

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

2005/0260(COD) - 29/03/2007 - Modified legislative proposal

The Commission has accepted 37 amendments proposed by the European Parliament in full. The rest it has accepted in part on in principle. In summary, the amendments accepted by the Commission on the operative part of the proposed Directive are as follows:

Definitions: the Commission has accepted, subject to some rewording definitions on:

- **audiovisual media service;**
- **television broadcasting or television broadcast** (i.e. a **linear audiovisual media service**) meaning an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;
- **on-demand service** (i.e. a **non-linear audiovisual media service**) meaning 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;

Procedure according to Article 2 of the Directive: The Commission can, in principle, accept an amendment changing the procedure to ensure freedom of reception and the non-restriction of retransmissions, subject to some rewording. Thus, “Member States will only be allowed to derogate from paragraph 1 on condition a) an audiovisual media service coming from another Member States manifestly infringes Article 22 or Article 3d or Article 3e; b) during the previous 12 months, the media service provider has infringed the provisions 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) consultation with the Member States 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 States will be required to put an end to the measures in question as a matter of urgency.”

Procedure according to Article 3 of the Directive: The Commission can accept, in part, a Parliamentary amendment relating to Article 3 subject to the following rewording: “Member States will 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.”

Short reporting: The Commission can accept, in principle, three Parliamentary amendment concerning short reporting, subject to the following rewording: 1) “ Member States shall ensure that the purpose of short new 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.” 2) “Without prejudiced 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 reasonable defined, in particular any compensation arrangements.” and 3) “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.”

Basic tier provisions: In order to align the amendment of “basic tier provisions”, the Commission can accept this Parliamentary provision subject to the following rewording: “Member States shall ensure by appropriate means that audiovisual media services provide by providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.”

European production: The Commission accepts two Parliamentary amendment concerning this issue, subject to some reformulation: 1) “Member States shall ensure that on-demand service 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 programme proposed by the service.” and 2) “The Commission shall, on the basis of the information provided by the 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.”

Commercial Communication: With regard to commercial communication the Commission accepts two amendments with some alterations:

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.”

Product Placement: The Commission accepts one amendment proposed by the Parliament on Product Placements as follows:

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 (a) cinematographic works, films and series made for audiovisual media services, light entertainment and sports programmes; or (b) 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: a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or b) specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

Issues of accessibility: The Commission has accepted Parliament's amendment on accessibility subject to the following reformulation: "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; and 2) In its report according to Article 26 the Commission will also describe progress made in achieving these objectives".

Spot advertising: The Commission has accepted two amendments subject to some reformulation:

"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."

Teleshopping: The Commission can accept the Parliamentary amendment on this matter subject to some rewording: "Teleshopping windows shall be clearly identified as such by optical and acoustic means and be of an uninterrupted minimum duration of 15 minutes."

Regulatory authorities: The Commission has accepted two amendments subject to some rewording: "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."

General transposition provisions: The Commission has accepted two Parliamentary amendments subject to some rewording:

1) "No later than every three years, 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: i) European and independent production; and ii) Accessibility for people with disabilities. 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."

2) 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."