



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 13.12.2005  
COM(2005) 646 final

2005/0260 (COD)

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**

(presented by the Commission)

{SEC(2005) 1625}  
{SEC(2005) 1626}

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

The market for European television services has changed dramatically through the convergence of technologies and markets. “Traditional” television broadcasting services remain regulated on the basis of the regulatory approach of the 1980’s and 1990’s. While this approach has succeeded in spectacularly developing the audiovisual market in the European Union, it is no longer adapted to the increasing degree of choice of consumers of audiovisual services in the digital age. At the same time, broadcasters have to compete increasingly with other linear services on other platforms and non-linear (on-demand) services that offer the same or similar audiovisual media content, but are subject to a different regulatory environment. This creates a non-level playing field in the way content is delivered. In line with the principles of “better regulation”, therefore, a fresh approach is required.

- **General context**

In view of technological and market developments and in order to further improve the competitiveness of European industry in the fields of information and communication technologies and media, the Commission has decided to launch a review of the current regulatory framework for television broadcasting. The modernisation of the legal framework for audiovisual media services in the single market is an integral part of the Commission’s commitment to better regulation. At the same time, it contributes to the Lisbon agenda and is a crucial component of the new i2010 policy strategy adopted by the Commission in June. Moreover, it is consistent with the Communication on accelerating the transition from analogue to digital broadcasting adopted by the Commission in May.

With the work programme annexed to the Fourth Report on the application of Directive 89/552/EEC “Television without Frontiers”<sup>1</sup>, the Commission launched in 2003 a first consultation round for the review of Council Directive 89/552/EEC as amended by Directive 97/36/EC (Television without Frontiers Directive – TVWF), including public hearings and a written consultation. The Commission drew the conclusions from this first consultation in the Communication on the Future of European Regulatory Audiovisual Policy<sup>2</sup>. Following this Communication, Focus Groups were established to discuss certain issues in greater depth with experts.

The results of the Focus Groups were presented to the Member States at a seminar in Luxembourg on 30 and 31 May and were summarised in “issues papers” published by the Commission in July 2005. The Commission received contributions from more than 200 stakeholders in this second consultation round from all sectors, including civil society and industry representatives.

The “issues papers” and contributions served as a basis for the preparation of a major

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<sup>1</sup> COM(2002) 778.

<sup>2</sup> COM(2003) 784.

audiovisual conference co-organised with the UK Presidency in Liverpool in September 2005. This Conference wrapped up the discussion and marked the end of the consultation exercise.

The main conclusion drawn from this debate was that keeping the “Television without Frontiers” Directive as it stands now would aggravate increasingly unjustifiable differences in regulatory treatment between the various forms of distributing identical or similar media content and that action at EU level was thus needed to enhance legal certainty in order to ensure the best possible conditions for the competitiveness of the sector.

The objective of this proposal is to ensure that on-demand audiovisual media services providers within the Member States can fully benefit from the internal market through the principle of regulation by the country of origin. This would enhance legal certainty overall for all audiovisual media service providers within the EU.

This is in line with the principle of technological neutrality. Indeed, modern rules in the audiovisual policy field should not discriminate between and within different platforms delivering similar content and should create a level playing field for fair and enhanced competition between different operators, while enabling new services to flourish.

At the same time, in the light of developments in technology, the market and users’ behaviour (their increased choice and responsibility) and in order to remain proportionate with the goals of general interest, a greater degree of flexibility is needed in respect of the rules for linear audiovisual media services, in particular as regards advertising.

In sum, the objective of the Commission’s proposal is to modernise and simplify the regulatory framework for broadcasting or linear services and introduce minimum rules for non-linear audiovisual media services.

- **Existing provisions in the area covered by the proposal**

Council Directive 89/552/EEC as amended by Directive 97/36/EC concerns “television broadcasting”. The present proposal amends the TVWF Directives in order to establish a modernised and flexible framework for television broadcasts, including other linear (scheduled) audiovisual media services, and to introduce a set of minimum rules for non-linear (on-demand) audiovisual media services.

- **Consistency with the other policies and objectives of the Union**

This proposal is complementary to existing EU law, in particular Directive 2000/31/EC on electronic commerce, which also deals with on-demand services. Directive 2000/31/EC allows Member States to derogate from the country of origin principle for a number of public policy reasons. The effect is that on-demand audiovisual media services can be subject to different rules for contents delivered in different Member States (Article 3(4) of Directive 2000/31/EC). Furthermore, Directive 2000/31/EC does not deal with public policy issues such as the protection of minors or respect for human dignity, whereas the current proposal includes minimum coordination in these fields for audiovisual media services. Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices through a cross-media approach,

whereas the present Directive makes specific provisions on commercial communications appropriate to audiovisual media services.

Directive 2003/33/EC prohibits advertising for cigarettes and other tobacco products in the press and other printed publications, in radio and in information society services. It also bans sponsorship, by tobacco companies, of radio programmes and of cross-border events. Moreover, recital 14 of Directive 2003/33/EC makes it clear that all forms of direct and indirect audiovisual commercial communications for cigarettes and other tobacco products in broadcast services are prohibited by the TVWF Directive, as they would also be in all audiovisual media services if the present proposal is adopted.

This proposal takes full account of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, in particular its Article 11. In this regard, this proposal does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

## 2) CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT

- **Consultation of interested parties**

*Consultation methods, main sectors targeted and general profile of respondents*

A first public consultation took place in 2003. The Commission published discussion papers on its website and invited interested parties to transmit their written contributions by 15 July 2003. The Commission received more than 150 written contributions (around 1 350 pages) from all relevant parties (private and public broadcasters, regulators, producers, rights holders) and most Member States. Subsequently, a series of public hearings was organised.

The Communication from the Commission on the future of European regulatory audiovisual policy [COM(2003) 784, 15.12.2003] drew the conclusions from this first consultation round and set up three Focus Groups with experts to discuss i) the scope of future regulation, ii) adequate rules for television advertising and iii) the right to information / short reporting.

The results of the Focus Group discussions were summarised in “Issues papers” published in July 2005 for the Audiovisual Conference co-organised with the UK Presidency. The Commission received submissions from more than 200 concerned parties, including ICT companies, telecom operators and internet service providers, in this second round of consultation. The consultations triggered a wide debate on the issues at stake with all major stakeholders, which culminated at the Liverpool Conference in September 2005.

The 2005 open consultation was conducted over the internet from 11 July 2005 to 5 September 2005. The Commission received responses from 206 stakeholders.

The results of both consultations are available on the Commission’s website:

<http://europa.eu.int/comm/avpolicy/regul/review-twff2003/contribution.htm>

<http://europa.eu.int/comm/avpolicy/revision-tvwf2005/2005-contribution.htm>

## Summary of responses and how they have been taken into account

### Scope of future regulation

It was clearly apparent from the discussions that technological neutrality is an important principle. Member States, consumer organisations and public service broadcasters support revising the content rules for television as part of a comprehensive regulatory framework for all audiovisual media services. However, all agree that a horizontal approach to content can work only if linear and non-linear services are subject to a two-tier system of rules.

In the consultations, the majority view was that the distinction between linear and non-linear services is a workable, future-oriented basis for a legal definition.

### Advertising

Concerning quantitative rules, some flexibility in the rules concerning insertion and daily advertising limits was considered. This idea was widely supported by the industry and, to some extent, also by public service broadcasters and some Member States.

Many stakeholders stressed the usefulness of co- and self-regulation in the field of advertising.

### Protection of minors and human dignity

Concerning the protection of minors and the incitement of hatred, there seems to be quite a broad consensus on the current balance in the TVWF Directive. Member States, public service broadcasters, religious organisations and consumers' and viewers' organisations have all expressed the view that these values should apply to non-linear services as well, and not only to traditional television.

### Cultural diversity

While there is general agreement on the objective of a vibrant European audiovisual production sector reflecting the diversity of our cultures, it is clear that transmission time quotas are not an option in an on-demand world. On the other hand, it is recognised that the Directive should provide for the free circulation of non-linear services in the internal market in a comprehensive way and needs to address this issue.

### Rights to information and short extracts

The right to information and to short extracts is approached differently by the various stakeholders: on the one hand, some stakeholders claim that there is no need for the harmonisation of different regulatory frameworks at European level, while, on the other hand, public broadcasters consider that the current negotiating conditions do not facilitate access to short extracts, so a provision in the Directive would be helpful in that respect.

- **Collection and use of expertise**

Scientific/expertise domains concerned

- comparative study on the impact of control measures on the television advertising markets in European Union Member States (Carat);
- study on the impact of measures for the promotion of the distribution and production of TV programmes - Community and national (David Graham and Associated Ltd.);
- study on co-regulatory measures in the media sector (Hans Bredow Institut);
- study on the application of rules concerning TV advertising, sponsorship and teleshopping (Audimetrie);
- Impact Assessment (Rand).

Methodology used

Benchmarking, statistical research, qualitative interviews, bibliography research, collection of facts and figures taking into account economic parameters as well as technological factors.

Main organisations/experts consulted

Focus Groups, Carat, RAND, David Graham and Associated Ltd., Hans Bredow Institut, S.A. Audiometrie and all stakeholders in two public consultations.

Summary of advice received and used

The existence of potentially serious risks with irreversible consequences has not been mentioned.

- The study on the impact of measures concerning the promotion of the distribution and production of TV programmes confirms that Articles 4 and 5 TVWF have proved to be a satisfactory and stable framework for the promotion of European and independent production and cultural diversity. They have had — since entering into force — a considerable positive impact not only in terms of the increased scheduling of European works on European television but also in cultural and economic terms.
- Impact of regulation on television advertising markets (Articles 10-20 of the TVWF Directive): broadcasters urge a simplification, or even abolition of Article 11, which they consider too complicated. The number of breaks is lower in countries where regulation is strict and higher in deregulated markets. Analysis shows that the limitations provided for in Article 18 ensure a good balance between viewer protection and market needs. On product placement, clear and precise information to the public on the placement of an advertiser's products in a programme could avoid qualification as surreptitious advertising.

Means used to make the expert advice publicly available

DG Information Society and Media website:

[http://europa.eu.int/comm/avpolicy/stat/studi\\_en.htm](http://europa.eu.int/comm/avpolicy/stat/studi_en.htm)

• **Impact assessment**

In addressing the review of the TVWF Directive, five possible options exist:

(1) Repealing the Directive

From the perspective of the internal market for audiovisual services, the protection of minors and human dignity, consumers and public order as well as the promotion of cultural diversity, the repeal of the Directive would mean that only national rules would be applied and that the principle of the country of origin would be lost for all broadcasters.

(2) No change to the Directive

Any impact assessment has to consider a scenario in which nothing is changed (the status quo). This provides a benchmark for the evaluation of differential impacts.

(3) Focused amendments and clarification of text

The Directive would be revised to update the definitions in line with the case law of the Court of Justice of the European Communities in order to clarify that all linear services similar to television are covered. The Directive would not encompass non-linear services.

(4) Comprehensive framework with graduated treatment of linear and non-linear services

The Directive would create a comprehensive framework for any form of electronic delivery of audiovisual content, but would treat different types of service (specifically linear and non-linear) differently. Non-linear services would be subject only to a basic tier of rules.

(5) Full harmonisation with equal treatment of linear and non-linear services

This would require the introduction of an audiovisual content services directive that treats all types of services on an equal basis. Every provision of this directive — from the country-of-origin principle to the requirements for European and independent production — would apply to all linear and non-linear providers alike.

The impact assessment looked in detail at options 2, 3 and 4.

The repeal of the Directive — option 1 — would benefit neither the operators, who could no longer operate in a co-ordinated and open pan-European audiovisual market, nor the consumers, who would lose the safeguards of having access to large number of audiovisual services respecting minimum qualitative standards independently of the MS of origin. In fact, in the course of the extensive public consultation mentioned

under Chapter 1, none of the stakeholders made a proposal along these lines. For these reasons, option 1 cannot be regarded as realistic and is not considered by the impact assessment.

Option 5 calls for full harmonisation across the entire audiovisual industry. It has not been considered either, since pursuing this within the current context — a highly diverse, rapidly evolving industry subject to a volatile mix of economic, political and socio-cultural interests — seems impossible in the foreseeable future. Again, none of the stakeholders has put forward a proposal along these lines.

Nine main groups of stakeholders, the Member State administrations and the Commission were identified as being directly or indirectly involved in implementing regulation based on the TVWF Directive or its revision. For these stakeholders, a detailed impact analysis is summarised in tables for three policy options, as specified above, with regard to the main issues discussed during the public consultation — see Annex.

The analysis demonstrated that the status-quo option (option 2), would have negative consequences for a considerable number of stakeholders. Only few stakeholders would clearly benefit from maintaining the Directive as it is.

According to the analysis, option 3 would impact fewer stakeholders because of its limited scope, and would improve the risk/benefit balance for only a few stakeholders as well. For some of them this option would not result in any substantial modification of overall conditions, while in a minority of cases it would represent a positive scenario.

A comprehensive legislative framework, with graduated treatment of linear and non-linear services, would represent almost the reverse of the status-quo option in respect of the number of stakeholders benefiting from or being negatively impacted by a comprehensive revision of the Directive. While a relative majority of stakeholders would not face changed conditions, this option would represent a substantially improved scenario for a very large number of stakeholders. Only in a few cases could conditions deteriorate, assuming a series of hypotheses were met.

The Commission carried out the impact assessment in accordance with the work programme, a report on which is annexed to the draft legislative proposal and will be made available on DG Information Society and Media's website:

[http://europa.eu.int/comm/avpolicy/stat/studi\\_en.htm](http://europa.eu.int/comm/avpolicy/stat/studi_en.htm).

### **3) LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

- Amending the Directive

- Common minimum rules for all audiovisual media services (including non-linear services)

- Flexibility and modernisation of advertising rules while ensuring protection of



consumers and meeting general public policy objectives

- **Legal basis**

Articles 47(2) and 55 of the Treaty establishing the European Community.

- **Subsidiarity principle**

With regard to emerging on-demand audiovisual media services, there is a growing concern that differences in national regulations applying to these services will create barriers to competition in the internal market. The revision of the TVWF Directive has to address the issue of improving the conditions for the establishment and functioning of the internal market so as to eliminate the (existing or likely) obstacles to the exercise of the fundamental freedom to provide services resulting from national rules or from appreciable distortions of competition due to the disparities between national rules governing new (on-demand) services.

There is a real risk of legal uncertainty if, with the emergence of on-demand audiovisual services, Member States were to derogate from the country of origin principle for public policy reasons with the effect that on-demand audiovisual services would be subject to non-harmonised rules in different Member States. At the same time, as a recent questionnaire sent out by the Commission to the Members of the TVWF Contact Committee has shown, most Member States already regulate non-linear (on-demand) services with regard to the main issues at stake. Indeed, Member State regulations for on-demand audiovisual services do diverge, with 23 out of 25 Member States having some form of regulation for the majority of subjects concerned. Without a harmonised European approach, pan-European offers would suffer from a lack of legal certainty and may choose to go offshore outside the EU and therefore in the medium-term harm Member State economies.

- **Proportionality principle**

The draft only proposes minimum harmonisation to ensure the free movement of audiovisual media services in the internal market. As regards implementation, it explicitly refers to co- and self-regulation.

The proposal will considerably reduce the complexity involved in the monitoring of the rules concerning television advertising. As the harmonisation of minimum rules for non-linear audiovisual services mostly does not introduce new obligations for operators but only harmonises them at European level to implement the country of origin principle, it therefore seems proportionate to the objective.

- **Choice of instruments**

Proposed instruments: directive, co-regulation, self-regulation.

The draft proposes a set of instruments: where fundamental rights are touched upon, regulation is necessary. Co-regulation is already widely used with regard to the protection of minors and the proposal should encourage co-regulatory regimes in the fields coordinated by the Directive. Such regimes must be broadly accepted by the main stakeholders and provide for effective enforcement.

#### 4) BUDGETARY IMPLICATIONS

The proposal has no implications for the Community budget.

#### 5) ADDITIONAL INFORMATION

- **Simulation, pilot phase and transitional period**

There will be a transitional period for the proposal.

- **Simplification**

The proposal provides for the simplification of legislation.

The rules concerning television advertising in the current TVWF Directive will be considerably simplified. The daily limit will be abolished, the advertising categories simplified and the rule on the insertion of advertising made clearer and more flexible.

The proposal is included in the Commission's Work and Legislative Programme under the reference 2005/INFSO/032.

- **Review/revision/sunset clause**

The proposal includes a review clause.

- **Correlation table**

The Member States are required to communicate to the Commission the text of national provisions transposing the Directive as well as a correlation table between the national provisions and the Directive.

- **European Economic Area**

The proposed act concerns an EEA matter and should therefore extend to the European Economic Area.

- **Short explanation of the proposal**

The aim of the revision is to define rules for audiovisual media services in a platform neutral way, which would mean that the same basic rules apply to the same kind of services. The set of applicable rules shall no longer depend on the delivery platform but on the nature of a service. The future regulation will distinguish between linear audiovisual services or "broadcasting", including IPTV, streaming or web-casting on one side, and non-linear services, such as "video-on-demand"- services, on the other side.

The amending Directive introduces new definitions based around the notion of "audiovisual media service" in Article 1 of the amended Directive. The definition of audiovisual media services covers mass media in their function to inform, entertain and educate, but excludes any form of private correspondence, like e-mails sent to a limited number of recipients. This definition also excludes all services the principal purpose of

which is not to provide audiovisual content, even where such services contain some audiovisual elements. Services where the audiovisual content is merely ancillary to and not the principal purpose of the service are not covered.

The new Articles 3c to 3h contain the basic tier of rules for all audiovisual media services. As a consequence, some of the specific provisions for television broadcasts, such as Article 7, Article 12 and Article 22a, can be abolished.

Non-linear (on-demand) services will be subject to some minimum principles with regard to

- protection of minors
- prohibition of incitement to hatred
- identification of the media service provider
- identification of commercial communication
- some qualitative restrictions for commercial communication ( ex. for alcohol or targeted at minors).

The new Article 3b introduces a rule on the non-discriminatory application of the right to short news reporting for linear services.

The main changes to Chapter IV on television advertising concern flexible rules for the insertion of advertising (amended Article 11), clear rules for product placement, the abolition of the daily limit on television advertising (old Article 18) and the dropping of quantitative restrictions with regard to teleshopping (old Article 18a).

The daily limit of three hours of advertising per days is considered obsolete, as it finds no application in practice and therefore it is deleted. The insertion rules have been simplified and made more flexible. Instead of being compelled - as is now the case - to allow 20 minutes time between each advertising break, broadcasters can now choose the most appropriate moment to insert advertising during programmes. Nonetheless, films made for television, cinematographic works, children's programmes and news programmes may be interrupted by advertising only once per each period of 35 minutes.

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**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission<sup>3</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

Having regard to the opinion of the Committee of the Regions<sup>5</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>6</sup>,

Whereas:

- (1) Directive 89/552/EEC coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities. However, new technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to take account of the impact of structural change and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness for Europe's information technologies and its media industries and services.
- (2) The laws, regulations and administrative measures in Member States concerning the pursuit of television broadcasting activities are already coordinated by Directive 89/552/ECC, whereas the rules applicable to activities such as on-demand audiovisual media services contain disparities, some of which may impede the free movement of these services within the European Union and may distort competition within the common market. In particular, Article 3(4) of Directive 2000/31/EC provides that

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<sup>3</sup> OJ C [...], [...], p. [...].

<sup>4</sup> OJ C [...], [...], p. [...].

<sup>5</sup> OJ C [...], [...], p. [...].

<sup>6</sup> OJ C [...], [...], p. [...].

Member States may derogate from the country of origin principle for specific public policy reasons.

- (3) The importance of audiovisual media services for societies, democracy and culture justifies the application of specific rules to these services.
- (4) Traditional audiovisual media services and emerging on-demand services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment.
- (5) Legal uncertainty and a non-level playing field exist for European companies delivering audiovisual media services as regards the legal regime governing emerging on-demand services, it is therefore necessary, both to avoid distortions of competition and to improve legal certainty, to apply at least a basic tier of coordinated rules to all audiovisual media services.
- (6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy<sup>7</sup>, in which it stresses that regulatory policy in the sector has to safeguard certain public interests, such as cultural diversity, the right to information, the protection of minors and consumer protection, now and in the future.
- (7) The Commission has adopted the initiative “i2010: European Information Society”<sup>8</sup> to foster growth and jobs in the information society and media industries. i2010 is a comprehensive strategy designed to encourage the development of the digital economy, against the background of the convergence of information and media services, networks and devices, by modernising and deploying all EU policy instruments: regulatory instruments, research and partnerships with industry. The Commission has committed itself to creating a consistent internal market framework for the information society and media services by modernising the legal framework for audiovisual services, starting with a Commission proposal in 2005 to modernise the Television without Frontiers Directive.
- (8) On 6 September 2005, the European Parliament adopted a Resolution on the application of Articles 4 and 5 of Directive 89/552/EEC, as amended by Directive 97/36/EC, for the period 2001-2002 (Weber Report)<sup>9</sup>. This Resolution calls for the adaptation of the existing Television without Frontiers Directive to structural changes and technological developments while fully respecting its underlying principles, which remain valid. In addition, it in principle supports the general approach of basic rules for all audiovisual media services and additional rules for linear (“broadcasting”) services.

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<sup>7</sup> Communications from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. The future of European regulatory audiovisual policy - COM(2003) 784, 15.12.2003.

<sup>8</sup> Communications from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions. “i2010 – A European Information Society for growth and employment” - COM(2005) 229, 1.6.2005.

<sup>9</sup> European Parliament resolution on the application of Articles 4 and 5 of Directive 89/552/EEC (“Television without Frontiers”), as amended by Directive 97/36/EC, for the period 2001-2002, A6-0202/2005.

- (9) This Directive enhances compliance with fundamental rights and is fully in line with the principles recognised by the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. In this regard, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.
- (10) Because of the introduction of a minimum set of harmonised obligations in Articles 3c to 3h and in the areas harmonised in this Directive Member States can no longer derogate from the country of origin principle with regard to protection of minors and fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violation of human dignity concerning individual persons or protection of consumers as provided in Article 3(4) of Directive 2000/31/EC of the European Parliament and the Council<sup>10</sup>.
- (11) Directive 2002/21/EC of the European Parliament and the Council<sup>11</sup> according to its Article 1(3) is without prejudice to measures taken at Community or national level, to pursue general interest objectives, in particular relating to content regulation and audiovisual policy.
- (12) No provision of this Directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of media.
- (13) The definition of audiovisual media services covers all audiovisual mass-media services, whether scheduled or on-demand. However, its 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 non-economic activities, such as purely private websites.
- (14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate, but excludes any form of private correspondence, such as e-mails sent to a limited number of recipients. The definition also 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. Examples include websites that contain audiovisual elements only in an ancillary manner; such as animated graphical elements, small advertising spots or information related to a product or non-audiovisual service.
- (15) This Directive does not cover electronic versions of newspapers and magazines.
- (16) The term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio.
- (17) The notion of editorial responsibility is essential for defining the role of the media service provider and thereby for the definition of audiovisual media services. This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

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<sup>10</sup> OJ L 178, 17. 7. 2000, p. 1.

<sup>11</sup> OJ L 108, 24.4.2002, p. 33.

- (18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises moving images with or without sound which accompany audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image or a natural or legal entity pursuing an economic activity and therefore it does not include public service announcements and charity appeals broadcast free of charge.
- (19) The country of origin principle remains the core of this Directive, as it is essential for the creation of an internal market. This principle must therefore be applied to all audiovisual media services in order to ensure legal certainty for media service providers as the necessary basis for new business models and the deployment of these services. It is also essential in order to ensure the free flow of information and audiovisual programmes in the internal market.
- (20) Technological developments, especially with regard to digital satellite programmes, mean that subsidiary criteria need to be adapted in order to ensure suitable regulation and effective implementation and to give players genuine power over the content of an audiovisual content service.
- (21) As this Directive concerns services offered to the general public in the European Union, it should apply only to audiovisual media services that can be received directly or indirectly by the public in one or more Member States with standard consumer equipment. The definition of “standard consumer equipment” should be left to the competent national authorities.
- (22) Articles 43 to 48 of the Treaty lay down the fundamental right to the freedom of establishment. Therefore, audiovisual media service providers are in general free to choose the Member States where they are established. The European Court of Justice has also emphasised that “the Treaty does not prohibit an undertaking from exercising the freedom to provide services if it does not offer services in the Member State in which it is established”<sup>12</sup>.
- (23) Member States must be able to apply stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction. To ensure that such rules are not circumvented, the codification of the case law of the European Court of Justice<sup>13</sup>, combined with a more efficient procedure, is an appropriate solution that takes account of Member State concerns without calling into question the proper application of the country of origin principle.
- (24) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take measures that restrict the freedom of movement of television broadcasting, but only under certain conditions listed in Article 2a of this Directive and following the procedure laid down in this Directive. However, the European Court of Justice has consistently held that any restriction of

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<sup>12</sup> Case C-56/96 VT4, paragraph 22; Case C-212/97 *Centros v. Erhvervs-og Selskabsstyrelsen*; see also: Case C-11/95 *Commission v Kingdom of Belgium* and Case C-14/96 *Paul Denuit*.

<sup>13</sup> Case C-212/97 *Centros v. Erhvervs-og Selskabsstyrelsen*; Case C-33/74 *Van Binsbergen v Bestuur van de Bedrijfsvereniging*; Case C-23/93 *TV 10 SA v. Commissariaat voor de Media*, paragraph 21.

the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively<sup>14</sup>.

- (25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union<sup>15</sup> the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-making<sup>16</sup> provides agreed definitions, criteria and procedures. Experience showed that co- and self-regulation instruments implemented in accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.
- (26) Entertainment rights for events of public interest may be acquired by broadcasters on an exclusive basis. However, it is essential to promote pluralism through the diversity of news production and programming across the European Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.
- (27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other broadcasters and intermediaries, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds.
- (28) Non-linear services are different from linear services with regard to choice and control the user can exercise and with regard to the impact they have on society<sup>17</sup>. This justifies imposing lighter regulation on non-linear services, which only have to comply with the basic rules provided for in Articles 3c to 3h.
- (29) Because of the specific nature of audiovisual media services, especially the impact of these services on the way people form their opinions, it is essential for users to know exactly who is responsible for the content of these services. It is therefore important for Member States to ensure that media service providers make easily, directly and permanently accessible the necessary information on who has editorial responsibility for the content. It is for each Member State to decide the practical details as to how this objective can be achieved without prejudice to any other relevant provisions of Community law.

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<sup>14</sup> Case C-355/98 *Commission v Belgium* [2000] ECR I-1221, paragraph 28; Case C-348/96 *Calfa* [1999] ECR I-0011, paragraph 23.

<sup>15</sup> COM(2005) 97.

<sup>16</sup> OJ C 321, 31.12.2003, p. 1.

<sup>17</sup> See e.g. Case C- 89/04, *Mediakabel*.



- (30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market. Where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as audiovisual media services are concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity.
- (31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry and parents. There will also be new challenges, especially in connection with new platforms and new products. It is therefore necessary to introduce rules to protect the physical, mental and moral development of minors as well as human dignity in all audiovisual media services and in audiovisual commercial communication.
- (32) Measures taken to protect minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of these measures should thus be to ensure an adequate level of protection of minors especially with regard to non-linear services but not to ban adult content as such.
- (33) None of the provisions of this Directive that concern the protection of minors and public order necessarily requires that the measures in question be implemented through prior control of audiovisual media services.
- (34) Article 151(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.
- (35) Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, they should where practicable promote the production and distribution of European works and thus actively contribute to the promotion of cultural diversity. It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports set out in Article 3f paragraph 3, Member States shall also take into account notably the financial contribution by such services to the production and rights acquisition of European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of European works proposed by such services.
- (36) When implementing the provisions of Article 4 of Directive 89/552/EEC as amended, Member States should make provision for broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin.
- (37) It is important to ensure that cinematographic works are transmitted within periods agreed between right holders and audiovisual media service providers.
- (38) The availability of non-linear services increases the choice of the consumer. Detailed rules governing audiovisual commercial communication for non-linear services thus appear neither to be justified nor to make sense from a technical point of view. Nevertheless, all audiovisual commercial communication should respect not only the

identification rules but also a basic tier of qualitative rules in order to meet clear public policy objectives.

- (39) As has been recognised by the Commission in its Interpretative Communication on certain aspects of the provisions on advertising in the “Television without frontiers” Directive, the development of new advertising techniques and marketing innovations has created new effective opportunities for commercial communications in traditional broadcasting services, potentially enabling them to better compete on a level playing field with on-demand innovations<sup>18</sup>. This Interpretative Communication remains valid to the extent that it refers to provisions of the Directive that are unaffected by the amending Directive.
- (40) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. To remain proportionate with the goals of general interest, regulation must allow a certain degree of flexibility with regard to linear audiovisual media services: the separation principle should be limited to advertising and teleshopping, product placement should be allowed under certain circumstances and some quantitative restrictions should be abolished. However, where product placement is surreptitious, it should be prohibited. The separation principle should not prevent the use of new advertising techniques.
- (41) Apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. Moreover, as Directive 2003/33/EC, which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, is without prejudice to 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, in view of the special characteristics of audiovisual media services, the relation between Directive 2003/33/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. Article 88(1) of Directive 2001/83/EC<sup>19</sup> which prohibits advertising to the general public of certain medicine products applies, as provided in paragraph 5 of the same Article, without prejudice to Article 14 of Directive 89/552/EEC; the relation between Directive 2001/83/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive.
- (42) As the increase in the number of new services has led to a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. While the Directive does not increase the hourly amount of admissible advertising, it gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.
- (43) The Directive is intended to safeguard the specific character of the European television landscape and therefore limits possible interruptions for cinematographic works and

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<sup>18</sup> OJ C 102, 28.4.2004, p. 2.

<sup>19</sup> As amended last by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 amending Directive 2001/83/EC on the Community code relating to medicinal products for human use (OJ L 136, 30.4.2004 p. 34).

films made for television as well as for some categories of programmes that still need specific protection.

- (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; 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, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation<sup>20</sup>.
- (45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising does not cover legitimate product placement within the framework of this Directive.
- (46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers 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, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.
- (47) Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

HAVE ADOPTED THIS DIRECTIVE:

#### *Article 1*

Directive 89/552/EEC<sup>21</sup> is hereby amended as follows:

- (1) The title is replaced by the following:

“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

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<sup>20</sup> Cases Reti Televisive Italiane SpA (RTI) C-320/94; Radio Torre C-328/94; Rete A Srl C-329/94; Vallau Italiana Promomarket Srl C\_337/94; Radio Italia Solo Musica Srl and Others C-338/94 and GETE Srl C\_339/94 v Ministero delle Poste e Telecomunicazioni, ECR I-06471.

<sup>21</sup> OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)”.

(2) Article 1 is replaced by the following:

*“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 the principal purpose of which is the provision of moving images with or without sound, 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<sup>22</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’ mean a linear audiovisual media service where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule;
- (d) ‘broadcaster’ means provider of linear audiovisual media services;
- (e) ‘non-linear service’ means an audiovisual media service where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider;
- (f) ‘audiovisual commercial communication’ means moving images with or without sound which accompany audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity;
- (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 advertising’ 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 broadcaster 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;

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<sup>22</sup> OJ L 108, 24.4.2002, p. 33.

- (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, 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.
- (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 audiovisual media services, normally in return for payment or for similar consideration.”

(3) Article 2 is amended as follows:

- (a) In paragraph 1, the expression “television broadcasts transmitted by broadcasters” is replaced by the expression “audiovisual media services transmitted by media service providers” and the expression “broadcasts” is replaced by the expression “audiovisual media services”;
- (b) In paragraph 2, the word “broadcasters” is replaced by the expression “media service providers”;
- (c) In paragraph 3, the word “broadcaster” is replaced by the expression “media service provider”; the expression “editorial decision about programme schedules” is replaced by the expression “editorial decision about the audiovisual media service”; the expression “television broadcasting activity” is replaced by the expression “audiovisual media service activity” and the expression “where it first began broadcasting” is replaced by the expression “where it first began its activity”, the expression “decisions on programme schedules” is replaced by “decisions on audiovisual media service”.
- (d) Paragraph 4 is replaced by the following:
 

“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 a Member State, they use a satellite capacity appertaining to that Member State.”
- (e) In paragraph 5, the word “broadcaster” is replaced by the expression “media service provider” and “Article 52” is replaced by “Article 43”.
- (f) Paragraph 6 is replaced by the following:

“6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with

standard consumer equipment directly or indirectly by the public in one or more Member States.”

(g) The following new paragraphs 7, 8, 9 and 10 are added:

“7. A Member State may, in order to prevent abuse or fraudulent conduct, adopt appropriate measures against a media service provider established in another Member State that directs all or most of its activity to the territory of the first Member State. This shall be proven on a case by case basis by the first Member State.

8. Member States may take measures pursuant to paragraph 7 only if all of the following conditions are met:

- (a) the receiving Member State asks the Member State in which the media service provider is established to take measures;
- (b) the latter Member State does not take such measures;
- (c) the first Member State notifies the Commission and the Member State in which the media service provider is established of its intention to take such measures and
- (d) the Commission decides that the measures are compatible with Community law.

9. Any measures pursuant to paragraph 7 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.

10. The Commission shall decide within three months following notification under paragraph 8. If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.”

(4) Article 2a is amended as follows:

(a) Paragraph 1 is replaced by the following:

“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.”

(b) In paragraph 2 “Article 22a” is replaced by “Article 3e”.

- (5) Article 3 is replaced by the following:

*“Article 3*

1. 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.
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-regulatory regimes in the fields coordinated by this Directive. These regimes shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement.”

- (6) The following Articles 3b to 3h are inserted:

*“Article 3b*

1. Member States shall ensure that, for the purposes of short news reports, broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction.
2. Short news reports may be chosen freely by the broadcasters from the transmitting broadcaster’s signal with at least the identification of their source.

*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 3d*

Member States shall take appropriate measures to ensure that audiovisual media services under their jurisdiction are not made available in such a way that might seriously impair the physical, mental or moral development of minors.

#### *Article 3e*

Member States shall ensure by appropriate means that audiovisual media services and audiovisual commercial communications provided by providers under their jurisdiction do not contain any incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

#### *Article 3f*

1. Member States shall ensure that media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works within the meaning of Article 6.
2. Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.
3. Member States shall report to the Commission, no later than the end of the fourth year after adoption of this Directive and every three 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.

#### *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 clearly identifiable 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) 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 and teleshopping for cigarettes and other tobacco products shall be prohibited;
- (e) audiovisual commercial communications for alcoholic beverages must not be aimed at minors and may not encourage immoderate consumption of such beverages;
- (f) audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not directly exhort minors to buy 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 3h*

1. Audiovisual media services that are sponsored or that contain product placement shall meet the following requirements:
  - (a) the scheduling, where appropriate, and the content of such audiovisual media services 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 and/or the existence of product placement. 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. Programmes containing product placement must be appropriately identified at the start of the programme in order to avoid any confusion on the part of the viewer.
2. Audiovisual media services must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products. Further, audiovisual media services must not contain 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.
3. The sponsorship of audiovisual media services 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 shall not be sponsored and not contain product placement. Audiovisual media services for children and documentaries may not contain product placement.”

(7) Article 6 is amended as follows:

- (a) Paragraph 1(c) is replaced by the following:

“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 within each of these agreements.”

- (b) Paragraph 3 is deleted.
- (c) Paragraph 4 becomes paragraph 3.
- (d) Paragraph 5 is deleted.

(8) Article 7 is deleted.

(9) Article 10 is replaced by the following:

*“Article 10*

1. Television advertising and teleshopping shall be readily recognizable 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 sports programmes, shall remain the exception.”

(10) Article 11 is replaced by the following:

*“Article 11*

1. Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes and the rights of the right holders are not prejudiced.
2. The transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children’s programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of 35 minutes.

No advertising or teleshopping may be inserted during religious services.”

- (11) Articles 12 and 13 are deleted.
- (12) Articles 16 and 17 are deleted.
- (13) Article 18 is replaced by the following:

*“Article 18*

- 1. The proportion of short forms of advertising such as advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.
- 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 placement.”

- (14) Article 18a is deleted.
- (15) Article 19 is replaced by the following:

*“Article 19*

The provisions of this Directive shall apply *mutatis mutandis* to television broadcasts exclusively devoted to advertising and teleshopping as well as to television broadcasts 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 broadcasts.”

- (16) Article 19a is deleted.
- (17) Article 20 is replaced by the following:

*“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 Article 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 and in respect of broadcasts having no significant impact in terms of audience share.”

- (18) Articles 22a and 22b are deleted.
- (19) Article 23a is amended as follows:

In paragraph 2 (e) the expression “television broadcasting services” is replaced by the expression “audiovisual media services”.

(20) The following Article 23b is inserted:

*“Article 23 b*

1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.
2. National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”

(21) Articles 25 and 25a are deleted.

(22) Article 26 is replaced by the following:

*“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 and the competitiveness of the sector.”

*Article 2*

Regulation (EC) No 2006/2004<sup>23</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>24</sup> and Articles 10 to 20<sup>25</sup>. Directive as last amended by Directive .../.../EC of the European Parliament and of the Council<sup>26</sup>.”

*Article 3*

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

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<sup>23</sup> OJ L 364, 9.12.2004, p. 1.

<sup>24</sup> OJ L xxxx, p xxx.

<sup>25</sup> OJ L 298, 17.10.1989, p. 23.

<sup>26</sup> OJ L xxxxx, p. xxx.

forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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*

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

#### *Article 5*

This Directive is addressed to the Member States.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*