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THE EUROPEAN UNION**

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**NOTE**

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from : The Presidency  
to : Council

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Subject : Proposal for a Directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative Action in Member States concerning the pursuit of television broadcasting activities (Television without frontiers)  
– *General approach*

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1. Delegations will find in Annex the Presidency compromise text for the attention of Ministers at the Council on 13 November 2006. Following the discussion at Coreper on 27 October 2006 the Presidency has made a number of changes to the text, whilst attempting to maintain its overall balance and coherence.
2. With regard to the Directive's **scope**, a modification has been introduced to Recital 13 so as to ensure that the status of user-generated content is addressed in a more logical way, whilst an addition to Recital 13a underlines the dynamic notion of "programme" and thus of the future scope of the Directive.

On the question of **jurisdiction** a change has been made to Article 3(1a) which has the effect of applying the co-operation procedure between Member States to cases where a particular *service* targets another Member State, rather than the activities of a broadcaster taken as a whole.

On the issue of **product placement** it has been made clear in Article 3f that the starting point is a prohibition. There is a possibility for derogation from this general prohibition, but only for a limited list of programme types, and only according to a set of strict conditions. Slightly more flexible conditions apply to cases where the programme has been acquired from an independent programme maker. Children's programmes are cited specifically as an area where product placement is not permitted.

Regarding **quantitative advertising rules** a change has been made in Article 11(2) to prevent the interruption of shorter children's programmes by advertising. In addition the Commission will be required to give special attention to the question of advertising accompanying children's programmes in its report on the application of this Directive required by Article 26.

Finally, the changes agreed at Coreper regarding sponsorship (Article 3e) and the short-news reports (Article 3j) have been included, and a technical improvement has been made to the Recital in footnote 9 (relationship with the e-commerce Directive) to clarify the text.

3. The text is presented in a consolidated form, plain text indicating unchanged provisions of the existing Directive, italics indicating the Commission's proposal, and changes proposed by the Presidency set out in bold. Changes introduced after the Coreper discussion are indicated with underlining.

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**Amended TVWF Directive – Consolidated version**

**DIRECTIVE [] OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING  
COUNCIL DIRECTIVE 89/552/EEC**

on the coordination of certain provisions laid down by law, regulation or administrative action in  
Member States concerning the pursuit of television broadcasting activities

Text with relevance for EEA

The title is amended as follows:

*“Directive [No] of the European Parliament and of the Council on the coordination of certain  
provisions laid down by law, regulation or administrative action in Member States concerning the  
provision of audiovisual media services (Audiovisual Media Services Directive)”.*

## CHAPTER I

### Definitions

#### Article 1

For the purpose of this Directive:

(a) ‘audiovisual media service’ means:

- a service as defined by Articles 49 and 50 of the Treaty **which is under the editorial responsibility<sup>1</sup> of a media service provider and the principal purpose of which is the provision of programmes [...] in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council. Such audiovisual media services are either television broadcasts as defined in paragraph (c) of this Article or on-demand services as defined in paragraph (e) of this Article.**

**and/or**

- **audiovisual commercial communication.**<sup>23 4</sup>

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<sup>1</sup> **Rec 16a: A media service provider must exercise editorial responsibility over his service. Editorial responsibility means the exercise of prior control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided.**

<sup>2</sup> OJ L 108, 24.04.2002, p.33

<sup>3</sup> Amended Rec 13: The definition of audiovisual media services covers only audiovisual media services, whether scheduled or on-demand, **which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. The scope is limited to services as defined by the Treaty and therefore covers any form of economic activity, including that of public service enterprises, but does not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest. The definition excludes all services not intended for the distribution of audiovisual content, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose.**

<sup>4</sup> Rec 15a: **This directive does not cover services, such as gambling services and on-line games, the principal purpose of which is not the provision of programmes.**

(aa) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedy, documentary, children's programmes and original drama.<sup>5</sup>

(b) 'media service provider' means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

(c) 'television broadcasting' [...] or 'television broadcast' (i.e. a linear audiovisual media service) means an[...]audiovisual media service **provided by a media service provider for simultaneous<sup>6</sup> viewing of programmes [...] on the basis of a programme schedule;**

(d) 'broadcaster' [...] means **a media service provider of television broadcasts [...]**

(e) 'on-demand service' (i.e. a non-linear audiovisual media service) [...] means an audiovisual media service **provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his/her individual request[...] on the basis of a [...] catalogue of programmes selected by the media service provider;**<sup>7</sup>

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<sup>5</sup> Recital 16 (addition): **Whilst the principal purpose of an audiovisual media service is the provision of programmes, i.e. sets of moving images with or without sound, the definition of such a service also covers text-based content which accompanies such programmes, such as subtitling services and electronic programme guides. Stand-alone text-based services do not fall within the scope of this Directive, which does not affect Member States' freedom to regulate such services at national level in accordance with the Treaty.**

<sup>6</sup> New recital: [...] **In the context of television broadcasting the notion of simultaneous viewing also entails quasi simultaneous viewing because of the variations in the short timelag which occurs between the transmission and the reception of the broadcast due to technical reasons inherent in the transmission process.**

<sup>7</sup> Rec 13a: **It is characteristic of on-demand services that they are "television-like", i.e. that they compete for the same audience as television broadcasts and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. On this basis in order to prevent disparities as regards free movement and competition, the notion of programme should be interpreted in a dynamic way taking into account developments in television broadcasting.**

(f) 'audiovisual commercial communication' means [...] images with or without sound which [...] are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. [...] **Such images [...] accompany or [...] are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement.**

(g) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(h) 'surreptitious **audiovisual commercial communication**' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the [...] **media service provider** to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

<sup>8</sup>(i) 'sponsorship' means any contribution made by a public or private undertaking not engaged in [...] *providing audiovisual media services* or in the production of audio-visual works, to the financing of [...] *audiovisual media services* **or programmes** with a view to promoting its name, its trade mark, its image, its activities or its products;

(j) 'teleshopping' means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

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<sup>8</sup> Addition to recital 46: **The decisive criterion distinguishing sponsorship and product placement is the fact that in product placement the reference to a product is built into the action of a programme (which is why the definition in Article 1(k) contains the word "within"). Sponsor references in contrast may be shown during a programme but are not part of the plot.**

*(k) 'product placement' means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within [...] a programme, [...] in return for payment or for similar consideration.*

(l) (ex art 6)

(i) 'European works' means the following:

[...] - works originating from Member States;

[...] - works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point (ii);  
[...]

[...] - *works co-produced in the framework of agreements related to the audiovisual sector concluded between the European Community and third countries and fulfilling the conditions defined in each of these agreements.*

Application of the provisions of [...] **the second and third indents above** shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

(ii) The works referred to in **the first and second indents of point (i) [...]** are works mainly made with authors and workers residing in one or more States referred to in **the first and second indents of point (i) [...]** provided that they comply with one of the following three conditions:

- they are made by one or more producers established in one or more of those States; or
- production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or

- the contribution of co-producers of those States to the total coproduction costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

[...]

**(iii)** Works that are not European works within the meaning of **point (i)** [...] but that are produced within the framework of bilateral coproduction treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

[...]



CHAPTER II  
**General provisions**  
Article 2

- 1 Each Member State shall ensure that all [...] *audiovisual media services transmitted by media service providers* under its jurisdiction comply with the rules of the system of law applicable to [...] *audiovisual media services* intended for the public in that Member State.
2. For the purposes of this Directive the [...] *media service providers* under the jurisdiction of a Member State are:
  - (a) those established in that Member State in accordance with paragraph 3;
  - (b) those to whom paragraph 4 applies.
3. For the purposes of this Directive, a [...] *media service provider* shall be deemed to be established in a Member State in the following cases:
  - (a) the [...] *media service provider* has its head office in that Member State and the editorial decisions about [...] *the audiovisual media service* are taken in that Member State;
  - (b) if a [...] *media service provider* has its head office in one Member State but editorial decisions on [...] *the audiovisual media service* are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the [...] *audiovisual media service activity* operates; if a significant part of the workforce involved in the pursuit of the [...] *audiovisual media service activity* operates in each of those Member States, the [...] *media service provider* shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the [...] *audiovisual media service activity* operates in neither of those Member States, the [...] *media service provider* shall be deemed to be established in the Member State where it first began [...] *its activity* in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

- (c) if a [...] *media service provider* has its head office in a Member State but decisions on [...] *audiovisual media service* are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the [...] *audiovisual media service activity* operates in that Member State.
4. [...] *Media service providers* to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:
- [...]
- (a) [...] they [...] use a satellite up-link situated in that Member State.
- (b) [...] *although they do not use a satellite up-link situated in that Member State*, they [...] use a satellite capacity appertaining to that Member State;
5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the [...] *media service provider* is established within the meaning of Articles [...] 43 and following of the Treaty establishing the European Community.
6. This Directive does not apply to [...] *audiovisual media services* intended exclusively for reception in third countries and which are not received *with standard user equipment* directly or indirectly by the public in one or more Member States.
7. [...]
8. [...]
9. [...]
10. [...]

## Article 2a

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of [...] *audiovisual media services* from other Member States for reasons which fall within the fields coordinated by this Directive.
2. **In respect of television broadcasting,** Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:
  - (a) **a television broadcast** coming from another Member State manifestly, seriously and gravely infringes Article 22 (1) or (2) and/or **Articles 3b**;
  - (b) during the previous 12 months, the **broadcaster** has infringed the provision(s) referred to in (a) on at least two prior occasions;
  - (c) the Member State concerned has notified **the broadcaster** and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;
  - (d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.

The Commission shall, within two months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.

3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the **broadcaster** concerned.
4. **In respect of on-demand services, Member States may take measures to derogate from paragraph 1 according to the conditions and procedures set out in Articles 3(4), (5) and (6) of Directive 2000/31/EC.**<sup>9</sup>

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<sup>9</sup> New recital: **Directive 2000/31/EC on certain aspects of information society services, in particular electronic commerce, in the Internal Market, applies fully except as otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive should prevail, unless otherwise provided for in this Directive.**

### Article 3

1. <sup>10</sup>Member States shall remain free to require [...] *media service providers* under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.

**1a. In cases where a Member State:**

- (a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest<sup>11</sup>; and
- (b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory

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<sup>10</sup> New recital: This Directive does not affect the obligations on Member States arising from the application of Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations, as amended by Directive 98/48/EC. Accordingly, draft national measures applicable to on-demand audiovisual media services of a stricter or more detailed nature than those required to simply transpose the present Directive would be subject to the procedural obligations established under Article 8 of Directive 98/34/EC.

<sup>11</sup> New recital: The notion of rules of general public interest has been developed by the Court of Justice in its case law in relation to Articles 43 and 49 of the Treaty and includes, inter alia, rules on the protection of consumers, the protection of minors and cultural policy. The requesting Member State should ensure that the specific national rules in question are objectively necessary, applied in a non-discriminatory manner, suitable for attaining the objectives which they pursue and do not go beyond what is necessary to attain them.

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State with jurisdiction shall inform the first Member State of the results obtained following this request within two months.

**1b. Where the first Member State assesses:**

- (a) that the results achieved through the application of paragraph 1a are not satisfactory; and**
- (b) that the broadcaster in question has established itself in the Member State having jurisdiction in order to avoid the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established within the first Member State, it may adopt appropriate measures against the media service provider concerned.**

**Such measures shall be objectively necessary, applied in a non-discriminatory manner, be suitable for attaining the objectives which they pursue and may not go beyond what is necessary to attain them.<sup>12</sup>**

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<sup>12</sup> Revised Recital 47: [...] Close cooperation between competent national authorities and the Commission is necessary to ensure the correct application of this Directive. **Similarly close cooperation between Member States and between Member States' regulatory authorities is particularly important with regard to the impact broadcasters established in one Member State might have on another Member State. In the case that licensing procedures are provided for in national law and if more than one Member State is concerned, it is desirable that contacts between the respective authorities take place before such licences are granted. This cooperation should cover all fields coordinated by this Directive and in particular Articles 2, 2a and 3 thereof.**

- 1c. *Member States may [...] take measures pursuant to paragraph 1b only if all of the following conditions are met:*
- (a) *[...]*
  - (b) *[...]*
  - (c) **it has notified the Commission and the Member State in which the media service provider is established of its intention to take such measures while substantiating the grounds on which it bases its assessment and**
  - (d) **the Commission decides that the measures are compatible with Community law, and in particular that assessments made by the Member State taking these measures under paragraphs 1a and 1b are correctly founded.**
- 1d. *The Commission shall decide within three months following notification under paragraph 1c(c). If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.*
2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that [...] *media service providers* under their jurisdiction effectively comply with the provisions of this Directive.
- [...]
3. *Member States shall encourage co- and/or self-regulatory regimes in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement.*<sup>13</sup>

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<sup>13</sup> **New Rec 25: (first part deleted)** Experience in the audiovisual sector has shown that co- and self-regulation instruments implemented in accordance with the different legal traditions of Member States can play an important role in delivering a high level of consumer protection. **Without prejudice to Member States' formal obligations regarding transposition, this Directive encourages the use of such instruments. This neither obliges Member States to set up co- and/or self-regulatory regimes nor disrupts or jeopardises current co- or self-regulatory initiatives which are already in place within Member States and which are working effectively.**

## CHAPTER IIa

### **Provisions applicable to all audiovisual media services**

#### ***Article 3a (ex-Article 3c)***

*Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of the service at least the following information:*

- (a) the name of the media service provider;*
- (b) the geographic address at which the media service provider is established;*
- (c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and effective manner;*
- (d) where applicable, the competent regulatory authority.*

#### ***Article 3b (ex-Article 3e)***

*Member States shall ensure by appropriate means that audiovisual media services [...] provided by providers under their jurisdiction do not contain any incitement to hatred based on **race, sex, religion or nationality** [...].*

#### ***Article 3c (ex- Article 3j)***

**Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.**



**Article 3d (ex- Article 3g)**

*Member States shall ensure that audiovisual commercial communications provided by providers under their jurisdiction comply with the following requirements:*

*(a) audiovisual commercial communications must be [...] readily recognizable as such.*

*Surreptitious audiovisual commercial communication shall be prohibited.*

*(b) audiovisual commercial communications must not use subliminal techniques;*

*(c) audiovisual commercial communications must not:*

**(-i) prejudice respect for human dignity**

*(i) include any discrimination on grounds of race, sex or nationality;*

*(ii) be offensive to religious or political beliefs;*

*(iii) encourage behaviour prejudicial to health or to safety;*

*(iv) encourage behaviour prejudicial to the protection of the environment;*

*(d) all forms of audiovisual commercial communications [...] for cigarettes and other tobacco products shall be prohibited;*

*(e) audiovisual commercial communications for alcoholic beverages must not be aimed specifically at minors and may not encourage immoderate consumption of such beverages;*

**(ea) [ex art 14(1)]**

**audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited.**

*(f) audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not directly exhort minors to buy **or hire** a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.*

*Article 3e (ex-Article 3h)*

1. *Audiovisual media services **or programmes** that are sponsored [...] shall meet the following requirements:*
  - (a) *[...] **their content and, in the case of television broadcasting, their scheduling** may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;*
  - (b) *they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;*
  - (c) *viewers must be clearly informed of the existence of a sponsorship agreement [...]. Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes. [...]*
2. *Audiovisual media services **or programmes** must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products. [...]*
3. *The sponsorship of audiovisual media services **or programmes** by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.*
4. *News and current affairs **programmes** shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during childrens' programmes, documentaries and religious programmes. [...]*

*Article 3f (ex-Article 3i)*

1. **Product placement shall be prohibited.**
2. **By way of derogation from paragraph 1, Member States may choose to explicitly permit product placement**  
**- in cinematographic works, films and series made for television, sports broadcasts and light entertainment programmes; or**  
**- in cases where there is no payment but only provision of certain goods or services for free with a view to their inclusion in a programme.**

**Programmes for children shall not contain product placement.**

The programmes [...] that contain product placement **shall** meet at least **all of** the following requirements:

- (a) [...] their content [...] and, in the case of television broadcasting, their scheduling [...] is in no circumstances [...] influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) they [...] do not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (ba) they do not give undue prominence to the product in question;
- (c) viewers [...] are clearly informed of [...] the existence of product placement. [...] Programmes containing product placement [...] are appropriately identified at the start and the end of the programme in order to avoid any confusion on the part of the viewer.<sup>14</sup>

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<sup>14</sup> Rec 45: --The prohibition of surreptitious advertising does not cover legitimate product placement within the framework of this Directive, where the viewer is adequately informed of the existence of product placement; this can be done either by mentioning which products are involved or by signalling the fact that product placement is taking place in a given programme.

**In cases where the payment or similar consideration for the product placement has not been paid to the media service provider, Member States may choose to waive the requirements set out in (c) above.**

3. In any case programmes [...] must not contain **product** placement of:
  - tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;
  - or
  - specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls
4. The provisions of paragraphs 1, 2 **and 3** apply only to programmes produced after [*date: transposition deadline for the Directive*].

**Provisions applicable only to on-demand services**

*Article 3g (ex-Article 3d)*

*Member States shall take appropriate measures to ensure that **on-demand services [..] provided by media service providers under their jurisdiction [..] which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand services.***<sup>15</sup>

*Article 3h (ex-Article 3f)*

1. *Member States shall ensure that **on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works [...]. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes proposed by the service.***

[...]

3. *Member State shall report to the Commission, no later than the end of the fourth year after the adoption of this Directive and every [...] **four** years thereafter on the implementation of the measure set out in paragraph 1.*
4. *The Commission shall, on the basis of the information provided by Member States, report to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments.*

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<sup>15</sup> Revised Rec 32: --*The aim of these measures, such as the use of PIN codes (personal identification numbers), should--.*

**Exclusive rights and short news provisions in television broadcasting**

***Article 3i (ex-Article 3a)***

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.
2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the Official Journal of the European Communities and at least once a year the consolidated list of the measures taken by Member States.

3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with the preceding paragraphs via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.

*Article 3j (ex-Article 3b)*

1. Member States shall ensure that for the purpose of short-news reports, any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to [...] events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.
2. Member States shall ensure that such access is guaranteed by allowing *broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.*
3. As an alternative to paragraph 2, a Member State may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.<sup>16</sup>
4. Such extracts shall be used solely for news purposes.
5. Without prejudice to paragraphs 1 to 4 above, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the use of such short extracts are defined, in particular any compensation arrangements, the maximum length of extracts and time limits regarding their transmission [...].

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<sup>16</sup> New Recital: The requirements of this Directive regarding access to events of high interest for the purpose of short news reports are compatible with Directive 2001/29/EC and the relevant international conventions in the field of copyright. Typically, Member States shall facilitate access to events by granting access to the broadcaster's signal within the meaning of paragraph 2 of Article 3j. However, they may choose other equivalent means within the meaning of paragraph 3 of the same article. Such means include, inter alia, granting access to the venue of these events prior to granting access to the signal.



## CHAPTER III

### **Promotion of distribution and production of television programmes**

#### Article 4

1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works [...] a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.
2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.  
However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.
3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.  
That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive. To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

## Article 5

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

Article 6

[...]

*Article 7*

[...]

Article 9

This Chapter shall not apply to television broadcasts that are intended for local audiences and do not form part of a national network.

## CHAPTER IV

### Television advertising [...] and teleshopping

#### Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.
2. Isolated advertising and teleshopping spots, *other than in transmissions of sports events*, shall remain the exception.
3. [...]
4. [...]

#### Article 11

[...]

1. Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes, **taking into account natural breaks in and the duration and the nature of the programme**, and the rights of the right holders are not prejudiced.<sup>17</sup>

[...]

- ~~3.~~ 2. The transmission of [...] *films made for television (excluding series, serials, [...] and documentaries), cinematographic works [...] and news programmes [...]* may be interrupted by advertising and/or teleshopping once for each period of **30 minutes**. **The transmission of children's programmes may be interrupted by advertising and/or teleshopping once for each period of 30 minutes, provided the scheduled duration of the programme is greater than 30 minutes.** No advertising or teleshopping may be inserted during religious services.

[...]

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<sup>17</sup> rec 43: The Directive is intended to safeguard the specific character of the European television landscape, **where advertising is preferably inserted between programmes**, and therefore limits possible interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection.

## *Article 12*

[...]

## *Article 13*

[...]

## Article 14

1. [...] **[moved to Art 3d]**
2. Teleshopping for medicinal products which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products, as well as teleshopping for medical treatment, shall be prohibited.

## Article 15

Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

- (a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
- (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

- (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
- (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

*Article 16*

[...]

*Article 17*

[...]

Article 18

[...]

- ~~2.~~ 1. The proportion of [...] advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.<sup>18</sup>

[...]

2. *Paragraph 1 does not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.*

*Article 18a*

[...]

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<sup>18</sup> Amended Recital 44: The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots **and should also be interpreted as applying to teleshopping windows which have a duration of less than 15 minutes**; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable.  
[...]

## Article 19

[...]

The provisions of this Directive shall apply *mutatis mutandis* to television **channels** [...] exclusively devoted *to advertising* and *teleshopping as well as to television channels exclusively devoted to self-promotion*. Chapter 3 *as well as Article 11 (rules on insertion)* and Article 18 (duration of advertising and teleshopping) do not apply to these **channels**.

## Article 19a

[...]

## Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11 (2) [...] and Articles 18 [...] in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States [...].

## CHAPTER V

### **Protection of minors [...] in television broadcasting**

#### Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.
2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.
3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

#### *Article 22a*

[...]



## CHAPTER VI

### **Right of reply in television broadcasting**

#### Article 23

1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.
2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.
3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.
4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.
5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

## CHAPTER VIa

### Contact committee

#### Article 23a

1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.
2. The tasks of this committee shall be:
  - (a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;
  - (b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;
  - (c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;
  - (d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;
  - (e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities [...] *audiovisual media services*, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;
  - (f) to examine any development arising in the sector on which an exchange of views appears useful.

## **CHAPTER VIb**

### **Cooperation between National Regulatory Authorities**

#### *Article 23 b*

1. [...]
2. *National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 thereof.*

## CHAPTER VII

### **Final provisions**

#### Article 24

In fields which this Directive does not coordinate, it shall not affect the rights and obligations of Member States resulting from existing conventions dealing with telecommunications or broadcasting.

#### *Article 25*

[...]

#### *Article 26*

Not later than [...], and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended and, if necessary, make further proposals to adapt it to developments in the field of [...] *audiovisual media services*, in particular in the light of recent technological developments, [...] *the competitiveness of the sector and levels of media literacy in all Member States.*

**This Report shall also assess the issue of advertising accompanying children's programmes, and in particular whether the quantitative and qualitative rules contained in this Directive have afforded the level of protection required.**

*Article 2 of the amending Directive*

*Regulation 2006/2004/EC<sup>19</sup> is hereby amended as follows*

*Annex 'Directives and Regulations' covered by Article 3(a) No 4 of this Regulation is replaced by the following:*

*"4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 3g to 3h<sup>20</sup> and Articles 10 to 20<sup>21</sup>. Directive as last amended by Directive XXXX/XXXX/EC of the European Parliament and of the Council<sup>22</sup>."*

*Article 3 of the amending Directive*

- 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions [...].<sup>23</sup>*

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<sup>19</sup> OJ L 364, 9.12.2004, p. 1

<sup>20</sup> OJ L xxxx, p xxx

<sup>21</sup> OJ L 298, 17.10.1989; p.23

<sup>22</sup> OJ L xxxxx, p xxx

<sup>23</sup> New recital added: **In accordance with point 34 of the Interinstitutional agreement on better law-making, Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.**

*When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*

2. *Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.*

*Article 4 of the amending Directive*

*This Directive shall enter into force on the [...] day following that of its publication in the Official Journal of the European Union.*

*Article 5 of the amending Directive*

*This Directive is addressed to the Member States.*

*Done at Brussels, [...]*

*For the European Parliament*

*The President*

*[...]*

*For the Council*

*The President*

*[...]*

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