

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

2005/0260(COD) - 13/12/2006 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution based on the report drafted by Ruth **HIERONYMI** (EPP-ED, DE) and made some amendments to the proposal:

Product placement: Parliament backed a new amendment which will see product placement allowed in a limited range of programmes, and then only under strict rules. Product placement is banned in news and current affairs programmes, children's programmes, documentaries and programmes of advice. The text states that product integration and thematic placement shall be prohibited in principle.

Member States could still permit it in cinematographic works, films and series made for television and sports broadcasts, as well as in cases of production props where no payment is made but certain goods or services are merely provided for free of charge with a view to their inclusion in a programme.

Even where they are allowed, however, Parliament stated that the content and the scheduling programmes that feature product placement should never affect the responsibility and editorial independence of the broadcaster. Nor should they directly encourage the purchase or rental of goods or services or give undue prominence to the product in question.

Lastly, viewers should be appropriately notified of the existence of product placement in such programmes, at the start and the end of the programme and by a signal at least every 20 minutes during the programme. In cases of production props, the viewer should be informed of the use of any such aid by appropriate means. MEPs agreed with the Commission that product placement for tobacco products or cigarettes (or producers whose principal activity is the manufacture or sale of cigarettes and other tobacco products) should be completely banned. This ban would also apply to specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

New rules on advertising: Parliament voted to limit advertising breaks in the transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes to once for each scheduled period of 30 minutes - and not, as the Commission had proposed, every 35 minutes, or 45 minutes as the Culture Committee had proposed. On this amendment, 324 MEPs voted in favour and 323 against.

Television advertising and teleshopping will have to be readily recognisable and distinguishable from editorial content. They will also have to be kept quite distinct from other parts of the programme service by optical and/or acoustic and/or spatial means. The proportion of short forms of advertising such as advertising spots and teleshopping spots within a given clock hour must not exceed 20%.

Agreeing with the Commission that audiovisual commercial communications must not use subliminal techniques, Parliament inserted a clause stating that the sound volume of advertisements, and of the programmes or sequences which precede and follow them, shall not exceed the average sound volume of other parts of the programme service. This obligation shall be as much the responsibility of advertisers as

it is of broadcasters, which must ensure that advertisers comply with it when supplying their advertising material.

Parliament asked Member States and the Commission to encourage audiovisual service provider 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. Accordingly, Parliament opted for self-regulation for the industry in this area.

Derogations from the country of origin principle: derogations from the country of origin principle allow all Member States to adopt more detailed or stricter rules, provided that they are justified for reasons of public policy, including the protection of minors or public security or public health or the protection of cultural diversity. Once a Member State considers that a broadcaster under the jurisdiction of another Member State has taken advantage of the Directive in abusive or fraudulent manner in order to circumvent such rules, it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed.

In an attempt to prevent any further abuse or fraudulent conduct, MEPs also clarified a set of criteria to be applied when a Member State adopts appropriate measures against the media service provider based in another EU country. Such measures have to 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.

The European Commission would have to be asked whether the measures are compatible with Community law. If it rules that they are not, the Member State in question must refrain from taking the proposed measures.

Ethical issues: under the Commission's proposal, Member States would have to ensure that commercials aired by providers under their jurisdiction do not include or incite prejudice or discrimination. Parliament proposed additional conditions, saying commercials should not offend on the basis of gender, disability, age or sexual orientation, nor violate human dignity.

Protection of minors: Member States must 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. This applies in particular to programmes containing pornography and gratuitous acts of violence. The Commission and the Member States should encourage the relevant players in the media sector to promote a Community-wide labelling, assessment and filtering system as a further measure to protect minors. Member States must promote measures to give parents and other carers greater control over the pornographic and gratuitously violent content of programmes. In addition, the Commission and Member States must encourage audiovisual media service providers, regulatory authorities and all parties concerned to consider the technical and legal feasibility of developing a harmonised system of content symbols promoting better filtering and classification at source, regardless of the delivery platform used, with a view to providing greater protection for minors. Audiovisual media service providers should also promote information campaigns to prevent violence against women and minors, where possible in collaboration with public and private associations and entities involved in this field.

People with disabilities: Member States must ensure that audio-visual media services are gradually made accessible to people with a visual or hearing disability, and must submit a bi-annual report to the Commission on the progress they have made. Member States shall submit a national report to the Commission every two years on the application of this Article. The report will include, in particular, statistics on the progress made towards achieving the goal of accessibility, and describe any obstacles and describe the measures needed to overcome them.

Right of reply: without prejudice to other provisions adopted by the Member States under civil, administrative or criminal law, any natural or legal person, regardless of nationality, whose legitimate interests, in particular but not limited to reputation and good name, have been affected by an assertion of facts in a transmission shall have a right of reply or equivalent remedies. A right of reply or equivalent remedies shall exist in relation to all broadcasters under the jurisdiction of a Member State . The latter must adopt the measures needed to establish the right of reply or equivalent remedies and determine the procedure to be followed for its exercise.. In particular, they shall ensure that a sufficient period of time is allowed and that the procedures are such that the right or equivalent remedies may be exercised appropriately by natural or legal persons resident or established in other Member States

Scope of the directive: Parliament clarified the definition of "audiovisual media service" and added that it does not include services where the provision of audiovisual content is merely incidental to the service and not its principal purpose, nor does it include the press in printed and electronic form. It added the notion of editorial responsibility to the text. Parliament also clarified the concepts of 'linear' and 'non-linear' services defined in the initial proposal. The former refers to traditional television services, transmitted to viewers' receivers at a specific time chosen by the broadcaster. The latter refers to television services on the web and video on demand, where the viewer chooses when to watch programmes. In making this distinction, Parliament insisted that providers of linear services should be more tightly regulated.

A new clause states that Member States must entrust to the national regulatory authorities the task of ensuring that audiovisual media service providers comply with the provisions of this Directive, in particular those relating to freedom of expression, media pluralism, human dignity, the principle of non-discrimination and the protection of minors, the vulnerable and the disabled. They must also adopt the measures needed to ensure pluralism of information in the television broadcasting system.