

## DISCUSSION DOCUMENT

### REVIEW OF THE “TELEVISION WITHOUT FRONTIERS” DIRECTIVE

#### THEME 3: PROTECTION OF GENERAL INTERESTS IN TELEVISION ADVERTISING, SPONSORSHIP, TEleshopping AND SELF- PROMOTION

Chapter IV of the "television without frontiers" Directive provides the frame of reference at Community level with regard to television advertising, teleshopping, sponsorship and, in general, all other forms of televised commercial communication.

In accordance with its work programme, the Commission is examining in particular whether an adaptation of existing regulatory measures is necessary in the light of technological developments and market trends. In preparation for the debate, the Commission has had an independent study carried out on the development of new advertising techniques.<sup>1</sup>

If the exercise shows that intervention is desirable, the Commission will examine whether, in order to achieve the general interest objectives pursued by the Directive, the current provisions should be reviewed, by modulating them, providing for other measures or specifying how these provisions should be interpreted or applied. With regard to the type of measures, the Commission will examine the various possible instruments as appropriate, taking particular account of the possibilities offered by co-regulation and/or self-regulation.

#### **1) Concepts and definitions (Article 1 c)–f))**

The concepts of "television advertising", "surreptitious advertising", "sponsorship" and "teleshopping" are defined for the purposes of the Directive in Article 1 under points c)–f) respectively.

**Do the provisions of these Articles seem appropriate to you with regard to the aims pursued? Are there in your opinion problems with the interpretation of these concepts with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)?**

#### **2) General standards (Article 12) and those for the attention of minors (Article 16)**

Article 12 of the Directive sets out general standards to which television advertising and teleshopping spots must conform in order to respect the interests of viewers (respect for human dignity, ban on discrimination on the grounds of race, sex or nationality, ban on incitements to behaviour prejudicial to health or safety, etc.). These standards are the corollary to the freedom enjoyed by broadcasters and announcers to provide these services.

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<sup>1</sup> [http://europa.eu.int/comm/avpolicy/stat/bird\\_bird/pub\\_rapportfinal\\_en.pdf](http://europa.eu.int/comm/avpolicy/stat/bird_bird/pub_rapportfinal_en.pdf)

Article 16 adds specific protection for the interests of minors and lays down the criteria which television advertising must respect in order not to cause them moral or physical harm. These provisions also apply to teleshopping, which must in addition not incite minors to enter into contracts.

**Do the provisions of these Articles seem appropriate to you with regard to the aims pursued? Are there in your opinion problems with the interpretation of these concepts with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)? If so, what solutions would you propose?**

### **3) Form and presentation of television advertising and teleshopping (Article 10)**

In order to avoid any confusion between advertising or teleshopping programmes and other elements of the programme service, Article 10 lays down principles with a view to clearly separating the editorial content of the programme from the different forms of advertising: identification by acoustic means and/or visual, the exceptional nature of isolated advertising and isolated teleshopping spots, ban on the use of subliminal techniques and surreptitious advertising and teleshopping.

**Do these provisions enabling the separation of the editorial content of the programme from the different forms of advertising seem appropriate to you with regard to the aims pursued? Are there problems with interpretation and/or implementation with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)? If so, what solutions would you propose?**

### **4) Insertion of advertising and teleshopping spots (Article 11)**

Article 11 lays down the principle whereby advertising and teleshopping spots are inserted between broadcasts. However, subject to the conditions laid down in paragraphs 2–5, they may also be inserted during broadcasts in such a way as not to affect certain specific interests (integrity and value of the broadcasts, taking account of natural breaks in the programme, length and nature of the programme, etc.).

**Do the provisions relating to advertising and teleshopping spots between (principle) and during programmes (limited derogation) seem appropriate to you with regard to the aims pursued? Are there problems with interpretation and/or implementation with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)? If so, what solutions would you propose?**

**Any other aspects not raised in the context of the preceding questions.**

### **5) Advertising and teleshopping for certain products (Articles 13, 14 and 15)**

Certain products and services are subject to specific regulation in the Directive where television advertising and teleshopping are concerned: prohibition of any form of advertising and teleshopping for cigarettes and other tobacco products, a ban on medicinal products and medical treatments available only on medical prescription from the competent Member State and teleshopping concerning these products and services, criteria for alcoholic drinks.

**Do the provisions of these Articles seem appropriate to you with regard to the aims pursued? Are there in your opinion problems with the interpretation of these concepts with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)? If so, what solutions would you propose?**

## **6) Duration**

With a view to maintaining a balance between the need of certain broadcasters for advertising revenues and, particularly, respect for their independence, the integrity of programmes and, more generally, respect for the viewer, Articles 18 and 19a lay down the transmission time which can be devoted to teleshopping spots, advertising spots and other forms of television advertising. It is worthwhile examining whether there is a case for amending these provisions, taking into account, as the Commission indicated in its work programme, the degree of choice and control which users have.

**Do these provisions aimed at ensuring that the duration of the different forms of advertising is neither excessive nor prejudicial to the primary task of broadcasting<sup>2</sup> seem appropriate to you with regard to the aims pursued? Are there problems with interpretation and/or implementation with regard to recent technological and market developments (particularly with regard to new advertising techniques; see 8 below)? If so, what solutions would you propose?**

**Does it seem appropriate to you to modulate the application of the rule in accordance with the nature of the channel (for example, for teleshopping or self-promotion channels) and the size of the audience?**

**Additionally, does it seem worthwhile to you, in order to facilitate the coherent application of the Directive, to make use in certain cases of self-regulation or co-regulation?**

**Any other aspects not raised in the context of the preceding questions.**

## **7) Sponsorship (Article 17)**

In order not to affect the responsibility and editorial independence of the broadcaster and to inform the viewer, the sponsorship of television broadcasts is governed by the provisions of Article 17 (requirements linked to sponsored television programmes, restrictions on businesses involved in certain activities, etc.).

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<sup>2</sup> Information, education, social and cultural development and entertainment.

**Do the provisions of this Article seem appropriate to you? Are there in your opinion problems with the interpretation of these concepts with regard to recent technological and market developments (cf. definition under 1)? If so, what solutions would you propose?**

#### **8) New advertising techniques**

In its report on the application of the Directive, the Commission noted the development of new advertising techniques in some Member States, particularly virtual advertising, interactive advertising and split- or separated screen techniques. This development raises questions concerning the qualification or legal treatment of these techniques which are authorised in some Member States and banned in others with regard to the relevant provisions of the "television without frontiers" Directive. In this regard, differences of interpretation and implementation in the Member States are likely to hinder the free movement of the services concerned.

- By way of illustration, the development of **separate-/split-screen advertising** raises the practical question of calculating the length of transmission time devoted to the different forms of advertising broadcast (application of Article 18). This technique also leads to questions on the application of the rules governing the form and presentation of advertising (application of Article 10) during programmes (application of Article 11).

**In your opinion, is split-screen advertising compatible with the provisions of the Directive and in particular with Article 10, which lays down that television advertising and teleshopping must be easily identified? If so, what solutions would you propose, particularly with regard to the application of the rules governing insertion (see 4 above) and duration (see 6 above)? Do you consider it appropriate to specify the way in which the Directive should apply to split-screen advertising?**

- The development of **interactive advertising** raises a number of questions, particularly as it is not broadcast in linear fashion but in interaction with the viewer. It could be argued in this regard that, being broadcast in non-linear fashion, interactive advertising should not be subject to the provisions of the Directive. In any event, the Directive and particularly the provisions relating to the form and presentation of advertising still apply (Article 10) up until the changeover to the non-linear mode for interactive advertising. Given that the aim of these provisions is to avoid any confusion between advertising or teleshopping broadcasts and other elements of the programme service (see 3 above), **does it seem appropriate to you to interpret them in such a way as to oblige broadcasters to indicate by visual or acoustic means the fact that the user is leaving the editorial content in order to access advertising content?**
- The development of **virtual advertising** raises questions about the way in which it can be reconciled with the interests of rights holders and viewers in maintaining the integrity of the audiovisual work on the one hand and the ban on surreptitious advertising on the other.

**In your opinion, to what extent is virtual advertising compatible with the Directive and the general interest objectives it pursues? If applicable, do you consider it appropriate to specify the way in which the Directive should apply to virtual advertising?**

**In general, do these new forms of advertising recover, in your opinion, a substantial proportion of their investment? Do you know of new services (pilot or on the market) which would apply these new techniques?**

**How can any difficulties identified be resolved? Is it necessary to specify the way in which the relevant provisions of the Directive are likely to apply to these new techniques?**

**Additionally, does it seem worthwhile to you, in order to facilitate the coherent implementation of the Directive, to make use in certain cases of self-regulation or co-regulation?**

**Any other aspects not raised in the context of the preceding questions.**

#### **9) Broadcasts intended only for the national territory (Art. 20)**

Article 20 of the Directive provides for the possibility of a derogation from Article 11(2–5) relating to the insertion of advertising between and, where applicable, during interruptions to programmes (see 4 above) and from Articles 18 and 18a relating to the duration of advertising permitted (see 6 above). The Member States may therefore make provision for conditions other than those laid down in these Articles for broadcasts intended only for the national territory and which may not be received by the public, directly or indirectly, in one or more other Member States.

**Do these provisions seem appropriate to you? Are there problems with interpretation and/or implementation with regard to recent technological and market developments? If so, what solutions would you propose?**