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**STRATEGY OPTIONS TO STRENGTHEN
THE EUROPEAN PROGRAMME INDUSTRY
IN THE CONTEXT OF THE
AUDIOVISUAL POLICY OF
THE EUROPEAN UNION**

Green Paper

(presented by the Commission)

FOREWORD

The White Paper "Growth, Competitiveness and Employment" adopted by the European Council in December 1993 opened the debate on the major trends in our society on the eve of the 21st Century. Among the sectors where the stakes are highest, the White Paper identified the Information Society and, in particular, the audiovisual sector as having the greatest potential for growth and job creation.

A key component of this information society, the audiovisual industry is undergoing a transformation, in particular as a result of rapid technological developments.

Films and television programmes, as prime vectors of European culture and a living testimony to the traditions and identity of each country, deserve special attention. These programmes play a strategic role in what is happening in the audiovisual sector and today are fundamental to the future diversification in the sector.

The European Union must look resolutely to the future, take part in the developments that are occurring worldwide and play its full role in mastering and making use of this new technology. European operators must be in a position to adapt their strategies and forge alliances in order to benefit from the overall growth in the sector.

Coming in the middle of all this manoeuvring, the full implications of which cannot easily be measured today, this Green Paper looks at the future of one specific industry: the European film and television programme industry.

How can the European programme industry be made more competitive and more open on the world market? How can it be guaranteed its share of the overall growth of the audiovisual sector? How can it be placed in a position to realize its potential in terms of employment? How can European cultures be promoted without causing any individual country to lose its identity?

All these questions are discussed in this Green Paper as preparation for a wide-ranging debate in the European Union and the definition of options for the future under three heads: the rules of the game, financial incentives and the convergence of national support systems.

On the basis of this Paper the Commission intends to organize wide-ranging, in-depth consultations, reflecting the collective effort that will be needed in order to strengthen the European programme industry.

Contributions from all those concerned will be welcome

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1. INTRODUCTION

The audiovisual industry is a large, complex sector currently undergoing fundamental changes, brought about in particular by rapid technological developments.

These changes are causing new interactions between the different cultural, technological and industrial components of the industry.

They are also generating new audiovisual products and services reflecting the multimedia and interactive approach of the information society.

These developments are creating new openings for operators who will have to adapt their strategies and forge new alliances. This convergence will involve the film industry, broadcasting services and the television programme industry, cable and telecommunications operators, the publishing industry and manufacturers of information and communications technology equipment.

The sustained growth of the audiovisual sector is set to continue, thereby generating great potential in terms of creation of highly skilled jobs.

These phenomena are all present at world level and it is not yet possible to gauge them fully.

This Green Paper and the debate to which it should give rise focus on one specific aspect of the audiovisual sector: the development of the European film and television programme industry.

The Commission is aware of the difficulty of isolating this aspect among the many problems connected with the changes in the sector. But it believes this exercise to be necessary to take account of two characteristics of the programme industry:

- films and television programmes are not products like any others: as the prime vectors of culture they retain a specific place in the midst of the manifold new types of audiovisual products; as living testimony to the traditions and identity of each country they deserve encouragement;
- the programme industry is - and will be even more so in future - a strategic element in the development of the audiovisual sector: as recent developments show, the most powerful operators on the world market (equipment manufacturers and cable and telecommunications operators) are seeking to control the most important programme catalogues.

The debate initiated by this Green Paper on the future of the European programme industry must, of course, take account of the general trends in the audiovisual sector. It will draw on thoughts about the development of the information society.

But the Commission's present analysis, taking account of technological developments, convergence of industries and the changing market structures, already identifies four fundamental requirements for the future of the European programme industry:

- it must be competitive in an open worldwide market;

- it must be forward-looking and be involved in the development of the information society;
- it must illustrate the creative genius and the personality of the people of Europe;
- it must be capable of transforming its growth into new jobs in Europe.

Building on the additions made by the Maastricht Treaty to the existing Community instruments (in particular the new provisions on culture) and the acquis of Community audiovisual policy and the trends in this sector, this Green Paper sets out to present the options for the future on the basis of these fundamental guidelines.

The essential problem can therefore be summed up as follows:

How can the European Union contribute to the development of a European film and television programme industry which is competitive on the world market, forward-looking and capable of radiating the influence of European culture and of creating jobs in Europe?

The approach is therefore to consider what the European Union can contribute. But it is obvious that these objectives will not be attained unless there is a coordinated effort by all the actors at whatever level.

This Green Paper will also have a logical place in a series of further reflections and debates launched by the Commission to determine what role the European Union must assume in meeting the challenges facing the audiovisual sector in Europe.

Foremost among these exercises in futurology is the White Paper on Growth, Competitiveness and Employment¹ adopted by the European Council in December 1993 which provides the Union with a framework for action and thought on the development of the information society, underlining the growth potential of the audiovisual sector, in particular in terms of employment. Within this medium/long-term framework a high level working party on the information society has been set up to consider matters relating to the objectives of the European Union as regards the development of infrastructure and applications. This is evidence of how the European Union intends to play a full role in harnessing and using the new technologies.

The technological and industrial issues involved in the "digital revolution" in television broadcasting are discussed in a Commission communication to the Council and Parliament on digital broadcasting.² While this document (and the proposed directive on standards for satellite broadcasting)³ is being discussed in the various institutions, the

¹ Growth, competitiveness, employment - the challenges and ways forward into the 21st century - White Paper: COM(93) 700 final of 5 December 1993 - Part B, II, Chapter V, Sections A and C. For the presentation of these aspects of the White Paper, see 3.1 below.

² Communication from the Commission to the Council and the European Parliament - Digital video broadcasting - a framework for Community policy. Draft Council resolution - COM(93) 557 final of 17 November 1993.

³ Proposal for a directive of the European Parliament and of the Council on the use of standards for the transmission of television signals (including repeal of Directive 92/38/EEC) - COM(93) 556 final of 15 November 1993.

Commission is watching carefully the work of the European Digital Video Broadcasting Group which comprises most of the European operators concerned.⁴

Finally, in the context of the changes in the audiovisual market structures and the development of operators' strategies, the Green Paper entitled "Pluralism and media concentration in the internal market - an assessment of the need for Community action"⁵ analyses the question of whether the European Union should be laying down rules on ownership of the media.

The outcome of these different activities will help shape the framework in which a new environment for the audiovisual sector and a new communication society will gradually emerge in Europe. The Commission will endeavour to coordinate the different strands into an overall policy.

To take into account the analyses and suggestions of all the audiovisual professionals in the Union, the Commission, in preparing this Green Paper, conducted wide-ranging preliminary consultations during which three types of contribution were received:

To begin with the audiovisual sector presented its views and suggestions:

- professional associations representing the audiovisual industry at European level and various professional bodies responsible for managing the Community support measures available under the MEDIA programme⁶ were sent a questionnaire;
- in addition, any company or organization which expressed the wish to contribute to the exercise was requested to submit its views and suggestions in writing.

Secondly, the Commission set up a Think Tank⁷ last November to present a diagnosis of the audiovisual industry and suggestions for the future. The report produced by the Think Tank reflects the opinions of its authors and is not therefore a document put out or approved by the Commission.

Finally the competent authorities of the Member States were asked to submit their views.

⁴ For the presentation of the work of the DVB Group, see 4.2 below.

⁵ COM(92) 480 final of 23 December 1992.

There has been widespread consultation in connection with this Paper and the conclusions reached will be set out in spring in a communication to the Council and Parliament in which the Commission presents its position on the need for action.

⁶ Council Decision (90/685/EEC) of 21 December 1990 concerning the implementation of an action programme to promote the development of the European audiovisual industry (MEDIA) (1991-95): OJ L 380, 31.12.1990, p. 37).

⁷ This Think Tank was chaired by Antonio-Pedro Vasconcelos (TV and cinema producer and former coordinator of the National Secretariat for the Audiovisual Sector in Lisbon). The other members were David Puttnam (film producer, Director of Anglia Television and head of Enigma Productions), Michèle Cotta (journalist and TV producer with France 2, former Chairwoman of the Audiovisual High Authority and former head of the TF1 news service), Peter Fleischmann (film director, head of Hallelujah Films and founder of the European Federation of Audiovisual Film Makers) and Enrique Balmaseda Arias-Davila, lawyer, former legal adviser to Spanish television and former Director-General of the Institute of Cinematographic and Audiovisual Arts in Madrid).

It also heard the expert opinion of Gaetano Stucchi (RAI) on matters relating to new technologies.

From the mass of contributions received,⁸ it was seen that though there were some contrasting, not to say conflicting, views on what instruments should be used to implement the Union's audiovisual policy, there was virtually unanimous agreement on the following points, confirming the need for wide-ranging debate on the future on the audiovisual industry in Europe:

the audiovisual industry is a special case amongst the high-growth industries, in particular with the possibilities it offers for job creation;

the safeguarding of the diversity of national and regional cultures, often expressed in terms of maintaining the choice available to the public, is now clearly linked to the development of a predominantly European programme industry which must ultimately be profitable;

digital compression technology is seen as revolutionary because it appears set to transform the sector, accentuating the strategic role of the programme industry;

if the European Union wants to strengthen its audiovisual policy, it must act quickly, otherwise it will be overtaken by the rapidly developing technology and the unavoidable liberalization of the industry at international level.

While this Green Paper broadly reflects these points on which there is consensus, it is mainly concerned with initiating a wide-ranging debate on the options the European Union should take for the future.

To this end it will be circulated extensively and in-depth consultations will be organized.

⁸ For the list of contributions, see Annex 1.

2. FUNDAMENTAL TRENDS IN THE PROGRAMME INDUSTRY

The diagnosis of the condition of the European programme industry reveals its structural shortcomings and its malfunctionings at a time when new trends are becoming apparent as a result of technological change.

2.1 The diagnosis

The diagnosis of the situation in the European programme industry produced by the Think Tank, the professional organizations and the Member States is detailed - often highly so - and, apart from some slight differences between the various analyses, notably with regard to the causes of the phenomena under investigation, broadly consistent, enabling the Commission to give an overview of the key aspects of recent developments before going on to highlight the main upheavals likely to result from current technological advances linked to digital transmission.

2.1.1 The film industry

The current state of the European film industry shows clear evidence of a decline in the market share of European films. The causes of the decline are complex but there is agreement on some of the main factors involved.

(i) Decline in the market share of European films

While cinema attendance has been falling steadily (although the decline now appears to be bottoming out in some of the Member States), there has been an increase in the part played by television (pay-channels in particular) and the video cassette in the screening of cinema films. Although the success of a film on these alternative media is often largely determined by its success on the large screen, it is the video sector (hire and sale) which generates most of the revenue.

But whatever the medium, the market share of European films continues to shrink in the face of competition from imports from outside Europe, in particular from America.

Falling attendance has indeed affected only European films, and American films remain popular with their market share averaging nearly 80% for the European Union as a whole. And the "showcase" effect of large-screen success obviously has an impact on the television and video sectors.

(ii) Partitioning of national markets

Cultural and linguistic diversity clearly plays a part in market partitioning. But while the circulation rate of European films within Europe remains low, the Europe-wide distribution of American films is high, a paradox which has resulted in a polarization of supply between national films (dependent in terms of quantity and quality on the size of their national market) and non-European films.

All fingers point at the weakness of European distribution structures as one of the factors identified as causing this phenomenon. But apart from this structural defect, some blame the failure to take account of market realities throughout the creation, production and distribution process.

*** Fragmentation of distribution structures**

The American film industry invests massively in distribution and promotion throughout the Community. As revenue from the European market is now essential to cover ever-rising production costs, it is building pan-European strategies based on powerful distribution networks.

The European film industry, on the other hand, is struggling with fragmented distribution structures. With nearly 1 000 distribution companies in Europe for 400 or so European films produced each year, this sector is oversized and does not even provide genuine international distribution networks at European level.

The upshot is that only 20% of European films go beyond their national frontiers. Films are released in a number of countries but without any overall strategy. Only if they are a success on the markets where they are first screened will they be distributed further afield. But this step-by-step approach deprives distributors of the economies of scale that could be achieved via a comprehensive promotion strategy.

This fragmentation has also put the distribution sector in a position where it is incapable of investing in film production, thereby depriving the industry not only of resources but also of an indispensable link with the market.

*** Failure to take account of market realities**

This breakdown in essential links with the market is evident at two levels in particular.

At the creation stage, European projects are handicapped by a lack of development. This is the crucial stage where original ideas must be reworked and geared more towards other audiences, whether elsewhere in Europe or throughout the world. It is regrettable that some public support mechanisms are unduly restricted to domestic production and do not give sufficient incentive to work for European and transnational markets. This creation/development stage is essential: even with the most sophisticated distribution mechanisms, if no account is taken of the audience's tastes and demands, the European film industry will never be competitive.

At the promotion and marketing stage, compared with the massive investments of American operators (the promotion budget for blockbusters is frequently as much as the production budget), European campaigns are on too small a scale and lack experience in pan-European and worldwide marketing.

(iii) The spiral of deficit

With rising production costs compounded by failure to break into the different markets the European film industry is being sucked into the spiral of chronic deficit.

The increasing participation by broadcasters in production financing has so far done little to disrupt this pattern. Investment in co-productions is geared primarily to securing access to programmes attracting what are usually national audiences.

The small scale of the European film industry locked into national markets too restricted to guarantee continuing or profitable investment, is reflected at all levels, both upstream and downstream of production proper. The result is a crisis of confidence and a diversion of European capital, notably to the American programme industry.

(iv) The perverse effects of support systems

Apart from the shortcomings connected with the restriction of support mechanisms to domestic production, the proliferation of national and regional aid schemes for film production - with operating rules which pay little if any heed to market requirements - can create "lame-duck" mentalities in the European industry.

Where this happens, European operators become experts in milking these schemes and are then incapable of taking financial risks commensurate with the box-office receipts they can expect. They then develop projects without a thought for potential audiences, knowing full well that a substantial proportion of production costs will be covered by public aid.

The fact that some films produced with public funding are never distributed in cinemas is clear evidence of this.

The principle of public aid is not in itself the cause of this phenomenon; it can be an effective stimulus for the development of profitable projects, provided that the rules governing such aid take account of the market dimension. The reverse phenomenon can also occur, namely that where all public aid is discontinued, the film industry disappears almost entirely. This is why thought must be given to the priorities, the volume and the mechanisms of public financial support in the European Union.

2.1.2 The television industry

In the television sector the explosion in programme demand has failed to boost the European programme industry, which remains locked into fragmented national markets.

(i) Explosion of demand and rising production costs

The proliferation of broadcasters in the 1980s combined with longer viewing hours produced a veritable explosion of programme demand.

Increased receipts have not compensated for rising production costs or for soaring fees for rights to broadcast sports events. Programme budgets have been cut and broadcasters have had to make massive use of non-European material from programme catalogues that have already paid for themselves on other markets.

(ii) Low rate of programme circulation within Europe

Moreover, as most of the new broadcasting services have been developed on a national basis, television production has focused on satisfying national audiences with very little by way of programme circulation within the Community (other than in language areas).

The small number of co-production and co-financing ventures involving operators from more than one Member State is not conducive to the development of projects likely to attract European or world audiences. This has had an adverse effect on the production of television films in particular but television series, cartoons and documentaries are also affected, and these programmes are vital for the creation of catalogues. They are stock programmes which can be screened repeatedly. Catalogues of such programmes are the economic heritage of the television programme industry.

(iii) Weak production structures and catalogue shortage

Production structures remain fragmented, often dependent on one or two national broadcasters, and too small to compete on larger markets. They are undercapitalized and limited resources reduce their potential for building up catalogues, as programme rights are for the most part usually granted to broadcasters financing the production.

At a time when the emergence of pay-television has highlighted the strategic role played by catalogues in the launching of new services, these structural weaknesses are the Achilles' heel of the European television industry.

At the same time there is a tendency for broadcasters to integrate vertically, upstream towards production but also downstream towards conditional access technologies and individual receiving equipment.⁹ Recent alliances in Europe show that this tendency is set to increase, focusing on communications groups of telecommunications operators, catalogue holders and equipment manufacturers.

Despite the differences between the cinema and television sectors, the European programme industry can be said to display the following characteristics:

- it is fragmented into national markets threatening the survival of small producers unable to compete on European and world markets;
- the partitioning of national markets is compounded by a low rate of cross-border programme distribution and circulation;
- it is trapped in a chronic deficit spiral;
- it is unable to attract European capital, even though this is available for investment in non-European programme industries.

2.2 The new technology

The increasingly imminent transition from analog to digital broadcasting is so rich in potential that it is not excessive to use the term "revolutionary".

Based on digital compression (the vast quantity of information needed to transmit a moving image is "compressed" by means of algorithms), which is becoming increasingly sophisticated with every day that passes, digital transmission makes it possible:

⁹ Individual receiving equipment (apart from decoders) is mainly satellite dishes.

- to relay much more information on the same communications vector;
- to relay the same information on many different vectors (radio waves, cable, satellite, telephone lines ...) and develop multilevel user-interactivity;
- to access, store, rework and combine information at will in line with user requirements;
- to combine on the same networks services for consumers and services for business. The large investment required can be justified in economic and social terms by this extensive scope for utilization and the potential benefits for the user and profits for the supplier.

* The first possibility provides the audiovisual sector¹⁰ with a double option: quantity, quality or a combination of the two.

The quantity option will enable operators to use one and the same vector, either to provide a number of different services (increasingly specialized in nature) or to provide a single service on a staggered basis (near video-on-demand).

The quality option will enable them to play around with the different broadcasting parameters ranging from HDTV through the entire range of image quality and formats to mobile television and with the different sound channels and ancillary services (teletext ...) on one and the same transmission vector.

* The second possibility places on an equal footing all the different modes of programme transmission, practically fusing broadcasting and telecommunications. Thanks to digital technology, which has the potential to reduce the constraints imposed by frequency availability, access to a communications vector will become less and less costly. While the potential of digital technology can easily be realized with cable and satellite broadcasting, exploiting this potential with land-based radio transmission will depend to a very large extent on the approaches adopted by the Member States concerning the distribution of frequencies. Transmission modes will be selected depending on the level of user interactivity required.

* The third possibility virtually provides access to any information at any time with, as end result, the concept of multimedia, which allows the user to move around freely through all the information available and to combine images, texts and sounds at will.

In view of the scale and speed of the technological (digital) revolution, the European hardware and software (in the broad sense) industries will probably need to establish and develop new forms of cooperation and strategic alliance to exploit their respective strengths. If the multimedia opportunities are to benefit European firms, all parties involved must be given sufficient incentive to cooperate.

* The fourth possibility makes it difficult to accept that delays in introducing advanced digital infrastructures should jeopardize not only the availability to the consumer of a

¹⁰ The term "audiovisual sector" is used here to cover television broadcasting as well as all other telecommunications facilities able to transmit audiovisual programmes (see p. 7).

range of educational, entertainment and information services, but also the development of business services for professional users, on which the competitiveness of European companies depends.

The rich potential offered by digital transmission applies to all our communications systems but its impact on the economies of the image business will be decisive. Without opting for any given scenario it is possible to anticipate the main trends likely to result from this technological evolution, particularly as most of them are simply a consolidation or acceleration of trends already apparent on the audiovisual market.

2.2.1 Targeting of supply

Although the public has always been the *raison d'être* of the audiovisual programme or operator, it is the different distribution or transmission modes, and the economics underpinning them, that largely shape the influence of the consumer on the process as a whole.

Alongside the "mass media" approach offering "television for all" financed from licence fees or advertising revenues, the development of pay-television, subject-based or otherwise, has resulted in the phenomenon of channel loyalty, with viewers who are fewer in number but may well directly finance the service to which they subscribe.

The introduction of new types of service will accelerate this process of supply targeting led by consumer demand and purchasing power. For example:

- pay-per-view (PPV) enables the consumer to select a broadcast from a programme schedule limited both by the number of broadcasts and by the start-times (for example, ten films starting every quarter of an hour); the consumer pays only for the programme selected;
- video-on-demand (VOD) enables the consumer to select, at any time, a programme (or programme extract) from a catalogue which is virtually unlimited (the only limits are economic - capacity to acquire broadcasting rights - and technical - server storage and management capacity); the consumer pays only for the programme (or extract) selected;
- numerous types of services both interactive (enabling various levels of dialogue with the user) and multimedia (combining different types of information) may develop, resulting in an increasingly personalized pattern of consumption.

The change from the predominantly passive to the active consumer will have an impact on the economics of the audiovisual sector. As it is financed more and more by individual spending, so its mode of operation will become more and more like that of the cinema or video market. And if the viewer is to be won over, the link between programme promotion and programme distribution will have to be tightened.

2.2.2 Internationalization and globalization

The emergence of new technology for the development of transnational - even transcontinental - audiovisual facilities (satellite, cable, telephone) and for the diversification of storage media (video cassette, videodisc, CD-ROM,¹¹ CD-I¹²) is only one indication of the trend towards the internationalization and globalization resulting from the economics of the audiovisual sector.

The steady increase in production costs has made it essential to expand the audiovisual programme market, either by targeting new territory or by diversifying applications. This in turn means further investment, notably in the promotion/distribution business, and in the longer term the development of a global strategy.

The European programme industry has tended to submit to this trend rather than go along with it. As it has not yet exploited the potential of its domestic market, it does not have the necessary structures to benefit from this fundamental sectoral growth.

2.2.3 Explosion of programme demand and need for catalogues

An analytical appraisal of the audiovisual sector with a view to the imminent digital revolution reveals three different functions:

- the rights holder, who provides the programme;
- the broadcaster, who offers a package based on market knowledge;
- the communications vector, which provides the necessary medium.

Disappearance of the constraints resulting from the shortage of frequencies thanks to digital compression, the potential of which can be easily realized in the short term for transmission by cable and by satellite, will seriously alter the balance of power. Quite clearly, at the centre of the market development process, it will be the operators who develop new applications and provide the consumer with a variety of services who will benefit. But this will only be the case if the operators in question develop a content-based strategy: the potential of the broadcaster will be directly determined by whatever exclusive rights he has managed to acquire.

This content-based strategy, which applies in the case both of communications groups and of equipment manufacturers or telecommunications operators, is clearly reflected in the alliances currently being formed, in particular in the United States: the vertical integration of MCA and Matsushita, Columbia and Sony, Polygram and Philips, and Paramount and Viacom demonstrate that the most powerful operators on the world market are striving to acquire control of the most extensive programme catalogues.

¹¹ Invented in 1985 by Philips, CD-ROM (Compact Disc Read Only Memory) is capable of storing an enormous quantity of multimedia information (images, sounds, texts, ...) that can be read by micro-computer.

¹² Invented by Philips and Sony, CD-I (Compact Disc Interactive), like CD-ROM, stores multimedia applications but the drive is connected direct to the television and is operated by remote control. A large number of programme titles for the general public (games, education, culture, cinema) are already available on the market.

The new opportunities which this opens up for rights holders will be measured firstly in terms of quality: the quality of a programme will be determined by the ratio between the number of consumers it is likely to attract and the price they will pay to watch it. And secondly in terms of quantity: the launching of new services will be based on a critical mass of programmes constituting a catalogue that matches a given market segment. Moreover, production regularity (in terms of quantity and quality) will be a key factor in determining the structure of relations between programme industry and broadcasters.

Structuring the catalogues and boosting the production capacity of the European programme industry is therefore a fundamental challenge.

The capacity to offer a wide selection of programmes, one of the main results of the digital revolution, will enable the industry to cater for a wide range of requirements and types of user. Economies of scale in programme production will always be important, but many opportunities will arise for programmes geared to limited and specialized audiences. This is worth bearing in mind, since the cultural fragmentation of Europe has been a negative factor for the competitiveness of the European audiovisual industry: exploiting cultural diversity can be turned into an opportunity to be seized.

2.2.4 New products

Digitalization will not only bring with it a diversification of the means of distribution (in the broad sense) of audiovisual programmes. The new media (CD-I, CD-ROM) and the new services (services on demand, databases) mean that the concept of audiovisual programmes is now overtaken and replaced by a wide range of new audiovisual products.

The educational, information and entertainment functions traditionally assumed by television - although the arrangements vary from one Member State to another - will be developed on new applications using the potential of multimedia and interactivity.

Distance learning, for instance, which has been identified as a key vector, in particular for outlying regions and continuing training for small businesses, is an important avenue to be explored for the development of new types of service and product.¹³

In all these areas, the extension of the range of products already present on the market opens up prospects of certain new links within the programme industry.

First of all, the relationship between traditional programmes (cinema and television) and new products can be put in terms of synergy in the context of the globalization of the industry: for instance, a film (or cartoon) which has been a worldwide hit will quickly be taken up as the basis for a new video game (the characters and decors can be directly integrated in the game in digital form); similarly computer-assisted production of images for games provides basic experience for the production of cartoons or special effects in

¹³ The importance for education and training of the audiovisual media in general and television in particular is also underlined in the proposal for a scientific programme on targeted socio-economic research recently adopted by the Commission under the fourth research and technical development framework programme. The interactive and the supply-targeted approach are two important elements in the new information and communication technologies and there is a need for in-depth educational research in both areas.

films. Quite simply, any image produced and any experience acquired in any audiovisual subsector could give rise to new products at any other point in the image business.

Secondly, this relationship can also be expressed in terms of substitution: as the amount of leisure time available each day cannot go on increasing indefinitely, it is possible that the time devoted by consumers to the use of video games, educational or other services (on television or a home computer) will eventually be subtracted from the time spent watching traditional programmes. It is difficult to predict what will be the respective place (in cultural as well as economic terms) of the different types of audiovisual product in this new environment.

While this rapid overview of the many problems connected with the arrival of new multimedia products shows that it is impossible to define the frontiers of the audiovisual sector, it is also clear that a definition must be given of the programme industry, to which this Green Paper relates.

By programme industry, we mean the industry producing cinema films and television programmes.

Within the second category the main emphasis is on the production of stock programmes (fiction, cartoons, documentaries) which can be screened repeatedly and are thus the basic ingredients of catalogues. The other types of television programme (flow programmes) are very important for broadcasters and producers from an economic angle, but their value is nil (or little more) after the first broadcast.

The "traditional" programme industry will have to diversify and exploit the potential offered by new technology. But the wealth of the "traditional" catalogues will be a decisive factor in the success and profitability of this diversification.

With new technologies providing new possibilities for producing and transmitting pictures, we must turn our attention to these programmes and films, because:

- * they are the basis of the entire "image business";
- * they are essential for the launching of new technologies in the world market since the public bases its choice on the content of programmes, not on the technology used to produce and transmit them;
- * they are central to the cultural dimension of the industry, since the cultural impact of a country or region is largely dependent of the success of its programme-makers, whose products pass on not only cultural heritage but also lifestyles, and influence the daily lives of the people who watch them.
- * they constitute the fundamental link in a chain of creation, production, distribution and use, connecting a network of creative individuals and companies.

European cinema and television programmes are a basic cultural and economic asset and this Green Paper presents ideas on how best to protect, develop and use this asset.

2.3.4 Industrial imperative

This all points to an industrial imperative in terms of both the size of the structures involved and the way in which they operate.

The globalization of the market and the increase in production and promotion costs demand not only talent but also industrial structures of the critical size needed to secure the necessary financing and to constitute programme catalogues which have appeal for the different markets.

The future high-speed digital networks will be shared by entirely different services: voice telephony, information, video-on-demand, educational programmes, etc. The use of common technologies and the proximity of activities could influence the structure of industries which at present are independent. There will be convergence of interests and technical alliances involving the film industry, cable and telecommunications operators, the publishing industry and manufacturers of information and communications technology equipment. The effects of this phenomenon could prove extremely important for the financial structure of the audiovisual industry and for the range of diversification opportunities available to the industry.

Quite apart from critical size, another element in the industrial imperative is the modus operandi. With the economics of the sector being conditioned more and more by individual consumer choice it is important, if programmes are to find their public, that each production should determine the market segments on which its profitability can be guaranteed. To this end structuring the information flow between the different operating markets and the programme industry¹⁴ is just as vital as providing information for the public. And the constraints affecting audiovisual production vary depending on whether it is targeted at the world market, a local market or a very specialized segment of a transnational market.

¹⁴ Experience, notably of coded services and all other services relying on the development and management of a subscriber base will be crucial in the task of identifying the different publics. European creators and producers will have to be able to collaborate closely with specialists in this area with a view to more accurate targeting in project development and marketing. Similarly, information on technological developments affecting audiovisual programme production and operation must be effectively fed to creators, producers and other professionals in the image business.

3. THE CHALLENGES FACING THE EUROPEAN PROGRAMME INDUSTRY

In addition to the problems already identified, the European programme industry will have to meet the challenges that will come with the new information society: the risk of being sidelined into local markets and so missing out on the overall growth in the audiovisual sector; the chance to develop into a competitive industry which can make the most of our diversity of cultures and create new jobs in Europe.

3.1 The audiovisual sector in the new "information society"

Taking a medium/long-term view, the White Paper on Growth, Competitiveness and Employment devotes two large sections of the Chapter entitled "The changing society, the new technologies" to the information society and the audiovisual sector.¹⁵

Stressing the importance of the management, the quality and the speed of information for economic growth, the White Paper outlines the basic principles for establishing and implementing a common information area consisting of a number of indivisible levels:

- the hardware, components and software available to the user to process the information;
- the physical infrastructure (communications networks, satellites, etc.);
- basic telecommunications services;
- the applications, which offer users a wide variety of services;
- the users.

The White Paper underlines the importance of the establishment of a common information area for growth, competitiveness and employment in Europe. This analysis is even more relevant for the strengthening of the European audiovisual sector, as it will give consumers wider choice and develop new opportunities for the programme industry.

What the "digital revolution" will entail for the audiovisual sector is just one example of the impact of the emergence of a new "information society" which will transform dramatically many aspects of economic and social life. The boom of information and communication technologies made possible by digital applications is a powerful factor for economic and social improvement: a factor for growth, a factor for economic and social cohesion, a factor for effectiveness of other major infrastructures, a factor for development of new services and hence a factor for job creation.

3.1.1 The objectives of the European strategy

In response to the strategies developed by the United States and Japan, which are based largely on the development of information infrastructures ("digital highways") and new information and communication technologies, the European Union must step up its action to create a genuine common information area as soon as possible.

¹⁵ Chapter 5, Sections A and C.

The White Paper identifies three fundamental objectives for this European strategy:

- from the outset the approach must be placed in a world perspective with the encouragement of international alliances;
- account must be taken of specific European characteristics (multilingualism, cultural diversity, lack of economic uniformity);
- conditions must be created whereby, in an open and competitive international system, Europe still has an adequate take-up of basic technologies and an efficient and competitive industry.

To ensure that these objectives have maximum impact on employment and that they promote the development of new markets and a competitive environment, a European policy will have to be introduced, focusing on five interdependent priority themes:

- informing firms about best practice and developing European information and communication technologies;
- establishing and implementing rules and policies which stimulate private initiative with particular emphasis on competition, universal service, standardization and openness but with guarantees for data protection and privacy and the security of information and communication systems;
- providing the Community with basic trans-European telecommunications services with emphasis on interoperability of networks;
- developing the right training;
- harnessing technologies and enhancing the performance of Europe's information and communication technology industry, by the promotion of "technological strategy watch" and support for research and development effort.

3.1.2 Implications for the audiovisual sector

Audiovisual services are but one individual category in an ever-widening range of information services for firms and consumers; but they are, of course, foremost among the beneficiaries of the implementation of such a strategy. Their "supplier", the programme industry, likewise has everything to gain from the rapid development of a common information area. Without this demand-pull attraction exercised downstream by the development of a maximum of services, any stimulation of the European programme industry (stimulation of supply) would be doomed to failure.

Apart from the trends connected with the introduction of new technologies which are already evident on the audiovisual programme market (in particular the globalization of the industry), most of the priority themes for establishing a common information area can easily be transposed into the audiovisual sector.

Bringing the new technologies to companies working in programme production is a key challenge at a time when the very concept of the programme needs to be reviewed in the light of multimedia developments. In this connection the new information and communication technologies will require us not only to rethink the manner of developing and making new audiovisual products but also to learn how to use a multitude of new

ways of exploiting and recycling existing catalogues in order to give a fresh boost to the influence of Europe's cultures.

A competitive environment should generate new types of services which will help realize the economic value of the diversity of European audiovisual production.

The development of infrastructures in the form of trans-European communication networks should increase the size of new markets and so enhance the profitability of investments in both audiovisual services and the programme industry.

The development of appropriate training in the programme industry is essential not only to direct professionals towards the market-place but also to enable them to benefit from the potential offered by the new technologies.

These routes will all lead to the environment required to enable the European programme industry to benefit from convergence with the telecommunications, publishing, consumer electronics and computing sectors. The entrance of new actors, with greater financial resources, on the audiovisual stage opens up new prospects in terms of new investments and new outlets for the European programme industry.

The White Paper (which announced this Green Paper¹⁶) also translates the development potential of the audiovisual sector into employment terms:

"The audiovisual sector has a highly labour-intensive structure.... The sector intrinsically provides many high-level 'grey-matter' jobs, like technicians, performers, script-writers, directors, and so on. It is thus potentially less vulnerable to competition from low labour cost markets. Though there is a lack of reliable statistics on employment within the sector, it has been estimated that at least 1.8 million people are earning their living in the EC audiovisual services.... It is clear from the vigorous demand-side growth trend, accentuated by technological developments, in the audiovisual software sector in Europe, and from the nature and structure of the employment that it can provide, that there is remarkable potential for job creation in this sector.... In line with the increased growth predicted for the sector, on the condition that the growth is translated into jobs in Europe and not into financial transfers from Europe to other parts of the world, job creation could be of the order of two million by the year 2000, if current conditions prevail. Furthermore, bearing in mind that, if proper resources are deployed, there is a clear potential for an increase in our share of the market, it is not unrealistic to estimate that the audiovisual services sector could provide jobs, directly or indirectly to four million people."

This industry can therefore derive nothing but benefit from the creation of a European information area. What is more, it must help speed up its introduction, since any delay will subsequently turn out to be a handicap for our programme industry which will have to compete with non-European industries well versed in the multimedia techniques of the

¹⁶ "Moreover, a Green Paper on audiovisual policy will be presented by the Commission during the first semester of 1994 setting out suggestions on how existing policy instruments in this field may be developed and refined in order to maximize their impact and continue to guarantee not only the survival but also the growth of a viable audiovisual software industry in Europe into the year 2000" (Chapter 5, Section C of the White Paper).

future and with the accumulated experience and innovation capacity which will guarantee growth and competitiveness on the world market.

3.2. The dangers

Bearing in mind the various trends outlined above, what are the dangers and opportunities facing the European programme industry?

The main dangers can be summed up in a few words: the European industry may be sidelined into local market segments and fail to benefit from the overall growth in the audiovisual sector.

3.2.1 Suffocation in partitioned markets

Unless partitions between markets are removed and a new direction given at European level, the European programme industry faces gradual suffocation within the tight confines of its national boundaries.

In some Member States the industry has managed to derive some benefit from the first wave of expansion, which saw the proliferation of audiovisual services and the development of the video market. However, these have mostly been short-term gains and the industry has failed to remedy the chronic production shortage or constitute catalogues which are attractive for other markets. By contrast, the American industry has benefited fully from the expansion of the European market and readily invested in its development (e.g. the video market, pay television and networks of cinemas). It has consolidated its market share and, armed with its catalogues, has established itself as an indispensable partner for the launch of any new service.

With the 'digital revolution', the European market is set to become the major prize in the global struggle for market supremacy. Only a genuinely European industry, backed by its most powerful players, can be a match for the world's communications giants.

3.2.2 Refusal to move with the times

Since no such industry exists and we therefore stand to lose out both economically and culturally, some observers are tempted to oppose the introduction of the new distribution networks, which will be unified around a digital language and hence more efficient.

However, it must be stressed that, quite apart from its disastrous consequences for related European industries such as telecommunications, computing, consumer electronics and publishing, this Luddite approach would seriously undermine our chances of ever developing the programme industry. Not only is it essential that we coordinate restructuring measures throughout the communications industry in order to strengthen the European programme industry, we must also develop distribution networks of all kinds (and in particular those at the leading edge of technology), if we are to ensure growth in this sector.

3.3 The opportunities

Europe seems to possess all the prerequisites for developing a strong and competitive programme industry: it has the talent (which, incidentally, is easier to export than actual programmes); it has a domestic market of over 300 million consumers; it has adequate financial resources; and it has skills in the new production and broadcasting techniques (notably digital compression, which European firms have played a major part in developing in the United States).¹⁷

3.3.1 Overcoming the language barriers

Besides the obvious structural defects in the European audiovisual industry, observers over the last thirty years have generally pointed to the linguistic and cultural diversity of Europe to explain or justify its permanent state of crisis and underdevelopment.

Without going into the rights and wrongs of this argument, it is worth noting that the 'digital revolution' brings with it the potential to overcome or even capitalize on what has hitherto been seen as a structural constraint.

On the language front, digital compression makes it economically viable to edit and broadcast works in a number of languages. Several different soundtracks or sets of subtitles can be added, provided they already exist. Compression cuts costs drastically and allows a wide variety of combinations to be used in the same broadcasting medium thus offering audiences increased possibilities of access to European programmes.

These new technical possibilities must be used to the full in order to remove partitions between national markets and enable programmes to cross borders. This will require a special effort in bringing these new technologies to firms working in the industry. It will also mean developing high-quality dubbing and subtitling, the poor quality of dubbed and subtitled versions being the real reason why programmes fail to reach other markets or turn out to be flops, rather than the absence of such versions.

If the industry is to benefit from the European market, investment in dubbing and subtitling is a priority requirement.

3.3.2 Turning diversity to advantage

As for 'cultural barriers', the increased specialization of supply will, to some extent, enable Europe to develop a quality market where the diversity of programmes will become a valuable economic asset.

As the public is faced with an exponential increase in services and a growing variety of forms and media, the differentiation of products on the market will be a vital factor. The trend towards more uniform programmes supplied by companies seeking to maximize their share of the audience will be followed by a fragmentation of the market; companies

¹⁷ The European system for the production of high-definition videos, including post-production (montage, special effects, etc.), which is already based on digital technology, is very successful and much appreciated by producers and directors in television and, increasingly, in cinema.

will be forced to develop a strategy based on differentiation with the aim of satisfying ever-smaller audiences that are nevertheless capable of sustaining a specific product.

This opens up the prospect of a European audiovisual industry where diversity and quality of production are allowed to flourish and which at the same time is economically viable.

A striking illustration of this point may be seen in recent trends in the market for the sale of video cassettes.¹⁸ While the video rental market is confined almost exclusively to films, sales have quickly opened up to other products (programmes for children, documentaries, sport, natural history, music and tourism, etc.).¹⁹

The film sector of the video market is dominated by the American industry (although experience shows that it is possible to sell European films which would not have been successful in the rental market). However, the European market share of the non-film sector is steadily increasing. This market segment illustrates the European public's need for diversity. Moreover, it is the only market segment where Europe's share is in fact increasing!

The same thing can be said about the possibilities opened up by the development of new multimedia facilities. One example is the opportunity offered to the programme industry by the possibility of exploiting in multimedia form the enormous wealth of Europe's cultural heritage (museums, libraries, architectural sites ...).

It is tempting to draw conclusions from this analysis for trends in the market as a whole in the 21st century, but we must bear two things in mind:

- concentrating on 'market niches' may be a way of safeguarding and developing diversity, but it is no substitute for a wider strategy aimed at building up attractive programme catalogues for broader segments of the European and world markets;
- to make the most of these 'market niches' we need a pan-European approach: the narrower the target audience, the greater the need for broad geographical coverage.

Another cultural and economic opportunity is now emerging in Central and Eastern Europe, with the development (or revitalization) of the audiovisual sector there. A strong and competitive European programme industry can both contribute to this development and profit from it.

By offering competitive programmes across the whole market-range and capitalizing on the diversity of Europe throughout the continent, the European programme industry can

¹⁸ Although the market for the sale of video cassettes (*sell-through*) is a relatively recent development, it has already outstripped in volume the market for video rental. In Germany, for example, it accounts for 55% of the total video market.

¹⁹ For example, in the sale of video cassettes on the British market from 1991 to 1993, the share of films fell from 44% to 30%, while that of general-interest and health and sport programmes increased from 6% to 22% and 6% to 19% respectively. Although the main beneficiaries of this increase have so far been British programmes, there is also potential in this market segment for programmes from other European countries.

realize its immense potential as outlined in the White Paper on Growth, Competitiveness and Employment.

3.4 The aims of a European policy for the programme industry

In accordance with its aims and the powers assigned to it, it is for the European Union to facilitate the distribution of audiovisual programmes and to stimulate the development of the industry. But it is clear that a European policy for the programme industry will require a joint effort from all players in the Union.

The analysis above suggests that the broad lines of such a policy should be as follows:

As regards market development, the European programme industry must exploit the growth potential provided by the development of a European information area in terms of creation of new services and investment in ancillary industries with greater financial resources.

The European Union must press ahead with the introduction in Europe of technologically advanced information infrastructures to give consumers a wider choice and create new openings for the programme industry

On the programme supply side, the development of extensive distribution networks cannot be allowed to benefit only non-European programme makers and force Europe's own industry to retreat into local markets, with their limited economic potential and cultural influence.

The European Union must therefore mobilize its resources into developing a programme industry which is able to compete both at home and on the world market and at the same time act as a vehicle for its culture, create jobs and generate profits.

This must be a medium/long-term policy, the ultimate objective being that the European programme industry should recover its profitability on an open and dynamic world market.

The aims of these joint efforts are self-evident.

3.4.1 Removing barriers between national markets

The policy of the Union must be designed first and foremost to remove barriers between national markets so that the European programme industry can benefit from the scale of the European market and so provide as many outlets as possible for its products. The end result must be stronger audiovisual companies offering attractive catalogues to the rest of the world.

3.4.2 Catering for the European public

The development of a competitive European programme industry is the only way of guaranteeing in the long term a varied supply of films and television programmes. Given the importance of the audiovisual media as a vehicle for culture (not only in increasing awareness of our cultural heritage and promoting artistic creation, but also in influencing

our daily lives and behaviour), this is of paramount importance for the future of European society.

3.4.3 Promoting an industry with a future

The audiovisual industry is not only one of the areas of the economy which offers the richest potential for development, including the creation of jobs. It is also closely linked to other industries (e.g. consumer electronics, telecommunications, computing, etc.) which are also evolving towards internationalization and globalization. Without European partners in the programme industry, these other European industries will have no choice but to forge transatlantic alliances with the transfer of resources as an inevitable consequence.

3.4.4 Ensuring profitability for a loss-making industry

If there is no effective stimulation of private investment through the restoration of confidence in the European programme industry, the danger is the perpetuation of subsidy arrangements which, from a structural point of view, are both costly and inefficient. In a world where services are steadily being liberalized, there is an urgent need to restructure an industry which must in the long term survive without protectionism and without subsidies.

4. EXISTING INSTRUMENTS

This section gives an overview of the instruments already applied by the Community and the Member States in the audiovisual sector, with special reference to those designed to strengthen the European programme industry.

4.1 The regulatory framework in the European Union

The United States is a perfect example for anyone wishing to illustrate the importance of a regulatory framework for influencing the structure of the audiovisual industry: an important factor behind the powerful position of the majors on the world markets lies in the clear distinction between studios, which produce, and networks, which distribute. Similarly, the powers granted to the Federal Communication Commission have enabled it to introduce new audiovisual technology without any great upheaval.

The situation in Europe is different but here, as elsewhere, there are striking illustrations of the impact of regulations on industrial structures.

4.1.1 The role of the Member States

In the Member States, various levels of authority (national, regional or other²⁰) have a direct and decisive influence on the structures of the audiovisual sector.

Among the regulations with the greatest impact on the shape of the audiovisual industry are those governing the granting of licences to provide audiovisual services.

Examples include Channel Four in the UK, responsible for the emergence of a strong independent production industry or Canal + in France, which has made a significant contribution to the French film industry.

It is clear that the number and type of authorized services (and, in particular, the way in which they are funded), and the nature and scope of the rules under which they operate, all have a decisive impact on the programme industry, both in the case of television and, increasingly, cinema.

In addition, the Member States have a great deal of scope for developing infrastructure, be it for satellite or cable broadcasting, for example, or for telecommunications. Given the future prospects for the growth of a wide range of image- and sound-consuming information services, the level of development (in particular technological development) of these infrastructures and the arrangements for access will increasingly have a crucial role to play.

Lastly, national competition policy and rules designed to ensure pluralism in the media can also play a significant role in determining the size of companies in the industry and the scale of vertical and horizontal integration.

²⁰ For example, in some Member States some powers are devolved to the broadcasters themselves.

Together with population size, languages and the general state of the economy of each Member State, all the types of intervention referred to above have a significant impact on the way the national programme industries are structured.

4.1.2 The role of the European Union

The European Union does not have the means to intervene in such a direct way to shape the structure of the audiovisual industry. But it does make a substantial contribution to establishing a framework in which the industry can flourish.

With due respect for the subsidiarity principle, it helps the industry to develop by removing the partitions which separate national markets, using to best effect the size of the European market and promoting the production and distribution of European programmes.

It does this through the adoption of technical standards, the promotion and dissemination of new technologies, the approximation of national laws to facilitate cross-border business in the various branches of the industry and the implementation of Community competition rules.

4.2 A favourable environment for the development of services

The objective of the Union is to create an environment in which services can develop; the actions are designed to develop infrastructure, liberalize services or remove barriers to the single market to facilitate cross-border business.

4.2.1 The development of infrastructure and the liberalization of services

The Community and the Member States have taken various steps to encourage the development of information infrastructures. Apart from programmes to support research and development of information and communication technologies and policy on the standardization of equipment, the legislative framework for the telecommunications sector has evolved over the years with the liberalization of added value services²¹ and the adoption of a programme which should lead to the liberalization of voice telephony by 1998.

This process of liberalization should create a favourable environment for the development of private initiative leading to new services which, in a climate of open competition, will widen consumer choice and create new openings for the European programme industry.

The Commission is also watching carefully the work of the European Digital Video Broadcasting Group. This Group comprises 120 European broadcasters whose job is to identify the needs of the professionals and define technical specifications which can be sent to the European standardization authorities. The Group has already obtained results on technical specifications for digital satellite and cable broadcasting; matters relating to terrestrial network broadcasting and conditional access systems²² will require more time.

²¹ cf Open Network Provision.

²² Conditional access systems are those used by "pay-television" channels: the picture is scrambled when broadcast and can only be unscrambled by viewers with a decoder and an access code.

Conditional access is in fact an essential element in the development of new broadcasting services. The objective here is to produce a sufficiently open environment to give all potential pay-television companies fair and non-discriminatory access to the market but without forcing consumers to buy a whole series of different decoders in order to benefit from a large variety of services. While the DVB Group is examining the technical aspects, the Commission will look into the need for legislation to set up a single market and will present its findings in a Green Paper on the protection of encoded broadcasting signals.

As regards technical standards, the best method of achieving the objective of harmonious development of the market in digital television broadcasting would be to secure a consensus among all those involved in the industry. Voluntary agreements between the parties concerned will have an important role to play.

However:

if the operators cannot find a consensus which will guarantee the orderly development of the market,

and/or

if the needs of fair and open competition, consumer protection or other significant demands of general interest so require,

it may prove necessary to introduce regulations to facilitate achievement of this objective and protection of these interests.

4.2.2 Removing barriers in the single market

Harmonization of national legislation is a form of support for exploiting the potential of the European market since, by removing barriers in the single market, it promotes operations within the European Union.

Several directives harmonizing legislation in the audiovisual industry have helped to develop a European broadcasting market and promote the transnational exploitation of programmes:

- the television without frontiers Directive²³ established the general framework for free movement of television broadcasting services.

This Directive lays down common rules for advertising. As advertising is one of the sources of revenue for broadcasting companies, the implications of these rules go well beyond considerations of general interest such as consumer protection. Restrictions on the proportion of broadcasting time devoted to advertising and rules concerning the number and timing of advertising slots are factors determining the revenue of broadcasters and hence their capacity to invest in

²³ Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 298 of 17.10.1989, p. 23).

programme production or purchase. This demonstrates why the entire regulatory framework must be taken into account when determining how to strike the necessary balance in the development of the programme industry;

- the cable and satellite Directive²⁴ established minimum rules for the exercise of copyright and neighbouring rights in the context of cable and satellite rebroadcasting;
- two other directives²⁵ applying generally to copyright and related rights (not confined to broadcasting specifically) also facilitate transnational activities (e.g. video rental).

The development of the European market in services offers potential European outlets for European cinema and TV productions. The challenge consists in realizing this potential.

4.3 Promoting European programmes

Looking beyond this services-oriented growth logic (which is in accordance with the Treaty), specific rules exceeding what is legally strictly necessary to secure freedom to provide services in the programme industry have been enacted.

The television without frontiers Directive, for instance, has a set of articles devoted to the "Promotion of distribution and production of television programmes",²⁶ which establish legal rules to be applied by Member States to broadcasting companies within their jurisdiction and directed to the following objectives:

- broadcasting of a majority of European works;²⁷
- promotion of independent productions (up to 10% of broadcasting time or programming budgets);²⁸
- establishment of time-scales for media exploitation of cinematographic works.²⁹

²⁴ 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.

²⁵ Directive 92/100/EEC on rental right and lending right and certain rights related to copyright, and Directive 93/98/EEC harmonizing the term of protection of copyright and certain related rights.

²⁶ Chapter III of Directive 89/552/EEC.

²⁷ Article 4 provides: "Member States shall ensure where practicable and by appropriate means that broadcasters reserve for European works ... a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services. This proportion, having regard to the broadcaster's informational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria."

²⁸ Article 5 provides: "Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the Member State, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to the broadcaster's informational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production."

²⁹ Article 7 provides: "Member States shall ensure that the television broadcasters under their

The Commission recently sent a communication to Parliament and the Council on the implementation of the first two points,³⁰ based on Member States' reports to it under the monitoring arrangements provided for by the Directive itself.³¹

In the light of the conclusions of this exercise, but without anticipating the overall evaluation of the Directive, the Commission can make the following observations.

4.3.1 Majority proportion of European works

The results of the monitoring exercise show that most broadcasters in the Member States transmitted a majority of European works during the 1991-92 report period.

The overall results would therefore appear to be positive, both as regards compliance with requirements and the effectiveness of the machinery set up by the Directive.

With a view to increased cross-border distribution of programmes and enhanced impact on structures, a number of questions need to be asked. As the monitoring exercise is restricted to some basic information and not all the Member States supplied the data required, some essential indicators are still lacking:

- *what is the proportion of European works that would not have been broadcast if there had been no legal obligation?* The information supplied shows that the highest audience ratings are achieved by national material, especially fiction. Studio shows (variety shows, talk shows and so on, included within the Directive's definition of European works), most of which are hardly suitable for distribution in other countries, are more than a match for much of what is produced outside Europe in terms of cost:audience ratios;
- *what is the proportion of non-national material in the European works broadcast?* There are no reliable data to support an answer to this question. The figures for prime-time viewing suggest a bipolar structure combining national and American productions,³²
- *what, in terms of programming budgets or of turnover, is the business value of rights to retransmit these European works as compared with non-European works?*

jurisdiction do not broadcast any cinematographic work, unless otherwise agreed between its rights holders and the broadcaster, until two years have elapsed since the work was first shown in cinemas in one of the Member States of the Community; in the case of cinematographic works co-produced by the broadcaster, this period shall be one year."

³⁰

COM(94)57 of 3.3.1994.

³¹

Article 4 organizes a monitoring scheme whereby the Member States are to report to the Commission every two years (beginning on 3.10.1993) on the application of Articles 4 and 5. The Commission is to bring the reports to the attention of Parliament and the Council, with its own opinion on them. This should not be confused with the general assessment of the television without frontiers Directive on which the Commission is to report by the end of 1994 as required by Article 26 of the Directive.

³²

A recent Media Business School survey on the origin of prime time broadcasts by twenty or so Community broadcasters over one week abundantly bears out this conclusion.

While it may be concluded that this mechanism is by and large working effectively, it is still too early to say what impact it has had on structures. It has clearly helped promote the distribution of European works but it remains to be seen whether it is really helping to create a European programme industry.

4.3.2 Encouraging independent production

The first point worth noting here is that the Directive offers an alternative between proportions of broadcasting time and of programme budgets and most Member States have opted for the former.³³

In the Commission's opinion³⁴ however, the second option is best suited to achieving the objective of Article 5 of the Directive, namely investment in new works created by producers independent of broadcasters.

On the other hand, the Member States' reports give insufficient information, partly because figures are not available and partly because the definitions of independent producers used for the purpose have not been supplied.

Here again, although the structural objective of the measure is plain for all to see, there are more questions than answers. Apart from the questions generated by the preceding mechanism, which apply just as much to this one, the following points are noteworthy:

- *what is the proportion of recent works in the generality of European works?* Article 5 refers specifically to recent works, but the Member States' reports have little to say on the matter;
- *what is the degree of the producer's independence from the broadcaster transmitting his work?* (in terms of capital, proportion of business done with the broadcaster, duration and scope of rights transferred, etc.);
- *what are the degrees of importance attached to the legal obligation and the price factor?* Does the legal obligation improve the producers' negotiating position in relation to the broadcasters, particularly as regards the scope of the rights transferred?

4.3.3 Media time scales

Article 7 of the Directive provides for a third mechanism (outside the scope of the monitoring exercise) to establish flexible time scales:

- it applies only to the television broadcasting of cinematographic works, not to other forms of exploitation (e.g. video);
- the two-year time-lag (one year where there is a co-production with a broadcaster) between first cinema showing and television broadcasting may be shorter if rights holders are in agreement.

³³ France is the only exception.

³⁴ COM(94) 57 of 3 March 1994.

Following the logic of the single market, time runs from the first cinema showing in any Member State. This is important in the context of European exploitation of cinematographic works.

4.4 European financial incentives

Financial incentives are generally used as a catalyst to promote the development of specific activities in which operators in a given industry would not spontaneously engage because of structural deficiencies in the market. The incentives should eventually be withdrawn, as soon as they have achieved the desired effect of enabling the market to develop naturally (if this does not happen, then the "incentives" are subsidies, propping up what are essentially unprofitable activities). The money should, as a rule, be repaid (unless it is given for research and development or training) as soon as the activity in question passes a given profitability threshold.

4.4.1 Community instruments

So far the Community has established two major financial support schemes specifically for the audiovisual industry - the MEDIA Programme and the Action Plan for the introduction of advanced television services in Europe.³⁵

(i) The MEDIA programme

In accordance with the Council Decision establishing it, the MEDIA Programme 1991-95 was put through an evaluation exercise by the Commission in 1993 on the basis of an audit performed by a consulting firm.³⁶

The evaluation was conducted after only two years of implementation of the programme, which was too early for a final assessment of its impact on the industry. But some points at least emerged clearly:

- given the duration of business cycles in the audiovisual industry, the programme's across-the-board micro-economic approach to all stages of the broadcasting business is unlikely to have a measurable impact in less than five to ten years;

³⁵ Council Decision 93/424/EEC of 22 July 1993 on an action plan for the introduction of advanced television services in Europe: OJ L 196, 5.8.1993, p. 48.

³⁶ Commission Communication of 23 July 1993 on evaluation of the action programme to promote the development of the European audiovisual industry (MEDIA) (1991-95), COM(93)364 final. Initial conclusions were drawn in the form of proposals for amendments to Council Decision 90/685/EEC on primarily technical points: COM(93)462 final, 29.10.1993.

On 5 November 1993 the Council came to the following conclusions as regards the period covered by the current programme (expiring on 31 December 1995):

- it emphasized "the need to ensure continuity in existing activities" up to the end of 1995, "respecting the decentralized character of the programme";
- it emphasized the need for stronger "coordination and financial supervision of activities";
- it requested the Commission to begin studying measures for a MEDIA 2 Programme to run after 1995.

- the establishment of new industry structures through cross-border cooperation and groupings is seen as one of the most promising aspects;
- the programme is working effectively as a catalyst, since it accounts for only 24% of the aggregate financial value of activities flowing from projects;
- in certain areas, the resources available fall short of the critical mass needed for an effective market impact and the budget³⁷ is too small to provoke the desired structural changes;
- given the limited budget available for the programme, the horizontal approach of covering each of the phases from creation to exploitation means that resources have to be dispersed.

The experience acquired with the MEDIA programme thus confirms the main findings of the diagnosis of the programme industry's condition. The Commission is therefore able to identify four sets of priority objectives: training (geared to the market and the new technologies), pre-production and project development, distribution and marketing and finally stimulation of private investment.

(ii) The Action Plan

The Action Plan³⁸ has a narrower objective: it is to launch a critical mass of TV services in the new 16:9 format³⁹ so that a viable market can emerge in Europe.

Financial support mechanisms are targeted on two aspects of the introduction of new services. First, the Plan covers part of the additional costs involved in broadcasting in the new format; second, it covers part of the additional costs involved in adjusting programmes technically for 16:9 broadcasting (new and existing material).

It is too early to assess the Plan's true impact. But apart from the fact that in the short term it is services-oriented, it is expected to have a significant impact on the programme industry:

- by encouraging the use of technical media for stock productions that are compatible with high-definition television in terms of both format and image definition, it will help to extend the shelf-life of European catalogues;
- through its proximity to a new market, it offers an excellent observation point for ascertaining the technical developments that the programme industry will have to absorb in order to meet demand for the new services;

³⁷ Currently about ECU 50 million annually.

³⁸ The funding judged necessary to attain the objectives of the Action plan is ECU 405 million. This is the aggregate of Community budget appropriations and funds from other sources. The Community appropriations total ECU 228 million.

³⁹ The traditional TV screen is defined by reference to the 4:3 width:height ratio. Advanced television services (including high-definition television) offer substantial improvements in image and sound quality as well as a new format - 16:9 - which is closer to the cinema screen format.

- it promotes the use of the European HDTV standard for a wide range of TV and cinema productions.

4.4.2 Other European instruments

European audiovisual support mechanisms include the following:

The Council of Europe's EURIMAGES Fund sets out to encourage European co-productions of cinema and TV fiction.⁴⁰

Audiovisual EUREKA⁴¹ is an intergovernmental forum to facilitate the establishment of transnational audiovisual projects. It has no funds of its own and so is not strictly speaking a financial support mechanism, but it does facilitate transnational cooperation on projects for which national of Community resources can be mobilized.

It also constitutes the framework for establishment of the European Audiovisual Observatory, which has the chief function of organizing information flows within the industry.

4.5 National financial incentives

Apart from financing public-sector broadcasting companies through licence fees, the Member States have developed national and regional schemes to provide cinema and TV producers with the help they need to face the industry crisis, motivations being both cultural and economic.

These schemes reflect differing national and regional realities and vary enormously from one Member State to another in terms of resources deployed,⁴² the activities supported,⁴³ the type of aid schemes⁴⁴ and the financial techniques.⁴⁵

They are primarily designed to help production having some kind of link with a Member State, and a complex network of bilateral co-production agreements gives producers access to a variety of national support schemes in the event of transnational projects.

None of these schemes takes account of the transnational or European dimension of the market: selective schemes tend to proceed from cultural (notably linguistic) considerations and non-selective schemes proceed from the impact on the national market.

⁴⁰ Established in April 1989, it currently has 24 member countries.

⁴¹ Set up by Joint Declaration in Paris in October 1989.

⁴² In 1990, for instance, Denmark allocated ECU 400 000 to support for the programme industry whereas France allocated ECU 268 million (which is more than the whole five-year budget for the MEDIA Programme).

⁴³ National schemes are substantially directed towards support for the cinema industry, though some apply on a broader basis (distribution, cinema theatres, TV programmes etc.).

⁴⁴ Schemes are generally selective; only France has overall schemes operating on a large scale.

⁴⁵ Disregarding tax breaks, five Member States finance their support for programme industries from their general budget whereas six run an industry-specific income redistribution system (parafiscal charges on takings from cinemas, video rental and broadcasting).

4.6 The international context

All this consideration of the future of the European programme industry must further be related to the new context engendered by the recent Uruguay Round conclusions.

In the course of often highly technical debates, the negotiations on liberalization of services had the merit of clearly revealing the strategic importance of the audiovisual industries in general and the enormous economic and cultural interests at stake in the image business in Europe.

Analysis of the final agreement (General Agreement on Trade and Services - GATS) prompts the Commission to make two fundamental points that condition all future action in relation to audiovisual matters:

- the audiovisual industry is fully covered by the GATS with no special status, culturally or otherwise; it is accordingly subject to Article XIX of the Agreement which reads: "In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the Agreement establishing the MTO and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing market access":
- the European Union has committed itself to no particular liberalization measures, its GATS obligations being solely to secure transparency and thus to share information with the other parties to the Agreement on any new measures taken either by the Union or by its Member States. Moreover, through exemptions from the most-favoured-nation clause, the Union has managed to secure most aspects of its audiovisual policy, including its bilateral and multilateral agreements on co-production and other matters.

It is thus clear that the European Union and its Member States have the room for manoeuvre they need to develop their measures to help the programme industry, but for what will probably be a transitional period of limited duration.

Like other service sectors, the audiovisual industry must rise to the challenges of internationalization and globalization, in particular in the context of the digital revolution. The European programme industry must strengthen its competitive position while remaining open to the world.

5. OPTIONS FOR THE FUTURE

It can once again be said that all parties will have to be mobilized to rise to the challenge of the future. Application of the subsidiarity principle is essential for the definition of a European policy when action is planned in areas which are not within the exclusive jurisdiction of the Community. The point is to determine at what level the action to be taken will be most effective in the light of the objectives set. And measures taken at different levels must be kept compatible with each other.

While the decision on the question of who is to act - the European Union or one of the various levels of authority in the Member States - is crucial for defining what action is to be taken, the Commission's view is that when devising strategy, the interests at stake and the solutions to be adopted to secure them must be debated openly. It is against the backdrop of this comprehensive approach and on the assumption that a collective effort is to be made throughout the Union that pointers are offered as options for the future. Whether or not they are explored in depth at a later stage will depend on the general reaction to them.

This Part of the Green Paper is therefore offered without prejudice to the review for compatibility with the subsidiarity principle that must precede every practical proposal that the Commission makes after its discussions with the industry and the authorities of the Member States.

This Green Paper is not an inventory of practical measures to be proposed at European Union level. Instead, the Commission sees the options discussed as a basis for discussion, principles that should govern action by the Union and priority strategies that could be jointly defined to:

- end the compartmentalization of national markets and promote the exploitation of programmes throughout Europe and the rest of the world;
- develop the choice available to European audiences ;
- develop an industry with a future;
- ensure the profitability of a loss-making industry.

The Commission believes that the period of transition - in terms of technological development, the GATS framework and industrial change - on which the European programme industry is now embarked calls for urgent, vigorous action which, in the long term, will allow the industry to profit from the free play of market forces.

It is proposed that the debate should address three topics:

- the rules of the game
- financial incentives
- convergence of national systems.

These three topics are complementary and interdependent. What is more, their development and implementation must be closely coordinated with whatever action is taken by the European Union as part of its audiovisual policy and with any other activities that could have an impact on the audiovisual industry.

The sections which follow raise a number of issues that the Commission sees as essential in shaping a policy for the industry. They deal in turn with each of the three topics, adopting a consciously open approach to initiate a wide-ranging debate.

5.1 The rules of the game

The rules of the game must be analysed from the angle of their contribution to market development and preservation of competition and from that of the promotion of European programmes. The appearance of new services will also raise new questions as regards the rules of the game.

5.1.1 Development of the market

The development of the European audiovisual programme market will involve first developing infrastructure and liberalizing services, then removing barriers to the single market and finally enforcing the rules of competition.

(i) Infrastructure and services

The Commission considers that any action taken by the European Union to foster a pan-European approach to the development of new communications networks (whether in relation to the provision of services, freedom of establishment, technical specifications, standardization, unification and opening of conditional access systems or the interconnection of infrastructures) will help to create new markets for European programmes.

These new networks will be used for the development of new types of service such as pay-per-view, video on demand, educational services, etc. Only a Europe-wide approach to the development of these networks will make it possible to exploit both mass markets and market niches in Europe. This is a *sine qua non* for turning our cultural diversity to advantage.

Similarly, the liberalization of telecommunications services and the opening up of the telecommunications sector to the free play of competition is contributing to the development of these markets.

In this context, the timescale of transition to a European information area becomes a vital issue. If transition is short, our programme industry will gain much in terms of new outlets, fresh investment and experience of new technologies. At the same time, the necessary adaptation of the industry will call for more powerful, better targeted stimulation.

The general trend in the services sector, illustrated by the White Paper, is towards worldwide liberalization and deregulation. This is equally true of the audiovisual sector as far as access to information and communication activities is concerned. Making allowance for considerations of general interest that call for the definition of rules governing the content of programmes would not run counter to this trend. The only remaining issue is the search for an optimum match between these rules and the objectives pursued.

To sum up:

The European Union should give priority to the early creation of a European information area, thanks to the development of technologically advanced information infrastructures, liberalization of the services that will be using these infrastructures, standardization, and the creation of an open environment in terms of conditional access systems.

(ii) Single market

Similarly, the Commission considers that the establishment of a single market in the audiovisual sector has done much to create the conditions for the emergence of a genuine European programme industry. Side by side with the definition and implementation of a specific policy for the industry, correct operation of the single market, that is to say, removal of obstacles to the free movement of individuals, goods, services and capital and freedom of establishment, continue to be basic goals.

The development of specific national rules for the audiovisual industry must not be allowed to interfere with the functioning of the single market.

(iii) Application of the rules of competition

Competition policy has a key role to play in any Community strategy to promote sustainable development of the audiovisual industry. Healthy competition which stimulates structural and technological change will make Europe's companies more competitive. Application of the rules of competition is an effective tool in building the single market and combating the fragmentation of national markets that dogs the European industry. The same is true of the rules on State aids. In this context, the principle of non-discrimination implies that support mechanisms must be made accessible to nationals of other Member States. Lastly, strict enforcement of the rules of competition can help guarantee an optimum environment for companies to develop.

In the audiovisual industry the Commission is increasingly being asked to apply the competition rules to agreements between companies and sometimes to public subsidies.

The Commission's experience in this area prompts the following comments:

- firstly, many cases are referred to the Commission without any prior consultation of national competition authorities (or directly by them) and without any action being taken in the national courts;⁴⁶ all too often therefore the Commission is asked to deal with situations that could have been solved more readily at national level;
- secondly, the general lack of transparency in the industry, which results from patchy monitoring of the sector both by the authorities and by specialized companies involved in information gathering at national level,

⁴⁶ cf Notice on cooperation with national courts (OJ C39, 13.2.1993, p.5).

adds considerably to the complexity of the Commission's task, leading amongst other things to more lengthy procedures.

- thirdly, in the absence of cooperation between the Commission and anti-trust authorities in non-member countries, globalization of the industry makes it increasingly difficult to analyse the market penetration strategies of international audiovisual or multimedia groups.

For the future, therefore, the Commission would suggest that (a) cooperation between the Commission and the authorities responsible for competition in the Member States and non-member countries be developed and (b) market transparency be improved. In this connection, the European Audiovisual Observatory set up by Audiovisual Eureka could play a useful role in collecting and disseminating information and, even more importantly, identifying the most pressing requirements.

To sum up:

Improving the transparency of the audiovisual market calls for cooperation between the Commission and national authorities responsible for applying the rules of competition and cooperation between the Commission and anti-trust authorities in non-member countries.

5.1.2 Measures to promote European programmes

We have seen that Chapter III of the "television without frontiers" Directive gives the European Union the tools to promote the programme industry. The Commission believes that this *acquis communautaire* provides a sound framework for the cross-border development of the European programme industry and that it should be retained for the time being.

With an eye to a specific policy to strengthen the programme industry, discussion of the legislative framework does not challenge the principle but rather the manner in which it is applied, and in particular tighter checks on the application of Community law and more effective incentives.

(i) Tighter checks on the application of Community law

The credibility and effectiveness of the legislative framework for the audiovisual industry, including incentives, largely depend on the effectiveness of checks on whether operators are meeting their obligations and the imposition of sanctions if they are not. Limited, clearly binding measures are preferable to ambitious mechanisms with no effective control.

Controls (and the imposition of sanctions where necessary) are a matter for national authorities in the first instance. In its recent communication⁴⁷ the Commission reviewed the shortcomings of national reports and indicated that it proposed to make its own

⁴⁷ See footnote 29.

checks on the application of Articles 4 and 5. The elements of flexibility built into these mechanisms do not rule out the gradual emergence of a common interpretation, possibly under the control of the Court of Justice.

The implementation and enforcement of common rules and the imposition of sanctions in the event of non-compliance are vital for the harmonious development of broadcasting in Europe. Any differences in the application of the rules in Member States could distort competition in the free market for television programmes created by the "television without frontiers" Directive.

In an industry that is developing rapidly, where investment is spread over several years, where market shares can be won and lost in short order, operators need a maximum of transparency and certainty as to the law. To prevent operators adopting a "fait accompli" approach, taking advantage of the lack of precision as to their obligations, the absence of sanctions and lengthy procedures, we need to make the monitoring of Community law more stringent and more effective by tightening existing controls and sanctions.

To sum up:

<p><u>How can the application of Community law and its monitoring be made more effective?</u></p>

Apart from uncertainties about the effectiveness and the structural impact of incentives, a number of other questions will have to be examined in advance of the deadline set for the comprehensive review of the "television without frontiers" Directive.

Firstly, care will have to be taken to ensure that promotional mechanisms are adapted to the new types of service that will be coming on stream earlier than expected thanks to the "digital revolution".

Secondly, some thought will have to be given to whether and how the effectiveness of these mechanisms can be improved while retaining the measure of flexibility needed to accommodate the diversification of broadcasting in the widest sense of the term.

(ii) How can incentives be made more effective?

The discretion allowed the Member States as regards detailed arrangements ("appropriate means") for implementing the mechanisms of the Directive has led to significant differences in the level of constraints and controls to which broadcasters in the Member States, or indeed different types of broadcasters within a single Member State, are subject.⁴⁸

Given the impact of incentives on the activities of broadcasters, there is a danger that excessive differences in treatment could interfere with competition with the free movement of broadcasting services.

⁴⁸ We are thinking here of the obligations that transcribe the objectives of Articles 4 and 5 at national level, not of additional measures which Member States can impose unilaterally (usually for language policy reasons) on broadcasters under their jurisdiction.

* *Taking the diversity of broadcasting services into account*

What many see as the main weaknesses of the Directive⁴⁹ can be attributed in large measure to the flexibility needed to cope with a highly diversified industry. The economic constraints on broadcasting services are as varied as the services themselves, which can be:

- general or thematic
- encoded or unencoded
- funded by licence fees, advertising, subscription, payments for individual services, or a combination of these
- long-established or new
- geared to national or transnational audiences
- in major or minor languages

These essential differences have enormous consequences for the strategies of operators, including their policies on production and the acquisition of rights, and need to be taken into account.

It should be noted that the definition of "broadcasting" in the Directive⁵⁰ covers services such as Pay-per-View (PPV)⁵¹ or near video on demand but not telecommunications services such as video on demand (VOD).⁵²

Any attempt to increase the effectiveness of mechanisms must therefore reflect this reality and the trend towards diversification. There is no incompatibility in principle between diversification and incentives for the European programme industry provided by the regulations. On the contrary, appropriate mechanisms could promote diversity (which is what European audiences want) while guaranteeing a place for European programmes.

The diversity of national realities does seem on occasion to be a bar to the adoption of precise definitions at European Union level (for example the notion of "producers

⁴⁹ The main culprits are the terms used in Articles 4 and 5: "where practicable", "by appropriate means", and "progressively".

⁵⁰ Article 1 states that for the purposes of the directive "television broadcasting" means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

⁵¹ PPV services are classed as broadcasting in the sense that transmission is by a public service (even if the audience is limited to viewers with the right equipment), the viewer's choice being confined, technically speaking, to determining the segment of a programme that he wants to disencode and actually view. It is a "point to multipoint" communication, that is to say, from a single (transmission) point to multiple (reception) points.

⁵² VOD services, like all genuinely interactive services, are classed as telecommunications in that transmission is in response to individual demand. It is a "point to point" communication, that is to say, from a single (transmission) point to a single (reception) point. Because it appears to exclude services operated in response to individual demand, the definition in the Directive does not cover services such as VOD.

independent of broadcasters" used to implement structural mechanisms runs up against substantial differences in the way the production of television programmes is organized in the Member States). In the interests of balance and certainty as to the law, it might be a good idea to find minimal definitions to provide a base at Community level, without, however, excluding more precise definitions at national level to allow structural objectives to be adapted to national realities.

* *Clarification of obligations*

In view of the above, some thought might usefully be given to clarifying obligations in relation to the objectives of restructuring. It will no longer be enough to provide a framework to encourage the cross-border exercise of certain activities. More focused incentives need to be developed.

Discussion should concentrate on the following:

- how to promote cross-border movements of audiovisual programmes (mainly stock programmes to create catalogues which could be exploited in numerous formats and markets over a long period);
- how to encourage investment in the production of new programmes or the acquisition of rights to recent programmes, notably those emanating from "producers independent of broadcasters".

To sum up:

How can the diversity of services be taken into account?
How can intra-European distribution of programmes be encouraged?
Are clearer common definitions needed?
Should preference be given to incentives to invest in the production of programmes and the acquisition of rights rather than mechanisms based on broadcasting time?

(iii) **Media time scales**

Irrespective of any legislative framework, media time scales (the "windows" system) are a natural consequence of a determination to maximize earnings from the different ways in which a film or television programme can be exploited.

Decisions to move into a new market (from the big screen to video, from video to pay television, from pay television to ordinary television ...) may depend on the type of programme and the target audience but the aim, invariably, is to increase earnings. Moreover, the introduction of PPV and VOD services as well as the proliferation of new formats (videodisc, CD-I, CD-ROM) will create additional steps in the order and complicate the options open to rights-holders. Their freedom is an essential element in exploiting programmes.

Other considerations may well interfere with the freedom of rights-holders to maximize earnings from each production:

firstly, the importance of screening in the cinema, where success can determine the fate of a production in other markets, combined with a policy of promoting cinema-going ("a film must be seen in a cinema") means that there is a tendency to protect this way of exploiting productions.

secondly, the growing importance of investment by broadcasters in cinema productions is leading certain commentators to fear the development of "disguised television production", making cinema screening purely incidental.

thirdly, other sectors (the video sector for instance), which feel threatened by new ways of transmitting audiovisual programmes, are calling for specific protection.

Account must also be taken of the various interests affected by the prospect of further technological developments. A question mark therefore hangs over the wisdom and the substance of Community rules to regulate media time scales.

To sum up:

Should Community rules on media time scales be retained, given the need to maximize earnings and encourage the emergence of new formats and services?

Should existing rules be amended and extended to forms of exploitation other than broadcasting?

5.1.3 Should new types of service be covered?

With the digital revolution will come new types of audiovisual service straddling the divide between :

- broadcasting: from a single transmission point to multiple reception points;
- telecommunications: from a single transmission point to a single reception point.

Although a current of liberalization (deregulation of access to these activities by private operators) is spreading through both these communications sectors, the existing rules and the philosophy behind the approach to each of them are very different: broadcasting has traditionally been subject to many rules as regards content; there are, by contrast, very few rules on telecommunications.

The presence of two sets of legal rules may result in different treatment for what are much the same type of services although using different transmission techniques: for instance, a near video on demand service using a large number of channels would be subject to the broadcasting rules, while genuine video on demand would be subject to the rules for telecommunications.

This could then distort competition between different types of audiovisual service: ordinary television broadcasting, pay-television, PPV, near-VOD, VOD, etc.

Since these new vehicles for the transmission of audiovisual programmes will gradually be accounting for a substantial share of revenue, there are those who argue that they should play their part, alongside the traditional broadcasters, in the effort to promote European programmes.

In addressing this question, account must be taken of the objectives of rapid development of the common information area. The question of coverage for these new services is intimately linked to questions of what is appropriate: we must not lose sight of the need to develop these services as far as possible while ensuring that the European programme industry obtains a fair share of the consequential expansion of the European market.

Account must also be taken of considerations relating to the overall effectiveness of mechanisms for promoting European programmes and technical constraints: PPV and near-VOD might be subjected to a promotion mechanism based on transmission time (as distinct from actual viewing time), whereas VOD will require quite another approach.⁵³ Some recommend rules relating to catalogue content, whereas others advocate rules relating to investment in the production or purchase of European programmes.

To sum up:

How can the relationship between the development of new types of service and the development of the European programme industry be optimized?

Should incentives be developed for new ways of transmitting audiovisual programmes (notably those on individual demand, as opposed to broadcasting services in the strict sense - "point to multipoint" communication)? What would be the appropriate arrangements?

5.2 Financial incentives at European Union level

5.2.1 A horizontal approach or sectoral priorities?

With an eye to the development of a European market in film and television programmes, the first issue to be discussed is whether financial incentives should be available to all links in the "audiovisual chain" (from screenplay to the various ways of exploiting the end-product) or whether they should concentrate on priority sectors.

(i) A horizontal approach

Because the "crisis" in the European industry affects all links in the chain, incentives for each phase of the production/exploitation process would be justified.

Adopting a sectoral approach, the MEDIA programme has endeavoured to identify the main shortcomings of this process (with due allowance for the specific needs of areas

⁵³ For PPV services, transmission time and content cover all broadcasts without reference to individual viewing time. For VOD services, by contrast, transmission time and content are determined by individual viewing time and are not known until after the event.

such as animation or issues such as the utilization of new technologies in programme production) and devise incentives that could overcome them.

(ii) Priority sectors

An alternative, more macro-economic approach would be to identify priority links in the "audiovisual chain" and concentrate the bulk of available resources on these and in this way apply "leverage" to the entire chain.

The views canvassed by the Commission during the preliminary consultations suggest that the following could be regarded as priorities in the context of building a stronger European programme industry:

- the production of programmes adapted to the requirements of the European market presupposes considerable investment in the development of projects, given the variety of audiences and the range of potential formats (notably multimedia);
- optimum exploitation of programmes on the European market (using all possible forms and means of transmission) presupposes a major marketing effort and the creation of European distribution networks capable in the long term of investing in production and compiling a rights catalogue;
- promotion of programme distribution within Europe and allowance for the specific needs of countries with a limited language area presuppose a special effort to develop dubbing and subtitling, with emphasis on quality;
- the development of a European programme industry presupposes the mobilization of funds not only within the industry itself but also from private investors active in other sectors of the economy; such funds could be attracted to the industry by the use of financial engineering techniques;
- the transnational approach to audiovisual production and distribution and the diversification of distribution networks calls for comprehensive, market-oriented training programmes geared to the market and new information technologies.

These five priority targets do not rule out action in other areas, but the case for making them the focus of attention to stimulate the development of the European programme industry should be analysed.

To sum up:

Should the horizontal approach to financial incentives be continued, covering all phases of the creation/production/distribution/exploitation process, or should funds be concentrated on a number of priority phases to apply leverage to the process as a whole? And if so, on which?

In particular:

How can the development of projects be improved in a European context?

How can pan-European distribution of programmes be encouraged and the compartmentalization of national markets be brought to an end?

How can high-quality dubbing and subtitling be promoted?

How can investment be encouraged?

How can training be geared to the market and new information technologies?

5.2.2 Priority for companies or priority for projects?

The programme industry is an industry of prototypes. Another peculiarity is the fact that, generally speaking, the consumer "pays" for a product sight unseen (when he buys a cinema ticket, for instance). It is heavily dependent on talent and each prototype presupposes considerable risk-taking.

If this reality is taken into account, two distinct approaches to financial incentives emerge:

The first approach involves supporting a maximum number of programmes to give as many talented people as possible a chance, thereby increasing diversity. Under this approach, financial incentives serve to lessen the risks of production without paying too much attention to exploitation of the programmes produced. Taken to extremes this approach can have the perverse effect of programme production which takes no account whatsoever of markets and audiences. Programmes are indeed produced each year in Europe which, at best, are presented at festivals but are never exploited in any other way.

The second approach involves giving priority to activities that could strengthen the base of companies with potential for a number of programmes, thereby helping them to spread the inherent risks, provided that development of the programmes is market-oriented. Under this approach the crucial problem is not the activity subsidized (production, for instance) as such (the increase in the number of products, for example) but the conditions in which the activity is carried out: the creation and maximum exploitation of catalogues, the health of the companies involved and the strengthening of their base. Taken to extremes this approach can also have the perverse effect of discrimination between companies on the basis of their overall activities distorting competition between operators.

The project-by-project approach (whether in production or distribution) facilitates the activities it sets out to encourage but has no lasting effect on company structures.

By contrast, an approach which looks at the overall activities of companies and their success on the European market, or provides incentives to groups of companies for

instance, sparks growth, gradually increasing company potential whether in terms of catalogues, risk-sharing or training capacity.

To sum up:

Should the project-by-project (creation, production, distribution or exploitation) approach be continued for financial incentives?

or

Should priority be given to companies, taking the whole range of their activities into account?

5.2.3 What should the scale be in terms of territory, time and funding?

The definition of incentives designed to improve structures on the European market must be based on appropriate criteria in terms of market size, the time factor and the level of funding.

(i) Market size

If the goal of restructuring the European programme industry is to be achieved, the mechanisms to be put into operation should reflect a genuine European dimension. It is true that a limited territorial ambition (confined, for example, to projects involving the companies and markets of three Member States, two of them belonging to the same language area) does encourage cross-border activities, but it does not lead to a genuine "experience" of the European market, nor does it have a radical effect on the economics of projects subsidized.

(ii) The time factor

The time factor is an essential element of any industrial policy:

firstly, the life of the mechanisms chosen must coincide with the end of the "transitional phase", when the ultimate goal of restructuring should have been attained;

secondly, in the case of financial incentives which make provision wherever possible for repayment as soon as a profitability threshold has been reached, the timing of repayment should reflect the scale of the risks taken by companies in response to the provision of incentives.

(iii) The level of funding

The effectiveness of financial incentives is very much dependent on the concept of a "critical mass" (a term referring to both the total amount of funding and the individual amounts allocated under support mechanisms).

If the amounts are too small, the industry will use them to compensate for its shortcomings without changing its basic structure.

If they are too large, they will shield businesses from economic risk and have a perverse effect on the market.

The type of mechanism used often depends on the funding available.

Smaller sums generally necessitate a selective approach whereas, with larger sums, a more automatic mechanism can be operated, which will be triggered by market indicators.

To sum up:

The mechanisms which must be applied in order to bring about changes in structures at European Union level must have a genuine European dimension and be adequately funded in order to provide the "critical mass" required to achieve the objectives within a reasonable length of time.

5.2.4 The European market and cultural diversity

Given the cultural importance of the audiovisual industry, the Commission believes that it is vital to ensure that an industrial policy in this area does not lead to multi-speed development which would sideline Member States (or regions) with low audiovisual production capacity or a restricted language area.⁵⁴ It is important that all regions of the Union should be involved in the development of the audiovisual industry.

As to the programme industry, the creation of a genuine European market is the best way of responding in the long term to various structural handicaps:

with the development of the European market, the size of the national market will no longer be an impediment to talented people who, irrespective of their country of origin, will have to appeal to European audiences;

furthermore, the success and profitability of the European market will open the door to new markets outside Europe where producers of different countries and languages, big or small, will find a natural outlet (for example, the Spanish- and Portuguese-speaking areas of Europe may be relatively small but the world market for material in these two languages is much bigger).

In this connection the need to develop dubbing and subtitling - in terms of both number of programmes and quality of the product⁵⁵ - in order to increase the movement of programmes within the Community becomes a priority objective.

However, corrective mechanisms could be envisaged during the "intermediate phase" of the development of a European market.

⁵⁴ This is a particularly topical issue in the context of the accession to the European Union of further countries with low production capacity or a restricted language area.

⁵⁵ See 3.3.1 "Overcoming the language barriers".

Subject to compatibility with Community law, these mechanisms could take one of two forms: "positive discrimination" within the framework of measures available to all companies of the Union without distinction, or specific measures.

To sum up:

How can the European Union cater for the special problems of countries with low production capacity or a restricted language area?

Should they be catered for under mechanisms applicable across the board, or should specific mechanisms be developed? And if so, what form should they take?

5.2.5 Involvement in the development of new markets

For an industry that aims to be competitive on the world market, a presence on as many national markets as possible is just as vital as distribution in all formats. In the case of the programme industry this requirement is reinforced by the fact that the supply of audiovisual programmes is gradually shaping the tastes of European audiences.

Apart from the Community market where it is inappropriate to speak of exports, some outside markets are economically promising but difficult to penetrate (the US market for instance) while others are in the process of development or reconstruction. Whatever the stage of development reached by these markets, any links that European companies can establish to secure access to new markets for their programmes will prove to be trump cards for the European industry in the medium or long term.

Be that as it may, long-standing historical and cultural links with the countries of Central and Eastern Europe, the cinematic and audiovisual traditions that survive there, and the prospect of gradual economic integration in the region,⁵⁶ would argue in favour of the European Union giving priority to these markets.

(i) Reconstruction and development aid

Basically, economic relations between the European Union and these countries are built on the reconstruction and development aid that they so desperately need. This could be extended to industries like the audiovisual industry, under the Community's Phare and Tacis programmes for instance, provided the measures introduced are consistent with priorities jointly agreed with the authorities of the countries concerned.

Producers and companies in the European Union and in Central and Eastern Europe have a shared interest in the development of an audiovisual market in the region and action by the Union could help to speed matters.

⁵⁶ Cf the legal framework provided by the "Europe Agreements" with Poland, Hungary, Romania, the Czech Republic and Slovakia. Support measures might also be possible under the "Regional economic integration agreements", provided they are not regarded as export subsidies.

(ii) Extension of the Community's financial incentives

In this context, a possible first step might be to extend the Union's financial incentives to companies in Central and Eastern Europe. But this approach (aside from the familiar problems of the inadequacy of the legislative frameworks still being developed in these countries, notably in the area of copyright) faces two major obstacles:

first, differences in the level of development of audiovisual industries and exploitation networks in the two halves of Europe mean that mechanisms adapted to the situation in the Union would not necessarily work in Central and Eastern Europe;

second, given the limited funds that these countries could contribute in relation to the number of companies capable of submitting projects that would qualify for support, an extension of these mechanisms could lead to financial transfers that would undermine their effectiveness within the Union.

(iii) A new partnership

This being so, a different approach should be envisaged. This is why the Commission intends to consider whether it is advisable and feasible to provide incentives for Union companies to move into these countries.

Other industries - notably the American industry - have pursued a policy of "occupying the ground" in the area of infrastructures (cinema chains, cable companies, telecommunications ...) and low-cost programmes.

If the European Union were to encourage equal partnerships between companies from the two halves of Europe, this could help to revive our industries, notably the programme industry, and strengthen cultural ties.

To sum up:

With an eye to the development of the audiovisual market in the countries of Central and Eastern Europe:

Should action by the European Union be confined to development and reconstruction programmes for industry in general (and hence, potentially, the audiovisual industry)?

or

Should the Community's financial incentives be extended to professionals in these countries?

or

Should specific instruments be developed to encourage initiatives by Community companies in these countries in a spirit of partnership?

5.3 Convergence of national support systems?

Action taken by Member States is, in many respects, the decisive factor behind structural change in the audiovisual sector. This is the case as regards financial incentives, where national support mechanisms, all together, can act as a powerful lever to strengthen the programme industry.

National policies are first and foremost directed at national objectives:

- cultural objectives: preservation of quality and diversity in programming, language issues, support for creativity, promotion of national and local identities;
- industrial objectives: development of the national programme industry, development of services and new outlets, introduction of new technologies, etc.

The objective of developing a European programme industry by no means runs counter to these objectives; on the contrary, the long-term viability of the Member States' industrial and cultural policies depends on it.

What is more, if national policies incorporate the European dimension, they can contribute substantially to the effectiveness of measures adopted by the European Union, whereas if they withdraw into a purely national structural and market strategy they will seriously jeopardize the prospects for success in Europe and even more so in the world at large.

It would therefore seem appropriate to give thought to a comprehensive strategy with a view to achieving optimal economic impact of these systems.

5.3.1 A forum for exchanges and thought

Without questioning Member States' autonomy in such matters, it would be consistent with the idea of developing the European programme industry by means of a collective effort by all actors in the Union if thought could be given to the contribution that Member States, at their different levels of authority, can make to jointly defined objectives.

The Commission proposes to lead the discussions with the Member States' competent authorities in a spirit of cooperation. A forum would have to be set up for debate on subjects of interest to all, where it would be possible to discuss each other's experiences, analyse the effectiveness and limitations of existing national systems and ultimately study the possibilities and advantages of convergence towards common objectives.

At a later stage in what will be a gradual process, the Commission could formalize these exchanges or their conclusions, by initiating the institutional procedures for the adoption of recommendations or other common measures.

5.3.2 What are the priority themes for exchanges and thought?

We have already seen that Community regulations contain common rules for promoting the production and distribution of European programmes. Moreover, the Community has always been favourably disposed towards national support systems provided they do not

undermine the common interest or contravene Treaty provisions on free movement of individuals and services and right of establishment.⁵⁷

Above and beyond this legal approach reflection and exchanges can be developed in pragmatic fashion along two lines, with a view to optimizing the overall effectiveness of national support systems: convergence in the priorities for programme industry support, and convergence in financing such systems?

(i) Convergence in the priorities of national support systems

National systems do, to differing degrees, contribute towards strengthening the programme industry. Exchanges of experience and ideas between Member States about the operation of these systems and the priorities assigned to them could be a source of mutual enrichment leading to an appreciable improvement in effectiveness.

A number of topics could be suggested for consideration.

The strength of the national programme industries will depend on their ability to constitute large catalogues of programmes that can be used on a variety of markets (geographical and technical).

This being the constraint, the chief problem is obviously not production itself (in quantitative terms) but the conditions in which material is produced and exploited.⁵⁸

In this area the Commission proposes that thought be given to the way in which national support mechanisms can take account of the need to be market-oriented at the project-development stage and the need to stimulate the formation, compilation and maximum exploitation of programme catalogues.

In the same vein, the Commission also proposes that questions concerning market-oriented training and the dissemination of new information and communications technology be addressed.

In addition to this discussion about the thrust of national support mechanisms, another suitable subject for attention would be the arrangements for granting financial support. The Member States use a whole range of techniques (advances against box office takings, selective aid, automatic aid, etc.). It would be interesting to compare their effectiveness.

Taking account of the European dimension entails consideration of the openness of criteria of eligibility for national support mechanisms; can, for instance, the success of a cinema or television programme outside the national territory be relevant to national firms' transnational ambitions?

⁵⁷ It is worth recalling that the Union Treaty contains a clause which confirms this approach, namely the insertion of point (d) in Article 92(3) of the EC Treaty which includes "aid to promote culture and heritage conservation where such aid does not affect trading conditions and competition in the Community to an extent that is contrary to the common interest" among the types of aid which may qualify for exemption.

⁵⁸ The strategic question of catalogues applies also to existing material. An inventory should be taken so as to maximize market potential.

There are other considerations that militate in favour of at least some degree of convergence between national mechanisms. Transnational co-production and co-distribution arrangements will be all the easier to establish if national support mechanisms run along parallel lines. The complexity of co-production agreements is largely the result of the wide variations between them.

This list is not exhaustive? As the aim is to identify topics of common interest, it will clearly be for the Member States to say in what areas they think that a pooling of ideas may enrich their own experience.

(ii) Convergence in financing national support systems

The concept of a critical mass as applied to the financing of an industrial-type policy does not preclude consideration of questions of subsidiarity in relation to the origin of takings or to the implementation and management of distribution arrangements. In other words, determination of the critical mass must reflect both the mechanisms to be put in place at European Union level and those operating with comparable or closely inter-related objectives at national level. The aggregate amount must reflect the appropriations available from the Community budget and those available in national budgets to promote industrial restructuring objectives.

The transition from a micro-economic strategy to a macro-economic strategy presupposes a qualitative shift in the definition of financial support mechanisms as well as a quantitative shift in the resources deployed.

To deal with this and to release finance corresponding to the requisite critical mass, thought must be given to the different forms of funding that can be envisaged.

National support mechanisms are funded either from the central government purse or from the redistribution of a proportion of takings.

This second formula - a form of compulsory saving - consists of charging a parafiscal levy on the proceeds of exploitation of material at certain stages of its life (cinema takings, advertising receipts or broadcasters' turnover, video rentals) and redistributing them to programme industry operators by means of support mechanisms. Any such levy must abide by the policy followed hitherto by the Commission in relation to charges earmarked for specific purposes.

The value of such a system is two-fold:

- first, it takes account of the actual dimension of the market provided the levy is charged on a significant proportion of audiovisual programmes;
- second, the involvement of the "payers" (all services subject to the levy) in the audiovisual industry both requires and to some extent ensures that the redistribution mechanisms operate in an economically sound way. A broadcaster will be all the more willing to hand over part of his revenue if the redistribution mechanisms give him something in return in the form of greater availability of attractive programmes at competitive prices.

As systems of this type already exist at various levels in a number of Member States, and in view of their economic virtues, the Commission proposes that the Member States' authorities and operators in the sector join with it in considering whether something similar could be developed at Union level.

The establishment of such a system throughout the Community would not overburden national or Community budgets but would provide financial leverage commensurate with the industrial structure interests at stake.

If the principle were agreed, a certain level of Community coordination could be envisaged in the longer term.

The Commission is fully aware of the political sensitivity and the technical difficulties of any such scheme. It merits thought, however, in view of what is at stake.

It should be stressed that the questions of whether such a system could or should be set up throughout the Union remain open. It would be more a matter of looking into possibilities of coordinating Member States' schemes than of proposing a new financial instrument at Union level. To start with, a list of existing systems would have to be drawn up and their characteristics analysed.

To sum up:

Should a cooperative framework for exchanges and thought be set up with a view to improving national systems of support for the programme industry and promoting their convergence?

What should be the priority themes?

Should such an exercise promote:

- common priorities in national support systems?
- a gradual move towards a European dimension?
- debate on funding arrangements?

CONCLUSION

The Commission is aware that a change in attitude is the primary effort that must be made if the European Union elects to invest in the future of the programme industry via a policy designed to strengthen it structurally.

The change of attitude must, of course, begin with the institutions of the Union and national authorities, particularly in the way they approach the elaboration of comprehensive policies on the communications industries. But the industry itself must make an effort too.

Reconciling the cultural and the economic, the product and the audience, the small business structure and the industrial constraints - these are no mere buzz-words to conceal the complexity of the transition that the industry must make if it is to survive. Europe must have confidence in its talents and give them the proper means to flourish throughout Europe and the world.

It is in that spirit that the Commission is presenting this Green Paper to the European institutions. There will also be extensive consultations with the industry.

This will allow the Commission to canvass the views of individual operators and organizations representing the industry at European level.

In the audiovisual sector, and more especially in the programme industry, the Commission has to deal with a large number of trade organizations whose representativeness at European level and ability to present the views shared by the companies they represent vary enormously. In the long run the dialogue with the industry would be much easier if there were a more orderly structure in these organizations.

A first step will be the organization of a European Audiovisual Conference in Brussels. The results of this could be refined in another round of consultations.

At the end of the consultation process the Commission will draw its conclusions. It will then brief the European institutions as a preliminary to presenting proposals for practical action to be taken, pursued or boosted at European Union level.

SUMMARY

With the audiovisual sector undergoing far-reaching and rapid change, brought on in particular by technological developments, the Green Paper entitled "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union" focuses on a strategic aspect of the sector.

The film and television programme industry has two specific characteristics:

films and television programmes are not products like any others: as the prime vector of culture and living testimony to the traditions and identity of each country, they deserve encouragement.

Current developments are making these programmes a key factor in the strategy of the most powerful operators in the audiovisual sector.

The convergence of the programme industry, broadcasting services, cable and telecommunications operators, the publishing industry and manufacturers of information and communications technology equipment is behind the appearance of new products, new audiovisual services which are leading us into a new information society.

Although it is not yet possible to fully measure these phenomena which are developing throughout the world, there are a number of fundamental points which can be made concerning the future of the European programme industry:

- it must be competitive in an open, worldwide market;
- it must be forward-looking and be involved in the development of the information society;
- it must illustrate the creative genius and the personality of the people of Europe;
- it must be capable of transforming its growth into new jobs in Europe.

The aim of the Green Paper is to launch a debate on the following theme:

How can the European Union contribute to developing a strong, forward-looking programme industry (both for the cinema and for television) that can compete on world markets and help European culture to flourish and create jobs in Europe?

At this point in time the Commission is endeavouring, with the help of a series of forward studies - the White Paper on Growth, Competitiveness and Employment being foremost among them - to devise the basic guidelines for a European Union policy on communication, taking account of technological change brought about by digitalization, the convergence of industries in a single information area (information, infrastructures, applications) and changes in market structures (alliances and mergers).

This Green Paper is one such exercise. Input has come from three sources: a Think Tank set up by the Commission, trade organizations and the Member States.

It is clear from the diagnosis of the present situation that the European programme industry has failed:

- to overcome its atomistic local market structure or to promote intra-European distribution of programmes;
- to get out of its chronic loss-making situation and to attract significant flows of European or foreign investment.

In this crisis situation, the digital revolution will reinforce a number of trends already at work on the audiovisual market:

- the growing individualization of supply and the bigger role of individual consumption as a component of the industry's revenue structure;
- internationalization and globalization of the programme industry and related industries;
- the growing need for rich catalogues in terms of both quantity and quality.

The combined result of these trends will be the need for an industry policy approach that provides the means of satisfying every market segment and every audience in Europe, bearing in mind the variety of formats and services which are in the pipeline.

This approach is a logical extension of the strategy outlined in the Commission's White Paper for the creation of a European information area to foster the development of new markets for services.

Apart from the global approach and the allowance made for European characteristics, the audiovisual policy of the European Union must include new priorities:

- bringing the new technologies to companies working in the industry;
- creating a competitive environment for services;
- developing communication infrastructures;
- developing appropriate forms of training.

Although there is a risk of being sidelined into market segments that are too small to allow full benefit to be derived from the growth of the industry world-wide, the European programme industry does have a number of valuable trump cards, particularly the quality and diversity of its production capacity which is so important at a time of individualization of supply.

As part of a collective effort of all actors in the European Union, the Union policy will have to encourage the development of a diversified European market for programmes and at the same time prompt an appropriate response from the programme industry.

To this end:

The European Union should press ahead with the introduction of technologically advanced information infrastructures to give consumers a wider choice and create new openings for the programme industry.

At the same time, to ensure that the development of extensive distribution networks does not work to the sole advantage of non-European programme industries, forcing its own industry to retreat into local markets with limited economic potential and cultural influence, the European Union must mobilize its resources to invest in the development of a programme industry capable of competing at home and on the world market, acting as a vehicle for its culture, creating jobs and generating profits.

What is needed, therefore, is a medium/long-term policy with the ultimate aim of making the industry profitable again in an open, dynamic world market.

Existing instruments at Community and national level, both for financial and other forms of support, have helped the industry survive but have provided no incentive to make the necessary restructuring effort.

The audiovisual industry, like other industries affected by internationalization and globalization, notably in the context of technological change, will have to face pressures for liberalization in the years ahead.

For this reason, the European Union must lose no time in devising and implementing an ambitious industrial policy focusing on the following objectives:

- putting an end to the partitioning of national markets;
- guaranteeing real choice to the European public;
- optimizing opportunities in an industry with a future;
- securing the long-term profitability of a loss-making industry.

In order to outline such a policy, the Commission wishes to open a debate on a series of options under three heads: the rules of the game, financial incentives, and the convergence of national systems.

1. Options for the rules of the game

With a view to a European Union policy to boost the programme industry, the development of the market by the establishment of infrastructure, the liberalization of services and the removal of obstacles to the single market is the first objective.

Improving the transparency of the audiovisual market calls for better cooperation between the Community and national authorities responsible for applying the rules of competition and cooperation between the Community and anti-trust authorities in non-member countries.

The Commission believes that existing rules in the European Union to promote European programmes provide a sound framework for the cross-border development of the programme industry that should be retained for the time being.

However, there are a number of questions about the effectiveness of these tools:

How can the application of Community law and its monitoring be made more effective?

How can the diversity of services be taken into account?

How can intra-European distribution of programmes be encouraged?

Are clearer common definitions needed?

Should preference be given to incentives to invest in the production of programmes and the acquisition of rights rather than mechanisms based on broadcasting time?

Should Community rules on media time scales be retained, given the need to maximize earnings and encourage the emergence of new formats and services?

Should existing rules be amended and extended to forms of exploitation other than broadcasting?

Moreover the emergence of new audiovisual services straddling the divide between broadcasting and telecommunications raises new issues:

How can the relationship between the development of new services and the development of the European programme industry be optimized?

Should incentives be developed for new ways of transmitting audiovisual programmes (notably those on individual demand, as opposed to broadcasting services in the strict sense - "point to multipoint" communication)?

2. Options for financial incentives

With a view to a European Union industrial policy to boost the programme industry:

What principles should govern financial support?

Should the horizontal approach to financial incentives be continued, covering all phases of the creation/production/distribution/exploitation process, or should funds be concentrated on a number of priority phases to apply leverage to the process as a whole? And if so, on which?

In particular:

How can the development of projects be improved in a European context?

How can pan-European distribution of programmes be encouraged and the compartmentalization of national markets be brought to an end?

How can investment be encouraged?

How can training be geared to the market and new information technologies?

Should the project-by-project (creation, production, distribution or exploitation) approach be continued for financial incentives?

or

Should priority be given to companies, taking the whole range of their activities into account?

Apart from the need to promote dubbing and subtitling, in terms of both quantity and quality, to promote intra-Community distribution of European programmes, what can be done to ensure that cultural diversity is preserved?

How can the European Union cater for the special problems of countries with low production capacity or a restricted language area?

Should they be catered for under mechanisms applicable across the board?

Should specific mechanisms be developed? And if so, what form should they take?

The strengthening of the programme industry inevitably assumes a worldwide dimension, hence certain specific questions in the context of gradual integration with Central and Eastern Europe?

With an eye to the development of the audiovisual market in the countries of Central and Eastern Europe:

Should action by the European Union be confined to development and reconstruction programmes for industry in general (and hence, potentially, the audiovisual industry)?

or

Should the Community's financial incentives be extended to professionals in these countries?

or

Should specific instruments be developed to encourage initiatives by Community companies in these countries in a spirit of partnership?

3. Convergence of national support systems ?

Given the decisive role played by the authorities at different levels in the Member States on the structure of the audiovisual sector and in particular the potential impact of the systems of support for the programme industry, the Commission proposes that thought be given to the question of whether the convergence of national support systems is appropriate and feasible.

Should a cooperative framework for exchanges and thought be set up with a view to improving national systems of support for the programme industry and promoting their convergence?

What should be the priority themes?

Should such an exercise promote:

- common priorities in national support systems?
- a gradual move towards a European dimension?
- debate on funding arrangements?

CONTRIBUTIONS TO THE GREEN PAPER ON AUDIOVISUAL POLICY

I. PROFESSIONAL CIRCLES

1) Organisations representing the industry at European level replying to questionnaire sent by Mr. Pinheiro.

- ACT : (Association of Commercial Televisions in Europe)

Included replies of : TFI & ANT 1 (Antenna TV - GR).
Noted that others, such as ITV and Fininvest, were sending their contributions directly.
- ECCA (European Cable Communication Association)
- EPC : (European Publishers' Council)
- FEITIS : (Fédération Européenne des Industries Techniques de l'Image et du Son)

Submissions of French members FITCA & SNVC
German member VTFF
Italian member UNITC
- FERA : (Fédération Européenne des Réalisateurs de l'Audiovisuel)
- FIAD : (Fédération Internationale des Associations de Distributeurs de films)
- EBU/UER : (European Broadcasting Union/Union Européenne de Radio - Télévision)
(some members also sent separate contributions)
- UNIC : (Union Internationale des Cinémas)

Noted that they had forwarded the questionnaire on to their European members to respond directly.
- FIAPF : (Fédération Internationale des Associations de Producteurs de Films)
- CEA : (Cinema Exhibitors Association)
- CEPI : (Coordination of European Independent Producers)

2) Organisations involved in the MEDIA programme replying to the questionnaire sent by Mrs Flesch.

- EFA : (European Film Academy)
- BABEL : (Broadcasting Across the Barriers of European Language)

- CARTOON : (European Association of Animation Film)
- DOCUMENTARY : (Project for the Creative Documentay)
- EAVE : (Les Entrepreneurs de l'Audiovisuel Européen)
- EURO AIM : (Association Européenne pour un marché de l'Audiovisuel Indépendant)
- EMG : (Euro Media Guaranties)
- EFDO : (European Film Distribution Office)
- EVE : (Espace Video Européen - The Irish Film Institute)
- GRECO : (Groupement Européen pour la Circulation des Oeuvres)
- LUMIERE : (Sauvegarde et survie du patrimoine cinématographique européen)
- MAP TV : (Mémoire - Archives - Programmes TV)
- MEDIA SALLES : (Encouragement de l'exploitation cinématographique en Europe)
- SCALE : (Small Countries improve their Audiovisual Level in Europe)
- SCRIPT : (European Script Fund)
- CLUB : (Club d'investissement Media)
- SOURCES : (Stimulating Outstanding Resources for Creative European Screenwriting)

3) Other firms and organisations having sent a contribution.

- BT : (British Telecom)
- Central Television : (United Kingdom)
- Chambre Syndicale des Producteurs et Exportateurs de Films Français
- EACEM : (European Association of Consumer Electronics Manufacturers)
- IFFS : (International Federation of Film Societies)
- Fédération Nationale des Cinémas Français
- Fininvest Comunicazioni : (Italy)
- France Telecom
- American Film Marketing Association
- EUREKA Audiovisuel
- GESAC : (Groupement Européen des Sociétés d'Auteurs et Compositeurs)

- GNS : (Genootschap van Nederlandse Speelfilmmakers)
- ITV Network Centre : (United Kingdom)
- IVF : (International Video Federation, Europe)
- TV5 : (France)

Including the contribution of the "Bruges Group" of trans-national European public service satellite chains, comprising :

- BBC TV World
 - RAISAT
 - DEUTSCHE WELLE TV
 - RTVE INTERNATIONAL
 - TRT INTERNATIONAL
 - EURONEWS
 - RTP INTERNATIONAL
 - 3 SAT
 - TV 5
- ZDF : (Germany)

II. MEMBER STATES

- BELGIUM : Etat fédéral et Communautés
- DANMARK : Permanent Representation to the European Union
- GERMANY : Federal Ministry of Economy
- FRANCE : Permanent Representation to the European Union
- IRELAND : Permanent Representation to the European Union
- ITALY : Department of Information
- LUXEMBOURG : Permanent Representation to the European Union
- NETHERLANDS : Permanent Representation to the European Union
- PORTUGAL : Permanent Representation to the European Union
- UNITED KINGDOM : Permanent Representation to the European Union