

Questions

This part of the consultation document sets out some specific questions about the Commission's proposals. We would be grateful for your responses to these.

But no list of questions about proposals of this nature could be exhaustive. We would also therefore be interested in any other observations you might wish to make about them, whether these are related to the questions below or not.

Some of the questions refer to Options 2, 3 and 4. As explained in section 4 of the Regulatory Impact Assessment at Annex A, 'Option 2' is to leave the existing TVWF Directive as it is, 'Option 3' is to amend the TVWF Directive to make the advertising rules more flexible and make sure that it covers all 'linear' services similar to television, and 'Option 4' is to amend the Directive in the way the Commission have proposed.

We have grouped the questions below into several broad categories. These categories overlap.

We begin with some general questions about the economic impact of widening the scope of the Directive as envisaged by Option 4. Some more questions on this theme can be found in section 7 of the Regulatory Impact Assessment. There are then some more specific questions about individual proposals.

Responding to this consultation

We welcome your views on the questions below, and on any other issues raised by the Commission's proposals in this area, by 8th SEPTEMBER 2006. Please reply to: Natasha Pavey, Broadcasting Policy, Department for Culture, Media and Sport, 2-4 Cockspur Street, London SW1Y 5DH or e-mail to natasha.pavey@culture.gsi.gov.uk.

General - the effect of widening the scope of the Directive

- 1. To what extent would Option 2, 3, or 4 ease market entry for new providers of audio-visual media services, or prevent it or make it more difficult?**
- 2. To what extent would Option 2, 3 or 4 limit the freedom of firms active in the markets which are affected to determine their own prices, product characteristics and/or quality and standards, means of advertising the product and distribution channels?**
- 3. What would be the costs and benefits, both direct and indirect, to the UK generally and across the various audio-visual services?**
- 4. What impact would the Options have in terms of compliance costs, especially for smaller firms?**
- 5. Would any of the Options give rise to a potential for displacement of economic activity as between different parts of the audio-visual services sector? Would it give rise to decisions in this sector to relocate to or invest in non-EU locations?**
- 6. Would Option 4 have any indirect impacts on firms' competitiveness in audio-visual services, or more generally?**
- 7. If the TVWF Directive were extended to add only mass-media video-on-demand services of the kind currently available - so excluding all other**

forms of 'non-linear', on-demand services - what would the costs and benefits be?

Market information

8. **What are the market structures in the various sub-sectors covered by the draft AVMS Directive, and what are the overlaps between them?**

Country of origin

9. **Are there any instances in which the current lack of harmonisation of controls on *non-linear* audio-visual services among Member States is limiting competition in this sector?**
10. **Specifically, have businesses felt that the current derogations under Article 3 of the Electronic Commerce Directive harmed their business and thus whether the inclusion of their services under this proposed new Directive would be beneficial?**

Place of establishment, jurisdiction, and derogation

11. **Would the rules proposed in Article 2.3, for establishing which Member State has jurisdiction over any particular non-linear service, provide clear and effective jurisdiction in this sector?**

Protection of minors

12. **Article 3d of the Directive would require member states to ensure that audiovisual services within their jurisdiction do not carry material which might seriously impair the mental, physical, or moral development of minors. However, this Directive will not give the EU or Member States any greater powers than they have now in respect of undesirable Internet services from outside the EU, and would remove their ability, under the e-Commerce Directive, to enforce their own standards on non-linear services from other Member States. In view of this, would Article 3d give consumers adequate protection from services which might be harmful to minors?**

Incitement to hatred

13. **Would Article 3e give consumers adequate protection from services which might contain incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation? These prohibitions go much wider than current UK law. What consequences would this have for freedom of speech?**

Advertising – qualitative controls

14. **Articles 3g(c)(iii), 3(d), and 3(e) contain controls on advertising via any audio-visual service which bear on health and safety. They are supplemented, for linear services only, by Articles 14 and 15. Would these controls between them be effective in achieving the right balance between commercial freedom and public health?**

Advertising - quantitative controls

15. **What will be the impact of allowing for isolated advertising and teleshopping spots in sports programmes (Article 10.2)?**

16. **What will be the impact of removing the prohibitions in Articles 18 and 18a that put a limit on the amount of teleshopping allowed on a channel that was not 'exclusively devoted' to teleshopping?**
17. **What will be the impact of the rule (Article 11.2) that films made for television, cinematographic works, childrens' programmes and news programmes may be interrupted by advertising or teleshopping once for every period of 35 minutes?**

Sponsorship

18. **Are the rules on sponsorship of audio-visual media services set out at Article 3h necessary and sufficient to safeguard the integrity of the services that are sponsored?**

Product placement

19. **OFCOM have consulted on the possibility of allowing product placement on TV services within the UK if the EU – as a result of this draft Directive – removes the current implicit EU-wide prohibition of it. But the UK will retain its discretion not to allow product placement in programming made by and for UK broadcasters whatever the outcome of the EU discussion. If the UK were to continue not to allow product placement, but the EU allowed it, what practical impact would that have for UK broadcasters, UK programme makers, and the UK advertising industry?**

Surreptitious and subliminal advertising

20. **Is the definition of surreptitious advertising at Article 1(h) sufficient to catch all possible forms of abuse?**
21. **Should there also be a definition of the 'subliminal techniques' which are to be banned (Article 3g(b))?**

Right of reply

22. **The right of reply at Article 23 of the existing TVWF Directive will remain, but with its scope extended to cover 'linear' (but not 'non-linear' services. Is this right? What is the case for or against extending this right of reply to all 'audio-visual media services?**

Film rights

23. **Article 3f2 of the Directive would require Member States to ensure that audio-visual media services do not transmit cinematographic works outside the periods agreed with their licence holders. This re-enacts Section 7 of the existing TVWF Directive, but applied to audio-visual services as a whole rather than simply to television broadcasters. Would this provision achieve anything, given the existence of copyright law?**

Short reports

24. **Article 3b offers a limited transfrontier right of access to footage of major events, including (and especially) sports events for television news purposes. Does this strike a fair balance between the respective rights of the rights holders, broadcasters, news agencies, sports organisations and other event organisers, and the interests of the**

public? Should this right be available to broadcasters in all Member States, or should it be available only in Member States that already allow such access to footage of major events to their own domestic broadcasters?

Promotion of European work

- 25. Article 3f requires Member States to ensure that media service providers under their jurisdiction promote production of and access to European work. No specific quota is set. What would be the most effective ways for the Government to meet this obligation?**