



COMMISSION OF THE EUROPEAN COMMUNITIES

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95/0074 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

**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**

**(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)**

EXPLANATORY MEMORANDUM

1. Introduction

1.1 The 1989 Directive¹

The 1989 Directive was adopted in order to create the legal reference framework needed at Community level to ensure the free movement of television broadcasts. This is achieved through the coordination of national rules in the fields where the disparities between them were - or are potentially - such as to create legal barriers to free circulation. The fields concerned are respectively jurisdiction, the promotion of distribution and production of television programmes, advertising and sponsorship, the protection of minors and the right of reply. Member States may not restrict the reception or the retransmission of broadcasts from other Member States for reasons which fall within the coordinated fields. A Member State may only lay down more detailed or stricter rules in these fields as regards broadcasters under its own jurisdiction. The main objective of the Directive is to achieve free circulation. Because it uses the method of the coordination of national rules where necessary to achieve this primary objective, the Directive also espouses the objectives of those national rules. It is the cornerstone of the "European audiovisual space" and has been, or is in the process of being supplemented by complementary legal measures (in particular the cable and satellite copyright Directive²).

1.2 The History of the Proposal for a Directive amending the 1989 Directive

Article 26 of the 1989 Directive requires the Commission to present a report on its application five years after adoption, accompanied if appropriate by proposals to adapt it to developments in the field of television broadcasting. The Commission's services carried out an extensive consultation process in 1994. The Commission presented to Parliament and Council a Communication including the application report, the introductory statement and the proposal for a Directive amending the 1989 Directive on

¹ Council Directive 89/552/EEC of 3 October 1989 "on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities" (OJ L298 p. 23 17.10.1989)

² Council Directive 93/83/EEC (OJ L248, p. 15, 06.10.1996).

See also the recent "Green Paper on the legal protection of encrypted signals" COM(96)76

31 May 1995³. The purpose of the proposal is to adapt and clarify certain provisions of the 1989 text in the light of the experience gained in its implementation and of developments in the sector. The current Directive remains in force until amended (the next report on application is due in October 1996).

The Economic and Social Committee adopted its opinion on 13 September 1995 (CES 972/95).

On 14 February 1996 Parliament adopted a legislative resolution⁴ in the first reading under the co-decision procedure (Art.189 (b) EC Treaty) approving the Commission's proposal subject to the amendments it had made. In parallel, the Council of Ministers was examining the proposal and held a full debate at ministerial level at its meeting on 20 November 1995 pending the adoption of Parliament's opinion in accordance with the co-decision procedure.

2. The amended proposal

2.1 Parliament's amendments

The amended proposal set out here incorporates the amendments accepted by the Commission. A large number of amendments (25) were accepted in part or in spirit and 5 as such i.e. roughly half the amendments actually adopted by Parliament. This memorandum will explain how these have been incorporated into the text and will provide further specific comments on the Commission's reasoning where appropriate. In general terms, the Commission has done its utmost to take the greatest possible account of Parliament's wishes as expressed in the first reading. Where it has not been able to incorporate an amendment, either partially or not at all, this is for one or several of the following categories of reason:

- the amendment, either on its own or in combination with other amendments, would seriously upset the balance of the Commission's proposal;
- the amendment includes measures that would be impossible to implement in practical terms, in the Commission's view;
- the amendment presents, in the Commission's view, serious legal difficulties.

2.2 Explanation of the amendments incorporated

The right-hand column of the attached document constitutes the Commission's amended proposal. The amendments are underlined. The left-hand column represents the Commission's initial proposal and is provided for ease of reference.

³ OJ C185, p. 4, 19.07.1995

⁴ EP 196.583

Recital 5(a) incorporates in part Parliament's amendment no. 3⁵. This is because the Commission considers that while it is acceptable to state that future Community legal measures must be compatible with existing measures in the same field, to go beyond such a statement would prejudice the outcome of future legislative processes.

Recital 9 incorporates a change made necessary by Parliament's amendment no. 22 which has been partially incorporated into Article 2(3).

Recital 11 incorporates a change made necessary by Parliament's amendment no. 28 the spirit of which has been incorporated into Article 3(2).

Recital 15a corresponds to Parliament's amendment no. 88.

Recital 17a corresponds to Parliament's amendment no. 10 (and, in part, no. 4).

Recitals 21 (a) to (c) correspond to Parliament's amendment no. 35. The Commission considers that while it is useful, for the purposes of the implementation of Article 5, to have a guideline definition of what is meant by the term "independent producer", it would be too prescriptive, given the very diverse nature of the independent production sector in the Member States, to include such a definition in an Article. It is therefore proposed to include the definition in a recital. Moreover, the actual definition must be flexible enough to take account of this diversity. For example, in some smaller Member States there are very few broadcasters (in some cases, such as Austria and Ireland, there is currently only one). It is not possible therefore to stipulate in absolute terms that a producer is only independent if he or she does not supply to the same broadcaster more than 90% of the works he or she produces. A further useful criterion of independence to be taken into account is the degree to which the producer retains the right to exploit the work on secondary markets (eg. after first broadcast or after a certain time) as suggested by the amendment.

Recital 22a refers to Article 1 new paragraph (d) (definition of television advertising) and Article 18(1) which have been modified to take account of Parliament's Amendment no. 20 (in as far as the matter is not already covered by the current definition).

Recital 23 is modified to incorporate partially Parliament's amendment no. 12.

Recital 24 takes account, in part, of Parliament's amendment no. 52. It also incorporates changes made necessary by the amendment of Article 22 (2) which itself now takes account of Parliament's amendment no. 76.

⁵ This is the first of Parliament's amendments to be incorporated into the text of the amended proposal following the order of the recitals. However, it should be noted that Amendment no. 1 is identical to recital no. 16 of the 1989 Directive. This recital remains valid as it is not affected by the Directive amending the 1989 Directive and therefore there is no need (and it is not possible) to incorporate Amendment no. 1 into the Commission's amended proposal (as it is already in the 1989 text).

Recital 24a is included to take account of Parliament's amendments no. 14, 15, 62 and 55 (the latter being the so-called "V-chip" amendment); it corresponds to new Article 22b included to take account of the same series of amendments.

Recital 25 is modified to incorporate Parliament's amendment no. 26 which itself relates to Article 3(1).

It should be pointed out that Article 3(1), which states that Member States remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules than those laid down by the Directive, does not as such create any legal obligation for the Member States. It therefore makes no difference, in legal terms, whether the list of areas in which Member States may take such measures and, which is indicative in nature, is included in an Article or in a recital. The Commission has a preference for the latter for reasons of presentation and clarity.

Article 1 new paragraph (b). The Commission accepted this part of Parliament's amendment no. 18 because it considers that it is an improvement, in terms of legal security, to include this definition of what is meant by the term "television programme" in Article 1(a) (the weakness of which is due to the fact that television broadcasting is defined by reference to television programmes giving rise to a somewhat circular definition). However, this addition does not change the scope of the definition of television broadcasting, which is circumscribed by the terms "to the public" and "it does not include communication services --- on individual demand". The Commission explained in the Explanatory Memorandum to the initial proposal why it considers that it would be inappropriate to extend the scope of this Directive beyond that of the 1989 text (i.e. the point-to-multipoint transmission of television programmes intended for reception by the public).

Article 1 new paragraph (c) corresponds to Parliament's amendment no. 19. The Commission considers that it is useful to include a definition of the organisations which have to comply with the national provisions transposing those of the Directive. The definition proposed matches the one proposed by Parliament with the one used in the Council of Europe's Transfrontier Television Convention. It is based on three essential elements:

- it concerns natural or legal persons (as in the Convention)
- who have editorial responsibility for the composition of schedules of television programmes (this corresponds to the 2nd and 3rd parts of Parliament's definition and to the 2nd part of the Council of Europe's definition)
- who transmits, or has transmitted, these programmes (the 3rd part of the Council of Europe's definition).

Article 1(d). This is paragraph (b) of the 1989 text modified to take account of amendment no. 20. It should be seen in conjunction with recital no. 22a. The purpose is to make it clear that the basic consumer protection rules in Articles 10 to 16 apply to self-promotional forms of advertising (see also amended Article 18).

Article 1 (g) is paragraph (e) of the Commission's proposal modified to take account of amendment no. 21 and to align the reference to goods and services with the one in new paragraph (d).

Article 2 paragraphs 2,3 and 4 have been modified to take account of amendments no. 22, 23 and 24 (jurisdiction criteria). The Commission agrees that it is important to provide for detailed criteria making it possible to determine, with a sufficient degree of clarity and by reference to the specific nature of the activities involved, the place of establishment of the broadcaster for the purpose of determining which Member States has jurisdiction. However, this implies an exhaustive hierarchical arrangement of the three specific criteria that have been chosen (head office, place where editorial decisions are taken, and place where a significant part of the workforce is located) in order to take account of all the possible combinations of the criteria. Failure to establish a hierarchical order would give rise to positive conflicts (several States claiming jurisdiction) or negative conflicts (legal vacuum). Moreover, the Commission cannot accept paragraph (c) of amendment 23 for the following reasons:

- by introducing the criterion of the State for which the programmes are intended it reverses the "home country control principle" of the Directive and would make it unworkable;
- it is contrary to the logic of the Treaty;
- it is self-defeating, as the result would be that jurisdiction could not be determined on the basis of the three chosen criteria and therefore would have to be determined on the basis of the purely technical criteria contained in paragraph 4 (frequency, satellite capacity or up-link).

Article 2a has been modified to take account partially of amendment 24. However, the Commission cannot accept the part of the amendment that extends to advertising a procedure designed to deal with grave violations of the rules on protection of minors in programmes. It would be wholly inappropriate to confuse these two very different issues. Moreover, it would reverse in one field the "home country control" principle and thereby make the Directive unworkable.

Article 3 paragraph 2 has been modified to take account of amendments no. 27 (effective compliance) and 28 (third party redress).

(Amendment no. 35 has been incorporated into recital no.21a - see above).

Article 6 paragraph 1 incorporates a new sub-paragraph (d) which the Commission considers necessary in view of certain recent developments in the broadcasting legislation of some of the European third countries referred to in sub-paragraphs (b) and (c). This

addition also corresponds in part to what the Commission construes as being the spirit of Parliament's amendment no. 36.

Article 7 is modified to incorporate partially amendment no. 37. The wording of the first sentence emphasizes that windows are first and foremost a matter for the contracting parties. The duration of the windows is adjusted according to the amendment. However, the Commission considers that the provision in sub-paragraph (b) referring to works co-produced by the broadcaster renders the last paragraph in the amendment superfluous. Moreover, it is not possible, in the internal market, to take any other date than that of first release in the Community as the starting date for the various windows.

Article 9 incorporates a change that corresponds in part to amendment no. 38.

Articles 10 and 11 now incorporate references to teleshopping as in amendments no. 39, 40 and 42.

Article 11(3) incorporates the part of amendment no. 41 referring to films produced for television. The Commission cannot accept the part of the amendment stating that the basis for the calculation of the number of breaks allowed should be scheduled duration "exclusive of all interruptions". This would impose an unnecessary restriction that would impact very negatively on broadcasters' revenue streams.

Articles 12 (c) incorporates amendment no. 43.

Article 14 has been modified to incorporate the essence of the 2nd part of Parliament's amendment no. 44 with wording that is compatible with existing Community regulations. The first part of the amendment is not acceptable as it reverses the home country control principle of the directive and is incompatible with Court of Justice case law (notably the "Bond van Adverteerders" judgement, CJCE 352/86 of 24.04.1988). However, a wide prohibition on teleshopping for medical products, by reference to existing Community regulations, can be justified on the one hand by public health concerns, and on the other, by the fact that teleshopping differs from advertising and sponsorship in that it entails a much more direct relationship with the final consumer.

Article 17 includes a new paragraph 2a that incorporates changes that reflect the development of the debate on sponsorship of programmes by pharmaceutical companies since the Commission's initial proposal.

Article 18 incorporates changes deriving in part from amendments 45 and 46. However, the Commission is of the opinion that it is neither desirable nor possible to exclude forms of advertising other than spot advertising. It also incorporates a change relating to announcements made by broadcasters in connection with their own programmes that is made necessary by the amended definition of "television advertising" in Article 1 in order to avoid such announcements having to be counted within the daily advertising limit.

Article 18a reflects amendment no. 74 on teleshopping within channels other than teleshopping channels.

Article 19 corresponds to Article 18b in the Commission's initial proposal concerning teleshopping channels and other channels devoted exclusively to commercial promotion. The Commission does not consider it appropriate to place quantitative restrictions of the type that apply, by virtue of Article 18, to conventional channels on channels exclusively devoted to forms of commercial promotion or direct selling. The latter have a different purpose and do not compete on the same market segments as the former.

Article 20 incorporates a change that brings it into line with the terminology used in Article 9 and incorporates in part amendment no. 51.

Article 22 (2) corresponds to amendment no. 76 in particular and to concerns about the protection of minors in general as expressed in amendments nos. 14, 15, 62, 52 and 55 (see also recital no. 24). However, the Commission considers that it could be unnecessarily prescriptive to require a programme that is already encoded to incorporate warning signals. Moreover, one or other of the forms of warning (acoustic or visual) is sufficient to achieve the purpose of alerting the viewers.

Article 22 (b) includes a new second paragraph that corresponds in particular to amendments nos. 62 and 55 (see also recital no. 24a). The Commission considers that the "V-chip" is an interesting development that could provide an effective way of ensuring greater parental control. However, this idea requires further investigation before it can be incorporated into binding legal measures at Community level. In particular, the matter of the rating system poses specific problems in the context of transfrontier television in Europe. Furthermore, the inter play between the "V-chip" and existing family viewing policies, including watersheds at specific times, requires in-depth analysis in order to be sure that the new development will complement rather than undermine existing measures. Finally by taking the time needed to analyze all these questions, Europe will also be able to benefit from the experience that will be gained by the United States and Canada in implementing V-chip legislation.

Article 26 corresponds partially to amendment no. 58. The Commission agrees that developments in the field of television broadcasting need to be taken into account in the implementation of the Directive, including any future revision, but considers that to limit the scope of the analyses that will be required to services operating solely on individual demand would be to adopt too narrow an approach. This is why the Commission prefers the wider notion of technological developments in general.

Amended proposal for a
European Parliament and Council Directive
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

INITIAL PROPOSAL

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN
UNION,

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

Having regard to the proposal from the
Commission¹,

Having regard to the opinion of the
Economic and Social Committee²,

Acting in accordance with the procedure
referred to in Article 189b of the Treaty³,

1. Whereas Council Directive 89/552/EEC⁴
constitutes the legal framework for
broadcasting in the internal market;

2. Whereas Article 26 of Directive
89/552/EEC states that the Commission
shall, no later than the end of the fifth year
after the date of adoption of the Directive,
submit to the European Parliament and the
Economic and Social Committee a report
on the application of the Directive and, if
necessary, make further proposals to adapt
it to developments in the field of television
broadcasting;

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND
THE COUNCIL OF THE EUROPEAN
UNION,

Having regard to the Treaty establishing the
European 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
Economic and Social Committee,

Acting in accordance with the procedure
referred to in Article 189b of the Treaty,

Whereas Council Directive 89/552/EEC
constitutes the legal framework for
broadcasting in the internal market;

Whereas Article 26 of Directive
89/552/EEC states that the Commission
shall, no later than the end of the fifth year
after the date of adoption of the Directive,
submit to the European Parliament and the
Economic and Social Committee a report
on the application of the Directive and, if
necessary, make further proposals to adapt
it to developments in the field of television
broadcasting;

¹ OJ N°

² OJ N°

³ OJ N°

⁴ OJ N° L 298, 17.10.1989, p. 23

3. Whereas the application of Directive 89/552/EEC and the report on its application have revealed the need to clarify certain definitions or obligations on Member States under this Directive;

4. Whereas the Commission in its Communication of 19 July 1994 entitled "Europe's way to the information society. An action" underlined the importance of a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission;

5. Whereas the Council welcomed this action plan at its 1787th meeting on 28 September 1994 and stressed the need to improve the competitiveness of the European audiovisual industry;

5a.

6. Whereas the Heads of State and Government meeting at the European Council in Essen on 9 and 10 December 1994 called on the Commission to present a proposal for a revision of Directive 89/552/EEC before their next meeting;

Whereas the application of Directive 89/552/EEC and the report on its application have revealed the need to clarify certain definitions or obligations on Member States under this Directive;

Whereas the Commission in its Communication of 19 July 1994 entitled "Europe's way to the information society. An action" underlined the importance of a regulatory framework applying to the content of audiovisual services which would help to safeguard the free movement of such services in the Community and be responsive to the opportunities for growth in this sector opened up by new technologies, while at the same time taking into account the specific nature, in particular the cultural and sociological impact, of audiovisual programmes, whatever their mode of transmission;

Whereas the Council welcomed this action plan at its 1787th meeting on 28 September 1994 and stressed the need to improve the competitiveness of the European audiovisual industry;

Whereas the addition of a definition of a "television programme" shall by no means be interpreted as extending the scope of application of this Directive, to new services such as video-on-demand and on-line or internet type services and whereas any legislative framework concerning new audiovisual services must be compatible with the primary objective of this Directive which is to create the legal framework for the free circulation of services;

Whereas the Heads of State and Government meeting at the European Council in Essen on 9 and 10 December 1994 called on the Commission to present a proposal for a revision of Directive 89/552/EEC before their next meeting;

7. Whereas the application of Directive 89/552/EEC has revealed the need to clarify the concept of jurisdiction as applied specifically to the audiovisual sector; whereas, in view of the case law of the Court of Justice of the European Communities, the establishment criterion should be made the principal criterion determining the jurisdiction of a particular Member State;

8. Whereas the concept of establishment according to the criteria laid down by the Court of Justice in its judgment of 25 July 1991 in Factortame⁵, involves the actual pursuit of an economic activity through a fixed establishment for a indefinite period;

9. Whereas the establishment of a television broadcasting organization, for the purpose of Directive 89/552/EEC, as amended by this Directive, may be determined by a series of practical criteria such as the location of the head office of the provider of services, the place where decisions on programming policy are usually taken, the place where the programme to be broadcast to the public is finally mixed and processed, provided that a significant proportion of the workforce required for the pursuit of the television broadcasting activity is located in the same Member State;

Whereas the application of Directive 89/552/EEC has revealed the need to clarify the concept of jurisdiction as applied specifically to the audiovisual sector; whereas, in view of the case law of the Court of Justice of the European Communities, the establishment criterion should be made the principal criterion determining the jurisdiction of a particular Member State;

Whereas the concept of establishment according to the criteria laid down by the Court of Justice in its judgment of 25 July 1991 in Factortame, involves the actual pursuit of an economic activity through a fixed establishment for a indefinite period;

Whereas the establishment of a television broadcasting organization, for the purpose of Directive 89/552/EEC, as amended by this Directive, may be determined by a series of practical criteria such as the location of the head office of the provider of services, the place where decisions on programming policy are usually taken, the place where the programme to be broadcast to the public is finally mixed and processed, and the place where a significant proportion of the workforce required for the pursuit of the television broadcasting activity is located;

⁵ Case C-221/89, Queen v Secretary of State for Transport, ex parte Factortame, [1991] ECR I-3905, para. 20.

9a.

Whereas the fixing of a series of material criteria is designed to determine by an exhaustive procedure that one Member State and one only is competent for a broadcaster in connection with the pursuit of the provision of the services which the directive addresses; nevertheless, taking into account the case law of the Court of Justice and so as to avoid cases where there is a vacuum of competence, if the question as to which Member State has jurisdiction cannot be determined according to these material criteria, the competent Member State is that in which the broadcaster is established within the meaning of Article 52 and the following of the EC Treaty;

10. Whereas the Court of Justice has constantly held⁶ that a Member State retains the right to take measures against a television broadcasting organization that is established in another Member State but directs all or most of its activity to the territory of the first Member State if the choice of establishment was made with a view to evading the legislation that would have applied to the organization had it been established in the territory of the first Member State;

11. Whereas any interested party in the Community must be able to assert its rights in the competent courts of the Member State with jurisdiction over the television broadcasting organization that is failing to comply with the national provisions arising out of the application of this Directive;

12. Whereas Member States are free to take whatever measures they deem appropriate with regard to broadcasts coming from third countries, and which do not satisfy the conditions laid down in Article 2 of Directive 89/552/EEC, provided they comply with Community law and the international obligations of the Community;

13. Whereas in order to eliminate the obstacles arising from differences in national legislation on the promotion of European works, Directive 89/552/EEC contains provisions aimed at harmonizing these regulations; whereas those provisions which, in general, permit the liberalization of trade must contain provisions harmonizing the conditions of competition;

Whereas the Court of Justice has constantly held that a Member State retains the right to take measures against a television broadcasting organization that is established in another Member State but directs all or most of its activity to the territory of the first Member State if the choice of establishment was made with a view to evading the legislation that would have applied to the organization had it been established in the territory of the first Member State;

Whereas directly affected third parties, including nationals of other Member States, must be able to assert their rights in the competent courts or administrative bodies of the Member State with jurisdiction over a television broadcasting organization that may be failing to comply with the national provisions arising out of the application of this Directive;

Whereas Member States are free to take whatever measures they deem appropriate with regard to broadcasts coming from third countries, and which do not satisfy the conditions laid down in Article 2 of Directive 89/552/EEC, provided they comply with Community law and the international obligations of the Community;

Whereas in order to eliminate the obstacles arising from differences in national legislation on the promotion of European works, Directive 89/552/EEC contains provisions aimed at harmonizing these regulations; whereas those provisions which, in general, permit the liberalization of trade must contain provisions harmonizing the conditions of competition;

⁶ See, in particular, the judgments in Case 33/74, *Van Binsbergen v Bestuur van de Bedrijfsvereniging*, [1974] ECR I 299 and in Case C-23/93, *TV 10 SA v Commissariaat voor the Media* [1994] ECR I-4795

14. Whereas, moreover, Article 128(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty;

15. Whereas the Green Paper on "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union", adopted by the Commission on 7 April 1994, emphasizes in particular the need to step up measures to promote European works in order to further the development of the sector;

15(a)

16. Whereas, in addition to the considerations cited above, it is necessary to create conditions for improving the competitiveness of the programme industry; whereas the Communication on the application of Articles 4 and 5 of Directive 89/552/EEC, adopted by the Commission on 3 March 1994 pursuant to Article 4(3), shows that the measures to promote European works can contribute to such an improvement, but that they need to be modified to take account of developments in the field of television broadcasting.

17. Whereas, if Article 4 of Directive 89/552/EEC, as amended by this Directive, is effectively implemented over a ten-year period, it should be possible, given the impact of the financial instruments available to the Community and the Member States, to achieve the objective of strengthening the European programme industry;

Whereas, moreover, Article 128(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty;

Whereas the Green Paper on "Strategy options to strengthen the European programme industry in the context of the audiovisual policy of the European Union", adopted by the Commission on 7 April 1994, emphasizes in particular the need to step up measures to promote European works in order to further the development of the sector;

Whereas broadcasting organizations, programme makers, producers, authors and other experts should develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to a large audience;

Whereas, in addition to the considerations cited above, it is necessary to create conditions for improving the competitiveness of the programme industry; whereas the Communication on the application of Articles 4 and 5 of Directive 89/552/EEC, adopted by the Commission on 3 March 1994 pursuant to Article 4(3), shows that the measures to promote European works can contribute to such an improvement, but that they need to be modified to take account of developments in the field of television broadcasting;

Whereas, if Article 4 of Directive 89/552/EEC, as amended by this Directive, is effectively implemented over a ten-year period, it should be possible, given the impact of the financial instruments available to the Community and the Member States, to achieve the objective of strengthening the European programme industry;

17(a)

Whereas the Media II programme, which seeks to promote training and distribution in the audiovisual sector, is also designed to enable the production of European works to be developed;

18. Whereas it is necessary to ensure the effective application of such measures throughout the Community in order to preserve free and fair competition between firms in the same industry; whereas the application of such measures could help to reinforce mutual trust between Member States;

Whereas it is necessary to ensure the effective application of such measures throughout the Community in order to preserve free and fair competition between firms in the same industry; whereas the application of such measures could help to reinforce mutual trust between Member States;

19. Whereas, at the end of the ten-year period, any national measures in this field must not interfere with the principle of free circulation of services by restricting the reception or retransmission of television broadcasts from other Member States;

Whereas, at the end of the ten-year period, any national measures in this field must not interfere with the principle of free circulation of services by restricting the reception or retransmission of television broadcasts from other Member States;

20. Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, it is necessary to introduce a progressive system for achieving this objective;

Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, it is necessary to introduce a progressive system for achieving this objective;

21. Whereas account should be taken of the specific nature of transmissions broadcast only in a language other than those of the Member States;

Whereas account should be taken of the specific nature of transmissions broadcast only in a language other than those of the Member States;

21(a)

Whereas, for the purposes of the implementation of the measures designed to promote works created by producers who are independent of broadcasters, guideline criteria are needed whereby a producer may be deemed to be independent if :

- = the broadcaster holds no more than 25% of the share capital of the production company (50% if more than one television broadcaster is involved);
- = over a three-year period the producer supplies to the same broadcaster no more than 90% of the works produced, unless, over the same period, the producer makes only one programme or only one series;
- = the producer does not hold a significant number of shares in a broadcaster;

21(b)

Whereas, in applying the above criteria, due account shall be taken of specific characteristics of Member States' audiovisual systems, in particular those of Member States with a lesser audiovisual capacity or a limited language area;

21(c)

Whereas Member States may also take into account the destination and ownership of secondary rights when assessing the criteria of independence;

22. Whereas the question of specific time scales for each type of television showing of cinematographic works is primarily a matter to be settled by individual contracts; whereas, however, in the absence of agreements between the interested parties or professionals concerned, a schedule tailored to the needs at each stage in the showing of such works, should be drawn up;

Whereas the question of specific time scales for each type of television showing of cinematographic works is primarily a matter to be settled by individual contracts; whereas, however, in the absence of agreements between the interested parties or professionals concerned, a schedule tailored to the needs at each stage in the showing of such works, should be drawn up;

22(a)

Whereas transmission time allotted to announcements relating to programme schedules and derived products or to public service announcements and charity appeals broadcast free of charge is not to be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping;

23. Whereas, it is important to facilitate the development of teleshopping, an activity with an economic importance for operators as a whole and a genuine outlet for goods and services within the Community, by modifying the rules on transmission time; whereas, to ensure the full protection of consumer interests, teleshopping should be governed by a number of minimum standards regulating the form and content of broadcasts;

Whereas, in view of the development of teleshopping, an activity with an economic importance for operators as a whole and a genuine outlet for goods and services within the Community, it is essential to modify the rules on transmission time and to ensure a high level of consumer protection by putting in place appropriate standards regulating the form and content of broadcasts;

24. Whereas it is necessary to clarify the rules for the protection of the physical, mental and moral development of minors; whereas the establishment of a clear distinction between programmes that are subject to an absolute ban and those that may be authorized subject to appropriate technical means should satisfy concern about the public interest expressed by Member States and the Community;

Whereas it is necessary to clarify the rules for the protection of the physical, mental and moral development of minors, in particular with regard to programmes which might disturb them psychologically; whereas the establishment of a clear distinction between programmes that are subject to an absolute ban and those that may be authorized subject to appropriate protective measures of a technical nature or regarding the time of the broadcast should satisfy legitimate concerns; whereas moreover the latter programmes when broadcast in unencoded form should be identified through optical or acoustic means regardless of the time of the broadcast;

24(a)

Whereas, since it appears possible to harmonize national rules on the protection of minors only to a limited extent owing to differences in sensibility and moral standards, the potentialities of technical filtering devices and appropriate rating systems at national and Community level, should be studied with a view to enabling parents and guardians to filter out programmes which might have a detrimental effect on the mental and physical development of minors; whereas such rating systems should involve as much as possible bodies consisting of experts (educationalists and media specialists) set up in association with the broadcasting and producing organisations themselves with appropriate support from the competent national and European authorities;

24b.

Whereas the Commission, in liaison with Member State authorities, should conduct an in-depth analysis of these issues and possible measures involving :

- = the requirement for new television sets to be equipped with a technical device enabling parents or guardians to filter out certain programmes;
- = the setting up of appropriate rating systems;
- = encouraging family viewing policies;
- = other educational and awareness measures

with a view to presenting, if necessary before the deadline laid down in Article 26, the appropriate proposals for legislative or other measures.

25. Whereas the Court of Justice has constantly held⁷ that the concept of services, as referred to in Articles 59 and 60 of the EEC Treaty, embraces the broadcasting of the television programmes, including transmission through the intermediary of cable operators; whereas in accordance with Article 3b of the Treaty action by the Community should not go beyond what is necessary to achieve its objectives in the sphere of television broadcasting; whereas the principle that Member States are free to lay down stricter or more detailed rules for the broadcasters under their jurisdiction should be reaffirmed,

25a.

26. Whereas Article B of the Treaty on European Union states that one of the objectives the Union shall set itself is to maintain in full the "acquis communautaire",

Whereas the approach in Directive 89/552/EEC and this Directive has been adopted to achieve the essential harmonisation necessary and sufficient to ensure the free circulation of television broadcasts in the Community will not be restricted for reasons which fall within the coordinated fields; whereas Member States remain free to apply to broadcasters under their jurisdiction more detailed or stricter rules in these fields; these rules, which must be compatible with Community law⁷, may concern, inter alia, the achievement of language policy goals and the taking into account of the public interest in terms of television's role as a provider of information, education, culture and entertainment and the need to safeguard pluralism in the information industry and the media;

Whereas this Directive does not affect Member States' capacity to take measures in order to ensure the protection of competition with a view to avoiding the abuse of dominant positions and/or the establishment or strengthening of dominant positions by mergers, agreements, acquisitions and similar initiatives;

Whereas Article B of the Treaty on European Union states that one of the objectives the Union shall set itself is to maintain in full the "acquis communautaire",

⁷ (initial proposal) See, in particular, the judgments in Case 155/73, Sacchi, [1974] ECR 409 and in Case 52/79, Procureur du Roi v Debauve, [1980] ECR 833.

⁷ (amended proposal) See the judgement in Case C-412/93, Leclerc-Siplec, [1995], ECR I-179.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/552/EEC is amended as follows:

1. Article 1 is amended as follows:

(a) point (b) is replaced by the following:

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/552/EEC is amended as follows:

1. Article 1 is amended as follows:

(a) point (b) is replaced by the following:

"(b) "television programme" within the meaning of paragraph (a) means an animated or non-animated sequence of images which may or may not be accompanied by sound."

(b) point (c) is replaced by the following :

"(c) "broadcaster" means the natural or legal person who has editorial responsibility for the composition of schedules of television programmes within the meaning of paragraph (b) and who transmits them or has them transmitted by a third party."

(c) point (d) is replaced by the following :

"(b) "television advertising" means any form of announcement broadcast in return for payment or for similar consideration 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, or rights and obligations, in return for payment. It does not include teleshopping;"

"(d) "television advertising" means any form of announcement broadcast, whether in return for payment or for similar consideration or for self-promotional purposes, by a public or private undertaking in connection with trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, or rights and obligations, in return for payment;"

(d) point (c) in Article 1 of Directive 89/552/EEC becomes point (e)

(e) point (d) in Article 1 of Directive 89/552/EEC becomes point (f)

(b) the following point (e) is added:

(f) the following point (g) is added :

"(e) "teleshopping" means television programmes and spots containing direct offers to the public with a view to the sale, purchase or rental of products or with a view to the supply of services in return for payment;"

"(g) "teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, or rights and obligations, in return for payment".

2. Article 2 is replaced by the following:

"Article 2

1. Each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.
2. The broadcasters under the jurisdiction of a Member State are those established in the territory of that Member State, in which they must have a fixed establishment and actually pursue an economic activity.

2. Article 2 is replaced by the following:

"Article 2

1. Each Member State shall ensure that all television broadcasts transmitted by broadcasters under its jurisdiction comply with the rules of the system of law applicable to broadcasts intended for the public in that Member State.
2. For the purpose of this directive the broadcasters under the jurisdiction of a Member State are those established in the territory of that Member State according to paragraph 3 as well as those to whom paragraph 4 applies.
3. For the purposes of this directive, a broadcaster is deemed to be established in a Member State in the following cases :
 - (a) the broadcaster has its head office in that Member State and the editorial decisions about programme schedules are taken in that Member State's territory;

(b) if a broadcaster has its head office in one Member State but editorial decisions on programme schedules are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Member States, the broadcaster shall be deemed to be established in the Member State where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Member States, the broadcaster shall be deemed to be established in the Member State where it first began broadcasting in accordance with the system of law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if a broadcaster has its head office in a Member State but decisions on programme schedules are taken in a non-member state, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Member State.

3. Broadcasters established outside the territory of the Community shall also be under the jurisdiction of a Member State if they satisfy one of the following conditions:

4. Broadcasters which are not established in the territory of a Member State according to paragraph 3 are deemed to be under the jurisdiction of a Member State in the following cases :

- (a) they use a frequency granted by that Member State,
- (b) although they do not use a frequency granted by a Member State, they do use a satellite capacity granted by that Member State,
- (c) although they use neither a frequency nor a satellite capacity granted by a Member State, they do use a satellite up-link situated in that Member State.
4. This Directive shall not apply to broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States."
- (a) they use a frequency granted by that Member State,
- (b) although they do not use a frequency granted by a Member State they do use a satellite capacity appertaining to that Member State;
- (c) although they use neither a frequency granted by a Member State nor a satellite capacity appertaining to a Member State they do use a satellite up-link situated in that Member State.
5. This Directive shall not apply to broadcasts intended exclusively for reception in third countries, and which are not received directly or indirectly by the public in one or more Member States."

3. The following Article 2a is inserted:

"Article 2a

Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive. They may, provisionally, take appropriate measures to restrict reception and/or suspend retransmission of television broadcasts if the following conditions are fulfilled:

- (a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22 and/or Article 22a;
- (b) during the previous 12 months, the broadcaster has infringed the same provision(s) on at least two prior occasions;
- (c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of its intention to take measures to restrict reception and/or suspend retransmission should any such infringement occur again;
- (d) consultations with the transmitting State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.

3. The following Article 2a is inserted:

"Article 2a

Member States shall ensure freedom of reception and shall not restrict retransmission on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive. They may, provisionally, derogate from the above if the following conditions are fulfilled:

- (a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Articles 22 or 22a;
- (b) during the previous 12 months, the broadcaster has infringed the same provision(s) on at least two prior occasions;
- (c) the Member State concerned has notified the broadcaster and the Commission in writing of the alleged infringements and of the measures it intends to take should any such infringement occur again;
- (d) consultations with the transmitting State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point (c), and the alleged infringement persists.

The Commission shall, within no more than two months following notification of the measure taken by the Member State, take a decision on whether the measure is compatible with Community law. If it decides that it is not, the Member State will be required to put an end to the measure in question as a matter of urgency.

The provision referred to in the first paragraph is without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned."

4. Article 3 is replaced by the following:

"Article 3

1. Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive. These rules, which must be compatible with Community law, may concern, inter alia:

- the achievement of language policy goals;
- the taking into account of the public interest in terms of television's role as a provider of information, education, culture and entertainment and the need to safeguard pluralism in the information industry and the media.

The Commission shall, within no more than two months following notification of the measure taken by the Member State, take a decision on whether the measure is compatible with Community law. If it decides that it is not, the Member State will be required to put an end to the measure in question as a matter of urgency.

The provision referred to in the first paragraph is without prejudice to the application of any procedure, remedy or sanction to the infringements in question in the Member State which has jurisdiction over the broadcaster concerned."

4. Article 3 is replaced by the following:

"Article 3

1. Member States shall remain free to require television broadcasters under their jurisdiction to comply with more detailed or stricter rules in the areas covered by this Directive.

2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that television broadcasters under their jurisdiction comply with the provisions of this Directive.

Each Member State shall determine the penalties applicable to television broadcasting organizations under their jurisdiction who do not comply with provisions adopted for the implementation of this Directive, which penalties shall be sufficient to enforce compliance.

3. Member States shall also provide in their legislation, as regards television broadcasting organizations under their jurisdiction, for the possibility of invoking interim measures aimed at remedying an infringement of the provisions of this Directive, if necessary by suspending the broadcasting licence."

5. Article 4 is replaced by the following:

"Article 4

1. Member States shall, by appropriate means, ensure that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext and teleshopping services.

2. Member States shall, by appropriate means, ensure, within the framework of their legislation, that television broadcasters under their jurisdiction effectively comply with the provisions of this Directive.

The measures shall include the appropriate procedures for third parties directly affected, including nationals of other Member States, to apply to the competent judicial or other authorities to seek effective compliance according to national provisions."

5. Article 4 is replaced by the following:

"Article 4

1. Member States shall, by appropriate means, ensure that broadcasters reserve for European works, within the meaning of Article 6, a majority proportion of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext and teleshopping services.

2. In the case of channels which devote at least 80% of their transmission time, excluding the time appointed to advertising and teleshopping, to cinematographic works, drama, documentaries or animation, Member States shall allow television broadcasting organizations to choose between complying with the first paragraph or allocating 25% of their programming budget to European works within the meaning of Article 6. For the purposes of this Directive, "programming budget" means the accounting cost of acquiring, commissioning, producing and co-producing all those programmes broadcast by the channel in question in any given year.
 3. The proportions referred to in paragraphs 1 and 2 shall be attained progressively, in stages, no later than three years after the date of the first broadcast by the channel in question.
 4. Channels broadcasting entirely in a language other than those of the Member States are not covered by the provisions of this Article or those of Article 5.
 5. Member States shall provide the Commission with a report on the application of this Article and Article 5 every two years from the date of adoption of this Directive.
2. In the case of channels which devote at least 80% of their transmission time, excluding the time appointed to advertising and teleshopping, to cinematographic works, drama, documentaries or animation, Member States shall allow television broadcasting organizations to choose between complying with the first paragraph or allocating 25% of their programming budget to European works within the meaning of Article 6. For the purposes of this Directive, "programming budget" means the accounting cost of acquiring, commissioning, producing and co-producing all those programmes broadcast by the channel in question in any given year.
 3. The proportions referred to in paragraphs 1 and 2 shall be attained progressively, in stages, no later than three years after the date of the first broadcast by the channel in question.
 4. Channels broadcasting entirely in a language other than those of the Member States are not covered by the provisions of this Article or those of Article 5.
 5. Member States shall provide the Commission with a report on the application of this Article and Article 5 every two years from the date of adoption of this Directive.

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the channels falling within the jurisdiction of the Member State concerned. Member States shall notify the Commission of the reasons for the failure to attain those proportions and the measures they are taking in each case to ensure that the television broadcasting organization does actually attain them.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area."

That report shall in particular include a statistical statement on the achievement of the proportion referred to in this Article and Article 5 for each of the channels falling within the jurisdiction of the Member State concerned. Member States shall notify the Commission of the reasons for the failure to attain those proportions and the measures they are taking in each case to ensure that the television broadcasting organization does actually attain them.

The Commission shall inform the other Member States and the European Parliament of the reports, which shall be accompanied, where appropriate, by an opinion. The Commission shall ensure the application of this Article and Article 5 in accordance with the provisions of the Treaty. The Commission may take account in its opinion, in particular, of progress achieved in relation to previous years, the share of first broadcast works in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audiovisual production capacity or restricted language area."

6. Article 5 is replaced by the following:

"Article 5

Member States shall ensure, by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services, or alternately, at the discretion of the Member States, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters.

This proportion must be achieved by earmarking at least 50% for recent works, that is to say works transmitted within five years of their production."

7. Article 6 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

"(a) works originating from Member States"

6. Article 5 is replaced by the following:

"Article 5

Member States shall ensure, by appropriate means, that broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising, teleshopping and teletext services, or alternately, at the discretion of the Member States, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters.

This proportion must be achieved by earmarking at least 50% for recent works, that is to say works transmitted within five years of their production."

7. Article 6 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

"(a) works originating from Member States"

and a new point (d) is added:

"(d) the application of the provisions of paragraphs (b) and (c) is conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned."

(b) paragraph 3 is replaced by the following:

"3. The works referred to in point (c) of paragraph 1 are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States."

(c) the following paragraph 3a is inserted:

"3a. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States."

(d) in paragraph 4, the words "and paragraph 3a" are added after the words "within the meaning of paragraph 1";

(b) paragraph 3 is replaced by the following:

"3. The works referred to in point (c) of paragraph 1 are works made exclusively or in co-production with producers established in one or more Member States by producers established in one or more European third countries with which the Community has concluded agreements relating to the audiovisual sector, if those works are mainly made with authors and workers residing in one or more European States."

(c) the following paragraph 3a is inserted:

"3a. Works that are not European works within the meaning of paragraph 1 but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the Community co-producers supply a majority share of the total cost of the production and that the production is not controlled by one or more producers established outside the territory of the Member States."

(d) in paragraph 4, the words "and paragraph 3a" are added after the words "within the meaning of paragraph 1";

8. Article 7 is replaced by the following:

"Article 7

Rightsholders and broadcasters shall agree time limits for broadcasting cinematographic works. In the absence of such agreements, television broadcasting organizations shall not broadcast any cinematographic work until the following periods have elapsed since the work was first shown in cinemas in one of the Member States:

- (a) six months for pay-per-view services;
- (b) twelve months for pay-television services other than those referred to in (a);
- (c) eighteen months for services other than those referred to in (a) and (b).

Member States shall ensure that the television broadcasting organizations under their jurisdiction comply with these provisions."

9. Article 8 is deleted.

10. The title of Chapter IV is replaced by the following:

"Television advertising and sponsorship, and teleshopping"

8. Article 7 is replaced by the following:

"Article 7

Unless otherwise agreed between rightholders and broadcasters, the latter shall not broadcast any cinematographic work until eighteen months have elapsed since the work was first shown in cinemas in one of the Member States.

This period shall be reduced to twelve months :

- (a) for pay-per-view and pay-television channels;
- (b) in the case of cinematographic works co-produced by the broadcaster."

9. Article 8 is deleted.

9a. Article 9 is replaced by the following :

"Article 9

This chapter shall not apply to television broadcasts intended for local audiences and that do not form part of a national network."

10. The title of Chapter IV is replaced by the following:

"Television advertising, sponsorship and teleshopping"

10a. Article 10 is replaced by the following:

"Article 10

1. Television advertising and teleshopping shall be readily recognizable as such and kept quite separate from other parts of the programme service by optical and/or acoustic means.
2. Isolated advertising spots and teleshopping spots shall remain the exception.
3. Advertising and teleshopping shall not use subliminal techniques.
4. Surreptitious advertising and teleshopping shall be prohibited."

11. In Article 11, paragraph 3 is replaced by the following:

11. Article 11 is replaced by the following:

"Article 11

- "1. Advertisements and teleshopping shall be inserted between other programmes. Provided the conditions contained in paragraph 2 to 5 of this Article are fulfilled, advertisements and teleshopping may also be inserted during programmes in such a way that the integrity and value of the programme, taking into account natural breaks in and the duration and nature of the programme, and the rights of the rightsholders are not prejudiced."
2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertisements and teleshopping shall only be inserted between the parts or in the intervals."

- "3. The transmission of feature films may be interrupted once for each complete period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes."
3. The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries) provided their scheduled duration is more than 45 minutes, may be interrupted once for each period of 45 minutes. A further interruption is allowed if their scheduled duration is at least 20 minutes longer than two or more complete periods of 45 minutes.
4. Where programmes, other than those covered by paragraph 2, are interrupted by advertisements or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.
5. Advertisements and teleshopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes shall not be interrupted by advertisements or by teleshopping when their scheduled duration is less than 30 minutes. If their scheduled duration is of 30 minutes or longer, the provisions of the paragraphs 1 to 4 shall apply."

12. In Article 12, the introductory words are replaced by the following:

"Television advertising and teleshopping shall not:"

12. In Article 12, the introductory words are replaced by the following:

"Television advertising and teleshopping shall not:"

and paragraph (c) is replaced by the following :

"(c) be offensive to religious, philosophical or political beliefs;"

13. Articles 13 and 14 are replaced by the following:

"Article 13

All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.

Article 14

Television advertising and teleshopping for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited."

14. Article 15 is amended as follows:

(a) The introductory words are replaced by the following:

"Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:"

13. Articles 13 and 14 are replaced by the following:

"Article 13

All forms of television advertising and teleshopping for cigarettes and other tobacco products shall be prohibited.

"Article 14

1. Television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls shall be prohibited.

2. Teleshopping for medicinal products and medical treatment which are subject to a marketing authorization within the meaning of Directive 65/65/EEC⁸ as last amended by Directive 89/343/EEC⁹ shall be prohibited ."

14. Article 15 is amended as follows:

(a) The introductory words are replaced by the following:

"Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:"

⁸ OJ no.L22, 9.2.1965, p. 369

⁹ OJ no. L142, 25.5.1989, p. 14

(b) Points (a) to (f) are replaced by the following:

"(a) they may not be aimed specifically at minors or, in particular, depict minors consuming such beverages;

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

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

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

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

(f) they shall not place emphasis on high alcoholic content as being a positive quality of the beverages."

(b) Points (a) to (f) are replaced by the following:

"(a) they may not be aimed specifically at minors or, in particular, depict minors consuming such beverages;

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

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

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

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

(f) they shall not place emphasis on high alcoholic content as being a positive quality of the beverages."

15. Article 16 is amended as follows:

(a) The introductory words are replaced by the following:

"Television advertising and teleshopping shall not cause moral or physical detriment to minors and shall therefore comply with the following criteria for their protection:"

(b) Points (a) to (d) are replaced by the following:

"(a) they shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;

(b) they shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

(c) they shall not exploit the special trust minors place in parents, teachers or other persons;

(d) they shall not unreasonably show minors in dangerous situations."

15. Article 16 is amended as follows:

(a) The introductory words are replaced by the following:

"Television advertising and teleshopping shall not cause moral or physical detriment to minors and shall therefore comply with the following criteria for their protection:"

(b) Points (a) to (d) are replaced by the following:

"(a) they shall not directly exhort minors to buy a product or a service by exploiting their inexperience or credulity;

(b) they shall not directly encourage minors to persuade their parents or others to purchase the goods or services being advertised;

(c) they shall not exploit the special trust minors place in parents, teachers or other persons;

(d) they shall not unreasonably show minors in dangerous situations."

16. Article 17(2) is replaced by the following:

"2. Television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising of which is prohibited by Article 13."

17. Article 18 is replaced by the following:

"Article 18

1. The amount of advertising shall not exceed 15% of the daily transmission time. However, this percentage may be increased to 20% if it includes forms of advertising other than advertising spots and/or teleshopping spots inserted in a service that is not exclusively devoted to teleshopping, on condition that the amount of spot advertising does not exceed 15%.

2. The amount of spot advertising within a given *clock* hour shall not exceed 20%."

16. Article 17(2) is replaced by the following:

"2. Television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

2a. Sponsorship of television programmes by undertakings whose activities include the manufacture or sale of medical products and medical treatment may promote the name or the image of the undertaking and may not promote specific medical products or medical treatments only available on prescription."

17. Article 18 is replaced by the following:

"Article 18

1. The amount of transmission time of teleshopping spots, advertising spots and other means of advertising, with the exception of teleshopping windows in the sense of article 18a shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.

2. The amount of advertising spots and teleshopping spots within a given clock hour shall not exceed 20%.

3. For the purposes of this article, advertising does not include announcements made by the broadcaster in connection with its own programmes."

18. The following Articles 18a and 18b are inserted:

"Article 18a

1. Teleshopping programmes and spots must be easily identifiable as such and if they are inserted in a service that is not exclusively devoted to this activity they must be clearly distinguished from that service's other broadcasts, including advertising broadcasts, by optical or acoustic means.
2. Teleshopping programmes and spots must comply with the provisions of Council Directive [concerning consumer protection with regard to distance selling]¹⁰, and in particular with those provisions that relate to information on contractual obligations.

Article 18b

1. Windows devoted to teleshopping and inserted in a service not exclusively devoted to this activity shall not exceed three hours in any twenty-four-hour period.
2. Services devoted exclusively to teleshopping shall not be subject to any scheduling restrictions as regards time-limits."

19. Article 19 is deleted.

18. The following Article 18a is inserted :

"Article 18a

Windows devoted to teleshopping broadcast by a channel not exclusively devoted to teleshopping shall be of a minimum uninterrupted duration of 15 minutes. Their overall duration shall not exceed three hours per day. They must be clearly identified as teleshopping windows by optical and/or acoustic means."

19. Article 19 is replaced by the following:

"Article 19

Articles 18 and 18a shall not apply to channels exclusively devoted to advertising and/or teleshopping."

¹⁰ OJ No L

20. Article 20 is replaced by the following:

"Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) to (5) and Articles 18 and 18b in respect of broadcasts intended solely for the national territory which cannot be received, directly or indirectly, in one or more other Member States."

21. Article 21 is deleted.

22. The title of Chapter V is replaced by the following:

"Protection of minors and public morality"

23. Article 22 is replaced by the following:

"Article 22

1. Member States shall take appropriate measures to ensure that television broadcasts, including trailers, by broadcasters under their jurisdiction do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence.

20. Article 20 is replaced by the following:

"Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) to (5) and Articles 18 and 18a in respect of broadcasts intended for local audiences which cannot be received, directly or indirectly by the public, in one or more other Member States."

21. Article 21 is deleted.

22. The title of Chapter V is replaced by the following:

"Protection of minors and public order"

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts."

24. The following Articles 22a and 22b are inserted:

"Article 22a

Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

Article 22b

The Commission shall attach particular importance to application of this chapter in the report provided for in Article 26."

2. The measures provided for in paragraph 1 shall also extend to other programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical measure, that minors in the area of transmission will not normally hear or see such broadcasts. Furthermore, when such programmes are broadcast in unencoded form Member States shall ensure that they are preceded by an acoustic warning or are identified by the presence of a visual symbol throughout their duration.

The following Articles 22a and 22b are inserted:

"Article 22a

Member States shall ensure that broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.

Article 22b

1. The Commission shall attach particular importance to application of this chapter in the report provided for in Article 26.
2. The Commission shall, in liaison with the competent Member State authorities, carry out an investigation of the possible advantages and drawbacks of further measures with a view to facilitating the control exercised by parents or guardians over the programmes that minors may watch.

24a. In Article 23, paragraph 1 is replaced by the following:

"1. 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 reputation and good name, have been damaged by an incorrect assertion in a television programme must have a right of reply or equivalent remedies. Member States shall ensure that the actual exercise of the right of reply is not hindered by the imposition of unreasonable terms or conditions. The reply shall be transmitted within a reasonable time subsequent to the request, in conditions as similar as possible to those of the broadcast the request refers to.

25. Article 25 is deleted.

26. Article 26 is replaced by the following:

"Article 26

Not later than the end of the third year after the date of the adoption of this Directive and every two years thereafter, the Commission shall submit to the European Parliament, the Council and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting, in particular in the light of technological developments since its adoption."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year after the date of its adoption. They shall immediately inform the Commission thereof.

When Member States adopt these provisions, these shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 1 point 5 shall be effectively applied for a period of ten years from the date of entry into force of this Directive.

Article 4

This Directive is addressed to the Member States.

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Article 4

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