

# EUROPEAN PARLIAMENT

2004



2009

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*Committee on Culture and Education*

PROVISIONAL  
**2005/0260(COD)**

1.8.2006

**\*\*\*I**

## **DRAFT REPORT**

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))

Committee on Culture and Education

Rapporteur: Ruth Hieronymi

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2005)0646)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 47(2) and 55 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0443/2005),
  - having regard to Rule 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Economic and Monetary Affairs, the Committee on Industry, Research and Energy, the Committee on the Internal Market and Consumer Protection, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Women's Rights and Gender Equality (A6-0000/2006),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

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Amendments by Parliament

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### Amendment 1 RECITAL 1

(1) Directive 89/552/EEC coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities. However, new technologies in the transmission of audiovisual media services call for

(1) Directive 89/552/EEC coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities. However, new technologies in the transmission of audiovisual media services call for

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

adaptation of the regulatory framework to take account of the impact of structural change and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness for Europe's information technologies and its media industries and services

adaptation of the regulatory framework to take account of the impact of structural change and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness **and legal certainty** for Europe's information technologies and its media industries and services

#### *Justification*

*Insufficient legal certainty in the market for new audiovisual media services makes it harder to exploit their economic potential.*

#### Amendment 2 RECITAL 2

(2) The laws, regulations and administrative measures in Member States concerning the pursuit of television broadcasting activities are already coordinated by Directive 89/552/ECC, whereas the rules applicable to activities such as on-demand **audiovisual** media services **contain disparities, some of which may impede** the free movement of these services within the European Union and may distort competition within the common market. ***In particular, Article 3(4) of Directive 2000/31/EC provides that Member States may derogate from the country of origin principle for specific public policy reasons.***

(2) The laws, regulations and administrative measures in Member States concerning the pursuit of television broadcasting activities are already coordinated by Directive 89/552/ECC, whereas the rules applicable to activities such as on-demand media services **are only coordinated as regards dissemination by Framework Directive 2002/21/EC and as regards trading by Directive 2000/31/EC on eCommerce; the content of the new audiovisual media is still governed by the legislation of the Member States. Some of these disparities impede** the free movement of these services within the European Union and may distort competition within the common market.

#### *Justification*

*Legal uncertainty is primarily the result of insufficiently clear demarcation of the law governing the new audiovisual services as against European telecommunications law and the e-Commerce Directive.*

Amendment 3  
RECITAL 3

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

(3) ***Audiovisual media are both cultural and economic goods.*** The importance of audiovisual media services for societies, democracy and culture, ***particularly in guaranteeing freedom of information, diversity of opinion and media pluralism in accordance with Article 11 of the Charter of Fundamental Rights of the European Union and Article 151(2), subparagraph 4 of the EC Treaty,*** justifies the application of specific rules to these services

*Justification*

*The European media model is founded on the principle that the media are both cultural and economic goods, and the directive must therefore take account of both criteria, as has also been done in past legislation in line with the European treaties.*

Amendment 4  
RECITAL 3 A (new)

***(3a) In its resolutions of 1 December 2005 and 4 April 2006 on the Doha round and on the WTO Ministerial Conferences, the European Parliament calls for basic public services, such as health, education and audiovisual services to be excluded from liberalisation under the GATS negotiations. In its legislative resolution of 27 April 2006, Parliament supports the UNESCO Convention on the Protection of Cultural Diversity, which states in particular that ‘cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value’.***

### *Justification*

*In line with European law, the EU and the Member States have called for the special role of audiovisual goods to be taken into account in the GATS and WTO negotiations and in the drafting of, and decision-making under, the UNESCO Convention.*

#### Amendment 5

##### RECITAL 4

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

(4) Traditional audiovisual media services – ***such as television*** – and emerging on-demand ***audiovisual media*** services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment. ***Bearing in mind the importance of a level playing field and a true European broadcasting market, the basic principles of the common market, such as competition law and equal treatment, shall be respected in order to ensure transparency and predictability in media markets and to achieve low entry barriers.***

### *Justification*

*Highlights the importance of the internal market in providing the new audiovisual media services with development opportunities.*

#### Amendment 6

##### 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 at least a basic tier of coordinated rules to all audiovisual media services ***irrespective of whether they are transmitted on the basis of a fixed programme schedule or on demand.***

***The basic principles of the “TV without frontiers” Directive – the Transmitting State Principle and common minimum standards – have proved their worth and should therefore be retained.***

*Justification*

*Specified which media services are covered and draws the necessary conclusions from the success of the TV Directive.*

Amendment 7

RECITAL 7

(7) The Commission has adopted the initiative “i2010: European Information Society” to foster growth and jobs in the information society and media industries. i2010 is a comprehensive strategy designed to encourage the development of the digital economy, against the background of the convergence of information and media services, networks and devices, by modernising and deploying all EU policy instruments: regulatory instruments, research and partnerships with industry. The Commission has committed itself to creating a consistent internal market framework for the information society and media services by modernising the legal framework for audiovisual services, starting with a Commission proposal in 2005 to modernise the Television without Frontiers Directive.

(7) The Commission has adopted the initiative “i2010: European Information Society” to foster growth and jobs in the information society and media industries. i2010 is a comprehensive strategy designed to encourage the development of the digital economy, against the background of the convergence of information and media services, networks and devices, by modernising and deploying all EU policy instruments: regulatory instruments, research and partnerships with industry. The Commission has committed itself to creating a consistent internal market framework for ***services of*** the information society and media services by modernising the legal framework for audiovisual services, starting with a Commission proposal in 2005 to modernise the Television without Frontiers Directive ***and transform it into a Directive on Audiovisual Media Services.***

*Justification*

*The objective of the review of the TV Directive should be stated.*

Amendment 8  
RECITAL 8

(8) On 6 September 2005, the European Parliament adopted a Resolution on the application of Articles 4 and 5 of Directive 89/552/EEC, as amended by Directive 97/36/EC, for the period 2001-2002 (Weber Report). This Resolution calls for the adaptation of the existing Television without Frontiers Directive to structural changes and technological developments while fully respecting its underlying principles, which remain valid. In addition, it in principle supports the general approach of basic rules for all audiovisual media services and additional rules for linear (“broadcasting”) services.

(8) On 6 September 2005, the European Parliament adopted a Resolution on the application of Articles 4 and 5 of Directive 89/552/EEC, as amended by Directive 97/36/EC, for the period 2001-2002 (Weber Report). This Resolution – ***like the resolutions of 4 September 2003 and 22 April 2004*** – calls for the adaptation of the existing Television without Frontiers Directive to structural changes and technological developments while fully respecting its underlying principles, which remain valid. In addition, it in principle supports the general approach of basic rules for all audiovisual media services and additional rules for linear (“broadcasting”) services.

*Justification*

*The European Parliament has been calling for an urgent review of the EU’s TV directive for some time now.*

Amendment 9  
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) 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. ***In view of the areas harmonised in this Directive relating to the protection of minors, human dignity***

***and the consumer, the derogation pursuant to Article 3(5) of Directive 2000/31/EC may be applied only in particularly severe and urgent cases of infringement of Article 3e of this directive (incitement to hatred).***

*Justification*

*In particularly serious and urgent cases, a special rapid procedure should be available for non-linear services as it already is for TV.*

Amendment 10  
RECITAL 11

(11) Directive 2002/21/EC of the European Parliament and the Council according to its Article 1(3) is without prejudice to measures taken at Community or national level, to pursue general interest objectives, in particular relating to content regulation and audiovisual policy

(11) Directive 2002/21/EC of the European Parliament and the Council ***(the Framework Directive) created a uniform legal framework for all transmission networks and services, but*** according to its Article 1(3) is without prejudice to measures taken at Community or national level, to pursue general interest objectives, in particular relating to content regulation and audiovisual policy ***with a view to separating the regulation of transmission from the regulation of content.***

*Justification*

*Draws the distinction between this Directive and EU telecommunications legislation.*

Amendment 11  
RECITAL 11 A (new)

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***(11a) Directive 2003/31/EC (the eCommerce Directive) contains no specific substantial provisions governing audiovisual media services and leaves the Member States the option of derogating from the country of origin principle on specific matters of public policy on a case-by-case basis and in accordance with a notification procedure. By imposing additional minimum standards for non-***

*linear audiovisual media with a view to the protection of minors and the promotion of cultural diversity, this Directive extends the field of harmonised Community law. To that extent this Directive builds on Directive 2000/31/EC in these areas for a specific subset of non-linear audiovisual services which are of particular importance for society and are characterised by their cultural dimension. For these services the degree of coordination of national rules is higher and the internal market is more complete.*

*Justification*

*Seeks to distinguish the scope of the directive from that of the eCommerce Directive, which the new directive consciously takes as its basis.*

Amendment 12  
RECITAL 12

(12) No provision of this Directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of media.

(12) No provision of this Directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of **audiovisual** media.

*Justification*

*Clarification*

Amendment 13  
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, whether **the editorial activity and responsibility of the provider are reflected in a programme schedule or in a selection catalogue**. However, its scope is limited to services as defined by the Treaty and therefore covers any form of economic activity, including that of public service enterprises. **Economic activities are**

*normally provided in return for payment and are intended to have a certain duration and frequency; their status as such is subject to the criteria and rules of the Member State of origin. Consequently non-economic activities such as blogs and other user-generated contents without an economic objective and all forms of private communication such as e-mails and private websites, do not fall within the scope of the directive.*

*Justification*

*Definition of audiovisual media services on the basis of editorial responsibility and the economic element.*

Amendment 14  
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.

(14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate. The definition also excludes all services not intended for the distribution of audiovisual content, i.e. where any audiovisual content merely **fulfils a subordinate function** and **is not the principal purpose of the service.** Examples include websites that contain audiovisual elements only in an ancillary manner; such as animated graphical elements, small advertising spots or information related to a product or non-audiovisual service. **Further examples include online games, provided they do not constitute the principal purpose of the audiovisual media services, and search engines: the dissemination of audiovisual materials is not the principal purpose even if a search sometimes results in an offer of audiovisual material.**

*Justification*

*Definition of audiovisual media services by content-based guidelines.*

Amendment 15  
RECITAL 15

(15) This Directive does not cover electronic versions of newspapers and magazines.

(15) This Directive does not cover electronic versions of newspapers and magazines. ***In accordance with Directive 2000/31/EC, games of chance are also excluded from its scope.***

*Justification*

*Seeks to clarify that these services, which do not have the transmission of audiovisual services as their principal purpose, are excluded from the scope of the directive.*

Amendment 16  
RECITAL 16

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

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

*Justification*

*In other European and international legal acts, such as point 2.D of the WTO services classification list, the term “audiovisual services” covers radio as well as television. It needs to be ensured that this directive does not affect those definitions and also that radio remains covered by the definition of audiovisual services.*

Amendment 17  
RECITAL 16 A (new)

***(16a) An audiovisual media service consists of programmes, i.e. a discrete succession of moving images with or without sound which are subject to editorial responsibility and are disseminated by a media service provider in accordance with to a fixed time schedule or compiled in a catalogue.***

*Justification*

*The term “programme” is characteristic of audiovisual media services and therefore requires a separate definition.*

Amendment 18  
RECITAL 17

(17) The notion of editorial responsibility is essential for defining the role of the media service provider and thereby for the definition of audiovisual media services. This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

(17) The notion of editorial responsibility is essential for defining the role of the media service provider and thereby for the definition of audiovisual media services. ***“Editorial responsibility” means responsibility for the selection and organisation, on a professional basis, of the content of an audiovisual offer. This may apply to an individual content or a series of contents. It does not cover the mere technical dissemination of contents, whether in linear form or on demand, by or on the responsibility of a service provider.*** This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

*Justification*

*Clarifies the criterion of editorial responsibility.*

Amendment 19  
RECITAL 17 A (new)

***(17a) The more technical transmission of a terrestrial or satellite audiovisual media service does not of itself confer the status of a media service provider within the meaning of this directive, even where a selection decision is made, if a third party clearly bears the editorial responsibility.***

*Justification*

*Clarifies the distinction between regulation of transmission and regulation of content.*

Amendment 20

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 **as a part of** audiovisual media services **which** 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*

*This wording more closely reflects the various types of advertising.*

Amendment 21

RECITAL 20

(20) Technological developments, especially with regard to digital satellite programmes, mean that subsidiary criteria need to be adapted in order to ensure suitable regulation and effective implementation and to give players genuine power over the content of an audiovisual **content** service.

(20) Technological developments, especially with regard to digital satellite programmes, mean that subsidiary criteria need to be adapted in order to ensure suitable regulation and effective implementation and to give players genuine power over the content of an audiovisual **media** service.

*Justification*

*Editorial clarification.*

Amendment 22

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

(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-making 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.

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 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, *since these objectives, particularly in the context of the new audiovisual services, can best be achieved with the active support of the providers. Co-regulation and self-regulation instruments should therefore be used not only at European level but also, in line with the different legal traditions, for the transposition of the directive in the Member States. Broad acceptance of the regulatory procedure by stakeholders within the meaning of this directive relates to the Member State, not to the Community.*

#### *Justification*

*The definition of co-regulation and self-regulation is of great importance in the context of this directive. The Interinstitutional Agreement on Better Law-making at European level therefore needs to be complemented to show how these instruments are to be applied at national level.*

#### Amendment 23 RECITAL 25 A (new)

*(25a) The generic term “co-regulation” covers regulatory instruments which are based on cooperation between state bodies and self-regulation bodies, and vary widely in terms of their names and structures at national level. The actual form such instruments take reflects the specific tradition of media regulation in the individual Member States. What the*

*co-regulation systems have in common is that tasks and objectives which were originally the preserve of the state are realised in cooperation with the actors affected by regulation. Designated or authorised by the state, the participants themselves are to guarantee the achievement of the regulatory objective. In every case the systems are founded on a state legal framework which lays down instructions as to content, organisation and procedures. On this basis the interested parties create further criteria, rules and instruments, compliance with which they themselves monitor. Self-regulation as thus defined enables specialist knowledge to be exploited directly for administrative tasks, and bureaucratic procedures to be avoided. It is necessary for all, or at least the most influential, actors to participate in or recognise the system. Co-regulation operates by combining instructions to the interested parties with opportunities for state intervention should those instructions not be carried out.*

#### *Justification*

*The definition of co-regulation and self-regulation in the context of this directive describes the law-making process and the task of the self-regulation bodies, and outlines the scope for action by the Member States.*

#### Amendment 24

##### 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

(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 **major** public interest **must** grant other broadcasters and **news agencies**, where they are acting **directly** on behalf of **authorised** broadcasters, the right to use

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

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,
- *be transmitted before the event concludes,*
- *be screened later than 36 hours after the event,*
- *be used to create a public archive,*
- *remove the logo or other identifier of the host broadcaster, or*
- *be used in non-linear services.*

*The right to trans-frontier news access should apply only where it is necessary; accordingly, if another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster;*

#### *Justification*

*Makes clear that the right to broadcast short news reports should be implemented throughout the EU and that, besides TV broadcasters, only news agencies should be entitled to broadcast short extracts provided they are working directly on behalf of the broadcaster; also clarifies under what concrete conditions this should happen.*

#### Amendment 25

#### RECITAL 28

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

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

***which are also offered on a live or deferred basis as non-linear services by a media service provider, the requirements of this directive are deemed to be met by the linear transmission.***

*Justification*

*Clarifies which rules take precedence under this directive.*

Amendment 26

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 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. ***In the promotion of non-linear audiovisual media services, support might for example take the form of a minimum amount proportionate to economic performance, a minimum share of European works in video on demand catalogues, or the attractive presentation of European works in electronic programme guides.*** It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports set out in Article 3f paragraph 3, Member States shall also take into account notably the financial contribution by such services to the production and rights acquisition of European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of European works proposed by such services. ***In these reports, appropriate account should also be taken of the works of independent producers.***

*Justification*

*These additions demonstrate possible ways in which non-linear audiovisual media might be promoted while also complying with the reporting requirement.*

Amendment 27  
RECITAL 38 A (new)

***(38a) The right of reply is a particularly appropriate legal remedy in the online environment, since it is possible to correct the contested information immediately. However, the reply must be made within a reasonable period after receipt of the request, at a time and in a form which appears appropriate in view of the particular programme to which the request relates. The reply must in particular be given the same weight as the contested information, so as to reach the same circle of users with the same effects.***

*Justification*

*The specific characteristics of non-linear audiovisual media services must be taken appropriately into account in connection with the right of reply.*

Amendment 28  
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

(46) Product placement is a reality, **particularly** in **US** cinematographic works and in audiovisual **films** made for television, but Member States regulate this practice differently. To ensure a level playing field **in these areas**, and thus enhance the competitiveness of the European media industry, it is **proposed that rules be adopted** 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

consideration. It is subject to the same qualitative rules and restrictions applying to advertising

programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising

*Justification*

*Distinction drawn concerning the use of product placement.*

Amendment 29  
RECITAL 46 A (new)

***(46a) ‘Production aids’ means the mentioning or presentation of goods or services for editorial reasons without payment or similar consideration. In order to draw the distinction between production aids and product placement within the meaning of this directive, the legal framework for the use of production aids permitted in all programme formats should be clarified.***

*Justification*

*The inclusion of product placement in this directive makes it necessary to clarify the legal status of production aids as well.*

Amendment 30  
RECITAL 46 B (new)

***(46b) ‘Undue prominence’ is present when the repeated representation of the make, good or service or the nature of its presentation is such as to give undue prominence to products in the context of production aids or product placement, taking account of the content of the programmes in which they appear.***

*Justification*

*Undue prominence is a central criterion in identifying product placement and should therefore be more clearly defined.*

Amendment 31  
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

*Does not affect EN version.*

*Justification*

*Does not affect EN version.*

Amendment 32  
RECITAL 47 A (new)

***(47a) The right of people with disabilities and elderly people to participate in the social and cultural life of the community in accordance with Articles 25 and 26 of the Charter of Fundamental Rights of the European Union is inextricably linked with the provision of accessible audiovisual media services. The accessibility of audiovisual media services includes, but is not restricted to, sign language, subtitling, audio-description of images, audio-subtitling and easily understandable menu navigation.***

*Justification*

*In line with the Commission's obligation to take account of the interests of people with disabilities in all areas of Community policy, it is important to refer specifically to the provisions of the Charter of Fundamental Rights relating to people with disabilities and elderly people. A non-exhaustive list of accessibility criteria required for compliance with the Charter is also proposed.*

Amendment 33  
ARTICLE 1, PARAGRAPH 2

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

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

a) ‘audiovisual media service’ means a service ***provided under the editorial responsibility of a media service provider*** as defined by Articles 49 and 50 of the Treaty the principal purpose of which is the provision of ***programmes consisting of*** moving images with or without sound, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC of the European Parliament and of the Council. ***This Directive does not cover the press in printed and electronic form, in which the audiovisual part is not the primary constituent. National constitutional provisions guaranteeing the freedom of the press shall be respected.***

*Justification*

*In order to distinguish audiovisual media services more clearly from other audiovisual services, it needs to be made clear that the offer of moving images consists of programmes for which the media service provider bears editorial responsibility (see Article 1(b) of the Commission proposal). For purposes of clarification it is reiterated that the printed and electronic press are not covered by the scope of the directive.*

Amendment 34  
ARTICLE 1, PARAGRAPH 2

Article 1, letter 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 any natural or legal persons who merely transmit content for which the editorial responsibility lies with***

*third parties.*

*Justification*

*The mere transmission of content for which the editorial responsibility lies with a third party as media service provider is not covered by the scope of the directive.*

Amendment 35  
ARTICLE 1, PARAGRAPH 2

Article 1, letter 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 ***designed by a media service provider with a view to the simultaneous reception of programmes, in accordance with a fixed programme schedule, by an unlimited number of viewers***, where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule

*Justification*

*Clarifies that the term ‘television broadcast(ing)’ means a simultaneous offer of programmes to an unlimited number of viewers in accordance with a fixed programme schedule.*

Amendment 36  
ARTICLE 1, PARAGRAPH 2

Article 1, letter d (Directive 89/552/EEC)

d) ‘broadcaster’ means provider of linear audiovisual media services.

d) ‘broadcaster’ means ***a*** provider of ***television programmes, i.e.*** linear audiovisual media services.

*Justification*

*Clarification*

Amendment 37  
ARTICLE 1, PARAGRAPH 2

Article 1, letter 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 ***consisting of an offer of audiovisual content, edited and compiled by a media service provider,*** where the user, ***on an individual basis, requests the transmission of a particular programme.***

*Justification*

*Clarification of the term “non-linear service” as an on-demand media service.*

Amendment 38  
ARTICLE 1, PARAGRAPH 2

Article 1, letter 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 broadcast as part of*** 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

*Justification*

*Wording reflects the differing types of advertising.*

Amendment 39  
ARTICLE 1, PARAGRAPH 2

Article 1, letter 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

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.

provider of services in programmes when such representation is intended by the **media service provider** to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration

*Justification*

*Surreptitious advertising should be prohibited in non-linear services too.*

Amendment 40  
ARTICLE 1, PARAGRAPH 2

Article 1, letter k (Directive 89/552/EEC)

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

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

*Justification*

*It is a characteristic of product placement that it is carried out in return for payment or for similar consideration.*

Amendment 41  
ARTICLE 1, PARAGRAPH 2

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

***ka) 'production aids' means goods or services made available without payment or other consideration and used for editorial reasons.***

*Justification*

*Draws the distinction between production aids and product placement.*

Amendment 42  
ARTICLE 1, PARAGRAPH 2

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

***kb) ‘programme’ means a unit of content shaped by the editorial activity of a media service provider and comprising moving images with or without sound within a fixed transmission schedule or in a catalogue.***

*Justification*

*The term ‘programme’ is very important for this directive and therefore requires a separate definition.*

Amendment 43  
ARTICLE 1, PARAGRAPH 2

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

***kc) ‘editorial responsibility’ means the definitive compilation of programmes by a professional provider of media content for broadcasting within a set time frame or for ordering from a catalogue, and intended for the general public.***

*Justification*

*The term ‘editorial responsibility’ is very important for the scope of the directive and therefore requires a definition.*

Amendment 44  
ARTICLE 1, PARAGRAPH 4, LETTER B

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

b) *In paragraph 2 “Article 22a” is replaced by “Article 3e”.*

b) *Paragraph 2 is replaced by the following:*

***“(2) The Member States may provisionally derogate from paragraph 1 where the following conditions are fulfilled:”***

***(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) (of the TVWF Directive) and/or Article 22(3e) (of this directive), or a non-linear media service coming from another Member State clearly, seriously and severely violates Article 3e.”***

*Justification*

*It should be possible to react in the event of serious infringements in non-linear media services, as it is now for TV broadcasts.*

Amendment 45  
ARTICLE 1, PARAGRAPH 5

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

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

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

***Member States shall ensure that any policies they take in relation to broadcasting are in line with the communities’ general common market principles.***

*Justification*

*Any additional provisions adopted by the Member States must also be in line with the principles of the internal market.*

Amendment 46  
ARTICLE 1, PARAGRAPH 5

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

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

(2) Member States shall, by appropriate means, ensure, within the framework of their legislation **and in accordance with existing supervision procedures of proven effectiveness in the individual Member States**, that media service providers under their jurisdiction effectively comply with the provisions of this Directive

*Justification*

*Clarifies that Member States may employ national procedures of proven effectiveness to meet the requirements of the directive.*

Amendment 47  
ARTICLE 1, PARAGRAPH 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, in the fields coordinated by this Directive, regimes **at national level for co-regulation as a regulatory instrument founded on cooperation between state bodies and self-regulation bodies, with the state bodies determining the legal framework for the cooperation**. These regimes shall be such that they are broadly accepted by the main stakeholders and provide for effective enforcement

*Justification*

*Clarifies the relationship between co-regulation and self-regulation at national level.*

Amendment 48  
ARTICLE 1, PARAGRAPH 6

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

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

(1) ***Without prejudice to other contractual agreements between the television broadcasters concerned***, Member States shall ensure that, for the purposes of short news reports, broadcasters ***holding a valid permit and*** 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 ***and receive an appropriate payment for doing so.***

*Justification*

*Clarifies that existing contractual obligations must be complied with and an appropriate payment made.*

Amendment 49  
ARTICLE 1, PARAGRAPH 6

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

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

(2) ***Broadcasters may either freely choose short news reports*** from the transmitting broadcaster's signal with at least the identification of their source, ***or may themselves be given access to the event for the purposes of transmission in accordance with the law of the Member State.***

*Justification*

*Right of access to be granted subject to national law.*

Amendment 50  
ARTICLE 1, PARAGRAPH 6

Article 3 b, paragraph 2 a (new) (Directive 89/552/EEC)

***(2a) The provisions of this article shall apply without prejudice to the obligation of individual broadcasters to comply with the copyright law of the Member State in which they are established, including Directive 2001/29/EC and/or the Bern Convention, and shall not affect that obligation.***

*Justification*

*Clarifies that the existing obligations of copyright law are not affected by the directive.*

Amendment 51  
ARTICLE 1, PARAGRAPH 6

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

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

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

*Justification*

*Takes into account technological development and the resulting competition on the different distribution markets.*

Amendment 52  
ARTICLE 1, PARAGRAPH 6

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

(3) Member States shall report to the Commission, no later than the end of the

(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

fourth year after adoption of this Directive and every **two** years thereafter on the implementation of the measure set out in paragraph 1

*Justification*

*Shorter reporting period to reflect the dynamics of technological and economic development.*

Amendment 53  
ARTICLE 1, PARAGRAPH 6

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

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

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

*Justification*

*An independent study should also analyse the information from a pan-European viewpoint, taking into account, just as the Member States have done, market and technological developments and the objective of cultural diversity.*

Amendment 54  
ARTICLE 1, PARAGRAPH 6

Article 3 g, letter c, subparagraph i (Directive 89/552/EEC)

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

(i) include any discrimination on grounds of **sex, race, ethnic origin, religion or belief, disability, age or sexual orientation or any other infringement of human dignity**.

*Justification*

*Scope extended in line with Article 21 of the Charter of Fundamental Rights of the European Union.*

Amendment 55  
ARTICLE 1, PARAGRAPH 6

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

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

1. 1. Audiovisual media services **or programmes** that are sponsored shall meet the following requirements:

*Justification*

*The Commission proposal deals with sponsoring and product placement together in Article 3h. Your rapporteur considers this inappropriate, since sponsoring retains the separation of advertising and editorial content, while in the case of product placement that fundamental separation is removed. Accordingly, Article 3h as amended includes only the provisions on sponsoring. The new Article 3i contains the provisions on product placement.*

Amendment 56  
ARTICLE 1, PARAGRAPH 6

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

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

(a) **their content and, in the case of television broadcasting, their scheduling,** may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

*Justification*

xxx

Amendment 57  
ARTICLE 1, PARAGRAPH 6

Article 3h, paragraph 1, letter 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

(c) viewers must be clearly informed of the existence of a sponsorship agreement. Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate

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.***

way for programmes at the beginning and/or the end of the programmes.

*Justification*

*The reference to sponsoring should be permitted only at the beginning and end of the programme, in order to prevent the insertion of advertising.*

Amendment 58  
ARTICLE 1, PARAGRAPH 6

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

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

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

*Justification*

xxx

Amendment 59  
ARTICLE 1, PARAGRAPH 6

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

3. The sponsorship of audiovisual media services by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the

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

undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

*Justification*

.xxx

Amendment 60  
ARTICLE 1, PARAGRAPH 6

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

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

4. News and current affairs ***programmes*** shall not be sponsored

*Justification*

.xxx

Amendment 61  
ARTICLE 1, PARAGRAPH 6

Article 3i (new) paragraph 4 (Directive 89/552/EEC)

***1. Product integration and thematic placement are prohibited in principle. Product placement is prohibited in other than fictional programmes and sports programmes.***

***Where programmes contain product placement they shall meet the following requirements:***

***(a) their content and, in the case of television broadcasting, their scheduling, may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media***

*service provider;*

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

*(c) viewers must be clearly informed of programmes containing product placement, which must be appropriately identified at the start and the end of the programme and by a signal at least every 20 minutes during the programme in order to avoid any confusion on the part of the viewer;*

*2. Programmes must not contain placement of tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.*

*3. News and current affairs programmes, programmes for children, documentaries and religious programmes may not contain product placement.*

#### *Justification*

*Product placement removes the separation between editorial content and advertising and may only be disseminated for selected formats, with appropriate additional information for viewers.*

#### Amendment 62 ARTICLE 1, PARAGRAPH 6

Article 3j (new) paragraph 4 (Directive 89/552/EEC)

*The use of production aids in audiovisual media services must meet the following conditions:*

*a) It must not be linked to a restriction of journalistic or artistic freedom of presentation.*

*b) Where, in using production aids for editorial reasons, it is necessary to*

***mention or present goods, services, names, trade marks or activities of the producer of a product or provider of a service, this must be done without giving them special prominence.***

***c) No payment or similar consideration must be made for the presentation.***

***d) The viewer shall be informed about the use of production aids. The precise rules, including a de minimis threshold, shall be determined by the Member States.***

#### *Justification*

*This article defines the criteria for the admissibility of production aids, which are at present regulated in different ways – if at all – in the Member States. It ensures that the viewer is informed about production aids, but, in accordance with the subsidiarity principle, leaves the precise rules on labelling, and on the determination of de minimis thresholds, to the transposition stage in the Member States.*

#### Amendment 63 ARTICLE 1, PARAGRAPH 6

Article 3k paragraph 1 (new) (Directive 89/552/EEC)

***1. The Member States shall take appropriate measures to ensure that audio-visual media services under their jurisdiction are gradually made unrestrictedly accessible to people with disabilities.***

#### *Justification*

*Accessibility of audiovisual media services is an important component of the proper operation of the internal market, since people with disabilities and/or elderly people, for whom the issue of accessibility is also of crucial importance, make up a significant proportion of consumers of audiovisual services.*

Amendment 64  
ARTICLE 1, PARAGRAPH 6

Article 3k paragraph 2 (new) (Directive 89/552/EEC)

***2. The Member States shall forward to the Commission every two years national reports on the transposition of this article. These reports shall contain in particular statistical data on progress made towards achieving accessibility within the meaning of paragraph 1, on the reasons (where appropriate) for failures to achieve progress, and the measures adopted or proposed to achieve progress.***

*Justification*

*According to the Institute for Hearing Research, over 81 million Europeans live with a hearing defect; there are also more than 30 million blind and partially sighted Europeans. Research has shown that the vast majority of people with disabilities and/or elderly people watch TV. This represents a market which must be attended to. A requirement to provide accessible audiovisual services would undoubtedly lead to fruitful competition among service providers and improve the operation of the internal market.*

Amendment 65  
ARTICLE 1, PARAGRAPH 7, LETTER A A (NEW)

Article 6 paragraph 1 (Directive 89/552/EEC)

***aa. In paragraph 1, the following letter d is added:***

***“d) In defining the term 'independent producer', the Member States should take appropriate account of the following three criteria:***

***Proprietary rights of the production firm, number of programmes provided to the same broadcaster, and ownership of secondary rights”.***

*Justification*

*In order to make a realistic assessment of the works of independent producers, it is particularly important to be aware of the distribution of proprietary and broadcasting rights.*

Amendment 66  
ARTICLE 1, PARAGRAPH 9

Article 10 paragraph 2 (Directive 89/552/EEC)

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

2. Isolated advertising and teleshopping spots *shall be permitted in* sports programmes, *but shall otherwise remain subject to the legislation of the Member States*.

*Justification*

*There is an urgent need to open up advertising opportunities for free-to-air TV.*

Amendment 67  
ARTICLE 1, PARAGRAPH 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

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

*Justification*

*Better balance between the protection of certain programmes and improving the return on audiovisual works.*

Amendment 68  
ARTICLE 1, PARAGRAPH 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

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.***

Article 18 in respect of ***television*** broadcasts intended solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

*Justification*

*In order to guarantee legal certainty, the term "broadcasts" should be replaced with "television broadcasts", and the reference to broadcasts having no significant impact in terms of audience share should be deleted.*

Amendment 69

ARTICLE 1, PARAGRAPH 17 A (new)

Article 22, paragraph 1 (Directive 89/552/EEC)

***17a. Article 22(1) is replaced by the following:***

***"1. The Member States shall take appropriate measures to ensure that programmes broadcast by media service providers under their jurisdiction do not contain anything which might seriously impair the physical, psychological and moral development of minors, particularly programmes showing pornography or senseless violence."***

*Justification*

*Clarification in line with the scope of the directive.*

Amendment 70

ARTICLE 1, PARAGRAPH 18 A (new)

Article 23 (Directive 89/552/EEC)

***18a. Article 23 shall be replaced by the following:***

***"Article 23***

***1. Without prejudice to other provisions***

*adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in an audiovisual media service must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply or equivalent remedies is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.*

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

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

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

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

*Justification*

*Updating the scope of the directive means that the right of reply must also cover non-linear services, since the right of reply is based on equality of arms, a principle which is increasingly important now that facts are disseminated by non-linear as well as linear services. Accordingly this amendment merely replaces the term “broadcaster” with the term “media service provider” in Article 23.*

Amendment 71  
ARTICLE 1, PARAGRAPH 20

Article 23b, paragraph 1 (Directive 89/552/EEC)

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

1. Member States shall guarantee, **in accordance with national law**, the independence of national regulatory **bodies** and ensure that they exercise their powers impartially and transparently.

*Justification*

*Clarifies that it is regulatory bodies under national law which are referred to.*

Amendment 72  
ARTICLE 1, PARAGRAPH 20

Article 23b, paragraph 2 (Directive 89/552/EEC)

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

2. National regulatory **bodies** shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive. **The national regulatory bodies shall cooperate more closely, particularly in the resolution of problems as referred to in Article 2(7) of the directive.**

*Justification*

*Compliance with the country of origin principle may be promoted by better cooperation between the national regulatory bodies, particularly as regards bilateral problems.*

Amendment 73  
ARTICLE 1, PARAGRAPH 22

Article 26 (Directive 89/552/EEC)

Not later than [...], and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments and the competitiveness of the sector.

Not later than [...], and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended, ***including the reports referred to in Article 3f(3) and Article 3k(2)***, and, 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.

*Justification*

*More efficient bundling of the various reporting requirements.*

## EXPLANATORY STATEMENT

### Summary of the Commission proposal

The objective of the review of the EU's successful "TV Without Frontiers" Directive is to create the best possible conditions for the development of existing and new audiovisual media services in Europe.

The Commission proposal COM (2005)646 of 13 December 2005 focuses on the fundamental principles of the existing directive – the country of origin principle and the harmonisation of minimum standards – and brings them up to date, in a technology-neutral manner, with the Directive on Audiovisual Media Services. A review of the TV directive is necessary chiefly owing to technological changes:

1. the TV Directive applies only to analogue TV transmission, whereas the comprehensive switchover of TV broadcasting to new digital technology is scheduled to be completed in the EU by 2010.
2. these technological developments, such as rapid broadband Internet and 3G mobile telephony, permit the emergence of new TV-like media services, and hence of a large number of new business models. These new audiovisual services, like TV services, are both cultural and economic goods. They are subject to European rules as regards economic law, while in the cultural sphere they fall within the scope of the media legislation of the Member States.

In order to broaden the current EU legislation to cover new technological developments, the Commission proposal distinguishes between 'linear' services, i.e. broadcasts via traditional television, the Internet or mobile phone networks, which provide the viewer with content running on a fixed programme schedule, and 'non-linear services', i.e. TV-like services called up by the viewer from the network on demand.

For linear services the current rules governing TV are to continue in force, in a more modern and more flexible form. For non-linear services, on the other hand, only minimum basic rules are laid down, e.g. for the protection of minors, against incitement to racial hatred and for the prevention of surreptitious advertising. These common rules mean that in future the providers of audiovisual services too should be subject only to the legislation of the Member State in which they are established, and no longer to the diverse media legislation of all the Member States in which their services can be received.

In this way the Directive on Audiovisual Media Services creates the conditions for the completion of the internal market using the country of origin principle - essential in terms of economic growth and jobs - while at the same time doing justice to cultural aspects.

## **Your rapporteur's evaluation**

In the light of the technological changes in the television sector, the European Parliament has been calling for the review of the TVWF Directive for several years. Your rapporteur therefore welcomes the Commission's proposal, as it represents a good basis for the revision of the directive. However, a number of individual points still require further clarification. These include in particular the scope of the directive, the definition of co-regulation and self-regulation, the quantitative advertising rules, the proposal to allow product placement and the right to broadcast short news reports.

## **Scope**

The definition of the scope of the directive, and thus of the dividing line between audiovisual services in general and audiovisual **media** services in particular, is of crucial importance for the directive. The Commission proposes that audiovisual services must meet six criteria in order to qualify as a media service. They must:

- be 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.

For further clarification your rapporteur proposes adding to this set of criteria that of 'editorial responsibility' and a definition of 'programme', as the Commission has already done in other places in its proposal for a directive. This addition makes it clear that the directive covers only audiovisual media services in which a professional media service provider is responsible for the editorial design and final compilation of a programme for broadcasting in accordance with a fixed programme schedule or for viewing on demand from a catalogue. Services in which the audiovisual element is not the principal purpose of the service, and services which consist merely in the technical transmission of the content, should by way of clarification be expressly excluded from the scope of the directive.

## **Co-regulation and self-regulation**

It is very gratifying to see the Commission recommending for the first time in this proposal that, in the transposition of this directive, the Member States should in principle make use of co-regulation and self-regulation instruments. The amendments in this report seek to make clear that each national legislature should decide under what conditions co-regulation and/or self-regulation instruments are used at national level, how the interested parties should be appointed to form the relevant bodies and what penalties the legislature imposes in the event of failure by the appointed self-regulation bodies.

## **Quantitative advertising rules**

The Commission's proposals to increase the flexibility of quantitative advertising rules are correct, but should be extended – and this is also in the user's interest – so as to preserve equality of economic opportunities between free-to-air TV and non-linear TV-like services which are not subject to any quantitative advertising regulations.

Your rapporteur therefore suggests that the advertising block rule (prohibiting isolated advertising spots) should also be allowed as an option, though at the discretion of the Member States.

## **Emergency blocking in the interest of the protection of minors**

As is already the case with TV, the Member States should also have the right to rapidly block broadcasts in TV-like services in the event of an extreme violation of rules on the protection of minors. To this end your rapporteur proposes the tried and tested procedure under Article 3(5) of Directive 2000/31/EC.

## **Sponsoring – Product placement – Product integration – Production aids**

Parliament is highly critical of the Commission's proposal to legalise product placement, as this advertising instrument breaches the separation in principle between advertising and editorial content, risking an increasing loss of editorial independence and of the integrity of editorial content.

Your rapporteur strongly agrees with this critical attitude, and therefore proposes that a distinction be drawn between sponsoring – in which the separation between content and advertising is maintained – and product placement. In the Commission's proposal, both advertising instruments are dealt with together in a single article.

In addition, the various conceivable ways in which – in contrast to sponsoring – a link could be made between advertising and programme content need to be more clearly defined and demarcated. Product integration, in which the content is guided by the advertising, should remain prohibited. Thematic placement, in which not products but topics are incorporated into the programme by way of advertising, should remain prohibited. Product placement should also, your rapporteur suggests, remain prohibited in general, and only permitted in specific cases where – as in cinema and TV films – there is competition with US products in Europe, and in sports programmes.

Product placement, as thus defined, should be subject to more stringent transparency rules than are proposed by the Commission, including detailed information at the beginning and end of the programme, and at least one announcement every 20 minutes during the programme to draw the viewer's attention to the product placement.

One new proposal by your rapporteur is that production aids in the form of goods or services should be allowed. Unlike product placement, these permitted production aids must be

provided free of charge and only in accordance with editorial needs.

### **Right to broadcast short news reports – Right of reply – Dismantling barriers to access**

In order to enhance freedom of information for all EU citizens, your rapporteur proposes that:

- the right to broadcast short news reports should not just be allowed as an option but should be guaranteed in all Member States in accordance with national law,
- the right of reply should not be confined to traditional TV but extended to new media services,
- unimpeded access to audiovisual media services should gradually be guaranteed for people with disabilities.

### **Promotion of European content and independent producers**

The new audiovisual media services have great potential in terms of the transmission of European content. Your rapporteur sets out specific ways in which the Member States could promote this trend, which among other things would benefit independent producers, without endangering the new business models.

### **National regulatory bodies**

Improved cooperation between national regulatory bodies should in your rapporteur's view facilitate the resolution particularly of bilateral problems between the Member States with a view to guaranteeing the application of the state of transmission principle and of the minimum standards harmonised by this directive, thereby ensuring the success of the revised directive.