

Coordination of certain provisions in Member States concerning the pursuit of television broadcasting activities ('Audiovisual media services without frontiers')

2005/0260(COD) - 11/12/2007 - Final act

PURPOSE: to amend the "Television Without Frontiers" Directive in order to establish a modernised and flexible framework for television broadcasts, including other linear (scheduled) audiovisual media services, and to introduce a set of minimum rules for non-linear (on-demand) audiovisual media services.

LEGISLATIVE ACT: Directive 2007/65/EC 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.

CONTENT: the aim of the Directive 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.

Scope: "audiovisual media services" is defined as a service 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, by electronic communications networks. Such an audiovisual media service is either a television broadcast (i.e. a linear audiovisual media service) or an on-demand audiovisual media service (i.e. a non-linear audiovisual media service). The term also comprehends audiovisual commercial communication. The enlarged scope of the Directive responds to the increasing importance of on-demand audiovisual media services.

Jurisdiction: jurisdiction will continue to be determined on the basis of the establishment of the service provider, but there is now a mechanism for dealing with cases where a television broadcast is directed wholly or mostly towards a Member State other than the one where the broadcaster is established. The first phase is a non-binding "cooperation" phase, where mutually acceptable solutions are sought between the Member States involved, followed by a second "circumvention" phase where in certain well-defined cases binding measures can be taken. This second phase, to which a Community procedure is attached, effectively seeks to codify in secondary legislation existing case law of the Court of Justice. With regard to on-demand services, the conditions and procedures for derogation (for a number of public policy reasons, including the need to protect minors) are exactly those of the eCommerce Directive 2000/31/EC.

Cooperation and circumvention procedure: the Directive provides for a consultation procedure between Member State of jurisdiction and the one towards which television broadcast is wholly or mostly directed, which may lead to a non-binding request to a broadcaster to comply with a rule of general interest of the latter Member State, and subsequently a procedure on the basis of Court of Justice case law (specifically on circumvention) to allow Member States, under the ex-ante control of the Commission, to take binding measures against service providers that circumvent national rules.

Co- and self- regulation: Member States must encourage co- and/or self-regulatory regimes to the extent permitted by their legal systems.

Transparency obligations: Member States must ensure that audiovisual media service providers under their jurisdiction shall make accessible to the recipients of a service certain prescribed details.

Short reporting: those exercising exclusive television broadcasting rights to an event of high interest to the public must grant other 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 short extracts may be used for EU-wide broadcasts by any channel including dedicated sports channels and should not exceed 90 seconds. The right of access to short extracts will apply on a trans-frontier basis only where it is necessary. Therefore a broadcaster should first seek access from a broadcaster established in the same Member State having exclusive rights to the event of high interest to the public. The country of origin principle will apply to both the access to, and the transmission of, the short extracts. In a trans-frontier case, this means that the different laws should be applied sequentially. Firstly, for access to the short extracts the law of the Member State where the broadcaster supplying the initial signal (i.e. giving access) is established should apply. This is usually the Member State in which the event concerned takes place. Where a Member State has established an equivalent system of access to the event concerned, the law of that Member State will apply in any case. Secondly, for transmission of the short extracts, the law of the Member State where the broadcaster transmitting the short extracts is established will apply.

European works in on-demand audiovisual media services: Member States must ensure that not only television broadcasters but also on-demand audiovisual media services promote 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 offered by the on-demand audiovisual media service.

Product placement: the Directive establishes the principle that product placement be prohibited for all programmes. However, exemptions to this principle are provided for certain types of programme (films, series, sports and light entertainment) subject to certain conditions. These exemptions will apply automatically unless a Member State opts out of them. The requirement to identify product placement at the moment that a programme resumes after an advertising break has also been added, and the specific case of 'thematic placement' has been addressed in a recital.

Advertising: the Directive provides that a core of 'qualitative' rules on audiovisual commercial communication are applied to all audiovisual media services, whilst the 'quantitative' rules, which apply only to television broadcasting, have been simplified and streamlined, with a view to creating a regulatory environment in which the 'free-to-air' broadcasting model can continue to compete with subscription-based television channels. The Directive ensures additional protection for children. It requires Member States and the Commission to encourage the development of codes of conduct regarding advertising of 'junk food' aimed at children, whilst the quantitative rules on interruption of programmes are stricter for children's programmes.

Protection of minors in on-demand audiovisual media services: Member States must take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

Access of people with a visual or hearing disability: media service providers must be encouraged by Member States to ensure that their services are gradually made accessible to people with a visual or hearing disability.

Independent Regulators: Member States must take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of the Directive, notably through their competent independent regulatory bodies.

Media literacy: a recital underlines the vital role of media literacy and also recalls the Recommendation of 20 December 2006 which contains significant content relating to media literacy. The Commission is now required, as part of its reporting obligations and when deciding on future proposals for adaptations of the Directive, to pay particular attention to media literacy levels in Member States.

Right of reply: the obligations in Directive 89/552/EEC relating to television broadcasting remain untouched. A recital explains that the right of reply could also be applied as a legal remedy in the online environment and recalls the Recommendation on the protection of minors and human dignity and on the right to reply.

Report: not later than 19 December 2011, and every three years thereafter, the Commission must submit a report on the application of the Directive and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States. The report must also assess the issue of television advertising accompanying or included in children's programmes, and in particular whether the quantitative and qualitative rules contained in the Directive have afforded the level of protection required.

TRANSPOSITION: 19 December 2009.

ENTRY INTO FORCE: 19 December 2007.