

EUROPEAN UNION

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

AND

DIRECTIVE 97/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 19 JUNE 1997 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

Unofficial consolidated version prepared by the services of the Commission

RECITALS TO 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

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 (1),

In cooperation with the European Parliament (2),

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

1. Whereas the objectives of the Community as laid down in the Treaty include establishing an even closer union among the peoples of Europe, fostering 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, encouraging the constant improvement of the living conditions of its peoples as well as ensuring the preservation and strengthening of peace and liberty;

2. Whereas the Treaty provides for the establishment of a common market, including the abolition, as between Member States, of obstacles to freedom of movement for services and the institution of a system ensuring that competition in the common market is not distorted;

3. Whereas broadcasts transmitted across frontiers by means of various technologies are one of the ways of pursuing the objectives of the Community; whereas measures should be adopted to permit and ensure the transition from national markets to a common programme production and distribution market and to establish conditions of fair competition without prejudice to the public interest role to be discharged by the television broadcasting services;

4. Whereas the Council of Europe has adopted the European Convention on Transfrontier Television;

5. Whereas the Treaty provides for the issuing of directives for the coordination of provisions to facilitate the taking up of activities as self-employed persons;

6. Whereas television broadcasting constitutes, in normal circumstances, a service within the meaning of the Treaty;

7. Whereas the Treaty provides for free movement of all services normally provided against payment, without exclusion on grounds of their cultural or other content and without restriction of nationals of Member States established in a Community country other than that of the person for whom the services are intended;

8. Whereas this right as applied to the broadcasting and distribution of television services is also a specific manifestation in Community law of a more general principle, namely the freedom of expression as enshrined in Article 10 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms ratified by all Member States; whereas for this reason the issuing of directives on the broadcasting and distribution of television programmes must ensure their free movement in the light of the said Article and subject only to the limits set by paragraph 2 of that Article and by Article 56 (1) of the Treaty;

9. Whereas the laws, regulations and administrative measures in Member States concerning the pursuit of activities as television broadcasters and cable operators contain disparities, some of which may impede the free movement of broadcasts within the Community and may distort competition within the common market;

10. Whereas all such restrictions on freedom to provide broadcasting services within the Community must be abolished under the Treaty;

11. Whereas such abolition must go hand in hand with coordination of the applicable laws; whereas this coordination must be aimed at facilitating the pursuit of the professional activities concerned and, more generally, the free movement of information and ideas within the Community;

12. Whereas it is consequently necessary and sufficient that all broadcasts comply with the law of Member State from which they emanate;

13. 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 their authorities with regard to the organization - including the systems of licensing, administrative authorization or taxation - financing 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;

14. Whereas it is necessary, in the common market, that all broadcasts emanating from and intended for reception within 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 this Directive;

15. Whereas the requirement that the originating Member State should verify that broadcasts comply with 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 the receiving Member States; whereas, however, the receiving Member State may, exceptionally and under specific conditions provisionally suspend the retransmission of televised broadcasts;

16. Whereas it is essential for the Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole;

17. Whereas this Directive, being confined specifically to television broadcasting rules, is without prejudice to existing or future Community acts of harmonization, in particular to

satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions and competition;

18. Whereas co-ordination is nevertheless needed to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities;

19. Whereas minimum requirements in respect of all public or private Community television programmes for European audio-visual productions have been a means of promoting production, independent production and distribution in the abovementioned industries and are complementary to other instruments which are already or will be proposed to favour the same objective;

20. 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 envisaging for European productions where practicable and by appropriate means a majority proportion in television programmes of all Member States; whereas, in order to allow the monitoring of the application of these rules and the pursuit of the objectives, Member States will provide the Commission with a report on the application of the proportions reserved for European works and independent productions in this Directive; whereas for the calculation of such proportions account should be taken of the specific situation of the Hellenic Republic and the Portuguese Republic; whereas the Commission must inform the other Member States of these reports accompanied, where appropriate by an opinion taking account of, in particular, progress achieved in relation to previous years, the share of first broadcasts in the programming, the particular circumstances of new television broadcasters and the specific situation of countries with a low audio-visual production capacity or restricted language area;

21. Whereas for these purposes 'European works' should be defined without prejudice to the possibility of Member States laying down a more detailed definition as regards television broadcasters under their jurisdiction in accordance with Article 3 (1) in compliance with Community law and account being taken of the objectives of this Directive;

22. Whereas it is important to seek appropriate instruments and procedures in accordance with Community law in order to promote the implementation of these objectives with a view to adopting suitable measures to encourage the activity and development of European audio-visual production and distribution, particularly in countries with a low production capacity or restricted language area; whereas national support schemes for the development of European production may be applied in so far as they comply with Community law;

23. Whereas a commitment, where practicable, to a certain proportion of broadcasts for independent productions, created by producers who are independent of broadcasters, will stimulate new sources of television production, especially the creation of small and

medium-sized enterprises; whereas it will offer new opportunities and outlets to the marketing of creative talents of employment of cultural professions and employees in the cultural field; whereas the definition of the concept of independent producer by the Member States should take account of that objective by giving due consideration to small and medium-sized producers and making it possible to authorize financial participation by the coproduction subsidiaries of television organizations;

24. Whereas measures are necessary for Member States to ensure that a certain period elapses between the first cinema showing of a work and the first television showing;

25. Whereas in order to allow for an active policy in favour of a specific language, Member States remain free to lay down more detailed or stricter rules in particular on the basis of language criteria, as long as these rules are in conformity with Community law, and in particular are not applicable to the retransmission of broadcasts originating in other Member States;

26. Whereas in order to ensure that the interests of consumers as television viewers are fully and properly protected, it is essential for television advertising to be subject to a certain number of minimum rules and standards and that the Member States must maintain the right to set more detailed or stricter rules and in certain circumstances to lay down different conditions for television broadcasters under their jurisdiction;

27. Whereas Member States, with due regard to Community law and in relation to broadcasts intended solely for the national territory which may not be received, directly or indirectly, in one or more Member States, must be able to lay down different conditions for the insertion of advertising and different limits for the volume of advertising in order to facilitate these particular broadcasts;

28. Whereas it is necessary to prohibit all television advertising promoting cigarettes and other tobacco products including indirect forms of advertising which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on advertising by using brand names, symbols or other distinctive features of tobacco products or of undertakings whose known or main activities include the production or sale of such products;

29. Whereas it is equally necessary to prohibit all television advertising for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the broadcaster falls and to introduce strict criteria relating to the television advertising of alcoholic products;

30. Whereas in view of the growing importance of sponsorship in the financing of programmes, appropriate rules should be laid down;

31. Whereas it is, furthermore, necessary to introduce rules to protect the physical, mental and moral development of minors in programmes and in television advertising;

32. Whereas although television broadcasters are normally bound to ensure that programmes present facts and events fairly, it is nevertheless important that they should be subject to specific obligations with respect to the right of reply or equivalent remedies so that any person whose legitimate interests have been damaged by an assertion made in the course of a broadcast television programme may effectively exercise such right or remedy.

(1) OJ No C 179, 17. 7. 1986, p. 4.

(2) OJ No C 49, 22. 2. 1988, p. 53, and OJ No C 158, 26. 6. 1989.

(3) OJ No C 232, 31. 8. 1987, p. 29.

RECITALS TO DIRECTIVE 97/ /EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law,

regulation or administrative action in Member States

concerning the pursuit of television broadcasting activities

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 laid down in Article 189b of the Treaty in the light of the joint text approved by the Conciliation Committee on 16 April 1997,

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

(2) Whereas Article 26 of Directive 89/552/EEC states that the Commission shall, not later than the end of the fifth year after the date of adoption of the Directive, submit to the European Parliament, the Council 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;

(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 plan", 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 meeting of 28 September 1994 and stressed the need to improve the competitiveness of the European audiovisual industry;

(6) Whereas the Commission has submitted a Green Paper on the Protection of Minors and Human Dignity in audiovisual and information services and has undertaken to submit a Green Paper focusing on developing the cultural aspects of these new services;

(7) 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 movement of services;

(8) Whereas it is essential that the Member States should take action with regard to services comparable to television broadcasting in order to prevent any breach of the fundamental principles which must govern information and the emergence of wide disparities as regards free movement and competition;

(9) 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;

(10) 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;

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

(12) Whereas the establishment of a television broadcasting organization 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;

(13) Whereas the fixing of a series of practical criteria is designed to determine by an exhaustive procedure that one Member State and one only has jurisdiction over a broadcaster in connection with the provision of the services which this 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 jurisdiction it is appropriate to refer to the criterion of establishment within the meaning of Articles 52 and following of the Treaty establishing the European Community as the final criterion determining the jurisdiction of a Member State;

(14) 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 on the territory of the first Member State;

(15) Whereas Article F(2) of the Treaty on European Union stipulates that the Union shall respect fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms as general principles of Community law; whereas any measure aimed at restricting the reception and/or suspending the retransmission of television broadcasts taken under Article 2a of Directive 89/552/EEC as amended by this Directive must be compatible with such principles;

(16) Whereas it is necessary to ensure the effective application of the provisions of Directive 89/552/EEC as amended by this Directive throughout the Community in order to preserve free and fair competition between firms in the same industry;

(17) Whereas directly affected third parties, including nationals of other Member States, must be able to assert their rights, according to national law, before competent judicial or other authorities of the Member State with jurisdiction over the television broadcasting organization that may be failing to comply with the national provisions arising out of the application of Directive 89/552/EEC as amended by this Directive;

(18) Whereas it is essential that Member States should be able to take measures to protect the right to information and to ensure wide access by the public to television coverage of national or non-national events of major importance for society, such as the Olympic games, the football World Cup and European football Championship; whereas to this end Member States retain the right to take measures compatible with Community law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events;

(19) Whereas it is necessary to make arrangements within a Community framework, in order to avoid potential legal uncertainty and market distortions and to reconcile free circulation of television services with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest;

(20) Whereas, in particular, it is appropriate to lay down in this Directive provisions concerning the exercise by broadcasters of exclusive broadcasting rights that they may have purchased to events considered to be of major importance for society in a Member State other than that having jurisdiction over the broadcasters, and whereas, in order to avoid speculative rights purchases with a view to circumvention of national measures, it is necessary to apply these provisions to contracts entered into after the publication of this Directive and concerning events which take place after the date of implementation, and whereas, when contracts that predate the publication of this Directive are renewed, they are considered to be new contracts;

(21) Whereas events of major importance for society should, for the purposes of this Directive, meet certain criteria, that is to say be outstanding events which are of interest to the general public in the European Union or in a given Member State or in an important component part of a given Member State and are organized in advance by an event organizer who is legally entitled to sell the rights pertaining to that event;

(22) Whereas, for the purposes of this Directive, "free television" means broadcasting on a channel, either public or commercial, of programmes which are accessible to the public without payment in addition to the modes of funding of broadcasting that are widely prevailing in each Member State (such as licence fee and/or the basic tier subscription fee to a cable network);

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

(24) Whereas in order to eliminate the obstacles arising from differences in national legislation on the promotion of European works, Directive 89/552/EEC as amended by this Directive contains provisions aimed at harmonizing such legislation; whereas those provisions which, in general, seek to liberalize trade must contain clauses harmonizing the conditions of competition;

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

(26) 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, puts forward inter alia measures to promote

European works in order to further the development of the sector; whereas the MEDIA II programme, which seeks to promote training, development and distribution in the audiovisual sector, is also designed to enable the production of European works to be developed; whereas the Commission has proposed that production of European works should also be promoted by a Community mechanism such as a Guarantee Fund;

(27) Whereas broadcasting organizations, programme makers, producers, authors and other experts should be encouraged to develop more detailed concepts and strategies aimed at developing European audiovisual fiction films that are addressed to an international audience;

(28) Whereas, in addition to the considerations cited above, it is necessary to create conditions for improving the competitiveness of the programme industry; whereas the communications on the application of Articles 4 and 5 of Directive 89/552/EEC, adopted by the Commission on 3 March 1994 and 15 July 1996 pursuant to Article 4(3) of that Directive, draw the conclusion that measures to promote European works can contribute to such an improvement but that they need to take account of developments in the field of television broadcasting;

(29) Whereas channels broadcasting entirely in a language other than those of the Member States should not be covered by the provisions of Articles 4 and 5; whereas, nevertheless, where such a language or languages represent a substantial part but not all of the channel's transmission time, the provisions of Articles 4 and 5 should not apply to that part of transmission time;

(30) Whereas the proportions of European works must be achieved taking economic realities into account; whereas, therefore, a progressive system for achieving this objective is required;

(31) Whereas, with a view to promoting the production of European works, it is essential that the Community, taking into account the audiovisual capacity of each Member State and the need to protect lesser used languages of the European Union, should promote independent producers; whereas Member States, in defining the notion of "independent producer", should take appropriate account of criteria such as the ownership of the production company, the amount of programmes supplied to the same broadcaster and the ownership of secondary rights;

(32) Whereas the question of specific time scales for each type of television showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned;

(33) Whereas advertising for medicinal products for human use is subject to the provisions of Directive 92/28/EEC;

(34) Whereas daily transmission time allotted to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from

these, 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;

(35) Whereas, in order to avoid distortions of competition, this derogation is limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned; whereas the term ancillary refers to products intended specifically to allow the viewing public to benefit fully from or to interact with these programmes;

(36) Whereas in view of the development of teleshopping, an economically important activity 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 such broadcasts;

(37) Whereas it is important for the competent national authorities, in monitoring the implementation of the relevant provisions, to be able to distinguish, as regards channels not exclusively devoted to teleshopping, between transmission time devoted to teleshopping spots, advertising spots and other forms of advertising on the one hand and, on the other, transmission time devoted to teleshopping windows; whereas it is therefore necessary and sufficient that each window be clearly identified by optical and acoustic means at least at the beginning and the end of the window;

(38) Whereas Directive 89/552/EEC as amended by this Directive applies to channels exclusively devoted to teleshopping or self-promotion, without conventional programme elements such as news, sports, films, documentaries and drama, solely for the purposes of these Directives and without prejudice to the inclusion of such channels in the scope of other Community instruments;

(39) Whereas it is necessary to make clear that self-promotional activities are a particular form of advertising in which the broadcaster promotes its own products, services, programmes or channels; whereas, in particular, trailers consisting of extracts from programmes should be treated as programmes; whereas self-promotion is a new and relatively unknown phenomenon and provisions concerning it may therefore be particularly subject to review in future examinations of this Directive;

(40) 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 the use of appropriate technical means should satisfy concern about the public interest expressed by Member States and the Community;

(41) Whereas none of the provisions of this Directive that concern the protection of minors and public order requires that the measures in question must necessarily be implemented through the prior control of television broadcasts;

(42) Whereas an investigation by the Commission, in liaison with the competent Member State authorities, of the possible advantages and drawbacks of further measures to facilitate the control exercised by parents or guardians over the programmes that minors may watch shall consider, inter alia, the desirability of:

- 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 and other educational and awareness measures;
- taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations,

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

(43) Whereas it is appropriate to amend Directive 89/552/EEC to allow natural or legal persons whose activities include the manufacture or the sale of medicinal products and medical treatment available only on prescription to sponsor television programmes, provided that such sponsorship does not circumvent the prohibition of television advertising for medicinal products and medical treatment available only on prescription;

(44) Whereas the approach in Directive 89/552/EEC and this Directive has been adopted to achieve the essential harmonization necessary and sufficient to ensure the free movement of television broadcasts in the Community; whereas Member States remain free to apply to broadcasters under their jurisdiction more detailed or stricter rules in the fields coordinated by this Directive, including, inter alia, rules concerning the achievement of language policy goals, protection of the public interest in terms of television's role as a provider of information, education, culture and entertainment, the need to safeguard pluralism in the information industry and the media, and 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 or similar initiatives; whereas such rules must be compatible with Community law;

(45) Whereas the objective of supporting audiovisual production in Europe can be pursued within the Member States in the framework of the organisation of their broadcasting services, inter alia through the definition of a public interest mission for certain broadcasting organizations, including the obligation to contribute substantially to investment in European production;

(46) 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",

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

Definitions

Article 1

For the purpose of this Directive:

(a) 'television broadcasting' means the initial transmission by wire or over the air, including that by satellite, in unencoded or encoded form, of television programmes intended for reception by the public. 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;

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

(c) "television advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes 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, in return for payment;

(d) 'surreptitious advertising' means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature. Such representation is considered to be intentional in particular if it is done in return for payment or for similar consideration;

(e) 'sponsorship' means any contribution made by a public or private undertaking not engaged in television broadcasting activities or in the production of audio-visual works, to the financing of television programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

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

CHAPTER II

General provisions

Article 2

1. 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 purposes of this Directive the broadcasters under the jurisdiction of a Member State are:

- those established in that Member State in accordance with paragraph 3;
- those to whom paragraph 4 applies.

3. For the purposes of this Directive, a broadcaster shall be 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;

(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 third country, 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.

4. Broadcasters to whom the provisions of paragraph 3 are not applicable shall be 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 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. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the broadcaster is established within the meaning of Articles 52 and following of the Treaty establishing the European Community.

6. 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.

Article 2a

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of television broadcasts from other Member States for reasons which fall within the fields coordinated by this Directive.

2. Member States may, provisionally, derogate from paragraph 1 if the following conditions are fulfilled:

(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) and/or Article 22a;

(b) during the previous 12 months, the broadcaster has infringed the provision(s) referred to in (a) 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 Member State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in (c), and the alleged infringement persists.

The Commission shall, within two months following notification of the measures taken by the Member State, take a decision on whether the measures are compatible with Community law. If it decides that they are not, the Member State will be required to put an end to the measures in question as a matter of urgency.

3. Paragraph 2 shall be 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.

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 effectively comply with the provisions of this Directive.
3. 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.

Article 3a

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events via live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due and effective time. In so doing the Member State concerned shall also determine whether these events should be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.
2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the Committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the Official Journal of the European Communities and at least once a year the consolidated list of the measures taken by Member States.
3. Member States shall ensure, by appropriate means, within the framework of their legislation that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with the preceding paragraphs via whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.

CHAPTER III

Promotion of distribution and production of television programmes

Article 4

1. Member States shall ensure where practicable and by appropriate means, 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 services and teleshopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. Where the proportion laid down in paragraph 1 cannot be attained, it must not be lower than the average for 1988 in the Member State concerned.

However, in respect of the Hellenic Republic and the Portuguese Republic, the year 1988 shall be replaced by the year 1990.

3. From 3 October 1991, the Member States shall provide the Commission every two years with a report on the application of this Article and Article 5.

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 television programmes falling within the jurisdiction of the Member State concerned, the reasons, in each case, for the failure to attain that proportion and the measures adopted or envisaged in order to achieve it.

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.

4. The Council shall review the implementation of this Article on the basis of a report from the Commission accompanied by any proposals for revision that it may deem appropriate no later than the end of the fifth year from the adoption of the Directive.

To that end, the Commission report shall, on the basis of the information provided by Member States under paragraph 3, take account in particular of developments in the Community market and of the international context.

Article 5

Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve at least 10 % of their transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and teleshopping, or alternately, at the discretion of the Member State, at least 10 % of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

Article 6

1. Within the meaning of this chapter, 'European works' means the following:

- (a) works originating from Member States;
- (b) works originating from European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of paragraph 2;
- (c) works originating from other European third countries and fulfilling the conditions of paragraph 3.

Application of the provisions of (b) and (c) shall be conditional on works originating from Member States not being the subject of discriminatory measures in the third countries concerned

2. The works referred to in paragraph 1 (a) and (b) are works mainly made with authors and workers residing in one or more States referred to in paragraph 1 (a) and (b) provided that they comply with one of the following three conditions:

- (a) they are made by one or more producers established in one or more of those States; or
- (b) production of the works is supervised and actually controlled by one or more producers established in one or more of those States; or
- (c) the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States.

3. The works referred to in paragraph 1(c) 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.

4. 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.

5. Works which are not European works within the meaning of paragraphs 1 and 4, but made mainly with authors and workers residing in one or more Member States, shall be considered to be European works to an extent corresponding to the proportion of the contribution of Community co-producers to the total production costs.

Article 7

Member States shall ensure that broadcasters under their jurisdiction do not broadcast cinematographic works outside periods agreed with the rights holders.

Article 8

Article 9

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

CHAPTER IV

Television advertising, sponsorship and teleshopping

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 and teleshopping spots shall remain the exception.
3. Advertising and teleshopping shall not use subliminal techniques.
4. Surreptitious advertising and teleshopping shall be prohibited.

Article 11

1. Advertising and teleshopping spots shall be inserted between programmes. Provided the conditions set out in paragraphs 2 to 5 are fulfilled, advertising and teleshopping spots 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 rights holders are not prejudiced.

2. In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and teleshopping spots shall only be inserted between the parts or in the intervals.

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 shall be 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 advertising or teleshopping spots, a period of at least 20 minutes should elapse between each successive advertising break within the programme.

5. Advertising 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, when their scheduled duration is less than 30 minutes, shall not be interrupted by advertising or by teleshopping. If their scheduled duration is 30 minutes or longer, the provisions of the previous paragraphs shall apply.

Article 12

Television advertising and teleshopping shall not:

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or to safety;
- (e) encourage behaviour prejudicial to the protection of the environment.

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 which are subject to a marketing authorization within the meaning of Council Directive 65/65/EEC of 26 January 1965 on the approximation of provisions laid down by law, regulation or administrative action relating to medicinal products (*), as well as teleshopping for medical treatment, shall be prohibited.

Article 15

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

(a) it may not be aimed specifically at minors or, in particular, depict minors consuming these beverages;

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

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

(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;

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

Article 16

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

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

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

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

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

2. Teleshopping shall comply with the requirements referred to in paragraph 1 and, in addition, shall not exhort minors to contract for the sale or rental of goods and services.

Article 17

1. Sponsored television programmes shall meet the following requirements:

(a) the content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes;

(b) they must be clearly identified as such by the name and/or logo of the sponsor at the beginning and/or the end of the programmes;

(c) they must not encourage the purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services.

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

3. Sponsorship of television programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking but may not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the broadcaster falls.

4. News and current affairs programmes may not be sponsored.

Article 18

1. The proportion of transmission time devoted to teleshopping spots, advertising spots and other forms of advertising, with the exception of teleshopping windows within the meaning 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 proportion 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 and ancillary products directly derived from those programmes;

– public service announcements and charity appeals broadcast free of charge.

Article 18a

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

Article 19

Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to teleshopping. Advertising on such channels shall be allowed within the daily limits established by Article 18(1). Article 18(2) shall not apply.

Article 19a

Chapters I, II, IV, V, VI, VIa and VII shall apply *mutatis mutandis* to channels exclusively devoted to self-promotion. Other forms of advertising on such channels shall be allowed within the limits established by Article 18(1) and (2). This provision in particular shall be subject to review in accordance with Article 26.

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 solely for the national territory which cannot be received, directly or indirectly by the public, in one or more other Member States.

~~*Article 21*~~

CHAPTER V

Protection of minors and public order

Article 22

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

3. 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.

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 within one year from the date of publication of this directive, 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. This study shall consider, inter alia, the desirability of:

- 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 and other educational and awareness measures,
- taking into account experience gained in this field in Europe and elsewhere as well as the views of interested parties such as broadcasters, producers, educationalists, media specialists and relevant associations.

CHAPTER VI

Right of reply

Article 23

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 assertion of incorrect facts 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 or equivalent remedies is not hindered by the imposition of unreasonable terms or

conditions. The reply shall be transmitted within a reasonable time subsequent to the request being substantiated and at a time and in a manner appropriate to the broadcast to which the request refers.

2. A right of reply or equivalent remedies 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 or the equivalent remedies and shall determine the procedure to be followed for the exercise thereof. In particular, they shall ensure that a sufficient time span is allowed and that the procedures are such that the right or equivalent remedies can be exercised appropriately by natural or legal persons resident or established in other Member States.

4. An application for exercise of the right of reply or the equivalent remedies 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 or the equivalent remedies can be subject to judicial review.

CHAPTER VIa

Contact committee

Article 23a

1. A contact committee shall be set up under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of this committee shall be:

(a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;

(b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of the provisions of this Directive;

(c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 4(3), on the methodology of these, on the terms of reference for the independent study referred to in Article 25a, on the evaluation of tenders for this and on the study itself;

(d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organizations, producers, consumers, manufacturers, service providers and trade unions and the creative community;

(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding television broadcasting services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;

(f) to examine any development arising in the sector on which an exchange of views appears useful.

CHAPTER VII

Final provisions

Article 24

In fields which this Directive does not coordinate, it shall not affect the rights and obligations of Member States resulting from existing conventions dealing with telecommunications or broadcasting.

Article 25

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 3 October 1991. They shall forthwith inform the Commission thereof.

2. 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 25a

A further review as provided for in Article 4(4) shall take place before 19 June 2002. It shall take account of an independent study on the impact of the measures in question at both Community and national level.

Article 26

Not later than 31 December 2000, 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 as amended and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting, in particular in the light of recent technological developments.

Article 27

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 19 December 1998. They shall immediately inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down 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 28

This Directive shall enter into force on the date of its publication in the Official Journal of the European Communities.

Article 29

This Directive is addressed to the Member States.

Done at Brussels,

For the Parliament For the Council

The President The President