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*****I**

REPORT

on the 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 (COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Committee on Culture and Education

Rapporteur: Ruth Hieronymi

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	74
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS	79
OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS....	10709
OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY	1380
OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION.....	187
OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY	21921
PROCEDURE.....	242

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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

(COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0646)¹,
 - having regard to Article 251(2) and Articles 47(2) and 55 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0443/2005),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality (A6-0000/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

Amendment 1

RECITAL 1

(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

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¹ Not yet published in OJ.

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.

adaptation of the regulatory framework to take account of the impact of structural change, ***the spread of information and communication technologies (ICT)*** and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness ***and legal certainty*** for Europe's information technologies and its media industries and services, ***as well as respect for cultural and linguistic diversity. The laws, regulations and administrative measures should be as unobtrusive and simple as possible to allow new and existing audiovisual media services to develop and flourish, thus allowing for job creation, economic growth, innovation and cultural diversity to be nurtured.***

Justification

Insufficient legal certainty in the market for new audiovisual media services makes it harder to exploit their economic potential.

Amendment 2 RECITAL 2

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

(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 media services ***are only coordinated as regards their distribution by Framework Directive 2002/21/EC and as regards trading by Directive 2000/31/EC on eCommerce; the content of the new audiovisual media services is still governed by the legislation of the Member States. Some of these disparities impede*** the free movement of these services within the European Union and may distort competition within the common market.

Justification

Legal uncertainty is primarily the result of insufficiently clear demarcation of the law governing the new audiovisual services as against European telecommunications law and the e-Commerce Directive.

Amendment 3

RECITAL 3

(3) *The importance of audiovisual media services* for societies, democracy and culture justifies the application of specific rules to these services.

(3) ***Audiovisual media services are as much cultural goods as they are economic goods. Their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and media pluralism – education and culture justifies the application of specific rules to these services, and the enforcement of those rules, notably in order to preserve the fundamental rights and freedoms laid down in the Charter of Fundamental Rights of the European Union, the European Convention for Protection of Human Rights and Fundamental Freedoms and the United Nations Covenant on Civil and Political Freedoms, and in order to ensure the protection of minors and vulnerable and disabled people.***

Justification

The European audiovisual model is founded on the principle that the media are both cultural and economic goods. It should be reaffirmed that their importance in shaping public opinion and preserving democracy justifies the application and enforcement of rules safeguarding, inter alia, fundamental rights and freedoms and the protection of vulnerable persons as defined at national, European and global level.

Amendment 4

RECITAL 3 A (new)

(3a) In its resolutions of 1 December 2005 and 4 April 2006 on the Doha Round and on the WTO Ministerial Conferences, the European Parliament calls for basic public services, such as health, education and audiovisual services to be excluded from liberalisation under the GATS negotiations. In its resolution of 27 April 2006, Parliament supports the UNESCO

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which states in particular that ‘cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value’.

Justification

In line with European law, the EU and the Member States have called for the special role of audiovisual goods to be taken into account in the GATS and WTO negotiations and in the drafting of, and decision-making under, the UNESCO Convention.

Amendment 5

RECITAL 3 B (new)

(3b) Media education should serve to provide citizens with the wherewithal to bring critical interpretation to bear on, and use, the ever-expanding volume of information with which they are assailed, as laid down in Council of Europe Recommendation 1466 (2000). Helped by a learning process of this kind, citizens will be in a position to formulate messages and select the media best suited to impart them and thus become able to exercise their right to freedom of information and expression to the full.

Amendment 6

RECITAL 4

(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.

(4) Traditional audiovisual media services – ***such as television*** – and emerging on-demand ***audiovisual media*** services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment. ***Bearing in mind the importance of a level playing-field and a true European broadcasting market, the basic principles of the common market, such as competition law and equal treatment, should be respected in order to ensure transparency and***

predictability in media markets and to achieve low entry barriers.

Justification

Highlights the importance of the internal market in providing the new audiovisual media services with development opportunities.

Amendment 7

RECITAL 5

(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.

(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, ***in order*** to avoid distortions of competition, to improve legal certainty, ***to help complete the internal market and to facilitate the emergence of a single information area***, to apply ***to all audiovisual media services, both linear and non-linear, irrespective of whether they are transmitted on the basis of a set programme schedule or on demand***, at least a basic tier of coordinated rules ***aimed at guaranteeing, inter alia, a sufficient level of protection of minors, the vulnerable and the disabled and respect for fundamental rights and freedoms . The basic principles of Directive 89/552/EEC, namely the transmitting state principle and common minimum standards, have proved their worth and should therefore be retained.***

Justification

Specified which media services are covered and draws the necessary conclusions from the success of the TV Directive.

Amendment 8

RECITAL 6

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, in which it stresses that regulatory policy in the sector has to safeguard certain public interests,

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, 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.

such as cultural diversity, the right to information, *the need for media pluralism*, the protection of minors, consumer protection *and action to enhance public awareness and media skills and the principle of universal access for all sectors of the public, including the most disadvantaged*, now and in the future.

Amendment 9
RECITAL 6 A (new)

(6a) The co-existence of private and public broadcasters is of high importance in the audiovisual media market, where public service broadcasters may equally benefit from the advantages of digital economy.

Justification

It is important to emphasize that both private and public broadcasters can take advantage of digital market opportunities.

Amendment 10
RECITAL 6 C (new)

(6c) The country of origin principle is crucial to the emergence of a pan-European audiovisual market with a strong industry producing European content. Moreover, the principle safeguards the viewer's rights to choose from a wide variety of European programmes.

Amendment 11
RECITAL 7

(7) The Commission has adopted the initiative “i2010: European Information Society” 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

(7) The Commission has adopted the initiative “i2010: European Information Society” to foster growth and jobs in the information society and media industries. i2010 is a comprehensive strategy designed to encourage *the production of European content*, the development of the digital economy *and the uptake of ICT*, against the background of the convergence of

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.

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 information society *services* 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 *and transform it into a Directive on Audiovisual Media Services. The goal of the i2010 will in principle be achieved by allowing industries to grow with minimal regulation, as well as allowing small start-up businesses, which are the wealth and job creators of the future, to flourish, innovate and create employment in a de-regulated market.*

Justification

The objective of the review of the TV Directive should be stated.

Amendment 12 RECITAL 8

(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). 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.

(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). This Resolution – *like the resolutions of 4 September 2003 and 22 April 2004* – 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.

Justification

The European Parliament has been calling for an urgent review of the EU's TV directive for some time now.

Amendment 13

RECITAL 9

(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.

(9) This Directive enhances compliance with fundamental rights and ***seeks to incorporate the principles, rights and freedoms laid down in*** the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. ***In this context, Member States should set up one or more independent regulatory authorities, if they have not already done so. Such authorities should act as the guarantors of fundamental rights in the provision of audiovisual media services. Member States may decide whether it is appropriate to have a single regulatory authority for all audiovisual media services or several separate authorities for each category of service (linear or non-linear). Furthermore,*** this Directive does not in any way prevent Member States from applying their constitutional rules ***or regulatory arrangements*** relating to freedom of the press and freedom of expression in the media.

Amendment 14

RECITAL 10

(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

(10) ***The requirement that the originating Member State should ensure compliance with national law as coordinated by this Directive is sufficient under Community law to ensure free movement of audiovisual media services without secondary control on the same grounds in the receiving Member State; however, the receiving Member State may exceptionally and under specific conditions, derogate from this requirement in the event of serious violations of Articles 22(1), 22(2), 3d or 3e, taking into account the fact that***

and the Council.

respect for fundamental rights forms an integral part of the general principles of Community law.

Justification

In particularly serious and urgent cases, a special rapid procedure should be available for non-linear services as it already is for TV.

Amendment 15
RECITAL 11

(11) Directive 2002/21/EC of the European Parliament and the Council 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.

(11) Directive 2002/21/EC of the European Parliament and the Council (***the Framework Directive***) ***created a uniform legal framework for all transmission networks and services, but*** 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 ***with a view to separating the regulation of transmission from the regulation of content.***

Justification

Draws the distinction between this Directive and EU telecommunications legislation.

Amendment 16
RECITAL 11 A (new)

(11a) Directive 2003/31/EC (the eCommerce Directive) contains no specific substantive provisions governing audiovisual media services and leaves the Member States the option of derogating from the country of origin principle on specific matters of public policy on a case-by-case basis and in accordance with a notification procedure. By imposing additional minimum standards for non-linear audiovisual media services with a view to the protection of minors and the promotion of cultural diversity, this Directive extends the field of harmonised Community law. To that extent this Directive builds on the eCommerce

Directive in these areas to cover a specific subset of non-linear audiovisual services which are of particular importance for society and are characterised by their cultural dimension. For these services the degree of coordination of national rules is higher and the internal market is more complete.

Justification

Seeks to distinguish the scope of the directive from that of the eCommerce Directive, which the new directive consciously takes as its basis.

Amendment 17
RECITAL 12

(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.

(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 ***audiovisual*** media.

Justification

Clarification.

Amendment 18
RECITAL 13

(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.

(13) The definition of audiovisual media services covers all audiovisual mass-media services ***the content of which is suitable for television broadcasting irrespective of the delivery platform, whether the editorial approach and responsibility of the provider are reflected in a programme schedule or in a selection catalogue.*** 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. ***The economic element must be significant to justify the application of the Directive. Economic activities are normally provided for remuneration, intended for a certain period and characterised by a certain continuity; the assessment of the***

*economic element is subject to the criteria and rules of the country of origin. Accordingly, the definition of audiovisual media services does not cover non-economic activities **which are normally not provided for remuneration, such as weblogs and other user-generated content or any form of private correspondence, such as e-mails and** private websites.*

Justification

Definition of audiovisual media services on the basis of editorial responsibility and the economic element.

Amendment 19
RECITAL 14

(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.

(14) The definition of audiovisual media services covers mass media **exercising editorial responsibility** in their function to inform, entertain and educate **the general public, includes audiovisual commercial communications** but excludes any form of private correspondence, such as e-mails sent to a limited number of recipients. The definition also excludes all services **whose principal purpose is not** the distribution of audiovisual content, i.e. where any audiovisual content is merely incidental to the service. 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.

Also excluded are games of chance involving a stake representing a sum of money, including lotteries and betting, provided that their main purpose is not that of distributing audiovisual content. Further examples are online games, as long as the principal purpose of the audiovisual media service is not reached, and search engines where the delivery of audiovisual material is not the principal purpose even if a search sometimes results in an offer of audiovisual material.

Justification

Definition of audiovisual media services by content-based guidelines.

Amendment 20

RECITAL 14 A new

(14a) Television broadcasting services, i.e. linear services, currently include in particular analogue and digital television, live streaming, webcasting and near-video-on-demand, whereas video-on-demand, for example, is one of the on-demand, i.e. non-linear services. For linear audiovisual media services or television programmes which are also offered on a live or deferred basis as non-linear services by the same media service provider, the requirements of this Directive are deemed to be met by the linear transmission. However, where different kinds of services are offered in parallel, without one part being clearly subordinate to another, this Directive should still apply to those distinguishable parts of the service which fulfil all the criteria of an audiovisual media service.

Amendment 21

RECITAL 14 B new

(14b) The definitions in this Directive, in particular the definitions of television broadcasting, linear and non-linear services, are laid down only for the purposes of this Directive and do not affect the underlying rights protected by copyright and neighbouring rights legislation. The scope and regime of these rights are not prejudiced by these definitions and continue to be regulated independently by the relevant legislation.

Amendment 22

RECITAL 15

(15) This Directive does not cover electronic versions of newspapers and magazines.

(15) This Directive does not cover electronic versions of newspapers and magazines. ***In accordance with Directive 2000/31/EC, games of chance are also excluded from its scope.***

Justification

Seeks to clarify that these services, which do not have the transmission of audiovisual services as their principal purpose, are excluded from the scope of the directive.

Amendment 23

RECITAL 16

(16) ***The*** term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio.

(16) ***For the purposes of this Directive, the*** term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio ***services***.

Justification

In other European and international legal acts, such as point 2.D of the WTO services classification list, the term “audiovisual services” covers radio as well as television. It needs to be ensured that this directive does not affect those definitions and also that radio remains covered by the definition of audiovisual services.

Amendment 24

RECITAL 16 A (new)

(16a) An audiovisual media service consists of programmes, i.e. a discrete succession of moving images with or without sound which are subject to editorial responsibility and are either transmitted by a media service provider in accordance with a set time schedule or arranged in a catalogue.

Justification

The term “programme” is characteristic of audiovisual media services and therefore requires a separate definition.

Amendment 25

RECITAL 17

(17) The notion of editorial responsibility is essential for defining the role of the

(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.

media service provider and thereby for the definition of audiovisual media services. ***“Editorial responsibility” means responsibility for the selection and organisation, on a professional basis, of the content of an audiovisual offer. This may apply to an individual content or a collection of contents. Such editorial responsibility applies to the composition of the schedule, in the case of television programmes, or to the programme listing, in the case of non-linear services.*** This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

Justification

Clarifies the criterion of editorial responsibility.

Amendment 26
RECITAL 17 A (new)

(17a) The mere technical delivery, by terrestrial means or by satellite, of an audiovisual media service does not in itself confer the status of a media service provider within the meaning of this Directive; the same principle applies where a selection decision is made, provided that a third party under the jurisdiction of a Member State clearly bears that editorial responsibility.

Justification

It is necessary to prevent the creation of a kind of "loophole", whereby editorial responsibility could easily be exported outside the EU, with the possible effect that the Directive would no longer apply. See also amendment for Article 1 paragraph 2

Amendment 27
RECITAL 17 B (new)

(17b) The criteria laid down in the definition of audiovisual media services, as set out in Article 1(a) of this Directive and expanded in Recitals 13 to 17 of this

Directive, must be fulfilled simultaneously.

Justification

It is important to point out and emphasise that the criteria presented by the Commission in recitals 13 to 17 have to be fulfilled simultaneously

Amendment 28
RECITAL 18

(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.

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises images with or without sound which ***are transmitted as part of an audiovisual media service and form part of or accompany programmes*** 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.

Justification

This wording more closely reflects the various types of advertising.

Amendment 29
RECITAL 19

(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.

(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. ***The application of this principle cannot exclude a reference to the criteria of the origin of the resources of a service with a view to ensuring the conditions for fair competition.***

Justification

The country of origin principle is fundamental to the proposed Directive. Member States must

be able to apply stricter rules in the fields coordinated by the Directive to audiovisual media service providers under their jurisdiction. The codification of Court of Justice case-law and the introduction of new criteria based on the origin of a service's resources, combined with a more efficient procedure, offers an appropriate solution which takes account of Member States' concerns without calling into question the country of origin principle.

Amendment 30
RECITAL 19 A (new)

(19a) To promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the European Union, it remains essential that only one Member State should have jurisdiction over an audiovisual media service provider and that pluralism of information should be a fundamental principle of the European Union.

Amendment 31
RECITAL 19 B (new)

(19b) It is therefore essential that the Member States prevent the emergence of dominant positions that would lead to a limitation of pluralism and restrictions on freedom of media information as well as on the information sector as a whole, for instance by taking measures to secure non-discriminatory access to audiovisual media service offerings in the public interest, e.g. through must-carry rules.

Amendment 32
RECITAL 20

(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.

(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 ***media*** service.

Justification

Editorial clarification.

Amendment 33
RECITAL 23

(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, 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.

(23) Member States must be able to apply stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, ***while ensuring that those rules are consistent with Community competition law***. To ensure that such rules are not circumvented, the codification of the case law of the European Court of Justice, 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.

Justification

Allowing Member States the possibility to apply specific measures in the context of this Directive must not lead to infringement of the basic rules of competition law.

Amendment 34
RECITAL 23 A (new)

(23a) In order for a Member State to prove on a case-by-case basis that a media service provider established in another Member State is circumventing its rules, that Member State may cite indicators such as the origin of the advertising and/or subscription revenues, the main language of the service or the existence of programmes or commercial communications targeted specifically at the public in the Member State where they are received.

(Corresponding to Article 3 point 1b)

Amendment 35
RECITAL 24

(24) Under this Directive, notwithstanding

(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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively.

the application of the country of origin principle, Member States may still take measures that restrict the freedom of movement of television broadcasting **or non-linear audiovisual media services**, 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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively, **with particular reference to the protection of minors and health and provided always that the ex ante control of ideas or opinions is not be permitted under any circumstances.** **With respect to non-linear audiovisual services, the possibility of taking measures under Article 2a of this Directive replaces the possible measures which could have hitherto been taken by the Member State concerned as set out in Article 3(4) and/or Article 12 (3) of Directive 2000/31/EC within the area coordinated by Articles 3d and 3e of this Directive.**

Amendment 36
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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-making¹ provides agreed definitions, criteria and procedures.** Experience showed that co- and self-regulation instruments implemented in accordance with different

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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. **Furthermore,** experience showed that **both** 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.

legal traditions of Member States can play an important role in delivering a high level of consumer protection.

1 OJ C 321, 31.12.2003, p. 1.

Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector will be more effective if they are taken with the active support of the service providers themselves.

Thus self regulation constitutes a type of voluntary initiative, which enables the economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves. Member States should, in accordance with their different legal traditions, recognise the effective role which effective self-regulation can play as a complement to the legislation and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive.

However, while self-regulation might be a complementary method of implementing certain provisions of this Directive, it cannot constitute a substitute for the obligation of the national legislator. Co-regulation gives, in its minimal form, a "legal link" between self-regulation and the national legislator in accordance with the legal traditions of the Member States.

Amendment 37

RECITAL 25 A (new)

(25a) The generic term “co-regulation” covers regulatory instruments which are based on cooperation between State bodies and self-regulating bodies, and vary widely in terms of their designations and structures at national level. The actual form which such instruments take reflects the specific tradition of media regulation in the individual Member States. What co-regulation systems have

in common is that tasks and objectives which were originally the preserve of the State are achieved in cooperation with the players affected by regulation. Designated or authorised by the State, it is for the participants themselves to guarantee the achievement of the regulatory objective. In every case the systems are founded on a State legal framework which lays down instructions as to content, organisation and procedures. On this basis, the interested parties create further criteria, rules and instruments, compliance with which they themselves monitor. Self-regulation as thus defined enables specialist knowledge to be exploited directly for administrative tasks, and bureaucratic procedures to be avoided. It is necessary for all, or at least the most influential, players to participate in or recognise the system. Co-regulation operates by combining instructions to the interested parties with opportunities for State intervention should those instructions not be carried out.

Justification

The definition of co-regulation and self-regulation in the context of this directive describes the law-making process and the task of the self-regulation bodies, and outlines the scope for action by the Member States.

Amendment 38 RECITAL 26

(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.

(26) Entertainment rights for events of public interest may be acquired by broadcasters on an exclusive basis. However, it ***remains*** essential to promote ***free access to information and media pluralism as well as the protection of cultural multiformity***, 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. ***To this end, where Member States are permitted to draw up lists of events of substantial***

social interest which must not be broadcast on an exclusive basis, it is for the individual Member State to decide whether to draw up such a list, which events it regards as having substantial social interest for society, how the expression ‘a substantial proportion of the public’ is defined and what type of reporting should be made available.

Amendment 39
RECITAL 26 A (new)

(26) Media literacy refers to the skills, knowledge and understanding to enable consumers to use media effectively. Media-literate people will be able to exercise informed choices; understand the nature of content and services; be able to take advantage of the full range of opportunities offered by new communications technologies and be better able to protect themselves and their families from harmful or offensive material. It is therefore of crucial importance that Member States and national regulatory authorities actively promote the development of media literacy in all sections of society and that they conduct regular research to monitor it and to inform their approach to content regulation.

Justification

Media literacy is increasingly becoming a fundamental component of European and national communications policy agendas since it actively complements and underpins regulation. Important initiatives are being developed at European and national levels to advance people’s media literacy, so that they can take full advantage of the benefits brought about by digital technologies. The Audiovisual Media Services Directive should recognise and provide direction to such efforts.

Amendment 40
RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests

(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.

of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of **high** public interest *must* 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,
- ***be screened later than 36 hours after the event,***
- ***be used to create a public archive,***
- ***omit the logo or other identifier of the host broadcaster, or***
- ***be used in non-linear services except if offered on a live or deferred basis by the same media service provider. The right to trans-frontier news access should apply only where it is necessary; accordingly, if another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster.***

Amendment 41
RECITAL 28

(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. 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.

(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. 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. ***For linear audiovisual media services or television broadcasting services which are also offered on a live or deferred basis as non-linear services by a media service provider, the requirements of this Directive are deemed***

to be met by the linear transmission.

Justification

Clarifies which rules take precedence under this directive.

Amendment 42
RECITAL 29

(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.

(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 **users have access to information about the ways in which** editorial responsibility for the content **is exercised and by whom**. 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.

Amendment 43
RECITAL 30

(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.

(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 **promote** a high level of protection of objectives of general interest, in particular the protection of minors, **the rights of persons with disabilities** and human dignity.

Justification

Action at the community level is unable to ensure a high level of protection, but it can encourage it through a combination of co-and self-regulation.

Furthermore, today, the audiovisual media, and especially television, are a channel to obtain

information, educational training, cultural contents and access to leisure time in a rather significant manner. For this reason, it is indispensable that any progress that occurs should take fairly into account the possible needs of all European citizens, especially the handicapped, because otherwise they would remain excluded from the wide range of benefits that modern society and in particular digital TV can provide.

Amendment 44
RECITAL 31

(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.

(31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry and parents. ***In this regard it would seem necessary to educate not only children, but also their parents, teachers and educationalists, to make the best use of all the communications media, particularly audiovisual media services, however they may be delivered.*** 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, ***advertising, telesales, sponsorship, product placement and any other technically feasible means.***

Justification

Technological progress creates an urgent need to educate not only minors and their parents but also, particularly, teachers and educationalists for the educative tasks that society requires, in using the communication media and especially audiovisual media services properly, however they may be disseminated.

Amendment 45
RECITAL 31 A (new)

(31a) The Member States should ensure that their respective national curricula and further education courses provide for a critical appreciation of the media.

Justification

We need our citizens to have a mature and educated attitude towards the media, as otherwise it will be impossible to cope with the effects of the media explosion brought about by digitalisation. Any hope of self- and co-regulation is based on the assumption that citizens are practised in the use of the media, and know how they work, what they can do and what interests they represent.

Amendment 46
RECITAL 32

(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.

(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 **however** be to ensure an adequate level of protection of minors **and human dignity**, especially with regard to non-linear services, **by means of an obligation to clearly draw attention to the specific nature of certain programmes before they are transmitted and in accordance both with Article 1 of the Charter of Fundamental Rights of the European Union, recognising that human dignity is inviolable and must be respected and protected, and with Article 24 of the Charter, which states that children shall have the right to such protection and care as is necessary for their well-being, and that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.**

Amendement 47
RECITAL 32 A (new)

(32a) Minors and the vulnerable and disabled, including the mentally disabled, may be particularly undermined and psychically or psychologically upset and disturbed by programmes which feature scenes of verbal, physical or moral violence or by scenes which offend against human dignity, or incite racial hatred or any other form of discrimination. Insofar as one of the objectives of this Directive is to protect such persons in general, Member States are strongly encouraged to remind audiovisual media service providers of this overriding need and to require them to clearly indicate the particular nature of such programmes prior to their being broadcast.

Justification

The protection of minors and the vulnerable and disabled must remain one of the main focuses of concern for both European and national law-makers. It must also be the concern of audiovisual media service providers, whose duty it is to forewarn the users of their services of the harmful effect that certain scenes or programmes might have on vulnerable members of the public. There is clear scope for self regulation and co-regulation in this area.

Amendment 48
RECITAL 33

(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.

(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, ***nor do they justify such control. Member States should be encouraged to establish co- and self-regulation systems.***

Amendment 49
RECITAL 34

(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.

(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 ***and languages, and also to encourage mutual understanding.***

Justification

The protection and promotion of the cultural diversity can encourage the intercultural dialogue and help to achieve a better mutual understanding, withdrawing the prejudices which are usually major causes of today's conflicts. This is crucial to achieve a more peaceful coexistence.

Amendment 50
RECITAL 35

(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

(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. ***In the promotion of***

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.

non-linear audiovisual media services, support for European works might for example take the form of a minimum share of European works proportionate to economic performance, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programme guides. 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. ***In these reports, appropriate account should also be taken of the works of independent producers.***

Justification

These additions demonstrate possible ways in which non-linear audiovisual media might be promoted while also complying with the reporting requirement.

Amendment 51 RECITAL 35 A (new)

(35a) Parties who merely bundle or transmit audiovisual media services or offer for sale packages of such services, for which they do not have any editorial responsibility, should not be considered as media service providers. Thus, mere bundling, transmission or onward selling of content offers, for which they do not have any editorial responsibility, do not fall within the scope of this Directive.

Justification

It should be made clear that – as to date – pure bundling, transmission or reselling of content offers for which third parties do not have the editorial responsibility as media service

providers are not included in the scope of the Directive. As providers have no influence on and therefore no control over such content such a clarification is necessary

Amendment 52
RECITAL 36

(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.

(36) When implementing the provisions of Article 4 of Directive 89/552/EEC as amended, Member States should **adopt appropriate measures to encourage** broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin.

Justification

It is the Member States who can take measures in order to promote not only the broadcasting of European works of domestic origin, but also of European works of non-domestic origin.

Amendment 53
RECITAL 36 A (new)

(36a) Media service providers should also include in their services the works of independent producers, while respecting the rights attaching to repeat showings of such works and the fair apportionment of contributors' rights.

Justification

The multiple use of programmes of independent producers does not respect the intellectual rights of contributors.

Amendment 54
RECITAL 38

(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.

(38) The availability of non-linear services increases the choice of the consumer. ***The Member States should therefore make provision in their national curricula and further education courses for sufficient education in critical use of the media, to avoid the need to introduce detailed rules governing audiovisual commercial communication.*** 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.

Justification

We need our citizens to have a mature and educated attitude towards the media, as otherwise it will be impossible to cope with the effects of the media explosion brought about by digitalisation. Any hope of self- and co-regulation is based on the assumption that citizens are practised in the use of the media, and know how they work, what can do and what interests they represent.

Amendment 55
RECITAL 38 A (new)

(38a) The right of reply is a particularly appropriate legal remedy in the online environment, since it is possible to correct the contested information immediately. However, the right should be exercised within a reasonable period after receipt of the request, at a time and in a form which appears appropriate in view of the particular programme to which the request relates. The reply must in particular be given the same weight as the contested information, so as to reach the same circle of users with the same effects.

Justification

The specific characteristics of non-linear audiovisual media services must be taken appropriately into account in connection with the right of reply.

Amendment 56
RECITAL 40

(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

(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 ***in certain cases determined on the basis of a positive list,*** and some quantitative restrictions should be

should be prohibited. The separation principle should not prevent the use of new advertising techniques.

abolished. However, where product placement is surreptitious, it should be prohibited. The separation principle should not prevent the use of new advertising techniques.

Justification

It needs to be made clear that product placement is not allowed generally, but only under certain circumstances in cases set out in the positive list.

Amendment 57
RECITAL 41

(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 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.

(41) ***It is necessary to ensure coherence between this Directive and existing Community law. Accordingly, in the event of conflict between the provisions of this Directive and a provision of another Community act governing specific aspects of access to or exercise of an audiovisual media service activity, the provisions of this Directive should prevail. This Directive consequently complements the Community acquis. Thus, 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 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. **Furthermore, this Directive is without prejudice to Regulation .../... of the European Parliament and of the Council on nutrition and health claims made on foods.**

Justification

To provide legal certainty, the relationship between this Directive and the existing legal framework has to be clarified.

Amendment 58
RECITAL 42

(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.**

(42) **Given the increased use of new technologies such as personal video recorders and increased choice of channels**, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. **This Directive gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.**

Justification

Technology has advanced to the point where it is now easy to skip traditional spot advertisements. Therefore more flexibility is needed to ensure the viability of free to air broadcasting and increased cultural diversity.

Amendment 59
RECITAL 43

(43) The Directive is intended to safeguard the specific character of the European television landscape **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.**

(43) The Directive is intended to safeguard the specific character of the European television landscape. **Advertising and teleshopping spots may be inserted during programmes only in such a way as not to prejudice the integrity and value of the programme, taking into account natural breaks and the duration and nature of the programme, or the rights of the rights holders.**

Justification

Audiovisual media service providers that invest in expensive original content such as films made for television (TV-movies) or cinematographic films must be enabled to refinance this kind of premium content. As this premium content is costly and very important for the company's brand, advertising will be inserted in a very sensitive and responsible manner so that Premium content will not be devaluated by too much or misplaced advertising. Restrictions in the possibilities to insert advertising in films will restrict the funding of this content. As a result there audiovisual media providers might not continue to invest in films in the future. A general rule on the protection of the integrity of the film and on the programme flow as well as on the protection of copy rights will further the objective to invest in films also in the future.

Amendment 60 RECITAL 46

(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.

(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. **It is useful to have a positive list which authorises product placement in the types of content whose paramount function is not to influence opinion, and in cases in which no - or only negligible - consideration is provided in return.** The definition of product placement 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 may consist of placing at a person's disposal services or items having a monetary value, for the acquisition of which the recipient would otherwise have had to use his own financial, personal or material resources. Product placement is subject to the same qualitative rules and restrictions applying to advertising. It should, furthermore, meet specific requirements. The editorial responsibility and independence of the media service provider must not be jeopardised. In**

particular, the way the product is included in the programme must not create the impression that the product is endorsed by the programme or its presenters.

Furthermore, the product must not be given 'undue prominence'. This means prominence which is not justified by the editorial requirements of the programme, or the need to lend verisimilitude. Undue prominence may also mean the repeated appearance of the brands, goods or services in question or the manner in which they are given prominence. Account should also be taken of the content of the programme in which they are introduced. In the interests of consumer protection and transparency, there should be a comprehensive requirement to display a symbol. The symbol superimposed in the course of the programme should not be based on the logo of the firm providing the product, to avoid introducing any additional advertising effect. For that reason, a neutral logo should be chosen.

Justification

To regulate product placement, it is useful to have an affirmative list which establishes that it is permissible in cases in which influencing opinion is not the paramount function, or in which there is negligible risk of editorial content being influenced.

The criterion of undue prominence is defined by reference to the content of the Commission communication on questions arising from certain aspects of the 'television without frontiers' Directive on television advertising (2004C 102/02).

Amendment 61

RECITAL 46 A (new)

(46a) 'Production aids' means the mentioning or presentation of goods or services for editorial reasons without payment or similar consideration. In order to draw the distinction between production aids and product placement within the meaning of this directive, the legal framework for the use of production aids permitted in all programme formats should be clarified.

Justification

The inclusion of product placement in this directive makes it necessary to clarify the legal status of production aids as well.

Amendment 62
RECITAL 46 B (new)

(46b) ‘Undue prominence’ is given when the repeated representation of the brand, good or service or the nature of its presentation is such as to give undue prominence to products in the context of production aids or product placement, taking account of the content of the programmes in which they appear.

Justification

Undue prominence is a central criterion in identifying product placement and should therefore be more clearly defined.

Amendment 63
RECITAL 47

(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,

(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 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 in another Member State. Where 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 licences are granted. This cooperation should cover all the fields coordinated by this Directive and in particular Articles 2, 2a and 3.***

Amendment 64
RECITAL 47 A (new)

(47a) Cultural diversity, freedom of expression and media pluralism of means of communication are some important aspects of the European audiovisual sector and are therefore indispensable preconditions for democracy and diversity.

Justification

For a more integrated approach to the characteristics of the European audiovisual sector.

Amendment 65
RECITAL 47 B (new)

(47b) The right of persons with disabilities, the elderly and non-EU nationals whose mother-tongue is different from the language of their host country to participate and integrate in the social and cultural life of the community in accordance with Articles 25 and 26 of the Charter of Fundamental Rights of the European Union is inextricably linked with the provision of accessible audiovisual media services. The accessibility of audiovisual media services includes, but is not restricted to, sign language, subtitling, audio-description and easily understandable menu navigation.

Amendment 66
ARTICLE 1, POINT 2
Article 1, point (a) (Directive 89/552/EEC)

(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

(a) ‘audiovisual media service’ means a service ***provided under the editorial responsibility of a media service provider*** as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of ***programmes consisting of*** moving images with or without sound, in order to inform, entertain or educate, to the

Directive 2002/21/EC of the European Parliament and of the Council.

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 **and/or audiovisual commercial communications.**

It does not include services where the provision of audiovisual content is merely incidental to the service and not its principal purpose, nor does it include the press in printed and electronic form.

Justification

In order to distinguish audiovisual media services more clearly from other audiovisual services, it needs to be made clear that the offer of moving images consists of programmes for which the media service provider bears editorial responsibility (see Article 1(b) of the Commission proposal). For purposes of clarification it is reiterated that the printed and electronic press are not covered by the scope of the directive.

Amendment 67

ARTICLE 1, POINT 2

Article 1, point (b) (Directive 89/552/EEC)

(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;

(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.

It does not include natural or legal persons who merely transmit content for which the editorial responsibility lies with third parties;

Justification

The mere transmission of content for which the editorial responsibility lies with a third party as media service provider is not covered by the scope of the directive.

Amendment 68

ARTICLE 1, POINT 2

Article 1, point (c) (Directive 89/552/EEC)

(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***

(c) 'television broadcast' or '***linear service***' ***means an*** audiovisual media service where a ***chronological sequence of programmes is transmitted to an indeterminate number of potential viewers, at a point in time decided***

establishes the programme schedule;

*upon by the media service provider
according to a set programming schedule;*

Justification

Clarifies that the term ‘television broadcast(ing)’ means a simultaneous offer of programmes to an unlimited number of viewers in accordance with a fixed programme schedule.

Amendment 69

ARTICLE 1, POINT 2

Article 1, point (e) (Directive 89/552/EEC)

(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;*

(e) ‘*on demand service*’ or ‘non-linear service’ means an audiovisual media service *consisting of an offer of audiovisual content, edited or compiled by a media service provider, and* where the user, *on an individual basis, requests the delivery of a particular programme from among a selection of content and at the time of his choice;*

Justification

Clarification of the term “non-linear service” as an on-demand media service.

Amendment 70

ARTICLE 1, POINT 2

Article 1, point (f) (Directive 89/552/EEC)

(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;

(f) ‘audiovisual commercial communication’ means moving images with or without sound which *are transmitted as part of an audiovisual media service or, in cases such as dedicated teleshopping channels, as an audiovisual media service, with the aim of promoting*, directly or indirectly, *the* goods, services or image of a natural or legal entity pursuing an economic activity;

Justification

Wording reflects the differing types of advertising.

Amendment 71

ARTICLE 1, POINT 2

Article 1, point (h) (Directive 89/552/EEC)

(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;

(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 **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;

Justification

Surreptitious advertising should be prohibited in non-linear services too.

Amendment 72

ARTICLE 1, POINT 2

Article 1, point (h a) (new) (Directive 89/552/EEC)

(ha) ‘product integration’ and ‘thematic placement’ mean the intervention of any undertaking or body in the plot of a film or fictional programme seeking to promote in particular a product, service or brand;

Justification

This definition is essential in order to clarify what is meant by thematic placement.

Amendment 73

ARTICLE 1, POINT 2

Article 1, point (i) (Directive 89/552/EEC)

(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;

(i) ‘sponsorship’ means any contribution made by a public or private undertaking **or natural person** not engaged in providing audiovisual media services or in the production of audio-visual works, to the **direct or indirect** financing of audiovisual media services, with a view to promoting its name, its trade mark, its image, its activities or its products;

Amendment 74

ARTICLE 1, POINT 2

Article 1, point (i a) (new) (Directive 89/552/EEC)

(ia) ‘telepromotion’ means a form of advertising consisting of the display of goods or services or a spoken or visual presentation of the goods and services of a goods producer or services supplier, transmitted as part of a programme to promote the supply of the goods or services presented or displayed in return for payment;

Justification

The concept of ‘telepromotion’ represents a particular form of audiovisual commercial communication which therefore requires a specific definition. With regard to the definition, it should be noted that telepromotion was given tentative recognition through its inclusion in the interpretative communication of April 2004. Like other forms of advertising, telepromotion must be subject to time limits and, since the amendment of the directive abolishes daily limits, telepromotions need to be included in the hourly limits.

Amendment 75

ARTICLE 1, POINT 2

Article 1, point (k) (Directive 89/552/EEC)

(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.

(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, ***with or without*** payment or similar consideration ***to the media service provider. It does not include, however, communications resulting from independent editorial decisions to use products, without undue prominence, which are integral to a programme and facilitate its production, such as prizes awarded in programmes, branded merchandising products and incidental objects and props;***

Justification

It is a characteristic of product placement that it is carried out in return for payment or for similar consideration.

The definition of ‘product placement’ should exclude cases where the products form an independent part of a programme (for instance, as casual objects) and their inclusion is based on an independent and non-commercial editorial decision. Otherwise the rules on

product placement would adversely affect editorial decisions to use objects from daily life in audiovisual productions.

Moreover, it is important that the new regulations on product placement do not accidentally outlaw already existing and legitimately practiced formats in programming. Under the current definition, for example, the use of branded prizes would remain prohibited in children's programmes.

Amendment 76

ARTICLE 1, POINT 2

Article 1, point (k a) (new) (Directive 89/552/EEC)

(ka) 'production aids' means goods or services made available without payment or other consideration and used for editorial reasons;

Justification

Draws the distinction between production aids and product placement.

Amendment 77

ARTICLE 1, POINT 2

Article 1, point (k b) (new) (Directive 89/552/EEC)

(kb) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established or compiled by a media service provider;

Amendment 78

ARTICLE 1, POINT 2

Article 1, point (k c) (new) (Directive 89/552/EEC)

(kc)'co-regulation' means a form of regulation based on cooperation between public authorities and self-regulating bodies.

Justification

It is important to give additional definitions.

Amendment 79

ARTICLE 1, POINT 2

Article 1, point (k d) (new) (Directive 89/552/EEC)

(kd) ‘editorial responsibility’ means responsibility for the composition of the schedule or the compilation of programmes intended for the general public, in a professional capacity, in order to deliver the media content within a set time frame or to allow it to be ordered from a catalogue.

Justification

The term ‘editorial responsibility’ is very important for the scope of the directive and therefore requires a definition.

Amendment 80

ARTICLE 1, POINT 3, POINT (F)

Article 2, paragraph 6 (Directive 89/552/EEC)

“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.”

“6. This Directive does not apply to audiovisual media services which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.”

Justification

This Directive is intended (among other issues) to provide good service standards for European consumers of audiovisual media services. There is no reason to consider that citizens in other countries should be granted European audiovisual media services with lower standards than the ones that apply to EU. A good example from EU in this matter can have a global positive impact on the evolution of this sector.

Amendment 81

ARTICLE 1, POINT 3, POINT (G)

Article 2, paragraphs 7, 8, 9 and 10 (new) (Directive 89/552/EEC)

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

“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."

Amendment 82

ARTICLE 1, POINT 4, POINT (B)

Article 2a, paragraph 2 (Directive 89/552/EEC)

(b) *In* paragraph 2 "*Article 22a*" is replaced by "*Article 3e*".

(b) Paragraph 2 is replaced by *the following*:

"2. Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:

(a) an *audiovisual media service* coming from another Member State manifestly, seriously and gravely infringes *Article 22 (1) or (2) and/or Articles 3d or 3e*;

(b) during the previous 12 months, the *media service provider* has infringed the provision(s) referred to in (a) on at least two prior occasions;

(c) the Member State concerned has

notified the *media service provider, the Member State in which it is established 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 Member State *of establishment* and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists."

Justification

It should be possible to react in the event of serious infringements in non-linear media services, as it is now for TV broadcasts.

Amendment 83

ARTICLE 1, POINT 4, POINT (B)

Article 2a, paragraph 2a (new) (Directive 89/552/EEC)

2a. Member States may, in urgent cases, provisionally take measures to derogate from paragraph 1 without fulfilling the conditions set out in points 2(b), 2(c) and 2(d) above. If they do so, the measures shall be notified in the shortest possible time to the Commission and to the Member State in which the media service provider is established, with an indication of the reasons for which the Member State considers that the case is urgent.

Amendment 84

ARTICLE 1, POINT 4, POINT (B)

Article 2a, paragraph 2b (new) (Directive 89/552/EEC)

2b. 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 shall be required to withdraw the measures in question as a matter of urgency.

Amendment 85
ARTICLE 1, POINT 4, POINT (B)
Article 2a, paragraph 3 (Directive 89/552/EEC)

3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question to the Member State which has jurisdiction over the *broadcaster* concerned.

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 *media service provider* concerned.

Amendment 86
ARTICLE 1, POINT 5
Article 3, paragraph 1 (Directive 89/552/EEC)

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.

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, *provided that such rules do not conflict with general principles of EU law*.

Amendment 87
ARTICLE 1, POINT 5
Article 3, paragraph 1a (new) (Directive 89/552/EEC)

1a. Where a Member State:
(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules in the general public interest; and
(b) considers that a media service provider under the jurisdiction of another Member State directs all or most of its activity towards its territory
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 media service provider concerned 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.

Amendment 88
ARTICLE 1, POINT 5
Article 3, paragraph 1b (new) (Directive 89/552/EEC)

1b. Where the first Member State considers:
(a) that the results achieved through the application of paragraph 1a are not satisfactory; and
(b) that the media service provider concerned has established itself in the Member State having jurisdiction in order to avoid the stricter rules, in the fields coordinated by this Directive, to which it would be subject if it were established in the first Member State,
it may adopt appropriate measures against the media service provider concerned, in order to prevent abuse or fraudulent conduct.
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.

Amendment 89
ARTICLE 1, POINT 5
Article 3, paragraph 1c (new) (Directive 89/552/EEC)

1c. A Member State may take measures pursuant to paragraph 1b only if all of the following conditions are met:
(a) 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 proposes to adopt the measures and
(b) the Commission decides that the measures are compatible with Community law, and in particular that the reasons for which that Member State proposes to take the measures under paragraphs 1a and 1b are well-founded.

Amendment 90
ARTICLE 1, POINT 5
Article 3, paragraph 1d (new) (Directive 89/552/EEC)

1d. The Commission shall decide within three months following notification under paragraph 1c(a). If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.

Amendment 91
ARTICLE 1, POINT 5
Article 3, paragraph 3 (Directive 89/552/EEC)

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.

3. Member States shall encourage ***self-and/or*** co-regulatory regimes ***at national level*** in the fields coordinated by this Directive. These regimes shall be such that they are broadly accepted by the main stakeholders ***in the Member State concerned*** and provide for effective enforcement.

Amendment 92
ARTICLE 1 POINT 5
Article 3, paragraph 3 a (new) (Directive 89/552/EEC)

3a. Relationship with other provisions of Community law
If the provisions of this Directive conflict with a provision of another Community act governing aspects of access to an activity relating to audiovisual media services, or the exercise of that activity, the provisions of this Directive shall prevail.

Justification

The relationship between the proposal for a directive on audiovisual media services and other Community acts has not been clarified in the proposal. Consequently, in the event of conflict between the provisions of the proposal for a directive on audiovisual media services and other Community acts there is still uncertainty about the primacy of the provisions of this directive over any provision in another Community act..

In the interests of ensuring greater legal certainty we propose the insertion into the directive on audiovisual media services of a new provision whereby this directive will take precedence in the event of conflict with another Community act.

Amendment 93

ARTICLE 1, POINT 5

Article 3 paragraph 3 b (new)

3b. Member States shall, by appropriate means, promote the development of media literacy amongst consumers.

Justification

Media literacy refers to the skills, knowledge and understanding of consumers to enable them to use media effectively. It is increasingly becoming a fundamental component of European and national communications policy agendas since it actively complements and underpins regulation. Important initiatives are being developed at European and national levels to advance people's media literacy, so that they can take full advantage of the benefits brought about by digital technologies. The audiovisual media services directive should recognise and provide direction to such efforts.

Amendment 94

ARTICLE 1, POINT 6

Article 3b, paragraph 1 (Directive 89/552/EEC)

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.

1. Pursuant to the principle of freedom of access to information as enshrined, in particular, in Article 11 of the Charter of Fundamental Rights of the European Union, and without prejudice to existing contractual agreements between broadcasters, each Member States shall ensure that, for the purposes of short news reports, including reports intended for pan-European broadcasts, 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. The broadcaster granting such access shall be entitled to appropriate

compensation.

Amendment 95

ARTICLE 1, POINT 6

Article 3b, paragraph 2 (Directive 89/552/EEC)

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.

2. *Broadcasters* may freely *choose short extracts* from the transmitting broadcaster's signal with at least the identification of their source. *Such extracts shall be used exclusively for news purposes.*

Amendment 96

ARTICLE 1, POINT 6

Article 3b, paragraph 2 a (new) (Directive 89/552/EEC)

(2a) The provisions of this Article shall apply without prejudice to the obligation of individual broadcasters to respect copyright legislation, including Directive 2001/29/EC and/or the Rome Convention ('International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations' of 26th October 1961), and shall not affect that obligation in any way.

Amendment 97

ARTICLE 1, POINT 6

Article 3b, paragraph 2 b (new) (Directive 89/552/EEC)

(2b). Member States shall ensure that the modalities and conditions governing the use of such short extracts are defined, in particular their maximum length, time limits regarding their transmission and requirements for the identification of the host broadcaster.

Amendment 98

ARTICLE 1, POINT 6

Article 3b, paragraph 2 c (new) (Directive 89/552/EEC)

(2c). Broadcasters may, in accordance

with the law of the Member State concerned and for the purpose of transmission, themselves gain access to the event concerned.

Amendment 99
ARTICLE 1, POINT 6
Article 3c, point (d) (Directive 89/552/EEC)

(d) where applicable, the *competent* regulatory *authority*.

(d) where applicable, the *relevant* regulatory *or supervisory institution*.

Amendment 100
ARTICLE 1, POINT 6
Article 3d (Directive 89/552/EEC)

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.

Member States shall ensure *by appropriate means* 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. *This Article shall apply in particular to programmes containing pornography and gratuitous acts of violence. The Commission and the Member States should encourage the relevant players in the media sector to promote a Community-wide labelling, assessment and filtering system as a further measure to protect minors. The Member States shall promote measures to give parents and other carers greater control over the pornographic and gratuitously violent content of programmes.*

Amendment 101
ARTICLE 1, POINT 6
Article 3d, paragraph 1 a (new) (Directive 89/552/EEC)

1a. Member States shall ensure that audiovisual media service providers under their jurisdiction provide filtering systems for content that is damaging to the

physical, mental or moral development of minors and inform users of their existence.

Amendment 102
ARTICLE 1, POINT 6
Article 3d, paragraph 1b (new) (Directive 89/552/EEC)

1b In particular, they shall not authorise commercial communications, sponsorship, advertising or product placement for goods manufactured under conditions which contravene international law prohibiting child labour.

Justification

It would be hypocritical to claim to protect the moral development of minors while at the same time drawing young consumers' attention to products manufactured illegally by child labour.

Amendment 103
ARTICLE 1, POINT 6
Article 3d, paragraph 1 c (new) (Directive 89/552/EEC)

1c. The Commission and the Member States shall encourage audiovisual media service providers, regulatory authorities and all parties concerned to consider the technical and legal feasibility of developing a harmonised system of content symbols promoting better filtering and classification at source, regardless of the delivery platform used, with a view to providing greater protection for minors.

Amendment 104
ARTICLE 1, POINT 6
Article 3d, paragraph 1 d (new) (Directive 89/552/EEC)

1d. Member States shall ensure that audiovisual media service providers under their jurisdiction do not in any circumstances broadcast any child pornography under penalty of administrative and/or penal sanctions.

Justification

Against the background of what is occurring in many Member States with the disappearance and murder of children, offences relating to paedophilia, the distribution of pornographic material, Internet sites that encourage the exploitation of children and a growth in violence against women, it is increasingly urgent to intervene clearly and decisively against a social evil that particularly affects innocent and vulnerable age groups.

Amendment 105

ARTICLE 1, POINT 6

Article 3d, paragraph 1 e (new) (Directive 89/552/EEC)

1e. Member States shall ask audiovisual media service providers under their jurisdiction to promote information campaigns to prevent violence against women and minors, where possible in collaboration with public and private associations and entities involved in this field.

Justification

Against the background of what is occurring in many Member States with the disappearance and murder of children, offences relating to paedophilia, the distribution of pornographic material, Internet sites that encourage the exploitation of children and a growth in violence against women, it is increasingly urgent to intervene clearly and decisively against a social evil that particularly affects innocent and vulnerable age groups. Amendment 106

ARTICLE 1, POINT 6

Article 3d a (new) (Directive 89/552/EEC)

Article 3da

Member States shall take appropriate measures to ensure that audiovisual media services under their jurisdiction are not made available in such a way that promotes or reinforces the portrayal of gender stereotypes.

Gender stereotypes portrayed in the media are a key factor in the continued existence of sex discrimination.

Amendment 107

ARTICLE 1, POINT 6

Article 3e, (Directive 89/552/EEC)

Member States shall ensure by appropriate means that audiovisual media services and audiovisual commercial communications

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.

provided by providers under their jurisdiction do not contain any incitement to hatred based on sex, **race**, ethnic origin, religion or belief, disability, age or sexual orientation **or offend against human dignity in any other manner.**

Amendment 108

ARTICLE 1, POINT 6

Article 3f, paragraph 1 (Directive 89/552/EEC)

(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.

(1) Member States shall ensure that media service providers under their jurisdiction promote, where practicable and by appropriate means, **and taking due account of the various means of delivery, the development,** production of and access to European works within the meaning of Article 6. **For non-linear audiovisual media services, support and promotion might take the form of a minimum number of European works proportionate to economic performance, a minimum share of European works and of European works created by producers who are independent of broadcasters in video-on-demand catalogues, or the attractive presentation of European and works created by such independent producers in electronic programme guides.**

Amendment 109

ARTICLE 1, POINT 6

Article 3f, paragraph 4 (Directive 89/552/EEC)

(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.

(4) The Commission shall, on the basis of the information provided by Member States **and of an independent study**, report to the European Parliament and the Council **every three years** on the application of paragraph 1, taking into account the market, technological developments **and the objective of cultural diversity.**

Amendment 110

ARTICLE 1, POINT 6

Article 3g, introductory part (Directive 89/552/EEC)

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

Member States shall ensure that audiovisual commercial communications provided by providers under their jurisdiction comply with ***principles laid down in the Charter of Fundamental Rights of the European Union and, in particular***, the following requirements:

Amendment 111

ARTICLE 1, POINT 6

Article 3g, point (a) (Directive 89/552/EEC)

(a) audiovisual commercial communications must be clearly identifiable as such. Surreptitious audiovisual commercial communication shall be prohibited;

(a) audiovisual commercial communications must be clearly identifiable as such ***and kept quite separate from other parts of the programme service, in terms of both time and space, by optical and acoustic means***. Surreptitious audiovisual commercial communication shall be prohibited;

Justification

The principle of strict separation between advertising and editorial content is essential, and requires advertising to be clearly identified by both optical and acoustic means.

Amendment 112

ARTICLE 1, POINT 6

Article 3g, point (a a) (new) (Directive 89/552/EEC)

(aa) audiovisual commercial communications shall respect the integrity of and natural breaks in the programme in the course of which they are transmitted;

Justification

Most pieces of cultural works such as operas, theatre plays are often broadcasted on television. In order to preserve the coherence of such works, it is of importance to adapt audiovisual commercial communications for the natural breaks of the programmes.

Amendment 113

ARTICLE 1, POINT 6

Article 3g, point (b) (Directive 89/552/EEC)

(b) audiovisual commercial communications

(b) audiovisual commercial communications

must not use subliminal techniques;

must not use subliminal techniques.
Accordingly, the sound volume of advertisements, and of the programmes or sequences which precede and follow them, shall not exceed the average sound volume of other parts of the programme service. This obligation shall be as much the responsibility of advertisers as it is of broadcasters, which must ensure that advertisers comply with it when supplying their advertising material;

Justification

The average difference between advertising and programmes is usually significantly above the average volume for the rest of the programme service; this is a source of annoyance and may be regarded as a means used by advertisers to draw attention to their products or services without viewers being aware of this.

Amendment 114

ARTICLE 1, POINT 6

Article 3g, point (c) (Directive 89/552/EEC)

(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.

(c) audiovisual commercial communications must not:

(-i) offend against human dignity;

(i) ***be offensive*** on grounds of ***discrimination by race, gender, nationality, disability, age, or sexual orientation;***

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

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

Amendment 115

ARTICLE 1, POINT 6

Article 3g, point (d) (Directive 89/552/EEC)

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

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

Amendment 116
ARTICLE 1, POINT 6
Article 3 g, point (d a) (new) (Directive 89/552/EEC)

(da) Pornography, including depictions likely to incite hatred on the grounds of sex, shall be prohibited in all forms of audiovisual commercial communications and teleshopping;

Justification

A prohibition of pornography shall not mean that all erotic movies and depictions are no longer allowed, but that those depictions which are used to incite hatred based on sex are forbidden. Based on the revised European Convention on Transfrontier Television of the Council of Europe, in particular its Article 7, pornography must be added to the list of banned audiovisual commercial communications in point (d). Article 7 of the Convention states that: "All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not: a) be indecent and in particular contain pornography; b) give undue prominence to violence or be likely to incite to racial hatred"

Amendment 117
ARTICLE 1, POINT 6
Article 3g, point (e a) (new) (Directive 89/552/EEC)

(ea) audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the provider of audiovisual services falls shall be prohibited.

Amendment 118
ARTICLE 1, POINT 6
Article 3g, point (f) (Directive 89/552/EEC)

(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

(f) audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not exhort minors to buy a product or service, 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

trust minors place in parents, teachers or other persons, or **unreasonably** show minors in dangerous situations.

persons or show minors in dangerous situations.

Amendment 119
ARTICLE 1, POINT 6
Article 3g, point (f a) (new) (Directive 89/552/EEC)

(fa) Audiovisual media services directed at children may not contain any form of audiovisual commercial communications or teleshopping for food or drink in accordance with the principles laid down in the Health Claims Regulation.

Justification

Obesity is growing alarmingly in Europe. The increase in child obesity is particularly worrying. There is scientific evidence that shows that the promotion of unhealthy foods to children over audiovisual media services is decisive in children's diet choices. There fore there should be no advertising of such food at least before, during and after children's programmes.

Amendment 120
ARTICLE 1, POINT 6
Article 3h, paragraph 1 (Directive 89/552/EEC)

1. Audiovisual media services that are sponsored ***or that contain product placement*** shall meet the following requirements.

1. Audiovisual media services ***or programmes*** that are sponsored shall meet the following requirements:

Justification

The Commission proposal deals with sponsoring and product placement together in Article 3h. Your rapporteur considers this inappropriate, since sponsoring retains the separation of advertising and editorial content, while in the case of product placement that fundamental separation is removed. Accordingly, Article 3h as amended includes only the provisions on sponsoring. The new Article 3i contains the provisions on product placement.

Amendment 121
ARTICLE 1, POINT 6
Article 3h, paragraph 1, point (a) (Directive 89/552/EEC)

(a) the scheduling, where appropriate, and the content of such audiovisual media

(a) their content and, in the case of television broadcasting, their scheduling,

services may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

Amendment 122

ARTICLE 1, POINT 6 Article 3h, paragraph 1, point (c) (Directive 89/552/EEC)

(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 an 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.

(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 an appropriate way for programmes at the beginning, during and/or the end of the programmes.

Justification

The reference to sponsoring should be permitted only at the beginning and end of the programme, in order to prevent the insertion of advertising.

Amendment 123

ARTICLE 1, POINT 6

Article 3h, paragraph 2 (Directive 89/552/EEC)

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.

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.

Amendment 124
ARTICLE 1, POINT 6
Article 3h, paragraph 3 (Directive 89/552/EEC)

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.

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.

Amendment 125
ARTICLE 1, POINT 6
Article 3h, paragraph 4 (Directive 89/552/EEC)

4. News and current affairs shall not be sponsored **and shall not contain product placement. Audiovisual media services for children and documentaries may not contain product placement.**

4. News and current affairs **programmes** shall not be sponsored.

Amendment 126
ARTICLE 1, POINT 6
Article 3ha, paragraph 1 (new) (Directive 89/552/EEC)

"Article 3ha
1. Product placement shall be prohibited. In particular news and current affairs programmes, children's programmes, documentaries and programmes of advice may not contain product placement. Product integration and thematic placement shall be prohibited in principle.

Amendment 127
ARTICLE 1, POINT 6
Article 3ha, paragraph 2 (new) (Directive 89/552/EEC)

2. By way of derogation from paragraph

1, Member States may choose to expressly permit product placement
- in cinematographic works, films and series made for television and sports broadcasts; or
- in cases of production aid where no payment is made but certain goods or services are merely provided free of charge with a view to their inclusion in a programme.
The programmes containing product placement shall meet all of the following requirements:

Amendment 128
ARTICLE 1, POINT 6
Article 3ha, paragraph 2, point (a) (new) (Directive 89/552/EEC)

(a) [their content and, in the case of television broadcasting, their scheduling, shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

Amendment 129
ARTICLE 1, POINT 6
Article 3ha, paragraph 2, point (b) (new) (Directive 89/552/EEC)

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

Amendment 130
ARTICLE 1, POINT 6
Article 3ha, paragraph 2, point (c) (new) (Directive 89/552/EEC)

(c) they shall not give undue prominence to the product in question;

Amendment 131
ARTICLE 1, POINT 6

Article 3ha, paragraph 2, point (d) (new) (Directive 89/552/EEC)

(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme and by a signal at least every 20 minutes during the programme in order to avoid any confusion on the part of the viewer.

Amendment 132

ARTICLE 1, POINT 6

Article 3ha, paragraph 3 (new) (Directive 89/552/EEC)

***3. In any event programmes shall not contain product placement for:
- 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.***

Amendment 133

ARTICLE 1, POINT 6

Article 3ha, paragraph 4 (new) (Directive 89/552/EEC)

4. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after the date by which this Directive is required to be brought into force by the Member States.

Amendment 134

ARTICLE 1, POINT 6

Article 3hb (new) (Directive 89/552/EEC)

"Article 3hb

- 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 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or to sponsorship announcements."**

Justification

In order not to disturb viewers' viewing, linear and non-linear services should at least be subject to an hourly limit on advertising time. It is therefore necessary to insert a new Article 3ha, reproducing the provisions of the new Article 18(2), so that those provisions appear among the common provisions.

Amendment 135
ARTICLE 1, POINT 6
Article 3hc (new)(Directive 89/552/EEC)

“Article 3hc

- 1. The Member States shall take appropriate measures to ensure that audio-visual media services under their jurisdiction are gradually made accessible to people with a visual or hearing disability.***
- 2. No later than the end of the third year after the adoption of this Directive, the Member States shall submit a national report to the Commission every two years on the application of this Article. The report shall include, in particular, statistics on the progress made towards achieving the goal of accessibility, as described in paragraph 1. It shall describe any obstacles and describe the measures needed to overcome them.”***

Amendment 136
ARTICLE 1, POINT 6
Article 3hd (new) (Directive 89/552/EEC)

“Article 3hd

- 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 but not limited to reputation and good name, have been affected by an assertion of facts in a transmission shall have a right of reply or equivalent remedies.

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 equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient period of time is allowed and that the procedures are such that the right or equivalent remedies may 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 when it is not justified having regard to the conditions set out in paragraph 1, if it involves a punishable act, if its broadcasting involves the civil liability of the audiovisual media service provider or if it contravenes standards of public decency.

5. Member States shall ensure that disputes concerning the exercise of the right of reply or equivalent remedies are subject to judicial review.

6. The right of reply shall be without prejudice to other means of redress available to persons whose rights to dignity, honour, sound reputation or private life have not been respected by the media.”

Justification

The right of reply must apply to all audiovisual media services and not just to linear services.

Amendment 137

ARTICLE 1, POINT 7, POINT (A A) (new)
Article 6, paragraph 1 (Directive 89/552/EEC)

*(aa) In paragraph 1, the following point (d) is added:
“(d) in defining the term ‘independent producer’, the Member States shall take appropriate account of the following three criteria:
ownership and proprietary rights of the production firm; number of programmes provided to the same broadcaster, and ownership of secondary rights”*

Amendment 138
ARTICLE 1, POINT 9
Article 10, paragraph 1 (Directive 89/552/EEC)

(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.

(1) Television advertising and teleshopping shall be readily recognizable and ***distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct*** from other parts of the programme service by optical and/or acoustic ***and/or spatial*** means.

Amendment 139
ARTICLE 1, POINT 9
Article 10, paragraph 2 (Directive 89/552/EEC)

(2) Isolated advertising and teleshopping spots, other than in sports programmes, shall remain the exception.

deleted

Justification

Isolated advertising does not interrupt programmes and furthermore viewers prefer it to lengthy advertising breaks.

Amendment 140
ARTICLE 1, POINT 10
Article 11, paragraph 1 (Directive 89/552/EEC)

(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***

(1) Advertising ***and teleshopping spots shall be inserted only between programmes. Under the conditions laid down in paragraph 2, advertising and teleshopping***

holders are not prejudiced.

spots may also be inserted during programmes, in a manner which does not jeopardise their integrity, taking into account natural interruptions in the programme, in such a way that the rights of the right holders are not prejudiced.

Justification

The substantial relaxation proposed by the Commission in Article 11 would seriously jeopardise the balance currently in place between the need for programme funding, ease of viewing, programme quality and respect for works. However, it seems fair to allow broadcasters greater flexibility as regards the insertion of advertising spots in their programmes.

Consequently, in line with the principle of separating advertising from the rest of the programme, the equally fundamental principle of inserting advertising between programmes must be made explicit. The proposal thus aims to maintain the essence of the current Article 11(1), in particular by preserving the criterion of ‘natural programme interruptions’, which makes it possible to prevent sudden or untimely interruptions.

Article 11(2) represents a compromise between the need to preserve the quality and integrity of all programmes – in particular, series, serials, light entertainment programmes and documentaries – and the legitimacy of offering broadcasters more flexibility by replacing the 20 minute rule with three interruptions per clock hour.

Article 11(3) seeks to provide a framework for the retransmission of sports events, whose unpredictable nature justifies special arrangements so as not to deprive viewers of phases of play.

Amendment 141

ARTICLE 1, POINT 10

Article 11, paragraph 2 (Directive 89/552/EEC)

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.

2. The transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, **concerts, theatre plays and operas** may be interrupted by advertising and/or teleshopping once for each period of **45** minutes.

Children’s programmes and news programmes, provided that their scheduled duration exceeds 30 minutes, may be interrupted by advertising and/or teleshopping once for each period of 30 minutes.

Justification

Better balance between the protection of certain programmes and improving the return on audiovisual works.

Amendment 142

ARTICLE 1, POINT 13

Article 18, paragraph 2 (Directive 89/552/EEC)

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.*

2. Paragraph 1 does not apply to announcements made by the broadcaster *advertising its own programmes and teleshopping.*

Justification

Leaving loopholes allowing broadcasters to advertise products derived from their own programmes, as well as sponsorship announcements and product placement considerably weakens the restrictions introduced and could offer an easy means of side-stepping them.

Amendment 143

ARTICLE 1, POINT 15

Article 19 (Directive 89/552/EEC)

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.

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, ***which shall be readily recognisable as such by optical and/or acoustic means.*** Chapter 3 as well as Article 11 (rules on insertion) and Article 18 (duration of advertising and teleshopping) do not apply to these broadcasts.

Justification

Advertising, teleshopping, and self-promotion in television broadcasts exclusively devoted to these purposes should explicitly be signalled as such, as well. The consumer should be aware of the advertising content of the services provided.

Amendment 144

ARTICLE 1, POINT 17

Article 20 (Directive 89/552/EEC)

Without prejudice to Article 3, Member

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.***

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 ***television*** broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

Justification

In order to guarantee legal certainty, the term "broadcasts" should be replaced with "television broadcasts", and the reference to broadcasts having no significant impact in terms of audience share should be deleted.

Amendment 145

ARTICLE 1, POINT 17 A (new)

Article 22, paragraph 1 (Directive 89/552/EEC)

(17a) Article 22(1) is replaced by the following:

"1. The Member States shall take appropriate measures to ensure that programmes broadcast by media service providers under their jurisdiction do not contain anything which might seriously impair the physical, psychological and moral development of minors, particularly programmes showing pornography or senseless violence."

Justification

Clarification in line with the scope of the directive.

Amendment 146

ARTICLE 1, POINT 18

Article 22a (new) (Directive 89/552/EEC)

Article 22a

(1) Member States shall promote the production and programming of audiovisual media services and programmes which are suitable for minors and intended to improve their knowledge of

communications media.

(2) Such measures shall seek to facilitate educational action by parents, teachers and educators to create awareness of the effects of programmes that minors may watch by:

- setting up appropriate rating systems;*
- encouraging policies to raise awareness and knowledge of the media, which should include the participation of educational establishments and make it possible to produce European programmes suitable for family viewing or aimed at children and adolescents;*
- taking account of experience gained in this field in Europe or elsewhere and of the opinion of interested parties, such as broadcasters, producers, parents, educators, communications experts and associations concerned.*

(3) The Member States' respective legislation shall further stipulate that new television sets shall be equipped with technical devices to enable certain programmes to be filtered out.

Justification

The amendment seeks to define more precisely the measures that need to be taken to protect minors and assess the content of audiovisual media services.

The protection extended by the law to minors, to human dignity, to the rights of children and to the rights of parents and the family should be carried into effect by producing and transmitting a sufficient amount of programmes suitable for children, adolescents and family viewing, and by media awareness programmes.

Amendment 147

ARTICLE 1, POINT 20

Article 23b, paragraph 1 (Directive 89/552/EEC)

1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.

1. Member States shall ***take appropriate measures to establish national regulatory bodies and institutions in accordance with national law, to guarantee their independence, to ensure that women and men are represented equally in them*** and

to ensure that they exercise their powers impartially and transparently.

Amendment 148
ARTICLE 1, POINT 20
Article 23b, paragraph 1 a (new) (Directive 89/552/EEC)

1a. Member States shall entrust to the national regulatory authorities the task of ensuring that audiovisual media service providers comply with the provisions of this Directive, in particular those relating to freedom of expression, media pluralism, human dignity, the principle of non-discrimination and the protection of minors, the vulnerable and the disabled.

Amendment 149
ARTICLE 1, POINT 20
Article 23b, paragraph 2 (Directive 89/552/EEC)

2. National regulatory ***authorities*** shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.

2. National regulatory ***bodies*** shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive. ***National regulatory bodies shall cooperate more closely, particularly in the resolution of problems as referred to in Article 2(7) of this Directive.***

Justification

Compliance with the country of origin principle may be promoted by better cooperation between the national regulatory bodies, particularly as regards bilateral problems.

Amendment 150
ARTICLE 1, POINT 22
Article 26 (Directive 89/552/EEC)

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

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, ***including the reports referred to in Article 3f(3) and Article***

field of audiovisual media services, in particular in the light of recent technological developments **and** the competitiveness of the sector.

3k(2) and in particular with regard to the implementation of the measures set out in Article 3f(i) and in Article 3h(b), 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 the promotion of cultural diversity.**

*** The end of the fifth year after adoption of this Directive.**

d>

Amendment 151
ARTICLE 3, PARAGRAPH 1

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 and a correlation table between those provisions and this 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 and a correlation table between those provisions and this Directive.

*** Two years after the entry into force of this Directive.**

Justification

A deadline for transposition of this Directive has been omitted in the Commission's text. A speedy implementation is desirable in order to ensure a full functioning internal market for audiovisual media services and a level playing field for all media service providers. After two years of its implementation, Member States will need to report to the Commission about their implementing measures for certain provisions of this Directive. Similarly, the Commission will need to report to Council and Parliament about the application of this Directive after three years of its implementation (or five years after its adoption).

EXPLANATORY STATEMENT

Summary of the Commission proposal

The objective of the review of the EU's successful "TV Without Frontiers" Directive is to create the best possible conditions for the development of existing and new audiovisual media services in Europe.

The Commission proposal COM (2005)646 of 13 December 2005 focuses on the fundamental principles of the existing directive – the country of origin principle and the harmonisation of minimum standards – and brings them up to date, in a technology-neutral manner, with the Directive on Audiovisual Media Services. A review of the TV directive is necessary chiefly owing to technological changes:

1. the TV Directive applies only to analogue TV transmission, whereas the comprehensive switchover of TV broadcasting to new digital technology is scheduled to be completed in the EU by 2010.
2. these technological developments, such as rapid broadband Internet and 3G mobile telephony, permit the emergence of new TV-like media services, and hence of a large number of new business models. These new audiovisual services, like TV services, are both cultural and economic goods. They are subject to European rules as regards economic law, while in the cultural sphere they fall within the scope of the media legislation of the Member States.

In order to broaden the current EU legislation to cover new technological developments, the Commission proposal distinguishes between 'linear' services, i.e. broadcasts via traditional television, the Internet or mobile phone networks, which provide the viewer with content running on a fixed programme schedule, and 'non-linear services', i.e. TV-like services called up by the viewer from the network on demand.

For linear services the current rules governing TV are to continue in force, in a more modern and more flexible form. For non-linear services, on the other hand, only minimum basic rules are laid down, e.g. for the protection of minors, against incitement to racial hatred and for the prevention of surreptitious advertising. These common rules mean that in future the providers of audiovisual services too should be subject only to the legislation of the Member State in which they are established, and no longer to the diverse media legislation of all the Member States in which their services can be received.

In this way the Directive on Audiovisual Media Services creates the conditions for the completion of the internal market using the country of origin principle - essential in terms of economic growth and jobs - while at the same time doing justice to cultural aspects.

Your rapporteur's evaluation

In the light of the technological changes in the television sector, the European Parliament has been calling for the review of the TVWF Directive for several years. Your rapporteur therefore welcomes the Commission's proposal, as it represents a good basis for the revision of the directive. However, a number of individual points still require further clarification. These include in particular the scope of the directive, the definition of co-regulation and self-regulation, the quantitative advertising rules, the proposal to allow product placement and the right to broadcast short news reports.

Scope

The definition of the scope of the directive, and thus of the dividing line between audiovisual services in general and audiovisual **media** services in particular, is of crucial importance for the directive. The Commission proposes that audiovisual services must meet six criteria in order to qualify as a media service. They must:

- be 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.

For further clarification your rapporteur proposes adding to this set of criteria that of ‘editorial responsibility’ and a definition of ‘programme’, as the Commission has already done in other places in its proposal for a directive. This addition makes it clear that the directive covers only audiovisual media services in which a professional media service provider is responsible for the editorial design and final compilation of a programme for broadcasting in accordance with a fixed programme schedule or for viewing on demand from a catalogue. Services in which the audiovisual element is not the principal purpose of the service, and services which consist merely in the technical transmission of the content, should by way of clarification be expressly excluded from the scope of the directive.

Co-regulation and self-regulation

It is very gratifying to see the Commission recommending for the first time in this proposal that, in the transposition of this directive, the Member States should in principle make use of co-regulation and self-regulation instruments. The amendments in this report seek to make clear that each national legislature should decide under what conditions co-regulation and/or self-regulation instruments are used at national level, how the interested parties should be appointed to form the relevant bodies and what penalties the legislature imposes in the event of failure by the appointed self-regulation bodies.

Quantitative advertising rules

The Commission's proposals to increase the flexibility of quantitative advertising rules are

correct, but should be extended – and this is also in the user's interest – so as to preserve equality of economic opportunities between free-to-air TV and non-linear TV-like services which are not subject to any quantitative advertising regulations.

Your rapporteur therefore suggests that the advertising block rule (prohibiting isolated advertising spots) should also be allowed as an option, though at the discretion of the Member States.

Emergency blocking in the interest of the protection of minors

As is already the case with TV, the Member States should also have the right to rapidly block broadcasts in TV-like services in the event of an extreme violation of rules on the protection of minors. To this end your rapporteur proposes the tried and tested procedure under Article 3(5) of Directive 2000/31/EC.

Sponsoring – Product placement – Product integration – Production aids

Parliament is highly critical of the Commission's proposal to legalise product placement, as this advertising instrument breaches the separation in principle between advertising and editorial content, risking an increasing loss of editorial independence and of the integrity of editorial content.

Your rapporteur strongly agrees with this critical attitude, and therefore proposes that a distinction be drawn between sponsoring – in which the separation between content and advertising is maintained – and product placement. In the Commission's proposal, both advertising instruments are dealt with together in a single article.

In addition, the various conceivable ways in which – in contrast to sponsoring – a link could be made between advertising and programme content need to be more clearly defined and demarcated. Product integration, in which the content is guided by the advertising, should remain prohibited. Thematic placement, in which not products but topics are incorporated into the programme by way of advertising, should remain prohibited. Product placement should also, your rapporteur suggests, remain prohibited in general, and only permitted in specific cases where – as in cinema and TV films – there is competition with US products in Europe, and in sports programmes.

Product placement, as thus defined, should be subject to more stringent transparency rules than are proposed by the Commission, including detailed information at the beginning and end of the programme, and at least one announcement every 20 minutes during the programme to draw the viewer's attention to the product placement.

One new proposal by your rapporteur is that production aids in the form of goods or services should be allowed. Unlike product placement, these permitted production aids must be provided free of charge and only in accordance with editorial needs.

Right to broadcast short news reports – Right of reply – Dismantling barriers to access

In order to enhance freedom of information for all EU citizens, your rapporteur proposes that:

- the right to broadcast short news reports should not just be allowed as an option but should be guaranteed in all Member States in accordance with national law,
- the right of reply should not be confined to traditional TV but extended to new media services,
- unimpeded access to audiovisual media services should gradually be guaranteed for people with disabilities.

Promotion of European content and independent producers

The new audiovisual media services have great potential in terms of the transmission of European content. Your rapporteur sets out specific ways in which the Member States could promote this trend, which among other things would benefit independent producers, without endangering the new business models.

National regulatory bodies

Improved cooperation between national regulatory bodies should in your rapporteur's view facilitate the resolution particularly of bilateral problems between the Member States with a view to guaranteeing the application of the state of transmission principle and of the minimum standards harmonised by this directive, thereby ensuring the success of the revised directive.

9.10.2006

OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Culture and Education

on the 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
(COM(2005)0646 – 6-0443/2005 – 2005/0260(COD))

Draftsman: Jean-Marie Cavada

SHORT JUSTIFICATION

The Commission proposal, whose prime objective is to 'ensure optimal conditions of competitiveness for Europe's information technologies' makes a distinction between linear services and non-linear services. In the case of the former, it suggests updating and simplification of the current regulations, while for the latter it simply envisages applying some of the rules to which linear services are subject (the 'common rules'), notably in relation to issues surrounding the protection of minors and the prevention of racial hatred and surreptitious advertising.

It is regrettable that the Commission has confined itself to minimal common rules for non-linear services, even as regards the combating of discrimination and the protection of minors, on the grounds of a difficult or impossible technological implementation. In order to protect freedoms, the rights and obligations recognised in this field for linear services should be extended insofar as possible to non-linear services, which are becoming an increasingly important part of the audiovisual landscape by the day.

Furthermore, the Commission seeks in its proposal to encourage Member States to guarantee the independence of the regulatory authorities, which are responsible among other things for ensuring that the Directive is implemented in accordance with the principles it enshrines. That intention is quite laudable. However, it should be flanked with a requirement for Member States that have not already done so to establish such authorities, which play a fundamental role in the protection of freedoms, minors, pluralism of the media and human dignity, and this

for all audiovisual media services.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 2 A (new)

(2a) Media freedom and pluralism is a prerequisite for full respect for the right to freedom of expression and information and the case-law of the European Court of Human Rights recognises that States have a duty to protect media pluralism and, where necessary, take the measures required to guarantee it.

Justification

It is essential to insert a recital on media freedom and pluralism based on the positions adopted by the EP in the past (see justification for Amendment 30, Article 23 c (new)).

Amendment 2
RECITAL 3

(3) The importance of audiovisual media services for societies, democracy and culture justifies the application of specific rules to these services.

(3) The importance of audiovisual media services for societies, democracy, **education** and culture justifies the application of specific rules to these services, **notably in order to preserve the fundamental rights and freedoms laid down in the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the United Nations Covenant on Civil and Political Rights, and in order to ensure the protection of minors and the vulnerable and disabled.**

Amendment 3
RECITAL 5

(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***.

(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 ***to all audiovisual media services*** at least a basic tier of coordinated rules ***aimed at guaranteeing, inter alia, a sufficient level of protection of minors and the vulnerable and disabled and respect for fundamental rights and freedoms***.

Amendment 4
RECITAL 9

(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.

(9) This Directive enhances compliance with fundamental rights and ***seeks to incorporate the principles, rights and freedoms laid down in*** the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. ***In this context, Member States should set up one or more independent regulatory authorities, if they have not already done so. Such authorities should act as the guarantors of fundamental rights in the provision of audiovisual media services. Member States may decide whether it is appropriate to have a single regulatory authority for all audiovisual media services or several separate authorities for each category of service (linear or non-linear). Furthermore,*** this Directive does not in any way prevent Member States from applying their constitutional rules ***or regulatory arrangements*** relating to freedom of the press and freedom of expression in the media.

Amendement 5
RECITAL 10

(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 of the Council.

(10) *The provisions of Articles 3c to 3j of this Directive constitute a harmonised set of rules which are binding on Member States, and which therefore may not, in particular for non-linear services, derogate from the country of origin principle as regards the protection of minors, respect for human dignity, the combating of discrimination and incitement to hatred on grounds of race, sex, religion, sexual orientation, ethnic origin or nationality, protection of the vulnerable and disabled* or protection of consumers as provided in Article 3(4) of Directive 2000/31/EC of the European Parliament and of the Council.

Amendment 6
RECITAL 24

(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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively

(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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively, *with particular reference to the protection of minors and health and that ex ante control of ideas or opinions may not be permitted under any circumstances.*

Justification

The European Court of Justice's judgments on the matter have advised extreme caution in

interpreting any limitation of fundamental principles.

Amendment 7
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union¹ 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-making² 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.

(25) In the Interinstitutional Agreement on 'Better Lawmaking' of 31 December 2003 between the Commission, the Council and the European Parliament, the use of co-regulation is recommended, inter alia, where the European legislative authorities set the basic objectives and leave it to co-regulation, or self-regulation, to establish the resources enabling those objectives to be achieved. Co-regulation means a mechanism whereby a Community legislative act entrusts the attainment of the objectives defined by the legislative authority to players which are recognised in the field, such as economic operators, social partners, non-governmental organisations, or associations. Self-regulation, which consists of the drawing-up, at the sole initiative of economic operators and without State intervention, of codes of conduct, filtering software, labels or other devices, cannot on its own ensure respect for the principles laid down in this Directive, including those dealing with the protection of fundamental rights and freedoms.

¹. COM(2005)0097.

². OJ C 321, 31.12.2003, p. 1.

Justification

While it is important to provide broad scope to co-regulation, as recommended in the interinstitutional agreement, self regulation should not take precedence in the area of the protection of fundamental rights and the rights of minors.

Amendment 8
RECITAL 26

(26) Entertainment rights for events of public interest may be acquired by

(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.

broadcasters on an exclusive basis.
However, it *remains* essential to promote ***free access to information and media*** 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.

Amendment 9
RECITAL 28

(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. 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.***

(28) Non-linear services are ***distinct*** from linear services ***regarding the choice which the user is afforded and*** can exercise ***and*** with regard to the impact they have on society. This justifies imposing ***more flexible*** regulation on non-linear services. ***It is therefore important for Member States to ensure that providers of non-linear services undertake to ensure respect for fundamental rights and freedoms, notably with regard to the protection of minors and the vulnerable and disabled, respect for human dignity and non-discrimination. These principles constitute the Union's values and are set out in the Charter of Fundamental Rights of the European Union and in the European Convention for the Protection of Human Rights and Fundamental Freedoms, which the Member States have undertaken to respect.***

Amendment 10
RECITAL 30

(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

(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 ***objectives*** of the proper functioning of the internal market ***and respect for the rights, values and freedoms on which the European Union is founded.*** Where action at Community level is necessary, and in order

concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity.

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 ***fundamental rights and freedoms and objectives of general interest, in particular the protection of minors, *the vulnerable and disabled*, human dignity, consumers and public health.***

Amendment 11
RECITAL 31

(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.

(31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry, parents ***and non-governmental organisations working to protect minors and the vulnerable and disabled.*** 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 ***and the vulnerable and disabled,*** as well as human dignity in all audiovisual media services and in audiovisual commercial communication.

Amendment 12
RECITAL 32

(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.***

(32) ***The fundamental right to freedom of expression enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention for the Protection of Human Rights and Fundamental Freedoms is not unrestricted as regards respect for human dignity and the protection of minors.*** The aim should ***therefore*** be to ***achieve a balance, including for non-linear services, by guaranteeing, inter alia, the protection of minors,*** but not to ban adult content as such.

Amendement 13
RECITAL 32 A (new)

(32a) Minors and the vulnerable and disabled, including the mentally disabled, may be particularly undermined and psychically or psychologically upset and disturbed by programmes comprising scenes of verbal, physical or moral violence or by scenes that offend against human dignity, or incite racial hatred or any other form of discrimination. Insofar as one of the objectives of this Directive is to protect such persons in general, Member States are strongly encouraged to remind audiovisual media service providers of this overriding need and to require them to clearly indicate the particular nature of such programmes prior to their broadcasting.

Justification

The protection of minors and the vulnerable and disabled must remain one of the main focuses of concern for both European and national law-makers. It must also be the concern of audiovisual media service providers, whose duty it is to forewarn the users of their services of the harmful effect that certain scenes or programmes might have on vulnerable members of the public. There is clear scope for self regulation and co-regulation in this area.

Amendment 14
RECITAL 35

(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

(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. ***In line with this objective, attention should be paid to all audiovisual co-productions and productions from third countries involved in the European Neighbourhood Policy, so as to encourage cultural exchanges and mutual understanding.*** It will be important to

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.

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.

Amendment 15
RECITAL 36

(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.

(36) When implementing the provisions of Article 4 of Directive 89/552/EEC as amended, Member States should make provision for **audiovisual media services** to include an adequate share of co-produced European works or of European works of non-domestic origin.

Justification

In the area of the promotion of European audiovisual productions, the providers of non-linear services should be subject to requirements equivalent to those imposed on the providers of linear services, for equivalent contents.

Amendment 16
RECITAL 38 A (new)

(38a) The right of reply is a particularly appropriate remedy in the on-line environment because it allows for the instant correction of contested information. However, that right should be within a reasonable time subsequent to the request being substantiated, and at an appropriate time and manner in relation to the programme to which the request refers. The reply should, in particular, be awarded the same importance as that given to the

disputed information so that it reaches the same public with the same impact.

Amendment 17

RECITAL 40

(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.

(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, *provided that the user is very clearly informed of it*, 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

Amendment 18

RECITAL 42

(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.

(42) As the increase in the number of new services, *both linear and non-linear*, 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.

Justification

This clarification is needed to avoid the interpretation that only non-linear services are referred to.

Amendment 19
RECITAL 43 A (new)

(43a) Certain categories of programmes, such as those for minors, should be adequately protected by means of appropriate information on the content or effective filtering systems.

Justification

The directive should be able to guard against the use of audiovisual systems by children and young people by giving accurate information about programmes so as to guide parents in their choices, or by suitable filtering systems to allow proper protection of minors even in the absence of parental control.

Amendment 20
RECITAL 45

(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. ***deleted***

Amendment 21
RECITAL 47

(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,

(47) Regulators, ***whose very existence and role are essential in the increasingly complex world of audiovisual media services***, 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 ***respect for freedom of expression and for pluralism. Furthermore, regulators should ensure that human dignity, minors and the vulnerable and disabled are protected, that all forms of discrimination are fought and, more generally, that fundamental rights and freedoms are promoted.*** Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

Amendment 22
RECITAL 47

(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,

(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. ***Their powers over content should be limited to the areas and principles referred to in this Directive: in no circumstances should they exercise any type of control over the veracity of information.*** Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

Justification

Under no circumstances is the protection of fundamental rights a matter for the regulatory authorities: this is the preserve of the judges and the courts. To permit a regulatory authority to decide if a given piece of information is true or false would amount to prior censorship and would be an attack on freedom. Parliament has received numerous complaints from citizens about this.

Amendment 23
RECITAL 47 A (new)

(47a) The right of disabled and elderly persons to participate in social and cultural life in the community deriving from Articles 25 and 26 of the Charter of Fundamental Rights is indivisible from the provision of accessible audiovisual media services. Accessibility of audiovisual media services includes but is not limited to sign language, subtitling, audio description, audio subtitling and easy-to-understand screen menus,

Justification

In line with the Commission's commitment to mainstream disability in all Community policies, it is vital to make an explicit reference to the provisions of the Charter dealing with persons with disabilities and older persons. Moreover, a non-exhaustive list of accessibility features necessary to respect the provisions of the Charter is proposed. Guidelines explaining the term 'accessibility' in the context of audiovisual services should be given in the text of the Directive or, as proposed below, in the Annex to the Directive.

Amendment 24
ARTICLE 1, POINT 2
Article 1, point (c) (Directive 89/552/EEC)

(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;

(c) '**linear services**', **including** 'television broadcasting' or 'television broadcast', mean audiovisual media **services** where a media service provider decides upon the moment in time when a specific programme is transmitted **on the basis of a fixed** programme schedule **that he has established**;

Justification

This amendment seeks to clarify the definition of 'linear services'.

Amendment 25
ARTICLE 1, POINT 2
Article 1, point (e) (Directive 89/552/EEC)

(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;

(e) 'non-linear service' means an audiovisual media service where the user **individually requests the transmission of a specific programme on the basis of a broad range** of content selected by the media service provider;

Amendment 26
ARTICLE 1, POINT 2
Article 1, point (k a) (new) (Directive 89/552/EEC)

(ka) 'media audience and broadcast rating' means an estimate of the audience for a television broadcast.

Amendment 27
ARTICLE 1, POINT 2
Article 1, point (k b) (new) (Directive 89/552/EEC)

(kb) 'broadcast ratings body' means any natural or legal person responsible for organising or conducting surveys for the purposes of media audience and broadcast ratings.

Justification

For the purposes of the directive, it is essential to insert definitions of audience rating and ratings body (see amendment to Article 20a (new), Amendment 25).

Amendment 28

ARTICLE 1, POINT 3, POINT (A A) (new)

Article 2, paragraph 1 a (new) (Directive 89/552/EEC)

(aa) The following paragraph 1 a is inserted in Article 2:

"1a. Member States and the Commission shall, without prejudice to their respective powers, guarantee the pluralism, freedom and independence of audiovisual media services."

Amendment 29

ARTICLE 1, POINT 6

Article 3 b, paragraph 1 (Directive 89/552/EEC)

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.

1. In line with the principle of freedom of access to information, set out in Article 11 of the Charter of Fundamental Rights, Member States shall ensure that, for the purposes of short news reports, broadcasters established in other Member States and intermediaries, where they are acting on behalf of broadcasters, 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.

Justification

An inconsistency should be pointed out between recital 27 and Article 3b, as regards the right of intermediaries, such as press agencies, to benefit from access to the signal. In order to avoid confusion, the Article should specify that intermediaries, where acting on behalf of broadcasters, have rights of access to the signal.

Amendment 30

ARTICLE 1, POINT 6

Article 3b, paragraph 1 a (new) (Directive 89/552/EEC)

1a. Member States may propose that some events which are regarded as being of major importance for society but which are

not included in the list referred to in Article 3 not be broadcast on an exclusive basis by broadcasters under their jurisdiction owing to their major importance or unforeseeability or for reasons of time. Such requests shall be subject to an accelerated verification procedure based on that laid down in Article 3(b), paragraph 3a(2).

Amendment 31
ARTICLE 1, POINT 6
Article 3b, paragraph 2 (Directive 89/552/EEC)

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.

2. Short news reports may be chosen freely ***and transmitted*** by the broadcasters from the transmitting broadcaster's signal ***provided that the source is identified.***

Amendment 32
ARTICLE 1, POINT 6
Article 3 c, point (a a) (new) (Directive 89/552/EEC)

(aa) its corporate form;

Amendment 33
ARTICLE 1, POINT 6
Article 3 c, point (a b) (new) (Directive 89/552/EEC)

(ab) its capital;

Amendment 34
ARTICLE 1, POINT 6
Article 3 c, point (a c) (new) (Directive 89/552/EEC)

(ac) the name of its legal representative;

Amendment 35
ARTICLE 1, POINT 6
Article 3 c, point (a d) (new) (Directive 89/552/EEC)

(ad) the name of the editor responsible for content if other than the legal representative;

Amendment 36
ARTICLE 1, POINT 6
Article 3 c, paragraph 1a (new) (Directive 89/552/EEC)

In order to render the information in paragraph 1 more accessible, Member States shall create national public registries of audiovisual media services in which all providers of such services whose place of establishment is within the territory of a Member State shall register and provide the information referred to in the first paragraph.

Amendment 37
ARTICLE 1, POINT 6
Article 3d (Directive 89/552/EEC)

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.

Audiovisual programmes or services which may seriously impair the physical, mental or moral development of minors shall be prohibited.

Amendment 38
ARTICLE 1, POINT 6
Article 3 d (Directive 89/552/EEC)

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.

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 dignity of and respect for the individual, or* the physical, mental or moral development of minors, *the vulnerable or the disabled.*

Amendment 39
ARTICLE 1, POINT 6
Article 3 d, paragraph 1 a (new) (Directive 89/552/EEC)

Member States shall ensure that audiovisual media service providers under

their jurisdiction provide filtering systems for content that is damaging to the physical, mental or moral development of minors and inform users of their existence.

Amendment 40

ARTICLE 1, POINT 6

Article 3 d, paragraph 1 b (new) (Directive 89/552/EEC)

The Commission and Member States shall encourage audiovisual media service providers, the regulatory authorities and all the parties concerned, to consider the technical and legal feasibility of developing a harmonised system of content symbols promoting better filtering and classification at source, regardless of the platform used, with a view to enabling greater protection of minors.

Amendment 41

ARTICLE 1, POINT 6

Article 3d, paragraph 1 c (new) (Directive 89/552/EEC)

Member States shall adopt appropriate measures to ensure that the prohibition laid down in the first paragraph is enforced.

Amendment 42

ARTICLE 1, POINT 6

Article 3d, paragraph 1 d (new) (Directive 89/552/EEC)

Member States shall ensure that audiovisual media service providers under their jurisdiction do not in any circumstances broadcast any child pornography under penalty of administrative and penal sanctions.

Justification

Against the background of what is occurring in many Member States with the disappearance and murder of children, offences relating to paedophilia, the distribution of pornographic material, Internet sites that encourage the exploitation of children and a growth in violence against women, it is increasingly urgent to intervene clearly and decisively against a social evil that particularly affects innocent and vulnerable age groups.

Amendment 43
ARTICLE 1, POINT 6
Article 3d, paragraph 1 e (new) (Directive 89/552/EEC)

Member States shall ask audiovisual media service providers under their jurisdiction to promote information campaigns to prevent violence against women and minors, where possible in collaboration with public and private associations and entities involved in this field.

Justification

Against the background of what is occurring in many Member States with the disappearance and murder of children, offences relating to paedophilia, the distribution of pornographic material, Internet sites that encourage the exploitation of children and a growth in violence against women, it is increasingly urgent to intervene clearly and decisively against a social evil that particularly affects innocent and vulnerable age groups.

Amendment 44
ARTICLE 1, POINT 6
Article 3 e (Directive 89/552/EEC)

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.

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

Amendment 45
ARTICLE 1, POINT 6
Article 3 f, paragraph 1 (Directive 89/552/EEC)

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.

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. ***In the case of non-linear services,***

this promotion may, inter alia, take the following forms: minimum investment in European productions as a proportion of turnover, minimum proportion of European productions in 'on demand' video listings and attractive presentation of European productions in electronic programme guides.

Justification

The proposed addition lists the main types of measures that Member States might take to achieve the first-phase objective. It therefore promotes implementation of the objective, while maintaining the flexibility needed in that implementation ('where practicable and by appropriate means'); non-exhaustive and non binding list of measures.

Amendment 46

ARTICLE 1, POINT 6

Article 3 f, paragraph 4 (Directive 89/552/EEC)

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.

4. The Commission shall, on the basis of the information provided by Member States *and an independent study*, report *every two years* to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments *and the objective of cultural diversity*.

Amendment 47

ARTICLE 1, POINT 6

Article 3 f, paragraph 4 a (new) (Directive 89/552/EEC)

4a. By the end of the fifth year after adoption of this Directive, the Council shall review the implementation of this Article on the basis of a report by the Commission which shall, if appropriate, include proposals for adjustments to take into account the market and technological development and the objective of cultural diversity and an independent study on the impact of the measures taken pursuant to paragraph 1.

Justification

It is essential to ensure the effective implementation of this Article, and to that end to put in place a mechanism for the review of the Article based on the arrangements currently in force for television broadcasting services, as defined in Articles 4(4) and 25a of the Television with Frontiers Directive.

Amendment 48

ARTICLE 1, POINT 6

Article 3g, introductory part and points (a) to (c) (Directive 89/552/EEC)

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.

Member States shall ensure that audiovisual commercial communications provided by providers under their jurisdiction comply with ***the principles laid down in the Charter of Fundamental Rights and in particular*** the following requirements:

(a) audiovisual commercial communications must ***not***

(i) include any discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or nationality;
(ia) undermine of the dignity of and respect for the individual;
(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.

(b) audiovisual commercial communications must ***be clearly identifiable as such.***

Surreptitious audiovisual commercial communication shall be prohibited;

(c) audiovisual commercial communications must not ***use subliminal techniques:***

Amendment 49
ARTICLE 1, POINT 6
Article 3 g, point (f) (Directive 89/552/EEC)

(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.

(f) audiovisual commercial communications must not cause moral or physical detriment to minors *or seek to exploit their susceptibility or that of the vulnerable or disabled*. 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, *unless this can be justified on educational or training grounds*.

Amendment 50
ARTICLE 1, POINT 6
Article 3 h, paragraph 2 (Directive 89/552/EEC)

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.

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, *they* 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.

Amendment 51
ARTICLE 1, POINT 6
Article 3 h, paragraph 4 (Directive 89/552/EEC)

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.

4. News and current affairs shall not be sponsored and not contain product placement. Audiovisual media services *and programmes* for children and documentaries may not contain product placement.

Amendment 52
ARTICLE 1, POINT 6
Article 3h a (new) (Directive 89/552/EEC)

Article 3 ha

1. Member States shall take all appropriate measures, however general or specific, to gradually ensure that audiovisual media services under their jurisdiction become fully accessible for people with disabilities.

2. From (day) (month) (year), the Member States shall provide the Commission every two years with national reports on the implementation of this Article.

That report shall in particular include a statistical statement on the progress made with the view to achieving accessibility within the meaning of paragraph 1, the reasons for any failure to achieve progress and the measures adopted or envisaged in order to achieve it.

The Commission shall ensure the application of this Article in accordance with the provisions of the Treaty.

Justification

The new article adds an obligation for Member States to take all appropriate measures to ensure accessibility of digital TV for disabled people and to report on the steps taken to ensure accessibility.

The reporters should at least include: TV accessibility statistical data, targets; progress report, how disabled users have been consulted.

An Annex to the Directive, explaining 'accessibility' and measures that may need to be taken to achieve it should be added with "Digital TV Equipment: Vulnerable Consumer Requirements" published by the UK in March 2006 used as a reference.

Amendment 53
ARTICLE 1, POINT 6
Article 3 h b (new) (Directive 89/552/EEC)

Article 3 hb

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, but not limited to, reputation and good name, have been affected by an assertion of facts in a transmission shall 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 given within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the transmission 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 may 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 when it is not justified having regard to the conditions set out in paragraph 1, if it involves a punishable act, if its broadcasting involves the civil liability of the audiovisual media service provider or if it contravenes standards of public decency.

5. Member States shall ensure that disputes concerning the exercise of the

right of reply or the equivalent remedies may be subject to judicial review.

6. The right of reply shall be without prejudice to other means of recourse available to persons whose rights to dignity, honour, sound reputation or a private life have not been respected by the media.

Justification

The right of reply must apply to all audiovisual media services and not just to linear services.

Amendment 54

ARTICLE 1, POINT 9

Article 10, paragraph 2 (Directive 89/552/EEC)

2. Isolated advertising and teleshopping spots, *other than in sports programmes*, shall remain the exception.”

2. Isolated advertising and teleshopping spots shall remain the exception.”

Amendment 55

ARTICLE 1, POINT 10

Article 11, paragraph 1 a (new) (Directive 89/552/EEC)

(1a) In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements shall only be inserted between the parts or in the intervals.

Amendment 56

ARTICLE 1, POINT 10

Article 11, paragraph 2, subparagraph 1 (Directive 89/552/EEC)

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.

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 **45** minutes. *Their transmission may be subject to a further interruption if their programmed duration is at least 20 minutes longer than two or*

more complete periods of 45 minutes. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their duration is more than 45 minutes, may be interrupted once for each complete period of 45 minutes. Their transmission may be subject to a further interruption if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes.

Amendment 57

ARTICLE 1, POINT 17

Article 20 a (new) (Directive 89/552/EEC)

Article 20a

1. In order to safeguard the principles of pluralism, competition and business freedom in advertising revenue, the activity of drawing up viewing shall should meet with the following criteria:

(a) the bodies carrying out surveys on the viewing and broadcasting figures of the various media must be independent of all the entities surveyed;

(b) the representative nature of the management bodies (technical-scientific committees and/or monitoring committees): they must include representatives of all the entities involved and surveyed (operators, market and consumers) and not be confined to the broadcasting platforms;

c) transparency of the technical committees, to which real powers must be assigned as regards the survey, without any interference - either technical or managerial - from the board of directors.

Justification

In view of the importance of compiling viewing figures for the purposes of advertising revenue, there should be uniformity throughout the Union in accordance with the principles

of freedom of expression, independence, transparency and representativeness.

Amendment 58
ARTICLE 1, POINT 18 A (new)
Article 23 (Directive 89/552/EEC)

(18a) Article 23 is deleted

Justification

The right of reply must apply to all audiovisual media services and not just to linear services.

Amendment 59
ARTICLE 1, POINT 19, POINT -A (new)
Article 23a, paragraph 1 (Directive 89/552/EEC)

(19a) Article 23a(1) is replaced by the following:

"1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent national regulatory authorities referred to in Article 23b. 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".

Amendment 60
ARTICLE 1, POINT 20
Article 23 b, paragraph 1 (Directive 89/552/EEC)

1. Member States ***shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.***

1. Member States ***shall ensure that regulatory authorities are created and shall guarantee their independence from political, economic and financial circles, their impartiality, and transparency in their operating methods and decision-making processes.***

Amendment 61
ARTICLE 1, POINT 20
Article 23 b, paragraph 1 a (new) (Directive 89/552/EEC)

Member States shall entrust the regulatory authorities with the task of ensuring that

audiovisual media service providers conform to the provisions of this Directive, and in particular those relating to freedom of expression, pluralism of the media, human dignity, the principle of non discrimination and the protection of minors, the vulnerable and the disabled.

Amendment 62

ARTICLE 1, POINT 20

Article 23 b, paragraph 2 (Directive 89/552/EEC)

2. **National** regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.

2. **The** regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive, **and in the event of serious infringement thereof, shall jointly decide what measures should be taken.**

Amendment 63

ARTICLE 1, POINT 20

Article 23c (new) (Directive 89/552/EEC)

Article 23c

1. The Member States shall adopt the measures needed to ensure pluralism of information in the television broadcasting system. The Member States shall in particular ban the creation and retention of dominant positions on the television market and related markets.

2. The Member States shall endeavour to guarantee respect for the neutrality of the information provided by the public authorities and shall lay down appropriate measures to prevent possible abuses of government positions from influencing the information conveyed via the media.

Justification

Consistent with positions already adopted by the EP (e.g. the resolution adopted on 6 September 2005 on 'Television without frontiers' and the European Parliament's resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI)) aimed at obliging the Member States to comply with general principles on the safeguarding of

pluralism and to ban those holding government office from controlling broadcasting companies.

The existing disparities between national legislations on the subject obviously make the exercise of freedom of establishment and freedom to provide services on Community territory more difficult.

Amendment 64

ARTICLE 1, POINT 22

Article 26, paragraph 1a (new) (Directive 89/552/EEC)

In drawing up these reports, the Commission shall consult not only the national regulatory authorities but also a European platform of consumer associations representing the various categories of users.

Justification

Consumer organisations should play an important role in the drawing up of such reports.

PROCEDURE

Title	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		
References	COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)		
Committee responsible	CULT		
Opinion by Date announced in plenary	LIBE 2.2.2006		
Enhanced cooperation – date announced in plenary			
Drafts(wo)man Date appointed	Jean-Marie Cavada 22.2.2006		
Previous drafts(wo)man			
Discussed in committee	4.5.2006	19.6.2006	12.7.2006
Date adopted	4.10.2006		
Result of final vote	+: 36 -: 1 0: 3		
Members present for the final vote	Alexander Alvaro, Edit Bauer, Johannes Blokland, Mihael Brejc, Michael Cashman, Jean-Marie Cavada, Carlos Coelho, Fausto Correia, Elly de Groen-Kouwenhoven, Panayiotis Demetriou, Agustín Díaz de Mera García Consuegra, Kinga Gál, Patrick Gaubert, Lilli Gruber, Adeline Hazan, Lívia Járóka, Barbara Kudrycka, Stavros Lambrinidis, Romano Maria La Russa, Henrik Lax, Antonio Masip Hidalgo, Edith Mastenbroek, Jaime Mayor Oreja, Martine Roure, Inger Segelström, Ioannis Varvitsiotis, Donato Tommaso Veraldi, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka		
Substitute(s) present for the final vote	Genowefa Grabowska, Ignasi Guardans Cambó, Luis Herrero-Tejedor, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Katalin Lévai, Javier Moreno Sánchez, Antonio Tajani, Kyriacos Triantaphyllides, Rainer Wieland		
Substitute(s) under Rule 178(2) present for the final vote	Luigi Cocilovo, Alessandro Foglietta, Roberto Musacchio		
Comments (available in one language only)			

12.10.2006

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Culture and Education

on the 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
(COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Draftsman: Karsten Friedrich Hoppenstedt

SHORT JUSTIFICATION

1. In creating the legal framework for audiovisual media, basic conditions must be laid down for the successful development of cross-border media services, so that Europe's competitiveness in this area is strengthened. At the same time, account must be taken of the special nature of the audiovisual sector and it must be ensured that important basic principles such as youth and consumer protection are observed.
2. With the progress of technological market development in the audiovisual domain, particularly that of the digital convergence of communications networks and the accompanying broadcasting of media content via new technological platforms such as cellular radio and internet, distribution possibilities have been created that have an opinion-forming potential as great as that of television.
Given these developments, the Commission proposal's approach, which is geared to the content-related and functional comparability of the services, thus creating a level playing field and legal certainty, is to be welcomed.
This technology-neutral approach is necessary in order to include future developments, which make their appearance with ever-increasing frequency.
3. Nevertheless, the very extensive scope of the proposal must be delineated. Areas which cannot be covered by the directive, given its regulatory aims, must be excluded. This applies above all to private content and on-line games and gambling.
4. In addition, there must be a clear demarcation between the e-commerce directive (2000/31/EC) and this one, the primacy of which must be made clear. This gives legal certainty, which is necessary in particular for investment in the new media services.
5. The existing differentiated regulatory treatment of television and on-demand services is justified by the difference in the viewer's control possibilities. However, indicative examples should be given in order to give some guidance and to obviate any lack of

- clarity in distinguishing between them.
6. A strong country-of-origin principle lies at the heart of the Directive and, in the interests of an efficiently functioning single market, should not be watered down. The codification of Court of Justice case-law to rectify any abuses should be seen as sufficient in this context.
 7. The right to short reporting must go beyond the non-discriminatory model contained in the Commission proposal, and should apply equally as a Community-wide right to all European Union Member States in order to guarantee a cross-border flow of information.
 8. The Commission, rightly, does not propose any direct extension of the set quotas to include non-linear services. It should, in addition, be made clear that the Member States have a wide margin of manoeuvre as far as promoting production and access to European works is concerned.
 9. The deregulation of quantitative advertising rules contained in the Commission proposal is to be welcomed.

Because of new technical developments that make it possible to cut out advertising spots, such as the time shift function of hard-disk recorders, further dismantling of advertising restrictions is called for in the interests of the economic situation of the European media sector.

By strengthening the media industry, a wide variety of freely accessible offers can be maintained, so the currently noticeable focus on remunerated offers can be counteracted. This will further the diversity of the European media landscape, and content providers will be given greater freedom to exercise their creativity.

Finally, given the many options and control possibilities, more can be left to the individual responsibility of viewers.

Against this background, the removal of the obligation to advertise in blocks and the reduction of the insertion periods for TV films, cinematographic films, children's programmes and news programmes from 35 to 30 minutes is to be welcomed.
 10. By eliminating the current grey area relative to product placement, a concrete regulatory framework will contribute to legal certainty and clarity. A useful approach to regulating product placement is a positive catalogue which allows of its use for formats where the opinion-formation function is not of overriding importance, and for cases where the payment given in return for product placement is small or non-existent, so that there is no danger of influence on editorial content.

It is also important to exclude particularly sensitive programmes, such as children's programmes, from product placement completely.

Fears with regard to detrimental effects on transparency and consumer protection can be met by appropriate labelling measures.
 11. Greater use should be made of co- and self-regulation mechanisms, and, in particular, the self-regulatory instrument must be included expressly in Article 3, paragraph 3, of the Directive. Nonetheless, ultimate accountability must belong with the State. The Member States should retain a certain measure of flexibility as far as practical arrangements are concerned, so that existing systems that work well do not go to waste.

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 RECITAL 1 A (new)

(1a) The revision of Directive 89/552/EEC should aim primarily at accommodating change and enhancing the competitiveness of the audiovisual media service industry in the global marketplace. A more liberal and straightforward regulatory framework will encourage economic growth, job creation and innovation in accordance with the Lisbon Strategy.

Amendment 2 RECITAL 3

(3) The importance of audiovisual media services for societies, democracy and culture justifies the application of specific rules to these services.

(3) The importance of audiovisual media services for societies, democracy and culture justifies the application of *limited* specific rules to these services ***but only where these are absolutely essential.***

Justification

In order to be competitive, audiovisual media services should not be overburdened with regulation.

Amendment 3 RECITAL 4

¹ Not yet published in OJ.

(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.

(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. ***Directive 89/552/EEC should not impede the development of new services by restrictive legal provisions.***

Justification

The revised directive should encourage rather than hamper the development of new audiovisual services.

Amendment 4
RECITAL 6 A (new)

(6a) The promotion of the competitiveness of European industry, of which the audiovisual sector forms an important part, is crucial to the attainment of the policy goals of the Lisbon Strategy. In order to strengthen the competitiveness of the audiovisual industrial sector, adequate means of financing should therefore be promoted within an appropriate regulatory framework. It is essential that the audiovisual sector be dynamic and profitable and, to this end, the aim should be to regulate the sector as unintrusively as possible.

Justification

In order to be competitive, audiovisual media services should not be overburdened with regulation.

Amendment 5
RECITAL 13

(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

(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.

purely private websites *or other content generated by the user that is not usually offered for sale. The economic element must be significant to justify the application of this Directive. Whether or not an activity has the requisite economic significance is to be judged on the basis of the legislation of the Member State in which the media service provider is established.*

Justification

It must be made quite clear that this directive applies only to economic activities and does not cover private content or semi-private offers.

The economic element should be of some significance, in order, for example, to exclude websites or blogs that only contain information on the software used. Assessment criteria can be derived from the relevant national law, for example tax or company law.

Amendment 6
RECITAL 14

(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.

(14) The definition of audiovisual media services covers mass media ***that contribute to forming public opinion*** 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. ***Also excluded are games of chance with a stake representing a sum of money – including lotteries, betting and online games based on interactive software - provided their main purpose is not to distribute audiovisual content.***

Justification

It must be made clear that games of chance and online games based on interactive software do not fall within the scope of the directive. The distribution of audiovisual content is

generally merely incidental, so that these areas are not covered by the regulatory purpose of the act.

Furthermore, the gambling sector is a highly sensitive market which requires different legislation for reasons of consumer protection and public safety and order.

Amendment 7
RECITAL 17

(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.

(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. ***Editorial responsibility includes responsibility for choosing and arranging the audiovisual content – whether in regard to individual programme components or to programme schedules – in a professional manner. In the case of television, editorial responsibility applies to drawing up the programme schedule and in the case of on-demand services, to compiling the proposed content.*** This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

Justification

By defining editorial responsibility it is made clear that simple hosting providers which merely provide the platform for content are not concerned. This criterion also serves to exclude content offered by private individuals on an occasional basis.

Amendment 8
RECITAL 18

(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.

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises images with or without sound which ***form part of or*** accompany ***programmes*** 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.

Justification

It needs to be made clear that, with the authorisation of product placing, audiovisual commercial communication can also be integrated into programmes. In addition, it is hard to see why images covered by the concept of audiovisual commercial communication should be moving images. With greater use of new advertising techniques such as split screen display, one could easily imagine a still picture being inserted.

Amendment 9
RECITAL 19 A (new)

(19a) To promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the European Union, it remains essential that only one Member State should have jurisdiction over any audiovisual media service provider. The criteria of establishment used to determine such jurisdiction should therefore remain as provided in Directive 97/36/EC.

Justification

To strengthen the country of origin principle and specifically to reinforce the current definitions of establishment and jurisdiction which have worked effectively in facilitating trans-frontier European broadcasting to date.

Amendment 10
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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 provides agreed definitions, criteria and procedures.*** Experience showed that co- and self-regulation instruments implemented in

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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. 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. ***Thus, self-***

accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.

regulation provides a complementary means by which to attain certain objectives of this Directive but cannot completely substitute the obligation of the legislative authorities. Co-regulation provides for the necessary legal link between self-regulation and national legislation and allows for the transposition of directives in line with different legal traditions.

Justification

The definitions of self- and co-regulation in the Inter-institutional Agreement on Better Lawmaking do not recognise many effective existing self-regulatory systems, such as those long established in many Member States for advertising self-regulation. If Member States entrust tasks in achieving the Directive's objectives to self-regulatory bodies, the entrustment mechanism must be sufficiently clear so as to ensure that regulatory measures may be used in the event of the failure of the self-regulatory measures to achieve the Directive's objectives.

Amendment 11 RECITAL 25 a (new)

(25a) Greater use should be made of co- and self-regulation to achieve the aims of this Directives. Experience has shown that these alternative regulatory mechanisms are effective in many cases in different relevant Member States and that they can therefore play an important role, particularly in the area of consumer protection. Co-regulation should be understood as meaning cooperation between State agencies and self-regulation bodies. In the context of such cooperation, the objectives laid down by the legislator are delegated by legislation to recognised players in the sector concerned. This legal link ensures that the national legislator continues to be accountable and may intervene in a regulatory capacity in the event of a failure of self-regulation.

Justification

Increased use of co- and self-regulation is to be welcomed. Nonetheless, ultimate accountability must belong with the State, so that the latter retains a right to intervene should the alternative regulatory procedure fail. At the same time, the Member States should retain a certain measure of flexibility as far as practical arrangements are concerned, so that existing systems that work well do not go to waste.

Amendment 12
RECITAL 27

(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.

(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, ***the Member States must ensure that*** those exercising exclusive rights concerning an event of *major* public interest should grant other broadcasters and ***authorised and recognised news agencies***, where they are acting *directly* on behalf of ***authorised*** broadcasters, the right to use short extracts for the purpose of *use in* a general news *program* on fair, reasonable and non-discriminatory terms taking due account of ***other licensed*** 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 ***and should have a duration only sufficient for purpose and in line with the nature of the event;***
- ***should, in the case of organised events, be broadcast only after the original broadcaster has had the chance to distribute his broadcast, or 60 minutes after the occurrence, whichever the sooner;***
- ***should not be broadcast later than 36 hours after the end of the event without specific authorisation by the rights holder;***
- ***should be broadcast showing clearly the name of the original broadcaster and/or the rights holder for the whole duration of the broadcast;***
- ***should be compensated for appropriately by the television broadcaster in favour of the rights holder;***

The obligations of this article do not override any provision of the copyright law of Member States, including for example the Directive 2001/29/EC, the Berne Convention and the Rome Convention.
Short news reports may *either* be chosen freely by the broadcasters from the

transmitting broadcaster's signal with at least the identification of their source, **or broadcasters may, in accordance with the law of the Member State concerned and for the purpose of transmission, themselves obtain access to the event.**

Amendment 13
RECITAL 28

(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. 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.

(28) Non-linear services are different from linear services with regard to **the** choice and control **which** the user can exercise and with regard to the impact they have on society. 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. **Television broadcasts - i.e. linear services - currently include in particular analogue and digital television, live streaming, webcasting and near video on demand, whereas video on demand, for example, is an on-demand (non-linear) services.**

Justification

Linguistic changes.

Amendment 14
RECITAL 35

(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**

(35) Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, they **may** 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.

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.

Amendment 15
RECITAL 36

(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. *deleted*

Amendment 16
RECITAL 40

(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.

(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 *for certain cases determined on the basis of a positive list*, 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.

Justification

It needs to be made clear that product placement is not allowed generally, but only under certain circumstances in cases set out in the positive list.

Amendment 17
RECITAL 41

(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 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.

(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 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. ***In addition, the provisions of this Directive should have priority over those of Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the internal market.***

Justification

A clear legal line must be drawn between this directive and Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market. This gives legal certainty, which is particularly important for investors in the new media industry.

Amendment 18
RECITAL 42

(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.

(42) As the increase in the number of new **linear and non-linear** 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.

Justification

In the digital age there is and will increasingly be greater choice also in linear services.

Amendment 19
RECITAL 43

(43) The Directive is intended to safeguard the specific character of the European television landscape **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.**

(43) The Directive is intended to safeguard the specific character of the European television landscape. **Advertising and teleshopping spots may be inserted during programmes only in such a way that the integrity and value of the programme, taking into account natural breaks and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.**

Justification

Audiovisual media service providers that invest in expensive original content such as films made for television (TV-movies) or cinematographic films must be enabled to refinance this kind of premium content. As this premium content is costly and very important for the company's brand, advertising will be inserted in a very sensitive and responsible manner so that Premium content will not be devaluated by too much or misplaced advertising. Restrictions in the possibilities to insert advertising in films will restrict the funding of this content. As a result there audiovisual media providers might not continue to invest in films in the future. A general rule on the protection of the integrity of the film and on the programme flow as well as on the protection of copy rights will further the objective to invest in films also in the future.

Amendment 20

RECITAL 46

(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.

(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. *A useful approach would be a catalogue of situations in which product placement is permitted for formats whose opinion-forming function is not of overriding importance, and for cases where the payment given in return for product placement is small or non-existent, so that there is no risk that editorial content will be influenced.* The definition of product placement 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. *This may consist in making available services for which payment (financial, personal or in kind) would otherwise have to be made. Product placement is subject to the same qualitative rules and restrictions applying to advertising. It must, in addition, meet certain requirements. For example, the editorial responsibility and independence of the media service provider must not be compromised. In particular, the incorporation of the product in the programme's storyline must not create the impression that the product is supported by the programme or its makers. The product, furthermore, must not be given undue prominence. Prominence is not permissible if it is not justified by the editorial requirements of the programme, particularly the requirement of true-to-life representation. The repeated appearance of the brands, goods or services in question, or the way in which they are presented can*

be grounds for prohibition. The content of the programmes into which they are inserted must also be borne in mind in this connection. The requirements of consumer protection and transparency are met by a comprehensive duty to label. The label incorporated into the programme must not be identical to the product logo, in order to avoid any additional advertising effects. For this reason a neutral logo should be chosen.

Justification

A useful approach to regulating product placement is a positive catalogue which allows of its use in cases where the opinion-formation function is not of overriding importance, or where the danger of influence on the editorial content is slight.

The characteristic of undue prominence will be based on the arguments in the Commission interpretative communication on certain aspects of the provisions on televised advertising in the "Television without frontiers" Directive (2004C 102/02).

Amendment 21

RECITAL 47

(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,

(47) Regulators ***and the members of regulatory bodies*** 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. ***As regards the practical organisation of the regulatory authorities and bodies, special national features based on media law may be retained, provided that they do not compromise the impartiality and transparency of those authorities and bodies.***

Justification

This addition is intended to ensure that special features of the organisation of the regulatory authorities and bodies in the Member States can be retained.

Amendment 22

ARTICLE 1, POINT 2

Article 1, point (a) (Directive 89/552/EEC)

(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.

(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 ***programmes that consist of*** moving images with or without sound, in order to inform, entertain or educate the general public, ***that are subject to the editorial responsibility of a media service provider, and that are distributed*** by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council ***and/or audiovisual commercial communication.***
This definition does not cover:
- services where audiovisual content is merely incidental to the service and not its principal purpose;
- electronic versions of newspapers and magazines; and
- non-economic activities such as blogs and private websites.

Amendment 23

ARTICLE 1, POINT 2

Article 1, point (a a) (new) (Directive 89/552/EEC)

(aa) ‘programme’ means a combination of moving images with or without sound, which constitutes an individual component of a programme schedule or content offer compiled by a media service provider, and the main purpose of which is to inform, entertain or educate viewers.

Justification

The Amendment supports the approach by the Rapporteur but adds a further definition of “programme” (“information, entertainment or education of viewers” as “the main purpose”). It is important to avoid confusion between programmes in the “traditional” sense, and substantial items of content (e.g. 30 minutes in length) which are produced by companies with a view to promoting their products and services. Such items of content – which may form a significant element of some non-linear services and which viewers may choose to watch on demand because of their own merits – should be regulated as “audiovisual

commercial communications”.

Amendment 24

ARTICLE 1, POINT 2

Article 1, point (c) (Directive 89/552/EEC)

(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.

(c) ‘television broadcast’ or ‘*linear service*’ *means the initial transmission by any technical means, in encoded or unencoded form and in a chronological sequence of different programmes for simultaneous viewing of programmes on the basis of the* programme schedule.

Amendment 25

ARTICLE 1, POINT 2

Article 1, point (e) (Directive 89/552/EEC)

(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.

(e) ‘*on-demand television service*’ (i.e. a *non-linear audiovisual media service*) *means an audiovisual media service provided by a media service provider for viewing of programmes at the moment chosen by the user* on the basis of a choice of content selected by the media service provider, *the economic element of which is significant.*

Amendment 26

ARTICLE 1, POINT 2

Article 1, point (f) (Directive 89/552/EEC)

(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;

(f) ‘audiovisual commercial communication’ means images with or without sound which *are transmitted as part of* 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;

Amendment 27

ARTICLE 1, POINT 2

Article 1, point (h) (Directive 89/552/EEC)

(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;

(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 **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;

Justification

Because of the negative effects of surreptitious advertising on consumers, this prohibition should extend to all providers of audiovisual services.

Extending the prohibition of surreptitious advertising to non-linear services is also in line with the surreptitious advertising prohibition laid down in 3g(a) for all audiovisual commercial communication.

Amendment 28

ARTICLE 1, POINT 2

Article 1, point (i) (Directive 89/552/EEC)

(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;

(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;

Justification

The addition gives greater precision.

Amendment 29

ARTICLE 1, POINT 2

Article 1, point (k) (Directive 89/552/EEC)

(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

(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.

so that it is featured within audiovisual media services, in return for payment or for similar consideration. ***The legal definition of product placement shall not cover prizes awarded in programmes and branded merchandising products in programmes.***

Justification

Audiovisual media service providers need legal certainty. Product placement shall only be qualified as such if there has been an actual payment. Applying the term “normally” would lead to a legal assumption of such a payment – even if there was not any - and have as a consequence that the specific regime for product placement including identification etc. would have to be followed. It is essential that the new rules on product placement do not accidentally outlaw already existing and legitimately practised formats in programming featuring games and offering prizes to winners which motivates viewers to participate in and enjoy the programming.

Amendment 30

ARTICLE 1, POINT 4, POINT (A)

Article 2a, paragraph 1 (Directive 89/552/EEC)

"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."

"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. ***The country of origin principle is the backbone of a successful European broadcasting industry as a natural part of the internal market. Moreover, the principle encourages freedom of information. The principle of country of origin is crucial for the emergence of a pan-European audiovisual market with a strong industry producing European content. Furthermore it safeguards the viewer's rights to take part in the variety of European programs.***"

Amendment 31

ARTICLE 1, POINT 4, POINT (B)

Article 2a, paragraph 2 (Directive 89/552/EEC)

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

(b) ***Paragraph 2 is replaced by the following:***

(2) 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 Article 22a or a non-linear media service coming from another Member State manifestly, seriously and gravely infringes Article 3e or 3d;

(b) during the previous 12 months, the media service provider has infringed the provision(s) referred to in (a) on at least two prior occasions;

(c) the Member State concerned has notified the media service provider 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 Member State providing the audiovisual media service and the Commission have not produced an amicable settlement within 15 days of the notification provided for in letter (c), and the alleged infringement persists.

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

Justification

Der Jugendschutz und der Schutz der Menschenwürde sind elementare Werte der europäischen audiovisuellen Politik und ein Kernanliegen der vorliegenden Richtlinie. Die diesen Werten dienenden Ziele müssen ausnahmsweise und unter bestimmten engen Voraussetzungen auch zur Einschränkung des Grundsatzes des freien Empfangs führen können. Nicht-lineare Dienste, deren freier Empfang bisher entsprechend den Regeln der e-Commerce Richtlinie eingeschränkt werden konnte, unterfallen in Zukunft der Richtlinie über audiovisuelle Mediendienste. Aus diesem Grund müssen Regelungen festgeschrieben werden, unter welchen Umständen der freie Empfang eingeschränkt werden darf. Es empfiehlt sich, diese Regelungen analog zu den Regelungen für lineare Dienste auszugestalten, denn nicht-lineare Dienste nähern sich in ihrem Charakter den linearen Diensten mehr und mehr an.

Amendment 32

ARTICLE 1, POINT 4, POINT (B A) (new)
Article 2a, paragraph 3 (Directive 89/552/EEC)

c) Paragraph 3 is replaced by the following:

(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 media service provider concerned.

Justification

See justification to amendment 117.

Amendment 33

ARTICLE 1, POINT 5

Article 3, paragraph 3 (Directive 89/552/EEC)

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.”

3. To implement and enforce the provisions of this Directive, Member States shall encourage co and self-regulatory systems. Such systems shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement.

Justification

It should continue to be possible to implement the Directive on the basis of self-regulatory and self-supervisory systems. It should therefore be clarified that self-regulation is also included provided that the State takes final responsibility and that it is possible for the State to intervene accordingly.

Amendment 34

ARTICLE 1, POINT 6

Article 3b, paragraph 1 (Directive 89/552/EEC)

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.

1. Each Member State 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.

As a general rule, such short extracts:
- should not exceed 90 seconds and should have a duration only sufficient for purpose and in line with the nature of the event;

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.

- should, in the case of organised events, be broadcast only after the original broadcaster has had the chance to distribute his broadcast, or 60 minutes after the occurrence, whichever the sooner;
- should not be broadcast later than 36 hours after the end of the event without specific authorisation by the rights holder;
- should be broadcast showing clearly the name of the original broadcaster and/or the rights holder for the whole duration of the broadcast;
- should be compensated for appropriately by the television broadcaster in favour of the rights holder.

2. Short news reports may *either* be chosen freely by the broadcasters from the transmitting broadcaster's signal with at least the identification of their source, *or broadcasters may, in accordance with the law of the Member State concerned and for the purpose of transmission, themselves obtain access to the event.*

Amendment 35
ARTICLE 1, POINT 6
Article 3c, point (d) (Directive 89/552/EEC)

(d) where applicable, the competent regulatory *authority*.

(d) where applicable, the competent regulatory *institution*.

Justification

This wording ensures that all the various organisational forms of regulatory institutions existing in the Member States are covered.

Amendment 36
ARTICLE 1, POINT 6
Article 3d (Directive 89/552/EEC)

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.

Member States shall ensure *by appropriate means* 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. *This applies in particular to programmes containing pornography and*

gratuitous acts of violence.
The Commission and the Member States shall use their best endeavours to encourage the relevant parties in the media sector to promote a Community-wide labelling, assessment and filtering system as a further measure to protect minors.
The Member States shall promote measures to give parents and other caregivers greater control over programmes' pornographic and gratuitously violent content.

Justification

Given that minors make extensive use of audiovisual media products and spend a large amount of their time with these, greater protection for minors is needed. Community-wide labelling, assessment and filtering systems, as well as better control for parents and other caregivers, should therefore be promoted.

Amendment 37

ARTICLE 1, POINT 6
Article 3e (Directive 89/552/EEC)

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.

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, **race**, ethnic origin, religion or belief, disability, age or sexual orientation **or violate human dignity in any other manner.**

Justification

In the interest of a uniform standard of protection for all audiovisual media services and audiovisual commercial communications, the content of the lists prescribed in Art. 3e and Art. 3g(c) should be brought into line with each other. At the same time, it would seem appropriate to bring the text into line with the provisions of primary law, as laid down in Article 13 of the EC Treaty. In addition, human dignity, which should be given paramount consideration, should also be included, as it was in the Charter of Fundamental Rights of the European Union.

Amendment 38

ARTICLE 1, POINT 6
Article 3f, paragraph 1 (Directive 89/552/EEC)

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.

1. Member States shall **encourage** media service providers under their jurisdiction **to** promote, where practicable and by appropriate means, production of and access to European works within the meaning of Article 6.

In the case of non-linear services, this promotion may take the following forms: investment in European productions as a proportion of turnover, a certain proportion of European productions in 'on demand' video listings and attractive presentation of European productions in electronic programme guides.

Amendment 39

ARTICLE 1, POINT 6

Article 3g, point ©, point (-i) (new) (Directive 89/552/EEC)

(-i) violate human dignity;

Justification

Human dignity must be included in the list in Article 3g(c) as the paramount and fundamental value to be protected.

This addition to the values to be protected is in line with Article 1 of the Charter of Fundamental Rights of the European Union, in which human dignity is placed above all other values as an inviolable right.

Amendment 40

ARTICLE 1, POINT 6

Article 3g, point (d) (Directive 89/552/EEC)

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

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

Justification

The term 'audiovisual commercial communications' embraces teleshopping, so that it does not need to be mentioned separately.

Amendment 41

ARTICLE 1, POINT 6

Article 3g, point (f) (Directive 89/552/EEC)

(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.

(English version not affected)

Justification

[The word 'commercial' is already present in the English version of the Commission proposal.]

Amendment 42

ARTICLE 1, POINT 6

Article 3h, paragraph 1, introductory part (Directive 89/552/EEC)

1. Audiovisual media services that are sponsored **or that contain product placement** shall meet the following requirements:

1. Audiovisual media services **or programmes** that are sponsored shall meet the following requirements:

Justification

In the interests of clarity and systematic presentation, the rules on sponsorship and product placement should be set out in separate paragraphs. They are subject to significantly differing requirements.

Amendment 43

ARTICLE 1, POINT 6

Article 3h, paragraph 1, point (c) (Directive 89/552/EEC)

(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

(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.

of the programme in order to avoid any confusion on the part of the viewer.

Justification

In the interests of clarity and systematic presentation, the rules on sponsorship and product placement should be set out in separate paragraphs. They are subject to significantly differing requirements.

Amendment 44

ARTICLE 1, POINT 6

Article 3h, paragraph 2 (Directive 89/552/EEC)

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.

2. Audiovisual media services ***or individual programmes*** must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

Justification

In the interests of clarity and systematic presentation, the rules on sponsorship and product placement should be set out in separate paragraphs. They are subject to significantly differing requirements.

Amendment 45

ARTICLE 1, POINT 6

Article 3h, paragraph 3 (Directive 89/552/EEC)

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.

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.

Justification

In the interests of clarity and systematic presentation, the rules on sponsorship and product placement should be set out in separate paragraphs. They are subject to significantly differing requirements.

Amendment 46

ARTICLE 1, POINT 6

Article 3h, paragraph 4 (Directive 89/552/EEC)

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.***

4. News and current affairs ***programmes*** shall not be sponsored.

Justification

In the interests of clarity and systematic presentation, the rules on sponsorship and product placement should be set out in separate paragraphs. They are subject to significantly differing requirements.

Amendment 47
ARTICLE 1, POINT 6
Article 3h a (new) (Directive 89/552/EEC)

Article 3ha

- 1. Product placement shall in principle be prohibited.***
- 2. Product placement shall be admissible on an exceptional basis in the following circumstances:***
 - (a) in cinematographic works, films and series made for television, sports broadcasts and reality shows; or***
 - (b) in cases where little or no consideration has been provided for the product placement.***
- 3. Paragraph 2 shall not apply to children's programmes, news programmes, documentary films, current affairs programmes and advisory programmes.***
- 4. Where product placement is admissible, it 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) product placement 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) the product must not be given undue prominence;
(d) viewers must be clearly informed of product placement in order to avoid any confusion. Programmes containing product placement must be identified as such. The product must be identified at the beginning of programmes and during transmission when product placement occurs, e.g. by inserting a neutral logo;
e) Further, programmes must not contain product placement of tobacco products or cigarettes or for undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

Justification

In order to eliminate the grey area around product placement, a specific set of rules will help improve legal certainty. It is useful to have an affirmative list which authorises product placement in cases where influencing opinion is not the paramount function, or where there is no risk of influencing the editorial content. Particularly sensitive programmes are completely excluded. Consumers should be protected by taking appropriate measures to identify the products concerned.

Amendment 48

ARTICLE 1, POINT 9

Article 10, paragraph 2 (Directive 89/552/EEC)

2. Isolated advertising and teleshopping spots, other than in sports programmes, shall remain the exception.” *deleted*

Amendment 49

ARTICLE 1, POINT 10

Article 11, paragraph 2, subparagraph 1 (Directive 89/552/EEC)

2. The transmission of films made for television (excluding series, serials, light entertainment programmes and

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**.

documentaries), cinematographic works, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of **30 minutes**.

Justification

The extension of the 30-minute rule currently applicable to news and children's programmes to 35 minutes would have a severe negative impact on broadcasters' advertising revenues and hence their ability to finance audiovisual content production. As most news and children's programmes are no longer than 30 minutes, this may effectively eliminate advertising from these programmes. There seems to be no explanation or justification for this measure in the Commission's proposal or its regulatory impact assessment.

Amendment 50

ARTICLE 1, POINT 13

Article 18, paragraph 2 (Directive 89/552/EEC)

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.”

2. Paragraph 1 does not apply to announcements made by the broadcaster in connection with its own programmes, **or programmes of another audiovisual media service belonging to the same group of company** and ancillary products directly derived from those programmes, sponsorship announcements and product placement.

Justification

Self and cross-promotion of programmes should be treated similarly in a multichannel environment where broadcasters need to inform viewer on programmes available on their other channels.

Amendment 51

ARTICLE 1, POINT 20

Article 23b, paragraph 1 (Directive 89/552/EEC)

1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.

1. Member States shall guarantee the independence of national regulatory authorities **and institutions** and ensure that they exercise their powers impartially and transparently.

Justification

This addition is intended to ensure that special features of the organisation of the regulatory

authorities and bodies in the Member States can be retained.

Amendment 52
ARTICLE 1, POINT 20
Article 23b, paragraph 2 (Directive 89/552/EEC)

2. National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”

2. National regulatory authorities ***and institutions*** shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”

Justification

This addition is intended to ensure that special features of the organisation of the regulatory authorities and bodies in the Member States can be retained.

PROCEDURE

Title	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
References	COM((2005)0646 - C6-0443/2005 - 2005/0260(COD)
Committee responsible	CULT
Opinion by Date announced in plenary	ECON 2.2.2006
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Karsten Friedrich Hoppenstedt 14.3.2006
Previous drafts(wo)man	
Discussed in committee	11.7.2006 11.9.2006 3.10.2006
Date adopted	10.10.2006
Result of final vote	+: 40 -: 2 0: 2
Members present for the final vote	Zsolt László Becsey, Pervenche Berès, Sharon Bowles, Udo Bullmann, Ieke van den Burg, David Casa, Jan Christian Ehler, Jonathan Evans, Jean-Paul Gauzès, Robert Goebbels, Donata Gottardi, Benoît Hamon, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Wolf Klinz, Christoph Konrad, Guntars Krasts, Kurt Joachim Lauk, Andrea Losco, Astrid Lulling, Gay Mitchell, Joseph Muscat, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Manuel António dos Santos, Peter Skinner, Margarita Starkevičiūtė, Sahra Wagenknecht.
Substitute(s) present for the final vote	Katerina Batzeli, Harald Ettl, Ona Juknevičienė, Werner Langen, Alain Lipietz, Sarah Ludford, Charles Tannock, Corien Wortmann-Kool.
Substitute(s) under Rule 178(2) present for the final vote	Christopher Heaton-Harris, Luis Herrero-Tejedor, Toine Manders.
Comments (available in one language only)	...

11.10.2006

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Culture and Education

on the 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
(COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Draftsman: Gianni De Michelis

SHORT JUSTIFICATION

- The directive that we are called upon to discuss and approve updates the 1999 Directive 89/552/EEC, the object of which was to enable television broadcasts to be freely disseminated to all parts of the EEC.
- What has changed since that time is that technological advances have greatly increased the number of platforms through which audiovisual content can be transmitted and received. Above all, however, they have fundamentally altered the distinctive features of the business model applying in the audiovisual sector. The seller's market, as it once was, has gradually turned to a consumer's market; having once been passive recipients of a supply determined de facto solely by the distributor, consumers have come to occupy a position – and, most importantly, will do so more and more in the future – in which they alone can decide what they will consume.
- One factor already brought into play by this new economic model and – it should be stressed – certain to become even more decisive in the future is the radical change regarding the sources of funding for the audiovisual industry where both production and distribution are concerned. The two traditional forms of financing, in other words licence fees and advertising revenue, have increasingly been losing ground to a payment system determined according to the nature and quality of the audiovisual service that users require. The economic importance of this industrial sector is therefore likely to grow steadily and substantially, and, of course, global competition will become keener.
- The above scenario accordingly makes it even more necessary and imperative to complete a genuine single European market on a scale enabling it to compete with the expanding Indian, Latin American, and Chinese markets, as well as with the American

market, and to operate beyond language barriers or the many and varied forms of national regulation. Secondly, the necessary rules need to be laid down in order to keep pace with, support, and foster ongoing technological development, bearing in mind not least that, in future, consumer interests will be accommodated to an ever greater degree by the breadth of choice offered by technology as such.

- It should also be recognised, however, that the particular nature of the product in question – audiovisual services – poses specific problems related to some extent to the still very marked diversity of feeling within national societies as well as the need to respect a value, cultural identity, protection of which is an essential defining characteristic of the ‘European model’.
- It is important to bear in mind in addition that, contrary to what happened in 1989, the Union has decided to centre its policy strategy on a leading geopolitical and geo-economic role to be defined as the global economy develops: this is the ‘Lisbon strategy, adopted in 2000, the aim of which is that, by 2010, the Union should become *‘the most dynamic and competitive knowledge-based economy in the world capable of sustainable economic growth with more and better jobs and greater social cohesion, and respect for the environment’*.

In view of the above it is obvious that the future of the economic sector to which the directive relates will be crucial to the success of this strategy. A regulatory framework thus needs to be laid down, proceeding from the imperative, applying also to other Union policy goals, of enabling European industry to hold its own at global level against competitors from other parts of the world. The revision of Directive 89/552/EEC will need to move in that direction and hence be couched in terms serving to reconcile the interests of the public as a whole, consumers, and the industry. Indeed, the approach to be adopted should seek to bring these various interests into a synergic relationship.

- From that point of view the Commission’s proposed text constitutes a substantial advance in the desired direction and should consequently be approved by Parliament, which should reject the alternatives of either continuing the approach based on the existing regulatory framework (the Television without Frontiers Directive for ‘linear services’ only and the E-Commerce Directive for non-linear services) or amending specific rules governing linear services.
- Defining ‘audiovisual media services’ is an aim that can be endorsed, although the scope of ‘non-linear media services’ ought to be marked out more exactly so as to enable a clearer distinction to be drawn between services and media services. Some fear – rightly – that if the scope were defined too sweepingly, Europe might be less able to explore new ways of communicating new products. The amendments which we are proposing in this opinion should be viewed as a means to the end described above.
- Our amendments likewise aim to strengthen the fabric of the European industry, especially where content production is concerned, so as to enable it to compete not just with American rivals, but also with rivals in the making from India, Latin America, and Japan.

There has to be a proper system for administering rights to exploit audiovisual content, which should serve to consolidate an independent content production industry. This general context ought, therefore, to be taken into account in the appropriate quarters, and the aims of the directive under consideration here should be dovetailed into it.

The same philosophy also militates in favour of proper regulation of ‘product placement’ and non-punitive rules to govern advertising as a whole, bearing in mind

that if consumers have a wider choice, the industry will be compelled to steer clear of options contrary to their interests, given that variety will encourage consumers to opt for products that they consider better and more to their taste. This change in users' needs and expectations reduces the need for supervision by the public authorities.

- Finally, we should like to make out a case for self-regulation, even in addition to co-regulation. We are aware that the possibility of legislating in this direction is greatly limited by the *Interinstitutional Agreement on Better Law-making*, adopted on 31 December 2001. However, technological change, as it affects market rules, is so rapid that appropriate regulation is required in order to accommodate the need to safeguard values and aims of general interest while guaranteeing the necessary flexibility and competitiveness for European industry.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 RECITAL 1

(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.

(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, ***the diffusion of information and communication technologies (ICT)*** 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.

Justification

The diffusion of information and communication technologies has had a major impact on societal and economic structures. In particular, their diffusion has triggered further technological developments that have changed the structures and the function of numerous business models.

Amendment 2 RECITAL 2 A (new)

(2a) Media freedom and pluralism are prerequisites for full respect for the right to freedom of expression and information and the case-law of the European Court of

¹ Not yet published in OJ.

Human Rights recognises that states have a duty to protect media pluralism and, where necessary, take suitable measures to guarantee it.

Justification

The amendment is based on the principle that the media are both cultural and economic goods and the directive should, therefore, take account of both aspects, as does the relevant current legislation.

Amendment 3

RECITAL 3

(3) The importance of audiovisual media services for societies, democracy and culture ***justifies*** the application ***of specific rules*** to these services.

(3) The importance of audiovisual media services ***and the content they convey*** for societies, democracy, ***education*** and culture ***and the very nature of audiovisual services, which are at the same time cultural and economic goods, justify*** the application to these services ***of specific rules aimed above all at safeguarding and enhancing pluralism in the information media in all their various forms, in order to uphold, in particular, the fundamental freedoms and rights enshrined in the Charter of Fundamental Rights of the European Union, the European Convention on the Protection of Human Rights and Fundamental Freedoms and the United Nations Covenant on Civil and Political Liberties and to guarantee the protection of minors and vulnerable or disabled people. Furthermore, the media should provide citizens with the means of critically appraising and interpreting reality and making better use of the ever-increasing amount of information which they are offered, as confirmed in Recommendation 1466(2000) of the Council of Europe. Moreover, once such services are properly regulated, citizens should be able to choose the most appropriate media and type of communication, and thus acquire the means of fully exercising their right to freedom of information and expression.***

Justification

Audiovisual services should be considered in terms of both their market value and their cultural value.

Amendment 4

RECITAL 4

(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.

(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, ***improving living conditions and thereby strengthening the competitiveness of European enterprises. Facilitating technical access for all, particularly vulnerable population groups such as disabled persons and the elderly, to audiovisual services will help to make the sector dynamic and competitive. Supporting firms which recognise this will serve not only the objective of inclusiveness but also that of promoting research and employment.***

Justification

The creation of jobs and the availability of significant employment opportunities are a factor of paramount importance for boosting the industrial sector in Europe. The promotion of growth and productivity in all industrial sectors is one of the most important goals of the European Community.

Amendment 5

RECITAL 5

(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.

(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, ***both linear and non linear, in order to help complete the internal market and to facilitate the***

emergence of a single information area.

Amendment 6

RECITAL 6

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, 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.

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, 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 need for media pluralism*, the protection of minors, consumer protection *and action to enhance public awareness and media skills and the principle of universal access for all sectors of the public, including the most disadvantaged*, now and in the future.

Amendment 7

RECITAL 6 A (new)

(6a) During the Lisbon European Council held on 23 and 24 March 2000, the European Union launched an ambitious agenda with the aim of making Europe by the year 2010 “the most dynamic and competitive knowledge-based economy in the world”. The Lisbon Strategy was relaunched in 2005 during the mid-term review as an essential component for improving welfare, promoting competition and fostering productivity in the European Union. To that end, and within the context of the Lisbon Strategy, it is necessary to focus on policies which will have a sound impact on completion of the internal market, the reduction of barriers to competition and the uptake of information and communication technologies, with a view to mapping out a path towards a competitive knowledge-based economy.

Justification

The Lisbon strategy has been the major action tool of the EU for boosting the competitiveness of European enterprises and improving welfare and living conditions. It forms the basis for

the promotion of the productivity of European industry and the European broadcasting industry is a part of it.

Amendment 8
RECITAL 6 B (new)

(6b) Promoting the competitiveness of European industry, of which the audiovisual sector forms an important part, is crucial to attaining the policy goals of the Lisbon Strategy. Therefore, in order to strengthen the competitiveness of the audiovisual sector, adequate means of financing should be promoted within the appropriate regulatory framework.

Justification

An addition to Mr De Michelis' amendment number 6. In order to be competitive, audiovisual media services should not be overburdened with regulation.

Amendment 9
RECITAL 6 C (new)

(6c) The country of origin principle is crucial to the emergence of a pan-European audiovisual market with a strong industry producing European content. Moreover, the principle safeguards the viewer's rights to choose from a wide variety of European programmes.

Amendment 10
RECITAL 6 D (new)

(6d) The Lisbon Strategy, which is designed to promote a competitive knowledge-based economy, requires sustained investment in the sector's infrastructure and the introduction of innovative new information and communication technologies, together with the necessary research, in order to develop, within the European market, a thriving and highly productive broadcasting industry (of which audiovisual services are an important component).

Amendment 11
RECITAL 6 E (new)

(6e) A strong European industry, including the traditional and emerging audiovisual sectors, properly regulated and supported by strong investments and successful ICTs, will contribute to the attainment of the Lisbon Strategy objective of making the European Union the most competitive and dynamic economy by 2010. The present rules need to strike the right regulatory balance in the Union's competitive environment, essential to giving confidence to firms that provide investments and create jobs.

Amendment 12
RECITAL 6 F (new)

(6f) The creation of a strong, competitive European industry was one of the major goals set in the Lisbon Strategy. To that end, productivity and technological leadership in all sectors of the economy, including the audiovisual sector, can be achieved through strong investments, research and powerful information. The use of ICT in a competitive environment will strike the right regulatory balance, so as to build confidence for consumers and for job-creating enterprises and to complete the internal market.

Amendment 13
RECITAL 6 G (new)

(6g) In the context of the Lisbon Strategy, it is important to take into account the development of European content production by drawing up a policy framework relating, in particular, to the ownership and exploitation of rights which seeks to strike a balance between the requirements of disseminating and distributing content and the need to protect the prerogatives of copyright holders.

Amendment 14
RECITAL 6 H (new)

(6h) Within the context of the Lisbon Strategy, it is important to take into account the development of European content production by drawing up a policy framework with regard, in particular, to the ownership and exploitation of rights.

Justification

With the general objective of promoting European industry and the European audiovisual industry, attention should be given also to European content producers. A framework should be drawn up to deal with rights, as the dominance of the distributors in this respect is detrimental.

Amendment 15
RECITAL 7

(7) The Commission has adopted the initiative “i2010: European Information Society” 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.

(7) The Commission has adopted the initiative “i2010: European Information Society” to foster growth and jobs in the information society and media industries. i2010 is a comprehensive strategy designed to encourage ***European content production***, the development of the digital economy ***and the uptake of ICT***, 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.

Justification

The deployment of the digital economy and the realisation of the information society can only be effectuated through the uptake of information and communication technologies.

Amendment 16
RECITAL 10

(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.***

(10) ***This directive introduces a minimum set of harmonised obligations in Articles 3c to 3h for all audiovisual media services relating to the protection of minors, human dignity and consumers. The provisions of Directive 2000/31/EC, notably those relating to the country of origin principle, the obligation to provide information and the rules governing responsibility (liability exemptions), also apply. In addition, the Member States still have the right to take measures on grounds of public policy pursuant to Article 3(3) to (5) of Directive 2000/31/EC.***

Justification

The recitals should make it clear that the Member States retain the power to take measures under Article 3(3) to (5) of Directive 2000/31/EC of the European Parliament and the Council (eCommerce Directive) on grounds of public policy.

Amendment 17
RECITAL 11

(11) Directive 2002/21/EC of the European Parliament and the Council 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.

(11) Directive 2002/21/EC of the European Parliament and the Council ***(a framework directive) established a uniform legal framework for all transmission networks and services, but*** according to its Article 1(3) *it* 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. ***This is in line with the principle of technological neutrality, which justifies a separation between transmission regulation and content regulation.***

Justification

The principle of technological neutrality allows complete freedom in the development of transmission technologies falling within the appropriate standards and rules and also makes it possible to apply a coherent framework to content regulation.

Amendment 18
RECITAL 13

(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.

(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 activities *which are primarily non-economic*, such as purely private websites, *the distribution and exchange of audiovisual material for the expression of personal opinions and services which distribute audiovisual content produced by users for exchange within communities of interest or other non-linear services which do not have a clear impact on a significant number of members of the public*.

Justification

Clarification would help reassure users about the fact that the Directive will not change the way in which they exploit the creative potential of the Internet, including online audiovisual material, subject only to respecting criminal law.

Amendment 19
RECITAL 14

(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.

(14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate *the general public*, 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.

Justification

One of the main features of the services described in this directive, mentioned also in the definition, is transmission to the general public.

Amendment 20
RECITAL 15

(15) This Directive does not cover electronic versions of newspapers *and* magazines.

(15) This Directive does not cover electronic versions of newspapers, magazines, *periodicals, journals or books when the visual content is largely static.*

Justification

Clarification.

Amendment 21
RECITAL 16

(16) *The* term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio.

(16) *For the purposes of this Directive, the* term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio.

Justification

A clarification since the term "audiovisual" includes radio in other legal acts, such as the classification of services in the WTO/GATS.

Amendment 22
RECITAL 16 A (new)

(16a) An audiovisual media service consists of programmes, a programme being a discrete succession of moving images with or without sound which are subject to editorial responsibility and are disseminated by a media service provider in accordance with a fixed programme schedule or are compiled in a catalogue.

Justification

Amendment clarifying an audiovisual media service.

Amendment 23
RECITAL 17 A (new)

(17a) The criteria laid down in the definition of audiovisual media services, as contained in point (a) of Article 1 of Directive 89/552/EEC, as hereby amended, and explained further in recitals 13 to 17 of this Directive, must be simultaneously

fulfilled.

Justification

It is important to point out and emphasise that the criteria presented by the Commission in recitals 13 to 17 have to be fulfilled simultaneously

Amendment 24
RECITAL 19 A (new)

(19a) To promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the European Union, it remains essential that only one Member State has jurisdiction over any audiovisual media service provider.

Justification

To strengthen the country of origin principle and specifically to reinforce the current definitions of establishment and jurisdiction which have worked effectively in facilitating trans-frontier European broadcasting to date.

Amendment 25
RECITAL 19 B (new)

(19b) Given that the pluralism of information is a fundamental principle of the European Union, Member States should prevent any dominant position from emerging which would undermine this principle and should guarantee freedom of information by means of suitable provisions to ensure non-discriminatory access to audiovisual media services which are in the public interest.

Justification

Respect for pluralism of information must be reflected in appropriate provisions such as the 'must carry' rules.

Amendment 26
RECITAL 21 A (new)

(21a) The definition of the term 'standard consumer equipment' should include functionalities to ensure that audiovisual media services are accessible to people with disabilities and the elderly. The features

ensuring the accessibility of such services should include, inter alia, sign language, subtitling, audio description of images, audio subtitling and a menu guide which is easy to operate and understand.

Justification

The definition of standard consumer equipment should take account of the requirement for media accessibility for people with disabilities and the elderly.

Amendment 27

RECITAL 24

(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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively.

(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 **audiovisual media services**, 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 the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively.

Justification

Article 2a should cover all audiovisual media services.

Amendment 28

RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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 provides

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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 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.

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.

Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector will be more effective if they are taken with the active support of the service providers themselves. Member States could thus make more extensive use of transparent and widely used co-regulation mechanisms, in particular for non-linear services. Co-regulation and self-regulation instruments should be used to give effect to this Directive and in accordance herewith, in compliance with Member States' legal traditions.

Justification

This amendment makes clear the complementarity between regulation stemming from the directive and applied in the Member States on the one hand and co- and self-regulation on the other.

Amendment 29

RECITAL 25 A (new)

(25a) Self-regulation is a type of voluntary initiative which allows economic operators, the social partners and non-governmental organisations or associations the possibility of adopting amongst themselves and for themselves common guidelines at European level. Self-regulation is an alternative method of fulfilling the existing provisions and cannot completely substitute the obligation of the legislature. Co-regulation can mean that compliance with the provisions of this Directive is entrusted to self-regulating bodies, without prejudice to the Member States' Treaty obligations.

Justification

The explanation of the concepts of 'co-regulation' and 'self-regulation' in the recitals is

necessary in order to allow for the highest level possible of self-regulation in the European Community.

Amendment 30
RECITAL 25 B (new)

(25b) The pursuit of public interest objectives in the field of non-linear services will be more effective if carried out with the active support of the service providers themselves. Member States are encouraged to make extensive use of transparent and widely-shared self-regulatory and co-regulatory schemes.

Amendment 31
RECITAL 26

(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.

(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. ***To this end, where Member States are permitted to draw up lists of events of substantial social interest which must not be broadcast on an exclusive basis, it is for the individual Member State to decide whether to draw up such a list, which events it regards as having substantial social interest, how the term ‘a substantial proportion of the public’ is defined and what type of reporting should be made available.***

Justification

It should remain at the discretion of the Member States what events they regard as having substantial social interest, how they define a substantial proportion of the public and what type of reporting is made available.

Amendment 32
RECITAL 27

(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.

(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, *on the reimbursement of reasonable costs*, grant other broadcasters and *news agencies*, acting on behalf of broadcasters, the right to use short extracts *only* 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,
- *be screened later than 48 hours after the event,*
- *be used to create a public entertainment archive,*
- *remove the logo or other identifier of the host broadcaster, or*
- *be used to create new non-linear services.*

Justification

Creating a pan-European short news right would address market failures where broadcasters are unable to obtain television short news footage of major public events taking place in other Member States for inclusion in their general news programming. Since it is important this right does not undermine investment in exclusive rights, the suggested additions to the Commission's proposed Recital 27 would therefore make it clear that material obtained under the short news right could only be used in general news programming in linear audiovisual media services (as defined in Article 1) under strictly limited circumstances. The proposed limitations, responding to the concerns of European sports bodies and others, would also prevent the repackaging of material obtained under the short news right for use in on-demand entertainment services. In addition it would ensure any marginal costs in making material available are covered. The amendment draws on, inter alia, Germany's Interstate Broadcasting Treaty.

Amendment 33 RECITAL 28

(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.*

(28) Non-linear services are different from linear services with regard to *the degree of choice exercised by the user.* This *may, in some cases, justify* imposing lighter

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.

regulation on non-linear services, which, *however*, have to comply with the basic rules provided for in Articles 3c to 3h.

Amendment 34
RECITAL 30

(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.

(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, *the rights of people with disabilities, especially those who have sight and hearing problems*, and human dignity.

Justification

The rights of people with disabilities and/or the elderly should be taken into account as well.

Amendment 35
RECITAL 33 A (new)

(33a) In order to reach an adequate level of protection of minors, the national regulatory authorities should determine time-zones for children and define the programmes aimed at children.

Justification

In the absence of a uniform EU-wide definition of "children" and "children's programmes" for the purposes of this directive, it is necessary that NRAs clearly define the time-zones where a higher level of protection rules should apply.

Amendment 36
RECITAL 35

(35) Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, they should where practicable promote the production and

(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.

distribution of European works and thus actively contribute to the promotion of cultural diversity. ***Such promotion could take the form of increased support for investment conducive to European production, in particular independent production, in the form of a minimum contribution proportionate to turnover, and better visibility for those works by requiring catalogues to include a minimum share of European works or a reference promoting the works in electronic programme guides.*** 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. ***These reports will also assess the position of works by independent producers.***

Justification

It is not enough simply to assert the need to promote cultural diversity; practical provisions need to be laid down.

Amendment 37 RECITAL 35 A (new)

(35a) Underlines that the differences between linear and non-linear services will gradually become less relevant to the audience as the development of digital services and hardware will make linear services accessible to viewers on direct demand. Against that background, it is important to secure that traditional broadcasters offering linear services are not financially disadvantaged compared with new broadcasters and media service

providers using today's non-linear services. That would deter European broadcasters from producing European high-quality content and from developing global competitiveness. For the same reason it is important that European rules for financing programme-making do not deter new media service providers from developing in Europe. This calls for flexible, simple and general rules for linear services as well as for non-linear services with less importance being given to the different technological natures of media services.

Amendment 38
RECITAL 43 A (new)

(43a) Certain categories of programmes, such as those for minors, should be adequately protected by means of appropriate information on the content or effective filtering systems.

Justification

The directive should be able to guard against the use of audiovisual systems by minors, either by giving accurate information about programmes, so as to guide parents in their choices, or by suitable filtering systems, to allow proper protection of minors even in the absence of parental control.

Amendment 39
RECITAL 44

(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 *deleted*

and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

Amendment 40
RECITAL 45

(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.***

(45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers.

Justification

It clarifies the justification for the amendment concerning Recital 40. On the conditions stipulated in Amendment 14 to Article 3h) (new), the use of "production aids" does not fall under the prohibition of surreptitious advertising, product placement remains forbidden.

Amendment 41
RECITAL 47

(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,

(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 ***as well as among national regulatory authorities*** is necessary to ensure the correct application of this Directive. ***The specific features of the organisation of regulators in the national media systems should be safeguarded,***

Justification

This wording takes account of the varying national organisational forms of supervision in the Member States.

Amendment 42
ARTICLE 1, POINT 2
Article 1, point (a) (Directive 89/552/EEC)

(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.

(a) ‘audiovisual media service’ means a service ***provided under the editorial responsibility of a media service provider*** as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of ***programmes consisting 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;
The term does not include the press in printed or electronic form of which the audiovisual element is not the primary constituent;

Amendment 43

ARTICLE 1, POINT 2

Article 1, point (c) (Directive 89/552/EEC)

(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;***

(c) ***‘linear service’ or ‘television broadcast’ means the transmission by any means, in unencoded or encoded form and in chronological sequence, of various programmes which are transmitted simultaneously to an indeterminate number of potential viewers, at a point in time decided upon by the media service provider, according to a fixed programming schedule;***

Amendment 44

ARTICLE 1, POINT 2

Article 1, point (e) (Directive 89/552/EEC)

(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;***

(e) ‘non-linear service’ means an audiovisual media service ***comprising an offer of audiovisual content which has been edited and compiled by a media service provider and*** where the user ***requests the transmission of a programme on an***

individual basis;

Justification

Clarifies the term “non-linear service” as an on-demand media service.

Amendment 45

ARTICLE 1, POINT 2

Article 1, point (f) (Directive 89/552/EEC)

(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;

(f) ‘audiovisual commercial communication’ means moving images with or without sound which **are transmitted as part of** audiovisual media services **with the aim of** directly or indirectly **promoting the sales of goods and** services or **the** image of a natural or legal entity pursuing an economic activity;

Amendment 46

ARTICLE 1, POINT 2

Article 1, point (h) (Directive 89/552/EEC)

(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;

(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 **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;

Amendment 47

ARTICLE 1, POINT 2

Article 1, point (k) (Directive 89/552/EEC)

(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

(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 **by or at the request of the media service**

media services, ***normally*** in return for payment or for similar consideration.”

provider so that it is featured within audiovisual media services, in return for payment or for similar consideration.”

Justification

In practice media service providers regularly procure ready-made content from third parties. They then frequently have no chance to determine whether such a programme includes product placement content. Nor do they have any chance to exert influence on it.

Amendment 48

ARTICLE 1, POINT 2

Article 1, point (k a) (new) (Directive 89/552/EEC)

(ka) ‘European works’ means the following:

- (i) works originating from Member States;***
- (ii) works originating from European third countries party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of points (iv), (v) or (vi) below;***
- (iii) works co-produced in the framework of agreements relating to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements.***

Application of the provisions of points (ii) and (iii) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

The works referred to in points (i) and (ii) are works mainly made with authors and workers residing in one or more States referred to in points (i) and (ii) provided that they comply with one of the following three conditions:

- (iv) they are made by one or more producers established in one or more of those States; or***
- (v) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or***
- (vi) the contribution of co-producers of***

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

Works that are not European works within the meaning of points (i), (ii) and (iii) but that are produced within the framework of bilateral co-production 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.”

Justification

The definition of European works should be included in the present article, instead of forming a separate article.

Amendment 49

ARTICLE 1, POINT 2

Article 1, point (k b) (new) (Directive 89/552/EEC)

(kb) 'news agency' means a wholesale supplier of audiovisual news to providers of linear audiovisual media services, but not of services supplied directly to the general public.”

Justification

The additional definition is intended to clarify and narrow the scope of the proposed “short news right” in Article 3(b). In particular, it limits the term “intermediaries” in the original proposal to news agency services, and only where they are providing services to broadcasters. The definition is based on the definition of broadcaster in proposed Article 1(d) as well as the classification of news agency services used for the purposes of the WTO’s General Agreement on Trade in Services. News agencies already supply linear broadcasters with much of their foreign news highlights and are therefore a practical and appropriate medium through which a short news right can operate.

Amendment 50

ARTICLE 1, POINT 3, POINT (A A) (new)

Article 2, paragraph 1 a (new) (Directive 89/552/EEC)

(aa) In Article 2, the following paragraph 1a is inserted:

“1a. The Member States and the Commission, in accordance with their

respective competences, shall guarantee the pluralism, freedom and independence of audiovisual communication services."

Amendment 51

ARTICLE 1, POINT 3, POINT (E)

Article 2, paragraph 5 (Directive 89/552/EEC)

(e) In paragraph 5, the word “broadcaster” is replaced by the expression “media service provider” and “Article 52” is replaced by “Article 43”.

(e) In paragraph 5, the word “broadcaster” is replaced by the expression “**audiovisual** media service provider” and “Article 52” is replaced by “Article 43”.

Amendment 52

ARTICLE 1, POINT 3, POINT (G)

Article 2, paragraph 7 (Directive 89/552/EEC)

“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.

“7. A Member State may in order to prevent abuse or fraudulent conduct **in an area of public policy not addressed by this Directive**, 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. **Member States shall not disturb the free circulation of services on grounds falling within the fields coordinated by this Directive.**

Justification

The Directive aims to achieve a Single Market for audiovisual media services by harmonising a set of rules. Article 2.7 in the current wording undermines this objective. It allows Member States to block incoming services even if they fully comply with the rules of the Directive, i.e. with those rules harmonised to ensure the functioning of the Single Market. In accordance with the Treaty and ECJ case law such blocking can only take place in specific cases where public order is threatened. The mere fact that a company has been established in Member State A for the sole purpose to enjoy the benefit of a more favourable legislation, does not constitute an abuse in itself, even if that company conducts activities entirely or mainly in Member State B.

Amendment 53

ARTICLE 1, POINT 4, POINT (B)

Article 2a, paragraph 2 (Directive 89/552/EEC)

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

(b) Paragraphs 2 and 3 are replaced by the following:

2. Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:

(a) an audiovisual media service coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) and/or Articles 3d and 3e;

(b) during the previous 12 months, the media service provider has infringed the provision(s) referred to in (a) on at least two prior occasions;

(c) the Member State concerned has notified the media service provider 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 of the infringements in question in the Member State which has jurisdiction over the media service provider concerned.

Justification

The derogations to the first paragraph, as well as the conditions to be fulfilled to this respect, shall cover all the audiovisual media services, not only the television broadcasts. Especially in respect to the protection of minors, non-linear services should be also covered by this article.

Amendment 54
ARTICLE 1, POINT 5
Article 3, paragraph 2 a (new) (Directive 89/552/EEC)

2a. The Member States shall send information to the Community institutions on the implementation of this Directive once a year.

Amendment 55
ARTICLE 1, POINT 5
Article 3, paragraph 3 (Directive 89/552/EEC)

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.”

3. As a mean to attaining the objectives of this Directive, Member States shall encourage, in the fields coordinated by this Directive, regimes at national level for co-regulation and self-regulation. These regimes shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement.”

Amendment 56
ARTICLE 1, POINT 6
Article 3b, paragraph 1 (Directive 89/552/EEC)

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.***

1. Member States shall ensure that, for the purposes of short news reports, broadcasters ***and news agencies acting on their behalf*** established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest.

Justification

The proposed addition to Article 3(b)(1) reproduces the reference to intermediaries in Recital 27 and thus gives additional clarity to the Commission proposal. For events taking place outside their country of establishment, broadcasters frequently rely on intermediaries such as news agencies to provide short news coverage. The inclusion of a reference to news agencies in Article 3(b) would ensure broadcasters are able to receive this raw international news material in the most efficient format for their purposes. To limit the right to broadcasters, by excluding news agencies, would establish a right that is more theoretical than real because of the practical issues of making crossborder arrangements swiftly, particularly when a news event is unexpected.

Amendment 57
ARTICLE 1, POINT 6

Article 3b, paragraph 1 a (new) (Directive 89/552/EEC)

1a. Member States may propose that some events which are regarded as being of major importance to society not included in the list referred to in Article 3a are not broadcast on an exclusive basis by television broadcasters under its jurisdiction where their major importance, unforeseeability or reasons of time so require. Such requests shall be subject to an accelerated verification procedure along the lines of that laid down in Article 3b (2).

Amendment 58

ARTICLE 1, POINT 6

Article 3b, paragraph 1 b (new) (Directive 89/552/EEC)

1b. The Member States shall take all necessary measures to ensure that authorised broadcasters under their jurisdiction and those 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 and that they receive an appropriate payment for doing so.

Justification

The proposal by the European Commission on the right of short reporting does not guarantee access by citizens to information on events of importance to society. It is therefore necessary to establish a Community-wide right to short reporting. Moreover, such a provision would also serve the still valid objective of bringing the EC Directive into line with the respective Convention by the Council of Europe.

Amendment 59

ARTICLE 1, POINT 6

Article 3b, paragraph 2 (Directive 89/552/EEC)

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.

2. Authorised broadcasters may either freely choose short news reports from the transmitting broadcaster's signal with at least the identification of their source ***or may themselves be given access to the event for short reporting rights.***

Justification

Access to the event itself can also be an alternative for getting the material needed for the right of short reporting.

Amendment 60

ARTICLE 1, POINT 6

Article 3c, paragraph 1, introductory part (Directive 89/552/EEC)

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:

Member States shall ensure **by appropriate means** 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:

Justification

The language should be consistent and allow Member States flexibility to use co-regulation.

Amendment 61

ARTICLE 1, POINT 6

Article 3c, paragraph 1, point (b) (Directive 89/552/EEC)

(b) the geographic address at which the media service provider is established;

(b) the geographic **and postal** address at which the media service provider is established;

Amendment 62

ARTICLE 1, POINT 6

Article 3c, point (d a) (new) (Directive 89/552/EEC)

(da) the indication of content unsuitable for minors or effective filtering systems that prevent minors accessing information that might seriously impair their physical or psychological development.

Justification

Article 3(c) sets out a minimum number of rules for audiovisual media service providers; these rules cannot be confined to making it easy to identify providers but should also cover the use by providers of specific measures to protect minors.

Amendment 63

ARTICLE 1, POINT 6

Article 3d (Directive 89/552/EEC)

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.

Member States shall *ensure by* appropriate **means** that audiovisual media services *and audiovisual commercial communications* under their jurisdiction are not made available in such a way that might impair the physical, mental or moral development of minors.

Justification

The language should be consistent and allow Member States flexibility to use co-regulation..

Amendment 64

ARTICLE 1, POINT 6

Article 3d, paragraph 1 a (new) (Directive 89/552/EEC)

In particular, they shall ensure that they do not authorise commercial communications, sponsorship, advertising or product placement for goods manufactured under conditions which contravene international law prohibiting child labour.

Justification

It would be hypocritical to claim to protect the moral development of minors while at the same time drawing young consumers' attention to products manufactured illegally by child labour.

Amendment 65

ARTICLE 1, POINT 6

Article 3e (Directive 89/552/EEC)

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.

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.

Conversely, they shall ensure that media service providers are encouraged and supported in their efforts to promote accessibility for persons with physical or mental disabilities.

Justification

It is not enough to reiterate the ban on discriminatory content: there is also a need to give concrete form to the socially, economically and culturally crucial issue of access to programmes for people with disabilities and elderly people .

Amendment 66

ARTICLE 1, POINT 6

Article 3f, paragraph 1 (Directive 89/552/EEC)

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.

1. Member States shall ensure that media service providers under their jurisdiction promote, by appropriate means, production of and access to European works within the meaning of Article 6.

Amendment 67

ARTICLE 1, POINT 6

Article 3f, paragraph 1, subparagraph 1 a (new) (Directive 89/552/EEC)

For non-linear services such promotion may take the following forms in particular: minimum investments in European productions (determined by reference to turnover), a minimum proportion of European productions in on-demand video catalogues, and the attractive presentation of European productions in electronic programme guides.

Justification

It is essential that the directive contain provisions requiring non-linear services to participate in the support and promotion of European works. Such services are most frequently supplied by major undertakings with a much larger financial capacity than broadcasters, such as telecoms operators, Internet access providers, etc. Placing the obligations relating to cultural diversity on broadcasters alone might jeopardise the European production of creative works.

Amendment 68

ARTICLE 1, POINT 6

Article 3g, points (a) to (f) and paragraph 1 a (new) (Directive 89/552/EEC)

(a) audiovisual commercial communications must be clearly identifiable as such. Surreptitious audiovisual commercial communication shall be prohibited;

(a) audiovisual commercial communications must be clearly identifiable as such ***and must be kept quite separate from other parts of the programme, both temporally***

(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.

and spatially and by optical and acoustic means. Surreptitious audiovisual commercial communication shall be prohibited;

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

(c) audiovisual commercial communications **must comply with the principles laid down in the Charter of Fundamental Rights of the European Union and, in particular** they must not:

(i) **be offensive because of** discrimination on grounds of **gender, race, ethnic origin, disability, age or sexual orientation or any other infringement of human dignity**;

(ii) **violate children's rights, according to the UN Convention on the Rights of the Child**;

(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 **or indirectly** exhort minors to buy a product or service by exploiting their inexperience or credulity, directly **or indirectly** 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, **especially role models or persons exercising authority**, or unreasonably show minors in dangerous **or degrading** situations **unless justified for learning or training purposes**. **Member States should encourage audiovisual media service providers to**

develop a code of conduct regarding children's programming containing or being interrupted by advertising, sponsorship or any marketing of unhealthy and inappropriate foods and drinks such as those high in fat, sugar and salt and of alcoholic beverages.

Amendment 69

ARTICLE 1, POINT 6

Article 3g, point (f a) (new) and paragraph 1 a (new) (Directive 89/552/EEC)

(fa) television advertising must not cause moral or physical detriment to minors and must therefore respect the following criteria in order to protect them:

(i) not directly exhort minors to buy a product or service by exploiting their inexperience or credulity;

(ii) not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

(iii) not exploit the special trust minors place in parents, teachers or other persons;

(iv) not show, without reason, minors in dangerous situations.

Audiovisual media services for children and documentaries shall not contain product placement.

Justification

Reference to minors should be considered a matter of priority and should therefore appear earlier in the text. Furthermore, the current text (Article 16), which safeguards the protection of minors to a greater extent, is preferable to the new text proposed by the Commission.

Amendment 70

ARTICLE 1, POINT 6

Article 3h, paragraph 1, introductory part (Directive 89/552/EEC)

1. Audiovisual media services that are sponsored *or that contain product placement* shall meet the following requirements:

1. Audiovisual media services that are sponsored shall meet the following requirements:

Amendment 71
ARTICLE 1, POINT 6
Article 3h, paragraph 1, point (a a) (new) (Directive 89/552/EEC)

(aa) they must not contain product placements which present products in an unduly prominent manner. “Undue prominence” shall be determined by the recurring presence of the product, service or trade mark thereof or from the manner in which it is presented, having regard to the content of the programme in which it appears;

Justification

Product placement unduly prominent in programming necessarily interferes with the media service provider’s editorial freedom. The “undue prominence” restriction of product placement will help to avoid surreptitious advertising and undesirable forms of product placement.

Amendment 72
ARTICLE 1, POINT 6
Article 3h, paragraph 1, point (b) (Directive 89/552/EEC)

(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;***

(b) they must not encourage the purchase or rental of ***particular products*** or services;

Justification

This amendment, too, is aimed at maintaining the distinction between advertising and editorial content.

Amendment 73
ARTICLE 1, POINT 6
Article 3h, paragraph 1, point (c) (Directive 89/552/EEC)

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***

(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 *an* appropriate way for programmes at the beginning, during and/or the end of the programmes.

of the programme in order to avoid any confusion on the part of the viewer.

Amendment 74

ARTICLE 1, POINT 6

Article 3h, paragraph 2 (Directive 89/552/EEC)

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.

2. Audiovisual media services must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

Amendment 75

ARTICLE 1, POINT 6

Article 3h, paragraph 3 (Directive 89/552/EEC)

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.

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. ***The specific characteristics of the medicinal product should be clearly understandable.***

Amendment 76

ARTICLE 1, POINT 6

Article 3h, paragraph 4 (Directive 89/552/EEC)

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.***”

4. News and current affairs shall not be sponsored.

Justification

La proposta della Commissione intende legittimare il posizionamento dei prodotti all'interno dei programmi come forma di comunicazione commerciale diversa dalla pubblicità. Appare in tal modo pregiudicato un pilastro fondamentale della disciplina delle trasmissioni televisive, consistente nella netta separazione tra comunicazione commerciale ed il resto della programmazione, a fine di tutela sia dell'integrità dei programmi e dell'autonomia editoriale delle emittenti, sia degli interessi dei telespettatori, per i quali non è certo sufficiente un avviso all'inizio o alla fine del programma per essere debitamente informati sul condizionamento dei produttori di beni e servizi nel confezionamento del programma. Le esperienze in vari paesi hanno messo in evidenza i gravi rischi per i consumatori e per la libertà di espressione di autori e produttori causati dal product placement.

Amendment 77

ARTICLE 1, POINT 6

Article 3h a (new) (Directive 89/552/EEC)

Article 3ha

1. Member States shall take all appropriate measures to gradually ensure that audiovisual media services under their jurisdiction become fully accessible to people with sight and hearing disabilities and the elderly.

2. Member States shall provide the Commission every two years with national reports on the implementation of this article. These reports shall include in particular statistical data on the progress made with a view to achieving accessibility within the meaning of paragraph 1, the reasons for any failure to achieve progress and the measures adopted or envisaged in order to achieve this.

Justification

Accessibility of audiovisual media services is an important part of the proper functioning of the internal market. According to the Institute of Hearing Research, over 81 million Europeans live with a hearing loss; moreover, there are more than 30 million blind and partially sighted Europeans. Research has shown that an overwhelming number of people with disabilities and/or elderly people watch TV. This represents a market which must be catered to. An obligation to provide accessible audiovisual media services would undoubtedly stimulate healthy competition among service providers and improve the functioning of the internal market.

Amendment 78

ARTICLE 1, POINT 6

Article 3h b (new) (Directive 89/552/EEC)

Article 3hb

Member States shall take all appropriate measures to ensure that audiovisual media services under their jurisdiction gradually become fully accessible to people with disabilities."

Justification

Accessibility of audiovisual media services to all consumers, including the disabled and/or elderly, is a vital aspect of the right to information.

Amendment 79

ARTICLE 1, POINT 6 A (new)

Article 4, paragraph 1 (Directive 89/552/EEC)

(6a) Article 4(1) is replaced by the following:

"1. Member States shall ensure by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment obligations towards its viewing public, should be achieved progressively, on the basis of suitable criteria."

Justification

Back in 1989, the purpose of the present article was to introduce the rule on the promotion of European works smoothly and gradually. Nowadays, within the context of the Lisbon strategy, it is necessary to propose more demanding rules on this matter in order to boost the European audiovisual industry and to maintain Europe's rich cultural diversity. Therefore, the Member States should not have excuses for not providing the necessary effort in promoting European productions.

Amendment 80

ARTICLE 1, POINT 7, POINT (D A) (new)

Article 6 (Directive 89/552/EEC)

(da) The following paragraph is added:

"4. Member States, in defining the notion of independent producer, should take

appropriate account of the following three criteria: ownership of the production company, the amount of programmes supplied to the same broadcaster and ownership of secondary rights.”

Justification

The reference to independence is of importance and very closely related to the concept of rights. The fact that the market is concentrated and power exercised by a few players in the acquisition of rights means that independent production companies are unable to fully exploit new forms of content distribution and to retain rights, and independent production companies are unable to attract capital and growth, remaining thus heavily funded with a level of concentration which is blocking innovation.

Amendment 81

ARTICLE 1, POINT 9

Article 10, paragraph 1 (Directive 89/552/EEC)

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.

1. Television advertising and teleshopping shall be readily recognizable and ***distinguishable*** from other parts of the programme service by optical and/or acoustic means. ***Television advertising and teleshopping shall not interfere with the editorial independence of the audiovisual media service provider nor mislead the viewer.***

Justification

The principle of transparency and identification ensures that commercial communications are recognisable as such and leaves room for the development of new advertising techniques.

Amendment 82

ARTICLE 1, POINT 10

Article 11, paragraph 1 a (new) (Directive 89/552/EEC)

1a. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements shall only be inserted between the parts or in the intervals.

Amendment 83

ARTICLE 1, POINT 10

Article 11, paragraph 1 b (new) (Directive 89/552/EEC)

1b. Where programmes, other than those covered by paragraph 2, are interrupted by advertisements or teleshopping, a period of at least 20 minutes should elapse between each successive advertising break within the programme.

Justification

Gli emendamenti hanno l'obiettivo di mantenere in vigore i parr. 2 e 4 dell'attuale testo dell'art. 11, in tema di inserimento di pubblicità nel corso della programmazione. La proposta della commissione modifica l'art. 11, eliminando alcune delle regole che nel testo attuale realizzano un'efficace argine nei confronti di eccessi di pubblicità. Non si ritengono motivazioni convincenti per giustificare l'elaborazione della proposta della Commissione. In particolare, la pretesa "libertà di scelta" - cioè l'aumento del numero di canali a disposizione dell'utente - non ha nulla a che vedere con il numero e la frequenza delle interruzioni pubblicitarie. Per fare un esempio, la trasmissione di una partita di calcio diffusa in esclusiva da un canale generalista sarà comunque seguita dagli utenti appassionati di sport, anche se infarcita di spot pubblicitari: gli utenti non rinunceranno certo a seguirla preferendo canali diversi dove la partita non è trasmessa. Lo stesso vale per altre tipologie di trasmissione.

Amendment 84

ARTICLE 1, POINT 10

Article 11, paragraph 2, subparagraph 1 (Directive 89/552/EEC)

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**.

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 **complete** period of **45 minutes**. ***A further interruption is allowed if their programmed duration is at least 20 minutes longer than two or more complete periods of 45 minutes.***

Amendment 85

ARTICLE 1, POINT 10

Article 11, paragraph 2 a (new) (Directive 89/552/EEC)

2a. The transmission of programmes other than those referred to in paragraph 2 may be interrupted by advertising and/or teleshopping spots, up to a maximum of three interruptions in any given period of one clock hour.

Notwithstanding the preceding paragraph,

where sporting events containing interruptions are retransmitted, advertising and teleshopping spots may be inserted only during these interruptions.

Justification

Commercial interruptions must take place in such a way as to respect the viewer and his or her comfort.

Amendment 86
ARTICLE 1, POINT 10
Article 11, paragraph 2 b (new) (Directive 89/552/EEC)

2b. The national regulatory authorities should determine the time-zones for children's programmes in order to better define the rules applicable to advertising.

Justification

In the absence of a uniform EU-wide definition of "children" and "children's programmes" for the purposes of this directive, it is necessary that NRAs clearly define the time-zones where the advertising rules should apply.

Amendment 87
ARTICLE 1, POINT 11 A (new)
Article 15, point (a) (Directive 89/552/EEC)

(11a) In Article 15, point (a) is replaced by the following:

"(a) it may not be aimed specifically at, or have any indirect access to, minors or, in particular, depict minors consuming these beverages; it should not be broadcast between 6 a.m. and 9 p.m.;"

Justification

Minors are especially vulnerable to television advertising and, for obvious reasons, alcoholic beverages are not suitable for them. A comprehensive regulation of alcohol advertisement aiming at minors should thus also comprise indirect forms of appeal to them. A flat prohibition of all advertisements of alcoholic beverages aiming at minors is a proportionate measure of protection assessable by objective criteria.

Amendment 88
ARTICLE 1, POINT 13
Article 18, paragraphs 1 and 2 and paragraph 2 a (new) (Directive 89/552/EEC)

1. The proportion of short forms of advertising such as advertising spots and

1. The broadcasting time devoted to advertising shall not exceed 15% of daily

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.”

transmission time. However, this percentage may be increased to 20% if it includes forms of advertising such as offers made directly to the public for the purposes of selling, purchasing or hiring products or providing services, provided that all the advertising spots together do not exceed 15%.

2. The broadcasting time devoted to advertising spots during a given one-hour period shall not exceed 20%.

2a. Without prejudice to the provisions of paragraph 1, forms of advertising such as offers made directly to the public for the purposes of selling, purchasing or hiring products or providing services shall not exceed one hour per day.”

Justification

The text of the current directive includes all forms of advertising and provides data protection for the editorial integrity of programmes.

Amendment 89 ARTICLE 1, POINT 15 Article 19 (Directive 89/552/EEC)

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.”

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, ***which shall be readily recognisable as such by optical and/or acoustic means***. Chapter 3 as well as Article 11 (rules on insertion) and Article 18 (duration of advertising and teleshopping) do not apply to these broadcasts.”

Justification

Advertising, teleshopping, and self-promotion in television broadcasts exclusively devoted to these purposes should explicitly be signalled as such, as well. The consumer should be aware of the advertising content of the services provided.

Amendment 90
ARTICLE 1, POINT 17 A (new)
Article 20 a (new) (Directive 89/552/EEC)

(17a) The following Article 20a is inserted:

"Article 20a

1. In order to guarantee the principles of pluralism, competition and business freedom in advertising revenue, the activity of drawing up viewing figures should meet the following criteria:

(a) the bodies carrying out surveys on audience, quality, popularity and broadcasting ratings of the various media must be independent of all the entities surveyed;

(b) the representative nature of the management bodies (technical-scientific committees and/or monitoring committees): they must include representatives of all the entities involved and surveyed (operators, market and consumers) and not be confined to the broadcasting platforms;

(c) transparency of the technical committees, to which real powers must be assigned as regards the survey, without any interference - either technical or managerial - from the board of directors.'

Justification

In view of the importance of compiling viewing figures for the purposes of advertising revenue, there should be uniformity throughout the Union in accordance with the principles of freedom of expression, independence, transparency and representativeness.

Amendment 91
ARTICLE 1, POINT 17 B (new)
Article 22 (Directive 89/552/EEC)

(17b) Article 22 is replaced by the following:

"Article 22

1. Member States shall take appropriate measures to ensure that audiovisual media services supplied by providers 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 audiovisual media service or by any technical measure, that minors in the area of transmission will not normally hear or see such audiovisual media services.

3. Furthermore, when such services are provided 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."

Justification

This article should cover non-linear services as well. It is an undoubted fact that especially pornography and violence are mostly met in this kind of services, where access for minors is easiest nowadays. Television broadcasting is already regulated more or less in respect to minors' protection. Action should be taken in the field of this new kind of services.

Amendment 92

ARTICLE 1, POINT 17 C (new)

Article 22, paragraph 1 (Directive 89/552/EEC)

(17c) Article 22(1) is replaced by the following:

'1. The Member States shall take appropriate measures to ensure that broadcasts by television broadcasters under their jurisdiction do not contain any programmes which may seriously harm the physical, mental or moral development of minors, particularly programmes containing scenes of pornography or gratuitous violence. Responsibility for programmes of this kind, which are judged to be harmful, shall be deemed to lie with the television broadcaster and the media services' supplier.'

Amendment 93

ARTICLE 1, POINT 20

Article 23b, paragraph 1 (Directive 89/552/EEC)

1. Member States shall guarantee *the* independence *of national regulatory authorities* and ensure that they exercise their powers impartially and transparently.

1. *Where* Member States *have established national regulators, they* shall guarantee *the latter's* independence and ensure that they exercise their powers impartially and transparently.

Justification

The Member States should not be obliged to establish national regulatory authorities. The wording of the Commission proposal should be corrected accordingly.

Amendment 94

ARTICLE 1, POINT 20

Article 23b, paragraph 1 a (new) (Directive 89/552/EEC)

1a. The Member States shall assign to the national regulatory authorities the task of monitoring compliance with the provisions of this Directive, in particular those relating to freedom of expression, pluralism of the media, human dignity, the principle of non-discrimination and the protection of vulnerable persons.

Amendment 95

ARTICLE 1, POINT 20

Article 23b, paragraph 2 (Directive 89/552/EEC)

2. National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive.”

2. *The* information necessary for the application of the provisions of this Directive *shall be made available at Member State and Commission level.*”

Amendment 96

ARTICLE 1, POINT 20 A (new)

Article 23b a (new) (Directive 89/552/EEC)

(20a) The following Article 23ba is inserted:

"Article 23ba

1. The Member States shall adopt the measures needed to ensure pluralism of information in the radio and television broadcasting system. The Member States shall in particular ban the creation and retention of dominant positions on the television market and related markets.

2. The Member States shall endeavour to guarantee respect for the neutrality of the information provided by the public authorities and shall lay down appropriate measures to prevent possible abuses of government positions from influencing the information conveyed via the media.

3. The Member States shall prohibit holders of government office, their spouses or first or second degree relatives, as well as companies controlled by them, from taking up or maintaining positions of control in businesses operating in the radio and television market and related markets.

4. The exercise of the right to information must always be weighed against the protection of the privacy of the persons concerned and should never violate respect for individual dignity, particularly in the case of minors. In the latter case, reference should always be made to the international conventions on the subject, as well as the ethical codes and other forms of self-regulation which information sector operators have drawn up in individual European states."

Justification

Consistent with positions already adopted by the EP (e.g. the resolution adopted on 6 September 2005 on 'Television without frontiers' and the European Parliament's resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) (2003/2237(INI)) aimed at obliging the Member States to comply with general principles on the safeguarding of pluralism and to ban those holding government office from controlling broadcasting companies.

The existing disparities between national legislations on the subject obviously make the exercise of freedom of establishment and freedom to provide services on Community territory more difficult.

Amendment 97

ARTICLE 2

Annex 'Directives and Regulations', Article 3(a), Number 4 (Regulation (EC) No 2006/2004)

"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

"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 and Articles 10 to 20 . Directive as last amended by Directive .../.../EC of the European Parliament and of the Council .”

concerning the pursuit of television broadcasting activities: **Articles 3c and 3g** to 3h and Articles 10 to 20 . Directive as last amended by Directive .../.../EC of the European Parliament and of the Council .”

Justification

The possibility for the consumer to identify audiovisual media services providers in an easy, direct and permanently accessible manner clearly relates to the protection of consumers’ interests, and must therefore be mentioned explicitly in the Annex ‘Directives and Regulations’.

PROCEDURE

Title	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
References	COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)
Committee responsible	CULT
Opinion by Date announced in plenary	ITRE 2.2.2006
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Gianni De Michelis 26.1.2006
Previous drafts(wo)man	
Discussed in committee	18.4.2006 30.5.2006 13.7.2006 2.10.2006
Date adopted	3.10.2006
Result of final vote	+: 29 -: 17 0: 2
Members present for the final vote	Šarūnas Birutis, Jerzy Buzek, Jorgo Chatzimarkakis, Giles Chichester, Gianni De Michelis, Nicole Fontaine, Adam Gierek, Umberto Guidoni, András Gyürk, Fiona Hall, David Hammerstein Mintz, Rebecca Harms, Erna Hennicot-Schoepges, Ján Hudacký, Romana Jordan Cizelj, Werner Langen, Anne Laperrouze, Vincenzo Lavarra, Pia Elda Locatelli, Eugenijus Maldeikis, Eluned Morgan, Reino Paasilinna, Umberto Pirilli, Miloslav Ransdorf, Vladimír Remek, Teresa Riera Madurell, Mechtild Rothe, Paul Rübig, Andres Tarand, Catherine Trautmann, Nikolaos Vakalis, Alejo Vidal-Quadras Roca
Substitute(s) present for the final vote	María del Pilar Ayuso González, Satu Hassi, Edit Herczog, Lambert van Nistelrooij, Vittorio Prodi, John Purvis, Dirk Sterckx
Substitute(s) under Rule 178(2) present for the final vote	Alessandro Battilocchio, Giovanni Berlinguer, Iles Braghetto, Mario Mauro, Marianne Mikko, Guido Sacconi, Antonio Tajani, Yannick Vaugrenard, Stefano Zappalà
Comments (available in one language only)	...

6.10.2006

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Culture and Education

on the 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
(COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Draftswoman: Heide Rühle

AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 RECITAL 1

(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

(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

¹ OJ C , ..., p. .

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.

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. ***The laws, regulations and administrative measures should be as unobtrusive and simple as possible to allow new and existing AVMS to develop and flourish, thus allowing for job creation, economic growth, innovation and cultural diversity to be nurtured.***

Amendment 2
RECITAL 3

(3) The importance of audiovisual media services for societies, democracy and culture justifies the application of specific rules to these services.

(3) The importance of audiovisual media services for societies, democracy and culture justifies the application of ***limited*** specific rules to these services ***but only if absolutely necessary.***

Justification

Rules should only be imposed if necessary and not needlessly stifle innovation and development of the European audiovisual media sector and increased cultural diversity.

Amendment 3
RECITAL 4

(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.

(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. ***The directive shall not impede the development of new services by premature and restrictive legal provisions.***

Justification

It is impossible for to predict precisely which new services will evolve in the future and to predict disruptive technologies. Therefore, the directive should not impede innovation and development of the European audiovisual media sector and increased cultural diversity.

Amendment 4
RECITAL 6

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, 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.

(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, 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. ***Such public interests and safeguards may in principal be best found through limited regulation, self-regulation and subsidiarity.***

Justification

Meeting public policy objectives in the new media environment, characterised by greater choice and user control, fragmentation and lower barriers to entry, require new and alternative public policy approaches. Rather than a top down legislative approach that was suitable for a consolidated broadcast environment, a more flexible approach focused on evidence based goal setting and effective responses to these challenges is appropriate. This should include self-regulatory approaches where appropriate.

Amendment 5 RECITAL 7

(7) The Commission has adopted the initiative “i2010: European Information Society” 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.

(7) The Commission has adopted the initiative “i2010: European Information Society” 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. ***The goal of the i2010 will in principle be achieved by allowing industries to grow with minimal regulation, as well as allowing small start-up businesses, which are the wealth and job creators of the***

future, to flourish, innovate and create employment in a de-regulated market.

Justification

Small enterprises across the European Union do not have the staff or finances to be aware of, comply with and adhere to all regulations.

Amendment 6

RECITAL 13

(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*.

(13) The definition of audiovisual media services covers all audiovisual mass-media services ***that are identical in nature to scheduled broadcast television irrespective of the delivery platform, whether or not the editorial approach and responsibility of the provider are reflected in a programme schedule or in a selection catalogue, in their function to inform, entertain and educate.*** It therefore covers any form of economic activity, including that of public service enterprises. ***The economic character may be relevant to the application of the Directive. Economic activities are normally provided for remuneration, intended for a certain period and characterised by a certain continuity; the assessment is to be made in accordance with the criteria and rules of the country of origin. Accordingly, the definition of audiovisual media services*** does not cover non-economic activities ***which are normally not provided for remuneration, such as blogs and other user-generated content or any form of private correspondence, such as e-mails or private websites. Neither does it cover services not intended for the distribution of audiovisual content, i.e. where the audiovisual content is merely incidental to the service and not its principal purpose, such as 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, such as search engines. Further, this definition does not cover services which do not consist***

scope and regime of the underlying rights as regulated by the relevant legislation.

Justification

Unlike traditional broadcasting, Internet services are not necessarily restricted as to their territorial scope, the level of control of Internet service providers over the dissemination of the content is substantially higher than that of traditional broadcasters, and the architecture of the two categories of services, as well as their nature differ to such an extent that the assimilation of Internet services with broadcasting services would in most cases be unrealistic and therefore impossible to apply and implement in practice.

Amendment 9
RECITAL 16

(16) ***The*** term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio.

(16) ***For the purpose of this Directive, the*** term “audiovisual” refers to moving images with or without sound, so includes silent films but does not cover audio transmission or radio ***broadcasting services.***

Justification

In other European and international legislative texts, such as the WTO classification of services, under point D, the term ‘audiovisual services’ covers radio as well as television. It must be ensured that the present regulation does not change these definitions and that radio continues in general to be included in audiovisual services.

Amendment 10
RECITAL 17

(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.

(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. ***Editorial responsibility implies that the media service provider selects and organises the content, whether individual elements or a range of content, on a professional basis. This excludes the sharing of user-generated content within limited virtual communities and the activities of intermediary service providers covered by the liability exemptions established in Directive 2000/31/EC. Furthermore, the definition of media service provider does not extend to a natural or legal person who selects and***

offers for sale a package of audiovisual media services – for example, either for the purposes of providing an audiovisual media service or for the purposes of organizing such services for consumers.

Justification

Specifies the notion of editorial responsibility, which involves decision-making power. Furthermore, the notion of editorial responsibility does not embrace those that provide inputs to AVMS and requires a more intervention in scheduling than merely organising a catalogue of audiovisual items.

Amendment 11

RECITAL 18

(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.

(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 **are transmitted as part of** 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.

Amendment 12

RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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-making¹ provides agreed definitions, criteria and procedures.** **Experience** showed that co- and self-regulation instruments implemented in

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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. **Furthermore, experience** showed that **both** 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

accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.

protection. Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector will be more effective if they are taken with the active support of the service providers themselves. Thus, self-regulation constitutes a type of voluntary initiative which gives the possibility to economic operators, the social partners, non-governmental organisations or associations to adopt amongst themselves and for themselves common guidelines. Member States should, in accordance with their different legal traditions, recognise the effective role that effective self-regulation can play as an additional complement to legislation and the judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive. However, while self-regulation might be an alternative method to implement certain provisions of this Directive, it cannot completely substitute the obligation of the national legislator. Co-regulation gives, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States.

1 OJ C 321, 31.12.2003, p. 1.

Amendment 13
RECITAL 26

(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.

(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. ***To this end, where Member States are permitted to draw up lists of events of substantial social interest which must not be broadcast on an***

exclusive basis, it is for the individual Member State to decide whether to draw up such a list, which events it regards as having substantial social interest, how the term ‘a substantial proportion of the public’ is defined and what type of reporting should be made available.

Justification

It should remain at the discretion of the Member States what events they regard as having substantial social interest, how they define a substantial proportion of the public and what type of reporting is made available.

Amendment 14
RECITAL 27

(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.**

(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 **a broadcaster**, the right to use short extracts for the purposes of general news programming, **but not for the purposes of entertainment programme. As a general rule, access to short extracts should be granted** on fair, reasonable and non-discriminatory terms, **for an appropriate payment, take** due account of exclusive rights **and should not exceed 90 seconds.** 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. **The right to news access should apply only where it is necessary; accordingly, if another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster.**

Justification

The right of short reporting is traditionally practiced through bilateral agreements and it should be acknowledged in the wording of the directive. Giving free access to a broadcaster’s

signal causes significant problems with regards to copyrights and infringes the broadcasters' and/or rights holders' property rights. The broadcaster is not necessarily the right holder for broadcasting rights in other EU Member states. As Member States have chosen different approaches for the right of information, this Directive should include a neutral clause, leaving it to the Member States to choose the legal instrument when transposing the Directive in national law.

Amendment 15
RECITAL 28

(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. 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.

(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. 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. ***The high level of consumer choice and control indicates that new services such as video on demand, repetitive loops of content or live streaming of events, which are not imbedded in a linear service are to be defined as non-linear services irrespective of the content.***

Justification

The EU-Commission has highlighted in its explanatory notes to the proposal of directive that any “pull” service should be defined as a non-linear service. In addition, innovative services, such as repetitive loops of content, allow the consumer to choose when and how to consume the content offered. New devices and applications give the consumer additional features and control over what is viewed. Moreover, a differentiation according to the subject of a service is not in line with a definition which ties in with the person establishing the programme schedule and the decision of the user. Therefore a non linear service can consist of sport events, concerts, films and other events on a pay per view basis. As a consequence, services such as repetitive loops of content and live streaming must be considered as non linear. This should be expressed clearly in the text of the Directive to allow a clear distinction between linear and non linear services with the respect to the scope of the E-Commerce Directive.

Amendment 16
RECITAL 29

(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

(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.

to know exactly who is responsible for the content of these services. It is therefore important for Member States to ensure that **users have access to information on the ways in which editorial responsibility for the content is exercised and by whom**. 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.

Justification

It is increasingly difficult to identify a single player in the media value chain which does not exercise some degree of editorial judgment, either in aggregating content or in filtering it out. As the definition of a single editorial control becomes elusive, obligations on Member States to ensure transparency should be affirmed in a general way.

Amendment 17
RECITAL 30

(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.

(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 **encourage** a high level of protection of objectives of general interest, in particular the protection of minors, **the rights of people with disabilities** and human dignity.

Justification

Action at the community level is unable to ensure a high level of protection, but it can encourage it through a combination of co-and self-regulation. Furthermore, today, the audiovisual media, and especially television, are a channel to obtain information, educational training, cultural contents and access to leisure time in a rather significant manner. For this reason, it is indispensable that any progress that occurs should take fairly into account the possible needs of all European citizens, especially the handicapped, because otherwise they would remain excluded from the wide range of benefits that modern society and in particular digital TV can provide.

Amendment 18
RECITAL 33

(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.

(33) None of the provisions of this Directive that concern the protection of minors and public order requires that the measures in question be implemented through prior control of audiovisual media services.

Amendment 19
RECITAL 35

(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.***

(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.

Justification

The market for non-linear services is at a very early stage it is development. Imposing cultural quotas or financial contribution risks undermining the development of these new services. In any case, lower barriers to distribution should have a positive effect on cultural diversity, in particular by creating markets for so-called "tail" content.

Amendment 20
RECITAL 35 A (new)

(35a) Parties who only bundle or transmit audiovisual media services or offer for sale packages of such services, for which they do not have the editorial responsibility,

should not be considered as media service providers. Thus, pure bundling, transmission or reselling of content offers, for which they do not have the editorial responsibility, do not fall within the scope of this Directive.

Justification

It should be made clear that – as to date – pure bundling, transmission or reselling of content offers for which third parties do not have the editorial responsibility as media service providers are not included in the scope of the Directive. As providers have no influence on and therefore no control over such content such a clarification is necessary.

Amendment 21

RECITAL 38

(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.***

(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.

Justification

European citizens should be given the choice over content. What is more, editorial integrity and cultural diversity should not be inhibited by public policy measures

Amendment 22

RECITAL 41

(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

(41) ***It is necessary to ensure that the relationship between this Directive and existing Community law is coherent. Accordingly, in case of conflict between the provisions of this Directive and a provision of another Community act governing specific aspects of access to or exercise of an audiovisual media service activity, the provisions of this Directive should prevail. This Directive consequently complements the Community acquis. Thus, apart from***

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 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.

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 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. **Furthermore, this Directive is without prejudice to Regulation .../... of the European Parliament and of the Council on nutrition and health claims made on foods.**

Justification

To provide legal certainty, the relationship between this Directive and the existing legal framework has to be clarified.

Amendment 23 RECITAL 42

(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.

(42) Given the increased use of new technologies such as personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim

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.

of protecting viewers is no longer justified. **The Directive gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.**

Justification

Technology has advanced to the point where it is now easy to skip traditional spot advertisements. Therefore more flexibility is needed to ensure the viability of free to air broadcasting and increased cultural diversity.

Amendment 24
RECITAL 44

(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.*

(44) The limitation on the amount of daily advertising **and the restriction on advertising time per clock hour should, with a few exceptions, be abandoned. It is sufficient for quality control to be retained.**

¹ *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..*

Justification

It is sufficient that quality control of advertising is ensured. The quantitative requirements may be abandoned in the interest of deregulation, particularly since consumers are only willing to tolerate a certain amount of advertising.

Amendment 25
RECITAL 47

(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.

(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. ***The specific features of the organisation of regulators in the national media systems should be safeguarded.***

Justification

This wording takes account of the varying national organisational forms of supervision in the Member States.

Amendment 26
RECITAL 47 A (new)

(47a) The right of people with disabilities with particular regard to those with sensory disabilities and elderly people to participate in social and cultural life in the community deriving from Articles 26 and 27 of the Charter of Fundamental Rights, is indivisible from provision of accessible audiovisual media services. Accessibility of audiovisual media services includes, but is not limited to, sign language, subtitling, audio description, audio subtitling and easy-to-understand screen menus.

Justification

In line with the Commission's commitment to mainstream disability in all Community policies, it is important to make an explicit reference to the provisions of the Charter dealing with persons with sensory disabilities and older persons. Moreover, a non-exhaustive list of accessibility features necessary to respect the provisions of the charter is proposed. Many accessibility features, including audio description and sub titling, are not only of benefit to people with sensory disabilities and older people, but also to people with learning disabilities and non English speaking audiences.

Amendment 27
ARTICLE 1, POINT 2
Article 1, point (a) (Directive 89/552/EEC)

(a) 'audiovisual media service' means a

(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,

service ***provided under the editorial responsibility of a media service provider and*** as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of ***programmes consisting 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.

This definition does not cover:

- ***services where audiovisual content is merely incidental to the service and not its principal purpose;***
- ***electronic versions of newspapers and magazines.***

Amendment 28

ARTICLE 1, POINT 2

Article 1, point (b) (Directive 89/552/EEC)

(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;

(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.

This definition does not cover natural or legal persons who only bundle or transmit content or offer for sale packages of such services, for which the editorial responsibility lies with third parties.

Amendment 29

ARTICLE 1, POINT 2

Article 1, point (c) (Directive 89/552/EEC)

(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;***

(c) ‘television broadcast’ or ‘***linear service***’ ***means an*** audiovisual media service where a ***chronological sequence of programmes is transmitted to an indeterminate number of potential viewers at a point in time decided upon by the media service provider according to a fixed programming schedule;***

Amendment 30
ARTICLE 1, POINT 2
Article 1, point (e) (Directive 89/552/EEC)

(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*;

(e) ‘non-linear service’ means an audiovisual media service *consisting of an offer of audiovisual content, edited and compiled by a media service provider*, where the user, *on an individual basis, requests the transmission of a particular programme from a choice of content and at a chosen time*;

Amendment 31
ARTICLE 1, POINT 2
Article 1, point (f) (Directive 89/552/EEC)

(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;

(f) ‘audiovisual commercial communication’ means moving images with or without sound which *are transmitted as part of* audiovisual media services *with the aim of promoting*, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity;

Amendment 32
ARTICLE 1, POINT 2
Article 1, point (h) (Directive 89/552/EEC)

(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;

(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 *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;

Amendment 33

ARTICLE 1, POINT 2
Article 1, point (i) (Directive 89/552/EEC)

(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;

(i) ‘sponsorship’ means any contribution made by a public or private undertaking **or natural person** not engaged in providing audiovisual media services or in the production of audio-visual works, to the **direct or indirect** financing of audiovisual media services, with a view to promoting its name, its trade mark, its image, its activities or its products;

Amendment 34
ARTICLE 1, POINT 2
Article 1, point (k) (Directive 89/552/EEC)

(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;

(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, **with or without** payment or similar consideration **to the media service provider**.
The legal definition of product placement does not cover, however, independent editorial decisions to use products, without undue prominence, which are integral to a programme and facilitate its production, such as prizes awarded in programmes, incidental objects and props.

Amendment 35
ARTICLE 1, POINT 3, POINT (F)
Article 2, paragraph 6 (Directive 89/552/EEC)

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.**

6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries.

Amendment 36
ARTICLE 1, POINT 3, POINT (G)
Article 2, paragraph 7 (Directive 89/552/EEC)

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.

7. A Member State may, in order to prevent abuse, fraudulent conduct *or a manifestly unreasonable distortion of competition*, 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.

Amendment 37
ARTICLE 1, POINT 3, POINT (G)
Article 2, paragraph 8 (Directive 89/552/EEC)

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.

8. Member States may *only* take measures pursuant to paragraph 7 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 *within two months from the date of receipt of the request*;
- (c) *after the period of two months referred to in point (b)*, 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.

Amendment 38
ARTICLE 1, POINT 3, POINT (G)
Article 2, paragraph 10 (Directive 89/552/EEC)

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

10. The Commission shall decide within three months following notification under *point (c) of 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.

question shall refrain from taking the proposed measures.

Amendment 39

ARTICLE 1, POINT 5

Article 3, paragraph 1 (Directive 89/552/EEC)

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.

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, ***provided that such rules do not manifestly distort competition or conflict with principles of EU law.***

Justification

It is important to be able to maintain a functional media market. If the application of the directive would result in unreasonable distortions of competition which would not normally be allowed under EU law, the Member States must be able to ensure that the underlying principles of EU law are upheld.

Amendment 40

ARTICLE 1, POINT 5

Article 3, paragraph 3 (Directive 89/552/EEC)

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.

3. Member States shall encourage ***self-and/or*** co-regulatory regimes in the fields coordinated by this Directive. These regimes shall be such that they are broadly accepted by the main stakeholders ***in the Member States concerned*** and provide for effective enforcement.

Amendment 41

ARTICLE 1, POINT 6

Article 3b, paragraph 1 (Directive 89/552/EEC)

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.

1. ***Without prejudice to other contractual agreements between the television broadcasters concerned,*** Member States shall ensure that, for the purposes of short news reports, broadcasters ***lawfully licensed and*** established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to ***news*** events

of high **public** interest which are transmitted by a broadcaster under their jurisdiction **and receive an appropriate payment for doing so.**

Justification

The right of short reporting is traditionally practiced through bilateral agreements and it should be acknowledged in the wording of the directive. Giving free access to a broadcaster's signal causes significant problems with regards to copyrights and infringes the broadcasters' and/or rights holders' property rights. The broadcaster is not necessarily the right holder for broadcasting rights in other EU Member states. As Member States have chosen different approaches for the right of information, this Directive should include a neutral clause, leaving it to the Member States to choose the legal instrument when transposing the Directive into national law.

Amendment 42

ARTICLE 1, POINT 6

Article 3b, paragraph 2 a (new) (Directive 89/552/EEC)

2a. The provisions of this Article shall apply without prejudice to the obligation of individual broadcasters to comply with the copyright law of the Member State in which they are established, including Directive 2001/29/EC and/or the Rome Convention, and shall not affect that obligation.

Justification

Clarifies that the existing obligations of copyright law are not affected by the directive.

Amendment 43

ARTICLE 1, POINT 6

Article 3c, point (c) (Directive 89/552/EEC)

(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;

Does not affect the English version

Justification

Linguistic amendment

Amendment 44

ARTICLE 1, POINT 6

Article 3c, point (d) (Directive 89/552/EEC)

(d) where applicable, the **competent** regulatory authority.

(d) where applicable, the **relevant** regulatory **or supervisory** authority.

Amendment 45
ARTICLE 1, POINT 6
Article 3d (Directive 89/552/EEC)

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.

Member States **and the Commission** shall **encourage the drawing up of codes of conduct by trade, professional and consumer association or organisations** to ensure audio visual media services are not made available in such a way that might seriously impair the physical, mental or moral development of minors.

Justification

Protection of minors must be achieved through a multi-level approach with all stakeholders involved. Through self-regulation, industry players such as ISPs have pioneered measures to protection of minors.

Amendment 46
ARTICLE 1, POINT 6
Article 3f, paragraph 1 (Directive 89/552/EEC)

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.

1. Member States shall ensure that media service providers under their jurisdiction promote, where practicable by appropriate means, production of and access to European **and independent** works within the meaning of Article 6.

Justification

Media service providers should promote European works and support independent production. This will contribute to Europe's cultural diversity objectives and preserve a fair and competitive environment between all actors in the sector.

Amendment 47
ARTICLE 1, POINT 6
Article 3f, paragraph 3 (Directive 89/552/EEC)

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

3. Member States shall report to the Commission, no later than the end of the fourth year after adoption of this Directive and every **two** years thereafter on the

implementation of the measure set out in paragraph 1.

implementation of the measure set out in paragraph 1.

Justification

The two year period fits better in the whole timetable. Three years are quite a long time in view of the fast development of the new services.

Amendment 48

ARTICLE 1, POINT 6

Article 3f, paragraph 4 (Directive 89/552/EEC)

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.

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 **and the objective of cultural diversity.**

Justification

As the Commission also stresses in its explanatory statement (and in Recital 3) audiovisual media services have not only a high importance for economic and technological development but a high impact as well in democracy and cultural diversity.

Amendment 49

ARTICLE 1, POINT 6

Article 3g, point (c), point (i) (Directive 89/552/EEC)

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

(i) **be offensive** on grounds of **discrimination by race, gender, nationality, disability, age, or sexual orientation;**

Justification

The current Commission proposal would forbid, for example, a documentary on racial hatred whereas the intention is really to forbid audio visual media content which is offensive. Furthermore, other forms of discrimination should not be overlooked.

Amendment 50

ARTICLE 1, POINT 6

Article 3g, point (c), point (iv) (Directive 89/552/EEC)

(iv) encourage behaviour prejudicial to the protection of the environment.

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

Amendment 51
ARTICLE 1, POINT 6
Article 3g, point (d) (Directive 89/552/EEC)

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

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

Justification

Superfluous

Amendment 52
ARTICLE 1, POINT 6
Article 3g, point (f) (Directive 89/552/EEC)

(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.

Does not affect English version

Justification

Linguistic amendment

Amendment 53
ARTICLE 1, POINT 6
Article 3g, point (f) (Directive 89/552/EEC)

(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

(f) audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not exhort minors to buy a product or service, 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 show minors in dangerous

other persons, or *unreasonably* show minors in dangerous situations.

situations.

Amendment 54
ARTICLE 1, POINT 6
Article 3h (Directive 89/552/EEC)

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

1. Audiovisual media services *or programmes* that are sponsored shall meet the following requirements *where applicable*:
(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 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

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.***

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.

Amendment 55
ARTICLE 1, POINT 6
Article 3h a (new) (Directive 89/552/EEC)

Article 3ha

1. Audiovisual media services 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 product placement.

Programmes containing product placement must be appropriately identified in order to avoid any confusion on the part of the viewer.

2. 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. News and current affairs shall not contain product placement. Audiovisual

media services for children and documentaries may not contain product placement.

Amendment 56
ARTICLE 1, POINT 6
Article 3h b (new) (Directive 89/552/EEC)

Article 3hb
Accessibility

- 1. Member States shall take appropriate measures to gradually ensure that audiovisual media services under their jurisdiction become fully accessible for people with sensory disabilities through the development of sign language, subtitling, audio description, audio subtitling.**
- 2. The European Commission shall seek information from Member States every two years on the implementation of this Article.**

Justification

Accessibility of audiovisual media services is an important part of the proper functioning of the internal market, in accordance with Recital 30. People with sensory disabilities and/or older people, to whom the issue of accessibility is a crucial one too, represent a significant share of consumers of audiovisual services. According to the Institute of Hearing Research, over 81 million Europeans live with a hearing loss; moreover, there are over 30 million Europeans who are blind or vision impaired. The research has shown that an overwhelming number of people with sensory disabilities and/or older people watch television. This represents a market that must be catered for. An obligation to provide accessible audiovisual media services would undoubtedly stimulate healthy competition of service providers and enhance functioning of the internal market.

Amendment 57
ARTICLE 1, POINT 9
Article 10, paragraph 1 (Directive 89/552/EEC)

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.

1. Television advertising and teleshopping shall be readily recognizable and **distinguishable from editorial content**. **Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct** from other parts of the programme service by optical and/or

acoustic *and/or spatial* means.

Justification

The principle that advertising shall be distinguishable from editorial content needs to be strongly established but its implementing means should be broadened to allow the development of new and creative advertising techniques while offering clarity and protection to viewers.

Amendment 58

ARTICLE 1, POINT 9

Article 10, paragraph 2 (Directive 89/552/EEC)

2. Isolated advertising and teleshopping spots, other than in sports programmes, shall remain the exception. *deleted*

Justification

The retention of the rule that isolated spots should remain the exception (except for sports) would place an artificial limit on broadcasters' ability to explore flexible new break patterns together with the viewers. Recent studies show that viewers actually prefer spot advertising compared to advertising blocks as they are less intrusive than long breaks.

Amendment 59

ARTICLE 1, POINT 10

Article 11, paragraph 2, subparagraph 1 (Directive 89/552/EEC)

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.

2. The transmission of **cinematographic works** (excluding series, serials, light entertainment programmes, documentaries *and films made for television*), children's programmes and news programmes, **provided their scheduled duration is more than 30 minutes**, may be interrupted by advertising and/or teleshopping once for each period of **30** minutes.

Justification

The introduction of a 35-minute rule would lead to loss in revenues for those investing in less profitable formats. To prevent these formats from being imported more frequently from non-European countries, restrictions should be based on periods of 30 minute schedule duration. In addition, they should apply only to specific genres such as children's programmes, news programmes and cinematographic works. Restrictions on films made for television which can only be financed by advertising revenues unlike cinematographic works which also sell merchandising should be lifted to offer a powerful incentive to investments in original European productions.

Amendment 60
ARTICLE 1, POINT 17
Article 20 (Directive 89/552/EEC)

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.**

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 **television** broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

Justification

The drafting is unclear and could cause problems: what does the term broadcast refer to? How can the impact of broadcasts on audience shares be measured. How can you determine whether a broadcast is intended solely for the national territory? In order to ensure legal certainty the term broadcast should be replaced by “television broadcasts” and the reference to “broadcasts having no...” should be deleted.

Amendment 61
ARTICLE 1, POINT 20
Article 23b, paragraph 1 (Directive 89/552/EEC)

1. Member States shall guarantee **the independence of national regulatory authorities** and ensure that they exercise their powers impartially and transparently.

1. **Where** Member States **have established national regulators, they** shall guarantee **their** independence and ensure that they exercise their powers impartially and transparently.

Justification

The Member States should not be obliged to establish national regulatory authorities. The wording of the Commission proposal should be corrected accordingly.

Amendment 62
ARTICLE 1, POINT 22
Article 26 (Directive 89/552/EEC)

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

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

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.

amended, ***in particular as regards the implementation of the measures set out in paragraph 1 of Article 3f and in Article 3h b***, 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 the promotion of cultural diversity***.

**** The end of the fifth year after adoption of this Directive.***

Amendment 63
ARTICLE 3, POINT 1

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 and a correlation table between those provisions and this 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 and a correlation table between those provisions and this Directive.

**** Two years after the entry into force of this Directive.***

Justification

A deadline for transposition of this Directive has been omitted in the Commission's text. A speedy implementation is desirable in order to ensure a full functioning internal market for audiovisual media services and a level playing field for all media service providers. After two years of its implementation, Member States will need to report to the Commission about their implementing measures for certain provisions of this Directive. Similarly, the Commission will need to report to Council and Parliament about the application of this Directive after three years of its implementation (or five years after its adoption).

PROCEDURE

Title	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				
References	COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)				
Committee responsible	CULT				
Opinion by Date announced in plenary	IMCO 2.2.2006				
Enhanced cooperation – date announced in plenary					
Drafts(wo)man Date appointed	Heide Rühle 21.2.2006				
Previous drafts(wo)man					
Discussed in committee	21.3.2006 11.7.2006	19.4.2006 14.9.2006	30.5.2006 4.10.2006	1.2.6.2006	20.6.2006
Date adopted	5.10.2006				
Result of final vote	+: 27 -: 0 0: 4				
Members present for the final vote	Charlotte Cederschiöld, Janelly Fourtou, Evelyne Gebhardt, Malcolm Harbour, Anna Hedh, Edit Herczog, Henrik Dam Kristensen, Kurt Lechner, Arlene McCarthy, Toine Manders, Manuel Medina Ortega, Béatrice Patrie, Zita Pleštinšská, Giovanni Rivera, Zuzana Roithová, Luisa Fernanda Rudi Ubeda, Heide Rühle, Andreas Schwab, József Szájer, Marianne Thyssen, Jacques Toubon, Bernadette Vergnaud, Glenis Willmott				
Substitute(s) present for the final vote	Maria Badia I Cutchet, Benoît Hamon, Filip Andrzej Kaczmarek, Gisela Kallenbach, Syed Kamall, Othmar Karas, Joseph Muscat, Gary Titley				
Substitute(s) under Rule 178(2) present for the final vote	Sharon Bowles, Den Dover, Harald Ettl, Ruth Hieronymi, John Purvis				
Comments (available in one language only)	...				

10.10.2006

OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on Culture and Education

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/ECC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities
(COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Draftswoman: Lissy Gröner

SHORT JUSTIFICATION

The Draftswoman welcomes the proposal of the Commission, in particular to bring linear and non-linear services within the same regulatory framework. However, some aspects of gender equality as well as protection of minors ought to be inserted in order to have a directive in line with the priorities of the Union. In a European context where more women enter the workforce but not enough measures are being implemented to reconcile working and family life. Also, a clear and strong protection of minors ought to be defined in the directive. On the same line, product placement should not be allowed since it is not proven that it enhances competitiveness while there is a clear risk to jeopardise the quality of content as well as the independence of authors, with possible negative consequences on consumers of audiovisual services as well as on the public.

AMENDMENTS

The Committee on Women's Rights and Gender Equality calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission

Amendments by Parliament

Amendment 1
RECITAL 10

(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.

(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, ***ethnic origin***, sex, religion, nationality, ***age, sexual orientation or disability*** 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.

Justification

There should be no discrimination because of ethnic origin, age, sexual orientation or disability

Amendment 2
RECITAL 13

(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

(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; ***the economic element must be of some significance to justify application of the Directive.***

Justification

The notion of "audiovisual media services" should apply only to services which are normally provided against remuneration; the fact that a website or videoblog contains information credits for, for example, the software used does not necessarily mean that it is to be qualified as an economic activity.

Amendment 3
RECITAL 17

(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***

(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. ***Editorial responsibility implies that the media service provider selects and organises the audiovisual content - either individual content items or a range of content - in a professional capacity. This excludes the sharing of user-generated content within limited virtual communities, as well as the activities of intermediary service providers which benefit from the liability exemptions established in Directive 2000/31/EC.***

Justification

It needs to be clarified further in a Recital that the notion of "editorial responsibility" presupposes that the media service provider edits the audiovisual content - either individual content items or the selection of content - in a professional manner. This also allows for a clearer distinction between "media service providers" and "intermediary service providers", which benefit from liability exemptions under Article 12-15 of the e-Commerce Directive.

Amendment 4
RECITAL 19 a (new)

(19a) It is therefore essential that the Member States prevent the emergence of dominant positions that would lead to a limitation of pluralism and restrictions on freedom of media information as well as of the information sector as a whole, for instance by taking measures to secure non-discriminatory access to audiovisual media service offerings in the public interest (e.g. through must-carry rules).

Justification

A central purpose of the Directive on audiovisual media services is to ensure access by citizens to a pluralistic media offering. This recital builds on an existing passage in the present Directive but states explicitly that infrastructural measures serving diversity, such as must-carry rules, also contribute to this objective.

Amendment 5
RECITAL 25

(25) In its Communication to the Council

(25) In its Communication to the Council

and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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 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.

and the European Parliament on Better Regulation for Growth and Jobs in the European Union 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 provides agreed definitions, criteria and procedures. Experience *shows* that **co-regulation systems** implemented in accordance with *the* different legal traditions of *the* Member States *must* play an important role in delivering a high level of **public** protection. ***The public objectives can best be achieved in the framework of the new audiovisual services with the active support of the providers. The Member States can therefore provide for the use of transparent and generally recognised co-regulation systems, especially for non-linear services.***

Justification

Self-regulation can be an instrument for implementing European rules only as an integral part of regulation. It must therefore be integrated into the necessary regulatory regime, so that, in effect, only co-regulation can be considered here.

Amendment 6 RECITAL 32

(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.***

(32) ***In the*** measures taken to protect minors and human dignity, ***an adequate balance must be established between on the one hand the respect of the fundamental rights of minors including young children, women and groups faced with discrimination and on the other hand,*** 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 ***the rights of minors, women and groups facing discrimination*** especially with regard to

non-linear services.

Justification

Considering the important role played by the media in the way people form their opinions, and the de facto power it has on the public, it is essential that a balance should be found between the fundamental right to freedom of expression and respect for human rights as recognised by the EU and its Member States.

Amendment 7
RECITAL 40

(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.***

(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: some quantitative restrictions should therefore be abolished, ***while the separation principle must remain inviolable in order to protect media services users, uphold editorial independence and safeguard artistic freedom. In this respect the prohibition of surreptitious advertising remains.***

Justification

Product placement is not compatible with the separation principle. The use of product placement represents a substantial interference in the audiovisual work and causes a confusion of editorial and promotional content. To maintain the credibility of the media it is necessary to continue to uphold the separation principle in a comprehensive manner.

Amendment 8
RECITAL 45

(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.***

(45) Surreptitious advertising, ***product integration and thematic placement are practices*** prohibited by this Directive because of *their* negative effect on consumers.

Justification

Necessary addition to clarifying the prohibition of product integration and thematic

placement, which are practices with very negative effects for the consumer.

Amendment 9
RECITAL 46

(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.

deleted

Justification

See amendment on recital 46 a (new)

Amendment 10
RECITAL 46 A (new)

(46 a) In the Member States different regulations and legal opinions exist with regard to the admissibility and use of production aids. It therefore appears that clarification of this point is needed in order to achieve fair cross-border competition. Production aid enables the prudent use of scarce resources without the disadvantage of violating the separation principle. The term production aid introduced here covers the acceptance free-of-charge or at a reduced price of production means or other inputs to the production of audiovisual media services that are needed on journalistic or artist grounds for the presentation of the real world. Production aids should be admissible if they do not involve any restrictions on journalistic or

artistic freedom of expression. There must not be any payment or similar consideration in return for the production aid used. If the use of production aids requires for editorial or artistic reasons the reference to or presentation of goods, services, names, trade marks or activities of a producer of commodities or provider of services, this shall occur without any special or undue emphasis.

Justification

The recital clarifies what is meant by admissible production aids. A production aid enables the prudent use of scarce financial resources. A production aid is presented in a work for editorial and not for promotional reasons, so its use does not lead to a confusion of editorial content and commercial forms of communication. This avoids the danger of undermining the separation principle or curtailing artistic or journalistic freedom.

Amendment 11

RECITAL 47

(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.

(47) **Regulatory authorities and regulatory bodies** 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. *The distinctive features of the national traditions of media regulation in terms of the organisation of regulatory authorities and regulatory bodies shall be respected.*

Justification

This wording takes account of the different national organisational forms of regulation and supervision in the Member States

Amendment 12

RECITAL 48 A (new)

(48a) Even though the providers of audiovisual content are obliged to ensure that facts and events presented in the media services they offer are correctly reported, there must still be clear obligations with

respect to the right of reply or equivalent measures so as to ensure that anyone who feels that his legitimate interests have been infringed by an assertion of incorrect fact via an audiovisual media service can effectively assert his rights.

Amendment 13
RECITAL 48 B (new)

(48b) The right of people with disabilities and elderly people to participate in social and cultural life in the community deriving from Articles 25 and 26 of the Charter of Fundamental Rights is indivisible from provision of accessible audiovisual media services. Accessibility of audiovisual media services includes but is not limited to sign language, subtitling, audio description, audio subtitling and easy-to-understand screen menus.

Justification

In the absence of a common understanding of what constitutes "accessibility", there is a danger of Member States interpreting the provisions of Article 3i in different ways, which may result in market fragmentation, unfair competition and legal uncertainty to the detriment of users with disabilities. Therefore, it is proposed to provide guidelines explaining the term "accessibility" in the context of audiovisual services.

Amendment 14
ARTICLE 1, POINT 2
Article 1, point (a) (Directive 89/552/EEC)

(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;

(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, **and which is offered by a media service provider** to the 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;
this definition does not include information society services, as defined in Article 1 of

Directive 98/48/EC;

Justification

Including a reference to the "media service provider" in this definition makes it clear that it is not just any provision of audiovisual content among members of the public which falls within the definition of "audiovisual media services", and thus within the scope of the Directive, but only those services for which a "media service provider" takes editorial responsibility (and not, for example, the sharing of user-generated content within limited virtual communities). The reference also ensures full coherence between the definitions of "audiovisual media service" and of "media service provider". However, what is meant in a "new media" environment by "editorial responsibility" needs to be further clarified in a recital. It is also proposed to delete the term "general" (before "public") in the English version ("grand" in the French version) so as to avoid the uncertainty which would be caused by changing the well-proven formulation in the current Directive, which simply uses the term "public".

Amendment 15

ARTICLE 1, POINT 2

Article 1, point (a a) (new) (Directive 89/552/CEE)

(aa) 'Audiovisual media services for children' means any media service as defined in Art. 1 (a) which is aimed at children or where children represent a significant proportion of the audience.

Justification

A reinforced protection of minors ought to be settled, since a growing number of women enter the workforce and leaving minors unattended in front of the television.

Amendment 16

ARTICLE 1 POINT 2

Article 1, point (h) (Directive 89/552/EEC)

(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;

(h) 'surreptitious advertising' means the **direct or indirect** 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;

Justification

Surreptitious advertising should also be prohibited in non-linear services in any form (direct or indirect).

Amendment 17

ARTICLE 1, POINT 2

Article 1, point (k) (Directive 89/552/EEC)

(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. ***deleted***

Justification

The article defines this newly introduced term "production aid".

Amendment 18

ARTICLE 1, POINT 2

Article 1, point (k a) (new) (Directive 89/552/EEC)

(ka) 'production aid' entails the acceptance without payment or at a reduced price of means of production or other non-pecuniary inputs for the production of audiovisual media services without any payment or similar consideration in return.

Justification

The article defines this newly introduced term "production aid".

Amendment 19

ARTICLE 1, POINT 2

Article 1, point (k b) (new) (Directive 89/552/EEC)

(kb) 'Co-regulation' means a form of regulation that is based on cooperation between public authorities and self-regulation bodies.

Justification

It is important to give additional definitions

Amendment 20

ARTICLE 1, POINT 4, POINT (B)

Article 2 a, paragraph 2, subparagraph 1, points a, b, c and d (Directive 89/552/EEC)

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

(1)

(b) Paragraph 2, *subparagraph 1, points a, b, c and d* are replaced by the following:
“(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) and/or Article 3e; or a non-linear media service coming from another Member State manifestly, seriously and gravely infringes Article 3d or Article 3e;

(2)

(b) during the previous 12 months, the media service provider has infringed the provision(s) referred to in (a) on at least two prior occasions;

(3)

(c) the Member State concerned has notified the media service provider and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;

(4)

(d) consultations with the Member State from which the audiovisual media service comes and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.”

(See wording of Article 2 a of Directive 89/552/EEC)

Justification

Care must be taken with the precise choice of words here, so as to reduce misunderstandings.

Amendment 21

ARTICLE 1, POINT 4, POINT (B A) (new)

Article 2 a, paragraph 3 (Directive 89/552/EEC)

(ba) Paragraph 3 is replaced by the following:

“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 media service provider concerned.”

Justification

Care must be taken with the precise choice of words here, so as to reduce misunderstandings.

Amendment 22

ARTICLE 1, POINT 5

Article 3 paragraph 3 a (new)

3a. Member States shall, by appropriate means, advance the development of media literacy amongst consumers.

Justification

Media literacy refers to the skills, knowledge and understanding of consumers to enable them to use media effectively. It is increasingly becoming a fundamental component of European and national communications policy agendas since it actively complements and underpins regulation. Important initiatives are being developed at European and national levels to advance people's media literacy, so that they can take full advantage of the benefits brought about by digital technologies. The audiovisual media services directive should recognise and provide direction to such efforts.

Amendment 23

ARTICLE 1, POINT 6

Article 3 b, paragraph 1 a (new)

1a The Member States shall take all necessary measures to ensure that broadcasters under their jurisdiction have access to events of great public interest for the purpose of short reporting.

Justification

The proposal by the European Commission on the right of short reporting does not guarantee access by citizens to information on events of importance to society. It is therefore necessary to establish a Community-wide right to short reporting. Moreover, such a provision would also serve the still valid objective of bringing the EC Directive into line with the respective Convention by the Council of Europe. A new paragraph 1 must therefore be inserted into Article 3b.

Amendment 24

ARTICLE 1, POINT 6

Article 3 b, paragraph 2 a (new) (Directive 89/552/EEC)

2a The broadcasters have the right of short reporting irrespective of the holder of exclusive rights and are thus entitled to independent access to events of major public interest.

Amendment 25
ARTICLE 1, POINT 6
Article 3 d (Directive 89/552/EEC)

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.

Member States *and the Commission* shall *encourage the drawing up of codes of conduct by trade, professional and consumer association or organisations* to ensure audio visual 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, *including young children, in particular through programmes containing scenes of pornography, meaning depictions to incite hatred based on sex, gratuitous violence, incitation to violence against women and girls or to intolerance..*

Justification

Protection of minors in the new media environment is best achieved through a multi-level partnership-based approach involving all stakeholders as provided for in Article 16 of the E-commerce Directive.

Amendment 26
ARTICLE 1, POINT 6
Article 3 d a (new) (Directive 89/552/EEC)

Article 3d a

Member States shall take appropriate measures to ensure that audiovisual media services under their jurisdiction are not made available in such a way that promotes or reinforces the portrayal of gender stereotypes.

Justification

Gender stereotypes portrayed in the media are a key factor in the continued existence of sex discrimination.

Amendment 27
ARTICLE 1, POINT 6
Article 3 e (Directive 89/552/CEE)

Member States shall ensure by appropriate means that audiovisual media services and audiovisual commercial communications provided by providers under their

deleted

jurisdiction do not contain any incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

Justification

Amendment 28
ARTICLE 1, POINT 6
Article 3 e a (new) (Directive 89/552/EEC)

Article 3 ea

1. Member States must ensure through appropriate means that the audiovisual media services and audiovisual commercial communications delivered by providers within their jurisdictions:

(a) do not include any discrimination on grounds of sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation;

(b) do not contain any incitation to hatred based on the above-mentioned grounds;

(c) do not portray persons with disabilities in a stigmatising manner that violates their human dignity and integrity.

2. Member States shall take all appropriate measures, both general and specific, to ensure that the audiovisual media services within their jurisdictions gradually become accessible universally, and in particular to persons with disabilities and the elderly, and present a report to the Commission every two years.

Justification

In accordance with recital 30, the accessibility of audiovisual media services is an important factor in the correct functioning of the internal market. Persons who suffer from disabilities and/or are elderly represent a significant proportion of audiovisual service consumers. According to the Institute of Hearing Research, over 81 million Europeans have hearing difficulties; Europe is also home to over 30 million people with impaired vision. Research shows that a very large number of people who suffer from disabilities and/or are elderly watch television. That represents a market which must be covered. A requirement to provide accessible audiovisual media services would be bound to stimulate competition between service providers and fuel the internal market.

Amendment 29
ARTICLE 1 POINT 6

Article 3 g, point (c) (i) (Directive 89/552/EEC)

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

(i) *undermine respect for human dignity or be in breach of fundamental rights as defined in the Charter of Fundamental Rights* or include any discrimination on grounds of race, sex, or *ethnic origin, religion or belief, disability, age, sexual orientation* or nationality.

Justification

The list laid down in 3 g is incomplete and does not follow the order laid down in Article 13 of the Treaty

Amendment 30

ARTICLE 1, POINT 6

Article 3 g , point (c)(ii) (Directive 89/552/EEC)

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

Justification

See amendment on Article 3 g , point c, subparagraph (i)

Amendment 31

ARTICLE 1, POINT 6

Article 3 g, point (d a) (new) (Directive 89/552/EEC)

(da) *Pornography including depictions to incite hatred based on sex shall be prohibited in all forms of audiovisual commercial communications and teleshopping;*

Justification

A prohibition of pornography shall not mean that all erotic movies and depictions are no longer allowed, but that those depictions which are used to incite hatred based on sex are forbidden. Based on the revised European Convention on Transfrontier Television of the Council of Europe, in particular its Article 7, pornography must be added to the list of banned audiovisual commercial communications in point (d). Article 7 of the Convention states that: "All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others. In particular, they shall not: a) be indecent and in particular contain pornography; b) give undue prominence to violence or be likely to incite to racial hatred"

Amendment 32
ARTICLE 1, POINT 6
Article 3 g, point (e) (Directive 89/552/EEC)

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

(e) Audiovisual commercial communications for alcoholic beverages **should not be broadcast before 9 p.m.;**

Justification

Reduce exposure of minors to alcohol advertising.

Alcohol is not an ordinary commodity. Apart from being a drug that can lead to both physical and psychological dependence, alcohol is a toxic substance and a cause of some 60 diseases and conditions. Alcohol is a key health determinant, responsible for 7,4 % of all ill-health and premature death in the EU, which makes it the third leading risk factor, after high blood pressure and tobacco. It causes nearly 195,000 deaths each year in the EU (over 25 % of male deaths in the age group 15-29 years are caused by alcohol. Further, alcohol-attributable disease, injury and violence cost the health, welfare, employment and criminal justice sectors across the EU some €125 billion a year. Equivalent to 1,3% GDP (i.e. €650 for each household). Regardless of whether alcohol advertisements are targeting young people, the reality is that young people are exposed to these advertisements. A growing body of research shows that exposure to and enjoyment of alcohol commercials cause minors to develop more positive expectancies and attitudes towards alcohol, which in turn influences the onset of drinking age, as well as their patterns and levels of alcohol consumption. In contrast with restrictions on the content of advertisements, a 9 p.m. watershed ban on alcohol advertising offers an easy and practical to implement and to monitor means to reducing the volume of alcohol advertising to which minors are exposed.

Amendment 33
ARTICLE 1, POINT 6
Article 3 g, point (f) (Directive 89/552/EEC)

(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

(f) Audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not directly **or indirectly** encourage minors to buy a product or a service directly **or indirectly** encourage minors to persuade their parents or others to buy the products or services being advertised; exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations,

Amendment 34
ARTICLE 1, POINT 6
Article 3 g, point (f a) (new) (Directive 89/552/CCE)

(fa) audiovisual media services for children shall not contain or be interrupted by advertising, sponsorship or any marketing of foods and drinks high in fat, sugar and salt based on nutrition profiles, following the same principles as developed in the Health Claims Regulation and of alcoholic beverages.

Justification

A reinforced protection of minors ought to be settled, since a growing number of women enter the workforce and leaving minors unattended in front of the television

Amendment 35

ARTICLE 1, POINT 6

Article 3h, paragraph 1 (Directive 89/552/CEE)

1. Audiovisual media services that are sponsored ***or that contain product placement*** shall meet the following requirements:

1. Audiovisual media services that are sponsored shall meet the following requirements:

Justification

See justification to the amendment on recital 40

Amendment 36

ARTICLE 1, POINT 6

Article 3h, paragraph 1, point (c) (Directive 89/552/CEE)

(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.

(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. Programmes ***produced in third countries*** 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.

Justification

See justification to the amendment on recital 40

Amendment 37
ARTICLE 1, POINT 6
Article 3 h, paragraph 2 (Directive 89/552/EEC)

(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.

(2) Audiovisual media ***programmes and*** services must not be sponsored by undertakings whose principal activity is ***either*** the manufacture or sale of cigarettes and other tobacco products ***or the manufacture or sale of alcohol.***

Justification

Sponsorship is inadmissible for any activities associated with tobacco or alcohol.

Amendment 38
ARTICLE 1, POINT 6
Article 3h, paragraph 4 (Directive 89/552/CEE)

(5) 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.***"

(6) 4. News and current affairs shall not be sponsored."

Justification

See justification to the amendment on recital 40

Amendment 39
ARTICLE 1, POINT 6
Article 3 ha (new) (Directive 89/552/EEC)

Article 3ha

The utilisation of production aid for audiovisual media services shall only be admissible under the following conditions:
a) it must not entail any restriction on journalistic or artistic freedom of expression,
b) if in this connection the mentioning or

showing of commodities, services, names, trade marks or activities of a producer of commodities or provider of services is required for editorial reasons, this must be done without any special or undue emphasis,

c) no payment or similar consideration shall be given in return for the presentation.

d) the viewer shall be informed of the use of any such production aids at the beginning and at the end of the programme. The precise rules, including a de minimis limitation, shall be set by the Member States.

e) Paid product placement, theme placement and product/script Integration shall be prohibit.

f) Third country programmes that include product placement must be clearly identified and labelled as such.].

The exact arrangements, including the fine details, shall be determined by the Member States.

Justification

The article defines the criteria for the admissibility of production aid. It ensures that the viewers are informed about the use of such production aids, but – in accordance with the subsidiarity principle – leaves the Member States to set the precise rules on what should be indicated. There is also scope for the setting of de minimis limits to discourage the excessive emphasis of production aids that are of minor importance to the respective work.

Amendment 40

ARTICLE 1, POINT 13

Article 18, paragraph 2 (Directive 89/552/CEE)

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.**”

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 **and** sponsorship announcements.”

Justification

See justification to the amendment on recital 40

Amendment 41
ARTICLE 1, POINT 20
Article 23 b, paragraph 1 (Directive 89/552/EEC)

1. Member States shall guarantee the independence of national regulatory authorities and ensure that they exercise their powers impartially and transparently.

1. Member States shall ***take appropriate measures to establish national regulatory authorities*** to guarantee the independence of national regulatory authorities ***to ensure that woman and men are represented equally in them*** and ***to*** ensure that they exercise their powers impartially and transparently.

Justification

Article 23 must be amended to comply with the Union's commitments to equal access for women and men in all areas of life, considering the crucial role played by the media in the way people's ideas are formed, and in order to ensure that women and men are represented equally in decision-making bodies. Furthermore, it is essential that the consumer should be well informed and able to avail of redress procedures at national level, in order to vindicate their rights.

Amendment 42
ARTICLE 1, POINT 20
Article 23 b, paragraph 2 a (new) (Directive 89/552/EEC)

2 a. Member States shall ensure that both linear and non-linear services are subject to control either by existing national regulatory authorities or by newly established national authorities; that pluralism is respected; that consumers are informed about procedures for redress and for bringing a case with the national regulatory authority or the relevant authority, in order to vindicate rights infringed as a result of non-compliance with the provisions of this Directive.

Justification

Article 23 must be amended to comply with the Union's commitments to equal access for women and men in all areas of life, considering the crucial role played by the media in the way people's ideas are formed, and in order to ensure that women and men are represented equally in decision-making bodies. Furthermore, it is essential that the consumer should be well informed and able to avail of redress procedures at national level, in order to vindicate their rights.

PROCEDURE

Title	Proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/ECC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities
References	COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)
Committee responsible	CULT
Opinion by Date announced in plenary	FEMM 2.2.2006
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Lissy Gröner 21.3.2006
Previous drafts(wo)man	
Discussed in committee	11.7.2006 12.9.2006 .5.10.2006
Date adopted	5.10.2006
Result of final vote	+: 12 -: 3 0: 6
Members present for the final vote	Edit Bauer, Hiltrud Breyer, Edite Estrela, Věra Flasarová, Lissy Gröner, Livia Járóka, Rodi Kratsa-Tsagaropoulou, Urszula Krupa, Siiri Oviir, Marie Panayotopoulos-Cassiotou, Marie-Line Reynaud, Teresa Riera Madurell, Lydia Schenardi
Substitute(s) present for the final vote	Iratxe García Pérez, Lidia Joanna Geringer de Oedenberg, Ana Maria Gomes, Karin Resetarits, Felekna Uca
Substitute(s) under Rule 178(2) present for the final vote	Manolis Mavrommatis, Karin Scheele, Margrietus van den Berg
Comments (available in one language only)	...

PROCEDURE

Title	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				
References	COM(2005)0646 – C6-0443/2005 – 2005/0260(COD)				
Date submitted to Parliament	13.12.2005				
Committee responsible Date announced in plenary	CULT 2.2.2006				
Committee(s) asked for opinion(s) Date announced in plenary	LIBE 2.2.2006	ECON 2.2.2006	ITRE 2.2.2006	IMCO 2.2.2006	FEMM 16.3.2006
Not delivering opinion(s) Date of decision					
Enhanced cooperation Date announced in plenary					
Rapporteur(s) Date appointed	Ruth Hieronymi 23.1.2006				
Previous rapporteur(s)					
Simplified procedure – date of decision					
Legal basis disputed Date of JURI opinion		/			
Financial endowment amended Date of BUDG opinion		/			
European Economic and Social Committee consulted – date of decision in plenary					
Committee of the Regions consulted – date of decision in plenary					
Discussed in committee	20.3.2006 11.9.2006	27.4.2006 9.10.2006	20.6.2006	12.7.2006	28.8.2006
Date adopted	13.11.2006				
Result of final vote	+ – 0	31 1 0			
Members present for the final vote	Maria Badia I Cutchet, Christopher Beazley, Ivo Belet, Giovanni Berlinguer, Guy Bono, Marielle De Sarnez, Marie-Hélène Descamps, Jolanta Dičkutė, Hanna Foltyn-Kubicka, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Luis Herrero-Tejedor, Ruth Hieronymi, Bernat Joan i Marí, André Laignel, Manolis Mavrommatis, Marianne Mikko, Ljudmila Novak, Doris Pack, Miguel Portas, Christa Prets, Karin Resetarits, Pál Schmitt, Nikolaos Sifunakis, Helga Trüpel, Henri Weber, Thomas Wise				
Substitute(s) present for the final vote	Ingeborg Gräßle, Ignasi Guardans Cambó, Erna Hennicot-Schoepges, Nina Škottová, Daniel Stroj, Catherine Trautmann				
Substitute(s) under Rule 178(2) present for the final vote					

Date tabled	22.11.2006
Comments (available in one language only)	35 Members present but only 32 votes as the quote of the respective political groups were fulfilled.