



Please find hereunder the observations and recommendations made by the Electronic Retailing Association Europe, the organization representing the Television Shopping Industry in Europe and more generally the companies involved in the retailing of goods and services through electronic media (Television, Radio, Internet, Telephone).

These positions are the evolution of ERA EUROPE previous position papers sent to the Directorate, in light of the Liverpool Conference preparation Issue Papers.

### Issue paper on Commercial Communication

## **1. RULES COMMON TO ALL AUDIOVISUAL COMMERCIAL COMMUNICATION**

### **Issue 1: The concept of Audiovisual Commercial Communication .**

- a) ERA's membership believes that the preamble to the future directive should establish that two types of audiovisual content exist, and that both types should be treated equally by member states and broadcasters, although each type must be subject to specific rules and provisions. These two types of content are:
  - i. Audiovisual Editorial Content
  - ii. Audiovisual Commercial Communication.
- b) The preamble should specify that, in proportions that should be decided only by the broadcasters (spectrum frequency owner or user), these two types of audiovisual content could co-exist on each Audiovisual Channel.
- c) ERA EUROPE supports the adoption of the new definition of “**Audiovisual Commercial Communication**”.
- d) ERA EUROPE supports the proposal that the same basic tier of qualitative rules be applicable, in all subcategories or kinds of **Audiovisual Commercial Communication** included in the definition.
- e) With the current evolution of the relation between brands, retailers, providers of services, and consumers, the increasing diversity of electronic channels of contact with the same consumer, we anticipate a growing integration of the different subcategories and kinds of Audiovisual Commercial Communication, delivered in linear and non linear mode.
- f) Consequently, ERA EUROPE recommends, that for the revised Directive to continue to provide the same added value as before, without unnecessary fragmentation of rules and provisions, to refer in the new Directive text and provisions to the concept of “Audiovisual Commercial Communication” as the main and core concept. Reference to subcategories, such as Teleshopping or Advertising should be made only in cases or for issues exclusively dealing with this subcategory.

As an example, it must be noted that in the current directive, there is no added value in maintaining the usage of the terminology “Advertising or Teleshopping spots”, in provisions dealing or referring to “spots” . We recommend that where needed , the concept of “Audiovisual Commercial Communication Spots” or “spots” be adopted as the single and only concept.

- g) ERA EUROPE are also convinced that the simplification and unification obtained by using “Audiovisual Commercial Communication” as the main and core concept in the directive, would reflect the most probable evolution of Audiovisual Commercial Content delivery to the public.

As an example, the current definition of Channels “exclusively devoted to Teleshopping”, is likely to evolve toward Channels “exclusively devoted to Audiovisual Commercial Communication” – “Teleshopping Channels” being one of them . It is likely that in the near future there will be channels entirely devoted to (for example) automobile brands, presenting all facets and modes of the relationship of the brand with interested segments of the public (history-events-news), including promotional and interactive Teleshopping programs .

### **Issue 2: Rules on human dignity and protection of minors.**

Consistent with the position above, ERA EUROPE supports the proposal of subjecting “Audiovisual Commercial Communication” as a single concept, inclusive of all sub-categories, to the same set of “qualitative rules”, whether in linear or non-linear modes of delivery.

### **Issue 3: Rules related to Public Health Considerations (Tobacco, Alcohol, medicines)**

- a) ERA EUROPE supports the proposal that current rules on tobacco and alcohol continue to be applied to all Audiovisual Services.
- b) ERA EUROPE supports the opinion of the EU Commission regarding the liberation of the sale of non-prescriptive medicinal products. Representing companies which do business in more than one European country ERA EUROPE notes that the regulation on the sales of medicinal products must be harmonized.
- c) ERA EUROPE recommends that no competitive disadvantage be established for Teleshopping against e-commerce or other media through different regulations on the sale of medicinal products (i.e. in Germany where non-prescriptive medicinal products can be sold on the internet but not via Teleshopping)

### **Issue 4: Identification of commercial communication in general, including sponsorship**

- a) ERA EUROPE supports the proposal that the directive requires “Audiovisual Commercial Communication” to be “recognizable as such”.
- b) ERA EUROPE recommends that a minimal regulatory framework on “product placement” be established to provide the public and users with clear information, with the objectives of opening this form of Audiovisual Commercial Communication to the public, the advertisers and broadcasters, while insuring a level playing field, to position this subcategory on par with other kinds of Audiovisual Commercial Communication.

### **Issue 5 : Identification of sponsored content in particular.**

ERA EUROPE supports the interpretation included in the 2004 Interpretative Communication on the Directive.

### **Issue 6: Application of the rules**

- a) In a previous position paper ERA EUROPE has called for an effort to encourage member states to eliminate unnecessary variations, when the national cultural or public behavioural context does not justify it, in the application of rules related to the definition of products or services accessible in Teleshopping programs.

- b) More generally; ERA EUROPE believes the future directive should have a clearly established “single market” orientation, with provisions that would satisfy the core regulatory objectives and expectations of member states, while giving the economy a solid “public and business friendly” framework.
- c) This calls for the preamble and core text of the Directive, to include a clear statement to protect from discriminatory measures of all sorts ( legal, financial or regulatory) channels fully devoted to “audiovisual commercial communication” , (Teleshopping Channels being one type of such channels), and within Audiovisual Content, Audiovisual Commercial Communication.
  - i. Cases exist today where member states have or are considering limiting the access to the spectrum of frequencies , of channels exclusively devoted to “Audiovisual Commercial Communication” in the Teleshopping sub-category, by placing them in a second tier category of applicants, for the same right of access to the frequency spectrum.
  - ii. Some other member states are considering excluding as entirely “prohibited categories” , some forms of “Audiovisual Commercial Communications” such as Teleshopping without any cultural or public interest protection justification.
  - iii. Some member states impose discriminatory tax regimes or legal constraints to some forms of “Audiovisual Commercial Communication” and to the corresponding operators.

If such member state practices developed, they would foster “expatriation” of “Audiovisual Commercial Communication operators” to circumvent this discriminatory treatment. Such threats on the “single market” spirit of the directive should be addressed in the revision principles and preamble.

- d) On the co-regulation , self regulation debate, ERA EUROPE strongly encourages the emergence of a **cooperative regulation model**, composed of two core elements:
  - i. “Self administered Codes of Conduct” developed by the industry representative organizations, with the objective of being recognized as such by public authorities.
  - ii. Intervention capability left in national regulating body hands with due appeal and redress processes in place.

## 2. QUANTITATIVE RULES ON TELEVISION ADVERTISING

### **Issue 1. Hourly and daily advertising limits**

- a) ERA EUROPE supports the consensus reached that the hourly limit is the only one which is still useful. However it should be clearly established that this limitation is applicable to the format defined as “ Spots” (consequently applicable to “Advertising spots and Teleshopping spots”) as defined in the current directive.
- b) ERA EUROPE is in favour of **a substantial expansion** of daily limits on Advertising and Teleshopping.
- c) ERA EUROPE supports the position that there should be no daily limits on non-linear audiovisual content services, these services been activated on-demand by the user / viewer.

## **Issue 2 : Hourly and daily limits to advertising and Teleshopping**

As explicitly justified in our comments on the concept of Audiovisual Commercial Communications, there is no need to single out Teleshopping from other forms of Audiovisual Commercial Communication.

- a) ERA EUROPE is supportive of the assimilation of Teleshopping into other forms of Commercial Communication.
- b) However, it is essential to ERA EUROPE member's businesses that the Directive continues to explicitly allow for channels exclusively devoted to Teleshopping.
- c) ERA EUROPE would be strongly opposed to any amendment to Article 19 or the Directive generally that could brought into question the legitimacy of television channels solely devoted to Teleshopping.
- d) ERA EUROPE has extensively explained in previous position paper the benefits of releasing daily limits on Teleshopping windows, especially to open extended possibilities of diversified revenues to small or thematic channels.
- e) Consequently, and referring, as in the issue paper , to the provisions of the current directive, provisions of the articles 18a should be substantially amended in the new directive, to extend the daily limits of Commercial Communication/ Teleshopping windows .
- f) However, ERA EUROPE, whilst believing the argument for removing daily limitations on Commercial Communication is a powerful one, does not necessarily call for the complete abolition of this daily limit, especially for high impact channels and public service channels. ERA would not wish the change to work against the small or specialty channels that increasingly rely on Commercial Communication revenue (especially Teleshopping one) to survive. We suggest that our first proposal of moving the limit from 3 hours to 6 , be adopted for an initial 3 year period after the revision , and that this limit be re-evaluated after this period, to be confirmed or expanded .

## **Issue 3 : Insertion of advertising**

- a) Generally, the current evolution toward digital audiovisual ( Television) technology, is creating a constantly growing choice of programs and program navigation for the users, decreasing the need to regulate in extreme detail the rules for insertion of Audiovisual Commercial Communication within Audiovisual Editorial Programs. ERA EUROPE believes that the quality and attention to the integrity of the programs as well as to the viewer's comfort , in the frequency and mode of advertising / Commercial Communication insertions, will be a factor of choice for the public and consequently an element of differentiation for broadcasters. A simplified and more flexible set of rules should be the objective of the new directive.

In the same vein, ERA EUROPE recommends a flexible and simple set of definitions and provisions to create a stable framework (absent from the current directive, and not commented on in the Issues papers) to all stakeholders for the insertion of elements allowing the user to move from linear programs and access non linear content or programs, within editorial contents screens. This framework should be technically neutral.

ERA EUROPE  
Brussels  
September 5<sup>th</sup>, 2005