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Subject: Proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of **audiovisual media services** in view of changing market realities
- Revised Presidency compromise text on audiovisual commercial communications

Following the meeting of the Audiovisual Working Party on 23 March, delegations will find attached a Presidency compromise text on audiovisual commercial communications. Changes have been made in Articles 22 and 23.

The following formatting is used in the attached document:

- normal font reproduces the text of the 2010 AVMS Directive¹,
 - **bold** indicates the amending provisions from the Commission proposal and text modified in the previous versions, which the Presidency has decided to keep,
 - **bold underlined** and **~~bold underlined strikethrough~~** indicate new proposals by the Presidency, in comparison to document 6798/17.
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¹ 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), OJ L 95, 15.4.2010, p.1.

Proposal for a

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

**on the coordination of certain provisions laid down by law, regulation or administrative
action in Member States concerning the provision of audiovisual media services in view of
changing market realities**

I. Provisions related to AUDIOVISUAL COMMERCIAL COMMUNICATIONS

Article 9

1. Member States shall ensure that audiovisual commercial communications provided by media service providers under their jurisdiction comply with the following requirements:
 - (a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;
 - (b) audiovisual commercial communications shall not use subliminal techniques;
 - (c) audiovisual commercial communications shall not:
 - (i) prejudice respect for human dignity;
 - (ii) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
 - (iii) encourage behaviour prejudicial to health or safety;
 - (iv) encourage behaviour grossly prejudicial to the protection of the environment;

- (d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;
- (e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;
- (f) 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 shall be prohibited;
- (g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

[...]²

Article 10

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:
 - (a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

² Paragraphs 2, 3 and 4 are addressed under the "co-/self-regulation" theme (V.).

(b) **they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services³;**

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

Sponsored programmes shall 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 at the end of the programmes.

2. Audiovisual media services or programmes shall 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 shall 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. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

³ ***Recital 14 to be modified as follows:*** "Sponsorship represents an important means of financing audiovisual media services or programmes while promoting a legal or physical person's name, trade mark, image, activities or products. [...] Sponsorship announcements should continue to clearly inform the viewers of the existence of a sponsorship agreement. The content of sponsored programmes should not be influenced in such a way as to affect the audiovisual media service provider's editorial independence."

Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.⁴
2. Product placement shall be allowed in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes⁵.
3. Programmes that contain product placement shall meet the following requirements:
 - (a) their content and organisation in a schedule in the case of television broadcasting or in a catalogue in the case of on-demand audiovisual service, shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;
 - (b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;
 - (ca) they shall not give undue prominence to the product in question;

⁴ Recital 91 of the current 2010 AVMS directive will continue to apply, including the provision of certain goods and services free of charge.

⁵ **Recital 16 will be amended as follows:** "Product placement should not be **allowed** in news and current affairs programmes, consumer affairs programmes, religious programmes and **children's** programmes [...]. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in **children's** programmes [...]. Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes."

- (c) **viewers shall be clearly informed of the existence of product placement by an appropriate identification at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer.**

Member States may waive the requirements set out in point (c) except for programmes produced or commissioned by the media service provider or by a company affiliated to that media service provider.

4. In any event programmes shall not contain product placement of:

- (a) **cigarettes and other tobacco products or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.**
- (b) **specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.**

Article 20

1. Member States shall ensure, where television advertising or teleshopping is inserted during programmes, that the integrity of the programmes, taking into account natural breaks in and the duration and the nature of the programme concerned, and the rights of the right holders are not prejudiced.
2. **The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes.** The transmission of children's programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes. No television advertising or teleshopping shall be inserted during religious services.

Article 22

- 1a.** Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:
- (a) it ~~shall~~ ~~may~~ not be aimed specifically at minors or, in particular, depict minors consuming these beverages;
 - (b) it shall not link the consumption of alcohol to enhanced physical performance or to driving;
 - (c) it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
 - (d) it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
 - (e) it shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;
 - (f) it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.
- 1b.** ~~Without prejudice to point (c) of Article 9(1), a~~ **Audiovisual commercial communications for alcoholic beverages in on-demand audiovisual media services, with the exception of sponsorship and product placement, shall also comply with the criteria in paragraph 1a.**

1. ~~In the period between 7:00 and 19:00, t~~The proportion of television advertising spots and teleshopping spots ~~within a given clock hour~~ within the period between 06:00 and 18:00 shall not exceed 20 % of that period. The proportion of television advertising spots and teleshopping spots within the period between ~~19:00~~ 18:00 and 00:00 shall not exceed 20 % of that period.⁶
2. Paragraph 1 shall not apply to:
 - (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes from other entities belonging to the same media group;
 - (b) sponsorship announcements;
 - (c) product placements;
 - (ca) neutral frames between editorial content and television advertising or teleshopping spots, and between individual spots.⁷

⁶ *Recital 19 to be modified as follows:* [...] It is important for broadcasters to have more flexibility and to be able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. Thus, for the period from 06:00 to 18:00, the limit of 20 % of advertising should be calculated on the basis of that period. In the same way, for the period from 18:00 to 00:00, the limit of 20 % of advertising should be calculated on the basis of that period. [...]

⁷ *A new recital to be added:* "Neutral frames separate editorial content from television advertising or teleshopping spots, as well as separate individual spots. They allow the viewer to clearly distinguish when one type of audiovisual content ends and the other starts. It is necessary to clarify that neutral frames are excluded from the quantitative limit set out for television advertising. This is in order to ensure that the time used in neutral frames does not impact on the time used for advertising and that revenues generated from the advertising are not negatively affected."