今後のICT分野における国民の権利保障等の在り方を考えるフォーラム

第2回ヒアリング資料

2010年3月29日

日本弁護士連合会

国際人権（自由権）規約に基づき提出された
第５回日本政府報告書に対する
日本弁護士連合会報告書

２００７年１２月

日 本 弁 護 士 連 合 会

（８）第８章では、刑事手続における被告人の権利について述べた。証拠開示の不徹底と二審で逆転有罪判決を受けた被告人が、事実の存否や量刑については上級裁判所の再審理を受ける権利を有しないことの規約違反を指摘している。
（９）第９章では、受刑者に対する刑事拘禁施設における処遇の問題点について述べた。この点に関しては、新たな立法により、刑事施設視察委員会が全国の各行刑施設で設置されるなど、多くの前進が見られた。なお残る問題点を指摘している。
（１０）第１０章では、新たに生起した規約違反の問題を記載した。規約１８条、１９条に関する政治ビラ配布の警察による取り締まり、国家公務員の政治活動一律全面禁止、教科書検定制度による表現の自由侵害、放送法改正や政府の放送局に対する行政指導により、報道の自由など表現の自由を侵害している実情を報告している。さらに、選挙における戸別訪問が公職選挙法により全面的に禁止されていることについて、前回委員会で表現の自由を侵害するとの議論がなされたが、この法律がなお維持され、裁判所もこの侵害を是認していることについて報告している。

４．　なお、委員会は１９９８年１１月５日に採択した総括所見において、中労委が労働者が腕章を着けている場合に不当労働行為の申立の審理を拒否していたことに対し、かかる取扱いは規約１９条及び２２条に反するとの見解を示した(パラ２８)。

５．　その後、いずれの労働組合に関しても、中労委の審理は以下のような状況で再開されるようになった。これは委員会の見解が示されたことによる改善である。

＜現　状＞
６．　中労委は審理を始めるにあたり、先ず労働組合側に対し「腕章をはずして下さい」、「ちゃんと言いましたからね」と述べ、労働組合側から「はい、聞きました。しかし、従前主張の理由により、腕章をはずすことはできません」と回答し、これを受けて、中労委は「それでは審理に入ります」と述べて審理が開始される習わしになっている。
　したがって、審理自体は支障なく行われるようになっており、かつてのように審理が進まない状態は解消されている。

資料 1

７７４．　（３）日弁連は上記の検定制度の現実の運用の実態を踏まえ、現行の検定制度は規約１９条に適合しないと主張するものである。仮に制度自身は存続させるとしても、本来教育内容に対する国家的介入はできるだけ抑制的で、自由な教育活動を保証すべきであるから、検定基準は検定当局者の恣意的な解釈の余地を残さない一義的で、大綱的なものとし、かつそれが法律として制定されることが必要であると提言するものである。

④ メディア関係

A　結論と提言

７７５．

１　国は、日本では、放送行政を中央官庁たる総務省が司っていることから、放送メディアに対する与党を中心とする政治家の圧力を防ぐことができない。総務省は、放送局に対して、番組内容、編集、演出など番組作成に関して、行政指導すべきではない。
２　国は、放送行政を司る独立行政委員会を設置し、放送局に対する政治圧力を防ぐべきである。
３　国は、放送法改正案から、第５３条８の２は削除されるべきである。

B　国際人権（自由権）規約委員会の懸念事項・勧告内容

７７６．　記載なし。

C　政府の対応と第５回政府報告書の記述

７７７．　記載なし。

D　日弁連の意見

<u>１　ＮＨＫ（日本放送協会）従軍慰安婦番組事件などにみる権力によるメディアへの支配介入</u>

７７８．　日本国憲法はその第２１条において、「１項　集会、結社及び言論、出版その他一切の表現の自由は、これを保障する。２項　検閲は、これをしてはならない。通信の秘密は、これを侵してはならない。」と定められ、集会・結社・表現の自由、検閲の禁止、通信の秘密を保障している。

７７９．　ところが、現実には、権力によるメディアへの支配・介入が隠然と行われている。

７８０．　東京高等裁判所は、２００７年１月２９日、ＮＨＫが、政治家の圧力によって、番組を放送直前に改変したことを認定した。この番組は、第二次世界大戦における

いわゆる従軍慰安婦に対する性暴力に関し、当時の政府の責任などを問おうとする民衆法廷を取り上げたものであった。東京高裁の判決によると、ＮＨＫ幹部が放送日の数日前に政府高官（官房副長官）に面談した後、民衆法廷の判決言い渡し場面を削除したり、民衆法廷で証言した被害者（外国人女性）の証言シーンを削除するよう番組制作担当者に指示し、その意にそわない改変を行ったことが認められている。
　この異常な事態に至った背景には、東京高裁判決も認定しているとおり、ＮＨＫが予算をスムーズに成立させるために予算の国会承認を前に国会議員の半数以上を個別に訪問し説明しているという実態がある。

７８１．　本来、放送局は政治家から独立するべきである。

７８２．　日本でも、第２次大戦後まもなく電波三法が制定され、中央官庁ではなく、政府・与党から距離を保てる独立行政委員会（電波管理委員会）が放送行政を司り、ＮＨＫの予算も独立行政委員会が国会に説明することで、政治介入を防いでいた。

７８３．　ところが、日本が独立を回復してまもなく、政府与党は、上記独立行政委員会を廃止し、放送行政を自らの影響力下にある中央官庁である郵政省（当時）の所管とした。これは世界の主要国をみても異例なことである。

７８４．　このため、ＮＨＫは、独立行政委員会という盾を失い、ＮＨＫ幹部は政治家の圧力を直接受けることになり、ついにＮＨＫ従軍慰安婦番組事件における改変にみられるような個々の番組に対する介入までも許す結果となった。

７８５．　さらには、総務省は、ＮＨＫに対して「北朝鮮の拉致報道を重点的にやりなさい」という個別的事項について放送法による「放送命令」まで出した。

７８６．　このことは、ＮＨＫだけでなく、民放についても同様である。民放の場合、免許更新を政府与党の影響下にある中央官庁たる総務省に握られていることによって、番組内容、演出、編集に関してまで、行政指導がなされている。最近は、瑣末なミスをいちいち取り上げて厳重注意処分という行政処分を頻発しているが、報道の自由との関連から謙抑的でなければならない。こうして民放各社は行政、政治家からの独立が阻害されており、その結果、民放は押しなべて権力監視機能が弱体化している。
　例えば、前記ＮＨＫ従軍慰安婦番組事件の東京高裁判決についても、ＮＨＫが政治家の圧力によって番組を放送直前に改変したことを認定した事実が正確に報道されず、むしろ政治家の直接的な圧力が認定されなかったといわんばかりの報道までなされている。
　放送行政の権限を政府・与党が直接握っている国は、主要国では日本とロシアくらいであり、日本でも、独立行政委員会を復活させることで、放送の独立性を確保する制度的保障が必要である。

<u>２　放送法改正案</u>

７８７．　度重なるメディアの不祥事に対する批判的世論を背景にして、公権力はメディア規制を図ろうとし、総務省は、ある民放テレビ局の情報番組におけるデータ捏造問題をきっかけとして、ついに放送法改正案を国会に提出した。
　放送法改正案は、２００７年6月１９日、衆議院で審議が開始された。

７８８．　今回の法改正案第５３条の８の２は、「１項　総務大臣は、放送事業者（受託放送事業者を除く。）が、虚偽の説明により事実でない事項を事実であると誤解させるような放送であって、国民経済又は国民生活に悪影響を及ぼし、又は及ぼすおそれがあるものを行い、又は委託して行わせたと認めるときは、当該放送事業者に対し、期間を定めて、同様の放送の再発の防止を図るための計画の策定及びその提出を求めることができる。２項　総務大臣は、前項の計画を受理したときは、これを検討して意見を付し、公表するものとする。」と規定している。

７８９．　同条文は、「誤解させる」「悪影響」「及ぼすおそれ」等曖昧な文言を多用している。
　これにより、個々の番組の評価を通じて総務大臣が放送内容へ介入する道を開くものであり、上記放送法改正案は、行政による放送の自由への侵害の危険が大きく、日本国憲法第２１条にも反し、違憲の疑いが強い。

３　有事法制による放送局の指定公共機関化

７９０．　有事法制３法には、放送局を指定公共機関とし、これらに対し、「必要な措置を実施する責務」を負わせ、内閣総理大臣が、対処措置を実施すべきことを指示し、実施されない時は自ら直接対処措置を実施することができるとされた。
　これにより、政府が放送メディアを統制下に置き、市民の知る権利、メディアによる自由な批判や権力監視機能を目的とする、報道の自由を侵害し、国民主権と民主主義の基盤を崩壊させる危険がある。

４　放送行政の政府からの独立

７９１．　１で述べたとおり、放送行政の権限を政府が一括して直接握っている国は、主要国では日本とロシアくらいである。アメリカには連邦通信委員会（ＦＣＣ）、イギリスには独立テレビ委員会（ＩＴＣ）、放送基準委員会（ＢＳＣ）、フランスには、視聴覚最高評議会（ＣＳＡ）、ドイツでは放送行政は各州に分属し、州メディア庁が行っている。イタリアには、1997 年に独立行政委員会（アウトリタ）が設立された（国の資金と放送局などの資金で構成）。
　アジアでも、韓国では２０００年新放送法が発効し、独立行政組織の韓国放送委員会ができた。台湾でも、２００６年独立性の強い国家通信放送委員会ができた。

７９２．　ちなみに、韓国では、反論権制度導入と共に、放送発展基金が資金を出す第三者的法定機関として言論仲裁委員会が設置されている（裁判官、弁護士、マスコミ出身者、知識人で構成）。

７９３．　日本でも、１９５０年、電波管理委員会という独立行政委員会が総理府の外局に設置されたが、１９５２年に郵政省に権限が移行した。
　あらためて、日本でも、電波管理委員会のような独立行政委員会が放送行政を管掌するべきである。

５　自主的な横断機関の設置

７９４．　テレビ界においては、放送事業者が設置した機関で、青少年問題、放送による人権侵害、放送倫理問題を扱う、自主的な横断機関であるＢＰＯがある。しかし、新聞及び雑誌メディアについては、このような業界横断的な機関の設置がなされていない。国家権力から表現の自由を守るためにも、学者、マスコミ関係者、弁護士会推薦の弁護士その他の有識者によって構成される自主的な業界横断機関である報道評議会を設置すべきである。そして、この報道評議会には、マスメディアによる名誉毀損、プライバシー侵害について、調査、仲裁、裁定する機能を持たせるべきである。

７９５．　報道被害救済の手段として、マスメディア自身によって設立される報道評議会による救済は、訴訟を始めとする法的手段による救済と比較して ① 簡易・迅速・廉価な救済を得られる可能性が大きいこと、② 法的手段による救済の外にあるとされる事案についても救済の可能性があること、③ マスメディア内部に自浄作用が発生し、報道被害を事前に防止する可能性が増大することが期待されることなどの利点が挙げられる。

７９６．　現在、名誉毀損、プライバシー侵害を理由として権力によるマスメディア規制が進められているが、この機関を設置することにより権力による介入を防ぐことができる。
　報道評議会の早急な設置が望まれる。

（２） 日の丸君が代問題（規約１８条）

A　総論と提言

７９７．

国は、公立の小学校、中学校及び高等学校の卒業式、入学式において、君が代が斉唱される際、思想良心の自由を理由として、日の丸に向かって起立せず、国歌を斉唱せず、あるいは伴奏をしない教職員に対し、職務命令などによって起立、斉唱や伴奏を強制してはならず、起立、斉唱あるいは伴奏をしない教職員を懲戒処分その他不利益に扱ってはならない。

B　国際人権（自由権）規約委員会の懸念事項・勧告内容

７９８．　記載なし。

表現の自由を確立する宣言
～自由で民主的な社会の実現のために～

憲法２１条１項が保障する表現の自由は，民主主義社会の死命を制する重要な人権である。自由で民主的な社会は自由な討論と民主的な合意形成によって成立するのであり，自由な意見表明が真に保障されていることが必要である。

当連合会は，これまで表現の自由や報道の自由等の重要性を訴え，それが最大限に尊重されるべきであることを表明してきている。

ところが，昨年来，靖国神社をテーマとした映画の上映が政治家の発言を契機として中止されたり，ホテルが裁判所の仮処分決定を無視して集会のための会場使用を拒否したりするなど，自由な意見を表明することが妨害される事件が立て続けに発生している。また，近年，政府に対する批判の内容を含むビラを投函する行為に対して，住居侵入罪または国家公務員法に基づいて市民や公務員が逮捕されたり，起訴されて有罪判決が下されたりするなど刑罰をもって市民の政治的表現の自由が脅かされる事態が生じている。市民が意見を表明する重要な手段の一つであるビラの配布等を，警察，検察及び裁判所が過度に制限することは，ビラの配布規制にとどまらない市民の表現の自由の保障一般に対する重大な危機である。さらに，表現の自由が保障されなければならない選挙運動においても，公職選挙法に基づき，戸別訪問が禁止され，選挙活動期間中に配布できる文書図画の数や形式が制限されている。重要な表現手段であるビラ配布などに対するこのような日本の現状について，２００８年１０月，国際人権（自由権）規約委員会からも懸念が表明され，表現の自由に対するあらゆる不合理な制限を撤廃すべきであるとの勧告がなされたところである。

さらに，自由で民主的な社会が実現されるためには，市民が社会に関する事実や他者の意見を正しく知ることが保障されなければならないが，市民の知る権利の保障，特に権力に対する監視は，マスメディアの報道の自由の保障なくして実現され得ない。そこで，マスメディアは，報道の自由が市民の知る権利に奉仕し，権力を監視するために保障されていることに重要な意義があることを再確認し，閉鎖的な記者クラブ制度を見直すなど自らを規律するとともに，権力からの不当な干渉に動じることなく多様な報道を行う責務を担っていることを強く自覚すべきである。

他方，放送内容にわたる事項について総務省が行政指導を多発し，放送局に政治家が圧力をかける例が見られる現状に鑑みるとき，放送行政が政府から独立するための制度を確立することは急務である。

情報公開制度も，市民の知る権利が具体化されたものであることを踏まえ，より広く公開されるよう，さらなる改正または構築が検討されるべきである。

加えて，近時のインターネットの発展と普及により，これまで情報の受け手にとどまっていた市民が，社会に対して広く情報発信を行うことが可能となりつつある。インターネットが民主的な世論形成の重要な手段の一つであることは誰しもが認めるところである。しかし，インターネットは，名誉やプライバシーを侵害する情報や子どもの成長発達上好ましくない情報などが広く流通するなどの問題も内包している。そこで，その弊害を防止しつつ，市民が自由に意見を表明し，民主的な合意形成をするために，今後さらに活用されていく必要がある。

よって，当連合会は，以下のとおりの提言をする。

１　民主主義社会における市民の表現行為の重要性に鑑み，市民の表現の自由及び知る権利を最大限保障するため，
(1) 国，地方公共団体，特に警察及び検察は，市民の表現行為，とりわけ，市民の政治的表現行為に対する干渉・妨害を行わないこと。
(2) 裁判所は，「憲法の番人」として市民の表現の自由に対する規制が必要最小限であるかにつき厳格に審査すること。
(3) 政府及び国会は，市民の政治的表現の自由を確保するため，早急に公職選挙法及び国家公務員法などを改正すること。

２　マスメディアは，報道の自由が市民の知る権利に奉仕し，権力に対する監視を役割とすることを改めて認識したうえ，この重要な役割を十分に果たすよう記者クラブ制度を見直すなど自らを規律し，かつ，権力による不当な干渉を排除して，多様な報道を実現し得るよう努力すること。

３　国は，市民の知る権利が十分に保障されるため，
(1) 放送行政が政府から独立するための制度を確立すること。
(2) 市民の知る権利が具体化された情報公開法を改正し，さらに，より実効的な情報公開のため公文書管理制度を構築すること。

４　インターネットの利点を最大限に生かすため，インターネット上の表現活動による弊害の防止は，できる限り自主規制と司法手続によるという制度設計がなされるべきであること。

当連合会は，今こそ表現の自由と知る権利の重要性を強く訴えるとともに，表現の自由を確立する活動を通して，２１世紀の日本において自由で民主的な社会が実現されるために全力を尽くす決意であることを表明する。

以上のとおり宣言する。

２００９年（平成２１年）１１月６日
日　本　弁　護　士　連　合　会

資料２

提　案　理　由

第１　表現の自由・知る権利の意義と問題の所在

日本国憲法は，基本的人権を「侵すことのできない永久の権利」と定めたうえで（憲法１１条，９７条），「集会，結社及び言論，出版その他一切の表現の自由は，これを保障する。」（憲法２１条）として，表現の自由を保障した。大日本帝国憲法（明治憲法）下における「表現の自由」は，「日本臣民ハ法律ノ範囲内二於テ言論著作印行集会及結社ノ自由ヲ有ス」と規定されていたものであり，あくまで臣民が天皇から恩恵として与えられたものであった。しかし，日本国憲法で保障された表現の自由は，明治憲法とは全く性格を異にし，立憲主義の観点から，法律はもとより，憲法改正によっても変えることのできない権利として保障されているものである。

また，表現の自由は，人間の本質的な属性である精神活動を充足するものとしての重要性にとどまらず，主権者たる私たち市民が政治決定のために必要な情報を十分に提供される機会を保障するものとしての重要性を有している。

しかし，日本では，表現の自由がその重要性・優越性にもかかわらず，公権力などによって侵害され，裁判所によってもその是正がなされていない。また，市民の知る権利に奉仕すべく報道の自由によって公権力に対する批判をなすべきマスメディアも，権力が情報を隠蔽している行為を見逃したり，政治家の意向を忖度してテレビ番組の内容を変更したりするなど，権力の監視機能を十分に果たしていない。

表現の自由に対する侵害やマスメディアの現状の問題点がこのまま放置されれば，自由で民主的な社会が瓦解するおそれがある。

第２　市民の表現の自由及び知る権利の現状

１　近時の動き

近時，自由な意見表明が妨害されたとして広く社会的関心を呼んだのは，昨年（２００８年）発生した次の二つの事件である。

まず，２００８年４月，靖国神社を取材した映画「靖国　ＹＡＳＵＫＵＮＩ」が，国会議員からの要請による試写会の実施が一つの契機となり，街宣車などが上映の中止を求める抗議を行ったりしたことから，上映を決めていた映画館５館が，近隣等に迷惑がかかることに配慮して相次いで公開を中止するという事件があった。

また，２００８年２月には，日本教職員組合の集会の会場に予定されていたホテルが，自ら契約を締結しておきながら，しかも会場使用を認める裁判所の決定があったにもかかわらず，街宣車の大騒音等により周辺住民等に迷惑がかかると判断したとして，会場使用を拒否する事件も発生した。

２　ビラ配りその他の市民の情報発信の自由に対する制約

(1) そして，近年，政府に対する批判の内容を含むビラを投函する行為に対して，住居侵入罪または国家公務員法に基づいて市民や公務員が逮捕されたり，起訴されたりして有罪判決が下されるなど刑罰をもって市民の政治的表現の自由が脅かされる事態も生じている。

ビラ配りは，新聞や放送などのマスメディアを直接利用することが困難な市民にとって不可欠な情報発信手段である。とりわけその内容がマスメディアを通じて取り上げられることを期待しがたい少数意見の場合，市民が自らの意見を読み手に直接手渡すことができるという意味において，ビラ配りは極めて有効な表現方法である。

しかし，２００４年２月に，自衛隊のイラク派兵に反対する内容のビラを自衛隊宿舎の各室の玄関ドアの新聞受けに投函した市民が住居侵入罪の疑いで逮捕され，７５日間もの長期間にわたって身柄が拘束されたうえ，起訴されたことは記憶に新しい。そして，本件について，東京地方裁判所八王子支部は，「被告人らによるビラの投函自体は，憲法２１条１項の保障する政治的表現活動の一態様であり，民主主義社会の根幹を成すものとして，いわゆる優越的地位が認められている」として，表現の自由の重要性を重視し，「刑事罰に処するに値する程度の違法性があるものとは認められない」として無罪判決を下した。これに対し，最高裁判所は，２００８年４月１１日，「たとえ表現の自由の行使のためとはいっても，このような場所に管理権者の意思に反して立ち入ることは，管理権者の管理権を侵害するのみならず，そこで私的生活を営む私生活の平穏を侵害するものといわざるを得ない。」として，他に特段の利益衡量をすることなく，被告人らを有罪とした。前記地裁判決も指摘しているとおり，当該自衛官宿舎においては他のビラ配布行為が問題とされた形跡はなく，本件はイラク戦争に反対するという表現内容に着眼して規制がなされた疑いが極めて強い。このような警察による不当な逮捕，検察による不当な起訴，さらには最高裁判所による利益衡量を放棄した判決は，憲法で保障されている表現の自由の保障の前記の意義が踏まえられているとは到底言いがたい。

(2) 市民の直接的表現行為が制約されるのは，ビラ配布だけではない。デモ行進などの示威行為においても，条例において許可制を採られていることから警察から詳細な指示がなされたり，デモ参加者が隊列を乱したりするなど些細な違反によって逮捕される事態が発生している。また，大学構内でのビラまきにつ

いて学生らが逮捕，起訴されたり，自治体が教職員組合の集会の会場使用を集会主催者と意見を異にする団体の妨害のおそれを理由として拒否した例もあるほか，自衛隊情報保全隊が自衛隊のイラク派遣に反対する市民を調査し，その情報を収集していたことも看過できない問題である。

3　公務員の政治的表現活動及び選挙運動に関する制約

(1) 国家公務員の表現の自由に対する過度の制約の例として，国家公務員法及び人事院規則が，国家公務員による政治活動につき，刑罰をもって包括的かつ一律に禁止している問題がある。２００３年１１月，一般職公務員である社会保険事務所職員が，休日に私服で，職場から離れた自宅近くのマンションに政党の機関誌等を配布したことにつき２００４年３月に逮捕され，２００６年６月に有罪とされた事件がある。この事件においては，逮捕に至るまで約１か月間にわたり最大１１名の公安警察官の尾行によるビデオ撮影がなされるなど，政治活動に対する公安警察の捜査の実態が明らかになった。

(2) また，市民の表現活動のうち，特に，選挙運動や政治的表現活動に対して，公職選挙法によって広汎な制約が課されていることも看過し得ない問題である。

同法は，①選挙運動は，選挙運動期間以外には一切行うことができないものとし（時期の制限），②選挙運動期間中も，候補者及び候補者届出政党以外の選挙運動を広範に制限し（主体の制限），③文書の配布，演説会の開催を強く制限したうえ，戸別訪問は一律に禁止している（方法の制限）。その結果，１９４６年以降，戸別訪問や文書頒布罪で９万１０００人以上の人々が検挙，処罰されている。

選挙運動は，表現の自由としての重要性にとどまらず，選挙を通じて民主制の過程への参加を可能とする意義を有する。かかる意義からすれば，選挙運動は広く市民によって担われ，かつ，選挙に関わる意見，情報が広く伝えられる手段が保障されるべきであり，公職選挙法によるこれらの広汎な規制は，市民による選挙運動の自由ひいては表現の自由を不当に制約するものであるといわざるを得ない。かかる制約により，日本ではインターネットを利用した選挙運動も原則として禁止されると解釈されているが，その見直しの是非も今後の課題である。

4　裁判所による違憲審査の不十分さ

以上のような事態は，日本国憲法が表現の自由を優越的な地位を占める人権として厚く保障しているにもかかわらず，現実には市民の表現の自由が正当に保障されていないことを意味している。特にその表現内容が権力批判に向かうときには，表現の自由に対する制約は「公共の福祉」の名のもとに必要最小限度を超えて不当な制約がなされることが少なくない。

このように，民主政の過程を構成する権利である表現の自由や選挙権を規制する立法や処分がなされた場合には，民主政の過程によって回復することが極めて困難になるため，規制が必要最小限か否かにつき裁判所は厳格に審査しなければならない。しかし，最高裁判所は，表現の自由が問題となる事案について厳格な審査をせず，近時の自衛隊官舎へのビラ入れの事案においても有罪の判断をしたことは前述のとおりである。最高裁判所は，国家公務員による政治活動の制限に関しても，また，選挙運動に関する戸別訪問の禁止や集会の自由を規制する条例についても，極めて緩やかに規制の合憲性を認めている。このような解釈が続けられる限り，「憲法の番人」として，特に表現の自由の規制に対して厳格に審査しなければならない裁判所の役割は到底果たされないものと評価せざるを得ない。

5　国際人権（自由権）規約委員会の総括所見

表現の自由，特に文書配布や対話による政治批判や選挙活動が自由にできることは民主政治の基盤であり，国際人権（自由権）規約も表現の自由（１９条），政治参与の権利（２５条）を保障している。そして，国際人権（自由権）規約委員会は，規約上の権利の制限は，制限の必要性に比例しなければならないと考えている（比例原則）。したがって，具体的な弊害を問わずに，一律に刑罰でもってビラ配布や選挙活動を抑圧することは同規約に違反するものと解される。

かかる観点から，国際人権（自由権）規約委員会は，２００８年１０月，「表現の自由と政治に参加する権利に対して加えられた，公職選挙法による戸別訪問の禁止や選挙活動期間中に配布することのできる文書図画の数と形式に対する不合理な制限に，懸念を有する。」「政府に対する批判的な内容のビラを私人の郵便受けに配布したことに対して，住居侵入罪もしくは国家公務員法に基づいて，政治活動家や公務員が逮捕され，起訴されたという報告に懸念を有する」旨の表明をし，さらに，「規約１９条，２５条のもとで保障されている政治活動やその他の活動を，警察，検察及び裁判所が過度に制限することを防止するため，その法律からあらゆる不合理な制限を撤廃すべきである」旨日本政府に勧告するに至った。

日本は，１９７９年に国際人権（自由権）規約を批准しており，批准締約国として委員会の勧告を誠実に受け入れる義務がある。したがって，この点からも，政府は早急に公職選挙法及び国家公務員法などを改正すべきであり，警察・検察は市民の表現行為，とりわけ市民の政治的表現行為に対する干渉・妨害を中止す

べきである。加えて，当連合会が長年にわたりその実現に取り組んでいる個人通報制度，とりわけ国際人権（自由権）規約第一選択議定書の批准が直ちになされなければならない。

第３　マスメディアの表現（報道）の自由とその課題

１　マスメディアは市民の知る権利に奉仕するものとして重要な機能を有しており，その帰結として，その報道の自由が保障されなければならない。他方，市民の知る権利を充足するために多様な報道，特に権力監視の視点に基づいた報道をすることが要請される。しかし，マスメディアが権力を監視する役割を十分に果たし，またその責務を十分に自覚しているとはいいがたい。

まず，報道の多様性を阻害する原因として従前より記者クラブ制度の排他性・閉鎖性が問題とされてきた。具体的には，クラブ加盟社のみが記者会見に立ち会う機会を与えられるなど情報の流通が制約されていること，クラブ加盟社が官庁から便宜を受けていることの裏返しとして官庁に対する批判的視点を失いかねないこと，また，官庁の情報操作を受けて広報機関化しかねず多様な報道がなされにくくなっていることが危惧されることは，第４２回人権擁護大会でも指摘したとおりである。この点については日本新聞協会も，クラブ加盟社以外のジャーナリストへの開放を規約上認める等その見直しを図っているが，未だに全面的に開放される運用になっているとはいいがたく，速やかにあらゆる記者クラブがすべてのジャーナリストに開放されるべきである。

また，マスメディアが権力による不当な干渉を受け，報道内容の変更に至った例として，２００１年に，「従軍慰安婦」に対する旧日本軍等の関与の問題を取り扱ったＮＨＫの番組に関し，ＮＨＫの幹部職員が番組放送前に政治家に接触して放送内容の説明をし，政治家から持論を聞かされ，その後に番組内容を変更した事件がある。この点，諸外国では，権力による不当な干渉を排除するために，経営陣と現場の記者らが編集方針などについて協議する場を設け，現場の記者の表現の自由を尊重する内部的制度が存在する。日本でも，かかる制度について研究を深め，その制度の当否について検討されることも今後の課題である。

２　前記のほかにも，公権力が報道内容に介入する事態も決して少なくない。

もともと，日本では，第２次世界大戦後まもなくいわゆる電波三法が制定され，独立行政委員会である電波監理委員会が放送行政を司り，ＮＨＫの予算も同委員会が原則として国会に説明することで政治介入を防いでいた。しかし，日本が独立してまもなく，同委員会は廃止され，郵政省（当時）の所管とされるに至ったが，これは世界の主要国でも異例なことである。

放送メディアにおいて，総務省が放送局に対し，放送内容に亘る事項に関して厳重注意等の行政指導をする例が多くみられる。この行政指導の中には，旧日本軍７３１部隊の特集番組において記者室内の記者の映像を流す際に当時の官房長官の写真が数秒間映り込んだことを問題とするなど，捏造でも誤報でもない単なる番組作りに亘る事項について出されたものや，放送内容に関して既に放送人権委員会が是正を勧告している事案について重ねて指導に乗り出すなどその必要性に疑問があるものもある。かかる行政指導を出すことができるのは，総務省が免許権限・監督権限を独占していることに起因する。そして，放送局は総務省から免許を受けることを通してその監督下にあるため，総務省から指導を受けることは現場に対する相当な圧力になる。とりわけその指導が放送内容に亘る事項に関するものであれば，それによってもたらされる番組作りへの影響は計り知れず，マスメディアが市民の知る権利に応えるために十分なものであるとはいいがたく，放送行政が政府から独立するための制度を確立することが必要である。

３　さらに，個人情報保護法や犯罪被害者基本計画などの規定を口実にして，警察や官庁がマスメディアに対する情報提供を恣意的に制限している実態が報告されている。たとえば，警察官の犯罪についてその氏名を明らかにしなかったり，警察が被害者にマスメディアを接触させたくない場合に被害者の意思と称してその氏名を発表しない例がある。情報公開制度が不十分な中，情報提供の過度の制約はマスメディアの権力監視を阻害することにつながる。

第４　情報公開制度の不十分さ

市民の知る権利を直接的に充足する方法として情報公開制度があり，日本でも情報公開法（行政機関の保有する情報の公開に関する法律）が１０年前に制定されたが，残念ながら十分なものとはいえない。

まず，開示されない情報が広汎に過ぎる。たとえば，現行法は行政機関のみが対象機関であるため，国会の文書や裁判所の司法行政に関する文書を公開させる法制度が存しないが，知る権利の充足の観点からすれば，国会及び裁判所も情報公開法の対象機関に加える必要がある。行政機関の情報についても，防衛・外交情報及び犯罪情報は，公にすると支障等が生ずる「おそれがあると行政機関の長が認めるにつき相当の理由がある」場合に開示しないでよいとされているが，これでは行政機関の裁量を過度に広く認める運用を許しかねない。そこで，不開示事由を厳格に限定し，防衛・外交情報及び犯罪情報については，支障等が生じる「おそれがあると行政機関の長が認めることにつき相当の理由がある情報」とあるのを「おそれがある情報」と改正すべきである。また，個人情報の不開示の例外（同法５条１号ハ）

については，公務員の氏名も公開の開示内容とすべきである。

また，訴訟手続上，裁判所が，不開示とされた文書の実物を確認する術がないため，当該文書の不開示が正当か否かを判断しにくい構造となっているので，不開示の濫用を防止するため，不開示とされた文書の実物を裁判所が見ることができるインカメラ審理を法定すべきである。

「情報公開と公文書管理は車の両輪」といわれる。２００９年６月，公文書管理法が成立したが，同法の公文書管理は未だ十分とはいえない。まず，公文書管理は国の各機関の利害と衝突することから，管理に携わる職員の中立性とともに強力な権限が必要となる。また，管理を効率的に行うには各機関との連携も必要である。そこで，各機関と連携しながら公文書管理の適正な統制を行う中立的な機関として「公文書管理庁」を創設すべきである。また，市民が公文書に接し利用しやすくするためには，国会や裁判所の公文書，検察庁保管の刑事確定訴訟記録や軍法会議記録も行政機関の公文書と同様に一括して国立公文書館で管理をする必要がある。さらに，特定歴史公文書等について公文書管理法は，時の経過により当該情報を不開示にする必要がなくなっているにもかかわらず現用文書の不開示事由と同様の利用拒否事由としており不合理であるため，利用拒否事由を見直すとともに，国際的慣行・動向である「３０年ルール」を採用し，３０年の経過とともに原則公開すべきである。

第５　市民による新たな表現手段の獲得

インターネットの急速な発達は，市民が自ら社会に対して情報発信することを可能とし，同時に，インターネット上に行き交う情報を容易に取得することを可能とした。このような特性を有するインターネットは，市民の表現の自由及び知る権利を支える画期的な媒体であり，市民の共有財産というべきである。

インターネット上には，名誉権やプライバシーを侵害する情報や子どもの成長発達上好ましくない情報なども流通しているなどの問題もあり，このため，インターネット上の情報の流通に公的な規制を期待する見解もある。

しかし，市民が自由で多様な表現活動を行うことができるというインターネットの特性に鑑みれば，国及び地方公共団体は民間における自主的で主体的な取組を尊重すべきであり，そのような取組によっても問題が解決しない場合は，当事者に攻撃防御の権利が保障された司法手続によるべきである。

また，米国，ドイツ，韓国など諸外国では，市民の作成した番組を地上波放送局やケーブルテレビ局の一定の枠を利用して放送させるなど市民がマスメディアを利用して表現の自由を行使することを可能とする制度（パブリックアクセス）がある。

このような仕組みは，大衆社会及びマスメディアの発達によって情報の受け手とならざるを得ない市民が自らの意見などを社会に伝えるために有用である。マスメディアが持つ高度の公共性，あるいは，放送などの媒体が本来市民に共有されるべきものであることなどを考慮すれば，日本でもこの問題の研究を深め，導入の是非の検討を行うことが今後の課題である。

第６　提言

当連合会は，たとえば，１９９９年に発表した「人権のための行動宣言」において，民主主義社会の基盤となる表現・集会・結社の自由などの精神的自由の保障の重要性を指摘し，社会秩序の維持，犯罪捜査の目的などの名のもとに，これらの人権を侵害するおそれがある法制定には強く反対し，行動することを宣言し，また，２００７年の第５０回人権擁護大会において，日本国憲法や国際人権法の定める人権保障を実現することの重要性を強く訴えるとともに，精神的自由などの人権の保障等の活動に全力を尽くす決意を表明してきた。

しかし，表現の自由の危機的状況は改善される方向にあるとはいえない。そこで，当連合会は以下のとおり提言する。

１　民主主義社会における市民の表現行為の重要性に鑑みれば，市民の表現の自由及び知る権利は最大限保障されなければならない。したがって，国，地方公共団体，とりわけその権限行使に強制力が伴うことが多く権限濫用の危険性を内包する警察及び検察は，市民の表現行為，とりわけ市民の政治的表現行為に対する干渉・妨害を行ってはならない。

また，裁判所は，「憲法の番人」として，表現の自由に対する規制が必要最小限度であるかにつき，厳格に審査しなければならない。

そして，政府及び国会は，公務員の休暇時のビラ配布などを一律に制約している国家公務員法や地方公務員法の規定を改正すべきであり，また，市民の選挙運動や政治的表現の自由を確保するため，早急に公職選挙法を改正し，選挙運動における戸別訪問禁止などの制約を撤廃すべきである。

２　マスメディアは，自らが行う取材・編集・報道は，市民のために行っていること，すなわち，自らが享受する報道の自由は受け手である市民の知る権利に奉仕するものであることを十分に自覚し，権力に迎合するのではなく，権力に対する監視を役割とすることを改めて認識すべきである。そのために，速やかに閉鎖的な記者クラブをすべてのジャーナリストに開放し，権力に対する監視機能に疑念を持たれることのないようにするなど，自らを規律すべきである。さらに，権力による不当な干渉を排除して，多様な報道を実現し得るよう努力すべきである。

3　世界の主要国では放送行政について，政府から独立した機関が管轄し，放送に対する政治的介入を防ぐための制度が採用されている。しかし，現在の日本の法制では，総務省が免許権限・監督権限を独占しており，その弊害は前述したとおりである。そこで，日本でも，直ちに放送行政を政府から独立させるための制度を確立させるべきである。

また，行政が保有する情報は，税金によって収集されたものであり，かつ，将来の国政及び地方政治のあり方を市民自らが検討するうえで不可欠のものであるから，本来すべて市民が共有すべきものである。しかし，現在の情報公開制度は非開示とされることが多く，裁判所も行政の判断を安易に追認することが多い。そこで，特段の事情がない限り，行政が保有する情報は公開されるように情報公開法を改正し，さらに，情報公開が実効化されるような公文書管理制度を実現しなければならない。

4　インターネットの利点を最大限に生かすために，できる限りインターネット上の表現活動による弊害の防止のルール作りやその管理は民間における自主的で主体的な取組に委ねるか，または，当事者に攻撃防御の権利が保障された司法手続によるべきである。

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私たちは市民とともに，表現の自由が，戦争の惨禍を経て初めて日本国憲法によって保障されるに至った歴史的意義を認識しつつ，不断の努力によってこれを保持していかなければならない。

当連合会は，今後も，表現の自由を確立する活動を通じて，表現の自由と知る権利の重要性を強く訴えていくとともに，２１世紀の日本において自由で民主的な社会が実現されるために全力を尽くす決意であることを表明する。

【日弁連第52回人権擁護大会シンポジウム第1分科会基調報告書】

資料 3

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Explanatory Memorandum

COUNCIL OF EUROPE
COMMITTEE OF MINISTERS

Recommendation Rec(2000)23

of the Committee of Ministers to member states

on the independence and functions of regulatory

authorities for the broadcasting sector

(Adopted by the Committee of Ministers

on 20 December 2000

at the 735th meeting of the Ministers' Deputies)

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The Committee of Ministers, under the terms of Article 15.*b* of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Bearing in mind Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights;

Recalling the importance for democratic societies of the existence of a wide range of independent and autonomous means of communication, making it possible to reflect the diversity of ideas and opinions, as set out in the Declaration on freedom of expression and information of 29 April 1982;

Highlighting the important role played by the broadcasting media in modern, democratic societies;

Emphasising that, to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, it is essential to provide for adequate and proportionate regulation of that sector, in order to guarantee the freedom of the media whilst at the same time ensuring a balance between that freedom and other legitimate rights and interests;

Considering that for this purpose, specially appointed independent regulatory authorities for the broadcasting sector, with expert knowledge in the area, have an important role to play within the framework of the law;

Noting that the technical and economic developments, which lead to the expansion and the further complexity of the sector, will have an impact on the role of these authorities and may create a need for greater adaptability of regulation, over and above self-regulatory measures adopted by broadcasters themselves;

Recognising that according to their legal systems and democratic and cultural traditions, member states have established regulatory authorities in different ways, and that consequently there is diversity with regard to the means by which - and the extent to which - independence, effective powers and transparency are achieved;

Considering, in view of these developments, that it is important that member States should guarantee the regulatory authorities for the broadcasting sector genuine independence, in particular, through a set of rules covering all aspects of their work, and through measures enabling them to perform their functions

effectively and efficiently,

Recommends that the governments of member states:

a. establish, if they have not already done so, independent regulatory authorities for the broadcasting sector;

b. include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation;

c. bring these guidelines to the attention of the regulatory authorities for the broadcasting sector, public authorities and professional groups concerned, as well as to the general public, while ensuring the effective respect of the independence of the regulatory authorities with regard to any interference in their activities.

Appendix to Recommendation Rec(2000)23

Guidelines concerning the independence and functions of

regulatory authorities for the broadcasting sector

I. General legislative framework

1. Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.

2. The duties and powers of regulatory authorities for the broadcasting sector, as well as the ways of making them accountable, the procedures for appointment of their members and the means of their funding should be clearly defined in law.

II. Appointment, composition and functioning

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

- regulatory authorities are under the influence of political power;

- members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

5. Furthermore, rules should guarantee that the members of these authorities:

- are appointed in a democratic and transparent manner;

- may not receive any mandate or take any instructions from any person or body;

- do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

6. Finally, precise rules should be defined as regards the possibility to dismiss members of regulatory authorities so as to avoid that dismissal be used as a means of political pressure.

7. In particular, dismissal should only be possible in case of non-respect of the rules of incompatibility with which they must comply or incapacity to exercise their functions duly noted, without prejudice to the possibility for the person concerned to appeal to the courts against the dismissal. Furthermore, dismissal on the grounds of an offence connected or not with their functions should only be possible in serious

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instances clearly defined by law, subject to a final sentence by a court.

8. Given the broadcasting sector's specific nature and the peculiarities of their missions, regulatory authorities should include experts in the areas which fall within their competence.

III. Financial independence

9. Arrangements for the funding of regulatory authorities - another key element in their independence - should be specified in law in accordance with a clearly defined plan, with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently.

10. Public authorities should not use their financial decision-making power to interfere with the independence of regulatory authorities. Furthermore, recourse to the services or expertise of the national administration or third parties should not affect their independence.

11. Funding arrangements should take advantage, where appropriate, of mechanisms which do not depend on ad-hoc decision-making of public or private bodies.

IV. Powers and competence

Regulatory powers

12. Subject to clearly defined delegation by the legislator, regulatory authorities should have the power to adopt regulations and guidelines concerning broadcasting activities. Within the framework of the law, they should also have the power to adopt internal rules.

Granting of licences

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

15. Regulatory authorities in the broadcasting sector should be involved in the process of planning the range of national frequencies allocated to broadcasting services. They should have the power to authorise broadcasters to provide programme services on frequencies allocated to broadcasting. This does not have a bearing on the allocation of frequencies to transmission network operators under telecommunications legislation.

16. Once a list of frequencies has been drawn up, a call for tenders should be made public in appropriate ways by regulatory authorities. Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants. Given the general interest involved, member states may follow different procedures for allocating broadcasting frequencies to public service broadcasters.

17. Calls for tender should also specify the content of the licence application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing.

Monitoring broadcasters' compliance with their commitments and obligations

18. Another essential function of regulatory authorities should be monitoring compliance with the conditions laid down in law and in the licences granted to broadcasters. They should, in particular, ensure that broadcasters who fall within their jurisdiction respect the basic principles laid down in the European Convention on Transfrontier Television, and in particular those defined in Article 7.

19. Regulatory authorities should not exercise *a priori* control over programming and the monitoring of programmes should therefore always take place after the broadcasting of programmes.

20. Regulatory authorities should be given the right to request and receive information from broadcasters in so far as this is necessary for the performance of their tasks.

21. Regulatory authorities should have the power to consider complaints, within their field of competence, concerning the broadcasters' activity and to publish their conclusions regularly.

22. When a broadcaster fails to respect the law or the conditions specified in his licence, the regulatory authorities should have the power to impose sanctions, in accordance with the law.

23. A range of sanctions which have to be prescribed by law should be available, starting with a warning. Sanctions should be proportionate and should not be decided upon until the broadcaster in question has been given an opportunity to be heard. All sanctions should also be open to review by the competent jurisdictions according to national law.

Powers in relation to public service broadcasters

24. Regulatory authorities may also be given the mission to carry out tasks often incumbent on specific supervisory bodies of public service broadcasting organisations, while at the same time respecting their editorial independence and their institutional autonomy.

V. Accountability

25. Regulatory authorities should be accountable to the public for their activities, and should, for example, publish regular or ad hoc reports relevant to their work or the exercise of their missions.

26. In order to protect the regulatory authorities' independence, whilst at the same time making them accountable for their activities, it is necessary that they should be supervised only in respect of the lawfulness of their activities, and the correctness and transparency of their financial activities. With respect to the legality of their activities, this supervision should be exercised *a posteriori* only. The regulations on responsibility and supervision of the regulatory authorities should be clearly defined in the laws applying to them.

27. All decisions taken and regulations adopted by the regulatory authorities should be:

- duly reasoned, in accordance with national law;
- open to review by the competent jurisdictions according to national law;
- made available to the public.

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Related Documents

Meetings

735 Meeting of the Ministers' Deputies / 20 December 2000

COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector

(Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies)

The Committee of Ministers of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage and facilitating their economic and social progress;

Bearing in mind Article 10 of the European Convention on Human Rights (ETS No. 5), guaranteeing the right to freedom of expression, which includes the freedom to hold opinions and to receive and impart information and ideas without interference by public authorities and regardless of frontiers;

Recalling the importance for democratic societies of the existence of a wide range of independent and autonomous means of communication, making it possible to reflect the diversity of ideas and opinions and the absence of any arbitrary controls or constraints on participants in the information process, on media content or on the transmission and dissemination of information, as set out in the Declaration on the freedom of expression and information (29 April 1982);

Recalling its Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector, and its Recommendation Rec(2003)9 to member states on measures to promote the democratic and social contribution of digital broadcasting, as well as its Declaration on the guarantee of the independence of public service broadcasting in the member states (27 September 2006);

Mindful of the case law of the European Court of Human Rights and the relevant decisions of the European Commission of Human Rights, in particular when the latter states that a licensing system not respecting the requirements of pluralism, tolerance and broadmindedness, without which there is no democratic society, would infringe Article 10, paragraph 1, of the European Convention on Human Rights and that the rejection by a state of a licence application must not be manifestly arbitrary or discriminatory, and thereby contrary to the principles set out in the preamble to the Convention and the rights secured therein;

Recalling the commitment made by member states in the Political Declaration of the 7th European Ministerial Conference on Mass Media Policy (Kyiv, 10 and 11 March 2005) to undertake to ensure that the regulatory measures which they may take with regard to the media and new communication services will respect and promote the fundamental values of pluralism and diversity, respect for human rights and non-discriminatory access;

Recalling the objective of Recommendation Rec(2000)23 that, to guarantee the existence of a wide range of independent and autonomous media in the broadcasting sector, it is essential to provide for adequate and proportionate regulation of that sector, in order to guarantee the freedom of the media whilst at the same time ensuring a balance between that freedom and other legitimate rights and interests;

Underlining the important role played by the traditional and digital broadcasting media in modern, democratic societies in particular for informing the public, for the free formation of public opinion and the expression of ideas and for scrutinising the activities of public authorities as underlined in its Recommendation Rec(2003)9 as well as in its Declaration on the guarantee of the independence of public service broadcasting in the member states;

Noting the overview concerning the legislative framework of members states and its practical implementation, as well as legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector, and which is reproduced in the appendix hereto;

Welcoming, in this context, the situation in many Council of Europe member states where, in line with Recommendation Rec(2000)23, the independent and efficient regulation of the broadcasting sector in the public interest, as well as the independence, transparency and accountability of regulatory authorities for the broadcasting sector, is ensured by law and in practice;

Concerned, however, that the guidelines of Recommendation Rec(2000)23 and the main principles underlining it are not fully respected in law and/or in practice in other Council of Europe member states due to a situation in which the legal framework on broadcasting regulation is unclear, contradictory or in conflict with the principles of Recommendation Rec(2000)23, the political and financial independence of regulatory authorities and its members is not properly ensured, licences are allocated and monitoring decisions are made without due regard to national legislation or Council of Europe standards, and broadcasting regulatory decisions are not made available to the public or are not open to review;

Aware that a 'culture of independence', where members of regulatory authorities in the broadcasting sector affirm and exercise their independence and all members of society, public authorities and other relevant players including the media, respect the independence of the regulatory authorities, is essential to independent broadcasting regulation;

Aware that independent broadcasting regulatory authorities can only function in an environment of transparency, accountability, clear separation of powers and due respect for the legal framework in force;

Aware of the new challenges to the regulation of the broadcasting landscape resulting from concentration in the broadcasting sector and technological developments in broadcasting, in particular digital broadcasting;

I. Affirms that the 'culture of independence' should be preserved and, where they are in place, independent broadcasting regulatory authorities in member states need to be effective, transparent and accountable and therefore;

II. Declares its firm attachment to the objectives of the independent functioning of broadcasting regulatory authorities in member states;

III. Calls on member states to:

– implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by political, economic and technological changes in Europe;

– provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference;

– disseminate widely the present declaration and, in particular, bring it to the attention of the relevant authorities, the media and of broadcasting regulatory authorities in particular, as well as to that of other interested professional and business players;

IV. Invites broadcasting regulatory authorities to:

– be conscious of their particular role in a democratic society and their importance in creating a diverse and pluralist broadcasting landscape;

– ensure the independent and transparent allocation of broadcasting licences and monitoring of broadcasters in the public interest;

– contribute to the entrenchment of a 'culture of independence' and, in this context, develop and respect guidelines that guarantee their own independence and that of their members;

– make a commitment to transparency, effectiveness and accountability;

V. Invites civil society and the media to contribute actively to the 'culture of independence', which is vital for the adequate regulation of broadcasting in the new technological environment, by monitoring closely the independence of these authorities, bringing to the attention of the public good examples of independent broadcasting regulation as well as infringements on regulators' independence.

COUNCIL OF EUROPE CONSEIL DE L'EUROPE
Committee of Ministers
Comité des Ministres

Appendix to the Declaration by the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector

Introduction

At its 3rd meeting, in June 2006, the Steering Committee on Media and New Information Services (CDMC) discussed the implementation of non-binding instruments in its area of competence, in particular that of Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector. It asked the Secretariat to collect information with a view to assessing the situation as regards the independence and functions of regulatory authorities in the broadcasting sector in member states.

In October 2006, the Bureau of the CDMC examined a first draft document prepared by the Secretariat and decided that this draft should be reviewed with a view "to develop in greater detail the possible deficiencies in the legislative framework of member states and its practical implementation, without however naming specific countries. The second part, which includes information on the situation in the member states, should be a factual overview of legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector, using as a template the main requirements of the recommendation, providing information on whether the safeguards of the regulatory authorities' independence and functioning laid down in the recommendation are observed in practice in the particular country".

This document contains an overview on the implementation of Recommendation Rec(2000)23 and, more particularly, information on the independence of regulatory authorities in the Council of Europe member states. The document examines the legal framework and practice on broadcasting regulatory authorities and broadcasting regulation in member states and the degree of compliance with regard to the guidelines set out in Recommendation Rec(2000)23.

This overview was prepared on the basis of information provided by member states on their legal frameworks. It also takes account of information gathered from other sources which include reports by the Parliamentary Assembly, the OSCE Special Representative on Freedom of the Media, a report by the Open Society Institute on broadcasting in Europe,[1] information provided by the European Platform of Regulatory Authorities (EPRA),[2] as well as information from international and national non-governmental organisations.

Overview of the legislative framework of members states and its practical implementation as well as legal and institutional solutions developed in particular countries regarding regulatory authorities in the broadcasting sector

I. LEGISLATIVE FRAMEWORK

[1] Open Society Institute, EU Monitoring and Advocacy Programme (2005) "Television Across Europe: Regulation, Policy and Independence".
[2] In particular a background paper on "The Independence of Regulatory Authorities" prepared by the EPRA Secretariat for the 25th EPRA meeting, Prague, 16-18 May 2007, doc EPRA/2007/02.

1. According to Recommendation Rec(2000)23 of the Committee of Ministers to member states on the independence and functions of regulatory authorities for the broadcasting sector (hereafter 'the recommendation'), an appropriate legal framework is essential for the setting up and proper functioning of a broadcasting regulator. Laws and regulations should indicate clearly how and by whom members are nominated, the ways of making them accountable, how the regulatory authority is financed and what its competencies are in order to ensure the financial and political independence of the authority and its members (cf. Appendix to the recommendation, Section I, paragraphs 1 and 2).

2. All Council of Europe member states have at least some basic legal provisions on broadcasting regulation. However, not all broadcasting regulators are established by law as independent authorities, neither are all required by law to act independently.

3. Almost all member states have clear legal provisions on the financing and competencies of the regulator and the nomination of its members. A number of laws, however, do not address all relevant matters. For those states where the broadcasting sector is not regulated by an independent body but by government bodies or bodies directly under the authority of a ministry or minister, rules on independent financing or the independent nomination of members can be considered redundant. In other cases, there is no apparent reason why the law does not provide the details required by the recommendation.

4. In general, the majority of Council of Europe member states' laws on broadcasting regulation seem to provide an adequate protection for the independence of regulatory authorities. However, it would appear that, in a number of member states, the legal framework does not protect the independence of regulatory authorities as required by the recommendation. In particular, the rules on the appointment of members to the regulatory authority often do not provide members adequate protection against political pressure (see below for further details).

It has also been reported that, in a number of member states, public authorities have failed to respect the legal framework or have taken advantage of legal loopholes to interfere with the independence of the regulatory authority (see below for further details).

5. In a number of member states, laws have been described as too vague or contradictory, making it difficult for regulatory authorities to reach consistent and objective decisions. In some cases, contradictory and seemingly arbitrary decisions by the broadcasting regulator have been explained by the fact that frequent changes to the broadcasting legislation give rise to uncertainty about the legal and regulatory framework in force at a particular point in time.

6. The quantity and detail of the regulations vary considerably between member states. However, there does not seem to be a clear link between the amount of detail in a country's legislation on broadcasting regulation and the regulatory authority's independence. In fact, some of the regulatory authorities that are governed by a very limited set of rules are considered in practice to operate relatively independently. Some importance has been attributed to a 'culture of independence' where law makers, government and other players, under the scrutiny of society at large, respect the regulatory authorities' independence without being explicitly required to do so by law.

II. APPOINTMENT, COMPOSITION AND FUNCTIONING

7. According to the recommendation (cf. the Appendix thereto, Section II, paragraph 3), the rules governing regulatory authorities in the broadcasting sector should secure their independence and protect them against any interference, in particular by political and economic interests.

8. The majority of the broadcasting regulatory authorities in Council of Europe member states are established by law as autonomous bodies. However, certain of them are government bodies or bodies directly under the authority of a ministry or minister. These regulators often depend on the administrative support of the ministry to which they are attached and seldom manage their own budget independently. In some such cases, the authorities concerned are said to succeed in working independently, usually due to a long-standing practice of independence or comprehensive regulatory frameworks which provide clear guidelines on the regulatory

authorities' competences. Almost all of the authorities which are not formally established as autonomous agencies but which are reported to work independently in practice seem to be found in longstanding democracies with relatively low levels of corruption, where the transparency of public bodies in general is ensured and where independent media and a vibrant civil society keep the regulatory authority's work under close scrutiny.

9. To guarantee the independence of members of regulatory authorities from political and economic pressure, the recommendation calls on member states to ensure that regulatory bodies have incompatibility rules, preserving their members from being under the influence of political powers or prohibiting them from holding interests in enterprises of other organisations in the media or related sectors (cf. Appendix to the Recommendation, Section II, paragraph 4).

10. Most Council of Europe member states have rules that prohibit members of regulatory authorities from holding political office; the number of states that also ban them from having commercial interests in the media sector is lower. Indeed, in certain cases, the incompatibility rules for members of regulatory authorities go beyond the guidelines appended to the recommendation and members of regulatory authorities are not permitted to work in the media business or engage in politics for several years after the expiry of their mandate. To prevent members from signing over their commercial interests in a media business to a family member, the law in some member states also requires that close relatives of members give up commercial interests in the media. This requirement extends on occasion to relatives holding political office.

However, in other member states, the framework seeking to guarantee the independence of members of regulatory authorities is far less satisfactory and, in many cases, incompatibilities do not extend to potentially conflicting relations with or interests in media businesses or politics.

11. In certain Council of Europe member states, the members of regulatory authorities have the power to decide over a member's possible conflict of interest, or a member can choose not to make use of his or her voting rights, should personal interests be at stake in a regulatory decision. Another practice is for the other members to decide to exclude a member in case of proven conflict of interest.

12. To guarantee the integrity of the members of regulatory authorities, the recommendation calls for rules designed to ensure that members of regulatory authorities are appointed in a democratic and transparent manner (cf. Appendix to the recommendation, Section II, paragraph 5).

13. In most Council of Europe member states, the members of regulatory authorities are appointed by the parliament or by the head of state at the proposal of parliament. In some member states, in order to ensure that the membership of the regulatory authority reflects the country's social and political diversity, part or all of the members are nominated by non-governmental groups which are considered to be representative of society. Further, in a few member states, the law provides objective selection criteria for the appointment of members.

By contrast, in a number of countries, members are appointed by sole decision of one state authority, e.g. the head of state or a state department, often without clearly specified selection criteria. The appointment of members of regulatory authorities by the head of state and/or parliament has sometimes been criticised advancing that, in such cases, membership would represent or reproduce political power structures.

14. Concerns have often been raised that the nominating or appointing bodies could exert pressure on the members after their appointment. In fact, in some member states, the members of regulatory authorities are frequently accused of acting on behalf of the state body that designated them or political formation behind the designating or appointing authority.

15. To avoid that dismissal be used as a means of political pressure, the recommendation calls for precise rules on the possibility to dismiss members. Accordingly, dismissal should only be possible in case of non-respect of the rules of incompatibility, duly noted incapacity to exercise a member's functions and conviction (by a court of law) for a serious criminal offence. An appeal before the competent courts should be possible against any dismissal (see Appendix to the recommendation, Section II, paragraphs 6 and 7).

16. Whereas in a majority of member states regulations exist on the dismissal of members, they are not always limited to the list of justifications for dismissal provided for by the recommendation. In a number of member states, the law stipulates that members of regulatory authorities can be dismissed if convicted of an offence, but it is not always specified that this has to be a serious offence as opposed to a minor or administrative offence.

17. In some member states, to avoid dismissal procedures being used as a means of exerting pressure on members, members of regulatory authorities cannot be dismissed at all. This practice has apparently given rise to concern in at least one member state, where members could not be held accountable and dismissed for licensing decisions that were allegedly in violation of national law.

III. FINANCIAL INDEPENDENCE

18. Another key factor for ensuring the independence of regulatory authorities is their funding arrangements, which, according to the recommendation, should be specified in law in accordance with a clearly defined plan, and with reference to the estimated cost of the regulatory authorities' activities, so as to allow them to carry out their functions fully and independently (cf. Appendix to the recommendation, Section III, paragraphs 9 to 11).

19. The majority of Council of Europe member states have legal provisions defining the source of funding of the regulatory body. By contrast, in at least a quarter of member states, the legal framework does not appear to be clear on this subject.

20. It is common practice amongst many regulatory authorities in Council of Europe member states to receive their funding directly through fees in order to be independent from public authorities' decision making. Nonetheless, the laws of a large number of member states specify that the regulatory authority is to be financed by the state budget. In some member states, the law mentions clearly that public authorities must not use their financial decision-making power to interfere with the independence of the regulatory authority; however in most countries where the regulatory authority is financed by the state budget no such precautions are laid down in the law.

21. In some member states, the law stipulates that the regulatory authority proposes its annual budget plan which then has to be automatically approved by a specific state body (or the approval of such a body being a formality). However, in at least a third of all Council of Europe member states, no clear rules exist to ensure that the approval for the regulatory authority's funding is not up to the discretion of such other state bodies.

22. It would appear that, despite the law envisaging an independent funding plan for the regulatory authority, in certain Council of Europe member states those authorities claim to feel under threat of or have experienced pressure from governments which go back on agreed funding plans and/or use funding decisions as leverage in political power struggles.

Reportedly, in more than one case, broadcasting regulatory authorities which, according to the law should be financed independently, in practice received their revenue from the state because of a weak broadcasting market or because the licence fee collecting system was ineffective. In at least two member states, the regulatory authority did not publicly disclose the source of their revenue after the licence fee system had collapsed.

23. In addition, many regulators also complain that they are not given the means (in particular human resources) to adequately perform their duties (see below for further details).

IV. POWERS AND COMPETENCE

24. According to the recommendation, the legislator should entrust the regulatory authority with the power to adopt regulations and guidelines concerning broadcasting activities as well as internal rules (cf. Appendix to the recommendation, Section IV, paragraph 12).

25. In a significant number of Council of Europe member states, the law clearly stipulates that regulatory authorities have the power to adopt regulations and guidelines concerning broadcasting activities and have the power to adopt internal rules. However, in at least a quarter of the member states, the legal framework does not foresee such rights. In at least two member states, these powers are in fact expressly vested upon another body or authority.

26. An essential task of the broadcasting regulatory authority should be the granting of licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner and decisions should be made public. Calls for tenders should also be made public, should define a number of conditions to be met by the applicants and specify the content of the licence application (cf. Appendix to the recommendation, Section IV, paragraph 13 to 17).

27. The above-mentioned requirements are fully met in some Council of Europe member states and partially in many of them. In particular, the majority of regulatory authorities in Council of Europe member states are given the competence to award broadcasting licences. However, in at least one fifth of all member states, a body other than a broadcasting regulator awards broadcasting licences. Further, the legislation of not less than nine member states fail to define clearly the basic conditions and criteria for the granting and renewal of broadcasting licences.

28. In almost half of all Council of Europe member states, tender procedures are insufficiently detailed. It would appear that, in at least 18 member states, there are no legal provisions requiring that the licence tendering process be public. In a comparable number of member states, the law does not specify on the selection criteria to be met by applicants for licences. Again, in almost one in two member states, the legal framework is either silent or provides insufficient detail on the content of licence applications.

29. Even though licensing decisions are often criticised, the majority of regulatory authorities seem to award licenses in a manner which is consistent with the recommendation. Nevertheless, in a number of Council of Europe member states, the broadcasting licensing procedure allegedly lacks transparency, is arbitrary or politically biased. It is claimed that, in many cases, this is due to a lack of regulations and licence selection criteria, and frequent revisions of the law apparently add to the confusion.

30. In addition, some broadcasting authorities have not been able to enforce the law when allocating licenses, because regulations were not clear as to the distribution of competences in the licensing process or because broadcasting regulators were not given the authority and/or financial means to establish or to implement an effective licensing system.

31. Another essential function of regulatory authorities should be the monitoring of broadcasters' compliance with their commitments and obligations. Regulatory authorities should have the power to consider complaints and there should be no *a priori* monitoring. Regulatory authorities should have the power to impose sanctions in cases of violations. The sanctions have to be defined by law and should start with a warning (cf. Appendix to the recommendation, Section IV, paragraphs 18 to 23).

32. The laws in almost all Council of Europe member states envisage an independent body to monitor broadcasters' compliance with the law and with licence conditions. This task is usually entrusted to the regulatory body that awards licenses although, in some countries, the law creates a separate independent authority for that purpose. There are, however, some member states where organs that are under the direct authority of or answerable to governmental authorities are vested with monitoring duties.

33. Hardly any of the legislations in member stipulate clearly that monitoring should be conducted only after broadcasting, although practice is broadly in compliance with this requirement.

34. In most member states, regulatory authorities are empowered to impose sanctions as prescribed by law. However, in at least seven member states, there are either no provisions on the body that would enforce sanctions or this function is carried out directly by government bodies or authorities.

Many member states give details on the sanctions that can be handed down in cases of violations of the laws or licence requirements. However, the lower end of the scale is not always a warning. Further, in a small number of member states, the law contains no details on possible sanctions.

It might be added that, only in about one quarter of Council of Europe member states, the law explicitly allows monitoring bodies to consider third party complaints concerning broadcasters' activities.

35. Almost all regulatory authorities in Council of Europe member states are by law required to monitor the respect of licence conditions. Many regulators have performed their monitoring duties successfully for many years, interpreting and developing licence requirements, on occasion in cooperation with broadcasters, in order to best protect the rules defined in national legislation. A significant number of bodies, however, allegedly monitor insufficiently or not at all because they do not have the necessary financial or human resources to do so.

36. On a number of occasions, regulators have been accused of applying sanctions arbitrarily or inconsistently. Further, in a few countries, complaints have been made that the sanctions were too harsh or too lax, motivated by archaic moral ideas or that they were politically motivated. This has apparently been due to vague licence conditions or broadcasting requirements with regulators being uncertain about how to interpret those conditions. It has also been argued that some regulatory authorities do not have the political support or are not given the means to enforce sanctions.

V. ACCOUNTABILITY

37. In its final part (cf. Appendix to the recommendation, Section V, paragraphs 25 to 27), the recommendation states that regulatory authorities should be accountable to the public for their activities, for example by means of publishing annual reports. The recommendation also underlines that regulatory authorities should make their decisions public and should only be supervised in respect of the lawfulness of their activities and the correctness and transparency of their financial activities.

38. In many member states, regulatory authorities are accountable to state bodies or authorities, for example the parliament, the head of state or the auditing authorities. By contrast, broadcasting regulatory authorities are accountable by law to the public in only a few cases. That said, in at least eight Council of Europe member states, the law clearly requires regulatory authorities to make their decisions public, while many other legal frameworks are silent on these issues.

In at least eight of the member states where the law prescribes that regulatory authorities are accountable to a state body or to the public, the legal framework does not specify clearly that the regulatory authorities can only be supervised in respect of the lawfulness of their activities and the correctness and transparency of their financial activities. Moreover, in a number of member states, regulatory authorities cannot be held accountable by law to anyone.

39. In approximately half of the Council of Europe member states, the law prescribes that decisions of the broadcasting regulator are open to review (usually by a court of justice). However, in other member states, decisions cannot be challenged before the courts.

40. The majority of regulatory bodies in Council of Europe member states publish their decisions in annual reports. In some countries where regulatory bodies are accountable by law to parliament and/or the head of state, it has been alleged that annual reports were rejected and regulatory authorities dissolved not on objective grounds but for political reasons.

DIRECTIVES

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee [1],

Having regard to the opinion of the Committee of the Regions [2],

Acting in accordance with the procedure laid down in Article 251 of the Treaty [3],

Whereas:

(1) Council Directive 89/552/EEC [4] coordinates certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of broadcasting activities. However, new technologies in the transmission of audiovisual media services call for adaptation of the regulatory framework to 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 to 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.

(2) The laws, regulations and administrative measures in Member States concerning the pursuit of television broadcasting activities are already coordinated by Directive 89/552/EEC, whereas the rules applicable to activities such as on-demand audiovisual media services contain disparities, some of which may impede the free movement of those services within the European Community and may distort competition within the internal market.

(3) 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.

(4) Article 151(4) of the Treaty requires the Community to take cultural aspects into account in its action under other provisions of the Treaty, in particular in order to respect and to promote the diversity of its cultures.

(5) In its resolutions of 1 December 2005 [5] and 4 April 2006 [6] 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 GATS negotiations. In its resolution of 27 April 2006 [1], 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'. The 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 [2] 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.

(6) Traditional audiovisual media services — such as television — and emerging on-demand audiovisual media services offer significant employment opportunities in the Community, 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.

(7) Legal uncertainty and a non-level playing-field exist for European companies delivering audiovisual media services as regards the legal regime governing emerging on-demand audiovisual media services. It is therefore necessary, in order to avoid distortions of competition, to improve legal certainty, to help complete the internal market and to 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). The basic principles of Directive 89/552/EEC, namely the country of origin principle and common minimum standards, have proved their worth and should therefore be retained.

(8) 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.

(9) 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 [3] 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.

(10) 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, starting with a Commission proposal in 2005 to modernise the Television without Frontiers Directive and transform it into a Directive on Audiovisual Media 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.

(11) The European Parliament adopted on 4 September 2003 [4], 22 April 2004 [5] and 6 September 2005 [6] resolutions which called for the adaptation of Directive 89/552/EEC to reflect structural changes and technological developments while fully respecting its underlying principles, which remain valid. In addition, it in principle supported the general approach of basic rules for all audiovisual media services and additional rules for television broadcasting.

(1) OJ C 318, 23.12.2006, p. 202.
(2) OJ C 51, 6.3.2007, p. 7.
(3) Opinion of the European Parliament of 13 December 2006 (not yet published in the Official Journal), Council Common Position of 15 October 2007 (not yet published in the Official Journal), Position of the European Parliament of 29 November 2007.
(4) 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. (OJ L 298, 17.10.1989, p. 23). Directive as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).
(5) OJ C 285 E, 22.11.2006, p. 126.
(6) OJ C 293 E, 2.12.2006, p. 155.
(1) OJ C 296 E, 6.12.2006, p. 104.
(2) OJ L 201, 25.7.2006, p. 15.
(3) OJ C 30, 5.2.1999, p. 1.
(4) European Parliament resolution on Television without Frontiers (OJ C 76 E, 25.3.2004, p. 453).
(5) 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).
(6) 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) 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 [1], 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.

(13) 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 [2] and of rules on Information Society services. Accordingly, draft national measures applicable to on-demand audiovisual media services of a stricter or more detailed nature than those required to simply transpose this Directive should be subject to the procedural obligations established under Article 8 of Directive 98/34/EC.

(14) 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) [3] according to its Article 1(3) is without prejudice to measures taken at Community or national level, to pursue general interest objectives, in particular relating to content regulation and audiovisual policy.

(15) 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.

(16) 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 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.

(17) 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 notion of 'programme' should be interpreted in a dynamic way taking into account developments in television broadcasting.

(18) 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 whose principal purpose 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.

(19) 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.

(20) 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.

(21) The scope of this Directive should not cover electronic versions of newspapers and magazines.

[1] OJ C 364, 18.12.2000, p. 1.
[2] OJ L 204, 21.7.1998, p. 37. Directive as last amended by Council Directive 2006/96/EC (OJ L 363, 20.12.2006, p. 81).
[3] OJ L 108, 24.4.2002, p. 33. Directive as amended by Regulation (EC) No 717/2007 (OJ L 171, 29.6.2007, p. 32).

(22) For the purpose 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 Member States' freedom to regulate such services at national level in accordance with the Treaty.

(23) The notion 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 notion 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) [1].

(24) In the context of television broadcasting, the notion 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.

(25) All the characteristics of an audiovisual media service set out in its definition and explained in Recitals 16 to 23 should be present at the same time.

(26) In addition to television advertising and teleshopping, a wider definition of audiovisual commercial communication should be introduced in this Directive, which however should not include public service announcements and charity appeals broadcast free of charge.

(27) The country of origin principle should remain the core of this Directive, as it is essential for the creation of an internal market. This principle should therefore 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.

(28) In order to promote a strong, competitive and integrated European audiovisual industry and enhance media pluralism throughout the European 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 European Union.

(29) 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.

(30) As this Directive concerns services offered to the general public in the European 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.

(31) Articles 43 to 48 of the Treaty 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' [2].

(32) 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 Community 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 [3], 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 notion 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 Treaty 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.

[1] OJ L 178, 17.7.2000, p. 1.

[2] Case C-56/96 VT4, paragraph 22; Case C-212/97 Centros v. Erhvervs-og Selskabsstyrelsen; see also: Case C-11/95 Commission v. Kingdom of Belgium and Case C-14/96 Paul Denuit.
[3] Case C-212/97 Centros v. Erhvervs-og Selskabsstyrelsen; Case C-33/74 Van Binsbergen v. Bestuur van de Bedrijfsvereniging; Case C-23/93 TV 10 SA v. Commissariaat voor de Media, paragraph 21.

(33) 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.

(34) 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 [1].

(35) With respect to on-demand audiovisual media services, restrictions on their free provision should only be possible in accordance with conditions and procedures replicating those already established by Articles 3(4), (5) and (6) of Directive 2000/31/EC.

(36) In its Communication to the European Parliament and 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- 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 Member States' formal obligations regarding transposition, this Directive encourages the use of co-regulation and self-regulation. This should neither oblige Member States to set up co- and/or self-regulatory regimes nor disrupt or jeopardise current co- or self-regulatory initiatives which are already in place within Member States and which are working effectively.

(37) '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 [2] 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.

(38) 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 European Union and to respect the principles recognised by Article 11 of the Charter of Fundamental Rights of the European Union.

[1] Case C-355/98 Commission v. Belgium [2000] ECR I-1221, paragraph 28; Case C-348/96 Calfa [1999] ECR I-0011, paragraph 23.

[2] OJ L 378, 27.12.2006, p. 72.

(39) In order to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the European 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 notion 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.

(40) 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 [1] and the relevant international conventions in the field of copyright and neighbouring rights. Member States should facilitate access to events of high interests 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.

(41) 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 still 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.

(42) 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 [2]. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive.

(43) 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 Community law.

(44) The availability of harmful content in audiovisual media services continues to be a concern for legislators, the media industry and parents. There will also be new challenges, especially in connection with new platforms and new products. It is therefore necessary to introduce rules to protect the physical, mental and moral development of minors as well as human dignity in all audiovisual media services, including audiovisual commercial communications.

(45) 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.

[1] OJ L 167, 22.6.2001, p. 10.

[2] Case C-89/04, Mediakabel.

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.

(46) 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 according to the provisions of Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography [1].

(47) None of the provisions introduced by 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 prior verification of audiovisual media services by public bodies.

(48) 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 regularly re-examine the application of the provisions relating to the promotion of European works by audiovisual media services. Within the framework of the reports set out under this Directive, Member States should also take into account notably 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 in the actual consumption of European works offered by such services.

(49) When defining 'producers who are independent of broadcasters' as referred to in Article 5 of Directive 89/552/EEC, 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.

(50) When implementing the provisions of Article 4 of Directive 89/552/EEC, Member States should encourage broadcasters to include an adequate share of co-produced European works or of European works of non-domestic origin.

(51) It is important to ensure that cinematographic works are transmitted within periods agreed between right holders and media service providers.

(52) The availability of on-demand audiovisual media services increases the choice of the consumer. 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.

(53) 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.

(54) 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 [2], 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 better to compete on a level playing-field with on-demand innovations.

(55) 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, product placement should be allowed under certain circumstances, unless a Member State decides otherwise, and some quantitative restrictions should be abolished. However, where product placement is surreptitious, it should be prohibited. The principle of separation should not prevent the use of new advertising techniques.

[1] OJ L 13, 20.1.2004, p. 44.

[2] OJ C 102, 28.4.2004, p. 2.

(56) 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 [1] applies to unfair commercial practices, such as misleading and aggressive practices occurring in audiovisual media services. Moreover, as 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 [2], which prohibits advertising and sponsorship for cigarettes and other tobacco products in printed media, information society services and radio broadcasting, is without prejudice to Directive 89/552/EEC, in view of the special characteristics of audiovisual media services, the relation between Directive 2003/33/EC and Directive 89/552/EEC should remain the same after the entry into force of this Directive. 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 [3] which prohibits advertising to the general public of certain medicinal products applies, as provided in paragraph 5 of that Article, without prejudice to Article 14 of Directive 89/552/EEC. The relation between Directive 2001/83/EC and Directive 89/552/EEC should remain the same after the entry into force 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 [4].

(57) Given the increased possibilities for viewers to avoid advertising through 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 no longer justified. While this Directive should not increase the hourly amount of admissible advertising, it should give flexibility to broadcasters with regard to its insertion where this does not unduly impair the integrity of programmes.

(58) 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 still need specific protection.

(59) The limitation that existed on the amount of daily television 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 television advertising and teleshopping spots. The restrictions on the time allowed for teleshopping or advertising channels seem no longer justified given increased consumer choice. However, the limit of 20 % of television advertising spots and teleshopping spots per clock hour remains applicable. The notion of a television advertising spot should be understood as television advertising in the sense of Article 1(i) of Directive 89/552/EEC as amended by this Directive having a duration of not more than 12 minutes.

(60) 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.

(61) Product placement is a reality in cinematographic works and in audiovisual works made for television, but Member States regulate this practice differently. In order to ensure a level playing field, and thus enhance the competitiveness of the European media industry, it is necessary to adopt rules for product placement. The definition of product placement introduced by 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 Article 1(m) of Directive 89/552/EEC as amended by this Directive contains the word 'within'. In contrast, sponsor references may be shown during a programme but are not part of the plot.

(62) 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.

[1] OJ L 149, 11.6.2005, p. 22.
[2] OJ L 152, 20.6.2003, p. 16.
[3] OJ L 311, 28.11.2001, p. 67. Directive as last amended by Regulation (EC) No 1901/2006 (OJ L 378, 27.12.2006, p. 1).
[4] OJ L 404, 30.12.2006, p. 9, as corrected by OJ L 12, 18.1.2007, p. 3.

(63) 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.

(64) The right of persons with a disability and of the elderly to participate and be integrated in the social and cultural life of the Community 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.

(65) According to the duties conferred upon Member States by the Treaty, they are responsible for the transposition and effective implementation of this Directive. They are free to choose the appropriate instruments according to their legal traditions and established structures, and notably 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.

(66) Close cooperation between competent Member States' regulatory bodies and the Commission is necessary to ensure the correct application of this Directive. Similarly close cooperation between Member States and between Member States' 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 Directive 89/552/EEC as amended by this Directive and in particular Articles 2, 2a and 3 hereof.

(67) Since the objectives of this Directive, namely 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 Community level, the Community may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 these objectives.

(68) In accordance with point 34 of the Interinstitutional Agreement on better law-making [1], Member States are encouraged to draw up, for themselves and in the interests of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 89/552/EEC is hereby amended as follows:

1. the title shall be replaced by the following:

'Directive 89/552/EEC of 3 October 1989 of the European Parliament and of the Council 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)';

2. Article 1 shall be replaced by the following:

'*Article 1*

For the purpose of this Directive:

(a) "audiovisual media service" means:

— a service as defined by Articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article,

and/or

— audiovisual commercial communication,

(b) "programme" means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and whose form and content is comparable to the form and content of television broadcasting. Examples of programmes include feature-length films, sports events, situation comedies, documentaries, children's programmes and original drama;

[1] OJ C 321, 31.12.2003, p. 1.

(c) "editorial responsibility" means the exercise of effective control both over the selection of the programmes and over their organisation either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. Editorial responsibility does not necessarily imply any legal liability under national law for the content or the services provided;

(d) "media service provider" means the natural or legal person who has editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organised;

(e) "television broadcasting" or "television broadcast" (i.e. a linear audiovisual media service) means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

(f) "broadcaster" means a media service provider of television broadcasts;

(g) "on-demand audiovisual media service" (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

(h) "audiovisual commercial communication" means images with or without sound which are designed to promote, directly or indirectly, the goods, services or image of a natural or legal entity pursuing an economic activity. Such images accompany or are included in a programme in return for payment or for similar consideration or for self-promotional purposes. Forms of audiovisual commercial communication include, *inter alia*, television advertising, sponsorship, teleshopping and product placement;

(i) "television advertising" means any form of announcement broadcast whether in return for payment or for similar consideration or broadcast for self-promotional purposes by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(j) "surreptitious audiovisual commercial communication" means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

(k) "sponsorship" means any contribution made by a public or private undertaking or natural person not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting its name, its trade mark, its image, its activities or its products;

(l) "teleshopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

(m) "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 a programme, in return for payment or for similar consideration;

(n) (i) "European works" means the following:

— works originating in Member States,

— works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe and fulfilling the conditions of point (ii),

— works co-produced within the framework of agreements related to the audiovisual sector concluded between the Community and third countries and fulfilling the conditions defined in each of those agreements,

— application of the provisions of the second and third indents shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned;

(ii) The works referred to in the first and second indents of point (i) are works mainly made with authors and workers residing in one or more of the States referred to in the first and second indents of point (i) provided that they comply with one of the following three conditions:

— they are made by one or more producers established in one or more of those States, or

— production of the works is supervised and actually controlled by one or more producers established in one or more of those States, or

— the contribution of co-producers of those States to the total co-production costs is preponderant and the co-production is not controlled by one or more producers established outside those States;

(iii) Works that are not European works within the meaning of point (i) but that are produced within the framework of bilateral co-production treaties concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the Community supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States.';

3. Article 2 shall be replaced by the following:

'*Article 2*

1. Each Member State shall ensure that all audiovisual media services transmitted by media service providers under its jurisdiction comply with the rules of the system of law applicable to audiovisual media services intended for the public in that Member State.

2. For the purposes of this Directive, the media service providers under the jurisdiction of a Member State are those:

(a) established in that Member State in accordance with paragraph 3; or

(b) to whom paragraph 4 applies.

3. For the purposes of this Directive, a media service provider shall be deemed to be established in a Member State in the following cases:

(a) the media service provider has its head office in that Member State and the editorial decisions about the audiovisual media service are taken in that Member State;

(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in each of those Member States, the media service provider shall be deemed to be established in the Member State where it has its head office. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither of those Member States, the media service provider shall be deemed to be established in the Member State where it first began its activity in accordance with the law of that Member State, provided that it maintains a stable and effective link with the economy of that Member State;

(c) if a media service provider has its head office in a Member State but decisions on the audiovisual media service are taken in a third country, or vice-versa, it shall be deemed to be established in the Member State concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in that Member State.

4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

(a) they use a satellite up-link situated in that Member State;

(b) although they do not use a satellite up-link situated in that Member State, they use satellite capacity appertaining to that Member State.

5. If the question as to which Member State has jurisdiction cannot be determined in accordance with paragraphs 3 and 4, the competent Member State shall be that in which the media service provider is established within the meaning of Articles 43 to 48 of the Treaty.

6. This Directive does not apply to audiovisual media services intended exclusively for reception in third countries and which are not received with standard consumer equipment directly or indirectly by the public in one or more Member States.';

4. Article 2a is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.';

(b) in paragraph 2 the introductory phrase and point (a) shall be replaced by the following:

'2. In respect of television broadcasting, Member States may provisionally derogate from paragraph 1 if the following conditions are fulfilled:

(a) a television broadcast coming from another Member State manifestly, seriously and gravely infringes Article 22(1) or (2) and/or Article 3(b);'

(c) the following paragraphs shall be added:

'4. In respect of on-demand audiovisual media services, Member States may take measures to derogate from paragraph 1 in respect of a given service if the following conditions are fulfilled:

(a) the measures are:

(i) necessary for one of the following reasons:

— public policy, in particular the prevention, investigation, detection and prosecution of criminal offences, including the protection of minors and the fight against any incitement to hatred on grounds of race, sex, religion or nationality, and violations of human dignity concerning individual persons,

— the protection of public health,

— public security, including the safeguarding of national security and defence,

— the protection of consumers, including investors;

(ii) taken against an on-demand audiovisual media service which prejudices the objectives referred to in point (i) or which presents a serious and grave risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Member State has:

— asked the Member State under whose jurisdiction the media service provider falls to take measures and the latter did not take such measures, or they were inadequate,

— notified the Commission and the Member State under whose jurisdiction the media service provider falls of its intention to take such measures.

5. Member States may, in the case of urgency, derogate from the conditions stipulated in paragraph 4(b). Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State under whose jurisdiction the media service provider falls, indicating the reasons for which the Member State considers that there is urgency.

6. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraphs 4 and 5, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Community law, the Commission shall ask the Member State in question to refrain from taking any proposed measures or urgently to put an end to the measures in question.';

5. Article 3 shall be replaced by the following:

'*Article 3*

1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules in the fields coordinated by this Directive provided that such rules are in compliance with Community law.

2. In cases where a Member State:

(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and

(b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory;

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within two months. Either Member State may invite the contact committee established under Article 23a to examine the case.

3. Where the first Member State assesses:

(a) that the results achieved through the application of paragraph 2 are not satisfactory; and

(b) that the broadcaster in question has established itself in the Member State having jurisdiction in order to circumvent the stricter rules, in the fields coordinated by this Directive, which would be applicable to it if it were established within the first Member State,

it may adopt appropriate measures against the broadcaster concerned.

Such measures shall be objectively necessary, applied in a non-discriminatory manner and be proportionate to the objectives which they pursue.

4. A Member State may take measures pursuant to paragraph 3 only if the following conditions are met:

(a) it has notified the Commission and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment; and

(b) the Commission has decided that the measures are compatible with Community law, and in particular that assessments made by the Member State taking these measures under paragraphs 2 and 3 are correctly founded.

5. The Commission shall decide within three months following the notification provided for in paragraph 4(a). If the Commission decides that the measures are incompatible with Community law, the Member State in question shall refrain from taking the proposed measures.

6. Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive.

7. Member States shall encourage co- and/or self-regulatory regimes at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. These regimes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned and provide for effective enforcement.

8. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.';

6. Article 3a shall be deleted;

7. the following Chapter shall be inserted:

'CHAPTER IIA

PROVISIONS APPLICABLE TO ALL AUDIOVISUAL MEDIA SERVICES

Article 3a

Member States shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

(a) the name of the media service provider;

(b) the geographical address at which the media service provider is established;

(c) the details of the media service provider, including his electronic mail address or website, which allow him to be contacted rapidly in a direct and effective manner;

(d) where applicable, the competent regulatory or supervisory bodies.

Article 3b

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to hatred based on race, sex, religion or nationality.

Article 3c

Member States shall encourage media service providers under their jurisdiction to ensure that their services are gradually made accessible to people with a visual or hearing disability.

Article 3d

Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.

Article 3e

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. Member States and the Commission shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended.

Article 3f

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;

(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;

(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 a appropriate way for programmes at the beginning, during and/or 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.

Article 3g

1. Product placement shall be prohibited.

2. By way of derogation from paragraph 1, product placement shall be admissible unless a Member State decides otherwise:

— in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or

— where there is no payment but only the provision of certain goods or services free of charge, such as production props and prizes, with a view to their inclusion in a programme.

The derogation provided for in the first indent shall not apply to children's programmes.

Programmes that contain product placement shall meet at least all of 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;

(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;

(c) they shall not give undue prominence to the product in question;

(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified 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.

By way of exception, Member States may choose to waive the requirements set out in point (d) provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

3. In any event programmes shall not contain product 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, or

— specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.

4. The provisions of paragraphs 1, 2 and 3 shall apply only to programmes produced after 19 December 2009.';

8. the following Chapter shall be inserted:

'CHAPTER IIB

PROVISIONS APPLICABLE ONLY TO ON-DEMAND AUDIOVISUAL MEDIA SERVICES

Article 3h

Member States shall take appropriate measures to ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction which might seriously impair the physical, mental or moral development of minors are only made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

Article 3i

1. Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

2. Member States shall report to the Commission no later than 19 December 2011 and every four years thereafter on the implementation of paragraph 1.

3. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and the Council on the application of paragraph 1, taking into account the market and technological developments and the objective of cultural diversity.';

9. the following Chapter shall be inserted:

'CHAPTER IIC

PROVISIONS CONCERNING EXCLUSIVE RIGHTS AND SHORT NEWS REPORTS IN TELEVISION BROADCASTING

Article 3j

1. Each Member State may take measures in accordance with Community law to ensure that broadcasters under its jurisdiction do not broadcast on an exclusive basis events which are regarded by that Member State as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Member State of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Member State concerned shall draw up a list of designated events, national or non-national, which it considers to be of major importance for society. It shall do so in a clear and transparent manner in due time. In so doing the Member State concerned shall also determine whether these events should be available by whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage.

2. Member States shall immediately notify to the Commission any measures taken or to be taken pursuant to paragraph 1. Within a period of three months from the notification, the Commission shall verify that such measures are compatible with Community law and communicate them to the other Member States. It shall seek the opinion of the contact committee established pursuant to Article 23a. It shall forthwith publish the measures taken in the *Official Journal of the European Union* and at least once a year the consolidated list of the measures taken by Member States.

3. Member States shall ensure, by appropriate means within the framework of their legislation, that broadcasters under their jurisdiction do not exercise the exclusive rights purchased by those broadcasters following the date of publication of this Directive in such a way that a substantial proportion of the public in another Member State is deprived of the possibility of following events which are designated by that other Member State in accordance with paragraphs 1 and 2 by whole or partial live coverage or, where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Member State in accordance with paragraph 1.

Article 3k

1. Member States shall ensure that for the purpose of short news reports, any broadcaster established in the Community has access on a fair, reasonable and non-discriminatory basis to events of high interest to the public which are transmitted on an exclusive basis by a broadcaster under their jurisdiction.

2. If another broadcaster established in the same Member State as the broadcaster seeking access has acquired exclusive rights to the event of high interest to the public, access shall be sought from that broadcaster.

3. Member States shall ensure that such access is guaranteed by allowing broadcasters to freely choose short extracts from the transmitting broadcaster's signal with, unless impossible for reasons of practicality, at least the identification of their source.

4. As an alternative to paragraph 3, Member States may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.

5. Short extracts shall be used solely for general news programmes and may be used in on-demand audiovisual media services only if the same programme is offered on a deferred basis by the same media service provider.

6. Without prejudice to paragraphs 1 to 5, Member States shall ensure, in accordance with their legal systems and practices, that the modalities and conditions regarding the provision of such short extracts are defined, in particular, any compensation arrangements, the maximum length of short extracts and time limits regarding their transmission. Where compensation is provided for, it shall not exceed the additional costs directly incurred in providing access.';

10. in Article 4(1), the phrase, 'within the meaning of Article 6,' shall be deleted;

11. Articles 6 and 7 shall be deleted;

12. the title of Chapter IV shall be replaced by the following:

'TELEVISION ADVERTISING AND TELESHOPPING';

13. Article 10 shall be replaced by the following:

'Article 10

1. Television advertising and teleshopping shall be readily recognisable and distinguishable from editorial content. Without prejudice to the use of new advertising techniques, television advertising and teleshopping shall be kept quite distinct from other parts of the programme by optical and/or acoustic and/or spatial means.

2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.';

14. Article 11 shall be replaced by the following:

'Article 11

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, 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 thirty 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.';

15. Articles 12 and 13 shall be deleted;

16. Article 14(1) shall be deleted;

17. Articles 16 and 17 shall be deleted;

18. Article 18 shall be replaced by the following:

'Article 18

1. The proportion of television advertising spots and teleshopping spots within a given clock hour shall not exceed 20 %.

2. Paragraph 1 shall not apply to announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes, sponsorship announcements and product placements.';

19. Article 18a shall be replaced by the following:

'Article 18a

Teleshopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes.';

20. Article 19 shall be replaced by the following:

'Article 19

The provisions of this Directive shall apply *mutatis mutandis* to television channels exclusively devoted to advertising and teleshopping as well as to television channels exclusively devoted to self-promotion. Chapter III as well as Article 11 and Article 18 shall not apply to these channels.';

21. Article 19a shall be deleted;

22. Article 20 shall be replaced by the following:

'Article 20

Without prejudice to Article 3, Member States may, with due regard for Community law, lay down conditions other than those laid down in Article 11(2) and Article 18 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.';

23. the title of Chapter V shall be replaced by following:

'PROTECTION OF MINORS IN TELEVISION BROADCASTING';

24. Articles 22a and 22b shall be deleted;

25. the title of Chapter VI shall be replaced by the following:

'RIGHT OF REPLY IN TELEVISION BROADCASTING';

26. in Article 23a(2), point (e) shall be replaced by the following:

'(e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the Community's audiovisual policy, as well as relevant developments in the technical field;'

27. the following Chapter shall be inserted:

'CHAPTER VIB

COOPERATION BETWEEN MEMBER STATES' REGULATORY BODIES

Article 23b

Member States shall take appropriate measures to provide each other and the Commission with the information necessary for the application of the provisions of this Directive, in particular Articles 2, 2a and 3 hereof, notably through their competent independent regulatory bodies.';

28. Articles 25 and 25a shall be deleted;

29. Article 26 shall be replaced by the following:

'Article 26

Not later than 19 December 2011, and every three years thereafter, the Commission shall submit to the European Parliament, the Council and the European Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States.

This report shall also assess the issue of television advertising accompanying or included in children's programmes, and in particular whether the quantitative and qualitative rules contained in this Directive have afforded the level of protection required.'

Article 2

Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection laws [1] is hereby amended as follows:

— Point 4 of Annex 'Directives and Regulations covered by Article 3(a)' shall be replaced by the following:

'4. Directive 89/552/EEC of 3 October 1989 of the European Parliament and of the Council 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) (*): Articles 3h and 3i and Articles 10 to 20. Directive as last amended by Directive 2007/65/EC of the European Parliament and of the Council (**).

(*) OJ L 298, 17.10.1989, p. 23.
(**) OJ L 332, 18.12.2007, p. 27.'

Article 3

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 19 December 2009 at the latest. They shall forthwith inform the Commission thereof.

[1] OJ L 364, 9.12.2004, p. 1. Regulation as amended by Directive 2005/29/EC.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such references shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

This Directive shall enter into force on the day following its publication in the *Official Journal of the European Union*.

Article 5

This Directive is addressed to the Member States.

Done at Strasbourg, 11 December 2007.

For the European Parliament	*For the Council*
The President	*The President*
H.-G. PÖTTERING	M. LOBO ANTUNES

資料 7

別紙7 独立行政委員会のあるべき姿

①独立性を高めるため、国家行政組織法3条に基づくものとする

②委員を選任するにあったって推薦委員会を設置するなどして透明性を確保するとともに公募制を採用して多様な人材からの選考を可能にする

③独立して職権行使できるようにする

④事務局員を総務省官僚の横滑りによるのではなく、学識経験者などから独自に採用し、委員が事務局人事の権限を有するようにする

⑤委員会の予算については受信料やＣＭ料を充てるようにする