

THE TELEVISION WITHOUT FRONTIERS DIRECTIVE: OVERVIEW AND ANALYSIS

National Assembly for Wales
Economic Development and Transport Committee

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Television Without Frontiers Directive: General Overview

What is the TV Without Frontiers Directive?

TWF is a **European Community Directive** which currently harmonises Member States (MS) television broadcasting regulation. The Directive has **two main objectives**:

- the protection of fundamental public interest objectives in terms of the **content** of TV programming; and
- the **free movement** of TV broadcasting services within the EU and the creation of a single market

To achieve these aims, TVWF sets **minimum rules for TV services** on: access to major events, proportions of European content, advertising, sponsorship and teleshopping, the protection of minors and public order, and rights of reply.

At the same time, TVWF requires that MS do not restrict the retransmission in their territory of TV programming originating from another MS, so long as this meets the TVWF rules. This is known as the **'Country of Origin' principle**.

What is currently at issue? Scope of the proposals

The Commission's approach is to extend the scope of the Directive to cover:

- *all* audiovisual services
- including traditional as well as on-demand audiovisual services, and
- Internet services

Two tiers of regulation are proposed:

- a basic tier for on-demand services
- a stricter tier of traditional TV rules for TV like services

This significantly extends regulation to ICT- a sector which Europe is expecting to drive growth –this may stunt investment and innovation. It is also unclear whether these proposals are workable in practice.

What is currently at issue? Reform of broadcasting regulation

The Commission proposes to remove or modernise some of the existing rules on broadcasters:

- Remove some quantitative restrictions on amount of advertising – will no longer be a defined limit on the amount of advertising per day
- Relax a rule which currently requires that there must be a 20 minute gap between advertising breaks within any single programme, but introduce a 35 minute requirement for minute rule for news, children's programmes and feature films
- Remove the absolute prohibition on product placement, though retain a ban on 'surreptitious advertising' which might mislead the viewer

What is currently at issue? Country of origin principle

Commission proposes to retain the 'country of origin' principle:

- A broadcaster established in a Member State only has to comply with rules of that MS, even if its broadcasts are received in another MS
- Principle would now be extended to on-demand services

Rationale is that this creates 'single market' for services. All broadcasters/service providers established in the EU, have to abide by a minimum tier of requirements (eg protection of minors) – but a Member State can impose additional national cultural rules only on those established in it's territory

What is currently at issue? Quotas

Current Directive sets cultural quotas requiring:

- that a majority of broadcasters' transmission time (usually interpreted as 50%+) is set aside for European works
- ..and 10% of transmission time or programming budget is set aside for *independently produced* European works

New proposal:

- Retains these quota requirements for broadcasters
- Additionally requires Member States to promote production of and access to European works by all Media Service Providers

Commission states this is not intended to oblige introduction of quotas for new media services – promotion can be other means, eg public funding

The UK's position

The UK welcomes the modernisation of TV broadcasting rules, supports retention of the country of origin principle and is content with the proposals on quotas for European works

However, the UK **strongly opposes the extension of the Directive's scope to new audiovisual services** (including Internet services). Instead it argues strongly for self regulation as a better alternative.

However, the UK is not alone in its concerns, with several Member States sharing its reservations regarding the workability and enforceability of the current proposals and others beginning to understand the UK's stance.

Television Without Frontiers Directive: Ofcom's Approach

What is Ofcom's view?

Ofcom recognises the need for the TVWF Directive to be brought up to date. The TV industry has moved on since 1997, with new platforms and new technology, and there is a clear need to think about the consequences of convergence.

Ofcom believes that the Directive seeks to address a legitimate and desirable set of objectives.

Ofcom welcomes:

- the proposal to retain the Country of Origin Principle in the Directive.
- the intention to provide regulation which is platform neutral
- the intention to simplify the complicated rules on advertising and sponsorship in the existing TVWF Directive

BUT Ofcom has fundamental problems with the proposals.

Ofcom's Problems with the Proposals

The scope of what would be caught by the new Directive is unclear: the current proposal would catch a wide range of web-based services.

→ As a result thousands of businesses which have little to do with broadcasting would potentially fall within the scope of regulation (including start-ups, SMEs, sole traders, video blogs and online games) and this is inappropriate.

There is no evidence of the benefits from the minimum harmonisation envisaged in the directive.

The Directive does not allow for self-regulation to be used as a preferable regulatory alternative, requiring co-regulation and, possibly, legislative action.

The proposals will **increase business uncertainty and regulatory risk.**

Why is Ofcom interested?

Ofcom's interest in this proposal stems from our position as the public authority in the UK responsible for implementation of the existing TV without Frontiers Directive and any successor legislation based on the Commission's proposals.

It is very important that the revised Directive is **consistent with Ofcom's regulatory principles** such as "light touch" and "evidence based" regulation.

What is Ofcom doing?

Ofcom is **actively engaging with industry and Europe**, in order to make sure that the implications for Ofcom and its stakeholders are fully understood.