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Subject:	Revision of the Audiovisual Media Services Directive and the promotion of European audiovisual content *- Policy debate* (Public debate pursuant to Article 8(2) CRP [Proposed by the Presidency])

Following consultation of the Permanent Representatives Committee (Part 1) on 18 May 2016, the Presidency has prepared the attached discussion paper, which is submitted as the basis for the policy debate to the Education, Youth, Culture and Sport Council meeting on 30-31 May 2016.

ANNEX

Revision of the Audiovisual Media Services Directive and the promotion of European audiovisual content

Presidency discussion paper

INTRODUCTION AND QUESTIONS

The Commission plans to issue its proposal for a revision of the Audiovisual Media Services (AVMS) Directive on 25 May 2016. If this schedule is met, the Commission will present the proposal in the EYCS Council (culture and audiovisual part) on 31 May, to be followed by an exchange of views by the Ministers.

As additional input to this exchange of views, the Presidency has prepared this discussion paper focusing on one particular objective of the AVMS Directive, which is the promotion of European audiovisual content. The discussion paper also touches upon other relevant national and EU policy measures as there are obvious links and possible synergies between them.

Bearing in mind the issues outlined below, Ministers are kindly invited to answer the following question:

How can public policy best support the cross-border circulation of European audiovisual content at national as well as European level?

In order to give all Ministers an opportunity to contribute, interventions will be restricted to three minutes maximum. In case the AVMS Directive is indeed issued before the May Council meeting, Ministers are of course free to devote their time to the Commission's proposal and presentation.

BACKGROUND

1. Changing media landscape

Along with strengthening the internal market and competitiveness, promoting cultural and linguistic diversity of Europe has long been a key objective of EU audiovisual policy, be it film, drama series, documentaries or animation[1]. Global media convergence has brought a new dimension to it.

The digital revolution and the rise of global players are affecting many aspects of media production, distribution and consumption. The proliferation of new means of distribution can have a positive effect on both audience reach and revenues of the media sector. One of the risks, however, is that doing business in the European media market will become more challenging for smaller and new players. Also, European content is more easily overlooked because of the wide range of (new) choices.

A particular challenge lies with the promotion of cross-border circulation of European audiovisual content. Here below are some figures which illustrate this:

– On television, European works do rather well (64% of transmission time), but in the period 2009-2010 only 8% of this share consisted of non-national European works [2].

[1] E.g. Recitals 65 – 67 and Articles 1 (1) and 16(1) of Directive 2010/13/EU (Audiovisual Media Services Directive) (OJ L 95, 15.4.2010, p. 1). Regulation (EU) No 1295/2013 establishing the Creative Europe Programme (2014-2020) (OJ L 347, 20.12.2013, p.221), notably its Article 4(b) and Article 9 (Media Sub-programme).

[2] First report on the application of Articles 13, 16 and 17 of Directive 2010/13/EU for the period 2009-2010 - Promotion of European works in EU scheduled and on-demand audiovisual media services (doc. 14233/12). According to the upcoming second report from the Commission, European works again counted for a share of 64% in 2012. The second report contains no updated figures for national versus non-national European works on television.

– In cinema, the number of European films produced has increased over the last 5 years, from 4 474 releases in 2010 to 6 188 releases in 2014[3]. Still, US films attract the largest audience (63% of admissions in 2014). National films often come second in their home market (24%), but they have difficulties in finding an audience abroad (9%)[4].

– For video-on-demand, on average 27% of the films available in catalogues is European, with 19% non-national and 8% national European films[5].

2. Policy dilemmas

Both the empirical evidence and the evolving media market call for a reconsideration of how public policies can best foster European audiovisual production and distribution. At EU level, the European Commission issued in May 2015 a Digital Single Market Strategy for Europe[6], which announces it will review the AVMS Directive, including measures for the promotion of European works. Promotion of transnational circulation is also a priority in the Commission's copyright initiatives[7] and in accompanying measures funded from the Creative Europe Programme. Furthermore, the Commission launched a Film Forum in 2014 to look for synergies between national and EU policies.

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3 European Audiovisual Observatory/Lumiere, Rentrak. Although there is a steady incline, the figure for 2014 has to be interpreted with caution as it can't be established with certainty to which extent the sharp increase in 2014 was caused by an increase in coverage and to which extent it reflects an actual increase in the number of films on release. In 2013, the number of European film releases was 4 916.

4 European Audiovisual Observatory/LUMIERE. The share of admissions for films from other countries is 3,7%. Counted as "European films" are films majority financed in a European country, excluding so called "incoming investment" films, i.e. films that are produced in Europe with incoming investment from US studios.

5 European Audiovisual Observatory 'The origin of films in VOD catalogues in the EU' (April 2016). The report concerns the origin of films (not drama series) which were available in 91 selected video-on-demand catalogues in the European Union in October 2015.

6 COM(2015) 192 final - doc. 8672/15.

7 Proposal for a regulation on ensuring the cross-border portability of online content services in the internal market (COM (2015) 627 final – doc. 15302/15) and the Commission Communication of 9 December 2015 on "Towards a modern, more European copyright framework" (COM (2015) 626 final – doc. 15264/15).

At national level, Member States are also evaluating and adapting various policies for audiovisual production and distribution, such as financial incentives (grants, soft loans, tax reliefs), levies and quota.

Policy makers face a number of dilemmas among which are the following ones:

a) Content creation versus audience reach

There is a boom in content creation, which is interesting from a creative point of view, but there is also a growing mismatch between the number of films produced in Europe and the number of films being circulated and viewed, in particular across borders. Public policies hence seem less successful in supporting marketing and distribution. For smaller countries and languages, it seems particularly challenging to sustain national productions and also raise their international appeal.

b) Co-productions

Co-productions have a potential to circulate better across borders as they are developed with broader, European market and audience, in mind. There is a lot to be gained from co-producing between countries, but the complexity around the financing of European and international co-productions is growing. Investors and producers from different countries must comply with different regulations and meet different criteria, which makes international cooperation increasingly challenging.

c) National financial incentives

Public support has to comply with EU law especially state aid rules. While public funding is evolving, most schemes are still tied to specific countries, platforms (cinema, television, video-on- demand, virtual reality and gaming) or genres. For new types of audiovisual content that cannot be pigeonholed to a specific genre, it is more difficult to get funding because the system is not yet adapted to the converging media world. At the same time, it is especially this kind of content that aptly uses different platforms to reach different groups of audiences.

As funding through grants is under pressure, providing tax reliefs appear to be an alternative way to attract audiovisual productions to national territories. At the same time, it may lead EU Member States to compete with each other, and it does not necessarily increase the circulation of and appetite for European audiovisual content.

d) Quotas

Most TV broadcasters in the Member States easily meet the minimum percentage of 50 percent of European works prescribed by the AVMS Directive (Article 16). This is mostly national content for which domestic audiences have a natural appetite.

For video-on-demand services, the situation is even more complex. Having a certain amount of European works in a catalogue does not mean viewers will actually find and watch it.

The current AVMS Directive (Article 13) leaves room for testing different approaches for video-on-demand services and evaluating their effectiveness in a relatively new market. However, this results in different ways the directive is implemented by Member States which might also have a negative effect on the level playing field.