Basic information

2005/0260(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Directive	Procedure completed
Coordination of certain provisions in Member States concerning the pursuit of television broadcasting activities ('Audiovisual media services without frontiers') Amending Regulation (EC) No 2006/2004 2003/0162(COD) **Subject** 3.30.01 Audiovisual industry and services 3.30.02 Television, cable, digital, mobile	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
CULT Culture and Education	HIERONYMI Ruth (PPE-DE)	23/01/2006

Former committee responsible	Former rapporteur	Appointed
CULT Culture and Education	HIERONYMI Ruth (PPE-DE)	23/01/2006

Former committee for opinion	Former rapporteur for opinion	Appointed
ECON Economic and Monetary Affairs	HOPPENSTEDT Karsten Friedrich (PPE-DE)	14/03/2006
ITRE Industry, Research and Energy	DE MICHELIS Gianni (NI)	26/01/2006
IMCO Internal Market and Consumer Protection	RÜHLE Heide (Verts/ALE)	21/02/2006
LIBE Civil Liberties, Justice and Home Affairs	CAVADA Jean-Marie (ALDE)	22/02/2006
FEMM Women's Rights and Gender Equality	GRÖNER Lissy (PSE)	21/03/2006

Council of the European Union

Council configuration	Meetings	Date
General Affairs	2823	2007-10-15
Education, Youth, Culture and Sport	2729	2006-05-18

	Education, Youth, Culture and Sport	2802	2007-05-24
	Education, Youth, Culture and Sport	2762	2006-11-13

European Commission	Commission DG	Commissioner
	Communications Networks, Content and Technology	REDING Viviane

Key events

Date	Event	Reference	Summary
13/12/2005	Legislative proposal published	COM(2005)0646	Summary
02/02/2006	Committee referral announced in Parliament, 1st reading		
18/05/2006	Debate in Council		
13/11/2006	Debate in Council		Summary
13/11/2006	Vote in committee, 1st reading		Summary
23/11/2006	Committee report tabled for plenary, 1st reading	A6-0399/2006	
12/12/2006	Debate in Parliament		
13/12/2006	Decision by Parliament, 1st reading	T6-0559/2006	Summary
13/12/2006	Results of vote in Parliament		
29/03/2007	Modified legislative proposal published	COM(2007)0170	Summary
15/10/2007	Council position published	10076/6/2007	Summary
25/10/2007	Committee referral announced in Parliament, 2nd reading		
12/11/2007	Vote in committee, 2nd reading		Summary
13/11/2007	Committee recommendation tabled for plenary, 2nd reading	A6-0442/2007	
28/11/2007	Debate in Parliament		
29/11/2007	Decision by Parliament, 2nd reading	T6-0555/2007	Summary
29/11/2007	Results of vote in Parliament		
11/12/2007	Final act signed		
11/12/2007	End of procedure in Parliament		
18/12/2007	Final act published in Official Journal		

Technical information

Procedure reference	2005/0260(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)

Procedure subtype	Legislation
Legislative instrument	Directive
Amendments and repeals	Amending Regulation (EC) No 2006/2004 2003/0162(COD)
Legal basis	EC Treaty (after Amsterdam) EC 055 EC Treaty (after Amsterdam) EC 047-p2
Stage reached in procedure	Procedure completed
Committee dossier	CULT/6/55095

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE376.676	30/08/2006	
Amendments tabled in committee		PE378.630	21/09/2006	
Amendments tabled in committee		PE378.712	25/09/2006	
Amendments tabled in committee		PE378.740	25/09/2006	
Amendments tabled in committee		PE378.764	27/09/2006	
Committee opinion	FEMM	PE374.418	05/10/2006	
Committee opinion	IMCO	PE374.499	06/10/2006	
Committee opinion	LIBE	PE376.345	09/10/2006	
Committee opinion	ITRE	PE368.033	11/10/2006	
Committee opinion	ECON	PE376.714	12/10/2006	
Committee report tabled for plenary, 1st reading/single reading		A6-0399/2006	23/11/2006	
Text adopted by Parliament, 1st reading/single reading		T6-0559/2006	13/12/2006	Summary
Committee draft report		PE396.653	23/10/2007	
Committee recommendation tabled for plenary, 2nd reading		A6-0442/2007	13/11/2007	
Text adopted by Parliament, 2nd reading		T6-0555/2007	29/11/2007	Summary

Council of the EU

Document type	Reference	Date	Summary
Council position	10076/6/2007	15/10/2007	Summary
Draft final act	03667/2007/LEX	11/12/2007	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2005)0646	13/12/2005	Summary

Document attached to the procedure	SEC(2005)1625	13/12/2005	
Document attached to the procedure	SEC(2005)1626	13/12/2005	
Commission response to text adopted in plenary	SP(2007)0303	24/01/2007	
Modified legislative proposal	COM(2007)0170	29/03/2007	Summary
Commission communication on Council's position	COM(2007)0639	18/10/2007	Summary
Follow-up document	COM(2010)0450	23/09/2010	Summary
Follow-up document	SEC(2010)0995	23/09/2010	Summary

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES1178/2006	13/09/2006	

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	

Final act

Directive 2007/0065
OJ L 332 18.12.2007, p. 0027 Summary

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."

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

2005/0260(COD) - 23/09/2010 - Follow-up document

The Commission presents its ninth Communication on the application of Articles 4 and 5 of Directive 89/552/EEC (Television Without Frontiers Directive), as amended by Directive 97/36/EC and Directive 2007/65/EC for the period 2007-2008 ('Audiovisual Media Services'). The Communication is based on Member States' statistical statements on the achievement of the proportions referred to in these Articles by each of the television programmes falling within their jurisdiction and presents the Commission's opinion on the application of these provisions, including the main conclusions to be drawn from the Member States' reports.

The purpose of this biennial reporting exercise is twofold:

- the Communication brings the statistical statements by the Member States to the knowledge of the other Member States, the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions:
- it aims to verify whether the measures adopted by the Member States with a view to promoting European works and independent productions have been properly applied.

For this reporting exercise, the Commission provided all the Member States with a predefined list of channels extracted from the MAVISE data base of the European Audiovisual Observatory. The purpose was to use a uniform basis to increase the consistency and comparability of the statistical data

provided by the Member States. In accordance with the provisions of the Directive, local channels were removed from the list since they are excluded from the scope of Articles 4 and 5 as well as channels which do not broadcast in an EU language and channels which broadcast exclusively for reception outside the EU and cannot be received in the EU. As had already been the case for the previous report, all channels falling within the jurisdiction of a given Member State had to be considered independently of their audience share. Additional details can be found in the background documents included in the Commission Staff Working Document accompanying this Communication (SEC(2010)0995).

For the first time, Bulgaria and Romania, which joined the EU on 1 January 2007 and provided statistical data on a voluntary basis for the 2005-2006 period, fulfilled their obligation to report on the application of Articles 4 and 5 during the 2007-2008 period. It is thus the first time that this Communication includes the compulsory reports of all 27 EU Member States.

According to the statistical data provided by the Member States, the scheduling of European works at the EU level registered a very slight increase during the current reference period. Over the period 2005-2008, development was stable, although some variations were registered between 2005 and 2007 (upward trend followed by a decrease in 2007). However, in 2008 European works scheduling was back at the same level as in 2005 (63.2 % for the EU- 27). This demonstrates stabilisation at a relatively high level, **well above the required proportion set out in Article 4**. Furthermore, this result has to be interpreted against the background of a continued increase in the number of channels on the market, with the emergence of small specialised channels which may well find it difficult to meet the required proportion of European works from the start of their operations. This aspect was already stressed in the eighth Communication and should be taken into account when assessing overall performance with respect to the scheduling of European works in the EU over the current reference period.

Although the overall situation is satisfactory, there is still some room for progress:

- the three Member States (Cyprus, Sweden, Slovenia) which failed to attain the required proportions of European works in 2007 and 2008 should step up their efforts in order to improve their performance and strengthen the increase (in one case, very slight) already registered in 2008. Since two of these underperforming Member States belong to the EU-10, an increase in their European works averages would have a positive impact on the downward trend registered by the EU-10 between 2005 and 2008, which should also be corrected;
- it is worth drawing attention to the high level of European works scheduling achieved by the two most recent Member States during the reference period and the increase they registered over the 2005-2008 period.

With respect to the **implementation of Article 5 of the Directive**, the overall development observed during the reference period shows a slight downward trend for independent works. According to the statistical statements provided by the Member States, a decrease was registered over the current reference period as well as in the period 2005-2008. Although it is not a significant decrease (-0.83 point from 2005 to 2008), it reverses the positive trend that was registered in the previous period. As far as independent productions are concerned, it should be noted that the EU-10 improved their performance.

There is a somewhat sharper downward trend as regards recent works by independent producers over the period 2005-2008. Member States are invited to encourage the channels falling within their jurisdiction to step up their efforts in order to increase the scheduling of independent productions and recent works.

Nonetheless, the results achieved during the reference period testify to a satisfactory implementation of Article 5, with a level of achievement well above the proportions required by this provision.

As already stated in the eighth Communication, the results of the analysis of the reports submitted by the Member States show that the requirements set out in Articles 4 and 5 of the Directive have been met comfortably during the period 2007-2008.

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

2005/0260(COD) - 13/11/2006

Pending the European Parliament's first reading opinion, the Council agreed on a general approach on this proposal, on the basis of a compromise text tabled by the Presidency. The Council addressed in particular four major issues, namely the Directive's scope, jurisdiction, product placement and quantitative advertising rules.

Following a long discussion, a compromise text was agreed that was supported by all delegations except Sweden, Ireland, Latvia, Belgium, Lithuania, Luxemburg and Austria. The Commission, Austria, Germany and Italy stated their intention of adding statements to the Council minutes. The text agreed seeks to address the significant technological and market developments of recent years while ensuring a competitive level playing field between service providers. It establishes common minimum rules for all audiovisual media services irrespective of the transmission platform used for their delivery.

Within the notion of audiovisual media services the text distinguishes between "linear" television broadcasts (e.g. scheduled broadcasting via traditional TV, the internet or mobile phones) which "pushes" content to viewers and "non-linear" on-demand services competing with television (such as video-on-demand), which the viewer "pulls" from a network). Only the common minimum rules would apply to on-demand services, whilst additional rules, including the quantitative rules on advertising, would apply to television broadcasts.

The text of the general approach would modernise and simplify the quantitative rules on television advertising by giving more flexibility to broadcasters with regard to the insertion of advertising.

However, the draft directive would not increase the hourly amount of admissible advertising and it would continue to limit possible interruptions for cinematographic works, television films and news programmes. Specific restrictions on the interruption of children's programmes by advertising are also retained.

The general approach would introduce into the Directive rules on the issue of product placement. In principle such a practice would be forbidden, but Member States would be free to derogate from this prohibition for certain categories of programmes, subject to strict conditions to protect the viewer.

Like the existing directive, the general approach continues to use the principle of country-of-origin to determine jurisdiction between Member States. However, the text agreed includes a Community mechanism allowing a "destination" Member State in certain limited circumstances to take measures against a provider established in another Member State. Co-operation between Member States in their handling of services provided across frontiers is also mandatory.

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

2005/0260(COD) - 13/12/2005 - Legislative proposal

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.

PROPOSED ACT : Directive of the European Parliament and of the Council.

CONTENT : the aim of the revision is to define rules for audiovisual media services in a platform neutral way, which would mean that the same basic rules apply to the same kind of services. The set of applicable rules shall no longer depend on the delivery platform but on the nature of a service. The future regulation will distinguish between linear audiovisual services or “broadcasting”, including IPTV, streaming or web-casting on one side, and non-linear services, such as “video-on-demand”- services, on the other side.

The amending Directive introduces new definitions based around the notion of “audiovisual media service”. The definition of audiovisual media services covers mass media in their function to inform, entertain and educate, but excludes any form of private correspondence, like e-mails sent to a limited number of recipients. This definition also excludes all services the principal purpose of which is not to provide audiovisual content, even where such services contain some audiovisual elements. Services where the audiovisual content is merely ancillary to and not the principal purpose of the service are not covered.

Other measures contain the basic tier of rules for all audiovisual media services. As a consequence, some of the specific provisions for television broadcasts can be abolished.

Non-linear (on-demand) services will be subject to some minimum principles with regard to the protection of minors; the prohibition of incitement to hatred; the identification of the media service provider; the identification of commercial communication and some qualitative restrictions for commercial communication (ex. for alcohol or targeted at minors).

A new Article introduces a rule on the non-discriminatory application of the right to short news reporting for linear services.

The main changes to Chapter IV on television advertising concern flexible rules for the insertion of advertising, clear rules for product placement, the abolition of the daily limit on television advertising and the dropping of quantitative restrictions with regard to teleshopping. The daily limit of three hours of advertising per days is considered obsolete, as it finds no application in practice and therefore it is deleted. The insertion rules have been simplified and made more flexible. Instead of being compelled - as is now the case - to allow 20 minutes time between each advertising break, broadcasters can now choose the most appropriate moment to insert advertising during programmes. Nonetheless, films made for television, cinematographic works, children’s programmes and news programmes may be interrupted by advertising only once per each period of 35 minutes.

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

2005/0260(COD) - 24/05/2007

The Council reached, by unanimity, political agreement on a draft directive on the coordination of certain provisions concerning the audiovisual media services. The text agreed by the Council has been pre-negotiated with the European Parliament, in accordance with the joint inter-institutional declaration on practical arrangements for the codecision procedure. It is, therefore, expected that the common position formalising today's political agreement will be adopted by the European Parliament with no amendments.

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

2005/0260(COD) - 18/10/2007 - Commission communication on Council's position

The Commission states that the common position meets the aims of the Commission's initial and modified proposals, and that the Commission therefore supports the text. The political agreement on the common position is, in substance, in line with the Commission's proposal. This is especially true for rules on scope, commercial communication, product placement, short reports, media pluralism, media literacy and co-regulation.

The Commission points out that the common position is the result of intense inter-institutional negotiations. The Chair of the CULT Committee, Mr Nikolaos Sifunakis, confirmed the agreement in a letter of 21 May 2007 to Dr. P. Witt, President of the COREPER. The Commission noted with satisfaction that the colegislators chose not to modify the rules that define the **place of establishment** of a media service provider and reaffirmed the right of a broadcaster to offer its

services in the Internal market from the country of establishment he chooses. As concerns **stricter national rules**, the Audiovisual Media Services Directive provides a new procedure regarding broadcasters possibly circumventing the stricter rules of a Member State having availed itself of the faculty to adopt such rules that are compatible with Community law.

The Commission is confident that the first stage of the procedure, consisting of cooperation between the Member States concerned on a "best endeavours" basis, will enable most difficulties to be solved at an early stage. Should the non-binding cooperation stage fail, a second, formal stage would begin, where the European Commission would play its role according to the new procedure set in place, which is to examine the compatibility of the Member State's proposed measures with Community law. If the proposed measures are deemed by the Commission not to be compatible with Community Law, the Member State concerned must refrain from taking them. The Commission considers that these procedural provisions safeguard the "country of establishment" principle.

With regard to **short reporting** for general new purposes, the compromise provision is acceptable for the Commission. On compensation the compromise wording was chosen to ensure that the right to short reporting can not be read as compulsory license which would have given the receiving broadcasters wider rights. This solution is largely supported by all stakeholders, broadcasters as well as rights owners.

As regards the **ban on discrimination in audiovisual commercial communications,** the Council accepted, in response to Parliament's request that the compromise text should refer to all the categories of discrimination mentioned in Article 13 of the Treaty. This is acceptable for the Commission.

With regard to the **independence of regulatory authorities** the Presidency proposed a reference in a recital referring to the faculty for Member States to create independent national regulatory bodies. These should be independent from national governments as well as from operators. Parliament and the Commission found it necessary that the reference to such bodies be included in the operative part of the Directive, and the text is acceptable to the Commission.

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

2005/0260(COD) - 15/10/2007 - Council position

The common position reflects the outcome of informal contacts between the Parliament, the Commission and the Council. The Council states that, although the common position contains some significant changes with regard to the Commission's initial proposal, both in structure and substance, the basic approach proposed by the Commission, as well as all the principal elements contained in its proposal, have been retained.

Structural changes: the Commission proposed a new two-tier regulatory architecture comprising a core of rules applicable to all audiovisual media services and an additional layer of obligations applicable only to television broadcasting. The common position retains this basic philosophy but introduces significant structural changes (introducing new Chapters and reordering certain articles) to ensure that obligations applicable to all service providers are grouped separately from those applicable only to on-demand services, which are in turn grouped separately from those applicable only to televisions broadcasting. These structural changes greatly improve the readability and legal clarity of the text.

Substantive Changes

Scope: the common position clarifies the extension to the scope of the Directive proposed by the Commission. The philosophy is that the 'on-demand services' now included should compete for the same audience as television broadcasts. The most significant change to the Commission's proposal in this regard is the introduction of the notion of a "programme", whilst the notion of "editorial responsibility" has also been emphasised further. The common position has also sought to bring legal clarity regarding the relationship of the Directive with other legal instruments, in particular Directive 2000 /31/EC (the eCommerce Directive).

Jurisdiction and free movement of services: the Council supports the basic approach of the Commission's proposal, i.e. that jurisdiction should continue to be determined on the basis of the establishment of the service provider (country of origin principle) but that there should be 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 common position text develops the mechanism proposed by the Commission, creating a first 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. On the related question of free movement of services, and measures derogating from that principle, the common position maintains the legal status quo. 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.

Co- and self- regulation: the common position recognises the important role of such 'soft law' by including an obligation on Member States to encourage co- and/or self-regulatory regimes to the extent permitted by their legal systems.

Product placement: the Council establishes the principle that product placement be prohibited for all programmes produced after the transposition deadline for the Directive. 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.

Other provisions on advertising, including that aimed at children: the common position essentially follows the philosophy of the Commission proposal, whereby 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 compared to the rules of the existing Directive, 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 common position 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.

Short news reports: the Commission proposed a provision seeking to ensure the non-discriminative application of national systems aimed at guaranteeing, for the purpose of short news reports, broadcasters' access to events of high interest to the public. The common position text is more ambitious, in that it creates an obligation on Member States to establish such a system, thus in effect creating a Community-wide right. The key aspects of this right are harmonised by the text, whilst the detailed modalities and conditions of its application are left to Member States to decide in accordance with the principle of subsidiarity.

Regulatory authorities: the common position text reflects a sensitive compromise between the European Parliament and the Council on this issue. The heart of this compromise is found in the new Article 23b dealing with cooperation and the exchange of information.

Protection of minors: whilst leaving the current provisions applicable to television broadcasting intact, the common position adds an obligation with regard to on-demand audiovisual media services. The obligation envisages that minors are protected by ensuring that are not normally able to access services which might seriously impair their physical, mental or moral development. The recitals refer to filtering systems and PIN codes as examples of measures that could be used. The recitals also draw attention to the Recommendation of 20 December 2006 on the protection of minors and human dignity and on the right to reply.

European Works: the provisions of the existing Directive applicable to television broadcasting are left untouched by the common position. With regard to on-demand audiovisual media services, however, media service providers have a new obligation to promote production of and access to European works.

Access of disabled persons to services: the common position contains an obligation on Member States to encourage service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability.

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 existing obligations 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.

The Council feels that the common position, the result of informal negotiations between the European Parliament, the Council and the Commission, maintains the approach and legal architecture proposed by the Commission with a view to adapting the regulation of the audiovisual sector to market and technological change. Important clarifications have been made to the scope of the Directive and to the provisions dealing with jurisdiction, and a number of other important adjustments have been made, including on sensitive questions such as product placement, advertising (particularly to children), extracts for short news reports, regulatory authorities and access of disabled persons to services.

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.

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. roduct 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, he 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.

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

2005/0260(COD) - 23/09/2010 - Follow-up document

This Staff working document supplements the Commission’s Communication on the application of Articles 4 and 5 of Directive 97/36/EC, pursuant to Article 4(3). The ninth Communication, covering the years 2007 and 2008, outlines the Commission’s opinion on application of Articles 4 and 5 at Community level and the principal conclusions which can be drawn from the Member States’ reports. This document contains a detailed analysis of application of Articles 4 and 5 in each Member State based on the reporting obligations for the reference period.

The Commission is responsible for ensuring correct application of Articles 4 and 5 of the Directive in accordance with the Treaty. Article 4(3) of the Directive requires the Member States to provide the Commission with a report on application of Articles 4 and 5 every two years. Summaries of these reports are provided in Annex 3. This document comprises two parts: general remarks on the application of Articles 4 and 5; and detailed analysis for each Member State on the application of those provisions.

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

2005/0260(COD) - 29/11/2007 - Text adopted by Parliament, 2nd reading

The European Parliament adopted a report drawn up by Ruth **HIERONYMI** (EPP-ED, DE) and approved the Council's common position on the proposal 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.