICT Strategy) targets and the Lisbon Agenda.

Secondly, there is also a concern that the distinction between linear and non-linear services in the Commission's proposal could rapidly become redundant given the speed and dynamism with which the new media industries are developing.

15. Thirdly, the e-commerce Directive, already regulates the provision of "information society services" and therefore extending the TVWF in this way is unnecessary.

16. Fourthly, the requirement not to incite hatred raises serious concerns with regard to subsidiarity and freedom of expression and the UK government is concerned that this subject be introduced into what is a sector specific, industrial Directive.

17. As well as this basic set of rules for all audio-visual media services, the effect of the Commission's proposal is that linear services, but not non-linear ones, should be subject to requirements about the coverage of major events, quotas of European and independently-produced programming, advertising, and rights of reply etc similar to those which the TVWF Directive already imposes upon television broadcasting services. The new proposals would however significantly simplify the advertising rules in the Directive, which the UK welcomes.

18. Another change in the Directive is the proposal to allow product placement, subject to certain controls, which would mean abandoning the current principle in TVWF that advertisements be clearly separate from programming. The Commission's rationale behind this is technological developments make it easier for people to "block" the adverts that appear between programmes. To date, the UK is taking a cautious approach to this.

Implementation

19. With regard to implementing the Directive the UK is concerned that the co-regulatory method of implementing the Directive would be bureaucratic and unwieldy, especially since the UK has a growing culture of self regulation. For example the on-line games industry, which would be captured in the extended scope of the proposal, has a self regulatory code of conduct that is working well and the UK government is opposed to the fact that there is no room for self-regulation when it comes to this Directive and does not want to send the message to industry that it is not allowed to self regulate.

Specific interest for Wales

20. The concerns of the UK Government concerning the proposed revision to this Directive are ones we share and there are few areas where there is a specific Welsh dimension to the TVWF debate.

21. However, there are two key areas of interest for the Welsh Assembly. Firstly, any extension of the scope of the Directive could stifle the development and growth of the vibrant new media sector Wales, which is generally composed of micro or small enterprises which would find these new regulatory burdens particularly unwelcome. On this issue, we very strongly support the concerns of the UK government, OFCOM and the sector.

22. Secondly, the Welsh Assembly Government in the light of our being a bi-lingual nation and given the existence of the Welsh language broadcaster S4C, supports the general objective of the Directive actively contributing to the promotion of a vibrant European audiovisual sector which reflects the diversity of our cultures. The Welsh Assembly Government supports the production of a wide range of TV programmes that reflects European cultural and linguistic diversity so that our citizens are able to

receive content telling their stories and in their languages, both majority and minority.

Next steps

23. The Welsh Assembly Government will shortly be invited to comment directly to the Department for Culture Media and Sport (the UK Government's lead department) in its inter-departmental consultation process. In addition, there will be opportunities for any other interested parties in Wales (like this committee or S4C for example) to respond to the Department for Culture Media and Sport's public consultation which should be published in April. The aim of this consultation will be to inform the Regulatory Impact Assessment and Small Firms Impact Assessment that the DCMS intends to publish on this amendment to TVWF, which will focus largely on its economic impact and potential costs to industry and the consumer.

24. On the European level, the debate in the European Parliament (EP) and Council is underway. As noted above MEPs had their first discussion of the proposal in the Culture Committee which focused largely on timetabling issues though the MEP who will draft the EP's opinion, Ruth Hieronymi, said that she broadly welcomed the Commission's proposal as it was in line with the stance taken by the EP in the past, which has been in favour of a higher degree of regulation. The EP will now organise a set of hearings on scope, advertising and the country of origin issue.

25. In the Council, many member states have requested more explanation from the Commission about the impact of extending the scope on the sector and the definitions of non-linear/linear. In initial discussions several member states already stated that they were opposed to including new media under the scope of this Directive, while others are now beginning to understand the full implications the proposed extension and may begin to question its wisdom.

Action for Economic Development and Transport Committee

26.. The Committee is invited to note this update.

Andrew Davies
Minister for Economic Development and Transport

Contact Point: Nia Lewis, EEAD Ext: +32 2 506 44 78