

# EUROPEAN PARLIAMENT

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*Committee on Culture and Education*

20.10.2006

## **WORKING DOCUMENT II**

on the Proposal for a directive 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

Proposal for a directive (COM(2005)0646 - C6-0443/2005 - 2005/0260(COD) - amending act)

Committee on Culture and Education

Rapporteur: Ruth Hieronymi

## *Working document on compromise amendments on advertising*

The amendments of this document concern advertising rules. These are specified in following articles:

- Article 3h sponsorship
- Article 3i new product placement
- Article 10 single spots
- Article 11 quantitative advertising rules

On these articles there is up to now no perspective to reach a compromise. It has therefore been agreed that alternative compromise amendments will be elaborated on these points. These different compromise amendments are not yet finished.

Attached the first provisional working document.

NB: Please note that the list of amendments by the culture committee, which will be replaced, is still to be verified.

## Provisional Working Document with Alternative Positions to be discussed in Working CULT Group:

### SPONSORSHIP

Amendments by rapporteur from 55 to 60, Amendments from 525 to 571  
(see also Am. by rapporteur from 61 to 64 and amendments from 572 to 591 and from 593 to 597)

#### ARTICLE 1, PARAGRAPH 6 Article 3 h (Directive 89/552/EEC)

1. Audiovisual media services that are sponsored *or that contain product placement* shall meet the following requirements.

(a) *the scheduling, where appropriate, and the content of such audiovisual media services* may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) viewers must be clearly informed of the existence of a sponsorship agreement *and/or the existence of product placement*. Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.

1. Audiovisual media services *or programmes (broadcast programmes\*)* that are sponsored shall meet the following requirements:

*(\* alternative vote by split vote to define the alternative compromise amendment for Guardians; limitation to regulations on sponsorship only for linear services)*

(a) *their content and, in the case of television broadcasting, their scheduling*, may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) viewers must be clearly informed of the existence of a sponsorship agreement. Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and/or the end of the programmes.

***Programmes containing product placement must be appropriately identified at the start of the programme in order to avoid any confusion on the part of the viewer.***

2. Audiovisual media services must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

***Further, audiovisual media services must not contain placement of tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.***

3. The sponsorship of audiovisual media services 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 media service provider falls.

4. News and current affairs shall not be sponsored ***and shall not contain product placement. Audiovisual media services for children and documentaries may not contain product placement.***

2. Audiovisual media services ***or programmes*** must not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

3. The sponsorship of audiovisual media services ***or 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 media service provider falls.

4. News and current affairs ***programmes*** shall not be sponsored.

**ALDE agrees with the split between sponsorship and product placement. Preferably the viewer should be informed about a sponsorship agreement also 'during' the programme as in the Commission proposal. However, the requirements should only apply to LINEAR services.**

## **PRODUCT PLACEMENT**

amendment 61 by rapporteur and amendments 576, 577, 578, 580, 584, 579, 587

### ARTICLE 1, PARAGRAPH 6 Article 3i point 1

***Product integration and thematic placement are prohibited in principle (in television broadcast programmes\*). Product placement is prohibited in other than fictional programmes and sports programmes.***

**Where programmes contain product placement they shall meet the following requirements:**

*(\*alternative vote by split vote to define the alternative compromise amendment for Guardians; limitation to regulations on product placement only for linear services)*

### ARTICLE 1, PARAGRAPH 6 Article 3i point 1a (Directive 89/552/EEC)

***(a) their content and, in the case of television broadcasting, their scheduling, may in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;***

### ARTICLE 1, PARAGRAPH 6 Article 3i point 1b (Directive 89/552/EEC)

***(b) they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services, or by giving them undue prominence;***

ARTICLE 1, PARAGRAPH 6  
Article 3i point 1c (Directive 89/552/EEC)

***(c) viewers must be clearly informed of programmes containing product placement, which must be appropriately identified at the start and the end of the programme and by a signal and***  
***\*at least every 20 minutes during the programme in order to avoid any confusion on the part of the viewer***  
***\*during transmission when product placement occurs, e.g. by inserting a neutral logo***  
***\*by the mention "This programme has been the object of product placement" and by a permanent small yellow signal "PP" at the corner of the screen in order to avoid any confusion on the part of the viewer***  
***(\* split vote)***

ARTICLE 1, PARAGRAPH 6  
Article 3i point 1d (Directive 89/552/EEC)

***(d) audiovisual media service providers must be kept informed of any product placement in the audiovisual and cinematographic works that they put out.***

ARTICLE 1, PARAGRAPH 6  
Article 3i point 2 (Directive 89/552/EEC)

***2. Programmes must not contain placement of tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.***

amendment 61 by rapporteur and amendments 556, 569, 570 and 579

ARTICLE 1, PARAGRAPH 6  
Article 3i point 3 (Directive 89/552/EEC)

*3. News and current affairs programmes,  
programmes for children, documentaries,  
advisory programmes*

## SINGLE SPOTS

amendment 66 by rapporteur and amendments 603-609

ARTICLE 1, POINT 9  
Article 10 paragraph 2

1. Television advertising and teleshopping shall be readily recognizable and kept quite separate from other parts of the programme service by optical and/or acoustic means.

*(EU-Commission's proposal not included in compromise.)*

2. Isolated advertising and teleshopping spots, *other than* in sports programmes, *shall remain the exception*.

Alternative 1  
*deletion*

2. Isolated advertising and teleshopping spots

Alternative 2  
*\*shall remain the exception*

Alternative 3  
*\*\*shall be permitted in* sports programmes, *but shall otherwise remain subject to the legislation of the Member States.*  
*\*split vote on alternative 1 against EU-Commission's proposal*  
*\*\*split vote on alternative 2 against EU-Commission's proposal*

## QUANTITATIVE ADVERTISING RULES

amendment 67 by rapporteur and amendments 618-624

### Article 11 paragraph 2

2. The transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of **35** minutes

2. The transmission of films made for television (excluding series, serials, light entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of

**45** minutes\*

**30** minutes\*\*

*\* split vote to vote against EU-Commission's proposal*

*\*\* split vote to vote against EU-Commission's proposal*

## PRODUCT PLACEMENT tabled by GREENS -PSE

### Amendment 221 RECITAL 40

(40) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. To remain proportionate with the goals of general interest, regulation must allow a certain degree of flexibility with regard to linear audiovisual media services: the separation principle should be limited to advertising and teleshopping, product placement *should be allowed under certain circumstances and some quantitative restrictions should be abolished. However, where product placement is surreptitious, it should be prohibited.* The separation principle should not prevent the use of new advertising techniques.

(40) Commercial and technological developments give users increased choice and responsibility in their use of audiovisual media services. To remain proportionate with the goals of general interest, regulation must allow a certain degree of flexibility with regard to linear audiovisual media services, ***but remain firm with regard to any potential excess, in particular to avoid editorial or artistic content being influenced by commercial interests:*** the separation principle should be limited to advertising and teleshopping. The separation principle should not prevent the use of new advertising techniques.

### Amendment 242 RECITAL 45

(45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising ***does not cover legitimate*** product placement within the framework of this Directive.

(45) Surreptitious advertising is a practice prohibited by this Directive because of its negative effect on consumers. The prohibition of surreptitious advertising ***covers*** product placement within the framework of this Directive.

### Amendment 246 RECITAL 46

***(46) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. To ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to***

***Deleted***

*adopt rules for product placement. The definition of product placement introduced here covers 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, normally in return for payment or for similar consideration. It is subject to the same qualitative rules and restrictions applying to advertising.*

Amendment 252  
RECITAL 46 A (new)

*(46a) The concept of ‘material production aid’ refers to the mentioning or presentation, for strictly editorial reasons, of goods, products or services, without any remuneration or consideration for the production. Material production aid enables the prudent use of resources without the disadvantage of infringing the separation principle. Material production aid will also help the financing of European independent productions without endangering the independence and credibility of the programme.*

Amendment 320  
ARTICLE 1, POINT 2  
Article 1, point (k) (Directive 89/552/EEC)

(k) ‘product placement’ means 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 audiovisual media services, **normally** in return for payment or for similar consideration.

(k) ‘product placement’ means any form of audiovisual commercial communication consisting of the inclusion of reference to a product, a service or **a** trade mark thereof so that it is featured within audiovisual media services, in return for payment or for similar consideration.

Amendment 318  
ARTICLE 1, POINT 2  
Article 1, point (k) (Directive 89/552/EEC)

(k) '**product placement**' means **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 audiovisual media services, normally in return for payment or for similar consideration.**

(k) '**material production aid**' means the inclusion of a product, a service or a trade mark featured within audiovisual media services **necessary for journalistic or creative reasons, where there is no payment or other forms of compensation, no editorial influence by the advertiser or brand owner, and no undue prominence.**

**Subsidies paid by public institutions, in accordance with the principles of the Treaty, for the production of programmes, shall be deemed to be production aid.**

Amendment 525  
ARTICLE 1 POINT 6  
Article 3h paragraph -1 (new) (Directive 89/552/EEC)

**-1. Product integration is prohibited.**  
**Thematic placement is prohibited.**  
**Product placement is prohibited.**

Amendment 526  
ARTICLE 1 POINT 6  
Article 3h, paragraph 1 (Directive 89/552/EEC)

1. Audiovisual media services that are sponsored **or that contain product placement** shall meet the following requirements:

1. Audiovisual media services that are sponsored shall meet the following requirements:

Amendment 533  
ARTICLE 1 POINT 6  
Article 3h, paragraph 1, point (b) (Directive 89/552/EEC)

(b) they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(b) they must not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services ***or by making references which are other than occasional and discreet to those products or services during the programme;***

Amendment 536

ARTICLE 1 POINT 6

Article 3h, paragraph 1, point (c) (Directive 89/552/EEC)

(c) viewers must be clearly informed of the existence of a sponsorship agreement ***and/or the existence of product placement.***

Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes.

***Programmes containing product placement must be appropriately identified at the start of the programme in order to avoid any confusion on the part of the viewer.***

(c) viewers must be clearly informed of the existence of a sponsorship agreement.

Sponsored programmes must be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in a appropriate way for programmes at the beginning, during and/or the end of the programmes.

Amendment 565

ARTICLE 1 POINT 6

Article 3h, paragraph 4 (Directive 89/552/EEC)

4. News and ***current affairs*** shall not be sponsored ***and not contain product placement. Audiovisual media services for children and documentaries may not contain product placement.***

4. News and ***information programmes*** shall not be sponsored.

Amendment 574

ARTICLE 1 POINT 6

Article 3h, paragraph 4 a (new) (Directive 89/552/EEC)

***4a. Any programme from a third country which may contain potential products placement should be clearly identified by a warning to viewers.***

Amendment 575 (?)

ARTICLE 1 POINT 6

Article 3h paragraph 4 a (new) (Directive 89/552/EEC)

***4a. Material production aid may be permitted only if the following conditions are met:***

- there is no influence over the editorial or artistic content, in particular by the legal or natural person concerned;***
- no payment, nor compensation of any kind is made;***
- it does not encourage the purchase of specific products or the provision of specific services;***
- the presentation of products or services is occasional and discreet, without undue prominence;***
- it does not concern undertakings whose activity includes the manufacture of cigarettes and other tobacco products or whose principal activity is the sale of these products.***

## ADVERTISING tabled by GREENS-GUE-PSE

Amendment 227

RECITAL 42

*(42) As the increase in the number of new services has led to a greater choice for viewers, detailed regulation with regard to the insertion of spot advertising with the aim of protecting viewers is no longer justified. While the Directive does not increase the hourly amount of admissible advertising, it gives flexibility to broadcasters with regard to its insertion where this does not unduly impede the integrity of programmes.*

*(42) There is a real concern that any changes to the rules on insertion of advertising may seriously jeopardise the balance currently in place between the need for programme funding, ease of viewing, programme quality and respect for works. It seems fair to allow broadcasters greater flexibility as regards the insertion of advertising messages in their programmes. This Directive represents a compromise between the need to preserve the quality and integrity of all programmes – in particular, series, serials, light entertainment programmes, concerts, theatre plays, operas and documentaries – and the legitimacy of offering broadcasters more flexibility by replacing the 20 minutes rule with three interruptions per clock hour. The unpredictable nature of broadcasting sports events justifies special arrangements so as not to deprive viewers of phases of play.*

Amendment 235

RECITAL 44

*(44) The limitation on the amount of daily advertising was largely theoretical. The hourly limit is more important since it also applies during prime time. Therefore the daily limit should be abolished, while the hourly limit should be maintained for advertising and teleshopping spots; also the quantitative restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of*

*(44) The average daily advertising limit in the current directive must be maintained.*

***20% of advertising per clock hour remains applicable, except for more time consuming forms of advertising such as telepromotions and teleshopping windows that require more time on account of their inherent characteristics and method of presentation.***

Amendment 586  
ARTICLE 1 POINT 6  
Article 3h a (new) (Directive 89/552/EEC)

***Article 3ha***

***The proportion of short forms of advertising such as advertising spots and teleshopping spots in linear services and programmes provided by non-linear services shall not exceed 20% within a given clock hour.***

Amendment 612  
ARTICLE 1, POINT 10  
Article 11, paragraph 1 (Directive 89/552/EEC)

***(1) Member States shall ensure, where advertising or teleshopping is inserted during programmes, that the integrity of the programmes and the rights of the right holders are not prejudiced.***

***(1) Advertising and teleshopping spots shall be inserted between programmes. Under the conditions laid down in paragraph 2, advertising and teleshopping spots may also be inserted during programmes, in a manner which does not undermine their integrity, taking into account natural interruptions in the programme, in such a way that the rights of the right holders are not prejudiced.***

Amendment 621  
ARTICLE 1, POINT 10  
Article 11, paragraph 2 (Directive 89/552/EEC)

**2. The transmission of films made for television (excluding series, serials, light**

**2. The transmission of films made for television (excluding series, serials, light**

entertainment programmes and documentaries), cinematographic works, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of 35 minutes.

entertainment programmes and documentaries), cinematographic works, **concerts, theatre plays, operas**, children's programmes and news programmes may be interrupted by advertising and/or teleshopping once for each period of 45 minutes.

***The transmission of programmes other than those referred to in the preceding paragraph may be interrupted by advertising and/or teleshopping spots, up to a maximum of three interruptions within a given clock hour.***

***Notwithstanding the preceding paragraph, where sporting events containing interruptions are retransmitted, advertising and teleshopping spots may only be inserted during these interruptions. Where the sporting event contains no interruptions, advertising and teleshopping spots shall be inserted under the conditions set out in the preceding paragraph.***

No advertising or teleshopping may be inserted during religious services.

No advertising or teleshopping may be inserted during religious services.

Amendment 640  
ARTICLE 1, POINT 13  
Article 18, paragraph 1 (new) (Directive 89/552/EEC)

***1. The proportion of transmission time for linear services 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.***

Amendment 648  
ARTICLE 1, POINT 13  
Article 18, paragraph 1 (Directive 89/552/EEC)

1. The proportion of short forms of

2. The proportion of short forms of

advertising such as advertising spots and  
teleshopping spots within a given clock hour  
shall not exceed 20%.

advertising such as advertising spots and  
teleshopping spots within a given clock hour  
shall not exceed 20%.

Amendment 660  
ARTICLE 1, POINT 14  
Article 18a (Directive 89/552/EEC)

(14) Article 18a is *deleted*.

(14) Article 18a is *replaced by the  
following*:

*'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.'*