

Directive 2010/13/EU of the European Parliament and of the Council  
of 10 March 2010 on the coordination of certain provisions laid  
down by law, regulation or administrative action in Member States  
concerning the provision of audiovisual media services (Audiovisual  
Media Services Directive) (codified version) (Text with EEA relevance)

DIRECTIVE 2010/13/EU OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles  
53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

Acting in accordance with the ordinary legislative procedure<sup>(1)</sup>,

Whereas:

- (1) Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive)<sup>(2)</sup> has been substantially amended several times<sup>(3)</sup>. In the interests of clarity and rationality the said Directive should be codified.
- (2) Audiovisual media services provided across frontiers by means of various technologies are one of the ways of pursuing the objectives of the Union. Certain measures are necessary to permit and ensure the transition from national markets to a common programme production and distribution market, and to guarantee conditions of fair competition without prejudice to the public interest role to be discharged by the audiovisual media services.
- (3) The Council of Europe has adopted the European Convention on Transfrontier Television.
- (4) In the light of new technologies in the transmission of audiovisual media services, a regulatory framework concerning the pursuit of broadcasting activities should take account of the impact of structural change, the spread of information and communication technologies (ICT) and technological developments on business

models, especially the financing of commercial broadcasting, and should ensure optimal conditions of competitiveness and legal certainty for Europe's information technologies and its media industries and services, as well as respect for cultural and linguistic diversity.

- (5) Audiovisual media services are as much cultural services as they are economic services. Their growing importance for societies, democracy — in particular by ensuring freedom of information, diversity of opinion and media pluralism — education and culture justifies the application of specific rules to these services.
- (6) Article 167(4) of the Treaty on the Functioning of the European Union requires the Union to take cultural aspects into account in its action under other provisions of that Treaty, in particular in order to respect and to promote the diversity of its cultures.
- (7) In its resolutions of 1 December 2005<sup>(4)</sup> and 4 April 2006<sup>(5)</sup> on the Doha Round and on the WTO Ministerial Conferences, the European Parliament called for basic public services, such as audiovisual services, to be excluded from liberalisation under the General Agreement on Trade in Services (GATS) negotiations. In its resolution of 27 April 2006<sup>(6)</sup>, the European Parliament supported the Unesco Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which states in particular that 'cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value'. Council Decision 2006/515/EC of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions<sup>(7)</sup> approved the Unesco Convention on behalf of the Community. The Convention entered into force on 18 March 2007. This Directive respects the principles of that Convention.
- (8) 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.
- (9) This Directive is without prejudice to existing or future Union acts of harmonisation, in particular to satisfy mandatory requirements concerning the protection of consumers and the fairness of commercial transactions and competition.
- (10) Traditional audiovisual media services — such as television — and emerging on-demand audiovisual media services offer significant employment opportunities in the Union, particularly in small and medium-sized enterprises, and stimulate economic growth and investment. Bearing in mind the importance of a level playing-field and a true European market for audiovisual media services, the basic principles of the internal market, such as free competition and equal treatment, should be respected in order to ensure transparency and predictability in markets for audiovisual media services and to achieve low barriers to entry.
- (11) It is necessary, in order to avoid distortions of competition, improve legal certainty, help complete the internal market and facilitate the emergence of a single information area, that at least a basic tier of coordinated rules apply to all audiovisual media services,

both television broadcasting (i.e. linear audiovisual media services) and on-demand audiovisual media services (i.e. non-linear audiovisual media services).

- (12) On 15 December 2003 the Commission adopted a Communication on the future of European regulatory audiovisual policy, in which it stressed that regulatory policy in that sector has to safeguard certain public interests, such as cultural diversity, the right to information, media pluralism, the protection of minors and consumer protection, and to enhance public awareness and media literacy, now and in the future.
- (13) The resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 25 January 1999 concerning public service broadcasting<sup>(8)</sup>, reaffirmed that the fulfilment of the mission of public service broadcasting requires that it continue to benefit from technological progress. The co-existence of private and public audiovisual media service providers is a feature which distinguishes the European audiovisual media market.
- (14) The Commission has adopted the initiative ‘i2010: European Information Society’ to foster growth and jobs in the information society and media industries. This is a comprehensive strategy designed to encourage the production of European content, the development of the digital economy and the uptake of ICT, against the background of the convergence of information society services and media services, networks and devices, by modernising and deploying all EU policy instruments: regulatory instruments, research and partnerships with industry. The Commission has committed itself to creating a consistent internal market framework for information society services and media services by modernising the legal framework for audiovisual services. The goal of the i2010 initiative will in principle be achieved by allowing industries to grow with only the necessary regulation, as well as allowing small start-up businesses, which are the wealth and job creators of the future, to flourish, innovate and create employment in a free market.
- (15) The European Parliament adopted on 4 September 2003<sup>(9)</sup>, 22 April 2004<sup>(10)</sup> and 6 September 2005<sup>(11)</sup> resolutions which in principle supported the general approach of basic rules for all audiovisual media services and additional rules for television broadcasting.
- (16) This Directive enhances compliance with fundamental rights and is fully in line with the principles recognised by the Charter of Fundamental Rights of the European Union<sup>(12)</sup>, in particular Article 11 thereof. In this regard, this Directive should not in any way prevent Member States from applying their constitutional rules relating to freedom of the press and freedom of expression in the media.
- (17) This Directive should not affect the obligations on Member States arising from the application of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services<sup>(13)</sup>. Accordingly, draft national measures applicable to on-demand audiovisual media services of a stricter or more detailed nature than those which are required to simply transpose Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 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<sup>(14)</sup> should be subject to the procedural obligations established pursuant to Article 8 of Directive 98/34/EC.

- (18) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>(15)</sup> according to its Article 1(3) is without prejudice to measures taken at Union or national level to pursue general interest objectives, in particular relating to content regulation and audiovisual policy.
- (19) This Directive does not affect the responsibility of the Member States and their authorities with regard to the organisation — including the systems of licensing, administrative authorisation or taxation — the financing and the content of programmes. The independence of cultural developments in the Member States and the preservation of cultural diversity in the Union therefore remain unaffected.
- (20) No provision of this Directive should require or encourage Member States to impose new systems of licensing or administrative authorisation on any type of audiovisual media service.
- (21) For the purposes of this Directive, the definition of an audiovisual media service should cover only audiovisual media services, whether television broadcasting or on-demand, which are mass media, that is, which are intended for reception by, and which could have a clear impact on, a significant proportion of the general public. Its scope should be limited to services as defined by the Treaty on the Functioning of the European Union and therefore should cover any form of economic activity, including that of public service enterprises, but should not cover activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest.
- (22) For the purposes of this Directive, the definition of an audiovisual media service should cover mass media in their function to inform, entertain and educate the general public, and should include audiovisual commercial communication but should exclude any form of private correspondence, such as e-mails sent to a limited number of recipients. That definition should exclude all services the principal purpose of which is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose. Examples include websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service. For these reasons, games of chance involving a stake representing a sum of money, including lotteries, betting and other forms of gambling services, as well as on-line games and search engines, but not broadcasts devoted to gambling or games of chance, should also be excluded from the scope of this Directive.
- (23) For the purposes of this Directive, the term ‘audiovisual’ should refer to moving images with or without sound, thus including silent films but not covering audio transmission or radio services. While the principal purpose of an audiovisual media service is the

provision of programmes, the definition of such a service should also cover text-based content which accompanies programmes, such as subtitling services and electronic programme guides. Stand-alone text-based services should not fall within the scope of this Directive, which should not affect the freedom of the Member States to regulate such services at national level in accordance with the Treaty on the Functioning of the European Union.

- (24) It is characteristic of on-demand audiovisual media services that they are ‘television-like’, i.e. that they compete for the same audience as television broadcasts, and the nature and the means of access to the service would lead the user reasonably to expect regulatory protection within the scope of this Directive. In the light of this and in order to prevent disparities as regards free movement and competition, the concept of ‘programme’ should be interpreted in a dynamic way taking into account developments in television broadcasting.
- (25) The concept of editorial responsibility is essential for defining the role of the media service provider and therefore for the definition of audiovisual media services. Member States may further specify aspects of the definition of editorial responsibility, notably the concept of ‘effective control’, when adopting measures to implement this Directive. This Directive should be without prejudice to the exemptions from liability established in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)<sup>(16)</sup>.
- (26) For the purposes of this Directive, the definition of media service provider should exclude natural or legal persons who merely transmit programmes for which the editorial responsibility lies with third parties.
- (27) Television broadcasting currently includes, in particular, analogue and digital television, live streaming, webcasting and near-video-on-demand, whereas video-on-demand, for example, is an on-demand audiovisual media service. In general, for television broadcasting or television programmes which are also offered as on-demand audiovisual media services by the same media service provider, the requirements of this Directive should be deemed to be met by the fulfilment of the requirements applicable to the television broadcast, i.e. linear transmission. However, where different kinds of services are offered in parallel, but are clearly separate services, this Directive should apply to each of the services concerned.
- (28) The scope of this Directive should not cover electronic versions of newspapers and magazines.
- (29) All the characteristics of an audiovisual media service set out in its definition and explained in recitals 21 to 28 should be present at the same time.
- (30) In the context of television broadcasting, the concept of simultaneous viewing should also cover quasi-simultaneous viewing because of the variations in the short time lag which occurs between the transmission and the reception of the broadcast due to technical reasons inherent in the transmission process.

- (31) A wide definition of audiovisual commercial communication should be laid down in this Directive, which should not however include public service announcements and charity appeals broadcast free of charge.
- (32) For the purposes of this Directive, ‘European works’ should be defined without prejudice to the possibility of Member States laying down a more detailed definition as regards media service providers under their jurisdiction, in compliance with Union law and account being taken of the objectives of this Directive.
- (33) The country of origin principle should be regarded as the core of this Directive, as it is essential for the creation of an internal market. This principle should be applied to all audiovisual media services in order to ensure legal certainty for media service providers as the necessary basis for new business models and the deployment of such services. It is also essential in order to ensure the free flow of information and audiovisual programmes in the internal market.
- (34) In order to promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the Union, only one Member State should have jurisdiction over an audiovisual media service provider and pluralism of information should be a fundamental principle of the Union.
- (35) The fixing of a series of practical criteria is designed to determine by an exhaustive procedure that only one Member State has jurisdiction over a media service provider in connection with the provision of the services which this Directive addresses. Nevertheless, taking into account the case-law of the Court of Justice of the European Union 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 49 to 55 of the Treaty on the Functioning of the European Union as the final criterion determining the jurisdiction of a Member State.
- (36) The requirement that the originating Member State should verify that broadcasts comply with national law as coordinated by this Directive is sufficient under Union law to ensure free movement of broadcasts without secondary control on the same grounds in the receiving Member States. However, the receiving Member State may, exceptionally and under specific conditions, provisionally suspend the retransmission of televised broadcasts.
- (37) Restrictions on the free provision of on-demand audiovisual media services should only be possible in accordance with conditions and procedures replicating those already established by Article 3(4), (5) and (6) of Directive 2000/31/EC.
- (38) Technological developments, especially with regard to digital satellite programmes, mean that subsidiary criteria should be adapted in order to ensure suitable regulation and its effective implementation and to give players genuine power over the content of an audiovisual media service.
- (39) As this Directive concerns services offered to the general public in the Union, it should apply only to audiovisual media services that can be received directly or indirectly by the public in one or more Member States with standard consumer equipment. The

definition of ‘standard consumer equipment’ should be left to the competent national authorities.

- (40) Articles 49 to 55 of the Treaty on the Functioning of the European Union lay down the fundamental right to freedom of establishment. Therefore, media service providers should in general be free to choose the Member States in which they establish themselves. The Court of Justice has also emphasised that ‘the Treaty does not prohibit an undertaking from exercising the freedom to provide services if it does not offer services in the Member State in which it is established’<sup>(17)</sup>.
- (41) Member States should be able to apply more detailed or stricter rules in the fields coordinated by this Directive to media service providers under their jurisdiction, while ensuring that those rules are consistent with general principles of Union law. In order to deal with situations where a broadcaster under the jurisdiction of one Member State provides a television broadcast which is wholly or mostly directed towards the territory of another Member State, a requirement for Member States to cooperate with one another and, in cases of circumvention, the codification of the case-law of the Court of Justice<sup>(18)</sup>, combined with a more efficient procedure, would be an appropriate solution that takes account of Member State concerns without calling into question the proper application of the country of origin principle. The concept of rules of general public interest has been developed by the Court of Justice in its case-law in relation to Articles 43 and 49 of the EC Treaty (now Articles 49 and 56 of the Treaty on the Functioning of the European Union) and includes, inter alia, rules on the protection of consumers, the protection of minors and cultural policy. The Member State requesting cooperation should ensure that the specific national rules in question are objectively necessary, applied in a non-discriminatory manner and proportionate.
- (42) A Member State, when assessing on a case-by-case basis whether a broadcast by a media service provider established in another Member State is wholly or mostly directed towards its territory, may refer to indicators such as the origin of the television advertising and/or subscription revenues, the main language of the service or the existence of programmes or commercial communications targeted specifically at the public in the Member State where they are received.
- (43) Under this Directive, notwithstanding the application of the country of origin principle, Member States may still take measures that restrict freedom of movement of television broadcasting, but only under the conditions and following the procedure laid down in this Directive. However, the Court of Justice has consistently held that any restriction on the freedom to provide services, such as any derogation from a fundamental principle of the Treaty, must be interpreted restrictively<sup>(19)</sup>.
- (44) In its Communication to the European Parliament and to the Council on Better Regulation for Growth and Jobs in the European Union, the Commission stressed that a careful analysis of the appropriate regulatory approach is necessary, in particular, in order to establish whether legislation is preferable for the relevant sector and problem, or whether alternatives such as co-regulation or self-regulation should be considered. Furthermore, experience has shown that both co-regulation and self-regulation instruments, implemented in accordance with the different legal traditions

of the Member States, can play an important role in delivering a high level of consumer protection. Measures aimed at achieving public interest objectives in the emerging audiovisual media services sector are more effective if they are taken with the active support of the service providers themselves. Thus self-regulation constitutes a type of voluntary initiative which enables economic operators, social partners, non-governmental organisations or associations to adopt common guidelines amongst themselves and for themselves.

Member States should, in accordance with their different legal traditions, recognise the role which effective self-regulation can play as a complement to the legislative and judicial and/or administrative mechanisms in place and its useful contribution to the achievement of the objectives of this Directive. However, while self-regulation might be a complementary method of implementing certain provisions of this Directive, it should not constitute a substitute for the obligations of the national legislator. Co-regulation gives, in its minimal form, a legal link between self-regulation and the national legislator in accordance with the legal traditions of the Member States. Co-regulation should allow for the possibility of State intervention in the event of its objectives not being met. Without prejudice to formal obligations of the Member States regarding transposition, this Directive encourages the use of co-regulation and self-regulation. This should neither oblige Member States to set up co-regulation and/or self-regulatory regimes nor disrupt or jeopardise current co-regulation or self-regulatory initiatives which are already in place within Member States and which are working effectively.

- (45) Because of the specific nature of audiovisual media services, especially the impact of these services on the way people form their opinions, it is essential for users to know exactly who is responsible for the content of these services. It is therefore important for Member States to ensure that users have easy and direct access at any time to information about the media service provider. It is for each Member State to decide the practical details as to how this objective can be achieved without prejudice to any other relevant provisions of Union law.
- (46) The right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Union is inextricably linked to the provision of accessible audiovisual media services. The means to achieve accessibility should include, but need not be limited to, sign language, subtitling, audio-description and easily understandable menu navigation.
- (47) ‘Media literacy’ refers to skills, knowledge and understanding that allow consumers to use media effectively and safely. Media-literate people are able to exercise informed choices, understand the nature of content and services and take advantage of the full range of opportunities offered by new communications technologies. They are better able to protect themselves and their families from harmful or offensive material. Therefore the development of media literacy in all sections of society should be promoted and its progress followed closely. The Recommendation of the European Parliament and of the Council of 20 December 2006 on the protection of minors and human dignity and on the right of reply in relation to the competitiveness of the European audiovisual and on-line information services industry<sup>(20)</sup> already contains a series of possible measures for promoting media literacy such as, for example,



continuing education of teachers and trainers, specific Internet training aimed at children from a very early age, including sessions open to parents, or organisation of national campaigns aimed at citizens, involving all communications media, to provide information on using the Internet responsibly.

- (48) Television broadcasting rights for events of high interest to the public may be acquired by broadcasters on an exclusive basis. However, it is essential to promote pluralism through the diversity of news production and programming across the Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.
- (49) 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 the European football championship. To this end, Member States retain the right to take measures compatible with Union law aimed at regulating the exercise by broadcasters under their jurisdiction of exclusive broadcasting rights to such events.
- (50) It is necessary to make arrangements within a Union framework, in order to avoid potential legal uncertainty and market distortions and to reconcile the free circulation of television services with the need to prevent the possibility of circumvention of national measures protecting a legitimate general interest.
- (51) In particular, it is appropriate to lay down 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. In order to avoid speculative rights purchases with a view to circumvention of national measures, it is necessary to apply those provisions to contracts entered into after the publication of Directive 97/36/EC of the European Parliament and of the Council<sup>(21)</sup> and concerning events which take place after the date of implementation. When contracts that predate the publication of that Directive are renewed, they are considered to be new contracts.
- (52) 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 Union or in a given Member State or in an important component part of a given Member State and are organised in advance by an event organiser who is legally entitled to sell the rights pertaining to those events.
- (53) 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).
- (54) Member States are free to take whatever measures they deem appropriate with regard to audiovisual media services which come from third countries and which do not satisfy

the conditions laid down in Article 2, provided they comply with Union law and the international obligations of the Union.

- (55) In order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union are fully and properly protected, those exercising exclusive television broadcasting rights to an event of high interest to the public should grant other broadcasters the right to use short extracts for the purposes of general news programmes on fair, reasonable and non-discriminatory terms taking due account of exclusive rights. Such terms should be communicated in a timely manner before the event of high interest to the public takes place to give others sufficient time to exercise such a right. A broadcaster should be able to exercise this right through an intermediary acting specifically on its behalf on a case-by-case basis. Such short extracts may be used for EU-wide broadcasts by any channel including dedicated sports channels and should not exceed 90 seconds. The right of access to short extracts should apply on a trans-frontier basis only where it is necessary. Therefore a broadcaster should first seek access from a broadcaster established in the same Member State having exclusive rights to the event of high interest to the public.

The concept of general news programmes should not cover the compilation of short extracts into programmes serving entertainment purposes. The country of origin principle should apply to both the access to, and the transmission of, the short extracts. In a trans-frontier case, this means that the different laws should be applied sequentially. Firstly, for access to the short extracts the law of the Member State where the broadcaster supplying the initial signal (i.e. giving access) is established should apply. This is usually the Member State in which the event concerned takes place. Where a Member State has established an equivalent system of access to the event concerned, the law of that Member State should apply in any case. Secondly, for transmission of the short extracts, the law of the Member State where the broadcaster transmitting the short extracts is established should apply.

- (56) The requirements of this Directive regarding access to events of high interest to the public for the purpose of short news reports should be without prejudice to Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society<sup>(22)</sup> and the relevant international conventions in the field of copyright and neighbouring rights. Member States should facilitate access to events of high interest to the public by granting access to the broadcaster's signal within the meaning of this Directive. However, they may choose other equivalent means within the meaning of this Directive. Such means include, inter alia, granting access to the venue of these events prior to granting access to the signal. Broadcasters should not be prevented from concluding more detailed contracts.
- (57) It should be ensured that the practice of media service providers of providing their live television broadcast news programmes in the on-demand mode after live transmission is possible without having to tailor the individual programme by omitting the short extracts. This possibility should be restricted to the on-demand supply of the identical television broadcast programme by the same media service provider, so it may not be used to create new on-demand business models based on short extracts.

- (58) On-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society<sup>(23)</sup>. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive.
- (59) The availability of harmful content in audiovisual media services is a concern for legislators, the media industry and parents. There will also be new challenges, especially in connection with new platforms and new products. Rules protecting the physical, mental and moral development of minors as well as human dignity in all audiovisual media services, including audiovisual commercial communications, are therefore necessary.
- (60) Measures taken to protect the physical, mental and moral development of minors and human dignity should be carefully balanced with the fundamental right to freedom of expression as laid down in the Charter on Fundamental Rights of the European Union. The aim of those measures, such as the use of personal identification numbers (PIN codes), filtering systems or labelling, should thus be to ensure an adequate level of protection of the physical, mental and moral development of minors and human dignity, especially with regard to on-demand audiovisual media services. The Recommendation on the protection of minors and human dignity and on the right of reply already recognised the importance of filtering systems and labelling and included a number of possible measures for the benefit of minors, such as systematically supplying users with an effective, updatable and easy-to-use filtering system when they subscribe to an access provider or equipping the access to services specifically intended for children with automatic filtering systems.
- (61) Media service providers under the jurisdiction of the Member States should in any case be subject to a ban on the dissemination of child pornography in accordance with the provisions of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography<sup>(24)</sup>.
- (62) None of the provisions of this Directive that concern the protection of the physical, mental and moral development of minors and human dignity necessarily requires that the measures taken to protect those interests should be implemented through the prior verification of audiovisual media services by public bodies.
- (63) Coordination is needed to make it easier for persons and industries producing programmes having a cultural objective to take up and pursue their activities.
- (64) Minimum requirements in respect of all public or private Union television broadcasts for European audiovisual 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.
- (65) 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 broadcasts of all Member States. In order to allow the monitoring of the application of those rules and the pursuit of the objectives, Member States should provide the Commission with a report on the application of the proportions reserved for European works and independent productions in this Directive. For the calculation of such proportions, account should be taken of the specific situation of Greece and Portugal. The Commission should 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 audiovisual production capacity or restricted language area.

- (66) It is important to seek appropriate instruments and procedures in accordance with Union law in order to promote the implementation of the objectives of this Directive with a view to adopting suitable measures to encourage the activity and development of European audiovisual production and distribution, particularly in countries with a low production capacity or a restricted language area.
- (67) The proportions of European works must be achieved taking economic realities into account. Therefore, a progressive system for achieving this objective is required.
- (68) 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. It will offer new opportunities and marketing outlets to creative talents, to cultural professions and to employees in the cultural field.
- (69) On-demand audiovisual media services have the potential to partially replace television broadcasting. Accordingly, they should, where practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity. Such support for European works might, for example, take the form of financial contributions by such services to the production of and acquisition of rights in European works, a minimum share of European works in video-on-demand catalogues, or the attractive presentation of European works in electronic programme guides. It is important to re-examine regularly the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports provided for under this Directive, Member States should also take into account, in particular, the financial contribution by such services to the production and rights acquisition of European works, the share of European works in the catalogue of audiovisual media services, and the actual consumption of European works offered by such services.
- (70) When implementing Article 16, Member States should encourage broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin.
- (71) When defining ‘producers who are independent of broadcasters’ as referred to in Article 17, Member States should take appropriate account notably 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.

- (72) Channels broadcasting entirely in a language other than those of the Member States should not be covered by Articles 16 and 17 of this Directive. Nevertheless, where such a language or languages represent a substantial part but not all of the channel's transmission time, Articles 16 and 17 should not apply to that part of transmission time.
- (73) National support schemes for the development of European production may be applied in so far as they comply with Union law.
- (74) The objective of supporting audiovisual production in Europe can be pursued within the Member States in the framework of the organisation of their audiovisual media services, inter alia, through the definition of a public interest mission for certain media service providers, including the obligation to contribute substantially to investment in European production.
- (75) Media service providers, 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.
- (76) It is important to ensure that cinematographic works are transmitted within periods agreed between right holders and media service providers.
- (77) The question of specific time scales for each type of showing of cinematographic works is primarily a matter to be settled by means of agreements between the interested parties or professionals concerned.
- (78) 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 those rules are in conformity with Union law, and in particular are not applicable to the retransmission of broadcasts originating in other Member States.
- (79) The availability of on-demand audiovisual media services increases consumer choice. Detailed rules governing audiovisual commercial communication for on-demand audiovisual media services thus appear neither to be justified nor to make sense from a technical point of view. Nevertheless, all audiovisual commercial communication should respect not only the identification rules but also a basic tier of qualitative rules in order to meet clear public policy objectives.
- (80) As has been recognised by the Commission in its interpretative communication on certain aspects of the provisions on televised advertising in the 'Television without frontiers' Directive<sup>(25)</sup>, the development of new advertising techniques and marketing innovations has created new effective opportunities for audiovisual commercial communications in traditional broadcasting services, potentially enabling them to compete better on a level playing-field with on-demand innovations.
- (81) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. In order to remain

proportionate with the goals of general interest, regulation should allow a certain degree of flexibility with regard to television broadcasting. The principle of separation should be limited to television advertising and teleshopping, and product placement should be allowed under certain circumstances, unless a Member State decides otherwise. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.

- (82) Apart from the practices that are covered by this Directive, Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market<sup>(26)</sup> applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. In addition, Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products<sup>(27)</sup>, which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, should be without prejudice to this Directive, in view of the special characteristics of audiovisual media services. Article 88(1) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use<sup>(28)</sup>, which prohibits advertising to the general public of certain medicinal products, applies, as provided in paragraph 5 of that Article and without prejudice to Article 21 of this Directive. Furthermore, this Directive should be without prejudice to Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods<sup>(29)</sup>.
- (83) 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.
- (84) Member States, with due regard to Union 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, should 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.
- (85) Given the increased possibilities for viewers to avoid advertising through the use of new technologies such as digital personal video recorders and increased choice of channels, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is not justified. While the hourly amount of admissible advertising should not be increased, this Directive should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.
- (86) This Directive is intended to safeguard the specific character of European television, where advertising is preferably inserted between programmes, and therefore limits

possible interruptions to cinematographic works and films made for television as well as interruptions to some categories of programmes that need specific protection.

- (87) A limit of 20 % of television advertising spots and teleshopping spots per clock hour, also applying during ‘prime time’, should be laid down. The concept of a television advertising spot should be understood as television advertising in the sense of point (i) of Article 1(1) having a duration of not more than 12 minutes.
- (88) It is necessary to prohibit all audiovisual commercial communication promoting cigarettes and other tobacco products including indirect forms of audiovisual commercial communication which, whilst not directly mentioning the tobacco product, seek to circumvent the ban on audiovisual commercial communication for cigarettes and other tobacco products 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.
- (89) It is also necessary to prohibit all audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls and to lay down strict criteria relating to the television advertising of alcoholic products.
- (90) Surreptitious audiovisual commercial communication is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious audiovisual commercial communication should not cover legitimate product placement within the framework of this Directive, where the viewer is adequately informed of the existence of product placement. This can be done by signalling the fact that product placement is taking place in a given programme, for example by means of a neutral logo.
- (91) Product placement is a reality in cinematographic works and in audiovisual works made for television. In order to ensure a level playing-field, and thus enhance the competitiveness of the European media industry, rules for product placement are necessary. The definition of product placement laid down in this Directive should cover any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration. The provision of goods or services free of charge, such as production props or prizes, should only be considered to be product placement if the goods or services involved are of significant value. Product placement should be subject to the same qualitative rules and restrictions applying to audiovisual commercial communication. The decisive criterion distinguishing sponsorship from product placement is the fact that in product placement the reference to a product is built into the action of a programme, which is why the definition in point (m) of Article 1(1) contains the word ‘within’. In contrast, sponsor references may be shown during a programme but are not part of the plot.
- (92) Product placement should, in principle, be prohibited. However, derogations are appropriate for some kinds of programme, on the basis of a positive list. A Member State should be able to opt out of these derogations, totally or partially, for example by permitting product placement only in programmes which have not been produced exclusively in that Member State.

- (93) Furthermore, sponsorship and product placement should be prohibited where they influence the content of programmes in such a way as to affect the responsibility and the editorial independence of the media service provider. This is the case with regard to thematic placement.
- (94) In accordance with the duties imposed on Member States by the Treaty on the Functioning of the European Union, they are responsible for the effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and, in particular, the form of their competent independent regulatory bodies, in order to be able to carry out their work in implementing this Directive impartially and transparently. More specifically, the instruments chosen by Member States should contribute to the promotion of media pluralism.
- (95) Close cooperation between competent regulatory bodies of the Member States and the Commission is necessary to ensure the correct application of this Directive. Similarly close cooperation between Member States and between their regulatory bodies is particularly important with regard to the impact which broadcasters established in one Member State might have on another Member State. Where licensing procedures are provided for in national law and if more than one Member State is concerned, it is desirable that contacts between the respective bodies take place before such licences are granted. This cooperation should cover all fields coordinated by this Directive.
- (96) 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. In particular, trailers consisting of extracts from programmes should be treated as programmes.
- (97) 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, should not be included in the maximum amounts of daily or hourly transmission time that may be allotted to advertising and teleshopping.
- (98) In order to avoid distortions of competition, this derogation should be limited to announcements concerning products that fulfil the dual condition of being both ancillary to and directly derived from the programmes concerned. The term ‘ancillary’ refers to products intended specifically to allow the viewing public to benefit fully from, or to interact with, these programmes.
- (99) 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 Union, it is essential to ensure a high level of consumer protection by putting in place appropriate standards regulating the form and content of such broadcasts.
- (100) 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. 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.

- (101) This Directive should apply 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 this Directive and without prejudice to the inclusion of such channels in the scope of other Union instruments.
- (102) 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.
- (103) The right of reply is an appropriate legal remedy for television broadcasting and could also be applied in the on-line environment. The Recommendation on the protection of minors and human dignity and on the right of reply already includes appropriate guidelines for the implementation of measures in national law or practice so as to ensure sufficiently the right of reply or equivalent remedies in relation to on-line media.
- (104) Since the objectives of this Directive, namely the creation of an area without internal frontiers for audiovisual media services whilst ensuring at the same time a high level of protection of objectives of general interest, in particular the protection of minors and human dignity as well as promoting the rights of persons with disabilities, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (105) This Directive is without prejudice to the obligations of the Member States relating to the time limits for transposition into national law of the Directives set out in Annex I, Part B,

HAVE ADOPTED THIS DIRECTIVE:

- (1) Position of the European Parliament of 20 October 2009 (not yet published in the Official Journal) and Council Decision of 15 February 2010.
- (2) [OJ L 298, 17.10.1989, p. 23](#). The original title of the act was ‘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’.
- (3) See Annex I, Part A.
- (4) [OJ C 285 E, 22.11.2006, p. 126](#).
- (5) [OJ C 293 E, 2.12.2006, p. 155](#).
- (6) [OJ C 296 E, 6.12.2006, p. 104](#).
- (7) [OJ L 201, 25.7.2006, p. 15](#).
- (8) [OJ C 30, 5.2.1999, p. 1](#).
- (9) European Parliament resolution on Television without Frontiers ([OJ C 76 E, 25.3.2004, p. 453](#)).
- (10) European Parliament resolution on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights) ([OJ C 104 E, 30.4.2004, p. 1026](#)).
- (11) European Parliament resolution on the application of Articles 4 and 5 of Directive 89/552/EEC (Television without Frontiers), as amended by Directive 97/36/EC, for the period 2001-2002 ([OJ C 193 E, 17.8.2006, p. 117](#)).
- (12) [OJ C 364, 18.12.2000, p. 1](#).
- (13) [OJ L 204, 21.7.1998, p. 37](#).
- (14) [OJ L 332, 18.12.2007, p. 27](#).
- (15) [OJ L 108, 24.4.2002, p. 33](#).
- (16) [OJ L 178, 17.7.2000, p. 1](#).
- (17) Case C-56/96 *VT4 Ltd v Vlaamse Gemeenschap* [1997] ECR I-3143, paragraph 22; Case C-212/97 *Centros v Erhvervs-og Selskabsstyrelsen* [1999] ECR I-1459; see also: Case C-11/95 *Commission v Belgium* [1996] ECR I-4115; and Case C-14/96 *Paul Denuit* [1997] ECR I-2785.
- (18) Case C-212/97 *Centros v Erhvervs-og Selskabsstyrelsen*, cited above; Case 33/74 *Van Binsbergen v Bestuur van de Bedrijfsvereniging* [1974] ECR 1299; Case C-23/93 *TV 10 SA v Commissariaat voor de Media* [1994] ECR I-4795, paragraph 21.
- (19) Case C-355/98 *Commission v Belgium* [2000] ECR I-1221, paragraph 28; Case C-348/96 *Calfa* [1999] ECR I-11, paragraph 23.
- (20) [OJ L 378, 27.12.2006, p. 72](#).
- (21) [OJ L 202, 30.7.1997, p. 60](#).
- (22) [OJ L 167, 22.6.2001, p. 10](#).
- (23) Case C-89/04 *Mediakabel BV v Commissariaat voor de Media* [2005] ECR I-4891.
- (24) [OJ L 13, 20.1.2004, p. 44](#).
- (25) [OJ C 102, 28.4.2004, p. 2](#).
- (26) [OJ L 149, 11.6.2005, p. 22](#).
- (27) [OJ L 152, 20.6.2003, p. 16](#).
- (28) [OJ L 311, 28.11.2001, p. 67](#).
- (29) [OJ L 404, 30.12.2006, p. 9](#).