

Art 3b of the proposal for an “Audiovisual Media Services Directive” on short reporting

This paper is based on the legislative proposal COM (2005) 646 final, especially the explanatory memorandum, as well as the related impact assessment and the relevant press releases. All these documents are available on the Commission's website.¹

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.

Recital 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.

The current TVWF Directive does not contain any provisions on the right to short reporting. However, it does, in Art 3a contain a provision that allows Member States to establish lists of events of major importance for society which should be broadcast on free TV and establishes a form of “mutual recognition” of these events.

¹ http://europa.eu.int/comm/avpolicy/regul/regul_en.htm#4

New Article 3b introduces a rule on the **non-discriminatory application of the rights to short news reporting for linear services**. Since this obligation does not create any new substantive obligations there are no potential conflicts with the Community's international obligations with regard to the protection of intellectual property and neighbouring rights. The provision states that Member States shall ensure that, for the purposes of short news reports, broadcasters established in other Member States are not deprived of access to events of interest to the public which are transmitted by a broadcaster under their jurisdiction. This concerns the access to the broadcasting signal of another broadcaster but not to the venue of the event itself. This furthermore only concerns linear services and the use of short reports for news programmes.

The examples given by stakeholders in the public consultation were that of broadcasters in Member State A that have difficulties to access coverage from Member State B because the arrangements in Member State B only apply to broadcasters established in Member State B. However, there might be a legitimate interest for the public in Member State A to be informed about events in Member State B – especially when one of its nationals is concerned; for example a football player from A playing in B's premier league.

Art 3 b(2) AVD states that short news reports should be chosen "freely" from the transmitting broadcaster's signal with the identification of their source. This does not mean that they should be provided for free, but on a "fair and reasonable" basis.

Intermediaries

The operative part of the proposal does not refer to intermediaries or news agencies. The recital confirms that *intermediaries, where they are acting on behalf of broadcasters, should have 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*. This only says the obvious in so far as news agencies acting as agents for broadcasters are treated like broadcasters.

Art 3b AVD will not only help to foster the right to information as a component of the freedom of expression, but will also contribute to the trans-frontier circulation of programmes on other Member States. It is in the citizens' interest.

This proposed right of access is also intended to complement provisions on "events of major importance to society" that are reserved for free TV.

The **impact assessment** came to the conclusion that the absence of provisions on the non-discriminatory access to short extracts of events of high interest to the public created problems in the field of linear services. As it cannot be expected that the market self-regulates in this area, current problems with access to short

extracts for non-domestic linear services would persist. Consequently, unequal market power would be affecting price and access and a significant share of viewers would not be able to see adequate news coverage of newsworthy events.