

Consolidated version

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

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

Text with relevance for EEA

The title is amended as follows:

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

CHAPTER I

Definitions

Article 1

For the purpose of this Directive:

(a) ‘audiovisual media service’ means a service as defined by Articles 49 and 50 of the Treaty 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 Council¹;

(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;

(ac) ‘television broadcasting’ ~~means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. It includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;~~

¹ OJ L 108, 24.04.2002, p.33

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;

~~(b d) 'broadcaster' means the natural or legal person who has editorial responsibility for the composition of schedules of television programmes within the meaning of (a) and who transmits them or has them transmitted by third parties;~~

means provider of linear audiovisual media services;

(e) 'non-linear service' means an audiovisual media service where the user decides upon the moment in time when a specific programme is transmitted on the basis of a choice of content selected by the media service provider;

(f) 'audiovisual commercial communication' means moving images with or without sound which accompany audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity;

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

(d 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;

(e i) 'sponsorship' means any contribution made by a public or private undertaking not engaged in ~~television broadcasting activities providing audiovisual media services~~ or in the production of audio-visual works, to the financing of ~~television programmes audiovisual media services~~ with a view to promoting its name, its trade mark, its image, its activities or its products;

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

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

CHAPTER II

General provisions

Article 2

1 Member State shall ensure that all ~~television broadcasts transmitted by broadcasters~~ *audiovisual media services transmitted by media service providers* under its jurisdiction comply with the rules of the system of law applicable to ~~broadcasts~~ *audiovisual media services* intended for the public in that Member State.

2. For the purposes of this Directive the ~~broadcasters~~ *media service providers* under the jurisdiction of a Member State are:

(a) those established in that Member State in accordance with paragraph 3;

(b) those to whom paragraph 4 applies.

3. For the purposes of this Directive, a ~~broadcaster~~ *media service provider* shall be deemed to be established in a Member State in the following cases:

(a) the ~~broadcaster~~ *media service provider* has its head office in that Member State and the editorial decisions about ~~programme schedules~~ *the audiovisual media service* are taken in that Member State;

(b) if a ~~broadcaster~~ *media service provider* has its head office in one Member State but editorial decisions on ~~programme schedules~~ *the audiovisual media service* are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the ~~television broadcasting activity~~ *audiovisual media service activity* operates; if a significant part of the workforce involved in the pursuit of the ~~television broadcasting activity~~ *audiovisual media service activity* operates in each of those Member States, the ~~broadcaster~~ *media service provider* shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the ~~television broadcasting activity~~ *audiovisual media service activity* operates in neither of those Member States, the ~~broadcaster~~ *media service provider* shall be deemed to be established in the Member State where it first began ~~broadcasting its activity~~ in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if a ~~broadcaster~~ *media service provider* has its head office in a Member State but decisions on ~~programme schedules~~ *audiovisual media service* are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the ~~television broadcasting activity~~ *audiovisual media service activity* operates in that Member State.

4. *Broadcasters Media service providers* to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

~~(a) they use a frequency granted by that Member State;~~

~~(ea) although they use neither a frequency granted by a Member State nor a satellite capacity appertaining to a Member State they do use a satellite up-link situated in that Member State.~~

~~(b) although they do not use a frequency granted by a Member State although they do not use a satellite up-link situated in that Member State, they do use a satellite capacity appertaining to that Member State;~~

5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the *broadcaster media service provider* is established within the meaning of Articles ~~52-43~~ and following of the Treaty establishing the European Community.

6. This Directive does not apply to ~~broadcasts-media service provider~~ intended exclusively for reception in third countries and which are not received *with standard user equipment* directly or indirectly by the public in one or more Member States.

~~7. 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 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;~~

~~(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.~~

Article 2a

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of ~~television broadcasts~~ *audiovisual media services* from other Member States for reasons which fall within the fields coordinated by this Directive.

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~~ *3e*;

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

(c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;

(d) consultations with the transmitting Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.

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

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

Article 3

1. Member States shall remain free to require ~~television broadcasters~~ *media service providers* under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.

2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that ~~television broadcasters~~ *media service providers* under their jurisdiction effectively comply with the provisions of this Directive.

~~3. The measures shall include the appropriate procedures for third parties directly affected, including nationals of other Member States, to apply to the competent judicial or other authorities to seek effective compliance according to national provisions.~~

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.

Article 3a

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the Official Journal of the European Communities and at least once a year the consolidated list of the measures taken by Member States.

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

Article 3b

1. Member States shall ensure that for the purpose of short news reports, broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction.

2. Short news reports may be chosen freely by the broadcasters from the transmitting broadcaster's signal with at least the identification of their source.

Article 3c

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

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

Article 3d

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

Article 3e

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

Article 3f

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

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

3. Member State shall report to the Commission, no later than the end of the fourth year after the adoption of this Directive and every three years thereafter on the implementation of the measure set out in paragraph 1.

4. The Commission shall, on the basis of the information provided by Member States, report to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments.

Article 3g

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

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

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

(c) audiovisual commercial communications must not:

- (i) include any discrimination on grounds of race, sex or nationality;*
- (ii) be offensive to religious or political beliefs;*
- (iii) encourage behaviour prejudicial to health or to safety;*
- (iv) encourage behaviour prejudicial to the protection of the environment;*

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

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

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

Article 3h

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

(a) the scheduling, where appropriate, and the content of such audiovisual media services may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

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

(c) viewers must be clearly informed of the existence of a sponsorship agreement and/or the existence of product placement. Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes. Programmes containing product placement must be appropriately identified at the start of the programme in order to avoid any confusion on the part of the viewer.

2. Audiovisual media services must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products. Further, audiovisual media services must not contain placement of tobacco products or cigarettes or product placement from

undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

3. The sponsorship of audiovisual media services by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

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

CHAPTER III

Promotion of distribution and production of television programmes

Article 4

1. Member States shall ensure where practicable and by appropriate means, that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

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

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

Article 5

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

Article 6

1. Within the meaning of this chapter, 'European works' means the following:

(a) works originating from Member States;

(b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;

~~(c) works originating from other European third countries and fulfilling the conditions of paragraph 3.~~

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

Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned.

2. The works referred to in paragraph 1 (a) and (b) are works mainly made with authors and workers residing in one or more States referred to in paragraph 1 (a) and (b) provided that they comply with one of the following three conditions:

(a) they are made by one or more producers established in one or more of those States; or

(b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or

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

~~3. The works referred to in paragraph 1(c) are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States.~~

4.3. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral coproduction treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.

~~5. Works which are not European works within the meaning of paragraphs 1 and 4, but made mainly with authors and workers residing in one or more Member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.~~

~~Article 7~~

~~Member States shall ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rights holders.~~

Article 9

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

CHAPTER IV

Television advertising, sponsorship and teleshopping

Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.

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

~~3. Advertising and teleshopping shall not use subliminal techniques.~~

~~4. Surreptitious advertising and teleshopping shall be prohibited.~~

Article 11

~~1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots may also be inserted during programmes in such a way that the integrity and value of the programme,~~

~~taking into account natural breaks in and the duration and nature of the programme, and the rights of the rights holders are not prejudiced.~~

1. Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes and the rights of the right holders are not prejudiced.

~~2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.~~

~~3.~~ 2. The transmission of ~~audiovisual works such as features films and films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes provided their scheduled duration is more than 45 minutes,~~ may be interrupted by advertising and/or teleshopping once for each period of ~~45 minutes~~ 35 minutes. ~~A further interruption shall be allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.~~ No advertising or teleshopping may be inserted during religious services.

~~4. Where programmes, other than those covered by paragraph 2, are interrupted by advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.~~

~~5. Advertising and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes and children's programmes, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.~~

Article 12

~~Television advertising and teleshopping shall not:~~

~~(a) prejudice respect for human dignity;~~

~~(b) include any discrimination on grounds of race, sex or nationality;~~

~~(c) be offensive to religious or political beliefs;~~

~~(d) encourage behaviour prejudicial to health or to safety;~~

~~(e) encourage behaviour prejudicial to the protection of the environment.~~

Article 13

~~All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.~~

Article 14

1. Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited.

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

Article 15

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

(a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;

(b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;

(c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;

(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

~~Article 16~~

~~1. Television advertising shall not cause moral or physical detriment to minors, and shall therefore comply with the following criteria for their protection:~~

~~(a) it shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;~~

~~(b) it shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;~~

~~(c) it shall not exploit the special trust minors place in parents, teachers or other persons;~~

~~(d) it shall not unreasonably show minors in dangerous situations.~~

~~2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.~~

~~Article 17~~

~~1. Sponsored television programmes shall meet the following requirements:~~

- ~~(a) — the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;~~
- ~~(b) — they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;~~
- ~~(c) — they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.~~

~~2. Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.~~

~~3. Sponsorship of television 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 broadcaster falls.~~

~~4. News and current affairs programmes may not be sponsored.~~

Article 18

~~1. The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning of Article 18a, shall not exceed 20 % of the daily transmission time. The transmission time for advertising spots shall not exceed 15 % of the daily transmission time.~~

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

~~3. For the purposes of this Article, advertising does not include:~~

- ~~(a) — announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;~~
- ~~(b) — public service announcements and charity appeals broadcast free of charge.~~

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

Article 18a

1. Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes.

2. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and acoustic means.

Article 19

Chapters I, II, IV, V, VI, VIa and VII shall apply mutatis mutandis to channels exclusively devoted to teleshopping. Advertising on such channels shall be allowed within the daily limits established by Article 18 (1). Article 18 (2) shall not apply.

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.

Article 19a

The provisions of this Directive apply mutatis mutandis to channels exclusively devoted to self-promotion except for Chapter 3 as well as the rules on insertion and duration of advertising and teleshopping contained in chapter 4. 18 (1) and (2). This provision in particular shall be subject to review in accordance with Article 26.

Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11 (2) ~~to (5)~~ and Articles 18 ~~and 18a~~ 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.*

CHAPTER V

Protection of minors and public order

Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts by broadcasters under their jurisdiction do not include any programmes which might seriously

impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence.

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts.

3. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

Article 22a

~~Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.~~

Article 22b

~~1. The Commission shall attach particular importance to application of this Chapter in the report provided for in Article 26.~~

~~2. The Commission shall within one year from the date of publication of this Directive, in liaison with the competent Member State authorities, carry out an investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch. This study shall consider, inter alia, the desirability of:~~

~~—the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes;~~

~~—the setting up of appropriate rating systems;~~

~~—encouraging family viewing policies and other educational and awareness measures;~~

~~—taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations.~~

CHAPTER VI

Right of reply

Article 23

1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a television programme must have a right of reply or equivalent remedies. Member States shall

ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.

2. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State.

3. Member States shall adopt the measures needed to establish the right of reply or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

4. An application for exercise of the right of reply or the equivalent remedies may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.

5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply or the equivalent remedies can be subject to judicial review.

CHAPTER VIa

Contact committee

Article 23a

1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of this committee shall be:

(a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;

(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;

(c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4 (3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;

(d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;

(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding ~~television broadcasting services~~ *audiovisual media services*, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;

(f) to examine any development arising in the sector on which an exchange of views appears useful.

Article 23 b Independent Regulators

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

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

CHAPTER VII

Final provisions

Article 24

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

~~Article 25~~

~~*1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 3 October 1991. They shall forthwith inform the Commission thereof.*~~

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

~~Article 25a~~

~~*A further review as provided for in Article 4 (4) shall take place before 30 June 2002. It shall take account of an independent study on the impact of the measures in question at both Community and national level.*~~

Article 26

Not later than ~~31 December 2000~~ [...], and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report

on the application of this Directive as amended and, if necessary, make further proposals to adapt it to developments in the field of ~~television broadcasting~~ *audiovisual media services*, in particular in the light of recent technological developments *and the competitiveness of the sector*.

Article 2 of the amending Directive

Regulation 2006/2004/EC² is hereby amended as follows

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

“4. Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities: Articles 3g to 3h³ and Articles 10 to 20⁴. Directive as last amended by Directive XXXX/XXXX/EC of the European Parliament and of the Council⁵.”

Article 3 of the amending Directive

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [...] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.*

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

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

Article 4 of the amending Directive

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

Article 5 of the amending Directive

This Directive is addressed to the Member States.

Done at Brussels, [...]

² OJ L 364, 9.12.2004, p. 1

³ OJ L xxxx, p xxx

⁴ OJ L 298, 17.10.1989; p.23

⁵ OJ L xxxxx, p xxx

For the European Parliament

The President

[...]

For the Council

The President

[...]