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*Committee on Civil Liberties, Justice and Home Affairs*

PROVISIONAL  
**2005/0260(COD)**

30.6.2006

## **DRAFT OPINION**

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Culture and Education

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

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## SHORT JUSTIFICATION

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

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

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

## SUGGESTIONS

### 1. Access to information

Your rapporteur welcomes the addition of *Article 3b* which lays down a right to short reports in the case of events of high interest to the public.

### 2. Combating of discrimination and respect for human dignity

Your rapporteur deplores the fact that the list of discriminations given in *Article 3(g)(c)(i)* is incomplete and does not mention, for example, discrimination based on disability, age or sexual orientation which might be included in audiovisual commercial communications or in audiovisual media services.

Your rapporteur also feels that it would be a good idea to add to *Article 3e* respect for human dignity and for the integrity of the person, in order to ensure that, in particular, certain reality television programmes which show participants in humiliating situations are banned.

### **3. Protection of minors and vulnerable persons**

Your rapporteur would like to tighten up *Article 3 d* to provide for measures similar to those that exist for linear services in *Article 22*, where that is achievable and by the appropriate means.

He also considers that the EU should encourage the relevant regulatory authorities, manufacturers and NGOs to jointly research and develop systems for the protection of minors using filters and harmonisation of symbols.

### **4. Promotion of cultural diversity**

The rapporteur heartily agrees with the objective, introduced in the new *Article 3f*, of all audiovisual services, including non-linear services, contributing to cultural diversity, and proposes that the implementing arrangements for this be specified.

### **5. Right of reply**

The right of reply should form part of the rules common to linear services and non-linear services, given that the Internet is the perfect means to spread the falsest of rumours extremely swiftly.

### **6. Ensuring better access for the disabled to audiovisual media services**

Your rapporteur proposes that a new *Article 3i* be introduced requiring Member States to take steps to improve access by the disabled to audiovisual media services, and to forward to the Commission a two-yearly report on the implementation of that article.

### **7. Role of the national regulatory authorities (Article 23b)**

Your rapporteur would like the directive, while adhering to the principle of subsidiarity, to include a requirement for the Member States to establish for themselves independent, impartial and transparent regulation authorities.

He is of the opinion that the powers of these regulatory authorities need to be specified, and to ensure that non-linear services are subject to supervision by the existing national authorities or by new authorities.

Those powers must include ensuring respect for pluralism.

It would be a good idea to provide that the regulatory authorities should not limit themselves to informing the other national authorities or the Commission in the event of a serious breach of the directive, but also that a joint decisional system should be established between them.

## **AMENDMENTS**

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

Text proposed by the Commission

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Amendments by Parliament

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Amendment 1  
Recital 3

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

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

Amendment 2  
Recital 5

(5) Legal uncertainty and a non-level playing field exist for European companies delivering audiovisual media services as regards the legal regime governing emerging on-demand services, it is therefore necessary, both to avoid distortions of competition and to improve legal certainty, to apply at least a basic tier of coordinated rules **to all audiovisual media services.**

(5) Legal uncertainty and a non-level playing field exist for European companies delivering audiovisual media services as regards the legal regime governing emerging on-demand services, it is therefore necessary, both to avoid distortions of competition and to improve legal certainty, to apply **to all audiovisual media services** at least a basic tier of coordinated rules **aimed at guaranteeing, inter alia, a sufficient level of protection of minors and of the vulnerable and disabled, as well as respect for fundamental rights and freedoms.**

Amendment 3

#### Recital 9

(9) This Directive enhances compliance with fundamental rights and ***is fully in line with the principles recognised by*** the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. In this regard, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.

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

#### Amendment 4 Recital 10

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

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

Amendment 5  
Recital 25

*(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union<sup>1</sup> the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-making<sup>2</sup> provides agreed definitions, criteria and procedures. Experience showed that co- and self-regulation instruments implemented in accordance with different legal traditions of Member States can play an important role in delivering a high level of consumer protection.*

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

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<sup>1</sup>. COM(2005)0097.

<sup>2</sup>. OJ C 321, 31.12.2003, p. 1.

*Justification*

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

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<sup>1</sup> COM(2005) 97.

<sup>2</sup> OJ C 321, 31.12.2003, p. 1.

Amendment 6  
Recital 26

(26) Entertainment rights for events of public interest may be acquired by broadcasters on an exclusive basis. However, it is essential to promote pluralism through the diversity of news production and programming across the European Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.

(26) Entertainment rights for events of public interest may be acquired by broadcasters on an exclusive basis. However, it **remains** essential to promote **free access to information and** pluralism through the diversity of news production and programming across the European Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.

Amendment 7  
Recital 28

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

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

Amendment 8  
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

(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 **and of respect for the rights, values and**

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.

***freedoms on which the European Union is founded.*** 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 ***fundamental rights and freedoms*** and objectives of general interest, in particular the protection of minors, ***of the vulnerable and disabled,*** human dignity, *the consumer and public health.*

Amendment 9  
Recital 31

(31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry and parents. There will also be new challenges, especially in connection with new platforms and new products. It is therefore necessary to introduce rules to protect the physical, mental and moral development of minors as well as human dignity in all audiovisual media services and in audiovisual commercial communication.

(31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry, parents ***and non-governmental organisations for the protection of children and of the vulnerable and disabled.*** There will also be new challenges, especially in connection with new platforms and new products. It is therefore necessary to introduce rules to protect the physical, mental and moral development of minors ***and the vulnerable and disabled,*** as well as human dignity in all audiovisual media services and in audiovisual commercial communication.

Amendment 10  
Recital 32

(32) ***Measures taken to protect minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of these measures should thus be to ensure an adequate level of protection of minors especially with regard to non-linear services,*** but not to ban adult

(32) ***The fundamental right to freedom of expression proclaimed in the Charter of Fundamental Rights of the European Union and in the European Convention for protection of human rights and fundamental freedoms is not unlimited as regards the respect for human dignity and the protection of minors. The aim must therefore be to achieve a balance, including for non-linear services, by guaranteeing,***

content as such.

*inter alia, the protection of minors* but not to ban adult content as such.

Amendment 11  
Recital 32 a (new)

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

*Justification*

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

Amendment 12  
Recital 36

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

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

### *Justification*

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

#### Amendment 13 Recital 38 a (new)

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

#### Amendment 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 should be allowed under certain circumstances, ***provided that the user is very clearly informed of it***, and some quantitative restrictions should be abolished. However, where product placement is surreptitious, it should be prohibited. The separation principle should not prevent the use of new advertising techniques

Amendment 15  
Recital 45

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

(45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising does not cover legitimate product placement within the framework of this Directive, ***provided that the user is very clearly informed of it.***

Amendment 16  
Recital 47

(47) Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

(47) Regulators, ***whose very existence and role are essential in the increasingly complex world of audiovisual media services,*** should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to ***respect for freedom of expression and for pluralism. Furthermore, regulators should ensure the protection of human dignity and of minors, the vulnerable and the disabled, and the combating of all forms of discrimination and, more generally, the promotion of fundamental rights and freedoms.*** Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

Amendment 17  
Recital 48 (new)

***(48) The right of the disabled and the elderly to participate in social and cultural life, as established in Articles 26 and 27 of the Charter of Fundamental Rights, is***

*inseparable from measures relating to accessibility to audiovisual media services. Accessibility to audiovisual media services covers, among other things, sign language, sub-titling, audio descriptions, audio sub-titling and easy-to-read menus.*

*Justification*

*It is important, in line with the Commission's undertaking to take disability into account in all its policies, to make explicit reference to the Articles in the Charter of Fundamental Rights that relate to the elderly and the disabled. Moreover, the list suggested, which is not exhaustive, specifies the main types of measures that Member States can take in order to achieve the objective set in the Charter on Fundamental Rights. It therefore promotes implementation of the objective, while maintaining the flexibility needed in that implementation.*

Amendment 18  
Article 1, point e)

(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 decides upon the moment in time when a specific **content** is transmitted on the basis of a choice of content selected by the media service provider;

*Justification*

*The term programme refers rather to television contents. For the sake of clarity, it should be replaced with the word 'content'.*

Amendment 19  
Article 3 b, paragraph 1

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

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

*behalf of broadcasters*, are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction.

*Justification*

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

Amendment 20

Article 3 c, point a) a (new)

***(a)(a) its corporate form,***

Amendment 21

Article 3 c, point a) b (new)

***(a)(b) its capital***

Amendment 22

Article 3 c, point a) c (new)

***(a)(c) the name of its legal representative***

Amendment 23

Article 3 c, point a) d (new)

***(a)(d) the name of the editor responsible for content if other than the legal representative***

Amendment 24

Article 3 c, first subparagraph (new)

***In order to render the information in***

*paragraph 1 more accessible, Member States are encouraged to create national public registries of audiovisual media services in which all providers of such services whose place of establishment is within the territory of a Member State must register and provide the mandatory information referred to above.*

Amendment 25  
Article 3 d

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

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

Amendment 26  
Article 3 d, subparagraph 1 a (new)

***Member States shall ensure, in particular, that audiovisual media service providers under their jurisdiction make effective filtering systems available to users and inform them of their existence.***

Amendment 27  
Article 3 d, subparagraph 1 b (new)

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

Amendment 28  
Article 3 e

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

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

Amendment 29  
Article 3 f, paragraph 1

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

1. Member States shall ensure that media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works within the meaning of Article 6. ***In the case of non-linear services, this promotion might, inter alia, take the following forms: minimum investment in European productions as a proportion of turnover, minimum proportion of European productions in 'on demand' video listings and attractive presentation of European productions in electronic programme guides.***

*Justification*

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

Amendment 30  
Article 3 f, paragraph 4

4. The Commission shall, on the basis of the

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.

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

Amendment 31

Article 3 f, paragraph a (new)

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

*Justification*

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

Amendment 32

Article 3 g, point (c) (i)

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

(i) include any discrimination on grounds of race, *ethnic origin*, sex, *sexual orientation, age, disability, religion, beliefs* or nationality;

Amendment 33

Article 3 g, point (c) (i a) (new)

***(ia) undermining of the dignity of and respect for the individual;***

Amendment 34  
Article 3 g, point (c) (iii)

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

(iii) encourage ***wrongful or criminal behaviour;***

Amendment 35  
Article 3 g, point (c)(iv)

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

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

Amendment 36  
Article 3 g, point (f)

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

(f) audiovisual commercial communications must not cause moral or physical detriment to minors ***or seek to exploit their susceptibility or that of the vulnerable or disabled.*** Therefore they shall not directly exhort minors to buy a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations, ***unless this can be justified on educational or training grounds.***

Amendment 37  
Article 3 h, paragraph 2

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

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

Amendment 38  
Article 3 h, paragraph 4

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

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

Amendment 39  
Article 3 i (new)

***1. Member States shall ensure, by appropriate measures, be these general or specific, that the audiovisual media services for which they have jurisdiction gradually become fully accessible to the disabled.***

***2. Starting from the end of the fifth year after adoption of this Directive at the latest, the Member States shall present to the Commission every two years a national report on the implementation of this article. That report shall include, inter alia, data on the progress made towards achieving the accessibility objective described in paragraph 1, the reasons for any setbacks and the measures adopted or contemplated to rectify these.***

### *Justification*

*There is a need for a new article making it mandatory for Member States to take all appropriate measures to guarantee access for the disabled to the audiovisual media and to present a regular report on the progress made towards achieving full accessibility.*

### Amendment 40 Article 3 j (new)

***1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular, but not limited to, reputation and good name, have been affected by an assertion of facts in a publication or transmission should have a right of reply or equivalent remedies.***

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

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

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

***4. An application for exercise of the right***

*of reply or the equivalent remedies may be rejected when it is not justified in respect of the conditions set out in paragraph 1, if it involves a punishable act, if its broadcasting involves the civil liability of the audiovisual media service provider or if it contravenes standards of public decency.*

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

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

#### *Justification*

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

#### Amendment 41 Article 23

#### *Article 23*

*deleted*

#### *Right of reply*

*1. Without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular, but not limited to, reputation and good name, have been affected by an assertion of facts in a publication or transmission should have a right of reply or equivalent remedies.*

*Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply should be within a*

*reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the transmission to which the request refers.*

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

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

*4. An application for exercise of the right of reply or the equivalent remedies may be rejected when it is not justified in respect of the conditions set out in paragraph 1, if it involves a punishable act, if its broadcasting involves the civil liability of the audiovisual media service provider or if it contravenes standards of public decency.*

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

#### *Justification*

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

#### Amendment 42 Article 23 b, paragraph 1

1. Member States *shall guarantee the independence of national regulatory*

1. Member States *shall see to the creation of regulatory authorities and shall*

*authorities and ensure that they exercise their powers impartially and transparently.*

*guarantee their independence from political, economic and financial circles, their impartiality, and transparency in their operating methods and decision-making processes.*

Amendment 43  
Article 23 b, paragraph 1 a (new)

*2. Member States may entrust these regulatory authorities with the task of ensuring that audiovisual media service providers conform to the provisions of this Directive, and in particular those relating to freedom of expression, pluralism of the media, human dignity, the principle of non discrimination and the protection of minors, the vulnerable and the disabled.*

Amendment 44  
Article 23 b, paragraph 2

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

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