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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of the Council Directive 93/83/EEC on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission

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Delegations will find attached document SWD(2016) 309 final.

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**COMMISSION STAFF WORKING DOCUMENT**

**EXECUTIVE SUMMARY OF THE EVALUATION**

**of the**

**Council Directive 93/83/EEC**

**on the coordination of certain rules concerning copyright and rights related to copyright  
applicable to satellite broadcasting and cable retransmission**

{SWD(2016) 308}

The retrospective REFIT evaluation of the Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (the "Directive") was carried out in preparation of the EU copyright modernisation initiative set out in the Digital Single Market Strategy for Europe (Commission Communication of 6 May 2015, COM(2015) 192) and the Commission Communication "Towards a modern, more European copyright framework" (9 December 2015, COM(2015) 626). In particular, the evaluation contributes to the evidence base for a decision whether and to what extent the legal mechanisms similar to the ones established by the Directive could be used in the envisaged EU copyright modernisation measures.

For satellite broadcasting the Directive introduced a harmonised exclusive right to authorise satellite transmissions of broadcasts and a principle according to which the copyright and related rights relevant act of communication to the public by satellite occurs solely in the Member State from which the programme-carrying signals originate (the 'country of origin' principle). The effect of this rule is that a broadcasting organisation, for its satellite transmission, has to clear copyright and related rights only for the country of origin. For cable retransmission the Directive provided a two-stop-shop copyright clearing mechanism (individual licensing by broadcasters combined with mandatory collective management of all other - "underlying" - rights) accompanied by an obligation to negotiate in good faith and a possibility to call upon the assistance of mediators in case of dispute.

In accordance with the better regulation guidelines, the evaluation concentrated on effectiveness, efficiency, relevance, coherence and EU added value of the Directive. It also sought to establish the Directive's simplification potential.

The evaluation took place between August 2015 and June 2016 and was based, in particular, on a study prepared for the Commission "The survey and data gathering to support the evaluation of the Satellite and Cable Directive and assessment of its possible extension", a questionnaire addressed to the Member States to gather details about the transposition and application of the Directive in national law and legal orders as well as an on-line public consultation carried out between 24 August 2015 and 16 November 2015. Obtaining quantitative data, especially data pertaining to the costs and benefits generated by the application of the Directive, has proved to be challenging.

The main conclusions of the evaluation are the following:

All Member States have introduced rules having as their objective the transposition of the Directive. The transposed rules have generated over the years relatively few legal disputes. The Directive can also be considered to have contributed to fostering thriving TV / radio broadcasting and distribution markets: 28.7 million EU households receive free-to-air satellite broadcasting services and 56.4 million - cable retransmission services.

As regards the effectiveness, there are indications that overall the specific mechanisms introduced by the Directive have facilitated the clearance of copyright and related rights for (free-to-view) cross-border satellite broadcasts and for the simultaneous retransmissions by

cable of broadcasts from other Member States. Similarly, these mechanisms can be considered to have contributed to ensuring a high level of protection for right holders and have improved, to different extents, access to TV and radio programmes from other Member States. The negotiation and mediation mechanisms established under the Directive have been used to a varying, but overall limited, degree; they were found helpful in the cases where they have been used.

The Directive can be considered to have been a cost-efficient and overall beneficial intervention. It has not created administrative burden or significant compliance / implementation costs for either stakeholders or Member States. The Directive has helped to reduce the transaction costs for the licensors and the licensees. Certain identified specific costs resulting from the application of the Directive (fees charged by collecting societies for managing cable retransmission rights) can be regarded to be outweighed by benefits - savings in transaction costs. Some right holders referred to the Directive's possible negative impacts on the market's functioning claiming that the country of origin principle undermines the territory-by-territory content distribution strategies and that mandatory collective management does not allow for the licensing of cable retransmission rights on fair market terms. However, these concerns are not estimated to be significant either in the case of the country of origin principle (since the Directive has left open the possibility to continue limiting the exploitation of satellite broadcasting rights in compliance with Union law) or in the case of mandatory management of cable retransmission rights (since individuals and SMEs, the category to which most right holders belong, are generally considered, due to their limited capacity to carry out multiple individual negotiations, to be the main beneficiaries of this approach).

The Directive remains relevant, as a tool facilitating licensing of (free-to-view) cross-border satellite broadcasts and cable retransmissions of TV and radio broadcasts from other Member States as well as, more generally, for improving consumers' access to TV and radio broadcasts from other Member States. Within the scope of application of the Directive (satellite broadcasting and cable retransmission) its relevance has been limited by two factors: the proliferation of territorially-limited satellite pay-TV offerings and the practice to inject program-carrying signals directly into cable networks (without any prior broadcast). Otherwise the Directive - due to the technology-specific nature of its provisions - does not cover various transmission and retransmission means that have emerged in recent years.

The Directive is coherent both internally and with other EU interventions pursuing similar objectives, notably those in the audiovisual and media sectors. Moreover, the Directive's objectives remain valid in view of the new Commission priorities, including the completion of the digital single market.

As regards satellite broadcasting, the Directive has provided significant EU added value, since no action with a comparable result could have been taken at the Member State level. As regards cable retransmission, action at the Member State level is possible, but the Directive has provided added value by establishing harmonised rules across the internal market.

In terms of REFIT, since the Directive has not created administrative burden or significant compliance / implementation costs for either stakeholders or Member States and since its

provisions are, generally, setting out principles rather than procedures, the available simplification potential is estimated as limited.