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COMMISSION OF THE EUROPEAN COMMUNITIES

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2005/0260 (COD)

Amended 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
("Audiovisual media services without frontiers")**

(presented by the Commission)

Amended proposal for a

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
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1. BACKGROUND

Transmission of the Proposal to the Council and the European Parliament Ref. COM (2005)646 - 2005/0260(COD)	15 December 2005
Opinion of the European Economic and Social Committee	13 September 2006
Opinion of the Committee of Regions	11 October 2006
Opinion of the European Parliament - first reading	13 December 2006

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the proposal is to deepen the internal market for non-linear/on-demand audiovisual services (minimum harmonisation with regard to protection of minors, hate speech, commercial communication) on the basis of the country-of-establishment principle and to modernize the rules, especially advertising rules, for linear/broadcast services.

3. COMMISSION OPINION ON THE AMENDMENTS ADOPTED BY THE PARLIAMENT

3.1. Amendments accepted by the Commission

The Commission can accept a number of Amendments that are consistent with the Commissions' proposal and also in line with Council's General Approach of 13 November 2006. For these reasons the Commission can accept the following **adopted amendments in full**:

6, 11, 12, 14, 16, 20, 25, 30, 32, 41, 42, 43, 49, 56, 62, 67, 78, 79, 81, 84, 85, 89-92, 99, 115, 117, 120-125, 133, 138, 144, 199¹, 213, 221, 222, 224, 226.

¹ The split vote on Amendment 199, which the Commission originally rejected, meant that Amendment 215 fell, but nevertheless led to the adoption of an Amendment which is identical to Amendment 215 which the Commission had accepted.

3.2. Amendments accepted in part or principle by the Commission

Recitals:

With regard to the Recitals the Commission can accept the following Amendments subject to rewording. These changes are mostly consequential to the changes in the operative part and intend to simplify the Amendments and make them more consistent:

Amendment 1 (Recital 1):

"(1) Directive 89/552/EEC coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities. However, new technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to take account of the impact of structural change, the spread of information and communication technologies (ICT) and technological developments on business models, especially the financing of commercial broadcasting, and to ensure optimal conditions of competitiveness and legal certainty for Europe's information technologies and its media industries and services, as well as respect for cultural and linguistic diversity."

Amendment 3 (Recital 3):

"(3) Audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy – in particular by ensuring freedom of information, diversity of opinion and media pluralism – education and culture justifies the application of specific rules to these services."

Amendment 4 (Recital 3a):

"In its resolutions of 1 December 2005, 4 April and 27 April 2006 the European Parliament has underlined the international dimension of audiovisual services and the fact that cultural activities, goods and services have both an economic and a cultural nature."

Amendment 7 (Recital 5):

"(5) The basic principles of Directive 89/552/EEC, namely the transmitting state principle and common minimum standards, have proved their worth and should therefore be retained. But 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, in order to avoid distortions of competition, to improve legal certainty, to help complete the internal market and to facilitate the emergence of a single information area, to apply to all audiovisual media services, both linear and non-linear, a basic tier of coordinated rules."

Amendment 8 (Recital 6):

"(6) The Commission has adopted a Communication on the future of European regulatory audiovisual policy, in which it stresses that regulatory policy in the sector has to safeguard certain public interests, such as cultural diversity, the right to information, the importance of media pluralism, the protection of minors and consumer protection and action to enhance media skills."

Amendment 10 (Recital 6b)²:

"(6a) The country of origin principle is crucial to the emergence and further development of a pan-European audiovisual market with a strong industry producing European content. Moreover, the principle safeguards the viewer's rights to choose from a wide variety of European programmes, and thus contributes to media pluralism."

Amendment 13 and Amendment 110³ (Recital 9):

"(9) This Directive enhances compliance with fundamental rights and is fully in line with the principles, rights and freedoms laid down in the Charter of Fundamental Rights of the European Union, in particular Article 11 thereof. In this context, Member States should set up independent regulatory authorities in the fields covered by this Directive, if they have not already done so. Member States may decide whether it is appropriate to have a single regulatory authority for all audiovisual media services or several separate authorities for each category of service (linear or non-linear). Furthermore, this Directive does not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media."

Amendment 17 (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 audiovisual media service."

Amendment 18 (Recital 13):

"(13) The definition of audiovisual media services covers only audiovisual media services, whether scheduled or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Audiovisual media services are made up of programmes. Examples of programmes include feature-length films, sports events, situation comedy, documentary, children's programmes and original drama. The 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 and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest. The definition 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."

Amendment 23 (Recital 16):

"(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, radio services or stand-alone text-based services. In the context of television broadcasting, the notion of simultaneous viewing also entails quasi simultaneous viewing because of the

² Accepted in principle only because the original numbering was not correct.

³ The reference to the Charter was proposed by the EP in the operative part and therefore accepted only in principle.

variations in the short timelag which occurs between the transmission and the reception of the broadcast due to technical reasons inherent in the transmission process."

Amendment 27 (Recital 17b):

"(17a) The criteria laid down in the definition of audiovisual media services, as set out in Article 1(a) of Directive 89/552/EEC and expanded in Recitals 13 to 17 of this Directive, must all be fulfilled at the same time."

Amendment 28 (Recital 18):

"(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, 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."

Amendment 33 (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, while ensuring that those rules are consistent with Community Law. To prevent abuse and fraudulent conduct, 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."

Amendment 34 (Recital 23a):

"(23a) In order for a Member State to argue on a case-by-case basis that a broadcast by a media service provider established in another Member State is wholly or mostly directed towards its territory, that Member State may cite indicators such as the origin of the advertising and/or subscription revenues, the main language of the service or the existence of programmes or commercial communications targeted specifically at the public in the Member State where they are received. In addition, in the context of the circumvention procedure, that Member State has to prove the abuse or fraudulent conduct of the media service provider established in the other Member State."

Amendment 35 (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 or non-linear audiovisual media services, but only under certain conditions listed in Article 2a of this Directive and following the procedures 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 Directive 89/552/EEC replaces the possible measures which could have hitherto been taken by the Member State concerned as set out in Article 3(4) and/or Article 12 (3) of Directive 2000/31/EC within the area coordinated by Articles 3d and 3e of Directive 89/552/EEC."

Amendment 36 (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. 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 enables the economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves. Member States should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the 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 a complementary method of implementing certain provisions of this Directive, it cannot constitute a substitute for the obligation of the national legislator. Co-regulation gives, in its minimal form, a "legal link" between self-regulation and the national legislator in accordance with the legal traditions of the Member States."

Amendment 39 (Recital 26a):

"(26a) Media literacy refers to skills, knowledge and understanding that allow consumers to use media effectively and safely. Media-literate people will be able to exercise informed choices, understand the nature of content and services and take advantage of the full range of opportunities offered by new communications technologies. They will be better able to protect themselves and their families from harmful or offensive material. Therefore development of media literacy in all sections of society should be promoted and monitored."

Amendment 218 (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 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 programmes 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. Broadcasters may freely choose short extract from the transmitting broadcasters' signal with, unless impossible for reasons of practicality, at least the identification of their source. Such short extracts should not exceed 90 seconds and be transmitted before the event concludes, or for sports events before the end of a single day's play - whichever is the sooner.

These provisions shall apply without prejudice to the obligation of individual broadcasters to respect the relevant community legislation and international conventions regarding copyright.

Typically, Member States shall facilitate access to events by granting access to the broadcaster's signal. However, they may choose other equivalent means. Such means include, inter alia, granting access to the venue of these events.

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."

Amendment 46 (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, such as PIN codes (personal identification numbers) or labelling, should however be to ensure an adequate level of protection of minors and human dignity, especially with regard to non-linear services, by means of an obligation to clearly draw attention to the specific nature of certain programmes before they are transmitted and in accordance both with Article 1 and Art 24 of the Charter of Fundamental Rights of the European Union."

Amendment 104[Art 3d (1d)] as new Recital 32 a:

"(32a) Audiovisual media service providers under the jurisdiction of one of the Member States will in any case be subject to criminal law provision banning the dissemination of child pornography."

Amendment 214 (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. Such support for European works might, for example, take the form of a minimum share of European works proportionate to economic performance, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programme guides. It will be important to regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports set out in Article 3f paragraph 3, Member States shall also take into account notably the financial contribution by such services to the production and rights acquisition of European works; the share of European works in the catalogue of audiovisual media services as well as in the effective users' consumption of European works proposed by such services."

Amendment 57 (Recital 41):

"(41) Apart from the practices that are covered by the present Directive, Directive 2005/29/EC applies to unfair commercial practices such as misleading and aggressive practices occurring in audiovisual media services. Moreover, as Directive 2003/33/EC, which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, is without prejudice to Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities; in view of the special characteristics of audiovisual media

services, the relation between Directive 2003/33/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. Article 88(1) of Directive 2001/83/EC which prohibits advertising to the general public of certain medicinal products applies, as provided in paragraph 5 of the same Article, without prejudice to Article 14 of Directive 89/552/EEC; the relation between Directive 2001/83/EC and Directive 89/552/EEC should remain the same after the entry into force of the present Directive. Furthermore, this Directive is without prejudice to Regulation .../... of the European Parliament and of the Council on nutrition and health claims made on foods."

Amendment 58 (Recital 42):

"(42) Given the increased use of new technologies such as personal video recorders and the increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. This Directive gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes."

Amendment 219 (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. It is useful to have a positive list which authorises product placement in the types of content whose paramount function is not to influence opinion and in cases in which no - or only 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. It is subject to the same qualitative rules and restrictions applying to advertising. It should, furthermore, meet specific requirements. The editorial responsibility and independence of the media service 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 its presenters. Furthermore, the product must not be given 'undue prominence'. This means prominence which is not justified by the editorial requirements of the programme, or the need to lend verisimilitude. The decisive criterion distinguishing sponsorship and product placement is the fact that in product placement the reference to a product is built into the action of a programme. Sponsor references in contrast may be shown during the programme but are not part of the plot."

Amendment 63 (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 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 that broadcasters established in one Member State might have in 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

licences are granted. This cooperation should cover all the fields coordinated by Directive 89/552/EEC and in particular Articles 2, 2a and 3 thereof."

Amendment 64 (Recital 47a):

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

Amendment 65 (Recital 47b):

"(47b) The right of persons with a disability and the elderly to participate and integrate in the social and cultural life of the community is inextricably linked to the provision of accessible audiovisual media services. The accessibility of audiovisual media services includes, but is not restricted to, sign language, subtitling, audio-description and easily understandable menu navigation."

Operative Part:

With regard to the **definitions in Article 1** the Commission can accept:

Amendment 66 subject to the following rewording: "(a) 'audiovisual media service' means a service as defined by Articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate 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.

Such audiovisual media services are either television broadcasts as defined in paragraph (c) of this Article or on-demand services as defined in paragraph (e) of this Article and/or audiovisual commercial communication;" The last sentence of the Amendment is deleted as the criterion of "principal purpose" already excludes electronic versions of newspapers and magazines from the scope of the Directive as clearly stated in Recital 15.

Amendment 68 subject to the following rewording: "(c) 'television broadcasting' or 'television broadcast' (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;"

Amendment 205 subject to the following rewording: "(e) 'on-demand service' (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his/her individual request on the basis of a catalogue of programmes selected by the media service provider;"

Amendment 70 subject to the following rewording: "(f) 'audiovisual commercial communication' means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, inter alia, television advertising, sponsorship, teleshopping and product placement;"

Amendment 71 subject to the following rewording: "(h) 'surreptitious audiovisual commercial communication' 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 as 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;"

Amendment 73 subject to the following rewording: "(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 financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;"

Amendment 77 subject to the following rewording: "(aa) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting;"

Amendment 137 proposes to enshrine in Art 6 of the Directive a definition which is already mentioned in Recital 36 of Directive 97/36. The Commission can in principle accept this definition in Art 1 subject to the following rewording: "(2) In defining the term 'independent producer', Member States shall take account notably of the ownership and proprietary rights of the production firm and of the number of programmes provided to the same broadcaster."

The changes to the definitions are made to better align the Amendments with Council's General Approach.

With regard to the **procedure according to Article 2a** of the Directive the Commission can accept in principle **Amendment 82** subject to the following rewording:

"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), Article 3d, or Article 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, in writing, the media service provider, the Member State in which it is established and the Commission 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.

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."

With regard to the **procedure in Art 3(1)** the Commission can accept in part **Amendment 220** subject to the following rewording:

"(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 are in compliance with Community Law."

With regard to **short reporting [Art 3b]** the Commission can accept in principle:

Amendment 223 subject to the following rewording:

"(1) Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction."

Amendment 97 subject to the following rewording: "(3) Without prejudice to the other paragraphs of this Article, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the use of such short extracts are reasonably defined, in particular any compensation arrangements."

Amendment 98 subject to the following rewording:

"(4) As an alternative to paragraph 2, a Member State may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means."

With regard to the **basic tier provisions** the Commission can accept:

In order to better align the Amendment with Council's General Approach (Article 3b), the Commission can accept in principle **Amendment 107** subject to the following rewording:

"Article 3e

Member States shall ensure by appropriate means that audiovisual media services provided by providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality."

Concerning the promotion of **European production** the Commission can accept in principle:

Amendment 108 subject to the following rewording:

"Article 3f

"(1) Member States shall ensure that on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes proposed by the service."

Amendment 109 subject to the following rewording:

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

With regard to **Commercial Communication** the Commission can accept:

Amendments 114 and 225 concerning **Art 3g** subject to the following rewording:

"(1) Member States shall ensure that audiovisual commercial communications provided by providers under their jurisdiction comply with the following requirements:

(a) audiovisual commercial communications must be readily recognizable as such and be distinguishable from editorial content. Surreptitious audiovisual commercial communication shall be prohibited.

(b) audiovisual commercial communications must not use subliminal techniques;

(c) audiovisual commercial communications must not:

(i) prejudice respect for human dignity

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

(iii) be offensive to religious or political beliefs;

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

(v) encourage behaviour grossly prejudicial to the protection of the environment;

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

(e) audiovisual commercial communications for alcoholic beverages must not be aimed specifically at minors and may not encourage immoderate consumption of such beverages;

(f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;

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

(2) Member States and the Commission should encourage audiovisual service providers to develop a code of conduct regarding children's programming containing or being interrupted by advertising, sponsorship or any marketing of unhealthy and inappropriate foods and drinks such as those high in fat, sugar and salt and of alcoholic beverages."

Concerning **product placement** (Art 3i) the Commission can accept:

Amendments 227 subject to the following rewording:

"(1) Product placement shall be prohibited.

(2) By way of derogation from paragraph 1, unless Member States decide otherwise, product placement shall be admissible in

- cinematographic works, films and series made for audiovisual media services, light entertainment and sports programmes; or
- in cases where no payment is made but certain goods or services are merely provided free of charge.

The derogation in the first indent shall not apply to programmes for children.

(3) The programmes that contain product placement shall meet at least all of the following requirements:

- (a) their content and, in the case of television broadcasting, their scheduling, shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
- (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
- (c) they shall not give undue prominence to the product in question;
- (d) viewers shall be informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.

In cases where the payment or similar consideration for the product placement has not been paid to the media service provider, Member States may choose to waive the requirements set out in (d) above.

(4) In any case programmes must not contain product placement of:

- tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or
- specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

(5) The provisions of this Article apply only to programmes produced after [date: transposition deadline for the Directive]."

Concerning **accessibility issues** the Commission can accept **Amendments 135** subject to the following rewording:

"Article 3j

(1) The Member States shall take appropriate measures to ensure that audio-visual media services under their jurisdiction are gradually and where feasible made accessible to people with a visual or hearing disability.

(2) In its report according to Article 26 the Commission shall also describe the progress made in achieving the objectives of paragraph 1."

Concerning the **insertion of spot advertising** (Art 11) the Commission can accept in part **Amendments 228 and 208** subject to the following rewording:

"Article 11

(1) Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme, and the rights of the right holders are not prejudiced.

(2) The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes. The transmission of children's programmes may be interrupted by advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided the scheduled duration of the programme is greater than 30 minutes. No advertising or teleshopping may be inserted during religious services."

Concerning **teleshopping** the Commission can accept **Amendment 229** subject to the following rewording:

"Article 18a

Teleshopping windows shall be clearly identified as such by optical and acoustic means and be of an uninterrupted minimum duration of 15 minutes."

Concerning **regulatory authorities** the Commission can accept **Amendment 147 and 149** subject to the following rewording:

"Article 23b

"(1) Member States shall take appropriate measures to establish national regulatory bodies and institutions in accordance with national law, to guarantee their independence and to ensure that they exercise their powers impartially and transparently.

(2) National regulatory authorities shall provide each other and the Commission with the information necessary for the application of the provisions of this Directive. National regulatory authorities shall cooperate closely in the resolution of problems arising from the application of this Directive."

Concerning the **general transposition provisions** the Commission can accept:

Amendment 150 subject to the following rewording:

"Article 26

Not later than [...], and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive as amended. This report shall describe the general level of compliance with the Directive and to which extent the objectives of this Directive have been achieved in particular with regard to:

- European and independent production (Art 5, 6 and 3f)
- Accessibility for people with disabilities (Art 3 hc).

If necessary, the Commission should make further proposals to adapt it to developments in the field of audiovisual media services, in particular in light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States."

Amendment 151 (Article 3 of the amending Directive) subject to the following rewording:

"(1) Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [Two years after the entry into force of this Directive] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive. When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made."

3.3. Conclusion

Pursuant to Article 250(2), of the EC Treaty, the Commission amends its proposals as set out above.