EUROPEAN BROADCASTING UNION **UNION EUROPEENNE DE RADIO-TELEVISION**

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EBU Briefing Paper

**on the draft Audiovisual Media Services Directive
after first reading in the European Parliament**

N.B. The numbering of the amendments, recitals, articles/paragraphs, etc. in square brackets follows the numbering in the provisional edition of the legislative resolution (European Parliament document P6 TA-PROV(2006)0559 of 18 December 2006).

SCOPE AND GRADUATED APPROACH

The EBU welcomes the fact that both the European Parliament (in its legislative resolution[1]) and the Council (in its "general approach"[2]) have refined the definitions without affecting the essential elements of the Commission Proposal, i.e. the extension of the scope of the Directive to all audiovisual media services, combined with a graduated regulatory approach.

EBU Recommendation

The overall support by the European Parliament for the extension of scope and the addition of certain clarifications are welcome. In particular the following Amendments should be accepted in principle: the definition of "editorial responsibility" (Amendments [25] on Recital [17] and [79] on Article [1, point (kd)]), the definition of services whose principal purpose is not the provision of audiovisual content (Amendment [213] on Recital [14]), the treatment of "mixed" or "hybrid" services (Amendment [20] on Recital [14a]), and the exclusion of mere transmission of content for which the editorial responsibility lies with third parties (Amendment [67] on Article [1, point (b)]).

However, care should be taken to ensure that the objective of the extension and the clear structure of the new regulatory approach are not undermined by exceptions for particular parts of the audiovisual industry (see below).

There should be no exclusion of content aggregators/packagers

Where providers of communications network infrastructure or services extend their scope of activities and start to offer audiovisual media services to their customers, they naturally have to accept the additional responsibilities that accompany it.

[1] Adopted on 13 December 2006; see Document (2006)0559.
[2] Adopted on 13 November 2006; see Council Document 15277/06.

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To avoid any misunderstandings, the EBU has no problem with excluding from the scope of the Directive the mere technical transmission activities and the activities of intermediaries which benefit from the liability exemptions in Articles 12-15 of the e-Commerce Directive.

However, a provider which selects audiovisual content and offers a content package to the general public engages in an editorial activity and should therefore be regarded as a media service provider within the meaning of the Directive. Consequently, operators who "bundle" or "offer for sale packages" of audiovisual content must not be excluded. Such an exclusion would create an enormous loophole which would allow circumvention of the Directive. Even certain broadcasters could consider themselves content-aggregators in that sense, as they acquire programmes from rightowners, put them together and sell the package (or channel) to subscribers.

The only exclusion which might be acceptable concerns the mere bundling of audiovisual media services which are already under the editorial responsibility of a media service provider within the jurisdiction of a Member State. In other words, as in this case it can be ensured that the individual elements of the package are in conformity with the Directive, it may appear unnecessary to establish a second layer of responsibility for the content-aggregator for the overall package.

The "general approach" of the Council is in line with the Commission proposal, which only excludes mere transmission activities. This is also the case with most of the amendments adopted by the European Parliament, with the notable exception of Recital [35a], which would unreasonably exclude on a general basis "pure bundling" and "reselling" from the scope of the Directive (see Amendment [51] on Recital [35a]). This would be inconsistent with the definitions proposed in Amendments [67] and [79] and also in direct contradiction with Amendment [26] (Recital [17a]), which addresses the same issue. As a compromise, the second part of Amendment [26] could be supported.

EBU recommendation

Amendment [51] on Recital [35a] should be rejected. Amendment [26] on Recital [17a] could be accepted if it is clarified that it applies to all distribution platforms, including fixed (cable, DSL etc.) networks.

There should be no sectoral exclusion of the press in electronic form

The EBU has no problem with excluding from the scope of the Directive electronic versions of newspapers and magazines, even if they contain moving images, as long as the audiovisual content is merely incidental. This is what the European Commission has already stated in its Proposal (Recitals 14 and 15).

On the other hand, we are greatly concerned about amendments which would go further by, in particular, excluding, without further qualification, "the press in electronic form". As the term "press" is often used in a broad sense, including all forms of electronic media, such an exclusion would run the risk of completely undermining the extension of

scope. Audiovisual media services, i.e. services which offer audiovisual programmes to the public by electronic means, should generally come within the scope of the new Directive; what should count is the content of the service and not whether a service is offered by a broadcaster or by another media company, or whether it is combined with a broader offer which also includes text and still pictures. Otherwise, the objective of creating a level regulatory playing-field for operators would not be attained, especially since on-line services by broadcasters and the press often contain the same kind of audiovisual programmes.

Whereas the "general approach" of the Council does not pose any problems in this regard, the EBU fears that the last part of the European Parliament's Amendment [66] on Article [1, point (a)] to the definition of audiovisual media services, which excludes the "press in printed and electronic form", may give rise to ambiguities. Instead of tampering with the definition, it might be more appropriate to amend Recital 15, if necessary.

EBU recommendation

In Amendment [66] on Article [1, point (a)] the formulation "nor does it include the press in printed and electronic form" should not be accepted. As a compromise, it could be stipulated in Recital 15 that "the exclusion of services where audiovisual content is merely incidental to the service and not its principal purpose is particularly relevant for electronic versions of print formats". (Printed versions are obviously outside the scope of the Directive in any case.)

The future-proof character of the new Directive must not be undermined by any limitation to "TV-like" programmes or formats

While it is true that the extension of the Directive targets non-linear services which fulfil a similar social, cultural or democratic function as television broadcasting and compete for the same audience, it would be inconsistent to limit the scope to services which look and feel like traditional television.

If the definition of "programme" were to cover only programmes in a traditional television format this would run counter to the very objective of the revision, i.e. the creation of a modern, future-proof regulatory framework for the audiovisual sector where the functions of traditional television are gradually taken up by new audiovisual media. Accordingly, the notion of audiovisual media services should not be limited to services which provide audiovisual programmes in a form characteristic of traditional television broadcasting.

Naturally, either traditional television formats will need to be adapted for new audiovisual media services or new formats will need to be created. Limiting the scope of the new Directive to programme formats which already exist for traditional television, or which are at least suitable for traditional television, would do nothing but "freeze" the scope and prevent a dynamic interpretation which takes into account new developments.

The European Parliament has introduced the "TV-like" character in Amendment [18] on Recital [13], requiring that the content of audiovisual media services should be "suitable for television broadcasting". The "general approach" of the Council refers to the "TV-like" character in the definitions of programmes (whose form and content should be "comparable to" the form and content of television broadcasting) and of non-linear services (which, according to Recital 13a, should be "television-like", i.e. they should compete for the same audience as television broadcasts and the nature and the means of access to the service should lead the user reasonably to expect regulatory protection within the scope of the Directive).

The EBU fears that the requirement of a "TV-like" character may give rise to different interpretations and create loopholes.

The formulation "*comparable* to [television broadcasting]" in the Council version would at least be preferable to the formulation "*suitable* for [television broadcasting]" in the Parliament's text. In contrast, the reference to "*form and* content" in the Council version raises difficulties, as the form (or format) of programmes naturally needs to be adapted to linear or non-linear distribution platforms; e.g. programmes designed for mobile television will clearly be much shorter in length ("clips"), perhaps even less than 60 seconds, and the accompanying advertising/sponsorship will naturally be different in form or style. In this regard, the Parliament version, which refers only to content, would seem preferable.

It is to be welcomed that Recital 13a of the Council version (see footnote to Article 1, point (e)) clarifies that the notion of programme should be interpreted in a dynamic way, taking into account developments in television broadcasting. However, this does not resolve all the ambiguities which are created by the use of the term "TV-like", and particularly in contexts other than the definition of "programme".

Great care must be taken to ensure that such ambiguities do not become an obstacle to a clear, consistent and future-proof delimitation of the scope.

EBU recommendation

If it is considered necessary to refer to the "TV-like" character of new audiovisual media services, there should preferably be one such reference, in the definition of "programme", referring to the content but not to the form, duration or format, and accompanied by a clause clarifying that the criterion should not be an obstacle to a dynamic interpretation of the notion of "programme" which takes into account new developments.

Live transmissions of sports events and repetitive loops of programmes must continue to be qualified as linear audiovisual services

The European Parliament has fortunately not taken up proposals for amendments (in particular, from the Internal Market Committee) which would have stipulated that repetitive loops of content and the live streaming of an event (for example, a sports event) should not, in itself, constitute the provision of a *linear* audiovisual media service (but should, rather, be qualified as a *non-linear* service).

In practical terms, this would have meant that transmissions of (a series of) sports events would come under stricter rules (particularly regarding the insertion of advertising) when they are part of a television channel and under lighter rules when they are offered on their own (e.g. by a cable television operator or a sports federation). This differentiation would also apply to other programme categories, and particularly reality shows, where live streaming is provided over the Internet.

As live streaming can deliver an event to mass audiences simultaneously, even if peer-to-peer technology is used, with the same features that characterize traditional television (immediacy, emotional intensity, potentially high impact on society, and no user control), the general application of the rules for linear services is fully justified. Applying instead the lighter rules for non-linear services in certain cases would put broadcasters at a competitive disadvantage as regards the acquisition of sports rights.

Accordingly, to avoid distortion of competition among different media service providers, and especially as regards the quantitative advertising restrictions, live transmissions of events (and in particular the streaming of sports events) and repetitive loops of content should continue to be qualified as a linear service.

While the EBU welcomes the fact that neither the European Parliament nor the Council has taken up such proposals, care is required to ensure that the definition of linear services proposed by the European Parliament (Amendment [68] on Article [1, point (c)]), which is based on the criterion of "chronological sequence of programmes", is not interpreted in a similar sense.

The EBU would therefore prefer the definition of linear services contained in the "general approach" of the Council (Article 1, point (c)), provided that the criterion of simultaneous *viewing* is replaced by simultaneous *transmission* or *reception*, which is better suited to characterize television broadcasting in the digital age, when users will increasingly use personal video recorders (PVRs).

EBU recommendation

The definition of "linear services" should be based on the criterion of "simultaneous transmission/reception", rather than "simultaneous viewing" or "chronological sequence of programmes".

CO-REGULATION AND SELF-REGULATION

The EBU has always been supportive of co- and self-regulatory instruments in the audiovisual media sector. It has therefore welcomed the Commission Proposal in this respect, considering it promising to use co-regulation as a means of implementing the Directive with the requisite flexibility (see the Initial EBU Contribution of 3 April 2006 to the first reading).

Both the Council (Article 3(3) and Recital 25) and the European Parliament (Amendments [36-37, 78 and 91]) have made proposals to strengthen and clarify the role of self- and co-regulation, but also to indicate their limitations, and particularly regarding the obligations of Member States on transposition. The thrust of these proposals can be fully supported although Amendment [37] goes into slightly too much detail. To improve coherence among the Amendments, it would also be preferable to use in Amendment [91] the formulation "self- *and* co-regulatory regimes".

EBU recommendation

Amendments [36] on Recital [25], [78] on Article [1, point (kc)] and [91] on Article [3(3)] should be accepted in principle.

JURISDICTION AND COUNTRY-OF-ORIGIN PRINCIPLE

The EBU welcomes the extension of the country-of-origin principle to cover non-linear audiovisual media services in the future Directive.

- Protection of minors and prevention of incitement to hatred

In cases of violations of the rules which protect minors and prohibit incitement to hatred, the European Parliament proposes application of the procedure already foreseen in Article 2a, paragraph 2, to both linear and non-linear services, complemented by an urgency clause ([paragraph 2a]) for non-linear services, which is necessary for cases where violations are ongoing (e.g. where incriminated content remains available on-demand). In contrast, the "general approach" of the Council deviates from the country-of-origin principle more than necessary by maintaining, as far as on-demand services are concerned, the derogations in Article 3(4), (5) and (6) of the e-Commerce Directive, despite the fact that the new Directive introduces for on-demand services harmonized rules on the protection of minors and incitement to hatred.

EBU recommendation

Amendments [35] on Recital [24], and [82, 199, 84-85] on Article [2a(2), (2a), (2b), (c)], should be accepted, with a view to limiting exceptions from the country-of-origin principle to what is necessary to protect minors and prevent incitement to hatred.

- Services targeting another Member State

Regarding the problem of circumvention of stricter national rules by services intended exclusively or mainly for the public in another Member State, the EBU considers that the solution retained in Article 3(1a)-(1d) in the "general approach" of the Council goes in the right direction. The EBU shares the view that the anti-circumvention clause which was proposed by the European Commission was liable to be insufficient to address problems related to audiovisual media services, including advertising windows, targeting another Member State (see the Initial EBU Contribution of 3 April 2006 to the first reading).

Whereas the report by the Committee on Culture and Education proposed a solution which was similar to the one in the "general approach" of the Council, the text adopted in plenary falls short of the latter in several respects:

Firstly, the use in Amendments [221] on Article [3(1a)] and [222] on Article [3(1b)] of the criterion "abusive or fraudulent manner" or "abuse or fraudulent conduct" (similar to the Commission Proposal) does not provide for legal certainty, as the key question remains unanswered, i.e. in which cases circumvention of national rules is to be considered abusive. Under the "general approach" of the Council, the decisive element is the fact that a broadcaster provides a television broadcast which is *wholly or mostly directed towards the territory of another Member State*.

More seriously, Amendment [222] on Article [3(1b)], which requires 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", would undermine the effectiveness of the whole mechanism. In particular the addition of "solely" would make it pointless as it will always be possible for broadcasters to invoke other reasons for their establishment decision.

EBU recommendation

Notwithstanding the possibility of further technical improvements (such as a clarification that a television broadcast within the meaning of this provision can also be a television advertising window), the Council should adhere to the solution contained in its "general approach" and should not allow it to be watered down. Consequently, Amendments [221] on Article [3(1a)] and [222] on Article [3(1b)] should <u>not</u> be accepted insofar as they introduce the criteria "abuse/abusive", "fraudulent" and "*solely* to avoid the stricter rules". On the other hand, Amendments [89] and [90] on Article [3(1c)-(1d)], which do not substantially differ from the Council version, can be accepted, as can Amendment [34] on Recital [23a], which mentions a number of indicators of circumvention.

SHORT REPORTING

The "general approach" of the Council would require all Member States to introduce a news access regime or, where such a right already exists, to apply the national regime also to foreign broadcasters. It might be assumed that the Amendments by the European Parliament may be understood in a similar sense. This runs the risk of omitting the flexibility which is necessary to address the differences between news access on the national level and on a transfrontier level. A well-balanced news exchange between national broadcasters, particularly when based on voluntary arrangements, cannot always be easily extended to foreign broadcasters, given that the latter involve different markets.

The EBU appreciates the fact that both the European Parliament and the Council leave it to the Member States to define the modalities and conditions of the news access right, except for the European Parliament requiring mandatory compensation for the "technical costs" (of granting access to the signal) for the rights-granting broadcaster. This may create a difficulty for countries whose broadcasters have established a reciprocal news exchange system based on free access.

Whereas the EBU has no difficulties with the Council's approach *per se*, it would need to be improved to include the necessary flexibility to differentiate between national and cross-border news access. In particular, since for news access between broadcasters in the same country only national law should apply, it would require a clarifying paragraph in the Recitals to prevent circumvention of national news access regimes (such as provided by the European Parliament's Amendment [218] on Recital [27], last paragraph, stating that access must be sought from the exclusive rightholder in the same Member State).

Where the new Recital in the Council's text (see the footnote to Article 3j(3)) refers to the possibility of access to the venue, it should acknowledge that this particular right can be exercised only when the (physical and technical) facilities for short reporting are still available, and that those broadcasters admitted by the event organizer on a contractual basis have priority. Furthermore, extending this possibility also to *foreign* broadcasters would imply that for 90 seconds of footage a broadcaster could find it worthwhile to send a camera crew to another country.

The European Parliament's text would also require a number of improvements. For example, Amendment [218] on Recital [27], last sentence, which determines the relevant legislation for so-called "pan-European broadcasters" as that of "the Member State in which the event takes place", creates unnecessary confusion. This fails to offer a solution with regard to events of high interest to the public occurring outside the European Union and also neglects the fact that in practice news access takes place primarily at the national level, between rightsholding and non-rightsholding broadcasters, also with regard to events taking place abroad. In the EBU's view, transfrontier news access should not *replace* national news access but should only *complement* it where necessary, i.e. where no other broadcaster in the same country has acquired the rights. The question of applicable law becomes an issue only in cases

where a broadcaster needs to access the signal in another Member State. In this case it is for the Member State which has jurisdiction over the rightsholding broadcaster to ensure *access* to the signal for broadcasters from other Member States, while the *use* of the extracts remains subject to the law of the Member State in which the broadcaster seeking access is established, in line with the country-of-origin principle. Moreover, in some places the Parliament's Amendments refer to the "host broadcaster" (i.e. the local producing broadcaster), instead of the rightholding broadcaster whose signal is actually used by the news broadcaster. Finally, in its present version, Amendment [207], adding a paragraph on certain copyright treaties, seems - similarly to Amendment [21] on the relationship with copyright law - superfluous or, even, unhelpful in this context.

EBU recommendation

The support by both the Council and the European Parliament for introducing a European news access right is welcome, but care should be taken not to go into too much detail and not to undermine national news access systems based on reciprocity.

The Amendments by the European Parliament cannot be fully accepted. In Amendment [218] on Recital [27] the clause preventing circumvention of national news access regimes (penultimate sentence) is welcome but the clause on applicable law for "pan-European" broadcasters (last sentence) is not acceptable in its current form. In principle, news access should be sought in the Member State in which the broadcaster seeking news access is established. Where this is not possible (because no other broadcaster in the same country has acquired any rights), access to the signal may be sought from a broadcaster in another Member State, but the use of the extracts obtained in this way should still respect the rules of the Member State in which the broadcaster seeking news access is established. The extracts may be used, in line with the country-of-origin principle, irrespective of where the television broadcast can be received. For reasons of consistency, the term "host broadcaster" should be replaced by "the broadcaster whose signal is used" (also in Amendment [97] (new paragraph 2b to Article 3b)).

In comparison, the "general approach" of the Council (Article 3j) lacks the clause preventing circumvention of national news access regimes, which should be included in a Recital. Moreover, it should be recognized that, for foreign broadcasters, access to the venue is not practical and cannot replace access to the signal.

EUROPEAN WORKS AND INDEPENDENT PRODUCTIONS

The EBU appreciates the fact that the European Parliament and the Council have essentially maintained unchanged, as far as linear services are concerned, the rules of the current Directive on the promotion of European works and independent productions.

- Co-productions and non-national European works

As an exception to this general approach, the European Commission had proposed an amendment to the Preamble (Recital 36) which gives the impression that the Directive

requires Member States to introduce quotas for European co-productions and non-national European works, which the EBU would strongly oppose (see the Initial EBU Contribution of 3 April 2006 to the first reading).

The EBU therefore welcomes the Amendment [52] on Recital [36] by the European Parliament, which avoids such an interpretation and clarifies that it is only a matter of *encouraging* broadcasters to broadcast an adequate share of co-produced European works and of European works of non-domestic origin.

EBU recommendation

Amendment [52] on Recital [36] should be accepted - unless the Council prefers to delete this Recital entirely.

- Definition of independent producers

Whereas the European Commission and the Council have not touched the status quo with regard to the definition of independent producers, the European Parliament has approved an amendment which would require Member States, when defining independent producers, to "take appropriate account" of three criteria, including the "ownership of secondary rights" (Amendment [137] on Article [6(1), point (d)]).

The current Directive already allows individual Member States to use, among other criteria, the retention of rights as a criterion for considering their independence from broadcasters.[3] However, there is no justification for interfering with the contractual distribution of rights between broadcasters and producers without a proper assessment of each market. If the amendment by the European Parliament meant that Member States were generally *obliged* to use the criterion of "ownership of secondary rights", the EBU would be strongly opposed to this.

Firstly, there is not necessarily a link between a producer's independence and his holding of rights in productions. Secondly, it would be unfair and contrary to economic logic for broadcasters who assume a large proportion of, or even almost all, the costs and risks of a production to be deprived of essential exploitation rights to the audiovisual work. However, for certain productions, depending on the market, language, format or programme genre, it might simply be impossible to find other sources of financing. Rights should follow risks. Amortization of the production costs is possible only through multiple exploitations, and broadcasters must also respond to the audiences' demands for time- and place-shifting use of their programmes. This means that the "secondary" rights of yesterday are essential rights today. Consequently, depriving broadcasters of the secondary exploitation rights would mean not only preventing them from amortizing their investment and thereby prompting them to reduce the level of their financial contribution to the production, but also hindering them in fulfilling the needs of their audiences. (For more details, see EBU Position of

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[3] See Recital 31 of Directive 97/36/EC in connection with Recital 23 of the original Directive 89/552/EEC.

5 September 2005 on Issues Papers for the Liverpool Audiovisual Conference - Cultural diversity and promotion of European and independent audiovisual production.)

The EBU is therefore opposed to the amendment to Article [6(1)] proposed by the European Parliament and prefers the current situation, where it is for each Member State to define independent producers, taking into account the economic context of the country and the structure of its audiovisual market.

EBU recommendation

Amendment [137] on Article [6(1)] should be rejected, as it is either superfluous or liable to be (mis)understood as making the criterion of "ownership of secondary rights" mandatory.

PRODUCT PLACEMENT

While firmly supporting the principle of separation of advertising from editorial content, the EBU welcomes the objective of creating a clear, transparent and stringent framework for product placement. Such a framework should be based on the principles of (a) protection of editorial integrity and independence, (b) prohibition of undue prominence and (c) transparency for viewers, and should take into account the differences which exist between various forms of product placement and production aid (see the Initial EBU Contribution of 3 April 2006 to the first reading).

The definition of product placement should be tightened

To be workable, the definition of product placement should not go as far as covering all products which are featured, "normally" in return for payment or for similar consideration, contrary to the Proposal by the European Commission. The word "normally" should be removed, also in the interests of legal certainty for broadcasters and to ensure coherence of the definitions of "television advertising" and "product placement".

EBU recommendation

The EBU welcomes in this respect the definition of "product placement" proposed by the Council in its "general approach" (Article 1, point (k)), as it removes the word "normally".

The formulation "with or without payment or similar consideration to the media service provider" in the definition proposed by the European Parliament in Amendment [75] seems to go in a different direction; however, it may be wondered whether the purpose of the Amendment is really to get rid of the requirement that product placement must be

carried out in return for payment or for a similar consideration and not, rather, to clarify that it does not matter whether the payment or similar consideration is made to the media service provider or a third party such as the producer.[4]

Another question is whether mere "production aid" (also referred to as "product references") should be covered by the definition of product placement.

Interestingly, Amendment [75] also excludes at least certain forms of production aid (or production props) from the definition of product placement (including prizes and merchandising products). While it seems justified to apply certain rules to safeguard editorial integrity and independence and ensure transparency for viewers also with regard to mere production aid, it would indeed be preferable to make a clear distinction, already in the terminology and definitions, between "product placement" on the one hand and mere "production aid/props" on the other.

EBU recommendation

The definition of "product placement" in the "general approach" of the Council should be combined with a separate definition of "production aid" (or "production props"), which should be clearly distinguished from product placement. The Parliament's Amendments [75 - 76] on Article [1, points (k), (ka)] and [227] on Article [3(ha)] contain useful elements for this purpose.

The concept of distinguishing between product placement and mere production aid is promising, but the identification requirements must be reconsidered

The European Parliament and the Council have adopted a new approach consisting of distinguishing between outright product placement, which is banned except for certain programme categories (particularly fiction and drama, unless they are addressed to children), and material production aid, which is admissible in all programme categories.

EBU recommendation

The EBU supports the new approach pursued by the European Parliament and the Council based on a distinction between outright product placement and mere production aid (or production props). It considers that it is necessary to distinguish between the two forms and to take full account of the differences between them.

There are two problems which have not been resolved by the "general approach" of the Council: firstly, there is no reason to prohibit entirely all production aid for children's programmes (for example, in the form of prizes or merchandising) and, secondly, it would be disproportionate to require the same degree of information for viewers on mere production aid as for outright product placement.

[4] In view of the recognition "It is a characteristic of product placement that it is carried out in return for payment or for similar consideration" in the official justification for Amendment [75].

Amendment [227] on Article [3ha(1)-(3)] provides for an acceptable solution as far as "production aid" (or "production props") is concerned; in particular, it leaves Member States a sufficiently wide margin as regards information for viewers on production aid. On the other hand, as far as product placement is concerned, the information requirements are overly prescriptive in requiring identification not only at the start and the end of the programme but also "by a signal at least every 20 minutes during the programme".

It is necessary to avoid disproportionate information/identification requirements, and in particular signals or symbols which would clutter the screen and which viewers may have difficulty in understanding. It is important to ensure transparency without causing any discomfort for viewers or affecting the integrity of audiovisual works.

EBU recommendation

In Amendment [227] on Article [3ha(2)] the formulation "and by a signal at least every 20 minutes during the programme" should not be accepted; the other parts of the Amendment, and in particular the graduated conditions and requirements for product placement and production props in Article [3ha(1)-(3)], can be supported.

Pragmatic solutions are needed to resolve problems with acquired programmes and/or past programmes

Obliging media service providers to identify product placement can work only if it is legally ensured that media service providers are themselves kept informed (by producers and/or vendors) about the presence of product placement in programmes. Where broadcasters do not know about the presence of product placement, or have no means of knowing, they should not be held responsible for it.

Both the European Parliament and the Council have proposed not to apply the new rules on product placement to programmes produced before a date which corresponds to the transposition deadline of the new Directive. This certainly helps to resolve many cases for broadcasters. The "general approach" of the Council also foresees the possibility for Member States to waive the requirement to inform viewers with regard to programmes where the payment or similar consideration has been made to the producer or another third party and not to the broadcaster or media service provider itself.

The EBU welcomes such pragmatic solutions which would exempt, on a general basis, programmes produced before a certain reference date and allow for an alleviation of the information requirements in cases where broadcasters or media service providers have not themselves been involved in the production and/or have not been informed about the presence of product placement.

EBU recommendation

Amendment [133] on Article [3ha(4)] should be accepted.

INDEPENDENT REGULATORY AUTHORITIES

The EBU supports the Commission proposal to introduce a new Article 23b on independent media authorities, as such authorities (or bodies) are an essential element of free and pluralistic audiovisual media systems (see the Initial EBU Contribution of 3 April 2006 to the first reading). The European Parliament has proposed amendments which would further improve the effectiveness of the clause and, in particular, the guarantee of independence.

While understanding the need to keep Community rules sufficiently flexible to accommodate the various national structures, the EBU regrets that the "general approach" by the Council makes no reference to the *independence* of the media authorities but deals only with *cooperation* among the national authorities.

EBU recommendation

Compared to the Commission proposal, Amendment [13] on Recital [9] and Amendment [147] on Article [23b(1)] have the advantage of stipulating with greater clarity that Member States have a double obligation, i.e. (a) to establish (one or more) regulatory authorities/bodies for the audiovisual media sector (if they have not already done so) and (b) to guarantee their independence. Insofar as this clarification is concerned, the Amendments should be supported.