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## TEXTS ADOPTED

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**PART VII**

EXTRACT

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PROVISIONAL EDITION

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**EN**

**EN**

## P6\_TA-PROV(2006)0559

### Coordination of certain of the Member States' provisions on television broadcasting \*\*\*I

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)<sup>1</sup>,
  - 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 (A6-0399/2006),
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 the 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

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I. \_\_\_\_\_

<sup>1</sup> Not yet published in OJ.

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.

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 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.***

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 Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services<sup>1</sup> (the Framework Directive) and as regards trading by Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)<sup>2</sup>; 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.

<sup>1</sup> *OJ L 108, 24.4.2002, p. 33.*

<sup>2</sup> *OJ L 108, 24.4.2002, p. 33.*

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.*

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*'.

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.*

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

(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*

of coordinated rules to all audiovisual media services.

*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.*

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, 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 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.*

Amendment 10  
RECITAL 6 B (new)

*(6b) 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 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 production of European content***, 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 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.***

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

(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***

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.

*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.

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,***

(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***

*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.*

*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 of Directive 89/552/EEC, taking into account the fact that respect for fundamental rights forms an integral part of the general principles of Community law.*

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 (*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.*

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.*

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.

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.

Amendment 213  
RECITAL 14

(14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate, but

(14) The definition of audiovisual media services covers mass media *exercising editorial responsibility* in their function to

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.

inform, entertain and educate ***the general public, and 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. ***It also excludes 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 and search engines, as long as the principal purpose of the audiovisual media service is not reached.***

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.*

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*.

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.*

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.

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.***

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 Directive 89/552/EEC and expanded in Recitals 13 to 17 of this Directive, must 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

(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***

designed to promote, directly or indirectly, the goods, services or image of 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.

*form part of or accompany programmes* and are designed to promote, directly or indirectly, the goods, services or image of 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 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.***

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.

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.

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.*

Amendment 35  
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 *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 Directive 89/552/EEC 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 Directive 89/552/EEC.*

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*

(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-*

***Agreement on Better Law-making<sup>1</sup> provides agreed definitions, criteria and procedures.*** Experience showed that co- and self-regulation instruments implemented in accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.

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. 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. 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.*

Amendment 39  
RECITAL 26 A (new)

*(26a) 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.***

Amendment 218

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 ***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 ***programmes*** 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 transmitted before the event concludes, or for sports events before the end of a single day's play - whichever is the sooner,***
- ***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 other than 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. For pan-European broadcasters, the relevant legislation is that of the Member State in which the event takes place.***

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 Directive 89/552/EEC are deemed to be met by the linear transmission.***

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

(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.

concerned, *Directive 89/552/EEC* 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.

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.*

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.*

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.*

Amendment 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.*

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.*

Amendment 214  
RECITAL 35

(35) Non-linear audiovisual media 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. 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.

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. ***Such 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.***

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.***

Amendment 52  
RECITAL 36

(36) When implementing the provisions of Article 4 of Directive 89/552/EEC as

(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.

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.

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.***

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.

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.***

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 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 ***in 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.

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,

(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

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.

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.**

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.

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.**

Amendment 219  
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 in 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.***

Amendment 61

RECITAL 46 A (new)

***(46a) 'Production props' 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 props and product placement within the meaning of this Directive, the legal framework for the use of production props permitted in all programme formats should be clarified***

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 props or product placement, taking account of the content of the programmes in which they appear.***

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 Directive 89/552/EEC and in particular Articles 2, 2a and 3 thereof.*

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.*

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 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 *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.*

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;*

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 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 set programming schedule;*

Amendment 205

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 transmission of a particular programme from a choice of content and at a time of his choice, or which is not covered by the definition of a*

*linear service in point (c);*

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;

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;

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;*

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

(i) ‘sponsorship’ means any contribution made by a public or private undertaking *or*

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;

*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;*

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;*

Amendment 76

ARTICLE 1, POINT 2

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

*(ka) ‘production props’ means goods or services made available without payment*

***or other consideration and used for editorial reasons;***

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.***

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.***

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.

Amendment 81

ARTICLE 1, POINT 3, POINT (G)

Article 2, paragraphs 7, 8, 9 and 10 (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*

*(b) Paragraph 2 is replaced by the*

replaced by "*Article 3e*".

*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."*

Amendment 199

ARTICLE 1, POINT 4, POINT (B A) (new)

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

*(ba) The following paragraph 2a is inserted:*

*"2a. In respect of on-demand services, a Member State may, in urgent cases, provisionally take measures to derogate from paragraph 1 without fulfilling the conditions set out in points (b), (c) and (d) of paragraph 2. If it does 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 first Member State considers that the case is urgent.*

Amendment 84

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

Paragraph 3 shall be 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.***

Amendment 220  
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 are in compliance with Community law and do not distort competition.***

Amendment 221  
ARTICLE 1, POINT 5  
Article 3, paragraph 1 a (new) (Directive 89/552/EEC)

***1a. In cases where a Member State:***  
***(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules; and***  
***(b) where such rules are justified for reasons of public policy, including the protection of minors or public security or***

*public health or the protection of cultural diversity; and*

*(c) that Member State considers that a broadcaster under the jurisdiction of another Member State takes advantage of this Directive in abusive or fraudulent manner in order to circumvent such rules,*

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

Amendment 222

ARTICLE 1, POINT 5

Article 3, paragraph 1 b (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 solely 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 1 c (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 1 d (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. 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.***

Amendment 93

ARTICLE 1, POINT 5

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

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

Amendment 223

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 and without undermining exclusive rights, each Member State 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 for technical costs incurred.***

Amendment 224

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 general news programmes.***

Amendment 207  
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 26 October 1961), and the Berne Convention for the Protection of Literary and Artistic Works of 1971, and shall have no effect on this obligation.*

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)

1. 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.

1. 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 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.***

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.***

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 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 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:

Amendments 189, 209, 230, 200, 112, 113, 114, 115, 116, 117, 225 and 226

ARTICLE 1, POINT 6

Article 3 g, points (a) to (f) (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 be distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising, teleshopping and telepromotions shall be kept quite distinct from other parts of the programme service*

**by optical and/or acoustic and/or spatial means.** Surreptitious audiovisual commercial communication shall be prohibited;

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

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

(b) audiovisual commercial communications 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;**

(c) audiovisual commercial communications must not:

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

**(-i) offend against human dignity;**

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

(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;

(ii) **violate children's rights, according to the UN Convention on the Rights of the Child;**

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

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

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

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

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

**(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;)**

(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.

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

*(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.*

(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 show minors in dangerous situations.

*(fa) The Member States and the Commission should encourage audiovisual service provider 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 120

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:

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

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

3. The sponsorship of audiovisual media services ***or programmes*** by undertakings whose activities include the manufacture or sale of medicinal products and medical

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.

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.

Amendments 227 and 133  
ARTICLE 1, POINT 6 A (new)  
Article 3h a (new) (Directive 89/552/EEC)

***(6a) The following Article 3ha is inserted:***

***"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.***

***2. However, unless Member States decide otherwise, product placement shall be admissible in cinematographic works, films and series made for television and sports broadcasts.***

***Production props 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 shall be allowed.***

***The programmes containing product placement or production props shall meet the following requirements:***

***(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;*

*(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;*

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

*(d) in cases of product placement, 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.*

*In cases of production props the viewer shall be informed of the use of any such aid by appropriate means.*

*3. In any event programmes shall not contain product placement or production 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.*

*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 3h b (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.*

Amendment 135

ARTICLE 1, POINT 6

Article 3h c (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 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.*

*\* 3 years from the adoption of the amending directive*

Amendment 136

ARTICLE 1, POINT 6

Article 3h d (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,*

I. \_\_\_\_\_

\* 3 years from the adoption of the amending directive

*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.*

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 228

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 holders are not prejudiced.***

1. Advertising ***and*** teleshopping ***spots may be inserted between programmes. Advertising and teleshopping 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.

Amendment 208

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 ***scheduled*** period of ***30 minutes***.

Amendment 202

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, sponsored programmes and, where applicable,* product placement.

Amendment 229

ARTICLE 1, POINT 14

Article 18a (Directive 89/552/EEC)

*14. Article 18a is deleted.*

*14. Article 18a shall be replaced by the following:*

*"Article 18a*

*Audiovisual commercial communication windows such as teleshopping, teleshopping windows and telepromotions shall be clearly identified as such by optical and acoustic means."*

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.

Amendment 144

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

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

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.***

territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

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."***

Amendment 146

ARTICLE 1, POINT 18

Articles 22a and 22b (Directive 89/552/EEC)

(18) Articles 22a and 22b are ***deleted.***

Articles 22a and 22b are ***replaced by the following:***

***"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."*

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

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

Directive.

*National regulatory bodies shall cooperate more closely, particularly in the resolution of problems as referred to in Article 2(7) of this Directive.*

Amendments 182, 197, 242 and 201  
ARTICLE 1, POINT 20 A (NEW)  
Article 23c (new) (Directive 89/552/EEC)

*The following Article 23c is inserted:*

*"Article 23c*

*The Member States shall adopt the measures needed to ensure pluralism of information in the television broadcasting system.*

*Member States shall, in compliance with Community law, promote measures, in order that broadcasters under their jurisdiction as a whole reflect the necessary pluralism of the relevant values and options within their society which are in accordance with the principles of the Charter of Fundamental Rights of the European Union."*

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

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 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.*

Amendment 151

ARTICLE 3, PARAGRAPH 1, SUBPARAGRAPH 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.

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