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**EBU contribution to the European Commission call for input
on the forthcoming review of the EU regulatory framework
for electronic communications and services**

General remark

The EBU attaches great importance to the European Commission i2010 initiative "A European Information Society for growth and employment" and in particular to its convergence pillar "a single European information space" and its two main regulatory tasks, which are the review of the Television without Frontiers Directive and the review of the electronic communications regulatory framework (the telecommunications package).

As providers of audiovisual media services, broadcasters are naturally concerned by the revision of the Television without Frontiers Directive, which is the cornerstone of the regulation of audiovisual content in Europe. However, they are also concerned by the revision of the regulatory framework for electronic communications, which covers networks, given that they also supply such content to the public.

In this connection it is of prime importance that the public should have access to a broad range of high-quality content and services from any network or platform of its choice which can be practically arranged. Furthermore, users, as consumers and citizens, will embrace new services and new technical devices only if these allow them easy access to interesting content of quality.

The revision of the regulatory framework for electronic communications should continue to take into account the links which exist between content and networks, and particularly concerning access to content which is of prime importance in a digital convergent environment. This entails not only access by citizens/consumers to content but also access by content providers, and not least broadcasters, to the networks and associated facilities which are necessary for reaching the public. This is crucial not only for consumer choice but also for cultural diversity and media pluralism.

Despite technological convergence, the regulatory framework for electronic communications must continue to guarantee that the networks continue to fulfil their fundamental role of distributing content and audiovisual services alongside other services. The general aim is to ensure a balance between networks and content and a level playing-field for all operators providing audiovisual content services by electronic means.

It is also important to bear in mind that the competition rules cannot deal with all media aspects and are not sufficient for achieving certain public interest objectives, such as media pluralism and consumer access to a broad range of content. That is why certain ex ante rules, such as must-carry rules and access rules, need to be maintained, and indeed improved, in the digital television era.

Concerning in particular public service broadcasters, as major producers and providers of European content, they will continue to play in the years ahead, a specific key role in achieving the European Union's objectives in relation to the renewed Lisbon strategy, the i2010 initiative. This means that digital technology should be used to ensure the widest possible access to a broad range of quality content for all, as well as to underpin pluralism and freedom of information and expression, the growth and diversity of creative industries across Europe, and European competitiveness.

Although it is too early to say whether the current EU regulatory system has achieved its objectives or what impact it has produced to date (since most of the Member States implemented it only recently), we can already stress the key points for broadcasters, and in particular for public service broadcasters.

1) Spectrum management

EBU Members share the view that scarce resources such as terrestrial frequencies should always be administered and used in the most effective way. It should be noted that the current regulatory framework already permits flexibility for the evolution of systems.

However, the introduction of spectrum trading in the broadcasting bands as a new spectrum management tool should be studied carefully before being adopted. It is not easy to understand how it would work in practice. Terrestrial broadcasting frequencies are assigned for use by individual broadcasters at specific transmitter sites (rather than being allocated on a nation-wide basis). Consequently, broadcasters have no excess capacity to trade with other potential users unless they are prepared to switch off existing services. From the technical standpoint, special care must be taken with the question of interference to ensure compatibility between services and to ensure interference free usage of the spectrum. Interference to analogue television services often takes the form of patterns on the picture which are obtrusive to different degrees, whereas interference to digital television services can result in a blank screen. Respecting interference rules will be absolutely critical in the digital environment.

Digital broadcasting in general makes much more effective use of spectrum than does analogue broadcasting. However, concerning a potential digital dividend, it cannot be assumed that considerable VHF and UHF spectrum will become available for non-broadcast services after analogue switch-off. In the digital environment, the public place new expectations on broadcasters. It will demand a greater choice of services adapted to a wide range of qualities and receivers from hand-held devices to large-flat panel displays with high definition (HDTV) capability.

Furthermore, current preparations for the Regional Radio Communications Conference to be held at the International Telecommunications Union (ITU) in 2006 (RRC-06) indicate that the digital demands of almost all Member States far exceed the spectrum available. Additionally, many of the requirements submitted to the ITU specified particular channels which make European harmonization of spectrum bands for use by other services in the future virtually impossible.

The start of operational digital broadcasting transmissions has made use of the spectrum bands currently used by analogue transmissions. The coexistence of both systems has been possible by imposing technical restrictions on digital broadcasting to protect analogue services. Consequently, an early analogue switch-off will be beneficial for European broadcasters, but the size of any digital dividend in each country will not be known until after RRC-06. The role of the EU should be to ensure appropriate cooperation among Member States to help shape the requirements for spectrum management, and contribute to the successful implementation of digital technology. Moreover, international agreements must always be respected.

To summarize, in order to fulfil their obligations under national law (in particular obligations of near-universal coverage), public service broadcasters need adequate, stable radio spectrum for transmitting their programmes and services, both now and in the future.

2) Must-carry rules

EBU Members consider that must-carry rules are of prime importance and will still be necessary in the digital environment particularly in terms of guaranteeing the pursuit of legitimate general interest objectives such as media pluralism, cultural diversity and consumer protection in the transmission of audiovisual content. These objectives do not change as a result of the change from analogue to digital transmission¹. The effect of must-carry rules being extended to digital platforms will also be to ensure that sections of the public which will not subscribe to pay services will continue to receive free-to-air services in the digital world.

¹ In its Recommendation Rec (2003) 9 on measures to promote the democratic and social distribution of digital broadcasting of 28 May 2003, the Council of Europe states that given the diversification of digital platforms, the must carry rules should be applied for the benefit of public service broadcasters as far as reasonably possible in order to guarantee the accessibility of their services and programmes via these platforms.

Free-to-air channels, including all public service broadcasters channels should be part of the basic package or offer of any network operator. Must-carry rules should apply to the whole programme signal or channel (including not only pictures and sound but also additional services, such as teletext and EPG information) provided by the public service broadcaster.

3) Access rules

EBU Members also consider that access rules, and in particular Articles 5(1)(b) and 6 of the Access Directive, are important and necessary as regards access to associated facilities (CAS, APIs, EPGs) in digital television. They cannot be regarded as an alternative to must-carry rules. The latter aim to guarantee universal access for citizens/consumers to certain content, whereas the purpose of access rules is to facilitate access by broadcasters to the networks and associated facilities.

Consequently, the access rules should be maintained and even improved so that they are extended to possible new gateways.

4) Interoperability

EBU Members realize that open standards cannot, of themselves, ensure interoperability. Proprietary systems and gateways continue to be used which hinder the citizen's reception of a broad choice of services. In practice, interoperability of digital interactive television services has not yet been achieved in Europe.

The development of new technology (for example, interactive television systems, systems for delivery to handheld receivers, broadband delivery, HDTV, DRM) will bring about a range of interoperability problems for the industry and the public. Work must continue to find solutions to ensure interoperability. It is important to reaffirm that citizens or consumers must have access to a broad and diversified range of content and services on different platforms with the highest possible quality and at the lowest possible price. This objective can be achieved most simply through market competition via open standards which are also interoperable systems. Action should be taken by the European Commission to remind Member States that Article 18.1 of the Framework Directive requires them to encourage the use of an open API.

The issue of possible encouragement measures for interoperability needs to be examined closely. The Commission should suggest such measures to the Member States and facilitate their introduction where necessary. Improved interoperability of digital devices will also foster consumer acceptance of digital broadcasting and will promote digital switch-over.
