

COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 21 March 1988

Amended Proposal for a
COUNCIL DIRECTIVE

on the coordination of certain provisions laid down by law, regulation
or administrative action in Member States concerning the pursuit
of broadcasting activities

(submitted by the Commission to the Council pursuant to
Article 149(3) of the EEC Treaty)

EXPLANATORY MEMORANDUM

On 30 April 1986, the Commission submitted to the Council its proposal for a Council Directive concerning broadcasting activities¹.

The Economic and Social Committee delivered an Opinion on the proposal on 1 July 1987².

The European Parliament, consulted under the co-operation procedure, discussed the proposal in detail in its Committees and on 19 January 1988, debated the report drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights by Mr. Barzanti, voting overwhelmingly in support of the proposed Directive as amended by Parliament on 20 January 1988³.

The amended proposal for a Directive is intended primarily to take into account those Opinions. Moreover, several minor amendments are introduced in the light of discussions and deliberations which have taken place since the original proposal was first made.

The amended proposal contains three major modifications of the original proposal. First, the concept of a Community work, relevant to the chapter concerned with promotion of distribution and production of television programmes, has been considerably enlarged, in particular in order to allow works produced in European countries which are not Member States of the European Community to be taken into account. Such a possibility would be based on agreements allowing for reciprocal treatment.

Second, the amended proposal considerably strengthens the position of copyright holders. In order to ensure free circulation of broadcasts, it no longer requires the establishment of a legal licence in the context of

¹ OJ C 179 of 17.7.1986, p.4

² OJ C 232 of 31.8.1987, p.29.

³ Minutes of proceedings of the sitting of Wednesday, 20 January 1988, PE 120.083, p.11.

copyright but proposes the setting up of bodies representing the interests involved which will be called upon to arbitrate in cases of remaining conflicts should all efforts to come to a contractual arrangement fail.

Third, the amended proposal contains a new chapter introducing the possibility of a right of reply for natural or legal persons whose legitimate interests have been damaged by the insertion of incorrect facts in a broadcast originating in the Community. Several other amendments have equally been introduced to the proposal following the Opinion of the European Parliament. In particular, the formal distinction between internal and cross-frontier broadcasts has been abolished. However, in the context of advertising the original approach has been maintained of allowing Member States to be more flexible in setting the levels for advertising in respect of the broadcasters under their jurisdiction. At the same time the Directive continues to provide a threshold for Member States to prohibit excessive amounts of advertising contained in programmes originating in other Member States. The proposal no longer requires the grouping of advertisements in blocks. A two tier system, operating mainly on the basis of a time threshold, has been introduced in the Chapter concerned with youth protection and definitions on sponsoring and independent producers have been added in the Chapter containing the final provisions.

The Commission has taken into account the requirements of Article 80 of the Treaty in the preparation of this proposal and has concluded that no special provision seems to be justified at this stage.

COMMENTARY ON THE RECITALS

The recitals have been adapted in line with most amendments adopted by Parliament. Minor drafting changes have been introduced.

Thirty ninth recital.

The Commission maintains the original wording of its proposal, in a slightly modified version, in order to maintain coherence of the text.

COMMENTARY ON THE ARTICLES

Article 1

In conformity with the Opinion of the European Parliament, Article 1(1) no longer contains any reference to internal broadcasts. However, in order to underline the major principle of the exclusive responsibility of the transmitting state for ensuring that broadcasts originating from broadcasters under their jurisdiction comply with the provisions of the directive the proposal now refers to broadcasters under the jurisdiction of a Member State. In doing so, the proposal takes up the concept proposed by Parliament in its amended version of Article 6.

Article 2

The amended proposal follows the amendment proposed by the European Parliament, with some minor editorial changes, emphasising the final quota to be reached at the end of a transitional period and allowing for greater flexibility in attaining such a quota in the three year transitional phase.

First, the reference to internal broadcasts has been omitted since Article 1(1) now already clearly refers to the responsibility of each Member State for broadcasters under its jurisdiction. Second, it has proved necessary to make specific reference to cable operators retransmitting television broadcasts as the definition of 'broadcasting' in Article 21 no longer refers to retransmissions. The change of this definition allows considerable lightening of the conceptual framework of the directive and no longer

necessitates references to concepts such as initial transmissions (Article 2), primary broadcasts or original programmes (Article 3 as amended by Parliament) without changing the regulatory content of the proposed Directive. Third, in order to take into account Parliament's amendments relating to the definition of a 'Community work', the amended proposal now regroups all elements of such a definition in a new version of Article 4. Fourth, in line with the Opinion of Parliament the amended proposal extends the definition of 'first broadcasts' to co-productions with non-Member States. Whereas the Opinion of Parliament limited itself to co-productions with EFTA and Council of Europe States, the amended proposal proposes to extend this principle to all co-productions involving at least one Community co-producer. This would stimulate co-productions without affecting the main provision requiring a 60% European content of programmes.

Article 3

The amended proposal follows the Opinion of Parliament. For the reasons set out above reference to 'internal' broadcasters, 'initial transmissions', 'primary broadcasts' and 'original programmes' is no longer necessary. All elements of the definition of 'Community work' are contained in Article 4.

Article 4

This Article has been reworded in order to take into account all the essential elements of the definition of a Community work as amended by the European Parliament in Article 2, 3 and 4.

The first major addition to the proposal of the Commission is that a Community work is defined not only by reference to producers but also to authors and workers residing in one or more Member States. This condition relates to all types of Community works as defined.

Second, supervision of the production by a Community producer is considered to be a sufficient criterion to establish the Community nature of a work, thus acknowledging the preponderance of creative Community input over the origin of the capital.

Third, the level of the Community contribution to the total production cost is reduced from 70% to 51% for similar reasons.

Fourth, where the Community contribution to the production costs of a work lies below the 51% threshold, provision is made for this work to be counted towards the quota on a pro rata basis equal to the level of Community investment in the production of such a work. Fifth, the definition of a Community work has been enlarged in order to encompass works produced in, or co-produced with producers from EFTA or Council of Europe States not Members of the Community. Such a possibility would be based on agreements ensuring that Community works would also receive preferential treatment in these countries. It equally emphasizes the creative input by authors and workers.

Article 4a

The exception in favour of local television broadcasters has been proposed by the European Parliament. Paragraph 2 enables Member States who wish to do so to be more stringent or specific as regards all or some of their own broadcasters by introducing the same type of provision already existing in the chapters on broadcast advertising and sponsoring and on the protection of children and young persons.

Article 4b

This Article invites the Commission to enter into the necessary negotiations in order to make the provisions on the mutual recognition of Community works and works from States of EFTA or Council of Europe operational.

Chapter III: Broadcast advertising and sponsoring

In accordance with the wishes of Parliament, this chapter no longer contains two distinct sections, the one relating to internal broadcasts and the other to cross-frontier television broadcasts.

Article 5

The new proposal follows the line of the amendment proposed by Parliament. It makes the regulation of advertising subject to the general criteria mentioned and adds to these the objective of safeguarding the pluralism of information.

Article 6

This amendment takes up the wish of the European Parliament to delete any reference to prior checking of broadcasts but maintains the objective that advertising, not in conformity with the rules of this chapter, should be prevented from transmission. Any reference to a broadcaster being under the jurisdiction of a Member State or to internal broadcasts is no longer necessary in view of the rephrasing of Article 1(1).

Article 7

This amendment takes up the amendment of the European Parliament, deleting any reference to 'block advertising' in the text of the proposal. The means by which advertising has to be separated from other programmes are identified.

Article 8

This Article has been changed in line with the Opinion of the European Parliament, deleting any reference to 'good taste' and adding 'discrimination on grounds of nationality' and a new requirement relating to the 'respect for the dignity of women'. The amended proposal has further been enlarged by adding 'the protection of the environment' to line (e).

Article 10

The amended proposal takes up the drafting proposed by the European Parliament.

Article 12

The amended proposal follows the Opinion of the European Parliament. Paragraph 1 contains the clarification, that the sponsoring of programmes is allowed. Paragraph 2 is reinforced by excluding any de jure or de facto influence of undertakings on the content of sponsored programmes. Lit. d) prohibits advertising where there is any "direct" link in content or presentation with the programme.

Article 13

The amended proposal follows the Opinion of the European Parliament but refers to the concept used in Article 1(1) rather than to 'internal' broadcasts. Moreover, an exemption contained in paragraph 3 is granted to local broadcasters in order to be able to compensate for the limited target audience by more flexible rules as to volume and presentation of advertising.

Article 14

The amended proposal follows the Opinion of Parliament in deleting the distinction between internal and cross-frontier broadcasts whilst maintaining the possibility for Member States to oppose the reception and retransmission of television broadcasts exceeding a proportion of advertising equal to 15% per day and 18% in any given hour in line with the amendment proposed by Parliament to Article 5.

Article 15

The amended proposal takes up the amendments proposed by the European Parliament, introducing a flexible time limit for certain programmes which do not consist of pornography, gratuitous violence or incitement to racial hatred but which nevertheless might harm the physical, mental or moral development of children and young persons.

Paragraph 2 has been adapted to correspond with the amended proposal of Art. 6.

Article 16

The amended proposal takes into account the deletion of the concept of internal broadcasts.

Articles 17 to 19

The amended proposal adopts the line proposed by the European Parliament and the Economic and Social Committee. First, the priority of contractual agreements on the cross-frontier retransmission by cable of broadcasts is underlined by the introduction of a new obligation on Member States to

encourage negotiations between the interested parties to that effect. Second, failing these efforts and insofar as free circulation of broadcasts in the Community is impeded, the Member States shall provide for bodies representing the interests involved to be called upon to arbitrate on the level of remuneration in those few cases where conflict remains.

Article 20a

The amended proposal introduces, in conformity with the Opinions of the European Parliament and the Economic and Social Committee, a new chapter consisting of a single Article on the right of reply. The amended proposal follows the wording proposed by Parliament closely but makes minor changes mainly in order to simplify the text and at the same time to accommodate different systems of reply already existing in some Member States.

Article 21

The amended proposal takes up the amendments proposed by the European Parliament, in particular the deletion of internal and cross-frontier broadcasts and the addition of two new definitions relating to sponsoring and independent producers. As already explained under Article 1, the amended proposal deletes the reference to retransmissions in the definition of 'broadcasting' in order to make it clear that the obligation of Member States to ensure the respect of the Directive by broadcasters under their jurisdiction does not extend to cable operators retransmitting broadcasts from other Member States.

Article 23

The amended proposal adopts the time span proposed by the European Parliament.

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE
on the coordination of certain provisions laid down by law,
regulation or administrative action in Member States concerning
the pursuit of broadcasting activities

Original Proposal

Amended Proposal

The Council of the European Communities,

Having regard to the Treaty establishing
the European Economic Community, and in
particular Articles 57(2) and 66 thereof,

Having regard to the proposal from the
Commission,

Having regard to the opinion of the
European Parliament,

Having regard to the opinion of the
Economic and Social Committee,

Whereas the objectives of the
Community as laid down in the Treaty
include an ever closer union among
the peoples of Europe and closer
relations between the States belonging
to the Community, ensuring the economic
and social progress of its countries
by common action to eliminate the
barriers which divide Europe, the
constant improvement of the living
conditions of its peoples as well as
the preservation and strengthening of
peace and liberty;

Unchanged.

Having regard to the proposal from the
Commission, (1)

In cooperation with the
European Parliament, (2)

Having regard to the opinion of the
Economic and Social Committee, (3)

Unchanged.

(1) OJ C 179 of 17.7.86, p. 4.

(2) Minutes of the proceedings of the
sitting of Wednesday 20.1.1988,
PE 120.083, p. 11.

(3) OJ C 232 of 31.8.1987, p. 29.

Original Proposal

Amended Proposal

Whereas for these purposes, the Treaty provides for establishing a common market, including the abolition, as between Member States, of obstacles to freedom of movement for services, the institution of a system ensuring that competition in the common market is not distorted, and the approximation of the provisions of Member States to the extent required for the proper functioning of the common market;

Unchanged.

Whereas broadcasts transmitted across frontiers within the Community, in particular by satellite and cable, are one of the principal means to promote the above objectives of the Community which are at the same time of a political, economic, social, cultural and legal nature;

Unchanged.

Whereas the attainment of the above objectives of the Community calls, almost 30 years after the establishment of the Community, for transition from the stage of the opening up of national markets for the production and distribution of broadcasts to the stage of one internal market for broadcasts;

Unchanged.

.1.

11.

Original Proposal

Whereas the achievement of this common market presupposes, in addition to the elimination of obstacles to the free movement of broadcasts, the adaptation and promotion of the factors of production and distribution in the Community of broadcast programmes in order to ensure that the enlarged market for broadcast programmes will operate similarly to a domestic market;

Whereas for this purpose or, in the words of the Treaty, in order to make it easier for persons to take up and pursue activities as self-employed persons, including the activities of producing or distributing broadcast programmes, the Treaty provides for the issuing of directives for the coordination of the provisions concerning the taking up and pursuit of such activities;

Amended Proposal

Unchanged.

Unchanged.

Whereas an essential condition for attaining the objectives of this Directive is to ensure the efficiency of the public broadcasting system by establishing conditions of fair competition in the common market;

Original Proposal

Whereas the broadcasting of commercial advertisements is a service within the meaning of the Treaty because it is provided for remuneration; whereas the liberalization of this service helps to promote trade in goods and services and has therefore to be given priority under the Treaty;

Whereas the broadcasting of other messages is also a service within the meaning of the Treaty because this activity is normally provided for remuneration and is, by its nature, not governed by the provisions of the Treaty relating to freedom of movement for goods such as other media like videocassettes, videodiscs, records, newspapers, magazines, periodicals and books;

Whereas the granting by a foreign broadcasting organization or other right holder to a domestic cable operator of the authorization required by copyright or other laws to relay the foreign programmes also constitutes a service within the meaning of the Treaty because it is normally provided for remuneration;

Amended Proposal

Delete.

Whereas the broadcasting of messages, including advertising, is a service within the meaning of the Treaty because this activity is normally provided for remuneration and is, by its nature, not governed by the provisions of the Treaty relating to freedom of movement for goods such as other media like videocassettes, videodiscs, records, newspapers, magazines, periodicals and books;

Unchanged.

Original Proposal

Amended Proposal

Whereas the Treaty does not exclude from its scope any such service, by reason of its particular nature, such as its cultural aspects or implications, but provides for the liberalization and free movement of all services normally provided for remuneration which are therefore and without prejudice as to their cultural or other contents considered by the Treaty to be economic activities, a harmonious development of which is one of the objectives of the Community;

Unchanged.

Whereas the Treaty guarantees freedom to provide services within the Community, including broadcasts, without restrictions in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended;

Unchanged.

Whereas this individual right to provide broadcasts to recipients in other Member States, including cable operators, free of restrictions is a specific Community law manifestation of the more general European human right to freedom of expression which includes freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers,

Unchanged.

Original Proposal

Amended Proposal

enshrined in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 and ratified by all Member States;

Whereas, for this reason, freedom to provide broadcasts under Community Law must be implemented, when applying the Treaty and issuing directives for the coordination of the provisions concerning the pursuit of the activities of broadcasters and cable operators, in the light of and at least to the extent guaranteed by the corresponding freedoms provided for in Article 10(1) of the European Convention on Human Rights;

Unchanged.

Whereas the same parallelism must be respected when applying the Treaty and issuing directives for the coordination of provisions limiting the exercise, on the one hand, of freedom to provide broadcasts which are authorized under Article 56(1) of the Treaty or justified on grounds of general interest and, on the other hand, of the freedom to receive and impart information and ideas through broadcasts which are authorized under Article 10(2) of the European Convention on Human Rights;

Unchanged.

Original Proposal

Whereas the laws, regulations and administrative measures in Member States concerning the pursuit of activities as broadcasters and cable operators contain disparities in respect of their applicability and content, on producing and distributing programmes, on advertising and sponsoring, on protecting children and young persons, and on copyright, which may impede the free movement of broadcasts within the Community and may distort competition within the common market;

Whereas the disparities referred to in the field of broadcast advertising have the additional effect of impeding the free movement of goods and services inasmuch as the opportunities to advertise those goods and services throughout the Community, which are an integral part of the process of marketing them, are subject to variable restrictions and prohibitions;

Whereas the free movement of broadcast within the Community is also impeded where the right to communicate a particular programme is assigned to different persons in different Member States, allowing the assignees to rely upon their rights to prohibit the cable retransmission of a foreign broadcast in different Member States;

Amended Proposal

Unchanged.

Unchanged.

Unchanged.

Original Proposal

Amended Proposal

Whereas all such restrictions on freedom to provide broadcasting services within the Community shall be abolished under the Treaty both by applying Article 59 of the Treaty and, in so far as such restrictive rules treat broadcasting services identically whatever their origin or the nationality or place of establishment of the persons providing them and in so far as those laws are justified on grounds of general interest, by issuing directives for the coordination of the provisions concerning the pursuit of activities as self-employed persons, including activities of broadcasters and cable operators;

Unchanged.

Whereas the purpose of this coordination is to make it easier for persons to pursue activities as self-employed persons, in particular, to make it easier for broadcasters and cable operators to pursue the transmission and the retransmission of broadcast programmes and advertisements and thus to abolish obstacles to the free movement of broadcasts and, more generally, to the free flow of information and ideas within the Community;

Unchanged.

Original Proposal

Whereas under the Treaty, nationals of Member States providing services from within a Member State to a person in another Member State may pursue their activities exclusively under the conditions imposed by the law of the first Member State;

Whereas for this reason, for the reason mentioned before the last recital and in order to avoid the cumulative application to the same broadcast, broadcaster or cable operator of the broadcasting law of all or several Member States, it is necessary but sufficient that all broadcasts comply with the law of the Member State in which they originate;

Amended Proposal

Unchanged.

Unchanged.

Whereas this Directive lays down the minimum rules needed to guarantee freedom of transmission in broadcasting; whereas, therefore, it does not affect the responsibility of the Member States and subdivisions thereof with regard to the organization and financing of broadcasting and the content of programmes; whereas the independence of cultural developments in the Member States and the preservation of cultural diversity in the Community therefore remain unaffected;

Original Proposal

Whereas it is necessary in the common market that all broadcasts originating and intended for reception with the Community, and in particular those intended for reception in another Member State, should respect the law of the originating Member State applicable to broadcasts intended for reception by the public in that Member State and the provisions of the present Directive in order to protect consumers as listeners and viewers, in particular young persons, as well as authors, producers, broadcasters and performers, advertisers and advertising agencies and the interests of the public in general;

Whereas checks on respect for national law as coordinated by this Directive in the originating Member State are sufficient under Community law to ensure free circulation of broadcasts without secondary control on the same grounds in each of the receiving Member States;

Amended Proposal

Unchanged.

Whereas it is vital that the accuracy and source of all news and information should be checked by broadcasters with the utmost care prior to transmission;

Whereas the requirement that the originating Member State should verify respect for national law as coordinated by this Directive is sufficient under Community law to ensure free movement of broadcasts without secondary control on the same grounds in each of the receiving Member States;

Original Proposal

Whereas the present Directive is without prejudice to existing or future Community acts of harmonization which are or will be necessary, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions;

Whereas the coordination of national laws designed to secure and promote distribution and production of television programmes in respect of provisions that are not based upon grounds of general interest,

Amended Proposal

Whereas it is essential for the satisfactory implementation of this Directive to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in broadcasts or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of broadcast information and of the information sector as a whole;

Unchanged.

Unchanged.

Original Proposal

Amended Proposal

public policy, public security or public health is not necessary since they cannot be invoked to restrict the free movement of broadcasts within the Community;

Whereas such coordination is nevertheless needed at the Community level to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities;

Whereas minimum requirements in respect of all public or private Community television programmes for audio-visual productions originating in the Community are an effective means to promote production, independent production and distribution in the above-mentioned industries and are complementary to other instruments which are already or will be proposed to favour the same objective;

Unchanged.

Unchanged.

Whereas in addition to this Directive other Community measures to promote the international competitiveness of European cinema and television production are needed, in view of the strength of the non-European media industry, not only in order to achieve

Original Proposal

Whereas the vulnerability of European cultural industries is not due to lack of creative talent, but to fragmented production and distribution systems and whereas it is therefore necessary to promote markets of sufficient size for television productions in the Member States to recover necessary investments not only by establishing common rules opening up national markets but also by offering productions of each kind from the Community an adequate part in television programmes of all Member States, which will at the same time promote the presence of other European cultures in the television programmes of each Member State;

Whereas the progressive establishment of a general preference for the distribution of television programmes of all kinds produced within the Community, and specific measures

Amended Proposal

the economic objectives of the Community but also to counteract any loss of linguistic and cultural identity;

Unchanged.

Unchanged.

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Original Proposal

Amended Proposal

designed to promote employment and small and medium-sized enterprises within the Community's cultural industries, allows for the necessary adaptation of audio-visual production facilities to meet the increasing demand for television programmes;

Whereas, in particular, a preference for the first broadcast of new Community productions of a creative kind will promote actual and future employment in the industries mentioned in the preceding recitals;

Unchanged.

Whereas, in addition, a preference for independent productions, made outside the broadcast undertaking, will stimulate new sources of television production, especially the creation of small and medium-sized enterprises and offer new opportunities and outlets to the marketing of creative talents of employment of cultural professions and workers;

Unchanged.

Whereas the admission of advertising in cross-frontier broadcasts will create the conditions in which broadcast advertising should become lawful in all Member States thereby establishing a common market for broadcast advertising throughout the Community;

Delete.

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Original Proposal

Whereas Member States should limit the volume of broadcast advertising, so that it does not detract from the function of radio and television as media for information, education, culture and entertainment and the demand for advertising in internal broadcasts of each Member State is largely met taking also into account the interests of other media;

Whereas in order to ensure that the interests of consumers as listeners and viewers of broadcasts are fully and properly protected, it is essential for broadcast advertising to be subject to a number of rules and standards, the compliance with which is checked prior to transmission;

Whereas the implementation of the free cross-frontier movement of broadcasts implies a legal framework at Community level containing certain minimum standards on advertising, but it is for the Member States to complete these provisions at the national level; and whereas the Member States must maintain the right to introduce stricter standards for domestic transmissions such as refusing to permit the broadcasting of advertisements on Sundays or public holidays;

Amended Proposal

Whereas Member States should limit the volume of broadcast advertising, so that it does not detract from the function of radio and television as media for information, education, culture and entertainment and so that the demand for advertising in internal broadcasts of each Member State is largely met taking also into account the interests of other media, with a view to safeguarding the pluralism of the information sector as a whole;

Whereas in order to ensure that the interests of consumers as listeners and viewers of broadcasts are fully and properly protected, it is essential for broadcast advertising to be subject to a number of rules and standards;

Unchanged.

Original Proposal

Whereas it is necessary to ensure that consumer interests are respected, especially bearing in mind the considerable impact of advertising on listeners and viewers, and thus it is necessary, in accordance with the solution adopted in the majority of Member States, to prohibit all advertisements promoting cigarettes and tobacco products and to introduce strict rules relating to the advertisement of alcoholic products and to permit those Member States which wish to do so to prohibit completely such advertisements in their internal broadcasts;

Whereas, more particularly, advertisements can unduly influence younger people if special standards are not laid down to prevent it;

Whereas because of the constant rise in the cost of audio-visual programmes sponsorship is developing greatly and playing an increasing role in the financing of programmes; whereas sponsorship should not be excluded from such financing, but it should be strictly ensured that sponsors do not exercise any improper influence on the contents

Amended Proposal

Unchanged.

Unchanged.

Whereas because of the constant rise in the cost of audio-visual programmes sponsorship is developing greatly and playing an increasing role in the financing of programmes; whereas sponsorship should not be excluded from such financing, but it should be strictly ensured that sponsors do not exercise any influence on the contents of

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Original Proposal

of programmes and that there is no link between programmes and advertising within or around them which can be taken to suggest this;

Whereas, given the large degree of flexibility for Member States to fix the total volume of advertising time in internal broadcasts, Member States may restrict the retransmission of cross-frontier broadcast advertising exceeding 15% of each broadcast receivable each day by the public in those Member States, in order to give a certain guarantee to consumers in receiving countries and to avoid important distortions of competition between broadcasters in the Community;

Whereas a lower limit than 15% could have the effect to excluding certain existing broadcasters in some Member States from free provision of their services within the Community;

Whereas it is accepted that the protection of the physical, mental and moral development of children and young persons is in the general interest;

Amended Proposal

programmes and that there is no direct link between programmes and advertising within or around them which can be taken to suggest this;

Whereas, given the large degree of flexibility for Member States to fix the total volume of advertising time in television broadcasts, each Member State should be permitted to restrict the retransmission of television advertising from other Member States exceeding 15% per day and 18% per hour of the television broadcast receivable by the public in that Member State, in order to give a certain guarantee to consumers in receiving countries and to avoid important distortions of competition between broadcasters in the Community;

Unchanged.

Unchanged.

Original Proposal

Whereas in a common market for broadcasting, broadcasters should be subject to similar obligations in relation to the protection of children and young persons against possible harmful effects of confrontation with inappropriate audio and audio-visual material;

Whereas the Community, while ensuring the free movement of broadcasts, must ensure respect for copyright and related rights;

Whereas a preference to arrive at this result by an agreement freely entered into by the various interested parties, that is a contractual solution, is generally recognized;

Whereas a sufficiently long period for negotiation should be allowed to permit these parties to conclude such agreements respecting the interests of each of them;

Whereas, nevertheless, in the absence of an agreement and if a cable operator has manifested his desire to retransmit a certain programme coming from another Member State, the balance between these interests has to be safeguarded by a system of legal licences providing for

Amended Proposal

Unchanged.

Unchanged.

Unchanged.

Unchanged.

Whereas, nevertheless, in the absence of an agreement and if a cable operator has manifested his desire to retransmit a certain programme coming from another Member State, the balance between these interests has to be safeguarded by the decision of an arbitration body fixing

Original Proposal

for adequate remuneration which the particular Member State will be obliged to introduce under these circumstances;

Amended Proposal

the adequate remuneration which the particular Member State will be obliged to introduce under these circumstances;

Whereas in a common market for broadcasting, broadcasting companies should be subject to similar obligations in relation to the right to reply, to ensure that this right may be effectively exercised by anyone whose legitimate interests have been harmed by a statement in a radio or television broadcast;

Whereas the Council must ensure by means of a separate decision that the Community directive takes precedence over the European Convention on broadcasting without frontiers currently being drawn up at the Council of Europe, to enable the Community, through the work of its institutions, to fulfil the task assigned to it of creating a common market in the field of broadcasting;

Whereas it is vital to stress the requirement that, in accordance with Article 5 of the Treaty, Member States should refrain from concluding international agreements on this subject before the Council has adopted this Directive;

Original Proposal

Amended Proposal

Whereas this Directive is only an initial step towards the necessary gradual development of the comprehensive European 'media' policy advocated by the European Parliament in its resolution of 10 October 1985; (4)

HAS ADOPTED THIS DIRECTIVE:

Unchanged.

(4) OJ No. C 288, 11.11.1985, p. 113.

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Original Proposal

Amended Proposal

Chapter I

GENERAL PROVISION

Article 1

1. Each Member State shall ensure that all internal broadcasts originating on its territory comply with its law applicable to broadcasts intended for the public in that Member State.

2. Without prejudice to Article 14 and the provisions of Chapter V, the Member States shall not restrict the reception and retransmission on their territories of broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive

3. This Directive does not apply to broadcasts intended exclusively for reception in States other than Member States.

Article 1

1. Each Member State shall ensure that all broadcasts transmitted by broadcasters under its jurisdiction comply with its law applicable to broadcasts intended for the public in that Member State.

2. Unchanged.

3. Unchanged.

Original Proposal

Amended Proposal

Chapter II

PROMOTION OF DISTRIBUTION AND
PRODUCTION OF TELEVISION
PROGRAMMES

Article 2

1. The Member States shall ensure that internal broadcasters of television reserve at least 30% of their programming time not consisting of news, sporting events and game shows, advertising or teletext services for broadcasts of Community works within the meaning of Article 4, of which in the case of initial transmissions at least one third shall be reserved for first broadcasts in the Community.

2. This percentage shall be progressively increased to reach at least 60% after the expiry of three years from the date specified in Article 22.

Article 2

1. Member States shall ensure that television broadcasters and cable operators retransmitting television broadcasts reserve at least 60% of their programming time not consisting of news, sporting events, game shows, advertising or teletext services for Community works of which at least one third shall be reserved for first broadcasts in the Community. This percentage shall be achieved gradually on the basis of appropriate criteria within a period of three years from the date specified in Article 22.

2. Delete.

Original Proposal

3. For the purposes of this Article,

- in cases of simultaneous, unaltered and unabridged retransmission, internal broadcasts from other Member States shall be regarded in their entirety as Community works;
- in cases of coproduced Community works, the first broadcast by each of the coproducers shall be considered a first broadcast in the Community.

Article 3

1. The Member States shall ensure that, as regards their initial transmissions, internal television broadcasters reserve at least 5% of their programming budget for Community works, within the meaning of Article 4, created by independent producers.

Amended Proposal

2. For the purposes of paragraph 1:

- in cases of simultaneous, unaltered and unabridged retransmission, broadcasts from other Member States shall be regarded in their entirety as Community works;
- in cases of coproductions, the first broadcast by each of the Community coproducers shall be considered to be a first broadcast in the Community.

Article 3

1. Member States shall ensure that television broadcasters reserve at least 5% of their programming budget for Community works created by producers who are independent of the television companies.

Original Proposal

2. This percentage shall be progressively increased to reach at least 10% after the expiry of three years from the date specified in Article 22.

Article 4

The Member States shall apply the provisions of this Chapter to :

(a) works made by producers from a Member State;

(b) works made by producers from several Member States;

Amended Proposal

2. This percentage shall be progressively increased to at least 10% after the expiry of three years from the date specified in Article 22 and shall be achieved by allocating an adequate proportion to recent works, that is, works produced within a reasonable period before their transmission. Such a period shall be considered reasonable where it does not exceed five years.

Article 4

1. Community works within the meaning of this Chapter are works mainly made with authors and workers residing in one or more Member States provided that they comply with one of the following three conditions:

(a) such works are made by one or more producers established in one or more Member States; or

(b) production of the works is supervised and actually controlled by one or more producers established in one or more Member States; or

Original Proposal

(c) works made by producers from one or several Member States and non-Member States where the Community proportion of the total production costs is equal to at least 70%.

Amended Proposal

(c) the contribution of Community co-producers to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside the Community.

2. Works made either exclusively or in co-production with producers established in one or more Member States, by producers established in one or more of the EFTA or Council of Europe States that have concluded agreements based on reciprocity with the Community shall be considered to be Community works for the purposes of this Chapter if they are made mainly with authors and workers residing in one or more Member States or EFTA or Council of Europe States.

3. Works not being Community works within the meaning of paragraph 1 but made mainly with authors and workers residing in one or more Member States shall be considered to be Community works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.

Original Proposal

Amended Proposal

Article 4a

1. This Chapter shall not apply to local television broadcasts not forming part of a national network.

2. Member States shall remain free in relation to some or all of the television broadcasters under their jurisdiction to provide for more detailed or stricter rules in order to promote the distribution and production of television programmes.

Article 4b

The Commission shall enter into negotiations with the States of EFTA and the Council of Europe with a view to the agreements referred to in Article 4(2).

3r

Original Proposal

Amended Proposal

Chapter III

BROADCAST ADVERTISING AND SPONSORING

Section 1

Delete.

INTERNAL BROADCASTS

Delete.

Article 5

Article 5

The Member States shall fix the amount of time allowed for broadcast advertising so that :

Member States shall ensure that broadcast advertising and the maximum amount of time allowed for it is determined for each broadcaster authorized to broadcast advertising so that :

(a) it does not detract from the function of radio and television as media for information, education, culture and entertainment; and

(a) Unchanged.

(b) the demand for broadcast advertising can be largely met, also taking into account the interests of other media.

(b) the demand for broadcast advertising can be largely met, also taking into account the interests of other media, with a view to safeguarding the pluralism of information.

Original Proposal

Article 6

1. Without prejudice to the provisions of other Community acts, the Member States shall ensure that broadcast advertising in internal broadcasts is checked prior to transmission and is broadcast only if it complies with the rules of this section.

2. The Member States shall ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 7

1. Broadcast advertising shall be clearly recognizable as such.

2. Broadcast advertising shall be grouped in blocks and kept quite separate from the other programme material.

3. Broadcast advertising shall not interrupt coherent programme items except where the interruption does not constitute an unreasonable interference because :

Amended Proposal

Article 6

1. Without prejudice to the provisions of other Community acts, Member States shall ensure that advertising is broadcast only if it complies with the rules of this Chapter.

2. Unchanged.

Article 7

1. Unchanged.

2. Broadcast advertising shall be kept quite separate from the other programme material by optical or acoustic means.

3. Unchanged.

Original Proposal

(a) the advertising is scheduled in such a way as to avoid prejudice to the integrity and value of programmes or their natural continuity;

(b) the advertising is inserted in a natural break within the programme; and

(c) the duration and nature of the programme is such as to permit that advertising break.

Article 8

Broadcast advertising shall not :

(a) offend against prevailing standards of decency and good taste;

(b) contain any racial or sexual discrimination;

(c) be offensive to religious or political beliefs;

(d) seek to rely on fear without justifiable reason;

Amended Proposal

Article 8

Broadcast advertising shall not :

(a) offend against prevailing standards of decency;

(b) contain any discrimination on the grounds of race, sex or nationality;

(c) Unchanged.

(d) seek to rely on fear;

Original Proposal

(e) encourage behaviour prejudicial to health or safety.

Article 9

Broadcast advertising for cigarettes and other tobacco products shall be prohibited.

Article 10

Broadcast advertising for alcoholic beverages shall comply with the following rules :

(a) it shall avoid anything that might prompt or encourage children and young persons to consume alcohol;

Amended Proposal

(e) encourage behaviour prejudicial to health or safety or the protection of the environment;

(f) employ forms of expression which contravene respect for the dignity of women.

Article 9

Unchanged.

Article 10

Broadcast advertising for alcoholic beverages shall comply with the following criteria :

(a) it shall avoid anything that might prompt or encourage children and young persons to consume alcohol; the participation of children and young persons in such advertising shall be prohibited;

Original Proposal

Amended Proposal

(b) it shall not link the consumption of alcohol to physical performance or to driving;

(b) Unchanged.

(c) it shall not create the impression that the consumption of alcohol contributes to social or sexual success;

(c) Unchanged.

(d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;

(e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

(e) Unchanged.

(f) it shall not place undue emphasis on the alcoholic content of beverages.

(f) Unchanged.

Original Proposal

Amended Proposal

Article 11

Article 11

Broadcast advertising shall further comply with the following rules for the protection of children and young persons :

Unchanged.

(a) it shall not directly exhort children and young persons to buy a product or a service or exploit their immaturity of judgement and inexperience;

(b) it shall not encourage children and young persons to persuade their parents or others to purchase the goods or services being advertised;

(c) it shall not exploit the special trust children and young persons place in parents, teachers or other persons;

(d) it shall not unreasonably show children and young persons in dangerous situations.

Original Proposal

Article 12

Undertakings shall not exert improper influence over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or programme which could reasonably be taken to suggest or imply that undertakings, for advertising purposes, have influenced parts of the programme which are not an advertisement. In particular,

(a) programmes shall not refer to specific undertakings, products or services in a way not necessary for their content;

(b) programmes which are funded or co-funded by non-broadcasters shall be identified as such; however, the identification shall be restricted to a credit at the beginning and end of the programme;

(c) programmes shall not contain any promotion equivalent to advertising, especially on behalf of those who funded or co-funded them;

Amended Proposal

Article 12

1. Member States shall allow the sponsorship of broadcast programmes.

2. Undertakings shall not exert any de jure or de facto influence over the programme as a whole or over parts of the programme that do not consist of advertising. Nothing shall be included in any broadcast advertising or programme which could be reasonably taken to suggest or imply that undertakings, for advertising purposes, have influenced parts of the programme which are not an advertisement. In particular,

(a) Unchanged.

(b) Unchanged.

(c) Unchanged.

Original Proposal

(d) advertising within or around programmes shall not be allowed if there is any link in content or presentation with the programme.

Article 13

1. The Member States shall remain free to prohibit or restrict broadcast advertising on Sundays and public holidays and to prohibit all broadcast advertising for alcoholic beverages.

2. Member States shall remain free to apply more detailed or stricter rules with regard to Articles 7, 8 and 10 to 12.

Amended Proposal

(d) advertising within or around programmes shall not be allowed if there is any direct link in content or presentation with the programme.

Article 13

1. As regards broadcasters under their jurisdiction Member States shall remain free to prohibit or restrict broadcast advertising on Sundays and public holidays and to prohibit all broadcast advertising for alcoholic beverages.

2. Member States shall remain free to require broadcasters under their jurisdiction to apply more detailed or stricter rules than are contained in Articles 7, 8 and 10 to 12.

3. Member States shall remain free not to apply Articles 5 and 6 and Article 7(2) and (3) to local broadcasts.

Original Proposal

Section 2

CROSS-FRONTIER TELEVISION BROADCASTS

Article 14

The Member States shall admit the reception and retransmission of advertising in cross-frontier television broadcasts which does not exceed 15% of the broadcast receivable each day by the public in those Member States. Where a Member State allows one or several internal television broadcasters to carry advertising for more than 15% of daily broadcasting time, it shall admit comparable types of cross-frontier broadcasts which contain amounts of advertising that do not exceed those permitted for internal television broadcasts of the same category.

Amended Proposal

Delete.

Delete.

Article 14

Each Member State shall permit the reception and retransmission of advertising in television broadcasts from other Member States which does not exceed 15% per day and 18% per hour of the broadcast receivable by the public in that Member State. Where a Member State allows one or more television broadcasters under its jurisdiction to carry more advertising it shall permit an equal proportion of advertising in comparable types of broadcasts from other Member States.

Original Proposal

Chapter IV

PROTECTION OF CHILDREN AND YOUNG
PERSONS

Article 15

1. The Member States shall ensure that internal broadcasts do not include programmes which might seriously harm the physical, mental or moral development of children and young persons, in particular those that involve pornography, gratuitous violence or incitement to race hatred.

Amended Proposal

Article 15

1. Member States shall ensure that broadcasts do not include programmes which are likely seriously to harm the physical, mental or moral development of children and young persons, in particular those that involve pornography or gratuitous violence. This shall also apply to programmes which, although not covered by the preceding sentence, might harm the physical, mental or moral development of children and young persons, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that children and young persons cannot normally hear or see such broadcasts.

Member States shall also ensure that broadcasts do not contain any incitement to racial hatred.

Original Proposal

2. They shall ensure that internal broadcasts are checked prior to transmission and broadcast only if they comply with the requirements under paragraph 1 above. The Member States shall ensure that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 16

The Member States shall remain free to apply more detailed or stricter rules for the protection of children and young persons to internal broadcasts.

Amendment Proposal

2. Member States shall ensure that programmes are broadcast only if they comply with the requirements under paragraph 1 and that, in the case of broadcasts that do not respect these requirements, appropriate remedies sufficient to secure compliance with the rules are imposed on the broadcasters concerned.

Article 16

Member States shall remain free to require broadcasters under their jurisdiction to apply more detailed or stricter rules for the protection of children or young persons.

Original Proposal

Chapter V

COPYRIGHT

Article 17

The Member States shall ensure that the retransmission by cable in their territory of internal broadcasts from other Member States may take place with respect for applicable copyright and related rights, in particular on the basis of contractual agreements between right owners and cable operators. When a cable operator retransmits a broadcast before a contractual agreement has been reached or a statutory licence is applied, he shall be subject to civil and penal sanctions provided for in the law of the Member State where the retransmission takes place sufficient to secure compliance with the rules.

Amended Proposal

Article 17

1. Member States shall ensure that the retransmission by cable in their territory of broadcasts from other Member States may take place with respect for applicable copyright and related rights, in particular on the basis of contractual agreements between right owners and cable operators. To this end Member States shall encourage negotiations between the collective bodies responsible for managing copyright and related rights and the cable operators with a view to the conclusion of agreements laying down the legal and financial conditions governing the retransmission of the broadcasts in question.

2. When a cable operator retransmits a broadcast before a contractual agreement has been concluded or a decision enabling such retransmission has been taken by the arbitration body specified in Article 19, he shall be subject to civil and penal sanctions provided for in the law of the Member State where the retransmission takes place. Such sanctions shall be sufficient to secure compliance with the rules.

Original Proposal

Article 18

1. Where a cable operator notifies a Member State that the simultaneous, unaltered and unabridged retransmission by cable of an internal broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been notified shall ensure, within a period of two years from the notification, that the retransmission is made possible by the application of a statutory licence. However, such a statutory licence need not be granted if, during the two year period, the obstacle to retransmission has been removed, in particular, by a contractual agreement between right owners and one or several cable-operators.

2. Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the introduction of the statutory licence, the Member State shall denounce the Agreement to the extent necessary to permit the statutory licence to be introduced in accordance with paragraph 1.

Amended Proposal

Article 18

1. Where a cable operator notifies a Member State that the simultaneous, unaltered and unabridged retransmission by cable of a broadcast from another Member State has been prevented by the invocation of copyright or related rights, the Member State that has been so notified shall ensure, within a period of two years from the notification, that the retransmission is made possible through a decision of the arbitration body specified in Article 19. However, such a decision shall not be necessary if, during the two year period, the obstacle to retransmission has been removed, in particular by a contractual agreement between right owners and one or more cable operators.

2. Where the right invoked is a related right held by a broadcasting undertaking by virtue of the European Agreement on the Protection of Television Broadcasts of 22 June 1960, and the Agreement is an obstacle to the establishment of a compulsory arbitration scheme, the Member State shall adopt appropriate procedures with a view to securing its establishment in accordance with paragraph 1.

Original Proposal

Article 19

1. The statutory licence introduced in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights.

2. In determining the remuneration, in particular all the following criteria shall be taken into account :

(a) the usual level of contractual licence fees for comparable cable transmissions ;

(b) the usual level of remuneration paid for the first broadcast ;

(c) the number of subscribers linked to the cable network and the level of fees paid by them ;

(d) the likelihood and the extent of any impairment of other marketing opportunities, in particular the showing of films and the performance of dramatic or dramatic musical works.

3. The remuneration may be claimed only by collecting societies.

4. In the absence of an amicable agreement, the remuneration shall be determined by the competent authority.

Amended Proposal

Article 19

1. The decision taken in accordance with Article 18 shall secure an equitable remuneration for the holders of copyright and related rights.

2. Unchanged.

3. Unchanged.

4. Deleted.

Original Proposal

5. The competent authority may be a court, an administrative authority or an arbitration body. It shall be composed so as not to cast doubt on its impartiality. It shall give reasons for its decisions. Where it is not a court, provision shall be made for procedures whereby improper or unreasonable exercise of the competent authority's powers or improper or unreasonable failure to exercise the said powers can be the subject of judicial review.

Article 20

The provisions of this Chapter shall not affect the moral rights of copyright owners and equivalent personal rights of owners of related rights.

Amended Proposal

4. Member States shall determine the composition of the arbitration body in such a way that holders of copyright and related rights are adequately represented thereon. It shall be so composed as not to cast doubt on its impartiality. It shall give reasons for its decisions. Member States shall make provision for procedures whereby improper or unreasonable exercise of the arbitration body's powers or improper or unreasonable failure to exercise the said powers can be subject to judicial review.

Article 20

Unchanged.

Chapter Va

RIGHT OF REPLY

Article 20a

1. Without prejudice to other provisions adopted by the Member States under civil or criminal law, any natural or legal person whose legitimate interests, in particular reputation and good name, have been damaged by an assertion of incorrect facts in a broadcast programme shall have a right of reply.

Original Proposal

Amended Proposal

2. A right of reply shall exist in relation to all broadcasters under the jurisdiction of a Member State.

3. Member States shall adopt the measures needed to establish the right of reply and shall determine the procedure for the exercise thereof. In particular, they shall ensure that sufficient time is allowed for the right to be exercised effectively by natural or legal persons resident or established in other Member States.

4. An application for exercise of the right of reply may be rejected if such a reply is not justified according to the conditions laid down in paragraph 1, would involve a punishable act, would render the broadcaster liable to civil law proceedings or would transgress standards of public decency.

5. Provision shall be made for procedures whereby disputes as to the exercise of the right of reply can be subject to judicial review.

Original Proposal

Amended Proposal

Chapter VI

FINAL PROVISIONS

Article 21

Article 21

For the purpose of this Directive :

1. For the purpose of this Directive :

1. "Broadcasting" means the initial transmission or retransmission by wire or over the air, including those by satellite, in unencoded or encoded form, of radio and television programmes intended for reception by the public. Except for the purposes of Chapter V on Copyright, it includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

(a) "Broadcasting" means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of radio and television programmes intended for reception by the public. Except for the purposes of Chapter V, it includes the communication of programmes between undertakings with a view to their being relayed to the public. It does not include communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services.

2. "Broadcast advertising" means an announcement in any form broadcast by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations. It does not include sponsored programmes.

(b) "Broadcast advertising" means an announcement in any form broadcast by a public or private undertaking in connection with a trade, business, craft or profession in order to promote the supply against payment of goods or services, including immovable property, rights and obligations.

Original Proposal

3. "Internal broadcasts" means initial transmission by public or private undertakings engaged in broadcasting on the territory of a Member State, including transmissions exclusively intended for reception in other Member States. It also includes the initial retransmission by such undertakings of broadcast transmissions originating from an undertaking engaged in broadcasting on the territory of a State other than a Member State.

4. "Cross-frontier broadcasts" means internal transmissions that can be received directly by the public in another Member State or by way of retransmission even where they are retransmitted by an undertaking established in the territory of that other Member State.

Amended Proposal

(c) "Sponsoring" means any contribution made by a public or private undertaking not engaged in broadcasting activities or in the production of audio-visual works, to the financing of broadcast programmes with a view to promoting its name, its trade mark, its image, its activities or its products.

4. Delete.

2. Member States shall take measures to establish the concept of the independent producer by providing sufficient opportunities for smaller producers and reserving the right to allow financial contributions by co-production subsidiaries of television companies.

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Original Proposal

Article 22

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than ... They shall forthwith inform the Commission thereof.

2. The Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the fields governed by this Directive.

Article 23

Before the end of the sixth year after the date mentioned in Article 22, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on the manner in which this Directive has operated and, if necessary, make further proposals to adapt it to the developments in the broadcasting field.

Article 24

This Directive is addressed to the Member States.

Amended Proposal

Article 22

Unchanged.

Article 23

Before the end of the third year after the date mentioned in Article 22 and every two years thereafter, the Commission shall submit to the Council, the European Parliament and the Economic and Social Committee a report on the manner in which this Directive has operated and, if necessary, make further proposals to adapt it to developments in the broadcasting field.

Article 24

Unchanged.

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