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Committee on Culture and Education

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PE 378.630v01-00

AMENDMENTS 74-263

Draft report

(PE 376.676v03-00)

Ruth Hieronymi

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

Proposal for a directive (COM(2005)0646 – C6-0443/2005 – 2005/0260(COD))

Text proposed by the Commission

Amendments by Parliament

Amendment by Maria Badia I Cutchet

Amendment 74 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 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.

(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 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

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services, *as well as respect for cultural and linguistic diversity.*

Or. en

Justification

The protection of the cultural and linguistic diversity must also be taken into account in the regulation of the audiovisual media services.

Amendment by Christopher Heaton-Harris

Amendment 75
RECITAL a (new)

(1a) The revision of the Directive should primarily aim at accommodating change and enhancing the competitiveness of the audiovisual media service industry in the global marketplace. A more liberal and straightforward regulatory framework will encourage economic growth, job creation and innovation in accordance with the Lisbon Strategy.

Or. en

Amendment by Marianne Mikko

Amendment 76
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

(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

country of origin principle for specific public policy reasons.

Directive 2000/31/EC provides that Member States may derogate from the country of origin principle for specific public policy reasons. *In particular, a Member State may adopt appropriate measures against the media service provider concerned, where a media service provider established in another Member State directs its activities wholly or mainly towards the first Member State and has established itself in the second Member State in order to avoid the sector-specific rules which would be applicable to it if it were established in the first Member State.*

Or. en

Justification

To curb location-shopping directed to undermining the rules of another MS. Alternatively, extended consultation and cooperation between MS-s could be considered.

Amendment by Maria Badia I Cutchet

Amendment 77
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, ***which also must respect pluralism and cultural diversity.***

Or. en

Justification

The protection of pluralism and of the cultural diversity must be taken into account in the regulation of the audiovisual media services.

Amendment by Henri Weber

Amendment 78

RECITAL 3

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

(3) ***Audiovisual media services are as much cultural goods as they are economic goods. Their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and pluralism – education and culture justifies the application of specific rules to these services, and the enforcement of those rules, notably in order to preserve the fundamental rights and freedoms laid down in the Charter of Fundamental Rights of the European Union, the European Convention for Protection of Human Rights and Fundamental Freedoms and the United Nations Covenant on Civil and Political Freedoms, and in order to ensure the protection of minors and vulnerable and disabled people.***

Or. fr

Justification

The European audiovisual model is founded on the principle that the media are both cultural and economic goods. It should be reaffirmed that their importance in shaping public opinion and preserving democracy justifies the application and enforcement of rules safeguarding, inter alia, fundamental rights and freedoms and the protection of vulnerable persons as defined at national, European and global level.

Amendment by Marie-Hélène Descamps

Amendment 79

RECITAL 3

(3) The importance of audiovisual media

(3) ***Audiovisual media are both cultural and***

services for societies, democracy and culture justifies the application of specific rules to these services.

economic services. 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.

Or. fr

Justification

The European media model is founded on the principle that the media are both cultural and economic services. The Directive must therefore take account of this dual nature, as was done in other legislation in line with the European treaties.

Amendment by Christopher Heaton-Harris

Amendment 80
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 and culture justifies the application of **limited** specific rules to these services **and only where absolutely essential**.

Or. en

Justification

In order to be competitive, audiovisual media services should not be overburdened with regulation.

Amendment by Giovanni Berlinguer, Giulietto Chiesa, Monica Frassoni, Donato Tommaso Veraldi und Lilli Gruber

Amendment 81
RECITAL 3 A (new)

(3a) Media education should serve to provide citizens with the wherewithal to bring critical interpretation to bear on, and

use, the ever-expanding volume of information with which they are assailed, as laid down in Council of Europe Recommendation 1466 (2000). Helped by a learning process of this kind, citizens will be in a position to formulate messages and select the media best suited to impart them and thus become able to exercise their right to freedom of information and expression to the full.

Or. it

Amendment by Christopher Heaton-Harris

Amendment 82

RECITAL 4

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

(4) Traditional audiovisual media services and emerging on-demand services offer significant employment opportunities in the Community, particularly in small and medium-sized enterprises, and stimulate economic growth and investment. ***The Directive shall not impede the development of new services by premature and restrictive legal provisions.***

Or. en

Justification

The revised directive should encourage rather than hamper the development of new audiovisual services.

Amendment by Luis Herrero-Tejedor

Amendment 83

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

(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.

economic growth and investment. ***This Directive will boost the development of these new services.***

Or. es

Justification

The directive is manifestly forward looking and must foster and stimulate the development of all new media services.

Amendment by Christopher Heaton-Harris

Amendment 84
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. ***deletion***

Or. en

Justification

The electronic-Commerce directive has provided and continues to provide new media service providers with the requisite legal certainty and level playing field between like services required to do business. This recital does not therefore reflect reality and should be deleted.

Amendment by Luis Herrero-Tejedor

Amendment 85
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 ***deleted***

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.

Or. es

Justification

Regulation is already provided at European level under the Electronic Commerce Directive, and Member States have already introduced effective self- and co-regulation systems. The online industry is not calling for harmonised checks on non-linear services; as well as being both difficult and costly, tightening up the regulation brought to bear might even increase legal uncertainty.

Amendment by Christopher Heaton-Harris

Amendment 86
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) ***As the introduction by Member States of their own rules on new audiovisual media services could lead to*** legal uncertainty and a non-level playing field for European companies delivering audiovisual media services as regards the legal regime governing emerging on-demand services, it is necessary, both to avoid distortions of competition and to improve legal certainty, to apply ***the country of origin principle as an overriding basic rule in that industry.***

Or. en

Justification

It is questionable whether legal uncertainty exists since on demand services are regulated by the eCommerce Directive. Besides, the country of origin principle in both this directive and the eCommerce Directive provides the most important legal certainty for service providers to allow them to operate across borders.

Amendment by Gyula Hegyi

Amendment 87
RECITAL 6 A (new)

(6a) The coexistence of private and public broadcasters is of high importance in the audiovisual media market, where public broadcasters may equally benefit from the advantages of digital economy.

Or. en

Justification

It is important to emphasize that both private and public broadcasters can take advantage of digital market opportunities.

Amendment by Christopher Heaton-Harris

Amendment 88
RECITAL 6 A (new)

(6a) Promotion of the competitiveness of European industry, of which the audiovisual sector forms an important part, is crucial to attainment of the policy goals of the Lisbon Strategy. Therefore, in order to strengthen the competitiveness of the audiovisual industrial sector, adequate means of financing should be promoted within the appropriate regulatory framework. It is therefore essential that the audiovisual sector be dynamic and profitable and to this end the objective should be the least possible intrusive regulation.

Or. en

Justification

In order to be competitive, audiovisual media services should not be overburdened with regulation.

Amendment 89

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 **respects** fundamental rights and **observes** the principles recognised **in particular** by the Charter of Fundamental Rights of the European Union. **In particular, this Directive seeks to ensure full respect for the right to information, as set out in Article 11 of the Charter of Fundamental Rights of the European Union. Accordingly, this Directive should be interpreted and implemented in compliance with those rights and principles.** 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.

Or. en

Justification

The new wording puts a stronger emphasis on the Charter of Fundamental Rights.

Amendment by Claire Gibault

Amendment 90

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 **3k** 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, nationality, **sexual orientation or ethnic origin** 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 provided for in Article 3(5) of Directive 2000/31/EC may be applied only in particularly severe and urgent cases of infringement of non-harmonised national rules.

Or. fr

Justification

These changes are necessary to be consistent with Amendment 44. With regard to protection of minors and incitement to hatred, there is no need to apply Article 3(5) of the Electronic Commerce Directive and Article 2b(2) of this Directive at the same time.

Amendment by Henri Weber und Catherine Trautmann

Amendment 91
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 ***(a framework directive) established a uniform legal framework for all transmission networks and services, but in accordance with its Article 1()*** it 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, ***in line with the principle of technological neutrality which justifies a separation between transmission regulation and content regulation.***

Or. fr

Justification

The principle of technological neutrality allows complete freedom in the development of transmission technologies falling within the appropriate standards and rules and also makes it possible to apply a coherent framework to content regulation.

Amendment by Thomas Wise

Amendment 92
RECITAL 11 A (new)

(11a) For the purposes of this directive and to protect cultural diversity between and within EU Member States as well as the principle of subsidiarity, self regulation shall be defined as 'the possibility for economic operators, social partners, non-governmental organisations or associations to adopt among themselves common guidelines at Member State and national levels'.

Or. en

Justification

Paragraph 22 of the 'Interinstitutional Agreement on better lawmaking (pursuant to 2003/2131(ACI)) reads:

'self regulation is defined as the possibility for economic operators, the social partners, non-governmental organisations or associations to adopt among themselves common guidelines at European level'

This interpretation ignores the principle of subsidiarity and ignores cultural diversity between and within member states, moreover it is the member states or the self regulatory bodies they approve, who apply broadcasting controls under the Country of Origin rules. A directive is binding, but leaves under Article 249 of the EC treaty the national authorities the choice of form and methods.

Amendment by Michl Ebner

Amendment 93
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) The freedom to take up and pursue the activities of a provider of audiovisual media services, which – like, in particular, non-linear audiovisual media services – are information society services within the meaning of Article 1(2) of Directive 98/34/EC as amended by Directive 98/48/EC, and not television broadcasting services within the meaning of Directive

89/552/EEC as amended by Directive 97/36/EC, has been protected up to now from being subject to prior authorisation or any other requirement having equivalent effect by Article 4(1) of Directive 2000/31/EC (Directive on electronic commerce). As part of the 'acquis communautaire' and a central element of the freedom of these media, this protection must continue to apply, while also covering all restrictions on content and other requirements harmonised by the present directive. In order to enshrine this important principle beyond all doubt in the relevant media-specific legislation, the protection in question must be incorporated in the present directive. In so far as television broadcasting services within the meaning of Directive 89/552/EEC, as amended by 97/36/EC, which are not covered by the protection currently offered by Article 4(1) of the Directive on electronic commerce, may be subject to the requirement for prior authorisation or requirements having equivalent effect, in accordance with the various national states' and European principles of broadcasting freedom, even at a time when means of transmission are increasingly unlikely to be in short supply, 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.

Or. de

Justification

The Commission proposal is unclear, as it makes no distinction between television broadcasting services and the newly-regulated non-linear audiovisual services. To the extent that the non-linear audiovisual media services to be addressed for the first time by this media-specific directive have been protected to date by the 'acquis communautaire' in the form of Article 4(1) of the Directive on electronic commerce (2000/31/EC) against national requirements for prior authorisation (and measures having equivalent effect) for the purpose of either taking up or pursuing the activity in question, it is obvious that this central element of media freedom should be incorporated in the first media-specific rules drawn up to regulate such services (see proposed amendment to Article 3(1)). This is the case because,

otherwise, doubts could arise as to whether the protection in question continued to apply as regards the requirements harmonised for the first time in the present directive or whether the protection offered by Directive 2000/31/EC had been reduced in this area. So, unless the protection in question is incorporated into the present directive, there would, for example, be a risk that measures taken on grounds of public policy or for the protection of young people, which had the effect of imposing a requirement for prior authorisation in order to pursue the activity, would be deemed to be admissible, even though prior restrictions on content on this kind are incompatible with the media freedom safeguards comprised in the 'acquis communautaire' by virtue of Article 4(1) of the Directive on electronic commerce. Given that Member States introduced national licensing requirements for traditional television programmes in the period when means of transmission were in short supply, and authorisation requirements could continue to be admissible even at times when means of transmission are increasingly unlikely to be in short supply, the present directive should in any event not encourage Member States to impose new systems of licensing or administrative authorisation.

Amendment by Luis Herrero-Tejedor

Amendment 94
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 media. ***Licensing or administrative authorisation should likewise remain void if no safeguard is provided in the form of prior judicial review.***

Or. es

Justification

European legislation guarantees the right to receive or impart information or ideas and rules out the possibility of interference by the authorities. Unless a court ruling has first been handed down, citizens should not be deprived of their right to receive information via the channel to which they normally tune in. Effective protection of fundamental rights and freedoms is the direct responsibility of judges and courts of law.

Amendment by Marie-Hélène Descamps

Amendment 95
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 approach and responsibility of the provider are reflected in a programme schedule or in a selection listing*. However, its scope is limited to services as defined by the Treaty and therefore covers any form of economic activity, including that of public service enterprises. *The economic character may be relevant to the application of the Directive. Economic activities are normally provided for remuneration, intended for a certain period and characterised by a certain continuity; the assessment is subject to the criteria and rules of the country of origin. Accordingly, non-economic activities, such as blogs and other not-for-profit user-generated content, and any form of private correspondence, such as e-mails and private websites, do not fall within the scope of this Directive.*

Or. fr

Justification

A Member State may wish to apply its own rules instead of those of the country in which the media services provider is established because the majority of its staff work on its territory, daily editorial decisions are taken on its territory and the programme's main language is that which is spoken on its territory.

In order to reflect more accurately the reality of the situation and to prevent damaging misuse of the country of origin principle, an economic criterion should also be introduced which would be measured in terms of the proportion of resources obtained in the state where the service is broadcast. The economic criterion is objective and easily quantifiable.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 96 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

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any form of economic activity, including that of public service enterprises, but does not cover non-economic activities, such as purely private websites.

any form of economic activity, including that of public service enterprises, but does not cover non-economic activities, such as purely private websites *or other types of user-generated content, which are not usually provided on a remunerated basis. A significant economic element must be involved to justify the application of this directive. The question of whether the activity in question involves a significant economic element shall be decided in accordance with the provisions laid down in the Member State in which the media services provider is established.*

Or. de

Justification

It must be expressly stated that the directive applies only to commercial activities and does not cover private or semi-private services.

Quite a significant economic element must be involved in order to ensure that, for example, websites or blogs which merely contain information about the software used are excluded from the scope of the directive. The relevant criteria can be derived from the various countries' national law, for example tax or company law.

Amendment by Helga Trüpel and Jean-Luc Bennahmias

Amendment 97 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 provided in return for payment and are intended to have a certain duration and frequency; their status 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.***

Or. en

Justification

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

Amendment by Mary Honeyball

Amendment 98
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 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 activities ***which are primarily non-economic***, such as purely private websites, ***the distribution and exchange of audiovisual material for the expression of personal opinions, services which distribute audiovisual content produced by users for exchange within communities of interest or other non-linear services which do not have a clear impact on a significant number of members of the public.***

Or. en

Justification

Clarification would help reassure users about the fact that the Directive will not change the

way in which they exploit the creative potential of the internet, including online audiovisual material, subject only to respecting criminal law.

Amendment by Christopher Heaton-Harris

Amendment 99
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 scheduled or on-demand. However, **this Directive's** scope is limited to **linear audiovisual media** services as defined **below and** by the Treaty, but does not cover non-economic activities, such as **user-generated content**, private websites **as well as any form of private correspondence, such as emails**.

Or. en

Justification

The definition of broadcasting needs to be amended to include services that are the same in nature to traditional scheduled broadcast services but delivered by different platforms, but it should be explicitly stated that user-generated content, private websites, etc. are not included.

Amendment by Hanna Foltyn-Kubicka

Amendment 100
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. However, its scope is limited to services as defined by the Treaty and therefore covers any form of **paid** economic activity, including that of public service enterprises, but does not cover non-economic activities, **not undertaken directly for profits but for the purpose of information, education, entertainment or the propagation of ideas and beliefs**.

Or. pl

Justification

The aim is to provide greater clarity by emphasising the criterion concerning the economic nature of audiovisual media services. This criterion is the best way of providing a clearer definition, as opposed to the previous method based on distinguishing between different forms of technological development. Rapid developments in technology and media mean that legal provisions on the subject can quickly become outdated.

Amendment by Karin Resetarits

Amendment 101

RECITAL 13

(13) The definition of audiovisual media services ***covers all audiovisual mass-media services***, whether scheduled or on-demand.

(13) The definition of audiovisual media services ***with an audiovisual component***, whether scheduled or on-demand.

Or. de

Justification

On-line services comprise not only traditional audiovisual mass-media and non-audiovisual mass media, but also hybrid services. Hence the need for this clarification.

Amendment by Ivo Belet

Amendment 102

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, ***including television-related 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.

Or. nl

Amendment 103

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 gambling or search engines, where the delivery of audiovisual materials is not the principal purpose of the service even if a search sometimes results in an offer of audiovisual material. However, where different kinds of services are offered in parallel, without one part being clearly subordinate to another, this Directive should still apply to those distinguishable parts of the service which fulfil all the criteria of an audiovisual media service.**

Or. en

Justification

Definition of audiovisual media services by content-based guidelines.

Amendment by Michl Ebner

Amendment 104

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

(14) The definition of audiovisual media services covers **the offer of electronic audiovisual content to the public** in **its** function to inform, entertain and educate,

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.*

but excludes any form of private correspondence, such as e-mails sent to a limited number of recipients. The definition also excludes all services *which do not exclusively constitute or have the principle aim of broadcasting editorial content comprising moving pictures with or without sound, i.e. services whose principal aim is not to make audiovisual material available to the general public. For example, this would exclude websites whose total output is dominated by non-audiovisual rather than audiovisual content, and whose primary purpose does not, therefore, consist in their audiovisual elements.*

Or. de

Justification

The directive's scope must be clearly defined and it must be clear that, as intended from the outset, it is restricted to television broadcasting services and equivalent services. It must be stressed that an internet media service is regarded as an audiovisual media service only if the audiovisual elements form its principle purpose and, in that sense, can be said to predominate.

Amendment by Claire Gibault

Amendment 105

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-

(14) The definition of audiovisual media services covers mass media in their function to inform, entertain and educate. The definition excludes all services not intended for the distribution of audiovisual content, i.e. where any audiovisual content **fulfils a function which** 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. **Examples include online games and search engines, provided the offer of audiovisual content does not**

audiovisual service.

constitute the principal purpose, even if a search sometimes results in an offer of audiovisual material. When different types of service are offered simultaneously, without one element being clearly subordinate to another, this Directive should apply to those identifiable elements of the service which comply with all the criteria of an audiovisual media service.

Or. fr

Justification

These changes are necessary to improve the translation and avoid misunderstandings (e.g. if a service simultaneously offers online music and online video, the fact that the music comprises the major part of the offer should not mean that the Directive does not apply to the online video element).

Amendment by Karsten Friedrich Hoppenstedt

Amendment 106 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 ***which contribute to forming public opinion*** 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. ***Further, this definition does not cover gambling activities in which the stake has a monetary value, games of chance, including lotteries, betting transactions and on-line games based on interactive software so long as their***

principle purpose is not to distribute audiovisual content.

Or. de

Justification

It should be made clear that games of chance and on-line games based on interactive software do not fall within the scope of the directive. In these cases, the dissemination of audiovisual content generally plays only an ancillary role, and consequently it can be categorically stated that these activities do not fall within the area the directive is intended to regulate.

Furthermore, games of chance constitute a highly sensitive market which, on grounds of consumer protection as well as public policy, require special regulation.

Amendment by Helga Trüpel and Jean-Luc Bennahmias

Amendment 107

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, ***and contribute to forming public opinion, including that of public service enterprises, whether the editorial work and responsibility of the provider are reflected in a programme schedule or in a selection catalogue. However it does not cover non-economic activities, such as purely private websites; the economic element having to be of some significance to justify the application of the Directive.*** 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 ***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 - except for article 3f(1) - online games, as long as the main purpose***

of the audiovisual media service is not reached, and search engines where the delivery of audiovisual materials is not the principal purpose even if a search sometimes results in an offer of audiovisual material.

Or. en

Justification

In certain Member States the contribution to public opinion forming (in a broad sense) is used as a criterion to distinguish "media" services from other communications services. Furthermore this is a definition of audiovisual media services by content-based guidelines. The notion of "audiovisual media services" should apply only to services which are normally provided against remuneration; the fact that a website or videoblog contains information credits for, for example, the software used does not necessarily mean that it is to be qualified as an economic activity.

Amendment by Hanna Foltyn-Kubicka

Amendment 108 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, **and disseminate ideas or beliefs**, but excludes any form of private correspondence, such as e-mails sent to **individually selected** 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 **and where the amount of content provided in this way is insignificant compared to the overall content of these services**. 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.

Or. pl

Justification

The idea that a commercial audio-visual communication can only apply to the sectors of education, information and entertainment is inaccurate. The definition should also include programmes with global content. It is also necessary to include an additional criterion distinguishing audiovisual from ancillary services. The best solution here seems to be a quantitative criterion. An incidental communication must take up considerably less space than the main communication and its ancillary role must be clear.

Amendment by Ignasi Guardans Cambó

Amendment 109
RECITAL 14 A (new)

(14a) The definitions in this Directive, in particular the definitions of television broadcasting, linear and non-linear services, are established only for the purposes of this Directive and do not cover the underlying rights concerned under copyright and neighbouring rights legislation. The scope and regime of these rights are not prejudiced by these definitions and continue to be regulated independently by the relevant legislation.

Or. en

Justification

Clarifies that the scope and the regime of the underlying rights concerned under copyright and neighbouring rights legislation are not affected by the directive.

Amendment by Karin Resetarits

Amendment 110
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 the form of text accompanied by still pictures. If journalistic content is presented in an audiovisual format, however, it should be treated in the same way as other audiovisual media services. In***

future, online editions of newspapers and periodicals will contain audiovisual components. These must be treated on the same basis as other audiovisual services in law, as they have the same impact on consumers.

Or. de

Justification

In future, on-line editions of newspapers and periodicals will contain audiovisual elements. These must be placed on the same legal footing as other audiovisual services, because they have the same impact on consumers.

Amendment by Christopher Heaton-Harris

Amendment 111
RECITAL 15

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

(15) This Directive does not cover electronic versions of newspapers, magazines, **periodicals, journals or books when the visual content is largely static.**

Or. en

Justification

Clarification.

Amendment by Ignasi Guardans Cambó

Amendment 112
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 which the audiovisual content appears only as an ancillary element.**

Or. en

Justification

This amendment seeks to clarify that these services are excluded from the scope of the directives long as they do not turn the transmission of audiovisual services into their principal purpose.

Amendment by Manolis Mavrommatis

Amendment 113
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) The term “audiovisual” refers to ***moving and/or alternating images*** with or without sound, so includes silent films but does not cover audio transmission or radio.

Or. el

Justification

The purpose of this amendment is to prevent the idea arising that programmes using only static images which alternate with or without special effects and with or without sound do not fall within the surge of this Directive.

Amendment by Luis Herrero-Tejedor

Amendment 114
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.

Or. es

Justification

It must be ensured that this directive will not alter the definitions of ‘audiovisual services’ used in other legislative acts.

Amendment by Christopher Heaton-Harris

Amendment 115
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.

Or. en

Justification

A clarification since the term "audiovisual" includes radio in other legal acts, such as the classification of services in the WTO/GATS.

Amendment by Claire Gibault

Amendment 116
RECITAL 16 A (new)

(16a) ‘Editorial responsibility’ covers, in particular, the choice and organisation of audiovisual content – whether an individual content element or a series of elements – on a professional basis. This editorial responsibility applies to the composition of the schedule, in the case of television programmes, or to the programme listing, in the case of non-linear services. Editorial responsibility does not necessarily imply any legal liability pursuant to national law with regard either to the content or the services provided.

Or. fr

Justification

Rather than attempt a formal legal definition of ‘editorial responsibility’ it is preferable to describe this concept in a recital as proposed by the Finnish presidency (17.7.2006).

Amendment by Henri Weber

Amendment 117
RECITAL 16 A (new)

(16a) Editorial responsibility covers, in particular, the responsibility – on a professional basis – for programme content and/or the choice of organisation of audiovisual content, whether an individual content element or a series of elements. This editorial responsibility applies to the composition of the schedule, in the case of television programmes, or to the programme listing, in the case of non-linear services. Editorial responsibility does not necessarily imply, pursuant to applicable national law, legal liability with regard either to the content or the services provided.

Or. fr

Justification

Establishing a formal legal definition of ‘editorial responsibility’ is an extremely delicate matter given the differences in national laws. It is therefore preferable to describe this concept in a recital.

Amendment by Ignasi Guardans Cambó

Amendment 118
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 compilation 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 delivery of contents, whether in linear form or on demand, by or under the responsibility of a service provider.** This

Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

Or. en

Justification

Clarifies the criterion of editorial responsibility.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 119
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 comprises responsibility for the selection and organisation of individual content - whether of individual programmes or of a range of programmes - on a professional basis. This editorial responsibility applies to the programme schedule, in the case of television broadcasting, and to the composition of the programme catalogue in the case of on-demand services.*** This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

Or. de

Justification

This definition of editorial responsibility makes it clear that 'hosting providers' who merely provide platforms for content do not fall within the scope of the directive.

Amendment by Ruth Hieronymi

Amendment 120
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 delivery of contents, whether in linear form or on demand whatever technical platform is used, where the service provider does not select or organise this content.*** This Directive is without prejudice to the liability exemptions established in Directive 2000/31/EC.

Or. en

Justification

Clarifies the criterion of editorial responsibility.

Amendment by Helga Trüpel

Amendment 121
RECITAL 17 A (new)

(17a) The mere technical delivery, by terrestrial means or by satellite, of an audiovisual media service does not in itself confer the status of a media service provider within the meaning of this Directive; this also applies where a selection decision is made, provided that a third party under the jurisdiction of a Member State clearly bears that editorial responsibility.

Or. en

Justification

It is necessary to prevent the creation of a kind of "loophole", whereby editorial responsibility could easily be exported outside the EU, with the possible effect that the Directive would no

longer apply. See also amendment for Article 1 paragraph 2

Amendment by Claire Gibault

Amendment 122
RECITAL 17 A (new)

(17a) The mere 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 from a Member State clearly bears the editorial responsibility.

Or. fr

Justification

We need to avoid creating a ‘loophole’ which would make it easy to ‘export’ editorial responsibility outside the EU in order to escape application of this Directive.

Amendment by Manolis Mavrommatis

Amendment 123
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 of a natural or legal entity pursuing an economic activity and therefore it does not include public service announcements and charity appeals broadcast free of charge.

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises moving ***and/or alternating*** 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 and therefore it does not include public service announcements and charity appeals broadcast free of charge.

Or. el

Justification

The purpose of this amendment is to prevent the idea arising that programmes using only static images which alternate with or without special effects and with or without sound do not fall within the scope of this Directive.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 124
RECITAL 18

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

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

Or. de

Justification

It should be made clear that 'audiovisual commercial communication' forms part of audiovisual media services. This term also covers new forms of advertising such as product placement. Moreover, it is not apparent why moving images should be deemed to be the hallmark of audiovisual commercial communication. Given the increasing use of new advertising techniques such as split screen, the possibility of including static images should also be considered.

Amendment by Christopher Heaton-Harris

Amendment 125
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**

(18) In addition to advertising and teleshopping, the wider definition of audiovisual commercial communication is introduced. It comprises moving images with or without sound which **are transmitted**

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 and therefore it does not include public service announcements and charity appeals broadcast free of charge.

as part of linear 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 and therefore it does not include public service announcements and charity appeals broadcast free of charge.

Or. en

Justification

Restricting the definition to linear audiovisual commercial communications will minimise scope for confusion with definitions of commercial communications in other EU legislation, such as the eCommerce Directive and Electronic Communications Data Protection Directive.

Amendment by Claire Gibault

Amendment 126 RECITAL 19

(19) The country of origin principle remains the core of this Directive, as it is essential for the creation of an internal market. This principle must therefore be applied to all audiovisual media services in order to ensure legal certainty for media service providers as the necessary basis for new business models and the deployment of these services. It is also essential in order to ensure the free flow of information and audiovisual programmes in the internal market.

(19) The country of origin principle remains the core of this Directive, as it is essential for the creation of an internal market. This principle must therefore be applied to all audiovisual media services in order to ensure legal certainty for media service providers as the necessary basis for new business models and the deployment of these services. It is also essential in order to ensure the free flow of information and audiovisual programmes in the internal market. ***The application of this principle may not exclude a reference to criteria relating to the origin of a service's resources with a view to ensuring the conditions for fair competition.***

Or. fr

Justification

The country of origin principle is fundamental to the proposed Directive. Member States must be able to apply stricter rules in the fields coordinated by the Directive to audiovisual media service providers under their jurisdiction. The codification of Court of Justice case-law and the introduction of new criteria based on the origin of a service's resources, combined with a

more efficient procedure, offers an appropriate solution which takes account of Member States' concerns without calling into question the country of origin principle.

Amendment by Henri Weber und Catherine Trautmann

Amendment 127
RECITAL 19 a (new)

(19a) Given that respect for pluralism of information is a fundamental principle of the European Union, Member States should prevent a dominant position from emerging which would undermine this principle and should guarantee freedom of information through provisions to ensure non-discriminatory access to audiovisual media services which are in the public interest.

Or. fr

Justification

Respect for pluralism of information must be reflected in appropriate provisions such as the 'must carry' rules

Amendment by Helga Trüpel, Jean-Luc Bennahmias and Monica Frassoni

Amendment 128
RECITAL 19 a (new)

(19a) It is therefore essential that the Member States prevent the emergence of dominant positions that would lead to a limitation of pluralism and restrictions on freedom of media information as well as of the information sector as a whole, for instance by taking measures to secure non-discriminatory access to audiovisual media service offerings in the public interest (e.g. through must-carry rules and universal access).

Or. en

Justification

A central purpose of the Directive on audiovisual media services is to ensure access by citizens to a pluralistic media offer. This recital builds on an existing passage in the present Directive but states explicitly that infrastructural measures serving diversity, such as must-carry rules, also contribute to this objective.

Amendment by Christopher Heaton-Harris

Amendment 129
RECITAL 19 a (new)

(19a) To promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the European Union, it remains essential that only one Member State has jurisdiction over any audiovisual media service provider. Therefore the criteria of establishment used to determine such jurisdiction must remain as set out in Directive 97/36/EC.

Or. en

Justification

To strengthen the country of origin principle and specifically to reinforce the current definitions of establishment and jurisdiction which have worked effectively in facilitating trans-frontier European broadcasting to date.

Amendment by Mario Mauro

Amendment 130
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 content service, ***which must however be lawful, respect the principle of human dignity and must not prejudice the***

full development of children, as laid down in Article 22.

Or. it

Justification

There is a need for provision in the same directive of suitable measures to protect the physical, mental and moral development of children using any information medium currently available on the market.

Amendment by Marielle De Sarnez

Amendment 131
RECITAL 23

(23) Member States must be able to apply stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction. To ensure that such rules are not circumvented, the codification of the case law of the European Court of Justice, combined with a more efficient procedure, is an appropriate solution that takes account of Member State concerns without calling into question the proper application of the country of origin principle.

(23) Member States must be able to apply stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, ***while ensuring that those rules are consistent with Community competition law.*** To ensure that such rules are not circumvented, the codification of the case law of the European Court of Justice, combined with a more efficient procedure, is an appropriate solution that takes account of Member State concerns without calling into question the proper application of the country of origin principle.

Or. fr

Justification

Allowing Member States the possibility to apply specific measures in the context of this Directive must not lead to infringement of the basic rules of competition law.

Amendment by Helga Trüpel

Amendment 132
RECITAL 24

(24) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take

(24) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take

measures that restrict the freedom of movement of television broadcasting, but only under certain conditions listed in Article 2a of this Directive and following the procedure laid down in this Directive. However, the European Court of Justice has consistently held that any restriction of the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively.

measures that restrict the freedom of movement of television broadcasting **and non-linear audiovisual media services**, but only under certain conditions listed in Article 2a of this Directive and following the procedure laid down in this Directive. However, the European Court of Justice has consistently held that any restriction of the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively. ***With respect to non-linear audiovisual services, the possibility of taking measures under Article 2a of this Directive replaces the possible measures which could be taken by the Member State concerned up to now as set out in Article 3(4), Article 12 (3) of Directive 2000/31/EC of the European Parliament and of the Council with regard to the area coordinated by Articles 3d and 3e of this Directive.***

Or. en

Justification

The country of origin principle is a fundamental principle of the Directive. It is however justified, for the purpose of the protection of human dignity and the protection of minors, which derives from the right to physical and mental integrity, which is protected, as is human dignity, by the European Charter of Fundamental Rights that under certain defined conditions an exemption (to the country of origin principle) be allowed not only for television programmes but also for non-linear audiovisual media services. Due to the systematic approach of this Directive it must be embedded, in as far as it concerns the coordinated area, in the new Directive and not in the 2000/31/EC Directive.

Amendment by Luis Herrero-Tejedor

Amendment 133 RECITAL 24

(24) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take measures that restrict the freedom of movement of television broadcasting, but only under certain conditions listed in

(24) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take measures that restrict the freedom of movement of television broadcasting, but only under certain conditions listed in

Article 2a of this Directive and following the procedure laid down in this Directive. However, the European Court of Justice has consistently held that any restriction of the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively.

Article 2a of this Directive and following the procedure laid down in this Directive. However, the European Court of Justice has consistently held that any restriction of the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively, ***-serving to protect minors and health in particular, and must not, under any circumstances, allow prior scrutiny of ideas or opinions.***

Or. es

Justification

The Court of Justice has ruled on this point and called for extreme caution to be exercised when interpreting any qualification made to fundamental principles.

Amendment by Helga Trüpel

Amendment 134 RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. ***For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.***

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union¹³ 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. ***The pursuit of public interest objectives in the field of non-linear services will be more effective if carried out with the active support of the service providers themselves. Member States are encouraged to make extensive use of transparent and widely shared co-regulatory schemes in all the fields of this Directive which apply to all audiovisual media service providers. Self-regulation can be an alternative method of implementing certain provisions of this Directive, but it cannot completely replace***

the obligation of the legislative authorities, and co-regulation provides the necessary “legal connection” between self-regulation and the national legislator. Implementation remains subject to the legislation of the Member States and the specific features of different national instruments of media regulation shall be respected.

Or. en

Justification

Member States shall encourage co-regulatory regimes in the fields coordinated by the Directive. If they do, the regimes must be broadly acceptable by the main stakeholders and provide for effective enforcement. The Member States should decide which mechanism is the most effective in accordance with the directive and therefore the implementation of co- and self-regulatory systems is up to the Member States.

Amendment by Catherine Trautmann und Henri Weber

Amendment 135
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.

(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. ***Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector will be more effective if they are taken with the***

active support of the service providers themselves. Member States could thus make more extensive use of transparent and widely used co-regulation mechanisms, in particular for non-linear services. Co-regulation and self-regulation instruments should be used to give effect to this Directive and in accordance herewith, in compliance with Member States' legal traditions.

Or. fr

Justification

This amendment makes clear the complementarity between regulation stemming from the Directive and applied in the Member States on the one hand and co- and self-regulation on the other.

Amendment by Christopher Heaton-Harris

Amendment 136
RECITAL 25

*(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.*

(25) Experience **has shown** 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 **audience and** consumer protection.

Or. en

Justification

The definition in the Interinstitutional Agreement on Better Law Making of co-regulation only offers one way to set up a self or co-regulatory scheme and does not correspond to a number of existing models of self- and co-regulation across Europe. Since co- and self-regulation have been successful, introducing restrictive definitions would be unhelpful.

Amendment by Mary Honeyball

Amendment 137
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union¹⁵ 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-making¹⁶ 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) 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 **audience and** consumer protection.

Or. en

Justification

The texts the recital refers to, in particular the Interinstitutional Agreement on Better Law-making, states that

“The Commission will ensure that any use of co-regulation or self-regulation...will not be applicable where fundamental rights or important political options are at stake or in situations where the rules must be applied in a uniform fashion in all Member States.”

Explicit reference to the Agreement may generate confusion as to the possibility to apply co-regulation in areas covered by the Directive, which arguably include “important political choices” or fundamental rights, like for example the protection of human dignity (cf. recital 30, which justifies harmonisation in the directive based on the fact that it deals with important

objectives of general interest).

Amendment by Luis Herrero-Tejedor

Amendment 138

RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation *is* preferable for the relevant sector and problem, or whether alternatives such as co-regulation or *self regulation* should be considered. ***For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.

(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 *was needed* on the appropriate regulatory approach, in particular whether legislation *would be* preferable for the relevant sector and problem, or whether alternatives such as co-regulation or *self-regulation* should be considered. Experience *has shown* 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.

Or. es

Justification

The definitions contained in the interinstitutional agreement no longer reflect the reality of the co- and self-regulation systems which the industry has developed and perfected. Parliament should therefore call for them to be revised.

Amendment by Sarah Ludford

Amendment 139

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. 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.

Or. en

Justification

Self-regulation is an effective means of consumer protection and should be explicitly recognised in this Directive. The reference to the Interinstitutional agreement

Amendment by Ignasi Guardans Cambó

Amendment 140 RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that "a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self-regulation should be considered. ***For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union¹⁵ 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. ***Co-regulation reflects the recognition that self-regulatory systems can complement the practical implementation of national and EU legislation.*** 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.

Justification

The definitions of self- and co-regulation in the Interinstitutional Agreement on Better Lawmaking do not recognise many effective existing self-regulatory systems, such as those long established in many Member States for advertising self-regulation. This would effectively exclude these systems from the recommendation to Member States to encourage their operation. A more general reference to self- and co-regulatory systems than that to the definitions of the Interinstitutional Agreement is therefore essential.

Amendment by Claire Gibault

Amendment 141
RECITAL 25

(25) In its Communication to the Council and the European Parliament on Better Regulation for Growth and Jobs in the European Union the Commission stressed that a careful analysis on the appropriate regulatory approach, in particular whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self regulation should be considered. For co-regulation and self-regulation, the Interinstitutional Agreement on Better Law-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.

(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 ***at Community level*** 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. ***Given that general policy objectives can be better achieved with the active support of providers, not least in the context of emerging audiovisual services, co-regulation instruments should also be used in accordance with the different legal traditions for the purpose of implementing this Directive in the Member States. Within the meaning of this Directive, general acceptance of co-regulation arrangements by interested parties refers to the Member State, not the Community.***

Justification

We need to differentiate clearly between co-regulation at Community level and co-regulation at national level, particularly as a means to implement the Directive. We also need to avoid a misunderstanding by giving the impression that self-regulation alone (i.e. with no element of co-regulation) is a sufficient means for transposing the Directive into national legislation.

Amendment by Helga Trüpel

Amendment 142
RECITAL 25 A (new)

(25a) The generic term "co-regulation" covers regulatory instruments which are based on a "legal connection" between State bodies and self-regulation bodies, and vary widely in terms of their names and structures at national level. The actual form of these instruments reflects the specific tradition of media regulation in the individual Member States. Co-regulation systems have in common that tasks and objectives which were originally the prerogative of the State are achieved 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 a multi-stakeholder-environment, which includes consumer groups. 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 can create further criteria, rules and instruments. Self-regulation, as defined above, allows specialist knowledge to be exploited directly for administrative tasks, and bureaucratic procedures to be avoided. Furthermore, it is necessary for all actors to participate in or recognise the system.

Or. en

Justification

The definition of co-regulation and self-regulation in the context has to be described more detailed in order to understand the law-making process and the task of the regulation bodies in a more concrete sense.

Amendment by Claire Gibault

Amendment 143
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 characteristics 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 requirements 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 essential for all, or at least the most influential, actors to participate in or recognise the system. Co-regulation operates by combining requirements to be respected by the interested parties with opportunities for state intervention should those requirements not be met.

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 by Karsten Friedrich Hoppenstedt

Amendment 144
RECITAL 25 A (new)

(25a) Greater use should be made of co-regulatory and self-regulatory systems to achieve the directive's aims. Experience shows that these alternative regulatory systems have proved effective in many cases in the various Member States and consequently can play an important role, particularly in the area of consumer protection. Co-regulation means cooperation between official bodies and self-regulatory bodies. In the context of this cooperation, objectives set by the legislative authorities are transferred to the recognised parties in the relevant area by means of a legal instrument. This 'legal link' ensures that the State retains the final responsibility and hence the possibility of intervening, so that if self-regulation fails the State can step in to take regulatory action.

Or. de

Justification

Greater use of co- and self-regulation should be encouraged. However, final responsibility must remain with the State, so that it still has the right to intervene if alternative regulatory methods fail. At the same time, Member States should retain a degree of flexibility as to the practical arrangements involved, in order to ensure that existing systems that work well can be preserved.

Amendment by Mary Honeyball

Amendment 145
RECITAL 25 A (new)

(25a) The pursuit of public interest objectives in the field of non-linear services will be more effective if carried out with the active support of the service providers themselves. Member States are encouraged to make extensive use of transparent and widely shared co-regulatory schemes in all the fields of this Directive which apply to all audiovisual media service providers.

Or. en

Justification

This proposal recalls the requirements of co-regulatory schemes in the Interinstitutional Agreement on Better Law-making and clarifies that Member States should be encouraged to make recourse to co-regulation wherever possible.

Amendment by Christopher Heaton-Harris

Amendment 146
RECITAL 25 A (new)

(25a) The pursuit of public interest objectives in the field of non-linear services will be more effective if carried out with the active support of the service providers themselves. Member States are encouraged to make extensive use of transparent and widely shared self-regulatory and co-regulatory schemes.

Or. en

Amendment by Christopher Heaton-Harris

Amendment 147
RECITAL 26

(26) Entertainment rights for events of deletion

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.

Or. en

Justification

The existing news access framework in the European Union, consisting of the EU Copyright Directive (2001/29/EC) and adherence to the Berne Convention for the Protection of Literary and Artistic Works, together with codes of conduct, contractual arrangements and the 1991 Council of Europe Recommendation (No. R (91) 5), effectively guarantee access through a plurality of sources to news on events where exclusive rights are acquired, respecting the principles set out by Article 11 of the Charter of Fundamental Rights of the European Union.

Amendment by Luis Herrero-Tejedor

Amendment 148
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 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 ***in such a way as to afford free access to users enabling them to receive broadcasts of events which individual Member States define to be of general interest in accordance with their respective national legislation. Freely accessible reception should be deemed to occur when more than 95% of users in each Member State can receive the signal directly and free of charge without need to install any device in their homes or make additional alterations to the facilities***

installed in the buildings in which they live.

Or. es

Justification

The concept of 'freely accessible reception' requires two conditions to be met: the service must be free (users should not have to pay for access), and every citizen (the numbers should be as close as possible to 100%) must be able to make use of it.

Amendment by Manolis Mavrommatis

Amendment 149
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 is essential to promote pluralism **and the protection of cultural multiformity** 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.

Or. el

Justification

The protection of cultural multiformity is indispensable for the development of a European identity.

Amendment by Henri Weber

Amendment 150
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

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

Article 11 of the Charter of Fundamental Rights of the European Union.

and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.

Or. fr

Justification

The Commission text should be strengthened.

Amendment by Mary Honeyball

Amendment 151
RECITAL 26 A (new)

(26) Media literacy refers to the skills, knowledge and understanding to enable consumers to use media effectively. Media-literate people will be able to exercise informed choices; understand the nature of content and services; be able to take advantage of the full range of opportunities offered by new communications technologies and be better able to protect themselves and their families from harmful or offensive material. It is therefore of crucial importance that Member States and national regulatory authorities actively promote the development of media literacy in all sections of society and that they conduct regular research to monitor these and to inform their approaches to content regulation.

Or. en

Justification

Media literacy is increasingly becoming a fundamental component of European and national communications policy agendas since it actively complements and underpins regulation. Important initiatives are being developed at European and national levels to advance people's media literacy, so that they can take full advantage of the benefits brought about by digital technologies. The Audiovisual Media Services Directive should recognise and provide direction to such efforts.

Amendment by Christopher Heaton-Harris

Amendment 152

RECITAL 27

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

deletion

Or. en

Justification

The existing news access framework in the European Union, consisting of the EU Copyright Directive (2001/29/EC) and adherence to the Berne Convention for the Protection of Literary and Artistic Works, together with codes of conduct, contractual arrangements and the 1991 Council of Europe Recommendation (No. R (91) 5), effectively guarantee access through a plurality of sources to news on events where exclusive rights are acquired. This framework establishes that access shall be on fair, reasonable and non-discriminatory terms taking due account of exclusive rights.

Amendment by Helga Trüpel and Jean-Luc Bennahmias

Amendment 153

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

*(27) 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, **the Member States shall be responsible for***

concerning an event of public interest **should** grant other broadcasters and **intermediaries**, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds.

ensuring that those exercising exclusive rights concerning an event of public interest **must** grant other broadcasters - **including transfrontier broadcasters** - and intermediaries **such as news agencies**, where they are acting **directly** on behalf of **authorised** broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds, **be transmitted before the event concludes, be screened later than 36 hours after the event, be used to create a public archive, omit the logo or other identifier of the host broadcaster. Furthermore there should be a fair refund of expenses for the rights holder of the signal and short extracts should not be used in non-linear services. If another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster, otherwise the access must be sought from one broadcaster holding exclusive rights in another Member State, usually the geographical nearest. In this way the Member States contribute to carrying out their declared intention under Article 9 of the Convention of the Council of Europe on Transfrontier Television.**

Or. en

Justification

The right to short reporting is necessary to safeguard the right of the citizen to freedom of information. The Commission's proposal on short reporting does not go far enough since it would fail to establish a European right to short reporting as such. This right would, however, be of great benefit, especially to the smaller television service providers in the smaller Member States. Creating a pan-European short news right would address market failures where broadcasters are unable to obtain television short news footage of major public events taking place in other Member States for inclusion in their general news

programming.

Amendment by Miguel Portas and Věra Flasarová

Amendment 154

RECITAL 27

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

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

- exceed 90 seconds,
- ***be screened later than 36 hours after the event,***
- ***be used to create a public archive,***
- ***omit the logo or other identifier of the host broadcaster, in the case that the host broadcaster signal is used***
- ***be used in non-linear services.***

The right to trans-frontier news access should apply only where it is necessary; accordingly, in the case of using the host broadcaster images and/or sound, if another broadcaster in the same Member State has acquired exclusive rights to the event in question, access must be sought from that broadcaster;

Broadcasters and news agencies shall be granted free access to those events in good

operational conditions in order to collect their own images and sound, although the broadcasting of these images and sound for short news reports is subject to the conditions referred to above, with the exception of that relating to the presence of the logo or other identifier of the broadcaster owning the exclusive rights, which does not apply in this case.

Or. en

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 by Marie-Hélène Descamps

Amendment 155
RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of **major** public interest **must** grant other broadcasters, **including pan-European broadcasters**, and **news agencies directly and explicitly authorised for the event by the broadcasters holding the rights**, the right to use short extracts **solely** 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. **Such** short extracts should not:

- exceed 90 seconds,
- **be transmitted before the event concludes,**

- *be transmitted later than 36 hours after the event,*
- *be used to create a public archive,*
- *omit the logo or other identifier of the broadcaster holding the rights,*
- *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.

Or. fr

Justification

Clarifies the conditions under which the right of broadcasters and news agencies to use short extracts applies.

Amendment by Marielle De Sarnez

Amendment 156 RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of **major** public interest **must** grant other broadcasters and **news agencies directly authorised by them for the event in question** the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. **Member States may specify other details concerning the conditions associated with this right, for example:**

- *the extracts should have a maximum duration (e.g. 90 seconds),*
 - *appropriate restrictions (e.g. not to be transmitted before the event concludes),*
 - *a specified deadline (e.g. not later than 36 hours after the event),*
 - *the logo or other identifier of the broadcaster whose signal is used should not be omitted,*
 - *fair remuneration of the holders of the rights to the signal in accordance with the applicable copyright law,*
 - *granting broadcasters access to the event site under certain conditions.*
- 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.*

Or. fr

Justification

The right to use short extracts in general news programming is subject to different rules in the different Member States. It is appropriate not to harmonise them because that would risk preventing certain national rules which are perfectly appropriate for the market in question from being applied.

Amendment by Luis Herrero-Tejedor

Amendment 157 RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those ***exercising exclusive rights concerning an event of public interest should grant*** other broadcasters and ***intermediaries***, where they are acting on ***behalf of*** broadcasters, the right to use short extracts ***for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of***

(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 ***with an exclusive right to broadcast live a very important event of great general interest should not deprive*** other broadcasters and ***recognised news agencies***, where they are acting on ***the direct instructions of authorised*** broadcasters ***for the purpose of covering the event of public interest – interest being the factor***

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**.

determining who will seek to broadcast the event – of the right to use short extracts in a truthful, reasonable, and non-discriminatory way, invariably taking into account the exclusive nature of the broadcast right, for news programmes, but not in entertainment programmes. Such terms should be communicated in a timely manner before the **very important event of great general 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 shown before the event has ended,**
- **be used to create a public archive,**
- **be broadcast without the logo or other means serving to identify the broadcaster which made the live broadcast, or**
- **be used in non-linear services.**

The cross-border access right to news should apply only where deemed necessary; consequently, if another broadcaster in the same Member State has acquired exclusive rights concerning the event in question, access should be sought from that broadcaster.

Or. es

Justification

The directive is intended to enable linear service broadcasters to have non-discriminatory cross-border access to short extracts for news coverage purposes. Matters related to use should be dealt with in accordance with the Treaties and EU legislation in force.

Amendment by Marianne Mikko

Amendment 158 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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly

protected, those exercising exclusive rights concerning an event of public interest **should** grant other broadcasters and **intermediaries**, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds.

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 broadcasters **duly licensed in their home markets**, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should:

- not exceed 90 seconds,

- not be transmitted before the event concludes,

- not be screened later than 36 hours after the event,

- not be used to create a public archive,

- not omit the logo or other identifier of the host broadcaster, and

- not 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;

Or. en

Justification

The right to broadcast short news reports should be implemented throughout the EU. In addition to TV broadcasters news agencies should be entitled to broadcast short extracts provided they are working directly on behalf of the broadcaster. Concrete conditions precluding taking unfair advantage of this right should be set out. (This amendment corrects apparently unintentional mistakes in the similar amendment by the rapporteur and clarifies the nature of the broadcaster, which can order short clips from a news agency)

Amendment 159

RECITAL 27

(27) 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.

(27) 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. ***Broadcasters retransmitting short extracts must be able to make multiple selections from a given programme. Member States may lay down further provisions governing the right to broadcast short extracts such as:***

- prohibiting the exercise of this right before the conclusion of the event;***
- setting a deadline for the use of short footage (e.g. no later than 36 hours after conclusion of the event);***
- prohibiting removal of the logo or other identifier of the host broadcaster;***
- appropriate remuneration of the broadcasting rights holder in accordance with the relevant copyright law.***

The right to cross-border access to information shall apply only where necessary; if another broadcaster in the same Member State has acquired exclusive rights to the event in question,

access must be sought from that broadcaster.

Or. pl

Justification

The aim is to make it clear that the selection of short extracts from important events for retransmission can include several extracts from a single programme, which is not clear in the first version of the amendment.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 160
RECITAL 27

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

(27) 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, **the Member States shall take care to ensure that** those exercising exclusive rights concerning an event of public interest should grant other broadcasters and intermediaries, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms. **In the case of broadcasters transmitting short extracts, due account of exclusive rights can be taken by paying the rights holders appropriate compensation**. **The** 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; **in the case of organised events, should not be broadcast until the original broadcaster has had an opportunity to broadcast it himself; should be destroyed within 36 hours of the end of the performance or event, and should indicate the source. If the broadcaster shows short extracts, he must pay those exercising exclusive rights**

appropriate compensation.

Or. de

Justification

The right to broadcast short extracts must be applied on the same basis Community-wide for all Member States of the EU, in order to ensure the free flow of information across borders. The rules governing the broadcasting of such extracts should be based on Article 9 of the Council of Europe Convention on cross-border television.

Finally, it must be made clear that broadcasters are obliged to pay suitable compensation to right-holders whose legal rights are affected.

Amendment by Karin Resetarits

Amendment 161

RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other **audiovisual media services** and intermediaries, where they are acting on behalf of **audiovisual media services**, the right to use short extracts for the purposes of **current** news programming on fair, reasonable, non-discriminatory **and transparent** 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. ***The extract must be broadcast after the end of the event, and within 24 hours. After that period, the extract may not be offered, broadcast or further processed.***

Or. de

Justification

The terms must be transparent for all those applying for the right to broadcast short extracts. The short extracts in question must be from current news broadcasts, and the word 'current' must be precisely defined and subject to time limits, to avoid possible misuse of the right.

Amendment by Mary Honeyball

Amendment 162
RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of major public interest ***must not deprive*** other broadcasters ***on fair, reasonable and non-discriminatory terms taking due account of exclusive rights for the purposes of scheduled general news bulletins for linear services, but not for the purposes of entertainment programmes.*** 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. ***Such*** short extracts ***must not:***

- exceed 90 seconds,
- ***be transmitted before the event concludes,***
- ***be screened later than 24 hours after the event,***
- ***be used to create a public archive,***
- ***omit the logo or other identifier of the host broadcaster, or***
- ***be used in non-linear services.***

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;

Or. en

Justification

It is important to avoid the commercial abuse of short extracts by intermediaries which would lead to the creation of a secondary market for news. The amendment also seeks to harmonise the reference to the news event and changes the time period for which such extracts can be used from 36 to 24 hours in line with current convention.

Amendment by Emine Bozkurt

Amendment 163
RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of **high** public interest **must** grant other broadcasters and intermediaries, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news 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.

Or. en

Amendment by Henri Weber und Catherine Trautmann

Amendment 164
RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in

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

the European Union are fully and properly protected, those exercising exclusive rights concerning an event of **major** public interest should grant other broadcasters and intermediaries – **such as news agencies – explicitly authorised by them for the event in question** the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds. **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.**

Or. fr

Justification

To avoid confusion the article should clarify that intermediaries have the right to access the signal when they are acting on behalf of broadcasters for a given event.

Amendment by Ignasi Guardans Cambó

Amendment 165 RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest **should** grant other broadcasters and **intermediaries**, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-

(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 on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-

discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. *As a general rule, such short extracts should not exceed 90 seconds.*

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. *The right to trans-frontier news access, which is restricted to linear services and subject to specific conditions, 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;*

Or. en

Justification

Makes clear that the right to broadcast short news reports should be implemented throughout the EU.

Amendment by Hannu Takkula

Amendment 166 RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, *broadcasters licensed in a Member State should have* the right to use short extracts for the purposes of general news programming. As a general rule, *access to short extracts should be granted on fair, reasonable and non-discriminatory terms, in return of reasonable remuneration, take due account of exclusive rights and* should not exceed 90 seconds.

Or. en

Justification

By consistency with previous amendment suggested for Article 3 b), the corresponding recital should be amended accordingly.

Amendment by Manolis Mavrommatis

Amendment 167
RECITAL 27

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

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other broadcasters and intermediaries, where they are acting on behalf of broadcasters, the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds ***and should not be shown before the expiry of a 24 hour period after the event.***

Or. el

Justification

Protection of exclusive rights.

Amendment by Ivo Belet

Amendment 168
RECITAL 27

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in

(27) Therefore, in order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in

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

the European Union are fully and properly protected, those exercising exclusive rights concerning an event of public interest should grant other broadcasters the right to use short extracts for the purposes of general news programming on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of public interest takes place to give others sufficient time to exercise such a right. As a general rule, such short extracts should not exceed 90 seconds.

Or. nl

Amendment by Michl Ebner

Amendment 169
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) **Linear services or television broadcasting services are, for a combination of reasons (in particular, limited supply of transmission channels and correspondingly limited range of programmes and the particular social impact of a range of audiovisual programmes broadcast to a schedule, which cannot be influenced by the user and reach a broad audience) typically subject to such constraints as licensing requirements, oversight by regulatory authorities, etc., and so traditionally benefit to a lesser extent than other media from the principles of freedom of the press and freedom of opinion. In view of the progressively declining scarcity of transmission channels, the correspondingly increased and diversified range of content on offer and the diminishing social impact of individual programmes, it is appropriate to consider to what extent the exceptional restrictions implied by the regulation of**

broadcasting can be maintained. In any event, however, the stricter regulatory system applied to broadcasting should not be transferred in part to other media such as non-linear audiovisual media services, which do not experience any shortage of means of transmission, offer an incredible diversity of content and offer the user possibilities in terms of selection and control which reduce their impact on society as a whole. This justifies ***and necessitates*** imposing lighter regulation on non-linear services, which only have to comply with the basic rules provided for in Articles 3c to 3h.

Or. de

Justification

European culture and democracy are founded on freedom of opinion and freedom of the press, which have been secured after centuries of struggle. The same applies to the diversity and competitive position of the media. Basically, this freedom means the right to free expression, with those exercising the right being subsequently answerable to the courts on the basis of existing general legislation. It applies in principle to all the media, and up to now has been withheld only from broadcasting, which is treated as an exception and is, as a general rule, subject to continuing state intervention in the form of programme content oversight by official authorities and licensing requirements, as well as special restrictions on communications of a political nature. The TV directive has accepted up to now the need to limit this restrictive type of regulation to television, so respecting the freedom of the other media. This freedom must continue to be upheld when the scope of the directive is extended beyond broadcasting.

The differences between non-linear and linear audiovisual media services must be clearly defined. At the same time the principle of technological neutrality - the significance of which has been stressed by the Commission itself - must be upheld. Repeat loops generally recur every few minutes, so that the user can decide for himself when and how he wishes to request the content he has selected. In accordance with the Commission's own analysis, all on-demand services must be defined as non-linear services.

Amendment by Christopher Heaton-Harris

Amendment 170
RECITAL 28

(28) Non-linear services are different from linear services with regard to choice and

(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.*

control the user can exercise, with regard to the impact they have on society *and also in the mechanisms that are best employed to deliver public policy objectives. The market for such services is at an early stage of development and its future evolution cannot be reliably predicted. It is therefore appropriate that as 'information society services' non-linear services continue to be covered by the eCommerce Directive and that self-regulation be encouraged in order to fulfil public policy goals such as the protection of consumers, minors and vulnerable minorities.*

Or. en

Justification

Non-linear services are already regulated by the eCommerce Directive. An additional layer of regulation on this newly emerging sector could be damaging and unnecessary since general law and self-regulation seem to be operating successfully, for example on the protection of minors and prevention of incitement to hatred.

Amendment by Luis Herrero-Tejedor

Amendment 171 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 *the* choice and control the user can exercise and *hence* 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.

Or. es

Justification

Non-linear services enable users to exercise greater control over content and therefore have less impact on society than linear services. We thus consider it to be more accurate to say that the degree of impact which non-linear services have on society is the result of the user's ability to choose.

Amendment by Ignasi Guardans Cambó

Amendment 172

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 **3g**. ***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.***

Or. en

Justification

Clarifies which rules take precedence under this directive and specifies the regulation that applies to non-linear services, which does not include limits to sponsorization and product placement that make no sense in the non linear environment.

Amendment by Marie-Hélène Descamps

Amendment 173

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 in the same form 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.

Or. fr

Justification

Clarifies which rules take precedence under this Directive.

In addition, provision should be made for cases where, for example, non-linear services differ from the original television broadcast in that advertising has been inserted.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 174
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. ***Television broadcasts - i.e. linear services - currently include in particular analogue and digital television, live streaming, webcasting and near video on demand, whereas video on demand, for example, is one of the on-demand (non-linear) services.***

Or. de

Justification

It is necessary to specify examples in order to give guidance with respect to the demarcation between television broadcasts and on-demand services. The list is non-exhaustive, to ensure the continued validity of the rules.

Amendment by Mario Mauro

Amendment 175
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 **the effective** 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 **must in any case** comply with the basic rules provided for in Articles 3c to 3h **and, as regards the protection of minors, in Article 22.**

Or. it

Justification

It is important and necessary to protect children from uncontrolled access to violent or pornographic content, irrespective of the kind of audiovisual media services provided.

Amendment by Mary Honeyball

Amendment 176
RECITAL 29

(29) Because of the specific nature of audiovisual media services, especially the impact of these services on the way people form their opinions, it is essential for users to know exactly who is responsible for the content of these services. It is therefore important for Member States to ensure that **media service providers make easily, directly and permanently accessible the necessary information on who has editorial responsibility for the content.** It is for each Member State to decide the practical details as to how this objective can be achieved without prejudice to any other relevant provisions of Community law.

(29) Because of the specific nature of audiovisual media services, especially the impact of these services on the way people form their opinions, it is essential for users to know exactly who is responsible for the content of these services. It is therefore important for Member States to ensure that **users have access to information about the ways in which editorial responsibility for the content is exercised and by whom.** It is for each Member State to decide the practical details as to how this objective can be achieved without prejudice to any other relevant provisions of Community law.

Or. en

Justification

It is increasingly difficult to identify a single player in the media value chain which does not exercise some degree of editorial judgment, either in aggregating content or in filtering it out. As the definition of a single editorial control becomes elusive, obligations on Member States

to ensure transparency should be affirmed in a general way.

Amendment by Henri Weber

Amendment 177

RECITAL 30

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

(30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market ***and respect for the rights, values and 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 objectives of general interest, in particular the protection of minors and ***vulnerable or disabled people, human dignity, consumers and public health.***

Or. fr

Justification

The functioning of the internal market and respect for rights, values and freedoms should be emphasised. Protection of the most vulnerable should be reaffirmed.

Amendment by Maria Badia I Cutchet

Amendment 178

RECITAL 30

(30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market. Where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as

(30) In accordance with the principle of proportionality, the measures provided for in this Directive are strictly limited to the minimum needed to achieve the objective of the proper functioning of the internal market. Where action at Community level is necessary, and in order to guarantee an area which is truly without internal frontiers as

far as audiovisual media services are concerned, the Directive must ensure a high level of protection of objectives of general interest, in particular the protection of minors and human dignity.

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, *as well as of cultural diversity, in accordance with the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted by the General Conference of UNESCO on 20th October 2005.*

Or. en

Justification

The protection of the cultural diversity must also be taken into account in the regulation of the audiovisual media services, in accordance with the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted by the General Conference of UNESCO on 20th October 2005.

Amendment by Mario Mauro

Amendment 179 RECITAL 31

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

(31) Harmful content and conduct in audiovisual media services continue to be a concern for law-makers, industry and parents. ***In this regard it would seem necessary to educate not only children but also their parents, teachers and educationalists to make best use of all the communications media, particularly the audiovisual media services, however they may be disseminated.*** It is therefore necessary to introduce rules to protect the physical, mental and moral development of minors as well as human dignity in all audiovisual media services and in audiovisual commercial communication, ***advertising, telesales, sponsorship, product placement and any other technically feasible manner.***

Or. it

Justification

Technological progress creates an urgent need to educate not only minors and their parents but also, particularly, teachers and educationalists for the educative tasks that society requires, in using the communication media and especially audiovisual media services properly, however they may be disseminated.

Amendment by Henri Weber

Amendment 180
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**. 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 vulnerable or disabled people** as well as human dignity in all audiovisual media services and in audiovisual commercial communication.

Or. fr

Justification

The importance of the work done by non-governmental organisations to protect the most vulnerable should be recognised in this recital.

Amendment by Christopher Heaton-Harris

Amendment 181
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,

(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 protect the physical, mental and moral

mental and moral development of minors as well as human dignity in all audiovisual media services and in audiovisual commercial communication.

development of minors as well as human dignity in all audiovisual media services and in audiovisual commercial communication.
EU or national rules to achieve the necessary level of such protection will only be permissible when normal legal protection is not available and may not obviate the overriding application of the country of origin principle.

Or. en

Justification

General law should protect against this type of abuse. Where this is not the case, national regulators should be able to take action. However, the country of origin principle must always be overriding.

Amendment by Karin Resetarits

Amendment 182
RECITAL 31 A (new)

(31a) The Member States should ensure that their respective national curriculum and further education courses provide for critical appraisal of the media.

Or. de

Justification

We need our citizens to have a mature and educated attitude towards the media, as otherwise it will be impossible to cope with the effects of the media explosion brought about by digitalisation. Any hope of self- and co-regulation is based on the assumption that citizens are practised in the use of the media, and know how they work, what they can do and what interests they represent.

Amendment by Christopher Heaton-Harris

Amendment 183
RECITAL 32

(32) Measures taken to protect minors and human dignity must be carefully balanced

(32) Measures taken to protect minors and human dignity must be carefully balanced

with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of these measures should thus be to ensure an adequate level of protection of minors especially with regard to **non-linear** services but not to ban adult content as such.

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 **linear** services but not to ban adult content as such.

Or. en

Justification

The directive should regulate linear rather than non-linear services.

Amendment by Mario Mauro

Amendment 184
RECITAL 32

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

(32) Measures taken to protect minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of these measures should **however** be to ensure an adequate level of protection of minors **and human dignity**, especially with regard to non-linear services, **in accordance both with Article 1 of the Charter of Fundamental Rights of the European Union, recognising that human dignity is inviolable and that it must be respected and protected, and with Article 24 of the Charter, stating that children shall have the right to such protection and care as is necessary for their well-being, and that in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.**

Or. it

Justification

The principles of child protection and respect for human dignity form the basis of any

national or international instrument for protecting fundamental rights. These principles, enshrined not just in the Charter on Fundamental Rights of the European Union but also in the Convention on the Rights of the Child, adopted by the UN General Assembly in 1989, are among the aims to be achieved by respecting such rights.

A secondary aspect of the amendment is based on consideration of the primary interests of minors in relation to the systems used by broadcasters, which must be appropriate to exclude viewing by children.

Amendment by Henri Weber

Amendment 185

RECITAL 32

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

(32) Measures taken to protect minors and human dignity must be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of these measures should thus be to ensure an adequate level of protection of minors especially with regard to non-linear services, ***in particular by means of an obligation to clearly draw attention to the specific nature of certain programmes before they are transmitted***, but not to ban adult content as such.

Or. fr

Justification

The right balance should be struck between the need to protect minors and the fundamental right of freedom of expression.

Amendment by Michl Ebner

Amendment 186

RECITAL 33

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

(33) ***The*** provisions of this directive, ***particularly those concerning*** the protection of minors and public order, ***do not prevent Member States from applying their constitutional principles and all their legislative provisions and legal principles***

concerning freedom of expression and freedom of the media. On no account may the implementation of the provisions of this directive require audiovisual media services to be subject to a priori control, which, in the interests of freedom of expression and of the media, can only constitute an exceptional measure

Or. de

Justification

Restrictions on content which limit freedom of expression and media freedom, and the regulatory measures required for that purpose, must not go further than permitted by the principles of freedom of expression and freedom of the media enshrined in the Member States' constitutional and legislative provisions. For example, if, as in many Member States, prior control of the content of the media is strictly prohibited as a form of censorship and there are additional restrictions on State supervision, these must be respected by the directive. This should be understood from the statement in Article 3(2) of the Commission proposal to the effect that Member States shall comply with the directive by appropriate means 'within the framework of their legislation'.

The Commission proposal is ambiguous to the extent that, by omitting to include an unconditional duty in European law as regards prior control of audiovisual media services, it implies that any such prior control with regard to audiovisual media services is admissible under European law. Yet Article 4(1) of the directive on electronic communications, whose scope may not be restricted or undermined by the present directive, but on the contrary should be incorporated (see proposed amendments to Recital 12 and to Article 3(1)), prohibits authorising procedures and measures having an equivalent effect also in relation to the pursuit of the activity of providing non-linear audiovisual media services, thereby prohibiting prior control which would have that effect (see Recital 12). Furthermore, freedom of opinion and media freedom are crucially important for any free and democratic society as a means of safeguarding individuals' personal development and as a prerequisite for the democratic development of the people's will. It should be assumed, therefore, that many means of exercising prior control over media content, such as censorship in particular, are incompatible with the fundamental principles of European law, and not only should not be required by secondary European media law, but must be proscribed. Because the principle of freedom of opinion, the press and the media means that items are first published, freely and on the responsibility of the person concerned, and are only subject to legal control subsequently and to the extent that they are bound by the law of the land. So European law should not, therefore, endorse prior control as a general measure.

Amendment by Sarah Ludford

Amendment 187

RECITAL 33

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

(33) None of the provisions of this Directive necessarily requires that the measures in question be implemented through prior control of audiovisual media services. ***Member States are encouraged to put in place self- and/or co-regulatory schemes.***

Or. en

Justification

Both co- and self-regulation are effective means of consumer protection in many areas, and should be explicitly recognised in this Directive.

Amendment by Ivo Belet

Amendment 188

RECITAL 33

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

(33) None of the provisions of this Directive that concern the protection of minors and public order necessarily requires that the measures in question be implemented through prior control of audiovisual media services, ***nor do they justify such control.***

Or. nl

Amendment by Luis Herrero-Tejedor

Amendment 189

RECITAL 33

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

(33) None of the provisions of this Directive that concern the protection of minors and public order necessarily requires that the measures in question be implemented through prior control of audiovisual media services. ***Member States should be encouraged to establish co- and self-***

regulation systems.

Or. es

Justification

It must be made clear that the directive is intended to encourage the idea that before resorting to state-imposed regulation, all avenues should be explored regarding self- and co-regulation arrangements.

Amendment by Helga Trüpel

Amendment 190
RECITAL 33

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

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

Or. en

Justification

Prior control should be the exception.

Amendment by Maria Badia I Cutchet

Amendment 191
RECITAL 34

(34) Article 151(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures.

(34) Article 151(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of this Treaty, in particular in order to respect and to promote the diversity of its cultures ***and languages, and also to encourage mutual understanding.***

Or. en

Justification

The protection and promotion of the cultural diversity can encourage the intercultural dialogue and help to achieve a better mutual understanding, withdrawing the prejudices which are usually major causes of today's conflicts. This is crucial to achieve a more peaceful coexistence.

Amendment by Luis Herrero-Tejedor

Amendment 192
RECITAL 35

***(35) Non-linear audiovisual media services deleted
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.***

Or. es

Justification

Given that in non-linear services the choice of content is a matter for the consumer, the most sensible approach would be to let the demand side determine the supply side, without resorting to a quota system.

Amendment by Christopher Heaton-Harris

Amendment 193
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) It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services.

Or. en

Justification

Non-linear services should remain outside the scope of the directive. Besides, it is too early to impose quotas on these newly emerging services and it may hamper their specialisation.

Amendment by Karin Resetarits

Amendment 194 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.

(35) Non-linear audiovisual media services have the potential to partially replace linear services. Accordingly, ***public-service broadcasters*** should where practicable promote the production and distribution of European works ***in the non-linear field also*** and thus actively contribute to the promotion of cultural diversity ***with the proceeds thereof***.

Or. de

Justification

As consumers play an active role in relation to non-linear services and decide on both content and timing, quotas do not make much sense as a general rule. However, as public service broadcasters do have a cultural and educational mission, and so receive public funding, it would be appropriate to require them to promote European works in their non-linear services also.

Amendment by Giovanni Berlinguer, Giulietto Chiesa, Monica Frassoni, Donato Tommaso Veraldi und Lilli Gruber

Amendment 195
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. 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 4**, 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.

Or. it

Justification

The Commission argues, not unreasonably, that non-linear services are bound to increase substantially in the near future. That growth, involving the provision of substantial funding, must be matched by a tangible contribution to European production by those service providers. Providing for a fair distribution of the burdens for supporting European production – which directly involves non-linear services in the same way as linear, one-way services, reflects the need not to create competitive imbalances between service providers and complies with the principle of technological neutrality.

Amendment 196
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 **and independent works** and thus actively contribute to the promotion of cultural diversity. ***For non-linear audiovisual media services, support and promotion might for example take the form of a minimum investment proportionate to economic performance, a minimum share of European works in catalogues of audiovisual media services, 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 **and independent 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 **and independent works**; the share of European **and independent works** in the catalogue of audiovisual media services as well as in the effective users' consumption of European **and independent works** proposed by such services.

Or. en

Justification

(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 and independent works and thus actively contribute to the promotion of cultural diversity. For non-linear audiovisual media services, support and promotion might for example take the form of a minimum investment proportionate to economic performance, a minimum share of European works in catalogues of audiovisual media services, or the

attractive exposure 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 and independent 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 and independent works; the share of European and independent works in the catalogue of audiovisual media services as well as in the effective users' consumption of European and independent works proposed by such services.

Amendment by Ignasi Guardans Cambó

Amendment 197
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 ***independent*** European works; the share of ***independent*** European works in the catalogue of audiovisual media services as well as in the effective users' consumption of ***independent*** European works proposed by such services.

Or. en

Justification

Support for independent European works deserves a specific analysis in the reports for Member States

Amendment by Claire Gibault

Amendment 198

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 distribution **and development** of European **content** 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 contribution as a proportion of turnover, a minimum share of European works in 'video-on-demand' listings or a favourable 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. ***These reports must also take appropriate account of the works of independent producers.***

Or. fr

Justification

These additions highlight the possibilities for supporting non-linear audiovisual media services and are consistent with the reporting obligation.

Amendment by Marie-Hélène Descamps

Amendment 199

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. ***Such support could, for example, take the form of a minimum investment as a proportion of turnover, a minimum share of European works in 'video-on-demand' listings or a favourable 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. ***These reports must also take appropriate account of the works of independent producers.***

Or. fr

Justification

To ensure that the objective of cultural diversity is achieved at European level, the Directive should indicate more precisely the type of support measures which Member States could take to promote European content.

Amendment by Bernat Joan i Mari

Amendment 200
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 ***independent*** 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 ***independent*** European works by audiovisual media services. Within the framework of the reports set out in *Article 3f(3)*, Member States shall also take into account notably the financial contribution by such services to the production and rights acquisition of ***independent*** European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of ***independent*** European works proposed by such services.

Or. es

Justification

Strengthening independent production has been a key means of eliminating the monopolistic attitude to programme-making and television slots.

Amendment by Manolis Mavrommatis

Amendment 201
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

(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 ***and independent*** 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

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.

promotion of European **and independent** 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 **and independent** works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of European **and independent** works proposed by such services.

Or. el

Justification

Fair competition between all elements in the audiovisual sector must be maintained and cultural multiformity protected.

Amendment by Maria Badia I Cutchet

Amendment 202 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, **with special attention to European works of non-domestic origin**, and thus actively contribute to the promotion of cultural diversity **and to foster the perception of a European culture and citizenship, as well as transnational cooperation between producers and broadcasters**. 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.

Or. en

Justification

It is the Member States who can take measures in order to promote not only the broadcasting of European works of domestic origin, but also of European works of non-domestic origin. This could help foster the perception of a European culture and citizenship, as well as a transnational cooperation between producers and broadcasters.

Amendment by Giovanni Berlinguer, Giulietto Chiesa, Monica Frassoni, Donato Tommaso Veraldi und Lilli Gruber

Amendment 203
RECITAL 35 A (new)

(35a) To ensure that European works receive the necessary support, this Directive should introduce new and effective arrangements for support by non-linear service providers. These include the realisation of investment proportionate to the service providers' turnover, provision for minimal quotas of European works in their catalogues and the display of such works in electronic guides, to ensure that their use is encouraged.

Or. it

Justification

To ensure that Article 3 f is used effectively there is a need for practical and viable measures to promote European content. In particular, as well as requiring a minimal investment proportionate to providers' turnover, the inclusion of European works in their catalogues needs encouraging, as does the use of electronic guides as a way of ensuring that such works are visible. While it is not compulsory, the list of measures to promote European film-making could provide a useful template for the Member States .

Amendment by Thomas Wise

Amendment 204
RECITAL 35 A (new)

(35a) 'European Works' should be defined as audiovisual productions of which the majority of the content is filmed on location and edited in one or more Member States, whether financed from outside the EU or not.

Or. en

Justification

Finance is international and it is the cultural value of an audiovisual work that qualifies it as a 'European Work'.

Amendment by Marielle De Sarnez

Amendment 205
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. ***deleted***

Or. fr

Justification

Recital 36 suggests that the Directive would require Member States to introduce quotas for non-national European works. However, a new regulatory constraint (the current directive contains no obligations of this type) would not provide a satisfactory solution regarding the circulation of non-national European works, which are mainly dependent on linguistic and cultural factors. Moreover, requiring Member States to introduce such detailed programming constraints would run counter to the editorial independence of television channels.

Amendment by Luis Herrero-Tejedor

Amendment 206

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. *deleted*

Or. es

Justification

Given that in non-linear services the choice of content is a matter for the consumer, the most sensible approach would be to let the demand side determine the supply side, without resorting to a quota system.

Amendment by Mary Honeyball

Amendment 207

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. *deletion*

Or. en

Justification

This provision is unnecessary and potentially harmful. The multiplication of channels and outlets is already making more content from all over Europe available to viewers in every Member State than ever before. This trend will continue. On the other hand, the call for Member States to determine in detail the programming choices of audiovisual media service providers runs counter the requirements of editorial independence.

Amendment by Christopher Heaton-Harris

Amendment 208

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 ***encourage media service providers to promote, where practicable, the production of and access to European works.***

Or. en

Justification

With the greater diversity offered by more services, quota provisions are unnecessary. There are more effective ways of encouraging the production and broadcasting of European works.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 209

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) ***The Member States should be encouraged to consider taking appropriate measures to encourage broadcasters to increase on a voluntary basis the share of co-produced European works or of European works of non-domestic origin.***

Or. de

Justification

The Community has no obvious competence to achieve harmonisation in this area.

Amendment by Karin Resetarits

Amendment 210

RECITAL 36

(36) When implementing the provisions

(36) When implementing the provisions of

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.

Article 4 of Directive 89/552/EEC as amended, Member States should make provision for **public service** broadcasters to include, ***in view of the particular way in which they are funded***, an adequate share of co-produced European works or of European works of non-domestic origin.

Or. de

Justification

As consumers play an active role in relation to non-linear services and decide on both content and timing, quotas do not make much sense as a general rule. However, as public service broadcasters do have a cultural and educational mission, and so receive public funding, it would be appropriate to require them to promote European works in their non-linear services also.

Amendment by Maria Badia I Cutchet

Amendment 211
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 ***adopt appropriate measures to encourage*** broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin.

Or. en

Justification

It is the Member States who can take measures in order to promote not only the broadcasting of European works of domestic origin, but also of European works of non-domestic origin.

Amendment by Gyula Hegyi

Amendment 212
RECITAL 36

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

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

amended, Member States should **make** provision **for** broadcasters to include **an** adequate share of co-produced European works or of European works of non-domestic origin.

amended, Member States should **adopt appropriate provisions and measures to encourage** broadcasters to include adequate share of co-produced European works or of European works of non-domestic origin.

Or. en

Justification

It is the Member States, who can take measures in order to promote not only the broadcasting of European works of domestic origin, but also of European works of non-domestic origin.

Amendment by Henri Weber

Amendment 213
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 service providers** to include an adequate share of co-produced European works or of European works of non-domestic origin.

Or. fr

Justification

The obligation to promote European audiovisual productions must also apply to non-linear service providers offering equivalent content.

Amendment by Manolis Mavrommatis

Amendment 214
RECITAL 36 a (new)

(36a) Audiovisual bodies must also include in their programme the works of independent producers, while respecting the rights arising from repetitions of these works and the fair attribution of contributors' rights.

Justification

The multiple use of programmes of independent producers does not respect the intellectual rights of contributors.

Amendment by Carl Schlyter

Amendment 215
RECITAL 37 A (new)

(37a) Any concession to interrupt audiovisual works with advertising provided by the Directive in Article 11 shall not include any authorisation related to the rights of the right holders, especially the moral rights of the authors. Those rights shall be dealt with separately, whether in the production contract or by special consent at the time of the transmission, according to the relevant copyright law.

Or. en

Justification

It should be clarified in the recital of the future directive that any concession to the broadcasters to interrupt films with commercial irrespective of the length of the periods between two breaks, does not include authorisation related to moral rights of the authors. Moral rights of the authors should be defined separately whether in the production contract or by special consent at the time of broadcasting, contingent to national copyrights laws.

Amendment by Christopher Heaton-Harris

Amendment 216
RECITAL 38

(38) The availability of non-linear services increases the choice of the consumer. Detailed rules governing audiovisual commercial communication for non-linear services thus appear neither to be justified nor to make sense from a technical point of view. ***Nevertheless, all audiovisual***

(38) The availability of non-linear services increases the choice of the consumer. Detailed rules governing audiovisual commercial communication for non-linear services thus appear neither to be justified nor to make sense from a technical point of view. ***Furthermore, non-linear commercial***

commercial communication should respect not only the identification rules but also a basic tier of qualitative rules in order to meet clear public policy objectives.

communications are regulated by general law as well as by Directive 2000/31/EC and by sector specific legislation, for example Directive 2001/83/EC which prohibits advertising to the general public of certain medicinal products.

Or. en

Justification

Non-linear commercial communications are already regulated. Therefore, this provision is unnecessary.

Amendment by Karin Resetarits

Amendment 217
RECITAL 38

(38) The availability of non-linear services increases the choice of the consumer. Detailed rules governing audiovisual commercial communication for non-linear services thus appear neither to be justified nor to make sense from a technical point of view.

(38) The availability of non-linear services increases the choice of the consumer. ***The Member States should therefore make provision in their national curriculum and further education courses for sufficient education in critical use of the media, to avoid the need for detailed rules governing audiovisual commercial communication.*** Detailed rules governing audiovisual commercial communication for non-linear services thus appear neither to be justified nor to make sense from a technical point of view.

Or. de

Justification

We need our citizens to have a mature and educated attitude towards the media, as otherwise it will be impossible to cope with the effects of the media explosion brought about by digitalisation. Any hope of self- and co-regulation is based on the assumption that citizens are practised in the use of the media, and know how they work, what can do and what interests they represent.

Amendment by Karin Resetarits

Amendment 218

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.*

(40) *As users have, in the case of non-linear services, an ever-increasing range of content from which to choose, so they acquire a corresponding responsibility for their use. Regulation must, therefore, be imposed more flexibly in the on-linear sector than in respect of 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.*

Or. de

Justification

Educated and mature media consumers putting together their own audiovisual programme should not be treated in the same way as citizens unschooled in the ways of the media who are obliged to consume the television programmes supplied by the broadcasters.

Amendment by Christopher Heaton-Harris

Amendment 219

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**

(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 **is replaced by the principle of transparency and identification**, product placement should be allowed and quantitative restrictions should be abolished. However, **surreptitious product placement is prohibited and all**

should be prohibited. The separation principle should not prevent the use of new advertising techniques.

remunerated product placement should be identified clearly to the viewer when and where it occurs.

Or. en

Justification

The principle of transparency and identification ensures that commercial communications are recognisable as such and leaves room for the development of new advertising techniques.

Product placement is a global reality and its authorisation will allow European services to benefit from additional revenue and to become more competitive.

Amendment by Åsa Westlund

Amendment 220

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. *At the same time, through new marketing techniques and digital marketing, advertising is becoming more powerful.* To remain proportionate with the goals of general interest, regulation must *on the one hand* allow a certain degree of flexibility with regard to linear audiovisual media services. *On the other*, the separation principle *must be strictly maintained to protect viewers. Product placement, theme placement and product/script integration should therefore be prohibited. New advertising techniques must respect the separation principle. Production aid may be allowed under certain conditions.*

Or. en

Justification

Product placement, theme placement and script integration are irreconcilable with the principle of separation between advertising and editorial content. The strict retention of the separation principle is necessary to maintain a high level of consumer protection, artistic freedom, and the credibility of audiovisual media services.

Amendment by Henri Weber, Lissy Gröner und Giovanni Berlinguer

Amendment 221
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, *but remain firm with regard to any potential excess, in particular to avoid editorial or artistic content being influenced by commercial interests:* the separation principle should be limited to advertising and teleshopping, product placement *is prohibited.* The separation principle should not prevent the use of new advertising techniques.

Or. fr

Justification

The revision of the Television Without Frontiers Directive should not be used as a pretext for excessive liberalisation of advertising rules. Product placement is prohibited. All that is allowed, apart from sponsorship, is material production aids, and under strict conditions.

Amendment by Marielle De Sarnez

Amendment 222
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,

(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.

product placement *must continue to be tolerated* under certain circumstances and some quantitative restrictions. However, where product placement is surreptitious, *or considered unacceptable by the national regulatory authority*, it should be prohibited. The separation principle should not prevent the use of new advertising techniques.

Or. fr

Justification

Product placement can jeopardise programme credibility and respect for televisual works. However, it should continue to be tolerated, particularly on account of existing European and/or foreign works which contain product placements. Product placement should therefore be limited, and in the event of misuse prohibited. In this way European producers of televisual works will not be disadvantaged by comparison with producers from third countries (in particular, the United States) in terms of the partial funding made available by product placement. The national regulatory authorities should ensure that the use of product placement in new televisual works remains limited.

Amendment by Michl Ebner

Amendment 223 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 ***remains, however, an essential element of the integrity of the media, and hence of consumer protection. Product placement should be allowed only subject to specific limited conditions***. However, where product placement is surreptitious, it should be prohibited. The separation principle should not prevent the use of new advertising techniques.

Justification

The importance of the separation principle as a means of safeguarding editorial content from the encroachment of advertising is an essential element of the credibility of the media and of media freedom. Furthermore, the separation principle is an essential element of consumer protection and fair competition. Directive 2005/29/EC (Unfair Commercial Practices Directive) classifies among the ‘commercial practices which are in all circumstances considered unfair’ ‘using editorial content in the media to promote a product where a trader has paid for the promotion without making that clear in the content or by images or sounds clearly identifiable by the consumer (‘advertorial’).’ This being so, allowing product placement in the very media which have the most seductive potential - in other words audiovisual content - is extremely dubious. Clear conditions must be set. No less stringent requirements should apply than in the case of Directive 2005/29/EC.

Amendment by Helga Trüpel, Jean-Luc Bennahmias and Carl Schlyter

Amendment 224

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. **At the same time, through new marketing techniques and digital marketing, advertising is becoming more powerful.** To remain proportionate with the goals of general interest, regulation must on the one hand allow a certain degree of flexibility with regard to linear audiovisual media services. **The** separation principle should be limited to advertising and teleshopping, **production aid** should be allowed under certain circumstances. **In this respect the prohibition of surreptitious advertising remains.** The separation principle should not prevent the use of new advertising techniques.

Justification

Product placement is not compatible with the separation principle. The use of product placement represents a substantial interference in the audiovisual work and causes a confusion of editorial and promotional content. To maintain the credibility of the media it is

necessary to continue to uphold the separation principle in a comprehensive manner. Under those circumstances only production aid should be allowed.

Amendment by Karin Resetarits

Amendment 225
RECITAL 41

(41) Apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services.

(41) Apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. ***These include phone-in programmes using premium-rate lines, where the allocation of the prizes promised is not overseen by an independent member of the legal profession and is not transparent for the paying member of the audience.***

Or. de

Justification

Apart from the practices covered by this directive, Directive 2005/29/EC covers unfair commercial practices including misleading and aggressive practices in audiovisual media services. This also covers phone-in programmes using premium rate lines where the process of allocating the promised prizes is not supervised by an independent member of the legal profession and is not transparent to the paying member of the audience.

Amendment by Marielle De Sarnez

Amendment 226
RECITAL 42

(42) As the increase in the number of new services has led to a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. While the Directive does not increase the hourly amount of admissible advertising, it gives flexibility to broadcasters with regard to its insertion

deleted

where this does not unduly impede the integrity of programmes.

Or. fr

Justification

Given the development and use of new advertising techniques, there is now more reason than ever to maintain detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers .

Amendment by Henri Weber und Giovanni Berlinguer

Amendment 227
RECITAL 42

(42) As the increase in the number of new services has led to a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. While the Directive does not increase the hourly amount of admissible advertising, it gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.

(42) There is a real concern that any changes to the rules on insertion of advertising may seriously jeopardise the balance currently in place between the need for programme funding, ease of viewing, programme quality and respect for works. It seems fair to allow broadcasters greater flexibility as regards the insertion of advertising messages in their programmes. This Directive represents a compromise between the need to preserve the quality and integrity of all programmes – in particular, series, serials, light entertainment programmes, philharmonic concerts, operas and documentaries – and the legitimacy of offering broadcasters more flexibility by replacing the 20 minute rule with three interruptions per clock hour. The unpredictable nature of broadcasting sports events justifies special arrangements so as not to deprive viewers of phases of play.

Or. fr

Justification

The limits set in the previous directive relating to insertion of advertising should be reinstated so as not to upset the overall balance in the advertising market between private and public. However, more flexibility should be allowed by replacing the 20 minute limit with three

interruptions per clock hour.

Amendment by Christopher Heaton-Harris

Amendment 228

RECITAL 42

(42) As the increase in the number of new services has led to a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. ***While the Directive does not increase the hourly amount of admissible advertising, it gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.***

(42) As the increase in the number of new ***linear and non-linear*** services has led to ***much increased competition and*** a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. ***The Directive gives flexibility to broadcasters with regard to the quality, intervals and timing of insertions.***

Or. en

Justification

Restrictions on advertising should be lifted to allow European media service providers to better compete and to sustain revenue in order to finance and invest in European audiovisual content.

The consumer is the best regulator of the amount and type of advertising

Amendment by Luis Herrero-Tejedor

Amendment 229

RECITAL 43

(43) The Directive is intended to safeguard the specific character of the European television landscape ***and therefore limits possible interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection.***

(43) The Directive is intended to safeguard the specific character of the European television landscape. ***Advertisements and teleshopping spots may be shown during programme time if, and only if, this does not undermine a programme-maker's right to preserve the integrity of his or her audiovisual work, taking into account natural breaks and the duration and nature of the work.***

Or. es

Justification

Audiovisual media service providers need a source of funding to keep producing profitable films. What needs to be done, therefore, is to encourage advertisers to invest in films while endeavouring to ensure that content is not in any way debased by too much or badly placed advertising. Laying down a general rule to safeguard the integrity of films and the value of programmes, as well as shareholders' rights, will open the door to future investment.

Amendment by Christopher Heaton-Harris

Amendment 230

RECITAL 43

(43) The Directive is intended to safeguard the specific character of the European television landscape **and therefore limits possible interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection.**

(43) The Directive is intended to safeguard the specific character of the European television landscape **but also to accept that the industry is now fiercely competitive. Therefore in linear programming, advertising and teleshopping spots may only be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks and the duration and nature of the programme, and the rights of the rights holders, are not prejudiced.**

Or. en

Justification

Service providers that invest in films should be able to refinance this type of expensive original content via advertising revenue. However, this should respect the integrity of the film and programme flow as well protecting copyright holders.

Amendment by Karin Resetarits

Amendment 231

RECITAL 43

(43) The Directive is intended to safeguard the specific character of the European television landscape and therefore limits possible interruptions for cinematographic works and films made for television as well as for some categories of programmes that

(43) The Directive is intended to safeguard the specific character of the European television landscape and therefore limits **in the case of linear services** possible interruptions for cinematographic works and films made for television as well as for some

still need specific protection.

categories of programmes that still need specific protection.

Or. de

Justification

Advertising breaks must be limited in the case of linear services. Since media consumers determine for themselves the role they play in relation to non-linear services, however, more liberal provisions are required in that sector.

Amendment by Marielle De Sarnez

Amendment 232
RECITAL 44

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation. *deleted*

Or. fr

Justification

Television should not become an advertising tool. It is vital to retain a daily limit and a quantitative limit, particularly in view of the new forms of advertising and the increasing frequency of teleshopping windows and telepromotions.

Amendment 233
RECITAL 44

(44) *The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.*

(44) The limit of 20% of advertising per clock hour remains applicable, *including the* more time-consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

Or. it

Amendment 234
RECITAL 44

(44) *The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased competition and consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping*

(44) *In view of the current and increasingly competitive state of the industry, the daily and hourly limit should be abolished; also the quantitative restrictions on the time allowed for teleshopping or advertising channels are no longer justified given increased competition and consumer choice.*

windows that require more time on account of their inherent characteristics and method of presentation.

Or. en

Justification

Restrictions on advertising should be lifted to allow European media service providers to better compete and to sustain revenue to finance and invest in European audiovisual content. The consumer is the best regulator of the amount and type of advertising.

Amendment by Henri Weber und Giovanni Berlinguer

Amendment 235
RECITAL 44

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

(44) The average daily advertising limit in the current directive must be maintained. This limit is not redundant, as any relaxing of the duration of advertising is liable to lead to a transfer of advertising resources from public channels and specialist channels, and even from the written press, to private channels. Furthermore, in the interests of ease of viewing, non-linear services should at least be subject to an hourly limit on advertising time and teleshopping programmes broadcast on channels not exclusively devoted to teleshopping should be subject to all the quantity rules in terms of frequency and duration.

Or. fr

Justification

The limits set in the previous directive relating to insertion of advertising should be reinstated so as not to upset the overall balance in the advertising market between private and public. Non-linear services must also be subject to an advertising time limit.

Amendment by Hanna Foltyn-Kubicka

Amendment 236

RECITAL 44

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for ***more time consuming forms of advertising such as telepromotions and*** teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

Or. pl

Justification

'Telepromotions', as opposed to teleshopping, are a concept not defined in the directive and one which raises considerable doubts. Bearing in mind, however, that telepromotion certainly includes product placement and sponsoring, it is hard to agree with the claim that such forms of advertising require more time, in the way that teleshopping does.

Amendment by Michl Ebner

Amendment 237

RECITAL 44

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed

(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed

for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20% of advertising per clock hour remains applicable ***and should include in future the time devoted to product placement***, except for more time-consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.

Or. de

Justification

Those calling for product placement to be allowed generally point to the change in advertising techniques from traditional advertising to product placement. On this argument, product placement should be regarded as a direct substitute for the advertising previously subject to time limits. That being so, the time used for product placement in a programme should be included in the 20% ceiling per hour.

Amendment by Helga Trüpel; Monica Frassoni, Jean-Luc Bennahmias and Carl Schlyter

Amendment 238
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.

Or. en

Justification

On the conditions stipulated in the Amendment to Article 3h) (new), the use of "production aids" does not fall under the prohibition of surreptitious advertising, but product placement remains forbidden.

Amendment by Åsa Westlund

Amendment 239

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.

Or. en

Justification

In practise no real distinction can be made between product placement and surreptitious advertising.

Amendment by Claire Gibault

Amendment 240

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, ***product integration and placement of subject matter are practices*** prohibited by this Directive because of ***their*** negative effect on consumers. The prohibition of surreptitious advertising, ***product integration and placement of subject matter*** does not cover legitimate product placement within the framework of this Directive.

Or. fr

Justification

This addition is necessary to clarify that the prohibition also extends to product integration and the placement of subject matter, which are practices having an extremely negative effect on consumers.

Amendment by Marielle De Sarnez

Amendment 241

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 covers **unacceptable** product placement within the framework of this Directive.

Or. fr

Justification

Product placement can jeopardise programme credibility and respect for televisual works. However, it should continue to be tolerated, particularly on account of existing European and/or foreign works which contain product placements. Product placement should therefore be limited, and in the event of misuse prohibited. In this way European producers of televisual works will not be disadvantaged by comparison with producers from third countries (in particular, the United States) in terms of the partial funding made available by product placement. The national regulatory authorities should ensure that the use of product placement in new televisual works remains limited.

Amendment by Henri Weber, Lissy Gröner und Giovanni Berlinguer

Amendment 242

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 **covers** product placement within the framework of this Directive.

Or. fr

Justification

Prohibits product placement.

Amendment by Giulietto Chiesa, Monica Frassoni, Donato Tommaso Veraldi und Lilli Gruber

Amendment 243
RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

deleted

Or. it

Amendment by Helga Trüpel and Jean-Luc Bennahmias

Amendment 244
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

(46) Production aid is a reality in cinematographic works and in audiovisual films made for television, mainly in the United States, but also in some Member States. But the Member States regulate and handle production aid in cinematographic works and in audiovisual works made for television differently. It therefore appears that clarification of this point is needed in order to achieve fair cross-border competition. Production aid enables the prudent use of scarce resources without the disadvantage of infringing the separation principle. Production aid will also help the

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

financing of European independent productions without endangering the independence and credibility of the programme. The definition of production aid introduced here covers the inclusion of a product, a service or a trade mark featured within audiovisual media services necessary for journalistic or creative reasons, where there is no payment or other consideration and no editorial influence by the advertiser or brand owner. If the use of production aids requires for editorial or artistic reasons the reference to or presentation of goods, services, names, trade marks or activities of a producer of commodities or provider of services, this shall occur without any special or undue emphasis. Production aid also includes independent editorial decisions to use products without undue prominence, which are integral to a programme and facilitate its production, for example, the use of branded prizes in audiovisual media services for children, which may constitute a motivation for viewers to participate and enjoy the programme. Third country programmes that include production aid should be clearly identified and labelled as such.

Or. en

Justification

The recital clarifies what is meant by admissible production aids. A production aid enables the prudent use of scarce financial resources. It is presented in a work for editorial and not for promotional reasons, so its use does not lead to a confusion of editorial content and commercial forms of communication. This avoids the danger of undermining the separation principle or curtailing artistic or journalistic freedom.

Amendment by Karsten Friedrich Hoppenstedt

Amendment 245
RECITAL 46

(46) Product placement is a reality in

(46) Product placement is a reality in

cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement *introduced here* covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. ***It*** is subject to the same qualitative rules and restrictions applying to advertising.

cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. ***It is useful to have an affirmative list which authorises product placement in the types of content where influencing opinion is not the paramount function, and in cases in which no - or only a negligible - consideration is provided in return.*** The definition of product placement covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. ***This may consist of placing at a person's disposal services or items having a monetary value, for the acquisition of which the recipient would otherwise have had to use his own (financial, personal or material) resources. Product placement is subject to the same qualitative rules and restrictions applying to advertising. It must, furthermore, meet specific requirements. The editorial responsibility and independence of the media services provider must not be jeopardised. In particular, the way the product is included in the programme must not create the impression that the product is endorsed by the programme or the presenters. Furthermore, the product must not be given 'undue prominence'. This means prominence which is not justified by the editorial requirements of the programmes, or to lend verisimilitude. Undue prominence may also mean the repeated appearance of the brands, goods or services in question or the manner in which they are given prominence. Account should also be taken of the content of the programme in which they are introduced. In the interests of consumer protection and***

transparency, there should be a comprehensive requirement to display a symbol. The symbol superimposed in the course of the programme should not be based on the firm's logo, to avoid introducing any additional advertising effect. For that reason, a neutral logo should be chosen.

Or. de

Justification

To regulate product placement, it is useful to have an affirmative list which establishes that it is permissible in cases in which influencing opinion is not the paramount function, or in which there is negligible risk of editorial content being influenced.

The criterion of undue prominence is defined by reference to the content of the Commission communication on questions arising from certain aspects of the 'television without frontiers' Directive on television advertising (2004C 102/02).

Amendment by Henri Weber, Lissy Gröner und Giovanni Berlinguer

Amendment 246
RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and ***thus enhance the competitiveness of the European media industry***, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, ***normally*** in return for payment or for similar consideration. It is ***subject to the same qualitative rules and restrictions applying to advertising***.

(46) Product placement is, ***in certain countries, a growing*** reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently, ***which creates a serious distortion***. To ensure a level playing field and ***preserve the integrity of works*** 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, in return for payment or for similar consideration. It is ***prohibited***. ***For works and programmes originating in third countries viewers must be warned of the existence of product placement***.

Justification

To rationalise the laws on product placement in the different Member States, the Directive specifies that product placement is prohibited in order to preserve the integrity of works. With a view to preserving its audiovisual model, the European Union must guard against the excesses that are already occurring in certain countries; however, provisions are required for works originating in third countries, where this prohibition does not apply.

Amendment by Ignasi Guardans Cambó

Amendment 247

RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual **works** made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is **necessary to adopt** rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

(46) Product placement is a reality, **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 which will not apply to programmes produced earlier than 2 years before the entry into force of this Directive**. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

Justification

It would be impossible in practice to apply the product placement rules to movies or programmes made many years ago. It makes sense to put a fixed time limit, which does not need to be the entry into force of the Directive, but better a reasonable period of time before it.

Amendment by Marielle De Sarnez

Amendment 248

RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary *to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.*

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary *to tolerate product placement and ensure that the national regulatory authorities in each Member State limit its use if necessary.*

Or. fr

Justification

Product placement can jeopardise programme credibility and respect for televisual works. However, it should continue to be tolerated, particularly on account of existing European and/or foreign works which contain product placements. Product placement should therefore be limited, and in the event of misuse prohibited. In this way European producers of televisual works will not be disadvantaged by comparison with producers from third countries (in particular, the United States) in terms of the partial funding made available by product placement. The national regulatory authorities should ensure that the use of product placement in new televisual works remains limited.

Amendment by Christopher Heaton-Harris

Amendment 249

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

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus

enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, *normally* in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

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

Or. en

Justification

Non-linear services should be outwith the scope of the directive.

Product placement should only be classed as such if there has been an actual payment. It is a legitimate source of revenue provided there is adequate transparency.

Amendment by Michl Ebner

Amendment 250 RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

(46) Product placement is a reality in cinematographic works and *to some extent* in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative *and quantitative* rules and restrictions applying to advertising.

Justification

Product placement is widely prohibited in the Member States. The general assumption that it is a reality in audiovisual television productions is, therefore, incorrect.

Furthermore, see justification to Recital 44.

Amendment by Luis Herrero-Tejedor

Amendment 251
RECITAL 46

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement ***in programmes made after the entry into force of this Directive***. The definition of product placement introduced here covers any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.

Justification

Product placement rules would be impossible to apply in practice to films made a long time ago.

Amendment by Henri Weber, Lissy Gröner und Giovanni Berlinguer

Amendment 252
RECITAL 46 A (new)

(46a) The concept of ‘material production aids’ refers to the mention or presentation, for strictly editorial reasons, of goods, products or services, without any remuneration or consideration for the production. To distinguish between this and ‘product placement’, which is prohibited, the legal framework applicable to the use of authorised material production aids should be specified. Production aids are considered to be subsidies or aids provided by public institutions, in conformity with the principles of the Treaty, for programme making.

Or. fr

Justification

The type of production aid involved should be clarified. The addition of the word ‘material’ removes any ambiguity as to their nature. They should be distinguished from the legal aids provided by public institutions.

Amendment by Karin Resetarits

Amendment 253
RECITAL 46 A (new)

(46a) Artists’ intellectual property rights arising through product placement must be taken into account in agreement with the producers.

Or. de

Justification

Product placement constitutes a short interruption of the programme which is not particularly noticeable to consumers. It must be clearly identified as such, not some time before or afterwards, but at the time it occurs, because consumers cannot realistically be expected to wait until the symbol is shown. The commercial impact of any such message being superimposed is not of importance to the legislator, who should be solely concerned with the consumer protection aspect.

Amendment by Helga Trüpel

Amendment 254

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) **Regulatory authorities and regulatory bodies** 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. ***The distinctive features of the national traditions of media regulation in terms of the organisation of regulatory authorities and regulatory bodies shall be respected. A close cooperation between regulatory authorities and the Commission is particularly important in the areas coordinated by Articles 2 and 2a of this Directive.***

Or. en

Justification

The independence of the Regulatory authorities and regulatory bodies is a key factor for media pluralism in Europe. But national traditions of organising media regulation - like those for public broadcasters - shall be respected in that sense. In the case of conflicts between Member States regulated by Article 2 and 2a of this Directive in which the regulatory authorities are also involved as expert authorities, the collaboration of the national regulatory authorities with the Commission takes a special importance.

Amendment by Carl Schlyter

Amendment 255

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

(47) Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. Close cooperation between competent national authorities and the

necessary to ensure the correct application of this Directive..

Commission is necessary to ensure the correct application of this Directive.
Similarly close cooperation between Member States and between Member States' regulatory authorities is particularly important with regard to the impact which broadcasters established in one Member State might have on another Member State. Where licensing procedures are provided for in national law and more than one Member State is concerned, it is desirable that contacts between the respective authorities take place before such licences are granted. This cooperation should cover all fields coordinated by this Directive and in particular Articles 2 and 2a thereof.

Or. en

Justification

Some broadcasters use another country of origin other than the one its intended audience lives in, for the purpose of avoiding national rules on advertising. Member states must be granted some rights of limiting this practise in order to prevent undue concurrence advantages and violation of its laws.

Amendment by Ignasi Guardans Cambó

Amendment 256
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) ***Member States need to have regulators, which*** should be independent from national governments as well as from audiovisual media service providers, in order ***to ensure the correct application of this Directive and of the corresponding national laws. This work is to be carried out impartially and transparently, and in close cooperation with other*** national regulatory authorities and ***with*** the Commission. ***It must also contribute to pluralism.***

Or. en

Justification

It cannot be an option left to the Member states to decide whether to have or not an independent regulatory authority. It is in the essential interest of the European Union in this matter, and it is in coherence with the basic goals of this Directive, to require all Member states to set up an impartial audiovisual national authority.

Amendment by Henri Weber

Amendment 257
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 rapidly changing 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 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.

Or. fr

Justification

Independence of regulators; reminder of their role and of the Member States' and Commission's responsibility to ensure in the legislation the combating of all forms of discrimination, the protection of vulnerable people, the promotion of fundamental rights and the protection of freedoms.

Amendment by Luis Herrero-Tejedor

Amendment 258
RECITAL 47

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

(47) Regulators should be independent from national governments as well as from audiovisual media service providers in order to be able to carry out their work impartially and transparently and to contribute to pluralism. ***Their powers to control content should be confined to the matters and rules covered by this Directive, and they may not, under any circumstances, bring any form of scrutiny to bear on the exercise of the right to information or on the truthfulness of information.*** Close cooperation among national regulatory authorities and the Commission is necessary to ensure the correct application of this Directive,

Or. es

Justification

In no way do regulators have the job of protecting fundamental rights. That role must be reserved exclusively for judges and courts. Allowing a regulator to decide whether or not information was truthful would be tantamount to resurrecting prior censorship, a practice inimical to freedom. Parliament knows that this is a matter which has given rise to numerous complaints from citizens.

Amendment by Manolis Mavrommatis

Amendment 259
RECITAL 47 a (new)

(47a) Cultural diversity, freedom of expression and pluralism of means of communication are some important aspects of the European audiovisual sector and are therefore indispensable preconditions for democracy and diversity.

Or. el

Justification

For a more integrated approach to the characteristics of the European audiovisual sector.

Amendment by Emine Bozkurt

Amendment 260
RECITAL 47 A (new)

Public broadcasting fulfils a basic need of access by people to basic media, including news broadcasts, which should not be unduly restricted. True television without frontiers must therefore entail access of Europeans to public broadcasting from their own Member State as well as from other Member States.

Or. en

Amendment by Ignasi Guardans Cambó

Amendment 261
RECITAL 47 A (new)

(47a) Where it has been decided to declare the conduct or practice of a media service provider illegal, it would be unfair on those who abide by the rules to allow such activities to continue or to penalise them with measures that are too weak in comparison with the benefits that can be expected from those same rules. Member States must allow their national regulatory authorities to ensure, in the context of national legislation, that media service providers under their jurisdiction do not infringe the provisions of this Directive, in accordance with the monitoring procedures of proven effectiveness in force in the Member States and without ignoring other traditional measures of European law, such as penalty payments.

Or. fr

Justification

The Directive proposes a reasonable number of regulations, some of which are strict prohibitions. Member States must apply them strictly, particularly when the benefit to be derived from ignoring them may be greater than the amount of any fine due.

Amendment by Marian Harkin

Amendment 262
RECITAL 47 A (new)

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

Or. en

Amendment by Karin Resetarits

Amendment 263
RECITAL 47 A (new)

(47a) The right of people with disabilities and elderly people to participate in social and cultural life in the community deriving from Articles 26 and 27 of the Charter of Fundamental Rights is indivisible from provision of accessible audiovisual media services. Accessibility of audiovisual media services includes but is not limited to sign language, subtitling, audio description, audio subtitling and easy-to-understand screen menus.

Or. en

Justification

In the absence of a common understanding of what constitutes "accessibility", there is a danger of Member States interpreting the provisions of Article 3i in different ways, which may result in market fragmentation, unfair competition and legal uncertainty to the detriment of

users with disabilities. Therefore, it is proposed to provide guidelines explaining the term "accessibility" in the context of audiovisual services.