

EUROPEAN PARLIAMENT

2004



2009

Committee on Culture and Education

20.10.2006

WORKING DOCUMENT

on the Proposal for a directive of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities

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

Committee on Culture and Education

Rapporteur: Ruth Hieronymi

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This working document presents 11 blocks of compromise amendments elaborated by the working group of rapporteur and shadow rapporteurs of the culture committee.

Please note that the list of amendments by the culture committee and by the opinion giving committees, which will be replaced by these blocks, is still to be verified.

I. SCOPE

Compromise 1

Amendment replacing AM 33 by the rapporteur and AM from 265 to 274
ECON 22, IMCO 27, ITRE 42, FEMM 14

ARTICLE 1, POINT 2

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

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

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

This definition does not cover services where audiovisual content is merely incidental to the service and not its principal purpose including press in printed and electronic versions

Compromise 2

Amendment replacing AM 13 rapporteur and AM from 95 to 102;
ECON 5, IMCO 6, ITRE 18, FEMM 2

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***

(13) The definition of audiovisual media services covers all audiovisual mass-media services ***the content of which is suitable for television broadcasting irrespective of the delivery platform,*** whether ***the editorial approach and responsibility of the provider are reflected in a programme schedule or in a selection catalogue.*** However, its scope

purely private websites.

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 element must be significant to justify 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, the definition of audiovisual media services does not cover non-economic activities which are normally not provided for remuneration, such as blogs and other user-generated content or any form of private correspondence, such as e-mails and private websites.***

Compromise 3

Amendment replacing AM 14 rapporteur and from 103 to 108/ 109;
ECON 6, IMCO 7, ITRE 19

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 ***with editorial responsibility*** in their function to inform, entertain and educate ***the general public***, includes audiovisual commercial communications but excludes any form of private correspondence, such as e-mails sent to a limited number of recipients. The definition also excludes all services ***where*** the distribution of audiovisual content ***is not its principal purpose***, i.e. where any audiovisual content is merely incidental to 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 nonaudiovisual service.

Also excluded are games of chance with a stake representing a sum of money including lotteries and betting provided their main purpose is not that of distributing audiovisual content.

Further examples are 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.

Compromise 4

Amendment replacing AM 25 by the rapporteur, AM 103, 105, 174, IMCO 8

RECITAL 14a new

(14a) 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 (nonlinear) services. For linear audiovisual media services or television programmes which are also offered on a live or deferred basis as non-linear services by the same media service provider, the requirements of this directive are deemed to be met by the linear transmission. 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.

Compromise 5

Amendment replacing AM 34 by the rapporteur and AM from 275 to 280 and IMCO 28

ARTICLE 1, POINT 2

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

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

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

This definition does not cover natural or legal persons who only * transmit content for which the editorial responsibility lies with third parties;

('bundle or transmit content or offer for sale packages'; EPP-ED position on this passage not yet finished.)*

Compromise 6

Amendment replacing AM 35 by the Rapporteur and AM from 281 to 291
LIBE 24, ECON 24, IMCO 29, ITRE 43

ARTICLE 1, POINT 2

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

(c) '***television broadcasting***' or 'television broadcast' ***mean a linear*** audiovisual media service where ***a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule;***

(c) 'television broadcast' or '***linear service***' ***means an*** audiovisual media service where a ***chronological sequence of programmes is transmitted to an indeterminate number of potential viewers, at a point in time decided upon by the media service provider according to a fixed programming schedule;***

Compromise 7

Amendment replacing AM 37 by the Rapporteur and AM from 293 to 306
LIBE 25, ECON 25, IMCO 30, ITRE 44

ARTICLE 1, POINT 2

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

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

(e) '***on demand service***' or 'non-linear service' means an audiovisual media service ***consisting of an offer of audiovisual content, edited or compiled by a media service provider, and*** where the user, ***on an individual basis, requests the transmission of a particular programme from a choice of content and at a chosen time;***
(split vote requested by ALDE 'on demand service or')

Compromise 8

Amendment replacing AM Rapporteur 38 and AM from 307 to 310
ECON 26, IMCO 31, ITRE 45

ARTICLE 1, POINT 2

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

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

(f) 'audiovisual commercial communication' means moving images with or without sound which ***are transmitted as part of an audiovisual media service or, in cases such as dedicated teleshopping channels, as an audiovisual media service, with the aim to promoting,*** directly or indirectly, goods, services or ***the*** image of a natural or legal entity pursuing an economic activity;

Compromise 9

Amendment replacing AM Rapporteur 39 and AM from 311 to 314
ECON 27, IMCO 32, ITRE 46, FEMM 16

ARTICLE 1, POINT 2

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

(h) 'surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the **broadcaster** to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

(h) 'surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the **media service provider** to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

(split vote request by ALDE on 'media service provider')

Compromise 10

Amendment replacing ECON 28 and IMCO 33

ARTICLE 1, POINT 2

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

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

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

Compromise 11

Amendment replacing AM 42 by rapporteur and AM 325, 326, 329

ARTICLE 1, POINT 2

Article 1, point (kb) (new)

(kb) 'programme' means a set of moving images within or without sound constituting an individual item with a schedule or a catalogue established by a media service provider;

Compromise 12

Amendment replacing AM 43 by rapporteur and AM 330

ARTICLE 1, POINT 2

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

(kc) ‘editorial responsibility’ means the responsibility for the composition of the schedule or the compilation of programmes, in a professional manner, in order to transmit the media content within a set time frame or to allow it to be ordered from a catalogue, and intended for the general public.

Compromise 13

Amendment replacing AM 18 and 120 by rapporteur and AM 116-119,
ECON 7, IMCO 10, FEMM 3

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

II. JURISDICTION. COUNTRY OF ORIGIN PRINCIPLE

Compromise 14

Amendment replacing AM 44, 376-378), ECON 31, ITRE 55, FEMM 20

ARTICLE 1, PARAGRAPH 4, LETTER B

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

(b) *In* paragraph 2 "*Article 22a*" is replaced by "*Article 3e*".

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

2. Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:
- (a) an *audiovisual media service* coming from another Member State manifestly, seriously and gravely infringes *Article 22 (1) or (2) and/or Articles 3d or 3e*
 - (b) during the previous 12 months, the *media service provider* has infringed the provision(s) referred to in (a) on at least two prior occasions;
 - (c) the Member State concerned has notified the *media service provider, the Member State in which it is established and* the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;
 - (d) consultations with the Member State *of establishment* and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.

Compromise 15

ARTICLE 1, PARAGRAPH 4, LETTER B

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

2a. In respect of on-demand services Member States may, in cases of urgency, provisionally take measures to derogate from paragraph 1 without fulfilling the conditions set out in paragraph 2, points (b), (c) and (d) above. Where this is the

case, the measures shall be notified in the shortest possible time to the Commission and to the Member State in which the media service provider is established, indicating the reasons for which the Member State considers that there is urgency.

(reservation by ALDE on Article 2a par 2a)

Compromise 16

Amendment replacing ITRE 54

ARTICLE 1, PARAGRAPH 4, LETTER B
Article 2a, paragraph 2b (new) (Directive 89/552/EEC)

2b. The Commission shall, within two months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.

Compromise 17

Amendment replacing ECON 32, FEMM 21

ARTICLE 1, PARAGRAPH 4, LETTER B
Article 2a, paragraph 3 (new) (Directive 89/552/EEC)

3. Paragraph 2 shall be without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the media service provider concerned.

Compromise 18

Amendment replacing Amendment 9, 90, LIBE 5, ITRE 16, FEMM 1

RECITAL 10

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

(10) The requirement that the originating Member State should ensure compliance with national law as coordinated by this Directive is sufficient under Community law to ensure free movement of audiovisual media services without secondary control on the same grounds in the receiving Member State; however, the receiving Member State may exceptionally and under specific conditions, derogate from this principle in the event of serious violations of Articles 22(1), 22(2), 3d and 3e, taking into account that respect for fundamental rights forms an integral part of the general principles of Community law.

Procedure in Article 2, paragraph 7, 8, 10 (Directive 89/552/EEC) moved to Article 3 as in the Council Presidency text of 10.10.06

Amendments replacing AM from 351 to 356, AM from 357 to 366, AM from 367 to 369, AM from 370 to 373; AM 34 by the rapporteur

Compromise 19

ARTICLE 1, POINT 5, former ARTICLE 1, POINT 3, POINT (G)
Article 3, paragraph 1a (new) (Directive 89/552/EEC)

1a. In cases where a Member State:
(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and
(b) assesses that a broadcaster under the jurisdiction of another Member State directs all or most of its activity towards its territory
it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State with jurisdiction shall inform the first Member State of the results obtained following this

request within two months.

Compromise 20

Amendment replacing AM from 351-356, IMCO 36

ARTICLE 1, POINT 5, former ARTICLE 1, POINT 3, POINT (G)
Article 3, paragraph 1b new, former Article 2, paragraph 7 (Directive 89/552/EEC)

7. A Member State may, in order to prevent abuse or fraudulent conduct, adopt appropriate measures against a media service provider established in another Member State that directs all or most of its activity to the territory of the first Member State. This shall be proven on a case by case basis by the first Member State.

1b. Where the first Member State assesses:

(a) that the results achieved through the application of paragraph 1a are not satisfactory; and

(b) that the broadcaster in question has established itself in the Member State having jurisdiction in order to avoid the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established within the first Member State, it may adopt appropriate measures against the media service provider concerned.

Such measures shall be objectively necessary, applied in a non-discriminatory manner, be suitable for attaining the objectives which they pursue and may not go beyond what is necessary to attain them.

Compromise 21

Amendment replacing AM from 357 to 366

ARTICLE 1, POINT 5, former ARTICLE 1, POINT 3, POINT (G)
Article 3, paragraph 1c new, former Article 2, paragraph 8 (Directive 89/552/EEC)

8. Member States may take measures pursuant to paragraph 7 only if all of the following conditions are met:

(a) the receiving Member State asks the

1c. Member States may take measures pursuant to paragraph 1b only if all of the following conditions are met:

(a) it has notified the Commission and the

Member State in which the media service provider is established to take measures;

(b) the latter Member State does not take such measures;

(c) the first Member State notifies the Commission and the Member State in which the media service provider is established of its intention to take such measures and

(d) the Commission decides that the measures are compatible with Community law.

Member State in which the media service provider is established of its intention to take such measures while substantiating the grounds on which it bases its assessment and

(b) the Commission decides that the measures are compatible with Community law, and in particular that assessments made by the Member State taking these measures under paragraphs 1a and 1b are correctly founded.

Compromise 22

Compromise Amendment replacing AM from 370 to 373, IMCO 38

ARTICLE 1, POINT 5, former ARTICLE 1, POINT 3, POINT (G)

Article 3, paragraph 1d new, former Article 2, paragraph 10 (Directive 89/552/EEC)

10. The Commission shall decide within three months following notification under paragraph 8. If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.

1d. The Commission shall decide within three months following notification under paragraph 1c(c). If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.

Compromise 23

RECITAL 23 a new

corresponding to Article 3 point 1b

(23a) In order for a Member State to prove on a case by case basis that a media service provider established in another Member State is circumventing its rules, the first

Member State may cite indicators such as the origin of advertising and/or subscription revenues, the main language of the programme or the existence of programmes or commercial communications targeted specifically at the public in the Member State where they are received.

(reservation by EPP-ED and ALDE)

Compromise 24

Amendment replacing LIBE 21, ECON 21, IMCO 25, FEMM 11

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. Close cooperation between competent national authorities and the 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 broadcasters established in one Member State might have on another Member State. In the case that licensing procedures are provided for in national law and if 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, 2a and 3 thereof.*

III. CO-REGULATION AND SELF-REGULATION

Compromise 25

Amendment replacing AM 380-383, IMCO 39

ARTICLE 1, POINT 5

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

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

1. Member States shall, remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive, *provided that such rules do not conflict with general principles of EU law.*

Compromise 26

Amendment replacing AM 46, AM 385-390 and AM 592

ARTICLE 1, POINT 5

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

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

(Paragraph 2 of Commission's proposals remains unchanged)

Compromise 27

Amendment replacing AM 47, AM 391-402, ECON 33, IMCO 40, ITRE 57

ARTICLE 1, POINT 5

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

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

3. Member States shall encourage *self-and/or* co-regulatory regimes *at national level* in the fields coordinated by this Directive. These regimes shall be such that they are broadly accepted by the main

enforcement.

stakeholders *in the Member State concerned* and provide for effective enforcement.

Compromise 28

Amendment replacing AM 22, AM 134-141, LIBE 7, ECON 10, IMCO 12, ITRE 28, FEMM 5

RECITAL 25

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

1 OJ C 321, 31.12.2003, p. 1.

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

Thus, self regulation constitutes a type of voluntary initiative, which gives the possibility to the economic operators, the social partners, non governmental organisations or associations to adopt amongst themselves and for themselves common guidelines.

Member States should, in accordance with their different legal traditions, recognise the effective role that effective self-regulation can play as an additional complement to legislation and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive.

However, while self regulation might be an complementary method to implement certain provisions of this Directive, it cannot substitute the obligation of the national legislator. Co-regulation gives, at its minimal form, a "legal link" between the self-regulation and the national legislator in accordance with legal traditions of Member States.

IV. SHORT EXTRACTS

Compromise 29

Amendment replacing AM 48-50, AM 407-422, AM 440, LIBE 29-30, ECON 37, IMCO 41, ITRE 56-58, FEMM 23

ARTICLE 1, POINT 6

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

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

1. Pursuant to the principle of freedom of access to information as enshrined, in particular, in Article 11 of the Charter of Fundamental Rights, and without prejudice to existing contractual agreements between broadcasters, each Member States shall ensure that, for the purposes of short news reports including those intended for pan-European broadcasts, broadcasters established in other Member States are not deprived of access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted by a broadcaster under their jurisdiction. The broadcaster granting the access shall have a right to appropriate compensation**.*

**(split vote on 'high interest to the public' requested by GUE)*

*** (PSE, Greens, ALDE, GUE, split vote on 'The broadcaster granting the access shall have a right to appropriate compensation')*

Compromise 30

Amendment replacing AM 423-434, LIBE 31, ITRE 59

ARTICLE 1, POINT 6

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

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

2. *Broadcasters* may freely *choose short extracts* from the transmitting broadcaster's signal with at least the identification of their source.

Such extracts shall be used solely for news

purposes.

Compromise 31

Amendment replacing AM 435-439, IMCO 42

ARTICLE 1, POINT 6

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

(2a) The provisions of this article shall apply without prejudice to the obligation of individual broadcasters to respect copyright provisions, including Directive 2001/29/EC and/or the Rome Convention, 'International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations' of 26th October 1961, and shall have no effect on this obligation.

Compromise 32

ARTICLE 1, POINT 6

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

(2b) Member States shall ensure that the modalities and conditions regarding the use of such short extracts are defined, in particular their maximum length, time limits regarding their transmission and requirements regarding the identification of the host broadcaster.

Compromise 33

Amendment replacing AM 49, AM 426, 430, 431

ARTICLE 1, POINT 6

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

(2c). Broadcasters may, in accordance with the law of the Member State concerned and

for the purpose of transmission, themselves obtain access to the event.

Compromise 34

Amendment replacing AM 24, AM 153-162 and ECON 12, IMCO 14, ITRE 32

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 *directly*** 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,
- *be transmitted before the event concludes*,***
- *be screened later than 36 hours after the event,*
- *be used to create a public archive,*
- *remove the logo or other identifier of the host broadcaster, or*
- *be used in non-linear services other than they are offered on a live or deferred basis by the same media service provider. 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;*
(*split vote demanded by GUE on 'high')
(** split vote demanded by ALDE on 'directly')
(***demand for split vote by GUE on 'be transmitted

*before the event concludes',)
(compatibility with compromise on article 3b par 4 to
be checked)*

V. YOUTH PROTECTION

Compromise 35

Amendment replacing AM 450-459, LIBE 37-42, ECON 36, IMCO 45, ITRE 63, FEMM 25

ARTICLE 1, POINT 6

Article 3d (Directive 89/552/EEC)

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

Member States shall ensure *by appropriate means* that audiovisual media services under their jurisdiction are not made available in such a way that might seriously impair the physical, mental or moral development of minors. *This applies in particular to programmes containing pornography and gratuitous acts of violence. The Commission and the Member States are urged to encourage the relevant parties in the media sector to promote a Community-wide labelling, assessment and filtering system as a further measure to protect minors. The Member States shall promote measures to give parents and other caregivers greater control over programmes' pornographic and gratuitously violent content.*

VI. EUROPEAN PRODUCTIONS

Compromise 36

Amendment replacing AM 26, 474, 479-480, 482-485, LIBE 45, ECON 38, IMCO 46, ITRE 66, 67, 79

ARTICLE 1, POINT 6

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

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

(1) Member States shall ensure that media service providers under their jurisdiction promote, where practicable and by appropriate means, ***and with due consideration to different means of distribution, the development,*** production of and access to European works within the meaning of Article 6. ***For non-linear audiovisual media services, support and promotion might take the form of a minimum amount proportionate to economic performance, a minimum share of European and independent works in video-on-demand catalogues, or the attractive presentation of European and independent works in electronic programme guides.***

(2) Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.

(EU-Commissions proposal remains unchanged.)

Compromise 37

Amendment replacing AM IMCO 47

ARTICLE 1, POINT 6

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

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

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

Compromise 38

Amendment replacing AM 53, 492-494, 496, IMCO 48, LIBE 46-47

ARTICLE 1, POINT 6

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

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

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

VII. QUANTITATIVE ADVERTISING RULES

Compromise 39

Amendment replacing AM 54, AM 504-511, LIBE 46-47, ECON 39, IMCO 49-50, ITRE 68, FEMM 30

ARTICLE 1, POINT 6

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

compromise by EPP-ED, PSE, Greens and GUE

c.) audiovisual commercial communications must not:

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

(ii) *be offensive to religious or political beliefs;*

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

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

c.) audiovisual commercial communications must not

(-i) violate human dignity;

(i) *be offensive* on grounds of *discrimination by* race, *gender, nationality, disability, age, or sexual orientation;*

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

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

Compromise 40

Amendment replacing AM 512, ECON 40, IMCO 51, ITRE 68

ARTICLE 1, POINT 6

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

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

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

Compromise 41

Amendment replacing AM 517

ARTICLE 1, POINT 6

Article 3g, point e a (new) (Directive 89/552/EEC)

(ea) Audiovisual commercial communications for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the provider of audiovisual services, falls shall be prohibited.

VIII. PEOPLE WITH DISABILITIES

Compromise 42

Amendment replacing AM 63-64, 587, 580, 590-591, LIBE 52, IMCO 56, ITRE 78, FEMM

ARTICLE 1, POINT 6

Article 3k(Directive 89/552/EEC)

1. The Member States shall take appropriate measures to ensure that audiovisual media services under their jurisdiction are gradually made accessible to people with a visual or hearing disability.

2. No later than the end of the third year after the adoption of this Directive the Member States shall submit a national report to the Commission every two years on the application of this article. The report shall include, in particular, statistics on the progress made towards achieving the goal of accessibility, as described in paragraph 1. It shall describe any obstacles and describe the measures needed to overcome them.

IX. INDEPENDENT PRODUCERS

Compromise 43

Amendment replacing AM 65, 598, ITRE 80

ARTICLE 1, POINT 7, POINT (A A) (new)
Article 6 paragraph 1 (Directive 89/552/EEC)

(aa) In paragraph 1, the following point (d) is added:

“(d) In defining the term ‘independent producer’, the Member States shall take appropriate account of the following four criteria:

ownership and proprietary rights of the production firm; number of programmes provided to the same broadcaster, and ownership of secondary rights”

X. ADVERTISING RULES

Compromise 44

Amendment replacing AM 20, 123-125, ECON 8, IMCO 11

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 images with or without sound which **are transmitted as part of an audiovisual media service and (form part of or)* accompany programmes** 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.

(* split vote 'form part of or' by EPP-ED)

(must be voted after the vote on product placement)

XI. MEDIA PLURALISM

Compromise 45

Amendment replacing AM 127-128, ECON 9, ITRE 24-25

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 an audiovisual media service provider and that pluralism of information is a fundamental principle of the European Union.

Compromise 46

Amendment replacing AM LIBE 1, FEMM 4

RECITAL 19 b (new)

(19b) 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).