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DRAFT OPINION

of the Committee on the Internal Market and Consumer Protection

for the Committee on Culture and Education

on the proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

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AMENDMENTS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Culture and Education, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1

RECITAL 4

(4) Traditional audiovisual media services and emerging on-demand services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment.

(4) Traditional audiovisual media services and emerging on-demand services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment. ***This Directive should therefore promote the development of these services within the internal market.***

Justification

The reason for the amendment of the Television without Frontiers Directive is to update the legal provision with the recent technological developments in the market and to offer the market players one legal text clarifying the legal provisions and thus contributing to the creation of a single information space, one of the three pillars of the i2010 initiative.

Amendment 2

RECITAL 10

¹ OJ C ##, ##, p. ##.

(10) Because of the introduction of a minimum set of harmonised obligations in Articles 3c to 3h and in the areas harmonised in this Directive Member States can no longer derogate from the country of origin principle with regard to protection of minors and fight against any incitement to hatred on grounds of race, sex, religion *or* nationality, and violation of human dignity concerning individual persons or protection of consumers as provided in Article 3(4) of Directive 2000/31/EC of the European Parliament and the Council.

(10) Because of the introduction of a minimum set of harmonised obligations in Articles 3c to 3h and in the areas harmonised in this Directive Member States can no longer derogate from the country of origin principle with regard to protection of minors, ***respect of the rights of people with disabilities*** and fight against any incitement to hatred on grounds of race, ***ethnic origin***, sex, religion, nationality, ***age, sexual orientation or disability*** and violation of human dignity concerning individual persons or protection of consumers as provided in Article 3(4) of Directive 2000/31/EC of the European Parliament and the Council.

Justification

This directive provides a minimum harmonisation thus providing a basis for the ruling country of origin principle. These proposals should be in line with the definitions of Directive 2000/78/EG and therefore cover as well discrimination against disabilities, ethnic origin, age and sexual orientation.

Amendment 3
RECITAL 13

(13) The definition of audiovisual media services covers all audiovisual mass-media services, whether scheduled or on-demand. ***However, its scope is limited to services as defined by the Treaty and therefore covers any form of economic activity, including that of public service enterprises, but does not cover non-economic activities, such as purely private websites.***

(13) The definition of audiovisual media services covers all audiovisual mass-media services ***that are identical in nature to scheduled broadcast television irrespective of the delivery platform*** whether scheduled or on demand, ***in their function to inform, entertain and educate.*** It therefore covers any form of economic activity, including that of public service enterprises. ***However, the definition of audiovisual media services does not cover non-economic activities which are normally not provided for remuneration, such as blogs and other user-generated content or any form of private correspondence, such as e-mails and private websites. Neither does it cover services not intended for the distribution of audiovisual content, i.e. where the audiovisual content is merely incidental to the service and not its principal purpose, such as websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, small advertising spots or information related to a product or non-audiovisual service, such as search engines. Further, this definition does not cover services which do not consist wholly or mainly in the conveyance of signals on electronic communication networks, nor does it cover online games, as long as the main purpose of the audiovisual media services is not reached. Finally, this definition does not cover Information Society Services, as defined in Article 1 of Directive 98/48/EC.***

Justification

As the Commission itself has highlighted, the Directive should not cover non-economic activities. Private Websites but also other private content such as blogs, should not be regulated. The same should be true for semi-private content such as information of local clubs or school events. This also is in conformity with the definition of services in the article 50 of the Treaty. The text should therefore exclude such content expressly from the scope of application.

Amendment 4
RECITAL 14

(14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate, but excludes any form of private correspondence, such as e-mails sent to a limited number of recipients. The definition also excludes all services not intended for the distribution of audiovisual content, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose. Examples include websites that contain audiovisual elements only in an ancillary manner; such as animated graphical elements, small advertising spots or information related to a product or non-audiovisual service. **deleted**

Justification

Recital 14 can be deleted as text has been incorporated in Recital 13

Amendment 5
RECITAL 16

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

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

Justification

In other European and international legislative texts, such as the WTO classification of services, under point D, the term ‘audiovisual services’ covers radio as well as television. It must be ensured that the present regulation does not change these definitions and that radio continues in general to be included in audiovisual services.

Amendment 6
RECITAL 18

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises moving images with or without sound which ***accompany*** audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image or a natural or legal entity pursuing an economic activity and therefore it does not include public service announcements and charity appeals broadcast free of charge.

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises moving images with or without sound which ***are transmitted as part of*** audiovisual media services and are designed to promote, directly or indirectly, the goods, services or image or a natural or legal entity pursuing an economic activity and therefore it does not include public service announcements and charity appeals broadcast free of charge.

Justification

The wording has to be better adapted to the techniques to give more legal certainty

Amendment 7
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. ***For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-making¹ provides agreed definitions, criteria and procedures.*** Experience showed that co- and self-regulation instruments implemented in accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.

1 OJ C 321, 31.12.2003, p. 1.

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. Experience showed that co- and self-regulation instruments implemented in accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection. ***Thus, self-regulation may be an alternative method to implement certain provisions of this Directive but it cannot completely substitute the obligation of the legislative authorities. Co-regulation provides for the necessary “legal link” between self-regulation and the national legislator.***

Justification

Member States shall encourage co-regulatory regimes in the fields coordinated by the Directive. They are not obliged to have recourse to such regimes. If they do, the regimes must be broadly acceptable by the main stakeholders and provide for effective enforcement. If Member States entrust tasks in achieving the Directives objectives to self-regulatory bodies, the entrustment mechanism must be sufficiently clear so as to ensure that regulatory measures may be used in the event of the failure of the self-regulatory measures to achieve the Directive’s objectives

Amendment 8
RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other broadcasters and intermediaries, where they are acting on behalf of **broadcasters**, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms **taking** due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. **As a general rule, such short extracts should not exceed 90 seconds.**

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other broadcasters and intermediaries, where they are acting on behalf of **a broadcaster**, the right to use short extracts for the purposes of general news programming, **but not for the purposes of entertainment programme. As a general rule, access to short extracts should be granted** on fair, reasonable and non-discriminatory terms, **in return of reasonable remuneration, take** due account of exclusive rights **and should not exceed 90 seconds**. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. **The right to news access should apply only where it is necessary; accordingly, if another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster.**

Justification

The right of short reporting is traditionally practiced through bilateral agreements and it should be acknowledged in the wording of the directive. Giving free access to a broadcaster's signal causes significant problems with regards to copyrights and infringes the broadcasters' and/or rights holders' property rights. The broadcaster is not necessarily the right holder for broadcasting rights in other EU Member states. As Member States have chosen different approaches for the right of information, this Directive should include a neutral clause, leaving it to the Member States to choose the legal instrument when transposing the Directive in national law.

Amendment 9
RECITAL 28

(28) Non-linear services are different from linear services with regard to choice and control the user can exercise and with regard to the impact they have on society. This justifies imposing lighter regulation on non-linear services, which only have to comply with the basic rules provided for in Articles 3c to 3h.

(28) Non-linear services are different from linear services with regard to choice and control the user can exercise and with regard to the impact they have on society. This justifies imposing lighter regulation on non-linear services, which only have to comply with the basic rules provided for in Articles 3c to 3h. ***The high level of consumer choice and control indicates that new services such as video on demand, repetitive loops of content or live streaming of events, which are not imbedded in a linear service are to be defined as non-linear services irrespective of the content.***

Justification

The EU-Commission has highlighted in its explanatory notes to the proposal of directive that any “pull” service should be defined as a non-linear service. In addition, innovative services, such as repetitive loops of content, allow the consumer to choose when and how to consume the content offered. New devices and applications give the consumer additional features and control over what is viewed. Moreover, a differentiation according to the subject of a service is not in line with a definition which ties in with the person establishing the programme schedule and the decision of the user. Therefore a non linear service can consist of sport events, concerts, films and other events on a pay per view basis

As a consequence, services such as repetitive loops of content and live streaming must be considered as non linear. This should be expressed clearly in the text of the Directive to allow a clear distinction between linear and non linear services with the respect to the scope of the E-Commerce Directive.

Amendment 10
RECITAL 30

(30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market. Where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as audiovisual media services are concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity.

(30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market. Where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as far as audiovisual media services are concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors, ***the rights of people with disabilities*** and human dignity.

Justification

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

Amendment 11 RECITAL 33

(33) None of the provisions of this Directive that concern the protection of minors and public order necessarily requires that the measures in question be implemented through prior control of audiovisual media services. ***deleted***

Justification

The freedom from prior authorisation of non-linear services and the ban on censorship of all audiovisual media means that there can never be any question of prior control. The wording ‘None of the provisions ... necessarily requires’ is misleading and its meaning unclear.

Amendment 12
RECITAL 35

(35) Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, they should where practicable promote the production and distribution of European works and thus actively contribute to the promotion of cultural diversity. ***It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services.*** Within the framework of the reports set out in Article 3f paragraph 3, Member States ***shall also*** take into account ***notably the financial contribution by such services to the production and rights acquisition of European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of European works proposed by such services.***

(35) Non-linear audiovisual media services ***may*** have the potential to partially replace linear services ***and traditional distribution channels, such as DVD and other physical supports.*** Accordingly, they should where practicable promote the production and distribution of European works and thus actively contribute to the promotion of cultural diversity. ***Member States should therefore regularly examine their impact on the production and distribution of European works and the promotion of cultural diversity.*** Within the framework of the reports set out in Article 3f paragraph 3, Member States ***may eventually*** take into account ***measures to promote European works and cultural diversity, in particular, measures such as minimum investments in European works proportional to turnover; minimum proportion of European works within the catalogue of audiovisual media services and attractive exposure of European works in electronic programme guides.***

Justification

The drafting is somehow unclear and needs clarification, competitions exist as well with traditional distribution channels which are not obliged to assist in the development of European works. Creating an equal playing field should take into account the whole picture, we should therefore be careful with new obligations.

Amendment 13
RECITAL 35 A (new)

(35a) Parties who only bundle or transmit audiovisual media services or offer for sale packages of such services, for which they do not have editorial responsibility, should not be considered as media service providers. Thus, pure bundling, transmission or reselling of content offers, for which third parties bear the editorial responsibility, do not fall within the scope of this Directive and are therefore solely governed by Directive 2000/31.

Justification

It should be made clear that – as to date – pure bundling, transmission or reselling of content offers for which third parties bear the editorial responsibility as media service providers are not included in the scope of the Directive. As providers have no influence on and therefore no control over such content such a clarification is necessary.

Amendment 14 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, ***provided that it is not surreptitious and*** under certain circumstances, should be allowed ***in fiction, fiction-like and sports programmes*** and some quantitative restrictions should be abolished. The separation principle should not prevent the use of new advertising techniques.

Justification

There is a whole range of different national rules for product placement and a large grey zone with legal uncertainty. It is therefore useful to coordinate the rules of product placement on a European level to create an equal playing field.

Amendment 15
RECITAL 41

(41) Apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. Moreover, as Directive 2003/33/EC, which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, is without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, in view of the special characteristics of audiovisual media services, the relation between Directive 2003/33/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. Article 88(1) of Directive 2001/83/EC which prohibits advertising to the general public of certain medicine products applies, as provided in paragraph 5 of the same Article, without prejudice to Article 14 of Directive 89/552/EEC; the relation between Directive 2001/83/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive.

(41) ***It is necessary to ensure that the relationship between this Directive and existing Community law is coherent. Accordingly, in case of conflict between the provisions of this Directive and a provision of another Community act governing specific aspects of access to or exercise of an audiovisual media service activity, the provisions of this Directive should prevail. This Directive consequently complements the Community acquis. Thus,*** apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. Moreover, as Directive 2003/33/EC, which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, is without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, in view of the special characteristics of audiovisual media services, the relation between Directive 2003/33/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. Article 88(1) of Directive 2001/83/EC which prohibits advertising to the general public of certain medicine products applies, as provided in paragraph 5 of the same Article, without prejudice to Article 14 of Directive 89/552/EEC; the relation between Directive 2001/83/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. ***Furthermore, this Directive is without prejudice to a future Regulation of the European Parliament and of the Council on nutrition and health claims made on foods.***

Justification

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

Amendment 16
RECITAL 45

(45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising does not cover legitimate product placement within the framework of this Directive. *deleted*

Justification

Already covered in recital 16

Amendment 17
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 ***while, at the same time, prohibiting surreptitious advertising such as product integration, given its negative effect on consumers***. 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 ***by the or at the behest of the media service provider*** so that it is featured within a programme, ***with or without*** payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising. ***Product placement does not however cover independent editorial decisions to use products without undue prominence, which are integral to a programme and facilitate its production, for example, the use of branded prizes in audiovisual media services for children, which may constitute a motivation for viewers to participate and enjoy the programme.***

Justification

The clarification of the rules for the use of product placement should as well draw a line to surreptitious advertising methods like product integration, protect the integrity of the storyline. On the other hand the new regulation on product placement should not accidentally outlaw already existing and legitimate practised formats in programming. For example children's programmes often use prizes – usually branded products such as a CD – as a motivation for viewers to participate in and enjoy the programming. Under the current definition, the use of branded prizes would be banned from children's programmes (as product placement is prohibited), which would make children's programming less attractive.

Amendment 18

RECITAL 48 A (new)

(48a) The right of disabled and elderly people to participate in social and cultural life in the community deriving from Articles 25 and 26 of the Charter of Fundamental Rights is indivisible from provision of accessible audiovisual media services. Accessibility of audiovisual media services includes, but is not limited to, sign language, subtitling, audio description, audio subtitling and easy-to-understand screen menus.

Justification

In line with the Commission's commitment to mainstream disability in all Community policies, it is important to make an explicit reference to the provisions of the Charter dealing with persons with disabilities and older persons. Moreover, a non-exhaustive list of accessibility features necessary to respect the provisions of the Charter is proposed.

Amendment 19

ARTICLE 1, POINT 2

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

(a) 'audiovisual media service' means a service as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council,

(a) 'audiovisual media service' means a service as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council.

This definition does not cover:

- information society services, as defined in Article 1 of Directive 98/48/EC;

- *services where audiovisual content is merely incidental to the service and not its principal purpose, and*
- *electronic versions of newspapers and magazines.*

Justification

This clarifies the scope of the Directive as that relating to TV and TV-like services as originally intended, and recognises the distinction between “mass media” and “personalised media” such as video blogs or user generated content. It also provides legal clarity to media service provider and consumers as to what particular regime applies to specific services.

Amendment 20

ARTICLE 1, POINT 2

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

(b) ‘media service provider’ means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

(b) ‘media service provider’ means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised.

This definition does not cover natural or legal persons who only bundle or transmit content or offer for sale packages of such services, for which third parties have editorial responsibility.

Justification

Pure bundling, transmission or reselling of content offers for which third parties bear the editorial responsibility as media service providers are not included in the scope of the Directive.

Amendment 21

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 broadcasting’ or ‘television broadcast’ mean a linear audiovisual media service **characterised by a chronological sequence of different programmes and** where a media service provider decides upon the moment in time when a specific programme is transmitted **on the basis of a fixed** programme schedule. **Transmission of a live event does not, in itself, constitute provision of a linear audiovisual media service;**

Justification

Linear audiovisual media services should in principle be identical in nature to traditional scheduled broadcast services. Regulation under the strict television regime is only justified when the provider specifies a programme schedule consisting of several programmes in chronological order. This must be indicated clearly in the text. A restriction that solely applies to the time of the service request is not sufficient, since it cannot make any difference whether an individual program is offered as live streaming or – a minute after the program has ended – as on demand (or even near video on demand) service. This difference is a purely technical one. The focus must be placed on the editorial decision, since it is above all the planning of the programme schedule that plays a major role in influencing users and in exercising external control. It results in users being “carried” from one program to the next, his communication behaviour thus being controlled by the provider.

Amendment 22

ARTICLE 1, POINT 2

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

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

(e) ‘non-linear service’ means an audiovisual media service where the user **makes an individual request for transmission of a specific audiovisual media service on the basis of an edited and diversified content offer** selected by the media service provider;

Justification

Purely technical application on the basis of the moment in time when a programme is

transmitted would contradict the principle of technology neutrality intended by the Directive. The point of time of the technical transmission cannot be of any relevance to the user, only the time when he consumes the programme.

Amendment 23

ARTICLE 1, POINT 2

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

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

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

Justification

The definition of promotion must – as in points g) and i) – be construed subjectively in order to achieve appropriate results. Otherwise, each mention of a product or a service could, for editorial reasons, fall under the definition of ‘audiovisual commercial communications’ if it is objectively seen to promote sales without this actually being the intention. On the other hand, genuine advertisement could be qualified as ‘audiovisual commercial communications’ if it had no impact and were therefore objectively seen not to promote sales, although this was the purpose intended.

Amendment 24

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 **purposes** and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

Justification

The term “Broadcaster” is no longer in line with the adaptation of this Directive to the new technological developments and should be therefore amended.

Amendment 25

ARTICLE 1, POINT 2

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

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

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

Justification

This amendment brings more legal certainty: sponsorship could be as well provided by natural persons; financing could be done in a direct as well as in an indirect way.

Amendment 26

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 ***by the or at the behest of the media service provider*** so that it is featured within audiovisual media services, ***with or without*** payment or for similar consideration .

The legal definition of product placement does not cover however independent editorial decisions to use products, without undue prominence, which are integral to a programme and facilitate its production, such as prizes, incidental objects and props.

Justification

The provider of audiovisual media services needs legal certainty. The new regulation on product placement should not accidentally outlaw already existing and legitimately practiced formats in programming. E.g. children’s programmes often use prizes – usually branded products such as a CD – as a motivation for viewers to participate in and enjoy the programming. Under the current definition, the use of branded prizes would be banned from children’s programmes (as product placement is prohibited), which would make children’s programming less attractive.

Amendment 27

ARTICLE 1, POINT 2

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

(ka) “product integration” means the incorporation of a product or a reference to a product, a service or the trademark thereof, by the or at the behest of the media service provider, in return for payment or for similar consideration, into the storyline of the programme so that the product appears to be endorsed by the programme or by its characters;

Justification

We must keep content and advertising separate. The integration of advertising into programmes has become a reality in the United States and there is growing concern that it is damaging the quality of programming. We should not repeat their mistakes. For Europe we should say ‘no’ to the integration of advertising and content and at least preserve the integrity of our own stories.

Amendment 28

ARTICLE 1, POINT 2

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

(kb) “News” or “news programmes” means daily news, newscasts, political and contemporary programmes, magazines and current affairs, including in the fields of science, culture, social matters (“soft news”).

Justification

Necessary clarification to provide legal certainty.

Amendment 29

ARTICLE 1, POINT 2

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

(kc) ‘Audiovisual media services for children’ means any media service as defined in Article 1 (a) which is aimed at children .

Justification

Necessary definition to provide legal certainty.

Amendment 30

ARTICLE 1, POINT 5

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

3. Member States shall encourage co-regulatory regimes in the fields coordinated by this Directive. These regimes shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement.”

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

Justification

Numerous examples in mobile communications and the Internet show that effective implementation of the provisions in the Directive can also be achieved through self-regulation. Accordingly, Recital 25 of the proposal states that self- and co-regulation play key roles in guaranteeing consumer protection and both should be taken into consideration in particular under the aspect of “better regulation.”

Amendment 31 ARTICLE 1, POINT 6 Article 3b(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.

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.

1. Subject to other contractual agreements between the broadcasters concerned, Member States **may** ensure that, for the purposes of short news reports, ***lawfully licensed*** broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis ***and against reasonable remuneration,*** to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction.

Justification

The right of short reporting is traditionally practiced through bilateral agreements and it should be acknowledged in the wording of the directive. Giving free access to a broadcaster's signal causes significant problems with regards to copyrights and infringes the broadcasters' and/or rights holders' property rights. The broadcaster is not necessarily the right holder for broadcasting rights in other EU Member states.

As Member States have chosen different approaches for the right of information, this Directive should include a neutral clause, leaving it to the MS to choose the legal instrument when transposing the Directive into national law.

Amendment 32

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.

Does not affect the English version

Justification

Linguistic problem.

Amendment 33

ARTICLE 1, POINT 6

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

(c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and effective manner;

Does not affect the English version

Justification

Linguistic amendment

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

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

(d) where applicable, the **relevant supervisory** authority.

Justification

Necessary clarification to provide legal certainty.

Amendment 35
ARTICLE 1, POINT 6
Article 3f, paragraph 1(Directive 89/552/EEC)

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

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

Justification

Competitions exist as well with traditional distribution channels which are not obliged to assist in the development of European works. Creating an equal playing field should take into account the whole picture, we should therefore be careful with new obligations.

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

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

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

Justification

The two year period fits better in the whole timetable. Three years are quite a long time in view of the fast development of the new services.

Amendment 37

ARTICLE 1, POINT 6

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

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

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

Justification

As the Commission also stresses in its explanatory statement (and in Recital 3) audiovisual media services have not only a high importance for economic and technological development but a high impact as well in democracy and cultural diversity.

Amendment 38

ARTICLE 1, POINT 6

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

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

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

Justification

Superfluous

Amendment 39
ARTICLE 1, POINT 6
Article 3g, point f (Directive 89/552/EEC)

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

Does not affect English version

Justification

Linguistic amendment

Amendment 40
ARTICLE 1, POINT 6
Article 3g, point f (Directive 89/552/EEC)

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

(f) Audiovisual commercial communications must not cause moral or physical detriment to minors. Therefore they shall not directly **or indirectly** exhort minors to buy a product or service, directly **or indirectly** encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or show minors in dangerous situations, **unless justified for learning or training purposes**.

Justification

The word “unreasonable” is somehow imprecise and can not really provide legal certainty.

Amendment 41

ARTICLE 1, POINT 6

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

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

1. Product integration shall be prohibited in general. Product placement shall be prohibited in programmes other than fiction, fiction-like and in sports programmes. News and current affairs, religious programmes and documentaries shall not be sponsored.

Where allowed, audiovisual media services that are sponsored or that contain product placement shall meet the following requirements:

Justification

We must keep content and advertising separate. The integration of advertising into programmes has become a reality in the United States and there is growing concern that it is damaging the quality of programming. We should not repeat their mistakes. For Europe we should say ‘no’ to the integration of advertising and content and at least preserve the

integrity of our own stories.

Amendment 42

ARTICLE 1, POINT 6

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

(ba) they must not contain product placement which presents products in an unduly prominent manner. The “undue prominence” shall be determined by the recurring presence of the brand, good or service in question or from the manner in which it is presented, having regard the content of the programmes in which it appears;

Justification

In its ‘Interpretive communication on certain aspects of the provisions on televised advertising in the “Television without frontiers” Directive (2004/C 102/02)’ the Commission put forward the ‘Undue Prominence’ criterion with the purpose of helping national authorities to distinguish between surreptitious advertising and lawful reference to goods, services, brands and economic operators. The Undue Prominence requirement has been used in many of the Member States to protect viewers’ interest. Including the Undue Prominence criterion in the legally binding text of the Directive will enhance legal certainty, give guidance on how products shall be presented in the least obtrusive manner and will ensure that undesirable forms of product placement such as product integration may not be used in European productions.

Amendment 43

ARTICLE 1, POINT 6

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

(c) viewers must be clearly informed of the existence of a sponsorship agreement and/or the existence of product placement.

Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes.

Programmes containing product placement must be appropriately identified at the start 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 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, **and/or** during and/or the end of the programmes.

Programmes ***commissioned or produced by the broadcaster*** containing product placement must be appropriately identified at the start ***and/or during*** the programme in order to avoid any confusion on the part of the viewer.

Justification

There has to be a clarification about the responsibility.

Amendment 44

ARTICLE 1, POINT 6

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

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

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

2. Audiovisual media services 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 ***in programmes commissioned or produced by the media service provider*** from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

Justification

There has to be a clarification about the responsibility.

Amendment 45
ARTICLE 1, POINT 6
Article 3h, paragraph 4 (Directive 89/552/EEC)

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

Justification

Already covered in Amendment 41.

Amendment 46
ARTICLE 1, POINT 6
Article 3ha (new) (Directive 89/552/EEC)

Article 3ha

Accessibility

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

2. Member States shall provide the Commission every two years with national reports on the implementation of this Article.

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

Justification

Accessibility of audiovisual media services is an important part of the proper functioning of the internal market, in accordance with Recital 30. People with disabilities and/or older people, to whom the issue of accessibility is a crucial one too, represent a significant share of consumers of audiovisual services. According to the Institute of Hearing Research, over 81 million Europeans live with a hearing loss; moreover, there are over 30 million blind and visually Europeans. The research has shown that an overwhelming number of people with disabilities and/or older people watch television. This represents a market that must be catered for. An obligation to provide accessible audiovisual media services would undoubtedly stimulate healthy competition of service providers and enhance functioning of the internal market. .

Amendment 47

ARTICLE 1, POINT 9

Article 10 (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 separate from other parts of the programme service by optical and/or acoustic ***and/or spatial*** means.

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

Justification

The retention of the rule that isolated spots should remain the exception (except for sports) would place an artificial limit on broadcasters' ability to explore flexible new break patterns together with the viewers. Recent studies show that viewers actually prefer spot advertising compared to advertising blocks as they are less intrusive than long breaks.

Amendment 48
ARTICLE 1, POINT 10
Article 11, paragraph 2 (Directive 89/552/EEC)

2. The transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of **35** minutes.

No advertising or teleshopping may be inserted during religious services."

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 **30** minutes.

No advertising or teleshopping may be inserted during religious services."

Justification

The introduction of a 35-minute rule would inevitably lead to loss in the revenue of those investing in these less profitable genres. As most news and children's programmes are no longer than 30 minutes, this may effectively eliminate advertising from these programmes. The effect would be to reduce commitment to, and investment in news and children's programmes, particularly original European production. Thus the retention of the current 30-minute rule has an utmost importance for the financial viability of these genres.

Amendment 49
ARTICLE 1, POINT 13
Article 18, paragraph 2 (Directive 89/552/EEC)

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

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

Justification

There is no reason why they should be excluded.

Amendment 50
ARTICLE 1, POINT 14
Article 18a (Directive 89/552/EEC)

Article 18a is deleted

Audiovisual commercial communication windows must be clearly identified as teleshopping windows by optical and acoustic means and their overall duration shall not exceed six hours per day.

Justification

The total removal of daily limits for Teleshopping Windows as is stated in the European Commission proposal by deleting article 18.a. could raise some considerable risks and does not contribute to any particular objective of the Directive. More importantly, this complete release and the overstock of media time for Teleshopping Windows, will allow questionable players, and rogue traders to take advantage of this opening, thus impacting the positive results already accomplished by the industry through robust self-regulation programmes and the continuous promotion of the highest standards. Overall this measure could undermine the efforts of the Teleshopping industry in Europe to create the highest standards for consumers.

Amendment 51
ARTIKEL 1, POINT 17
Article 20 (Directive 89/552/EEC)

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) and Article 18 in respect of ***broadcasts*** intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States ***and in respect of broadcasts having no significant impact in terms of audience share.***”

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) and Article 18 in respect of ***television broadcast*** intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States”

Justification

The drafting is unclear and could cause problems: what does the tem broadcast refer to? How can the impact of broadcasts on audience shares be measured. How can you determine whether a broadcast is intended solely for the national territory?

In order to ensure legal certainty the term broadcast should be replaced by “television broadcast” and the reference to “broadcasts having no...” should be deleted.

Amendment 52 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 ***[the end of the fifth year after adoption of this Directive]***, 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, ***in particular, as regards the implementation of the measures set out in Article 3 f (1) and in Article 3(h) a new***, 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***.”

Amendment 53 ARTICLE 3

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

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive ***before [two years]*** 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.

Justification

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