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Accompanying document to the

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

**Ninth Communication on the application of Articles 4 and 5 of Directive 89/552/EEC as
amended by Directive 97/36/EC and Directive 2007/65/EC, for the period 2007-2008**

(Promotion of European and independent audiovisual works)

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APPLICATION OF ARTICLES 4 AND 5 IN EACH MEMBER STATE

INTRODUCTION

This document supplements the Ninth Communication from the Commission to the Council and to the European Parliament on application of Articles 4 and 5 of Directive 97/36/EC, pursuant to Article 4(3).

The Ninth Communication, covering the years 2007 and 2008, outlines the Commission's opinion on application of Articles 4 and 5 at Community level and the principal conclusions which can be drawn from the Member States' reports. This document contains a detailed analysis of application of Articles 4 and 5 in each Member State based on the reporting obligations for the reference period.

The Commission is responsible for ensuring correct application of Articles 4 and 5 of the Directive in accordance with the Treaty. Article 4(3) of the Directive requires the Member States to provide the Commission with a report on application of Articles 4 and 5 every two years. Summaries of these reports are provided in Annex 3.

The present document comprises two parts:

Part 1: Application of Articles 4 and 5: General remarks;

Part 2: Application of Articles 4 and 5: Detailed analysis for each Member State.

It also contains the following annexes:

- Annex 1: Performance indicators
- Annex 2: Charts and tables on the application of Articles 4 and 5
- Annex 3: Summary of the reports from the Member States
- Annex 4: Report from the States of the European Free Trade Association participating in the European Economic Area
- Annex 5: List of television channels in the Member States which failed to achieve the majority proportion required by Article 4
- Annex 6: List of television channels in the Member States which failed to achieve the minimum proportion required by Article 5

1. APPLICATION OF ARTICLES 4 AND 5: GENERAL REMARKS

In 2007 a total of 2053 channels were reported, of which 1590 were covered by Articles 4 and 5 of the Directive. In 2008 some 2151 channels were reported, of which 1679 were covered, a 51.6% increase compared with 2006.

This increase is the consequence of the highly dynamic development of the audiovisual sector which has continued since the last reference period¹. At the same time, the Commission sent the Member States a pre-defined list of channels extracted from the European Audiovisual Observatory's MAVISE database in order to ensure greater consistency and comparability of the national statistical statements. This approach might also have played a part in the increase in the number of channels covered.

Progress has been made in terms of the consistency of the measurements, although there is still room for improvement in the consistency of the reporting: for instance, the distinction between local and regional channels needed some clarification². The same applies to how to treat certain specialised channels, such as cinema channels, which were exempt in some Member States³. Trailers also appear to be counted as programmes for calculating the proportion of European and independent works in some Member States, but not in others.

As in the Eighth Communication, all channels falling within the jurisdiction of a given Member State have been reported, irrespective of their audience shares.

Finally, for the first time, all 27 EU Member States were under an obligation to report.

1.1. Monitoring methods in the Member States

As regards the national monitoring methods, there are still divergences between Member States. Most national monitoring methods are based on mere submission of returns by the broadcasters to the regulator. In some Member States the data are verified by the regulator or an independent research organisation and in a few the competent authority or an independent organisation is directly involved in monitoring. The monitoring frequency also varies from one Member State to another: from randomly selected weeks throughout the year⁴ to daily. During the reference period, one competent authority (in Portugal) improved its monitoring method by abandoning samples and taking into account the total amount of broadcasting over the year in order to assess the performance of channels.

Furthermore, the national methods themselves sometimes differ, depending on the ownership of the channel (private or public) or the type of transmission (terrestrial, satellite or cable). In one Member State only analogue channels were monitored⁵. In this respect, the Commission reiterates that all channels falling within the jurisdiction of a given Member State are under the obligations set out in Articles 4 and 5, irrespective of the type of channel or transmission.

¹ The UK Regulatory Authority (Ofcom), for instance, updates every month the list of channels falling under national jurisdiction to include the new ones.

² Pursuant to Article 9 of the Directive, channels intended exclusively for local audiences which do not form part of a national network are not covered by Articles 4 and 5. Under the 'Suggested guidelines' adopted by the Commission in 1999 for monitoring implementation of Articles 4 and 5 of the 'Television without Frontiers Directive', local channels are defined as 'sub-regional'.

³ The Commission sent two official letters to Germany and Portugal concerning regional and cinema channels respectively. Germany gave an undertaking to provide statistical data on the 'Dritte Programme' regional channels from the next reporting period on and Portugal has already submitted data on cinema channels for the current reference period.

⁴ The sampling periods are generally indicated by the regulator.

⁵ In Cyprus the current legislation does not allow the national authority to monitor digital channels. This situation is expected to change in the next few months.

1.2. Reasons for non-compliance

The reasons given for non-compliance with the proportions required under Articles 4 and 5 of the Directive were very similar to those provided in the previous reference periods.

- **Thematic channels**

The number of channels specialising in only one genre or targeting a very specific audience has increased significantly. In this respect, it was pointed out that, due to their genre, ‘cinema channels’, for instance, could not fulfil the obligations set out in Articles 4 and 5.

It must be repeated once again that the Directive provides for no further exemptions beyond those already listed in Article 4(1).

- **Recently launched channels**

Some Member States indicated that recently launched channels found it difficult to meet the obligations set out in Articles 4 and 5 from the start of their operations. Some also argued that, especially for new market entrants targeting a very specific audience, European programmes were not attractive enough to build up a viewer base.

True as it is that the Directive leaves open the possibility of progressively building up to the required proportions of European works⁶ and that Article 4(3) allows the Commission to take into consideration the particular circumstances of new broadcasters, every effort should be made to achieve the set proportions as soon as possible.

- **Problems with acquisition of European programmes**

Some Member States considered that the small size of their domestic markets or their language area inevitably placed restrictions on production or commissioning of European programmes.

Article 4(3) allows the Commission to take into account the specific situation of countries with low audiovisual production capacity or a small language area.

Furthermore, some Member States indicated that broadcasters sometimes had difficulties finding European programmes on the market, either because the acquisition rights market was dominated by a few broadcasters who held the rights or because it was difficult to find European programmes at competitive prices.

The argument focusing on the higher costs of European programmes cannot be accepted, considering that the objective of Articles 4 and 5 is to foster production by the European audiovisual industry.

- **Channels belonging to a group**

One argument raised was that some channels belonging to a group did not meet the obligations, while others in the same group intended to cover European topics and programmes exceeded the required proportion by a large amount. In those cases, the broadcasters and the national authorities often considered the results of the group as a whole.

⁶ See, in particular, recital 30 of Directive 97/36/EC.

Once again, it must be repeated that, even though Article 4(1) states that ‘broadcasters’ must reserve set proportions of their transmission time for European works, Article 4(3) refers to each of the ‘television programmes’ when it comes to monitoring achievement of the set proportions.

- **Broadcasting from non-European stock**

A number of channels belonging to a non-EU group indicated that they use material from the group’s catalogue made up of non-European productions.

In this connection, the Commission reiterates that Article 4(1) does not include ownership structure as one of the reasons for exemption from the obligations imposed by the Directive.

- **Small channels**

Certain Member States argued that some channels are so small and have such a small audience that it would be disproportionate to impose reporting obligations on them.

It is true that a "de minimis" rule was set for earlier reference periods, when an exception was granted for channels with an audience share of less than 3 %. However, this rule has been abandoned since the 2005/2006 reporting period.

- **Specific market conditions during the reference period.**

The economic crisis and the resultant decrease in advertising revenue and other sources of income for broadcasters were explicitly mentioned in one report and the current economic context in another as reasons for non-compliance with the set quotas.

The Commission may take exceptional circumstances into account, following the principle of proportionality. However, situations such as those described in the two abovementioned reports do not exempt channels from the obligations set out in Articles 4 and 5 of the Directive. The Commission acknowledges the fact that the regulator in one of these two Member States plans to take enforcement measures against the non-compliant broadcasters and that in the other, broadcasters are considering cooperation agreements to produce audiovisual works at lower cost.

1.3. Measures planned or adopted to remedy cases of non-compliance

Enforcement seems to have improved somewhat during the reference period, compared with previous reports.

It is true that the legal situation still diverges from one Member State to another⁷ and that some competent authorities do no more than engage in ‘discussions’ with broadcasters or ‘encourage’ compliance with the quotas. However, the national authorities in nine Member States said that they had taken active measures during the reference period against cases of failure to communicate data and/or to achieve the required proportions of European works and/or independent productions. And five Member States reported that penalty procedures

⁷ In some Member States, the competent authorities have no power to apply sanctions (Ireland, Cyprus, Sweden and Austria, in the latter case only for failure to fulfil the proportions of European works and independent productions), whereas in others the sanctions include warnings and/or fines or withdrawal of licences.

had been initiated⁸. At the same time, one of the most recent Member States (Romania) reported that a provision on sanctions for failure to communicate data and to achieve the quotas had been added to the Audiovisual Law.

Although some progress seems to have been made, there is still room for further improvement in enforcement of the obligations set out in Articles 4 and 5. The Commission reiterates the need for the Member States concerned to improve the measures against non-compliant channels, in order to ensure by appropriate means that the proportions of transmission time laid down in Articles 4 and 5 are achieved. Especially in cases where channels continually fail to meet these proportions, stricter enforcement of the national rules in place is the only way to ensure effective implementation of Articles 4 and 5. In two⁹ of the three Member States which reported averages of below 50% of European works over the period 2007-2008 the competent authorities have no power to take sanctions against non-compliant broadcasters.

1.4. Conclusions

The reference period for this report includes the first compulsory reports from the most recent Member States, i.e. Bulgaria and Romania.

As far as Article 4 is concerned, the average proportion of European works rose in 14 Member States during the reference period and remained stable in two. It therefore fell in 11 Member States. The net result is a very slight (0.6 percentage point) increase over the current reference period. Over the four-year period from 2005 to 2008, 16 Member States reported an increase in their percentages, albeit relatively modest (not more than 5 percentage points in 11 cases), and the other 11 a decrease (of less than 10 percentage points in eight cases). In 2008 the proportion of European works broadcast slipped back to the level achieved in 2005 (63.21%), following the increase recorded during the last reporting period.

As far as European works created by independent producers are concerned, 14 Member States reported an upturn over the reference period and 13 recorded a decrease. The net result is a slight (-0.36 percentage point) decrease. Over the four-year period from 2005 to 2008, 19 Member States posted a decrease and only eight reported an increase. However, the resulting net decrease in relation to the previous period remained very moderate (-0.83 percentage point) and the proportion of European independent works broadcast at EU level reached 34.90% in 2008, well above the percentage set in Article 5.

The proportion of recent works by European independent producers shows a slight upward trend and the level of achievement (63.88% in 2008) is satisfactory.

⁸ Belgium (French-speaking community), the Czech Republic, France, Hungary and the Netherlands.

⁹ Cyprus and Sweden

2. APPLICATION OF ARTICLES 4 AND 5: DETAILED ANALYSIS

2.1. Belgium¹⁰

2.1.1. Belgium – Flemish community

The number of identified channels for the reference period was 48, from which two channels were exempt (Actua TV and EbS Europe by Satellite (version in Dutch)). Three channels were reported to be non-operational in 2007 (Euro 1080, Prime Family and Studio 100 TV) and only two channels in 2008 (Kinopolis TV 1 and Kinopolis TV 2).

European works

The 21 reported¹¹ channels broadcast an average of 80.7% European works in 2007. In 2008, the 34 reported channels broadcast an average of 69.8%. This represents a -10.9 percentage point decrease over the reference period.

For 2007, out of the 21 reported channels, 18 channels achieved the majority proportion required by the Article 4 of the Directive, while three channels did not (VijfTV, VT4 and 2BE). Of the 43 covered¹², 22 did not communicate all or some of the data. The compliance rate, in terms of numbers of channels, was 41.9%.

According to the report, the majority of VT4 prime time programming includes local productions which are very expensive, given that they target a small market with fragmented advertising spending. However, over 50% of the budget was spent on European productions, so that it can be concluded that the channel is making genuine efforts to show European and independent productions.

VijfTV did not reach the required proportion of European works, although it improved its average compared with the previous report. The report points to the fact that this channel devotes four hours per day to phone-in games produced by a Dutch company, which are not taken into account for the calculation of the proportion.

In 2008, of the total of 34 reported channels, 23 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 11 channels did not. Of the 44 covered channels, 10 did not communicate their data.. The compliance rate, in terms of numbers of channels, was 52.3%.

Except for VT4 and VijfTV (see above), no reasons have been given for non-compliance by the other channels in 2008.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 57.1% in 2007 and 57.3% in 2008, representing a 0.2 percentage points increase over the reference period.

¹⁰ Two separate reports were received from the Flemish and the French Communities. This distinction is therefore reflected in the present analysis. However, the figures were aggregated for the purpose of assessment at Member State level in Background Document 2.

¹¹ "Reported" channels are those for which data was communicated by the Member States

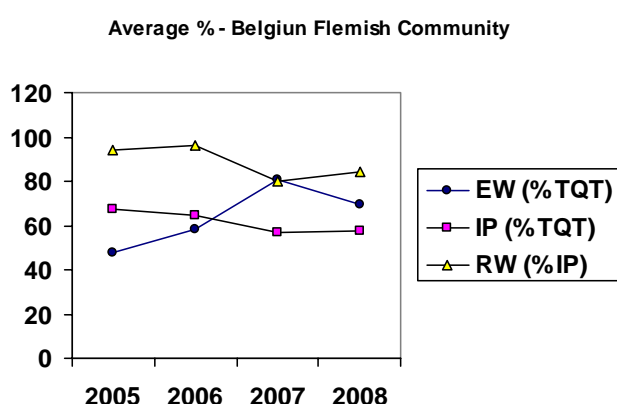
¹² The term "covered channels" refers to the total number of channels identified less the number of non-operational and exempted channels, see Indicator 1, Background document 1.

Not all reported channels exceeded the minimum proportion under Article 5 of the Directive. Five channels did not meet this target in 2007 and four in 2008. The compliance rate, in terms of numbers of channels, was 58.1% in 2007 and 65.9% in 2008.

The average relative proportion of recent European works by independent producers was 80.3% in 2007 and 84% in 2008, representing a 3.7 percentage point increase over the reference period

The Commission notes that the Flemish authorities do not envisage to take on any measures against the channels which failed to fulfil the required proportions, because they generally consider the channels belonging to the same broadcaster as a whole and in these conditions, the requirements are generally achieved.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.2. Belgium - French Community

The number of identified channels for the reference period was 25. Two channels were non-operational in 2007 (Be Sport 3 and Nickelodeon - MTV Wallonia) and two in 2008 (Move On TV and Move X TV), while four channels were exempt. Six channels did not communicate any data in 2007 and 2008.

European works

The 13 reported channels broadcast an average of 65.5% European works in 2007 and 67.3% in 2008. This represents a 1.8 percentage point increase over the reference period.

For 2007, all 13 reported channels achieved the majority proportion required by the Article 4 of the Directive. For the 19 covered channels, the compliance rate, in terms of numbers of channels, was 68.4%.

In 2008, out of 13 reported channels, 12 achieved the majority proportion of transmission time specified in Article 4 of the Directive, and only one channel did not (AB3). For the 19 covered channels, the compliance rate, in terms of numbers of channels, was 63.2%.

European works made by independent producers

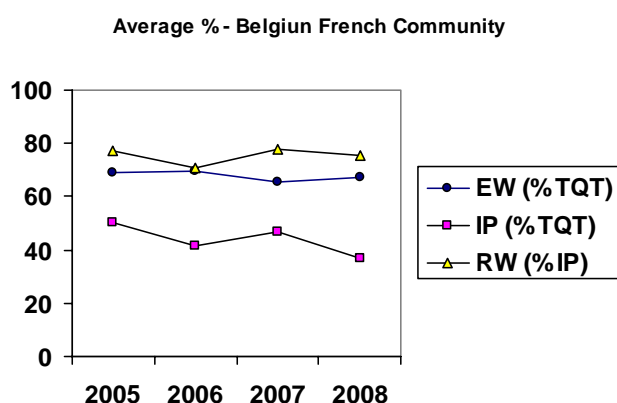
The average proportion of European works by independent producers on all reported channels was 46.9% in 2007 and 36.6% in 2008, representing a decrease of -10.3 percentage points over the reference period.

All reported channels exceeded the minimum proportion under Article 5 of the Directive (percentages ranking from 20% to 76.8% in 2007 and from 18.1% to 57.1% in 2008). The compliance rate, in terms of numbers of channels, was 68.4% in 2007 and 2008.

The average relative proportion of recent European works by independent producers was 77.8% in 2007 and 75.4% in 2008, representing a -2.4 percentage point decrease over the reference period.

According to the report, two channels, AB3 and AB4, did not fulfil the proportion of recent European independent works because they alleged that the rights to independent European works that are less than five years old are essentially held by competitors and it is difficult for smaller broadcasters to access these markets' rights. The Commission notes that in 2007 and 2008, the CSA took actions for reiterated non-compliance with the proportion of recent European independent works by AB3 and AB4.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.3. Bulgaria

The number of identified channels for the reference period was 42, from which four channels were exempt (Ring TV (Bulgaria), Telestar TV, TV 1 and Zdrave). One channel was non-operational in 2007 (GTV Gotinata Televizija).

European works

Over the reference period, the 23 reported channels broadcast an average of 55.6%.

For 2007, of the 23 reported channels, 15 achieved the majority proportion required by the Article 4 of the Directive, while eight channels did not. No data was communicated for 14 channels out of 37 covered channels.. The compliance rate, in terms of numbers of channels, was 40.5%.

In 2008, of the total of 23 reported channels, 14 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 9 channels did not. No data

was communicated for 15 channels out of 38 covered channels. The compliance rate, in terms of numbers of channels, was 36.8%.

According to the report, the Bulgarian authorities have made every effort to collect the statistical data and will take action against those channels which did not submit information.

No reason was given to explain why the non-compliant channels failed to reach the required proportion of European works.

European works made by independent producers

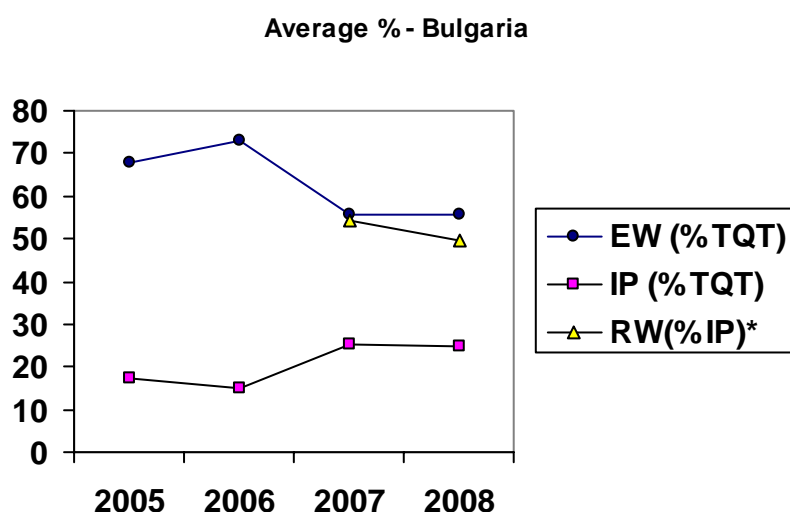
The average proportion of European works by independent producers on all reported channels was 25.2% in 2007 and 24.6% in 2008, representing a -0.6 percentage points decrease over the reference period.

In 2007, out of 16 reported channels, 13 channels exceeded the minimum proportion specified in Article 5 of the Directive, while three channels did not meet the target. No data was communicated for 21 channels out of 37 covered channels. The compliance rate was 35.1%.

For 2008, out of 18 reported channels, 14 channels exceeded the minimum proportion specified in Article 5 of the Directive, while four channels did not meet the target. No data was communicated for 20 channels out of 38 covered channels. The compliance rate, in terms of number of channels, was 36.8%.

The average relative proportion of recent European works by independent producers was 54.3% in 2007 and 49.5% in 2008, representing a -4.8 percentage point decrease over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



* The data related to recent works in 2005-2006 is missing since it was not compulsory for Bulgaria to report on the application of Article 4 and 5 at that time. They did it on a voluntary basis for European works (EW) and independent producers (IP).

2.1.4. *Czech Republic*

Of the total of 49 identified channels three channels were totally and five channels were partially exempt in 2007. Nine channels were not yet operational in 2007.

In 2008, six channels were totally exempt and five channels, only partially.

European works

All reported channels broadcast an average of 64.3% of European works in 2007 and an average of 65.9% in 2008. This represents a 1.6 percentage point increase over the reference period.

For 2007, of the total of 36 reported channels, 23 achieved the majority proportion required by Article 4 of the Directive and 13 channels were below this target. Out of the 37 covered channels, one did not communicate any data.. The compliance rate, in terms of numbers of channels, was 62.2%.

In 2008, of the total of 40 reported channels, 23 achieved the majority proportion of transmission time specified in Article 4, while 17 channels did not. Out of the 43 covered channels, three did not communicate any data. The compliance rate, in terms of number of channels, was 53.5%.

As was already the case in the 2005-2006 period, most of the channels that did not reach the minimum proportion of time devoted to European works were cinema channels. The report states that their non-compliance can be explained, amongst others, by the fact that the Czech Republic is a country with low audiovisual production and restricted language area.

While acknowledging this situation, the Commission would like to recall that the proportion of transmission time specified in Article 4(1) of the Directive applies to each of the television channels of broadcasters falling under the jurisdiction of the Member states concerned. The Directive allows adopting a progressive approach when necessary and this is a possibility which could be exploited in order to improve the situation of fiction channels.

The Commission acknowledges on the other hand that the Czech authorities have taken action against PRIMA TV, a generalist channel which did not fulfil the required proportion of European works in 2008.

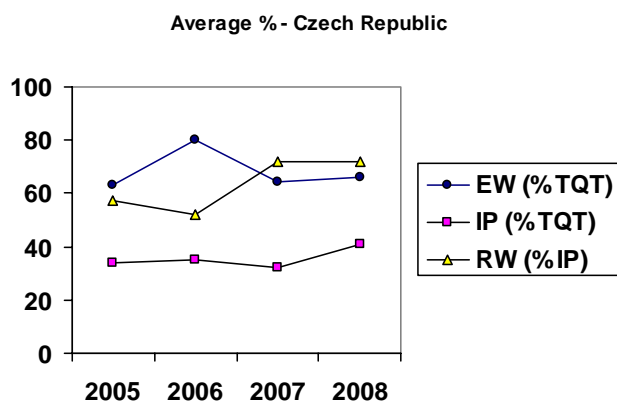
European works made by independent producers

The average proportion of European works by independent producers on all reported channels in 2007 was 32.2%. In 2008, it rose to 40.7%, which represents an increase of 8.5 percentage points over the reference period. In 2007, 13 channels were below the 10% threshold while in 2008 all the reported channels achieved this proportion.

The compliance rate, in terms of number of channels, was 56.3% in 2007 and 92.1% in 2008.

The average relative proportion of recent European works by independent producers for all reported channels was 72.1% in 2007 and 71.8% in 2008, representing a slight decrease (-0.3 percentage point) over the reference period. In 2007 no data was communicated for seven channels and in 2008 this was the case for only three channels. In this respect, the Commission notes that the Authority has taken action against the failing channels.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.5. *Denmark*

Of the total of 27 identified channels, eight channels were exempt over the reference period.

European works

All reported channels broadcast an average of 84.9% and 84.8% in 2007 and 2008 respectively, representing a -0.1 percentage point decrease over the reference period.

For 2007 and 2008, of the total of 18 reported channels, 16 channels achieved the majority proportion specified in Article 4 of the Directive, while two channels didn't meet this target (TV 2 Film and TV 2 Zulu). No data was communicated for one channel out of the 19 covered channels. The compliance rate, in terms of numbers of channels, was 84.2%.

The report did not provide any reason for the non-compliance of TV 2 Film and TV 2 Zulu.

The Commission notes that the proportion of European works has increased on TV 2 Film compared with the last reference period while there is stagnation for TV 2 Zulu. Since this channel has failed to fulfil the required proportion for several reference periods and does not show any improvement sign, effective enforcement measures should be taken in order to ensure that the channel increases its proportion of European works.

European works made by independent producers

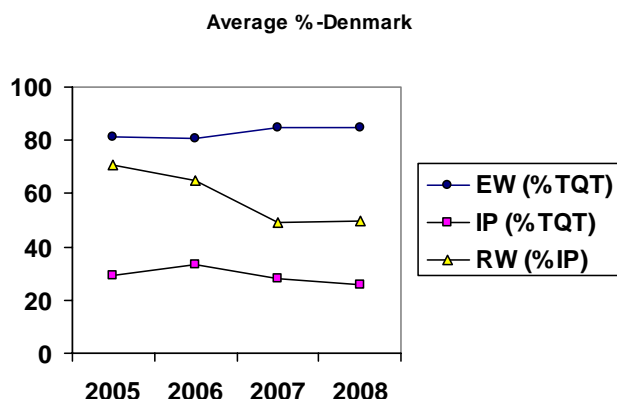
The average proportion of European works by independent producers on all reported channels was 28.1% in 2007 and 25.5% in 2008, representing a decrease of -2.6 percentage points over the reference period.

For 2007, of the 18 reported channels, 10 exceeded the minimum proportion under Article 5 of the Directive, while 8 channels did not. In 2008, of the 18 reported channels, 9 were above the 10% minimum, and 9 channels were below this threshold. The compliance rate, in terms of number of channels, was 52.6% in 2007 and 47.4% in 2008.

According to the report, the four channels that failed to reach the minimum proportion of transmission time specified in Article 5 are channels which mainly broadcast regional news and current affairs programmes.

The average relative proportion of recent European works by independent producers for all channels was 49.3% in 2007 and 49.9% in 2008, representing an increase of 0.6 percentage points over the reference period.

The evolution of averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.6. Germany

Out of 159 identified channels, 73 channels were exempt in 2007 and 2008, representing a proportion of 45.5% of the total number of channels.

Some of the exempt channels are regional public channels belonging to the so-called "Dritten Programme". During informal contacts with the German Authorities, the Commission indicated that the channels covering at least one region ("Land") and in some occasions, several, fall within the scope of Articles 4 and 5 and are under the obligation to fulfil the requirements set out by these Articles¹³. The statistical data corresponding to these channels should therefore be submitted in the future reports.¹⁴

European works

All reported channels broadcast an average of 64.2% and 63.9% in 2007 and 2008 respectively, representing a -0.3 percentage point decrease over the reference period.

In 2007 and 2008, out of 39 reported channels, 25 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 14 channels did not. No data was communicated for 47 channels out of 86 covered channels. The compliance rate, in terms of number of channels, was 29.1%.

The Commission notes very low compliance rates achieved during the reference period, compared to the compliance rates achieved in 2005 and 2006 (respectively 62% and 54%) and the significant increase in the number of channels which have not communicated their data.

¹³ In accordance with the Suggested Guidelines for the Monitoring of the Implementation of Articles 4 and 5 of the "Television Without Frontiers" Directive published by the Commission in 1999

¹⁴ This statement has been reiterated in a letter sent to the German Permanent Representative on 11 March 2010. The German Authority has undertaken to provide data relating to these regional public channels for the next reporting period.

The German Authorities have argued that the submission of the statistical data represents a heavy burden on the channels with a very low audience share.

European works made by independent producers

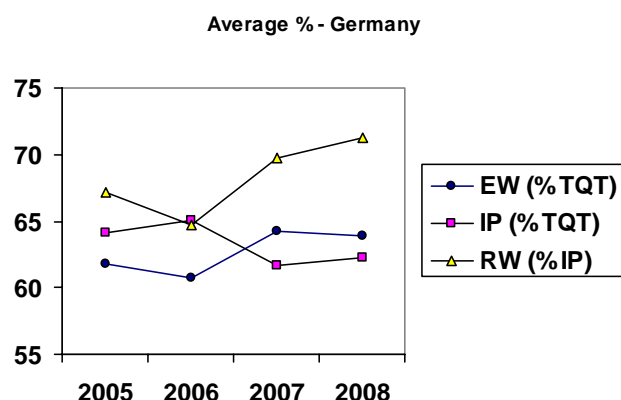
The average proportion of European works by independent producers on all reported channels was 61.7% in 2007 and 62.3% in 2008, representing an increase of 0.6 percentage points over the reference period.

For 2007, out of 39 reported channels, 35 exceeded the minimum proportion under Article 5 of the Directive, while four channels did not (MTV (Germany), PHOENIX, ARD EinsPlus and ZDF Infokanal). No data was communicated for 47 channels out of 86 covered channels

In 2008, out of 39 reported channels, 36 were above the 10% minimum, and three channels were below this threshold (MTV (Germany), PHOENIX and ZDF Infokanal). No data was communicated for 47 channels of a total of 86 covered channels. The compliance rate, in terms of number of channels, was 40.7% in 2007 and 41.9% in 2008.

The average relative proportion of recent European works by independent producers for all channels was 69.7% in 2007 and 71.3% in 2008, representing an increase of 1.6 percentage points over the reference period.

The evolution of averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.7. Estonia

European works

Of the total of nine channels identified, five channels were not yet operational in 2007.

The four reported channels broadcast an average of 61.6% European works in 2007. In 2008, the nine reported channels broadcast an average of 64.6%. This represents a 3 percentage point increase over the reference period.

For 2007, all four reported channels achieved the majority proportion required by the Article 4 of the Directive. The compliance rate, in terms of numbers of channels, was 100%.

In 2008, all nine reported channels achieved the majority proportion of transmission time specified in Article 4 of the Directive. Thus, the compliance rate, in terms of numbers of channels, was 100%. The achieved proportions ranged from 51% to 90.4%.

The Commission notes with satisfaction that the five channels which started operations in 2008 have all reached the required proportion of European works and contributed to the good results achieved in that year.

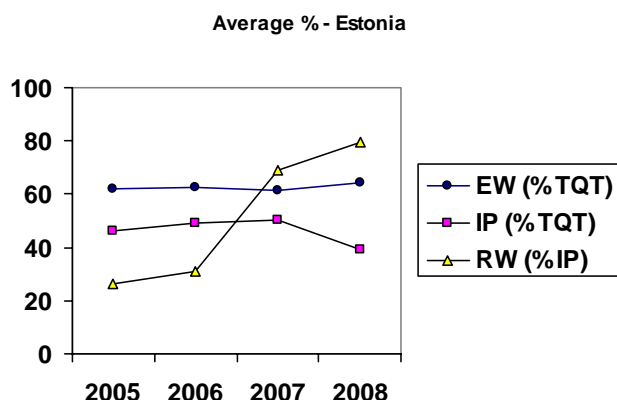
European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 50.3% in 2007 and 39.3% in 2008, representing a decrease of -11 percentage points over the reference period.

All reported channels exceeded the minimum proportion under Article 5 of the Directive (percentages ranking from 40.7% to 60% in 2007 and 10.7% to 62.3% in 2008). The compliance rate, in terms of numbers of channels, was 100%.

The average relative proportion of recent European works by independent producers was 68.9% in 2007 and 79.6% in 2008, representing a 10.7 percentage point increase over the reference period. The Commission welcomes this significant increase.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.8. Ireland

Of the total of 11 identified channels, six sports channels were exempt during the reference period.

European works

All reported channels broadcast an average of 55% and 56.4% in 2007 and 2008 respectively, representing a 1.4 percentage point increase over the reference period.

For 2007 and 2008, out of five reported channels, two channels achieved the majority proportion of transmission time specified in Article 4 of the Directive (RTE 1 and TG4), while three channels did not (Channel 6/3e, RTE 2 and TV3 (Ireland)). The compliance rate, in terms of number of channels, was 40%.

According to the report, two of the failing channels (RTE2 and TV3) achieved the required proportion of European works when news and sport programming was included in the total qualifying time. It is argued that the exclusion of news and sports programming is particularly problematic for TV3 due to the importance of this type of programming to its constituent audiences.

The third failing channel (Channel 6/3e) is a relatively new one which is progressively increasing the proportion of European works in its programming (42.3 % in 2008 compared to 40% in 2007).

European works made by independent producers

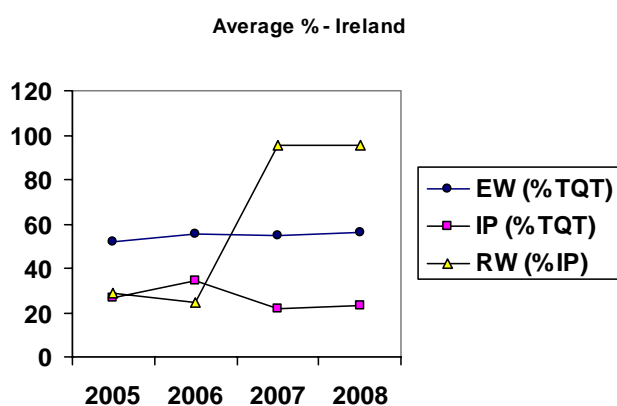
The average proportion of European works by independent producers on all reported channels was 21.9% in 2007 and 23% in 2008, representing a 1.1 percentage point increase over the reference period.

For both reported years 2007 and 2008, of the 5 reported channels, four exceeded the minimum proportion under Article 5 of the Directive, while one channel did not (TV3 (Ireland)). The compliance rate, in terms of number of channels, was 80%.

The reason given in the report for TV3's failure to achieve the required proportion of European works by independent producers is the same as for European works.

The average relative proportion of recent European works by independent producers for all channels was 95.3% for 2007 and 2008. The Commission welcomes the fact that Ireland has almost recovered the level of recent works scheduling achieved over the 2003-2004 period, following the significant decline suffered during the last reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.9. Greece

European works

All reported channels broadcast an average of 54.1% and 61.7% European works in 2007 and 2008, respectively, representing a 7.6 percentage point increase over the reference period.

In 2007, of the total of 36 identified channels, one was non-operational (MTV Greece) and one was exempt (CNN).

Of the total of 34 reported channels, 20 achieved the majority proportion specified in Article 4 of the Directive, while 14 did not. The compliance rate, in terms of number of channels, was 58.8%.

For 2008, of the total of 35 reported channels, 24 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 11 channels did not. The compliance rate was therefore 68.6%.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 14.5% in 2007 and 14.7% in 2008, representing a 0.2 percentage point increase over the reference period.

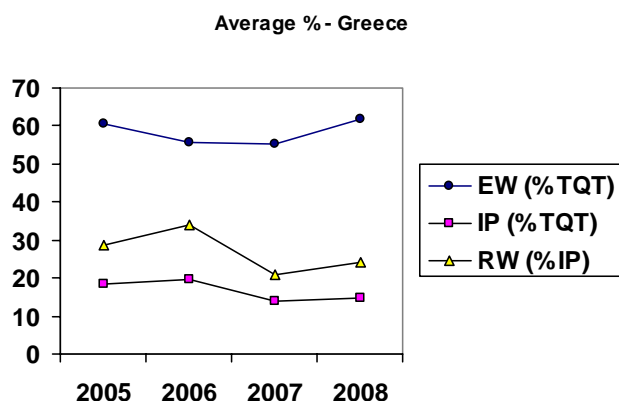
In 2007, of the total of 34 reported channels, 16 exceeded the minimum proportion under Article 5 of the Directive, while 18 channels remained below the target. Of the 34 covered channels, one was non-operational and another one was exempt. The compliance rate, in terms of number of channels, was 50.0%.

For 2008, of the total of 35 reported channels, 20 exceeded the minimum proportion specified in Article 5 of the Directive, while 15 channels were below the target. One channel out of the 35 covered channels was exempt. The compliance rate, in terms of number of channels, was 57.1%.

As underlined by the report, the generalist channels which broadcast nationwide have generally complied with the proportions set out in the Greek legislation relating to European works and independent productions. Channels which have not achieved these proportions are mostly thematic ones. The national report does not provide any reason for their failure to reach the required proportions of European works or independent productions, nor does it report on measures being taken against those channels. In this respect, the Commission reiterates that the Member States should ensure that individual channels which fall within their jurisdiction and are not covered by legal exceptions expressly set out in the Directive, achieve the proportions of transmission time specified in Articles 4 and 5.

The average relative proportion of the recent European works by independent producers for all reported channels was 21.6% in 2007 and 24.2% in 2008, resulting in a 2.6 percentage point increase over the reference period. However, the averages achieved in the reference period represent a decrease compared to the previous period. The Commission, which already stressed in the previous reports the relatively low proportion of recent independent productions compared to other Member States and the EU average, notes that no progress has been made in that respect.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.10. Spain

The number of identified channels for the reference period was 175. 12 channels were non-operational in 2007 and two in 2008. 29 channels were exempt during the reference period.

European works

The 107 reported channels broadcast an average of 54.2% European works in 2007. In 2008, the 115 reported channels broadcast an average of 55.7%. This represents a 1.5 percentage point increase over the reference period.

For 2007, of the 107 reported channels, 64 achieved the majority proportion required by the Article 4 of the Directive, and 43 channels did not meet this target. No data was communicated for 27 channels out of 134 covered channels. The compliance rate, in terms of numbers of channels, was 47.8%.

In 2008, of the total of 115 reported channels, 69 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 46 channels did not. No data was communicated for 29 channels out of the 144 covered channels. The compliance rate, in terms of numbers of channels, was 47.9%.

According to the report, non-compliance with the European works proportion can be explained by various factors: as was already the case in the last reference period, according to the law transposing the Directive, those channels which started operations after 31.12.2002 are granted a 5-year transitional period to progressively achieve the European works proportion (in fact, out of the 16 channels which were in this situation, only three did not reach the European works proportion and two did not communicate their data). On the other hand, the report states that the particular thematic nature or niche audience of some channels should be taken into account when assessing their compliance with the European works. In this respect, the Commission notes that most of the thematic channels that did not achieve the European works proportion are fiction ones. The Commission would like to reiterate that the majority proportion set out in Article 4 (1) applies to all channels covered by this Article and to stress the role that fiction channels should play to promote European works.

European works made by independent producers

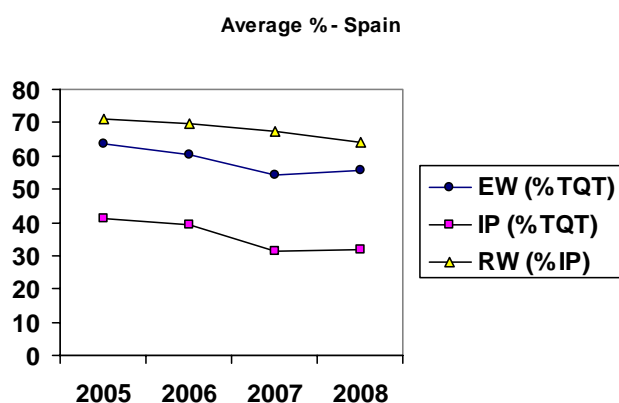
The average proportion of European works by independent producers on all reported channels was 31.3% in 2007 and 31.6% in 2008. This represents a 0.3 percentage point increase over the reference period.

For 2007, out of 106 reported channels, 87 achieved the majority proportion required by the Article 5 of the Directive 19 channels did not. No data was communicated for 28 channels out of the 134 covered channels. In 2008, of the 113 reported channels, 92 channels exceeded the minimum proportion under Article 5 of the Directive, and 21 channels were below the 10% threshold. No data was communicated for 31 channels out of the 144 covered channels. The compliance rate, in terms of number of channels, was 64.9% in 2007 and 63.9% in 2008.

According to the report, although the achievement of the independent productions proportion specified in Article 5 is higher than in the case of European works, the reasons for failure are the same as for the requirement set out in Article 4.

The average relative proportion of recent European works by independent producers was 67.3% in 2007 and 64.1% in 2008, representing a -3.2 percentage point decrease over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.11. France

Of the total of 152 identified channels, two channels were non-operational in 2007 (NRJ Paris and Vivolta).

European works

All reported channels broadcast an average of 72.6% and 71.7% in 2007 and 2008 respectively, representing a -0.9 percentage point decrease over the reference period.

In 2007, out of 81 reported channels, 78 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while three channels did not (NRJ 12, TF6 and Trace TV). 35 channels were exempt and no data was communicated for 34 channels. The compliance rate, in terms of number of channels, was 67.8%.

For 2008, out of 81 reported channels, 79 achieved the majority proportion specified in Article 4 of the Directive, while two channels did not (NRJ 12 and Trace TV). 36 channels were exempt and no data was communicated for 35 channels. The compliance rate was 68.1%

As far as NRJ 12 and Trace TV are concerned, no reasons have been given of their failure to fulfil the required proportion of European works. The report indicates that the CSA initiated

two penalty procedures against NRJ 12 for not complying with the European works quota in 2007 and 2008 and sent a warning to Trace TV.

The Commission notes the rather high number of channels for which data was not communicated. In this respect, the report points out that the CSA has sent warnings and letters of formal notice to several channels which did not supply their data. It is further indicated that the French legislation does not put channels with an annual budget of less than €150,000 under the obligation to submit their annual data to the CSA.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 47.5% in 2007 and 45.7% in 2008, representing a decrease of -1.8 percentage points over the reference period.

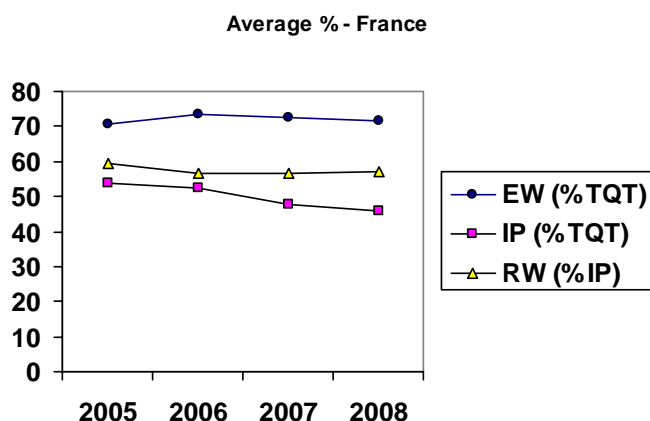
For 2007, of the 84 reported channels, 81 exceeded the minimum proportion under Article 5 of the Directive, while three channels did not. No data was communicated for 30 channels out of the 114 covered channels

In 2008, of the 84 reported channels, 80 were above the 10% minimum, and three channels were below this threshold. No data was communicated for 32 channels. The compliance rate, in terms of number of channels, was 71.1% in 2007 and 69% in 2008.

The report points out that the figures for digital terrestrial channels (unlike the figures for cable and satellite channels) are calculated on the previous year net turnover which constitutes a larger base than the one set by the Directive. Under these conditions, the French authorities argue that the rate below 10% does not imply non-compliance with the Directive. In this respect, the Commission regrets that the invitation made to France in the 2005-2006 Staff Working Document, to present its data in a way that accurately reflects the compliance of French channels with Article 5 of the Directive, has remained ineffective. The Commission would like to remind that, for comparability purposes, the national data should be calculated on similar bases.

The average relative proportion of recent European works by independent producers for all channels was 56.6% in 2007 and 57.1% in 2008, representing an increase of 0.5 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.12. Italy

Of the total of 260 identified channels, 18 channels were non-operational in 2007 and seven channels in 2008. 13 channels were exempt in 2007 and 11 channels in 2008.

European works

All reported channels broadcast an average of 62.9% and 52.7% in 2007 and 2008 respectively, representing a -10.2 percentage point decrease over the reference period.

In 2007, out of the 132 reported channels, 93 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 39 channels did not. No data was communicated for 97 channels out of the 229 covered channels. The compliance rate, in terms of number of channels, was 40.6%.

For 2008, out of the 159 reported channels, 94 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 65 channels did not. No data was communicated for 83 channels out of the 242 covered channels. The compliance rate, in terms of number of channels, was 38.8%.

The report only contains an explanation regarding the compliance rate of the channels belonging to editorial groups. According to the Regulation laid down by the competent Authority (Agcom), the quotas for those channels have to be calculated on the global amount of programming time, with a minimum threshold on each channel of 20%, as it has been the case in the previous reference periods.

Leaving aside the special situation of the above-mentioned channels, the Commission notes the significant decrease in the transmission time of European works in 2008 compared to 2007 (-10.5 percentage point), while the proportion remained stable at 61% during the previous reference period. In this respect, the Commission reiterates that the Member States should ensure that all channels under their jurisdiction achieve the proportions of transmission time specified in Article 4 of the Directive.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 22.6% in 2007 and 17% in 2008, representing a decrease of -5.6 percentage points over the reference period.

For 2007, out of 132 reported channels, 90 exceeded the minimum proportion under Article 5 of the Directive, while 42 channels did not. No data was communicated for 97 channels out of the 229 covered channels.

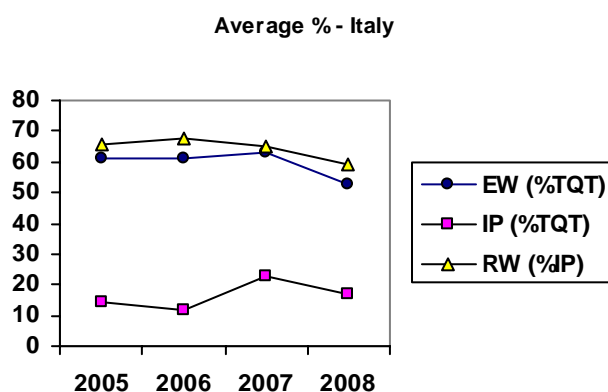
The proportion of channels which did not communicate their statistical data both for European works and independent productions is significant (42.3% in 2007 and 34.4% in 2008). The Commission acknowledges the fact that the Italian authorities will initiate the corresponding sanctioning proceedings against those channels which have failed to communicate their data as well as those which have not reached the required quotas.

In 2008, out of 159 reported channels, 85 were above the 10% minimum while 74 channels were below this threshold. No data was communicated for 83 channels out of the 242 covered channels. The compliance rate, in terms of number of channels, was 39.3% in 2007 and 35.1% in 2008.

The average relative proportion of recent European works by independent producers for all channels was 64.9% in 2007 and 59.5% in 2008, representing a decrease of -5.4 percentage points over the reference period.

As regards recent works, the report underlines the specific situation in Italy which was due to the legislation in force during the reference period. The report explains that the figures provided for the recent works are estimated since Article 44 of legislative decree 177/2005 sets out the proportion of recent works as a percentage of European works and not of independent productions. The Commission expects this provision to be modified in the near future.

The evolution of averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.13. Cyprus

Of the total of 25 identified channels, 17 channels were exempt over the reference period.

European works

The eight reported channels broadcast an average of 27.9% European works in 2007 and an average of 30% in 2008. This represents a 2.1 percentage point increase over the reference period but a -39.76 percentage point compared to 2006.

Over the reference period, seven out of eight reported channels did not achieve the majority proportion required by the Article 4 of the Directive. The only channel to comply with this target was ANT1 TV (Cyprus). The compliance rate, in terms of numbers of channels, was 12.5%.

The report does not provide any general reason to explain the drastic drop registered during the reference period. However, it indicates that, pursuant to the current national legislation, the obligation to fulfil the required proportion of European works only applies to free-to-air channels. Although this legislation has not yet been amended, the Cyprus Authority has requested two pay-TV channels (Alfa TV and LTV) to comply with the required proportion. It is therefore the first time that both channels are submitting their data. Another channel (CNC Plus TV) has been recently created and is also reporting its data for the first time. The Commission therefore encourages the Cyprus Authority to foster a continued effort by these channels in order to reach the required proportion of European works as soon as possible. It also would like to recall that pursuant to Article 4 (3) all channels falling within the jurisdiction of a given Member State are under the obligation to fulfil the proportions specified in Articles 4 and 5 and report on their performance.

In addition, according to the report, the current legislation only allows the monitoring of the channels which are broadcasting with analogue technology. However, this situation is due to change in the coming months, through a legislative amendment.

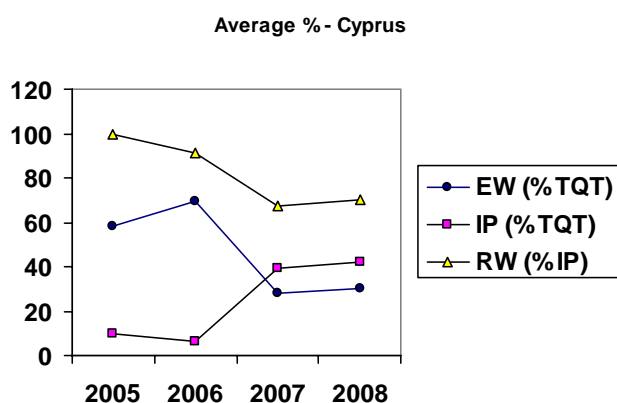
European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 39.6% in 2007 and 41.9% in 2008, representing a 2.3 percentage points increase over the reference period.

Six of the seven reported channels exceeded the minimum proportion under Article 5 of the Directive (percentages ranking from 12.1% to 73% in 2007 and 22.2% to 75% in 2008), while one channel did not (CNC Plus TV) The compliance rate, in terms of numbers of channels, was 75%.

The average relative proportion of recent European works by independent producers was 67.4% in 2007 and 69.9% in 2008, representing a 2.5 percentage point increase over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.14. Latvia

European works

All reported channels broadcast an average of 62.2% European works for both years 2007 and 2008.

For the 2007- 2008 period, of the total of six reported channels, five exceeded the minimum proportion of transmission time specified in Article 4 of the Directive, while one channel (LNT) did not. The compliance rate, in terms of number of channels, was 83.3% for both years.

The reasons stated in the report for failure to comply with the proportion of European works lie in the conditions imposed by the US producers (package sales) and the cost of domestically produced works compared with the cost of programmes purchased abroad.

European works made by independent producers

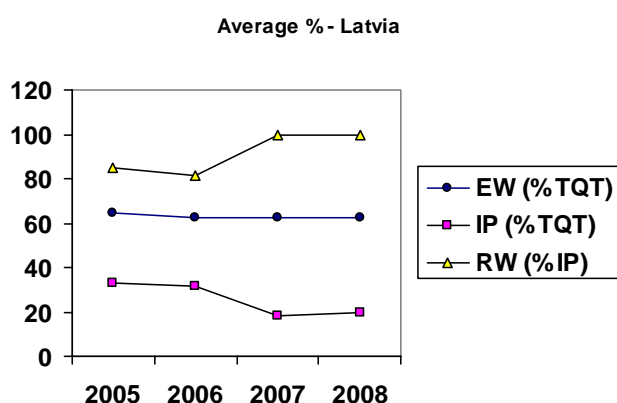
The average proportion of European works by independent producers scheduled on all reported channels was 18.4% for 2007 and 19.7% for 2008, representing a 1.3 percentage point increase over the reference period.

For 2007 and 2008, of the total of six reported channels, four channels exceeded the minimum proportion under Article 5 of the Directive, while two (LNT and TV5 RIGA) did not. The compliance rate, in terms of number of channels, was 66.7% for all reference periods.

The average relative proportion of recent European works by independent producers was 100% in 2007 and 99.6% in 2008, representing a slight -0.4 percentage point decrease over the reference period.

Although the report stresses the difficult situation of the channels which have been hit by a 40% fall in advertising revenue, it also acknowledges the need for sanctioning non-compliance with the required proportions. The Commission notes that the competent authorities have threatened two channels owned by NewsCorp (LNT and TV5 Riga) with being taken off the air for non-compliance with the independent productions proportion.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.15. Lithuania

European works

All reported channels broadcast an average of 59.3% in 2007 and 59.1% in 2008 representing a slight decrease of -0.2 percentage point over the reference period.

During the period 2007-2008, of the total of 11 reported channels, 7 channels achieved the majority proportion specified in Article 4 of the Directive, while 4 channels did not. The compliance rate, in terms of number of channels, was 63.6%.

The report states that the non-compliant broadcasters (LNK, TV1, TV3, TV6) were not able to achieve the target because European productions are much more expensive than non-European works. In this respect, the Commission reiterates that the proportion specified in Article 4(1) of the Directive applies to all television channels of a broadcaster which fall within the jurisdiction of a Member State and are covered by the mentioned Article. It notes however that the non-compliant channels are considering entering into co-operation agreements in order to produce audiovisual works at lower cost and increase the scheduling of European works.

European works made by independent producers

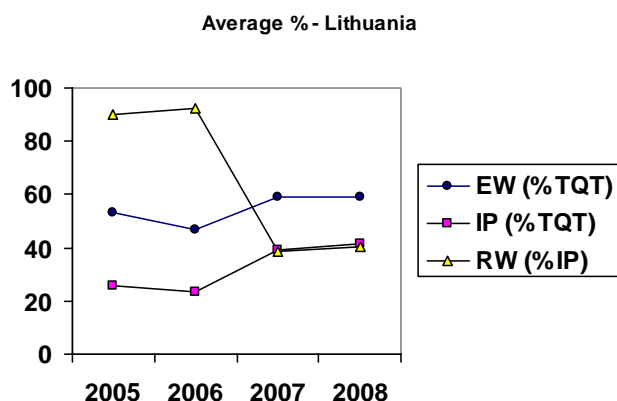
The average proportion of European works made by independent producers on all channels was 39% and 41.5% in 2007 and 2008 respectively, representing an increase of 2.5 percentage points over the reference period and a 15.49 percentage point increase compared to 2006.

All the 11 reported channels exceeded the minimum proportion, with percentages ranking from 10% to 83% in 2007 and 10% to 87% in 2008. The compliance rate, in terms of number of channels, was 100% for the entire reference period.

The Commission notes with satisfaction the progress made in the scheduling of independent productions compared to the previous period, especially taking into account the increase in the number of channels covered by the report.

The average relative proportion of the recent European works by independent producers for all reported channels was 38.5% in 2007 and 40.2% in 2008, resulting in a 1.7 percentage point increase over the reference period. The results achieved in the reference period represents a significant decline compared to the previous period (- 54 percentage point decrease between 2006 and 2007). No reason was given to explain this decrease.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.16. Luxembourg

Of the total of 15 identified channels, one (Current Italy) was non-operational in 2007.

European works

All channels reported broadcast an average of 69.6% and 70.7% in 2007 and 2008, respectively, representing an increase of 1.1 percentage point over the reference period.

For 2007, of the total of 14 reported channels, 13 achieved the majority proportion specified in Article 4 of the Directive and one channel did not (RTL9). The compliance rate was 92.9%.

In 2008, of the total of 15 reported channels, 14 achieved the majority proportion specified in Article 4 of the Directive and one channel was below (RTL8). The compliance rate was 93.3%

The report does not give any reasons for RTL9's failure in 2007. As far as RTL8 is concerned, according to the report, the channel did not attain the required proportion of European works in 2008 because during the selected sampling weeks the programming included series which were mostly of non-European origin. The Commission notes RTL8's intention to include a greater proportion of European works in its programming in order to improve its results.

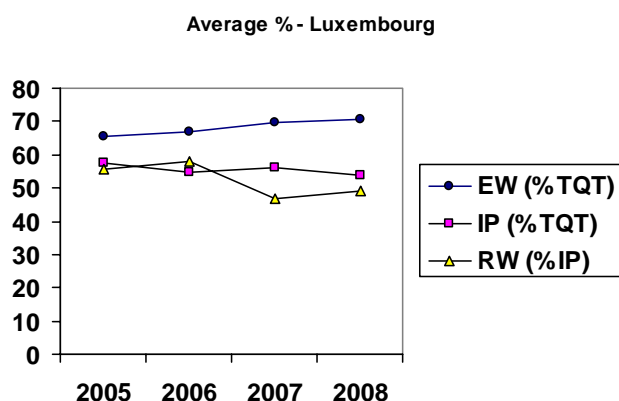
European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 56.2% in 2007 and 53.6% in 2008, representing a decrease of -2.6 percentage point over the reference period.

For 2007, all the 14 reported channels exceeded the minimum proportion under Article 5 of the Directive. In 2008, of the 15 reported channels, 14 were above the 10% minimum. One channel remained below the target (Current TV Italy did not start broadcasting until May 2008). The compliance rate, in terms of number of channels, was 100% in 2007 and 93.3% in 2008.

The average relative proportion of recent European works by independent producers for all channels was 47% in 2007 and 48.9% in 2008, representing an increase of 1.9 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below. It shows an overall high level of achievement of the requirements set out in Articles 4 and 5 of the Directive.



2.1.17. Hungary

Of the total of 29 identified channels, one channel was non operational in 2007. Three channels were exempt over the reference period. In 2007 no data was communicated for 3 channels and in 2008 this was the case for 4 channels.

European works

All reported channels broadcast an average of 68.5% in 2007 and 75.3% in 2008 representing a 6.8 percentage point increase over the reference period.

In 2007, out of 22 reported channels, 19 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 3 channels did not (HBO (Hungary), HBO 2 (Hungary) and Viasat3 Hungary). The compliance rate, in terms of number of channels, was 76%.

For 2008, out of 22 reported channels, 20 achieved the majority proportion specified in Article 4 of the Directive, while 2 channels did not (4-es csatorna and Viasat3 Hungary). The compliance rate was 76.9%.

The report indicates that the Hungarian authority (ORTT) granted partial exemptions to 3 channels in 2007 and 2008 regarding the achievement of the European works proportion. As it was already stressed in the Staff Working Document relating to the 2005-2006 period, the Hungarian legal framework allowing the granting of exemptions still raises some doubts as to whether the system is totally in line with the Directive and the 1999 Guidelines, even if the ORTT seems to have insisted during the reference period on a progressive approach towards the achievement of the required proportion. The Commission notes that the registration of the two most problematic channels which were granted partial exemption in 2005, 2006, 2007 and 2008 and never achieved the reduced proportion of European works, was cancelled as of April 2008. The Commission acknowledges as well the monitoring carried out by the competent Authority and the actions taken in case of non-compliance with the reporting obligation or the European works proportion, which included the imposition of fines.

Nonetheless, the Commission would like to reiterate that the Directive does not allow exempting channels on the mere ground that they are of a thematic nature, without stating any specific reason which would justify the exceptional granting of an exemption.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 39.7% in 2007 and 41.8% in 2008, representing a 2.1 percentage point increase over the reference period.

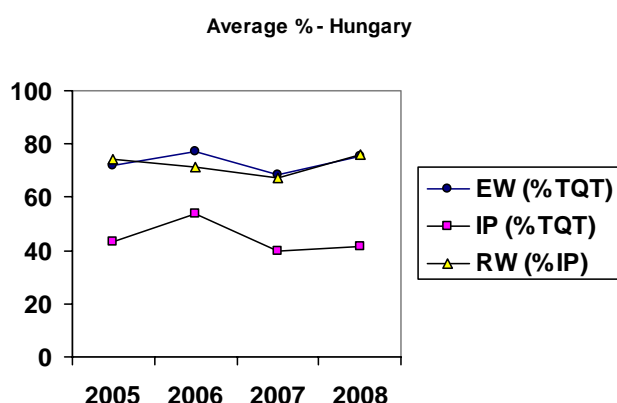
For 2007, out of 22 reported channels, only one channel (Fix TV) did not achieve the minimum proportion under Article 5 of the Directive. In 2008, of the 22 reported channels, 21 channels exceeded the minimum proportion under Article 5 of the Directive, and only one (Viasat3 Hungary) was below the 10% threshold. The compliance rate, in terms of number of channels, was 84% in 2007 and 80.8% in 2008.

In 2007 no channel was exempt from the compliance with the independent productions proportion. In 2008 one channel (Pax televízió) was partially exempt.

According to the report, the Hungarian authority initiated two administrative proceedings for non-compliance with the independent productions proportion in 2007 and 2008. One of these proceedings concerned Viasat 3 which failed to fulfil the independent productions proportions as well as the European works one.

The average relative proportion of recent European works by independent producers for all channels reported was 67.4% in 2007 and 75.8% in 2008, representing 8.4 percentage point increase over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.18. Malta

Of the total of 27 identified channels, 19 channels were exempt in 2007 and 18 channels in 2008. One channel was non-operational in 2007 (Family Television Network) and another one in 2008 (U TV (Malta)).

European works

The seven reported channels broadcast an average of 55.9% European works in 2007 and 69% in 2008. This represents a 13.1 percentage point increase over the reference period.

For 2007, out of seven reported channels, five channels achieved the majority proportion required by the Article 4 of the Directive, while two channels did not (U TV (Malta) and Smash TV). The compliance rate, in terms of numbers of channels, was 71.4%.

In 2008, out of eight reported channels, seven channels achieved the majority proportion of the transmission time specified in Article 4 of the Directive, and only one channel did not meet the target (Smash TV). The compliance rate, in terms of numbers of channels, was 87.5%.

According to the report, the reason for Smash TV's failure to fulfil the European works proportion seems to be in relation with its low audience share (0.2%) and the fact that the station is more geared to selling broadcasting air-time than for in-house productions. The Commission notes however that this channel has been able to broadcast a high proportion of European works over the previous reference period (72.7% in 2005 and 2006 compared to 35% in 2007 and 30% in 2008).

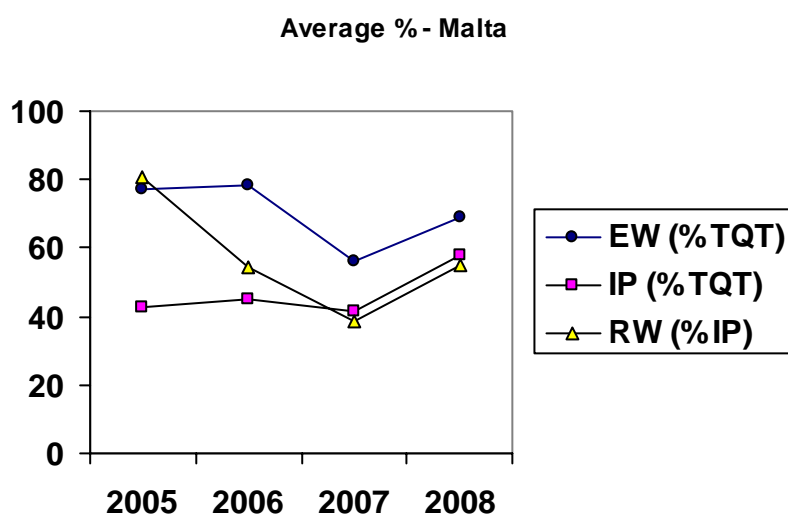
European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 41.4% in 2007 and 57.7% in 2008, representing a 16.3 percentage points increase over the reference period.

In 2007 and 2008, all of the reported channels exceeded the minimum proportion under Article 5 of the Directive. The compliance rate, in terms of number of channels, was 100%.

The average relative proportion of the recent European works by independent producers for all reported channels was 38.8% in 2007 and 55.1% in 2008, resulting in a 16.3 percentage point increase over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.19. Netherlands

Of the total of 208 identified channels, 33 channels were exempt in 2007 and 38 channels in 2008. There were 41 non-operational channels in 2007 and 22 in 2008.

European works

The average proportion of European works by independent producers scheduled on all channels was 80.8% for 2007 and 80.3% for 2008, representing a -0.5 percentage point decrease over the reference period.

For 2007, of the 102 reported channels, 80 channels achieved the majority proportion required by the Article 4 of the Directive, while 22 channels did not. The compliance rate, in terms of numbers of channels, was 59.7%.

In 2008, of the 113 reported channels, 90 channels achieved the majority proportion of the transmission time specified in Article 4 of the Directive, while 23 channels did not meet the target. The compliance rate, in terms of numbers of channels, was 60.8%.

As in the previous reference period, reasons for non-compliance are specified in the report for a number of channels failing to achieve the required proportions. For the MTV children' channels in particular (Nickelodeon, NickJr, Nick Hits and Nick Toons), the report argues that in a country with a limited linguistic area, it is expensive to produce or commission children's programmes. Furthermore, the offer of European children's programmes is rather small and does not always meet the requirements of MTV (non-violent and educational programmes).

As far as Chellomedia Programming BV channels are concerned, the report states that, although they did not reach the required proportion, they have slowly been moving towards it. The Commission notes that, if this is true for some of the channels in 2007, it is not the case for 2008 since the results of these channels show a downward trend. It would like to reiterate that all channels below the target should increase their efforts so that the proportions required under Article 4 are achieved.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 40.2% in 2007 and 37.8% in 2008, representing a -2.4 percentage point decrease over the reference period.

In 2007, out of 102 reported channels, 87 channels achieved the majority proportion required by the Article 4 of the Directive, while 15 channels did not. The compliance rate, in terms of numbers of channels, was 64.9%.

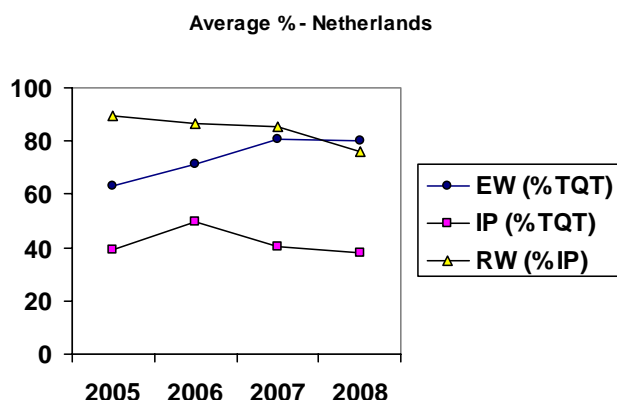
For 2008, out of 113 reported channels, 88 channels achieved the majority proportion of the transmission time specified in Article 4 of the Directive, while 25 channels did not meet the target. The compliance rate, in terms of numbers of channels, was 59.5%.

According to the report, some channels did not reach the required independent productions proportion because the proportion of European works was also too low. On the other hand, some regional public channels did not meet the proportion of independent productions because they transmit mainly categories of programmes that are not taken into account for the calculation of the transmission time and are therefore not subject to the reporting requirement.

The average relative proportion of the recent European works by independent producers for all reported channels was 85.3% in 2007 and 76.3% in 2008, resulting in a - 9 percentage point decrease over the reference period.

The Commission notes that the national authorities have initiated penalty procedures against the channels that did not submit statistical data and have warned those channels that did not achieve the required quotas in 2007.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.20. Austria

European works

All reported channels broadcast an average of 81% in 2007 and 79.1% in 2008 representing a slight decrease of -0.9 percentage point over the reference period.

In 2007, out of 18 identified channels, two channels were exempt (ORF Sport Plus and Tirol TV). Of the 16 reported channels, 13 achieved the majority proportion specified in Article 4 of the Directive, while three channels (ATV (Austria), ORF1 and Premiere Austria) were below the target. The compliance rate was 81.3%.

For 2008, out of the 18 identified channels, two channels were exempt (ORF Sport Plus and Tirol TV). Of the 16 reported channels, 13 met the requirements of Article 4 of the Directive, whereas the same three channels as in the previous year failed to comply. The compliance rate, in terms of number of channels, was 81.3%.

As far as ATV is concerned, the reasons stated in the report for non-compliance point to the fact that it is the only private channel that is broadcasted terrestrially throughout the country and that it is partly dependent on film rights to non-European works. This channel produces programmes but they belong to the categories which are not taken into account when calculating the European works proportion (games, sports).

In the case of Premiere 1, the report explains that it has broadcast an increased number of current international and above-all US productions, in order to gain greater audience acceptance.

No reasons have been provided for ORF1' non-compliance.

The Commission would like to reiterate that all channels falling within the jurisdiction of a Member State are subject to the obligation to comply with the required proportion of European works and that equal competition conditions should be ensured between broadcasters.

European works made by independent producers

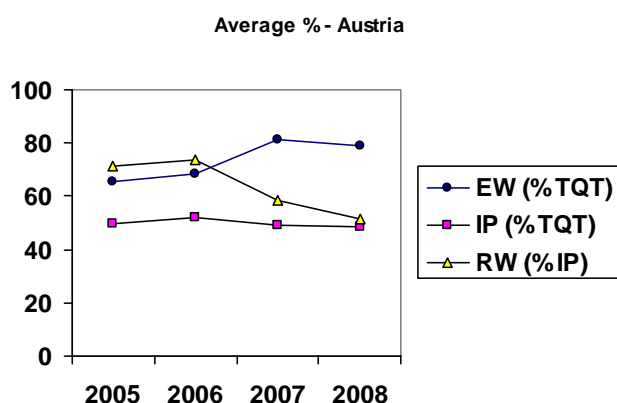
The average proportion of European works by independent producers on all reported channels was 49% and 48.7% in 2007 and 2008, respectively, representing a -0.3 percentage point decrease over the reference period.

In 2007, out of 18 identified channels, three channels were exempt. Of the 15 reported channels, 14 exceeded the minimum proportion specified in Article 5 of the Directive, while one channel did not meet the target (Puls 4). The compliance rate was 93.3%.

For 2008, out of 18 identified channels, three channels were exempt. Of the 15 reported channels, 14 exceeded the minimum proportion specified in Article 5 of the Directive, and one channel did not meet the target (Sat.1 Österreich). The compliance rate, in terms of number of channels, was 93.3%.

The average relative proportion devoted to recent European works was 58.5% in 2007 and 51.3% in 2008, representing a 11.7 percentage points decrease over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below:



2.1.21. Poland

Of the total of 67 identified channels, five channels were non-operational in 2007 and three channels in 2008. Three channels were exempt during the reference period (Canal+ Sport 2, Telezakupy Mango24 and Promocja.tv).

European works

All reported channels broadcast an average of 85% and 83.1% in 2007 and 2008 respectively, representing a -1.9 percentage point decrease over the reference period.

In 2007, out of 59 reported channels, 53 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while six channels did not (TELE 5,

Canal+ Polska Żółty, Canal+ Polska, Kuchnia TV, Zigzap and TVN Siedem). The compliance rate, in terms of number of channels, was 89.8%.

For 2008, out of 61 reported channels, 55 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while six channels did not (TELE 5, Ale kino!, Canal+ Polska Żółty, Canal+ Polska, Zigzap and TVN Siedem). The compliance rate, in terms of number of channels, was 90.2%.

The non-compliant channels include channels which already failed to achieve the required proportion of European works during the previous reference period.

The report mentions two types of reasons for non-compliance with the proportion required under article 4: difficulties in acquiring European works suitable for one specialised channel and economic factors for another channel. However, the Commission notes that in both cases the channels are correcting the situation and that the national Authority is closely monitoring the channels' programming.

Another three channels (Canal+ Polska Żółty, Canal+ Polska and Ale Kino) did not reach the 50% proportion of European works. The reason for this is that the Polish legislation allows for a lower proportion of 45% European works for film channels. As it already did in the previous report, the Commission reiterates that the proportion of transmission time specified in Article 4(1) of the Directive applies to each of the television programmes falling within the jurisdiction of a given Member State and that only individual channels may exceptionally be exempt from the requirements specified in Articles 4 and 5 for precise reasons.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 25% in 2007 and 29% in 2008, representing a 4 percentage point increase over the reference period.

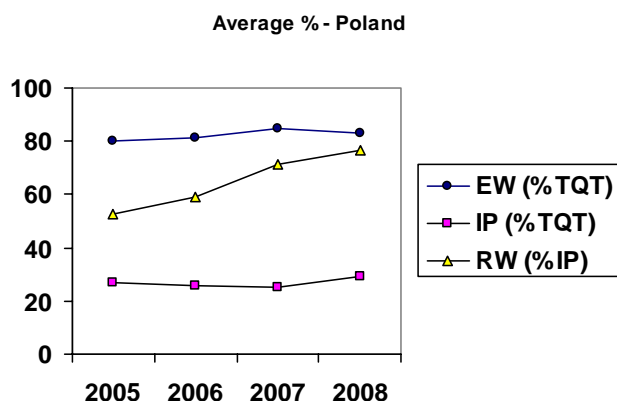
For 2007, of the total of 59 reported channels, 52 channels exceeded the minimum proportion under Article 5 of the Directive, while seven channels remained below the target. The compliance rate, in terms of number of channels, was 88.1%.

In 2008, of the 61 covered channels, 58 were above the 10% minimum, and three channels were below this threshold (SUPERSTACJA, TVN Meteo and TVN Med.). The compliance rate, in terms of number of channels, was 95.1%.

The average relative proportion of the recent European works by independent producers for all reported channels was 71.3% in 2007 and 76.8% in 2008, resulting in a 5.5 percentage point increase over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.

Despite a slight downward trend for European works in 2008, the Commission acknowledges the overall satisfactory results in Poland, in particular the high level of European works broadcasting and the strong increase in the proportion of recent European works by independent producers being broadcast.



2.1.22. Portugal

Of the total of 32 identified channels, five channels were non-operational in 2007 (Benfica TV, Sport TV3, MOV, MVM and Região Norte TV) and two channels in 2008 (Cine Estreia and Cine Clássico)

European works

All reported channels broadcast an average of 72.5% and 63.8% in 2007 and 2008 respectively, representing a -8.7 percentage point decrease over the reference period.

In 2007, out of 14 reported channels, 13 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while one channel did not (SIC Mulher). No data was communicated for eight channels out of a total of 22 covered channels. The compliance rate, in terms of number of channels, was 59.1%.

For 2008, out of 22 reported channels, 15 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while seven channels did not. No data was communicated for one channel out of 23 covered channels. The compliance rate, in terms of number of channels, was 65.2%.

The report states that the majority of the SIC channels which failed to comply with the requirements of Article 4(1) have improved the transmission time of European works in comparison with the previous reference period and that the results of the SIC Group, considered as a whole, are above the Article 4 requirements.

European works made by independent producers

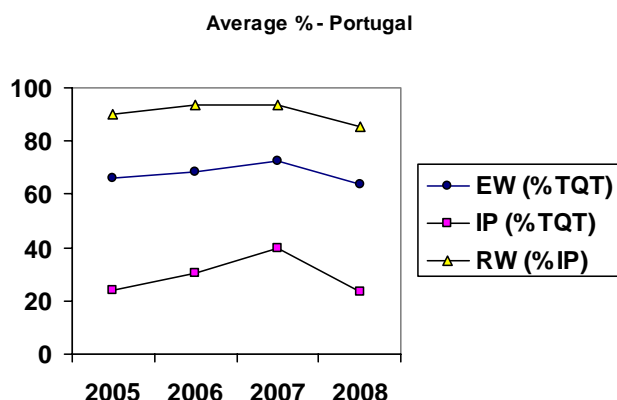
The average proportion of European works by independent producers on all reported channels was 39.5 % in 2007 and 23.5% in 2008, representing a – 16 percentage point decrease over the reference period.

For 2007, of the total of 32 identified channels, five were exempt and no data was communicated for eight channels. All reported channels exceeded the minimum proportion set out in Article 5 of the Directive. The compliance rate, in terms of number of channels, was 63.6%.

In 2008, out of 32 identified channels, seven were exempt and no data was communicated for one channel. Out of the 22 reported channels, 19 were above the 10% threshold and three channels were below. The compliance rate, in terms of number of channels, was 82.6%.

The average relative proportion of the recent European works by independent producers for all reported channels was 93.5% in 2007 and 85.5% in 2008, resulting in a -8 percentage point decrease over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.23. Romania

Of the total of 78 identified channels, four channels were non-operational in 2007 (TvRM Cultural, Digi TV Info, TVR3 and 1 Music Channel (Romania)) and one channel in 2008 (Boom Classic). 16 channels were exempt in 2007 and 17 in 2008.

European works

All reported channels broadcast an average of 63% and 67.2% in 2007 and 2008 respectively, representing a 4.2 percentage point increase over the reference period.

In 2007, out of the 38 reported channels, 28 achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 10 channels did not. No data was communicated for 20 channels out of the 58 covered channels. The compliance rate, in terms of number of channels, was 48.3%.

For 2008, out of 39 reported channels, 32 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while seven channels did not. No data was communicated for 21 channels out of the 60 covered channels. The compliance rate, in terms of number of channels, was 53.3%.

The Commission notes that a rather high number of channels have not communicated their statistical data. In this respect, it welcomes the fact that a new provision has been introduced in the Audiovisual Law which provides for sanctions in case of failure to communicate data or reach the required quota. The Commission expects the situation regarding data submission to improve in the future.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 28.2 % in 2007 and 26.3% in 2008, representing a – 1.9 percentage point decrease over the reference period.

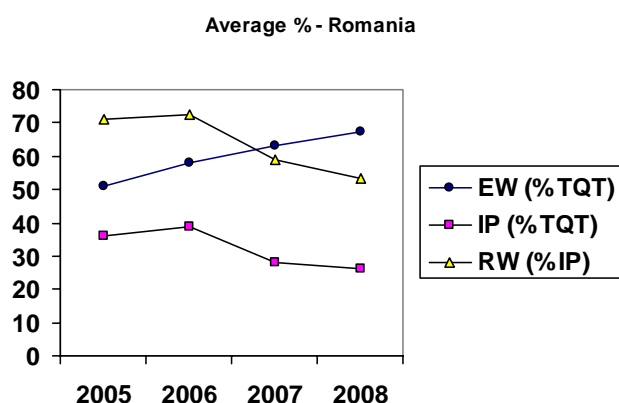
For 2007, of the total of 34 reported channels, 26 exceeded the minimum proportion under Article 5 of the Directive, while eight channels did not meet the target. No data was communicated for 24 channels out of 58 covered channels. The compliance rate, in terms of number of channels, was 44.8%.

In 2008, of the total of 35 reported channels, 27 exceeded the minimum proportion under Article 5 of the Directive, while eight channels did not. No data was communicated for 25 channels out of 60 covered channels. The compliance rate, in terms of number of channels, was 45%.

The average relative proportion of the recent European works by independent producers for all reported channels was 59.1% in 2007 and 53.2% in 2008, resulting in a -5.9 percentage point decrease over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.

The Commission notes with satisfaction the steady increase in the transmission time of European works over the past four years in Romania.



2.1.24. Slovenia

Of the total of 26 identified channels, 11 channels were exempt during the reference period.

European works

All reported channels broadcast an average of 34.1% and 44.6% in 2007 and 2008 respectively, representing a 10.5 percentage point increase over the reference period but a - 7.68 point decrease compared to 2006.

In 2007, out of 14 reported channels, six channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while eight channels did not. No data was communicated for one channel (TV RADGONA (TV SRK-11)). The compliance rate, in terms of number of channels, was 40%.

For 2008, out of 13 reported channels, eight channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while five channels did not. No data was communicated for two channels (TV RADGONA (TV SRK-11) and Vaš kanal). The compliance rate, in terms of number of channels, was 53.3%.

The Commission notes that a high proportion of channels did not fulfil the requirement specified in Article 4(1) in 2007 and that no reasons were given in the report to explain this situation. However, the 2008 figure represents a significant increase (10.5 percentage points) compared to the 2007 average of European works transmission. The Commission therefore encourages the Slovenian Authorities to foster a continued effort of the channels in order to reach the European works required proportion as soon as possible.

In addition, the Commission welcomes the intention of the Slovenian Authorities to improve their monitoring methods.

European works made by independent producers

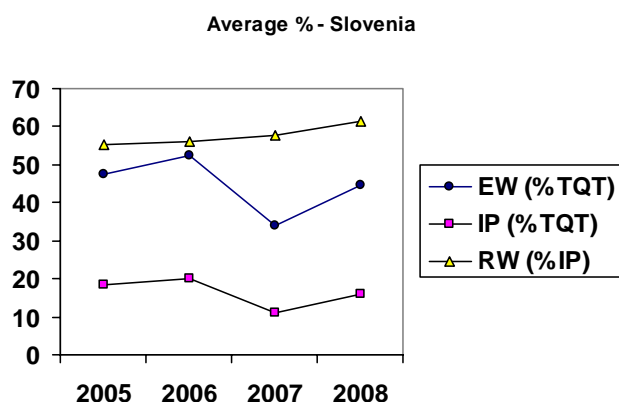
The average proportion of European works by independent producers on all reported channels was 10.9% in 2007 and 15.9% in 2008, representing a 5 percentage points increase over the reference period.

For 2007, out of 13 reported channels, 10 exceeded the minimum proportion under Article 5 of the Directive, while three channels did not (RTS (Slovenia), TV Pika and). No data was communicated for two channels (TV RADGONA (TV SRK-11) and VAŠA TELEVIZIJA (VTV)).

In 2008, out of 12 reported channels, 11 were above the 10% minimum, and one channel was below this threshold (RTS (Slovenia)). No data was communicated for three channels (Vaš kanal, TV RADGONA (TV SRK-11) and VAŠA TELEVIZIJA (VTV)). The compliance rate, in terms of number of channels, was 66.7% in 2007 and 73.3% in 2008.

The average relative proportion of recent European works by independent producers for all channels was 57.7% in 2007 and 61.4% in 2008, representing an increase of 3.7 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.25. Slovakia

Out of the ten identified channels, two were exempt during the reference period (A TV (Slovakia) and TA3).

European works

The reported channels broadcast an average of 66.5% and 67.3% in 2007 and 2008 respectively, representing a 0.8 percentage point increase over the reference period.

In 2007 and 2008, the four reported channels achieved the majority proportion of transmission time specified in Article 4 of the Directive. No data was communicated for four channels. The compliance rate, in terms of number of channels, was 50.00% over the reference period.

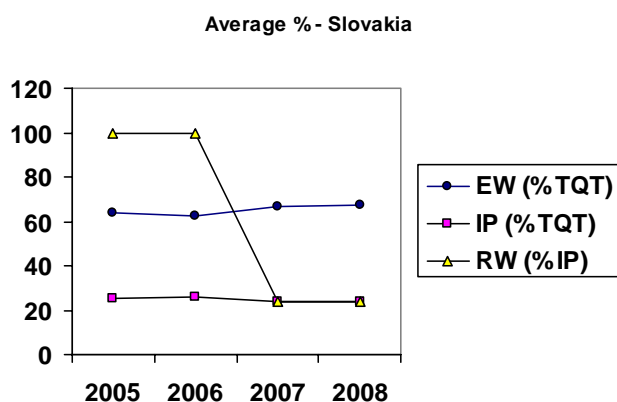
European works made by independent producers

The average proportion of European works by independent producers on the reported channels was 24% in 2007 and 23.8% in 2008, representing a -0.2 percentage points decrease over the reference period.

For 2007 and 2008, the four reported channels exceeded the minimum proportion under Article 5 of the Directive. No data was communicated for 4 channels. The compliance rate, in terms of number of channels, was 50%.

The average relative proportion of recent European works by independent producers for all channels was 24% in 2007 and 23.8% in 2008, representing a -0.2 percentage point decrease over the reference period and a substantial drop (-76 percentage points) compared to the 2005-2006 period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.26. Finland

Over the whole reference period, two sports channels (Urheilu+kanava and Urheilukanava) were exempt from reporting. Two channels were non-operational in 2007 (MTV3 Sarja and MTV3 AVA) and one channel in 2008 (YLE Extra).

European works

All reported channels broadcast an average of 64% in 2007 and 56.8% in 2008 representing a 7.2 percentage point decrease over the reference period and a 10.76 percentage point decrease between 2006 and 2008.

In 2007, out of the 16 reported channels, 12 channels achieved the majority proportion specified in Article 4 of the Directive, while four channels were below the target. The compliance rate was 75%.

For 2008, out of the 17 reported channels, 10 met the requirements of Article 4 of the Directive, whereas seven failed to comply. The compliance rate, in terms of number of channels, was 58.8%.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 40.1% and 35.3% in 2007 and 2008, respectively, representing a 4.8 percentage point decrease over the reference period.

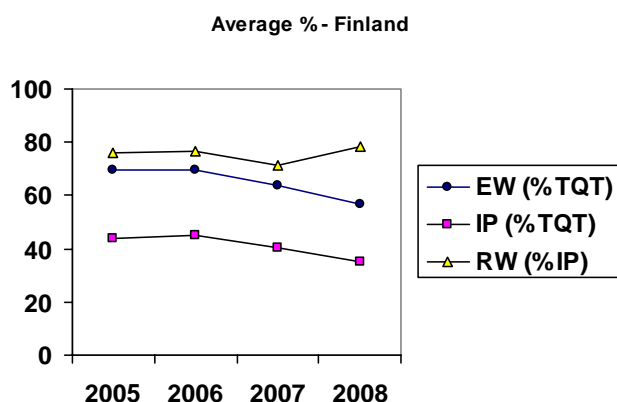
In 2007, out of the 16 reported channels, 15 channels exceeded the minimum proportion specified in Article 5 of the Directive. Only one channel did not meet the target. The compliance rate was 93.8%.

For 2008, out of the 17 reported channels, 16 channels exceeded the minimum proportion specified in Article 5 of the Directive, and one channel (KinoTV) did not meet the target for the second consecutive year. The compliance rate, in terms of number of channels, was 94.1%.

The average relative proportion devoted to recent European works was 71.3% in 2007 and 78.5% in 2008, representing an increase of 7.2 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.

Given that the average trend for European works and independent productions is decreasing, the Commission takes note of the statement made by those broadcasters which failed to reach the required level, that they are making efforts to raise the required proportions.



2.1.27. Sweden

Of the total of 45 identified channels, six channels were non-operational in 2007.

European works

All reported channels broadcast an average of 45.1% and 45.5% in 2007 and 2008 respectively, representing a 0.4 percentage point increase over the reference period.

In 2007, out of the 31 reported channels, 12 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 19 channels did not. Six channels were exempt and no data was communicated for two channels (Suryoyo Sat and 4chira). The compliance rate, in terms of number of channels, was 36.4%.

For 2008, out of the 36 reported channels, 12 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 24 channels did not. Seven channels were exempt and no data was communicated for two channels (Suryoyo Sat and 4chira). The compliance rate, in terms of number of channels, was 31.6%.

As in the previous reference period, a high number of channels failed to achieve the proportion of European works required under Article 4(1). The report does not explain the reasons for these failures. The only explanation given relates to TV4 Guld, a channel devoted to old classic productions, as regards the proportion of recent European works. Although the report argues that the transmission of European works has increased in real terms on TV400 and TV4 film, because of a significant increase in their total transmission time, it does not explain why these channels, as well as the other failing channels, did not reach the required proportions.

In this respect, the Commission would like to remind that Article 4(3) provides that the Member States' report will include reasons for failure to attain the required proportions for each channel and the measures envisaged or taken by the Member State. As it already did for the previous reference period, the Commission calls upon Sweden to improve its results as regards European works broadcasting.

European works made by independent producers

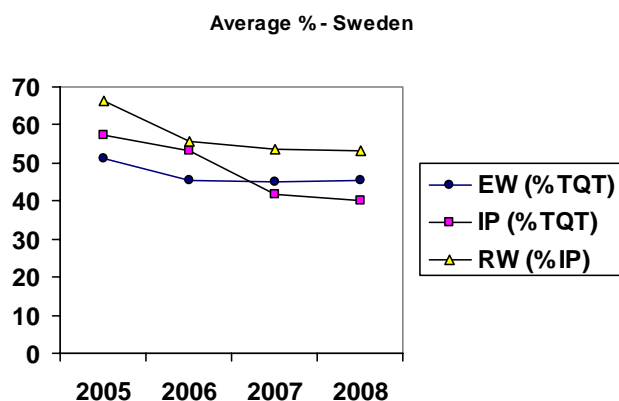
The average proportion of European works by independent producers on all reported channels was 41.6% in 2007 and 40.3% in 2008, representing a decrease of -1.3 percentage points over the reference period.

For 2007, out of the 33 reported channels, 30 exceeded the minimum proportion under Article 5 of the Directive, while three channels did not (Canal 7 (Sweden), Star! Scandinavia (version in Swedish) and TV1000 (Poland)). Four channels were exempt and no data was communicated for two channels.

In 2008, out of the 38 reported channels, 34 were above the 10% minimum, and four channels were below this threshold. Five channels were exempt and no data was communicated for two channels (Suryoyo Sat and 4chira). The compliance rate, in terms of number of channels, was 85.7% in 2007 and 85% in 2008.

The average relative proportion of recent European works by independent producers for all channels was 53.6% in 2007 and 53.3% in 2008, representing an increase of 0.4 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



2.1.28. United Kingdom

Of the total of 592 identified channels, 39 channels were non-operational in 2007 and 16 in 2008. 157 channels were exempt in 2007 and 2008.

The Commission welcomes the quality of the UK reporting which covers 396 channels in 2007 and 417 in 2008.

European works

All reported channels broadcast an average of 51.7% and 50.7% in 2007 and 2008 respectively, representing a -1 percentage point decrease over the reference period.

In 2007, out of the 396 reported channels, 196 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 200 channels did not. The compliance rate, in terms of number of channels, was 49.5%.

For 2008, out of the 417 reported channels, 192 channels achieved the majority proportion of transmission time specified in Article 4 of the Directive, while 225 channels did not. No data was communicated for two channels (Over 18 TV and Simply Movies). The compliance rate, in terms of number of channels, was 45.8%.

The report mentions several types of constraints to explain failure to achieve the required proportions which are mainly the same as in the last report: the very small audience share of the channels concerned and the lack of resources to buy or commission European works; the special-interest character and recent nature of some channels; the difficulty in finding European programmes at competitive prices and the fact that the concerned channels are subsidiaries of companies based in third-countries that broadcast programmes mostly from their own stock. The Commission reiterates that the proportion specified in Article 4(1) of the Directive applies each year to all the television channels of broadcasters within the jurisdiction of the Member State concerned, in particular with a view to ensuring equal competition.

European works made by independent producers

The average proportion of European works by independent producers on all reported channels was 29.8% in 2007 and 29.9% in 2008, representing an increase of 0.1 percentage point over the reference period.

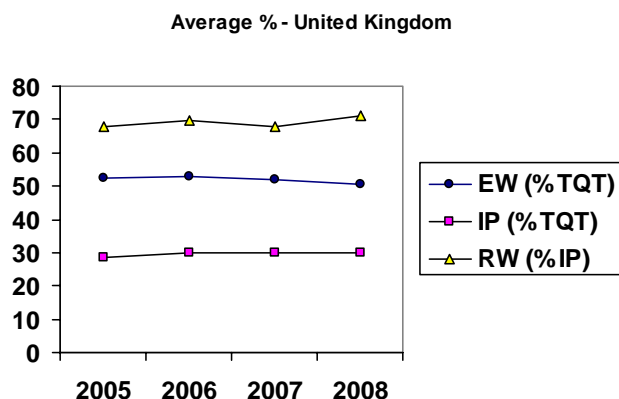
For 2007, out of the 396 reported channels, 287 exceeded the minimum proportion under Article 5 of the Directive, while 109 channels did not.

In 2008, out of the 417 reported channels, 292 were above the 10% minimum, and 125 channels were below this threshold. No data was communicated for two channels (Over 18 TV and Simply Movies). The compliance rate, in terms of number of channels, was 72.5% in 2007 and 69.7% in 2008.

The reasons given in the report for failure to reach the required proportion of independent productions are partly the same as for European works: recent nature of the channels concerned; difficulty in finding cost competitive independent European producers and subject matter of channels dedicated to live broadcasts. In addition, the British Authorities have stressed the fact that the UK public service broadcasters have produced/commissioned a high level of new productions during the reference period, therefore allowing a high level of first run originations. According to the report, the overall proportion of independent productions transmission time reached 38% for the public service broadcasting channels in the UK.

The average relative proportion of recent European works by independent producers for all reported channels was 67.7% in 2007 and 71.2% in 2008, representing an increase of 3.5 percentage points over the reference period.

The evolution of the averages achieved over the period 2005-2008 for European works, independent productions and recent works is reproduced in the chart below.



ANNEX 1: PERFORMANCE INDICATORS

The following indicators facilitate the evaluation of compliance with the proportions referred to in Articles 4 and 5 of the 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 activities¹⁵ ("Television without Frontiers Directive"), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997¹⁶ and by Directive 2007/65/EC of the European Parliament and of the Council of 18.12.2007 ("Audiovisual Media Services")¹⁷, (hereinafter referred to as "the Directive")¹⁸.

Indicators 2 – 5 are based on criteria set out in Articles 4 and 5. All performance indicators allow compliance to be assessed at both Member State and Community level.

General indicator

Indicator 1: Number of channels covered by Articles 4 and 5¹⁹.

Indicator 1 was calculated for each Member State and for all Member States taken together.

These figures were obtained by determining the total number of channels identified by Member States less the number of non-operational channels (NO) and the number of channels that were exempted (EX) due to the nature of their programmes (news, sports events, games, advertising, teletext services or teleshopping) or excluded due to legal exceptions:

- Article 9 of the Directive: television broadcasts that are intended for local audiences and do not form part of a national network;
- Article 2(6) of the Directive: broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States;
- Recital 29 of Directive 97/36/EC: channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5.

Channels for which Member States did not communicate data for Articles 4 or 5 (NC) were included.

Indicators concerning Article 4 (European works)

²⁰

Indicator 2: Average transmission time reserved for European works.

Indicator 2 is presented as an average proportion for each individual channel, for each Member State and for all Member States taken together.

¹⁵ OJ L 298, 17.10.1989

¹⁶ OJ L 202, 30.07.1997

¹⁷ OJ L 332, 18.12.2007

¹⁸ These three directives were codified as Directive 2010/13/EU after the end of the transposition period of Directive 2007/65/EC. The codification has involved a renumbering of the Articles. Articles 16 and 17 are now replacing the former Articles 4 and 5, although their substance has remained unchanged.

¹⁹ See Chart 1 and Table 1 in Background Document 2.

²⁰ See Table 2 in Background Document 2.

It is obtained by determining the average transmission time reserved for European works as referred to in Article 6 by each channel covered by Article 4 for which data were communicated ('reported channels') and by comparing that figure with the total qualifying transmission time.²¹

The Member State averages are based on the average proportions of all channels covered by Article 4 for which data were communicated ('reported channels') by the Member State concerned.

The EU averages are based on the Member State averages.

Indicator 3: Compliance rate of channels achieving or exceeding the majority proportion of European works.

Indicator 3 is presented for each Member State and for all Member States taken together.

It is obtained by determining the number of channels achieving the majority proportion (more than 50%) under Article 4 and comparing that figure with the number of channels covered by Article 4 (Indicator 1). The channels for which no data were communicated (NC) are thus considered non-compliant for the purpose of this indicator.

The EU averages are based on the Member State averages.

Indicators concerning Article 5 (European works made by independent producers)²²

Indicator 4: Average transmission time, or alternatively, average proportion of the programming budget allocated to European works by independent producers (independent productions).

Indicator 4 is presented as an average proportion for each individual channel, for each Member State and for all Member States taken together.

It is obtained by determining the average transmission time, or average programming budget, reserved for European works by independent producers on each channel covered by Article 5 for which data were communicated ('reported channels') and by comparing that figure with the total qualifying transmission time.

The Member State averages are based on the average proportions of all channels covered by Article 5 for which data were communicated ('reported channels') by the Member State concerned.

The EU averages are based on the Member State averages.

Indicator 5: Compliance rate of channels in achieving the minimum proportion of independent productions.

Indicator 5 is presented for each Member State and for all Member States taken together.

²¹ I.e. total transmission time excluding the time reserved for news, sports events, games, advertising, teletext services and teleshopping.

²² See Tables 3 and 4 in Background Document 2.

It is obtained by determining the number of channels achieving the minimum proportion of at least 10% under Article 5 and comparing that figure with the number of channels covered by Article 5 (Indicator 1). The channels for which no data were communicated (NC) are thus considered non-compliant for the purpose of this indicator.

The EU averages are based on the Member State averages.

Indicator 6: *average transmission time allocated to recent European works by independent producers (recent works)*.

Indicator 6 is presented as an average proportion for each individual channel, for each Member State and for all Member States taken together.

It is obtained by determining the average transmission time reserved for recent European works by independent producers on each channel covered by Article 5 for which data were communicated ('reported channels') and by comparing that figure with the transmission time reserved for all independent productions.

The Member State averages are based on the average proportions of all channels covered by Article 5 and for which data were communicated ('reported channels') by the Member State concerned.

The EU averages are based on the Member State averages²³.

In order to better evaluate actual developments in the broadcasting of recent works, the EU average figures for recent works were also compared with total qualifying transmission time.²⁴

²³ The figures provided at EU-level result from the mathematical average of all national averages. They have not been weighted since the parameters necessary for a correct weighting are not available for all channels.

²⁴ See Chart 2, Background Document 2.

ANNEX 2: CHARTS AND TABLES ON THE APPLICATION OF ARTICLES 4 AND 5

Chart 1

Indicator 1: channels covered by Articles 4 and 5 (EU level)

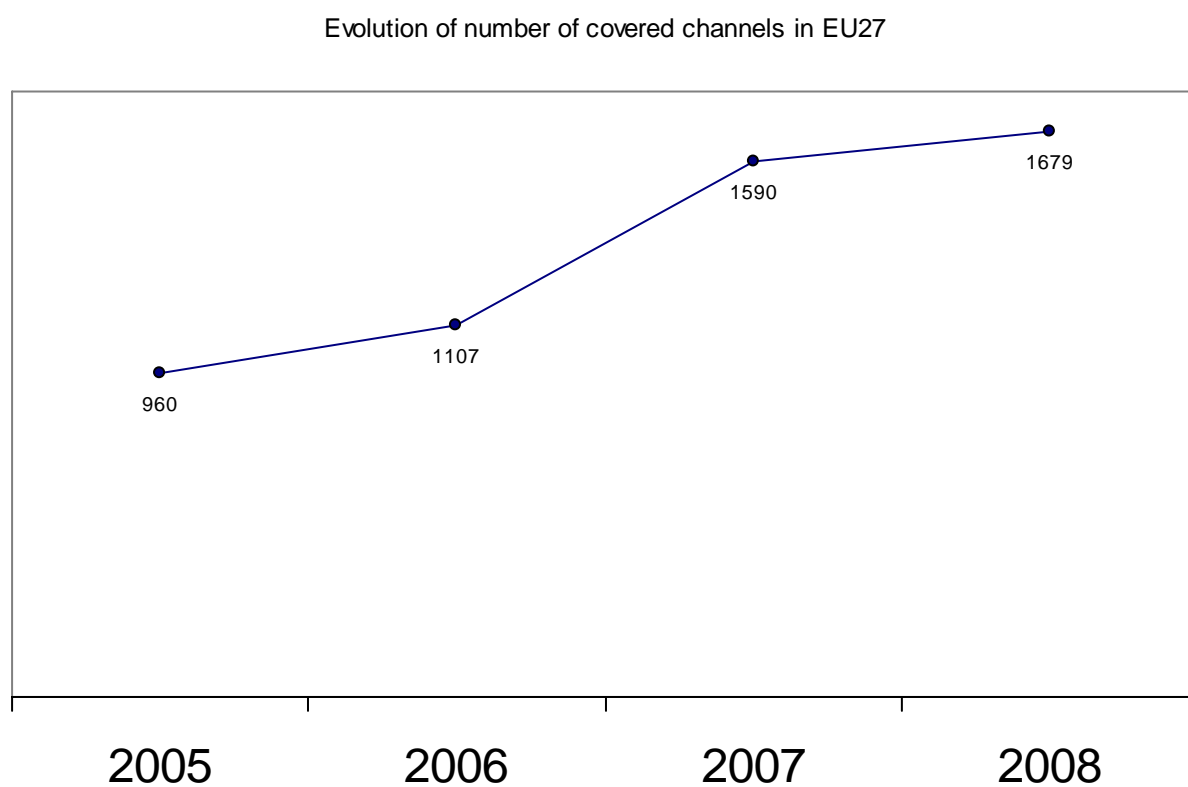
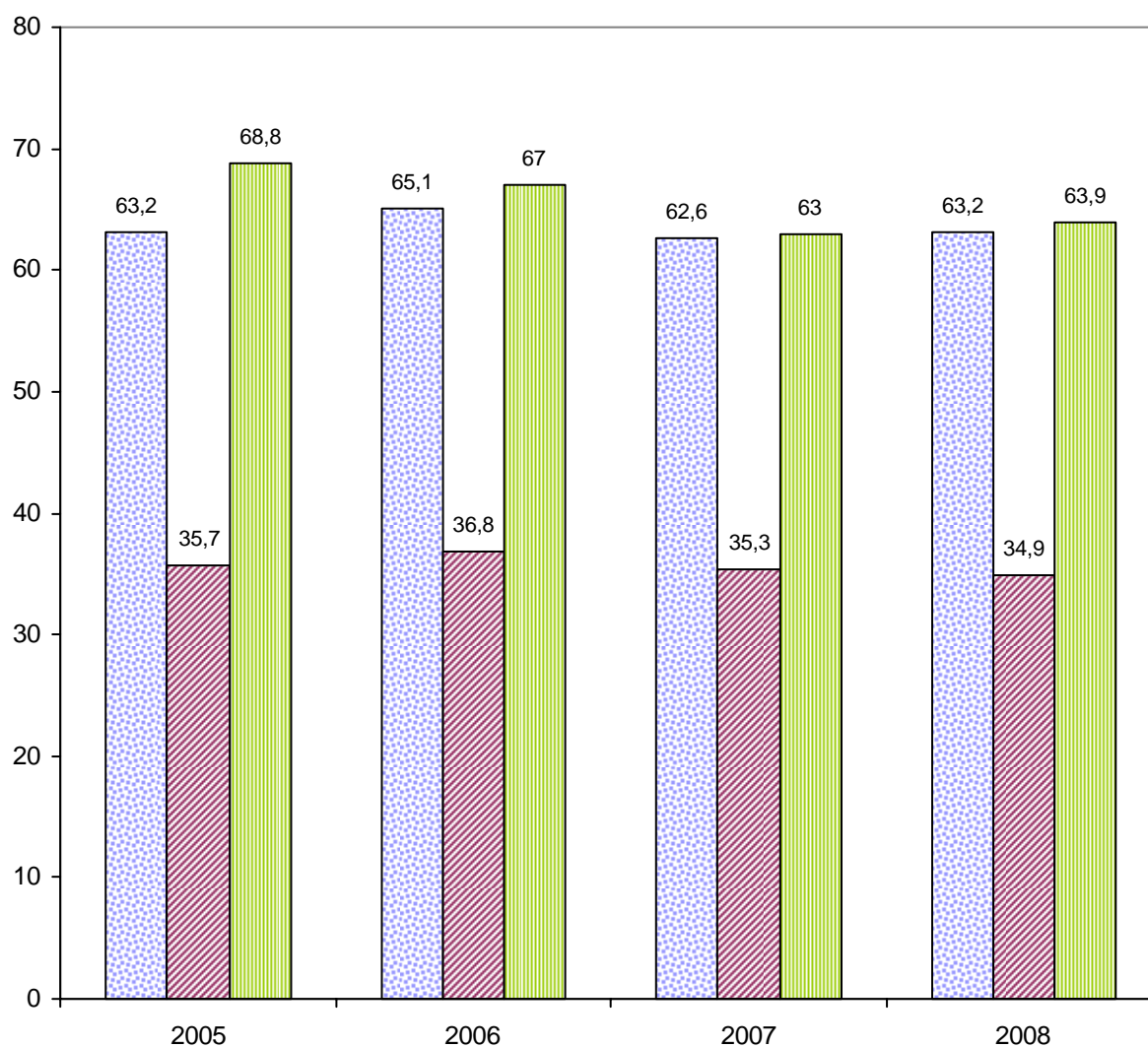


Table 1**Indicator 1: channels covered by Articles 4 and 5 (Member State level)**

Country		Identified Channels	IND1: Covered channels				
			2005	2006	2007	2008	Evolution
Belgium	BE	73	43	44	62	63	47%
Bulgaria	BG	42	3	3	37	38	1167%
Czech Republic	CZ	49	25	28	37	43	72%
Denmark	DK	27	17	18	19	19	12%
Germany	DE	159	37	41	86	86	132%
Estonia	EE	9	3	3	4	9	200%
Ireland	IE	11	4	5	5	5	25%
Greece	EL	36	40	38	34	35	-13%
Spain	ES	175	48	56	134	144	200%
France	FR	152	92	100	115	116	26%
Italy	IT	260	109	133	229	242	122%
Cyprus	CY	25	5	5	8	8	60%
Latvia	LV	6	5	5	6	6	20%
Lithuania	LT	11	4	4	11	11	175%
Luxembourg	LU	15	13	14	14	15	15%
Hungary	HU	29	22	22	25	26	18%
Malta	MT	27	5	5	7	8	60%
Netherlands	NL	208	65	85	134	148	128%
Austria	AT	18	12	11	16	16	33%
Poland	PL	67	50	53	59	61	22%
Portugal	PT	32	13	13	22	23	77%
Romania	RO	78	8	8	58	60	650%
Slovenia	SI	26	27	27	15	15	-44%
Slovak Republic	SK	10	3	3	8	8	167%
Finland	FI	20	9	9	16	17	89%
Sweden	SE	45	24	32	33	38	58%
United Kingdom	UK	592	274	342	396	419	53%
Total		2202	960	1107	1590	1679	
Average							132,3%

Chart 2

Development of main indicators from 2005-2008 (EU-27)



■ IND 2 = %European works/Total qualifying transmission time

■ IND 4 = %European works by independent producers/ Total qualifying transmission time

■ IND 6 = %European recent works by independent producers/Transmission time devoted to independent productions

Table 2**Indicators 2 and 3: European works (Member State level)**

Country		Identified Channels	IND2: European Works					IND3: Compliance Rate	
			2005	2006	2007	2008	Evolution	2007	2008
Belgium	BE	73	58,3%	64,0%	74,9%	69,1%	19%	50,0%	55,6%
Bulgaria	BG	42	67,7%	72,8%	55,6%	55,6%	-18%	40,5%	36,8%
Czech Republic	CZ	49	63,0%	79,9%	64,3%	65,9%	5%	62,2%	53,5%
Denmark	DK	27	81,1%	80,9%	84,9%	84,8%	5%	84,2%	84,2%
Germany	DE	159	61,8%	60,7%	64,2%	63,9%	3%	29,1%	29,1%
Estonia	EE	9	61,8%	62,7%	61,6%	64,6%	5%	100,0%	100,0%
Ireland	IE	11	52,3%	55,2%	55,0%	56,4%	8%	40,0%	40,0%
Greece	EL	36	60,7%	55,5%	54,1%	61,7%	2%	58,8%	68,6%
Spain	ES	175	63,6%	60,5%	54,2%	55,7%	-12%	47,8%	47,9%
France	FR	152	70,8%	73,3%	72,6%	71,7%	1%	67,8%	68,1%
Italy	IT	260	61,4%	60,9%	62,9%	52,7%	-14%	40,6%	38,8%
Cyprus	CY	25	58,5%	69,8%	27,9%	30,0%	-49%	12,5%	12,5%
Latvia	LV	6	64,5%	62,5%	62,2%	62,2%	-4%	83,3%	83,3%
Lithuania	LT	11	53,5%	47,0%	59,3%	59,1%	10%	63,6%	63,6%
Luxembourg	LU	15	65,5%	67,1%	69,6%	70,7%	8%	92,9%	93,3%
Hungary	HU	29	72,0%	76,9%	68,5%	75,3%	5%	76,0%	76,9%
Malta	MT	27	77,0%	78,5%	55,9%	69,0%	-10%	71,4%	87,5%
Netherlands	NL	208	66,4%	70,3%	80,8%	80,3%	21%	59,7%	60,8%
Austria	AT	18	65,6%	68,4%	81,0%	79,1%	21%	81,3%	81,3%
Poland	PL	67	80,2%	81,1%	85,0%	83,1%	4%	89,8%	90,2%
Portugal	PT	32	66,2%	68,6%	72,5%	63,8%	-4%	59,1%	65,2%
Romania	RO	78	51,1%	58,0%	63,0%	67,2%	32%	48,3%	53,3%
Slovenia	SI	26	47,3%	52,3%	34,1%	44,6%	-6%	40,0%	53,3%
Slovak Republic	SK	10	63,8%	62,3%	66,5%	67,3%	5%	50,0%	50,0%
Finland	FI	20	69,3%	69,6%	64,0%	56,8%	-18%	75,0%	58,8%
Sweden	SE	45	51,1%	45,4%	45,1%	45,5%	-11%	36,4%	31,6%
United Kingdom	UK	592	52,6%	53,0%	51,7%	50,7%	-3%	49,5%	45,8%
Total		2202							
Average			63,2%	65,1%	62,6%	63,2%	0, 1%	59,6%	60,4%

Table 3

Indicators 4 and 5: European works by independent producers (Member State level)

Country		Identified Channels	IND4: Independent Producers			2008	Evolution	IND5: Compliance Rate	
			2005	2006	2007			2007	2008
Belgium	BE	73	58,8%	53,0%	54,0%	51,5%	-12,5%	61,3%	66,7%
Bulgaria	BG	42	17,4%	14,9%	25,2%	24,6%	41,3%	35,1%	36,8%
Czech Republic	CZ	49	33,9%	35,0%	32,2%	40,7%	19,8%	56,3%	92,1%
Denmark	DK	27	29,0%	33,2%	28,1%	25,5%	-11,9%	52,6%	47,4%
Germany	DE	159	64,1%	65,1%	61,7%	62,3%	-2,8%	40,7%	41,9%
Estonia	EE	9	46,1%	48,9%	50,3%	39,3%	-14,8%	100,0%	100,0%
Ireland	IE	11	26,5%	34,4%	21,9%	23,0%	-13,4%	80,0%	80,0%
Greece	EL	36	18,3%	19,5%	14,5%	14,7%	-19,8%	50,0%	57,1%
Spain	SP	175	41,1%	39,5%	31,3%	31,6%	-22,9%	64,9%	63,9%
France	FR	152	53,6%	52,4%	47,5%	45,7%	-14,8%	71,1%	69,0%
Italy	IT	260	14,2%	11,5%	22,6%	17,0%	19,9%	39,3%	35,1%
Cyprus	CY	25	9,7%	6,5%	39,6%	41,9%	331,8%	75,0%	75,0%
Latvia	LV	6	33,3%	31,9%	18,4%	19,7%	-40,9%	66,7%	66,7%
Lithuania	LT	11	25,7%	23,2%	39,0%	41,5%	61,8%	100,0%	100,0%
Luxembourg	LU	15	57,6%	54,7%	56,2%	53,6%	-7,0%	100,0%	93,3%
Hungary	HU	29	43,4%	53,9%	39,7%	41,8%	-3,6%	84,0%	80,8%
Malta	MT	27	42,8%	45,0%	41,4%	57,7%	34,8%	100,0%	100,0%
Netherlands	NL	208	39,5%	49,6%	40,2%	37,8%	-4,1%	64,9%	59,5%
Austria	AT	18	49,7%	52,2%	49,0%	48,7%	-2,0%	93,3%	93,3%
Poland	PL	67	26,7%	26,0%	25,0%	29,0%	8,6%	88,1%	95,1%
Portugal	PT	32	23,7%	30,3%	39,5%	23,5%	-0,7%	63,6%	82,6%
Romania	RO	78	36,2%	38,6%	28,2%	26,3%	-27,5%	44,8%	45,0%
Slovenia	SI	26	18,5%	20,0%	10,9%	15,9%	-14,3%	66,7%	73,3%
Slovak Republic	SK	10	25,4%	26,0%	24,0%	23,8%	-6,5%	50,0%	50,0%
Finland	FI	20	44,1%	45,1%	40,1%	35,3%	-19,9%	93,8%	94,1%
Sweden	SE	45	57,1%	53,1%	41,6%	40,3%	-29,5%	85,7%	85,0%
United Kingdom	UK	592	28,5%	29,7%	29,8%	29,9%	4,8%	72,5%	69,7%
Total		2202							

Average 35,7% 36,8% 35,3% 34,9% -2,3% 70,4% 72,3%

Table 4

Indicator 6: Recent European works by Independent producers (Member State level)

Country		Identified Channels	IND6: works	Recent	2007	2008	Evolution
			2005	2006			
Belgium	BE	73	85,6%	83,2%	79,6%	81,6%	-4,7%
Bulgaria	BG	42	-	-	54,3%	49,5%	-
Czech Republic	CZ	49	57,1%	52,2%	72,1%	71,8%	25,8%
Denmark	DK	27	70,8%	64,8%	49,3%	49,9%	-29,6%
Germany	DE	159	67,1%	64,7%	69,7%	71,3%	6,3%
Estonia	EE	9	26,1%	30,8%	68,9%	79,6%	204,5%
Ireland	IE	11	28,5%	24,8%	95,3%	95,3%	234,3%
Greece	EL	36	28,6%	34,0%	21,6%	24,2%	-15,6%
Spain	SP	175	71,1%	69,5%	67,3%	64,1%	-9,9%
France	FR	152	59,3%	56,8%	56,6%	57,1%	-3,7%
Italy	IT	260	65,8%	67,7%	64,9%	59,5%	-9,5%
Cyprus	CY	25	100,0%	91,0%	67,4%	69,9%	-30,1%
Latvia	LV	6	85,2%	81,7%	100,0%	99,6%	16,9%
Lithuania	LT	11	90,0%	92,5%	38,5%	40,2%	-55,4%
Luxembourg	LU	15	55,7%	57,9%	47,0%	48,9%	-12,0%
Hungary	HU	29	74,1%	71,5%	67,4%	75,8%	2,3%
Malta	MT	27	82,2%	54,5%	38,8%	55,1%	-33,0%
Netherlands	NL	208	89,5%	86,8%	85,3%	76,3%	-14,7%
Austria	AT	18	71,2%	73,8%	58,5%	51,3%	-28,0%
Poland	PL	67	52,7%	59,2%	71,3%	76,8%	45,7%
Portugal	PT	32	90,2%	93,5%	93,5%	85,5%	-5,2%

Romania	RO	78	71,3%	72,4%	59,1%	53,2%	-25,4%
Slovenia	SI	26	55,5%	55,9%	57,7%	61,4%	10,7%
Slovak Republic	SK	10	100,0%	100,0%	24,0%	23,8%	-76,3%
Finland	FI	20	76,1%	76,8%	71,3%	78,5%	3,1%
Sweden	SE	45	66,2%	55,8%	53,6%	53,3%	-19,6%
United Kingdom	UK	592	67,6%	69,6%	67,7%	71,2%	5,3%
Total		2202					
Average			68,8%	67,0%	63,0%	63,9%	-7,1%

ANNEX 3 – SUMMARY OF THE REPORTS FROM THE MEMBER STATES

Key abbreviations:

EW	European works ²⁵ in relation to TQT (see Article 4 of the Directive)
IP	European works made by independent producers in relation to TQT (see Article 5 of the Directive)
RW	Recent European works by independent producers in relation to IP (see Article 5 of the Directive)
TQT	Total qualifying transmission time (excluding news, sport events, games, advertising, teletext services and teleshopping)
NC	Channels for which no data was communicated
NO	Channels non-operational during the year concerned
EX	Channels exceptionally exempt ²⁶ or exempt under the 'where practicable' provision (following specific reasons given by the Member States)

Disclaimer

Annex 3 contains statements by the Member States. This does not represent the Commission's opinion.

²⁵ See Article 1 n) i) of Directive 2007/65/EC.

²⁶ The reporting obligation under Article 4(3) applies to all transmissions by broadcasters within the jurisdiction of a Member State, with the following exception:
- Articles 4 and 5 do not apply to 'news, sports events, games, advertising, teletext services and teleshopping'.