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## **EUROPEAN CONVENTION ON TRANSFRONTIER TELEVISION**

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### **STANDING COMMITTEE ON TRANSFRONTIER TELEVISION**

**(T-TT)**

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**44th meeting  
11 and 12 June 2009  
Agora Building  
Room G.01**

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**Revision of the European Convention on Transfrontier Television  
Draft Council of Europe Convention on Transfrontier Audiovisual Media Services**

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The member States of the Council of Europe and the other States Parties to the European Cultural Convention (ETS No. 18), signatory hereto,

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

Considering that the dignity and equal worth of every human being constitute fundamental elements of those principles;

Considering that freedom of expression and information, as embodied in Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5), constitutes one of the essential principles of a democratic society and one of the basic conditions for its progress and for the development of every human being;

Considering the importance of audiovisual media services in our societies for the development of democracy, education and culture;

Affirming their commitment to the freedom and free flow of information, editorial independence, diversity of opinions, media pluralism, equality of opportunity among all democratic groups and political parties, the protection of minors and the promotion of media literacy of the users as essential elements of their audiovisual media policy;

Convinced that the continued development of information and communication technology should serve to further the right, regardless of frontiers, to express, to seek, to receive and to impart information and ideas, whatever their source;

Being desirous to present an increasing range of choice of programme services for the public, thereby enhancing Europe's heritage and developing its audiovisual creation, and being determined to achieve this cultural objective through efforts to increase the production and circulation of high-quality programmes, thereby responding to the public's expectations in the political, educational and cultural fields;

Considering the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted in 2005;

Recognising the need to consolidate the common broad framework of regulation, in particular to ensure broad consistency between the Convention of the Council of Europe and relevant European Community law;

Recalling the relevant resolutions and declarations adopted during the European Ministerial Conferences on Mass Media Policy, and in particular at the 1st Ministerial Conference on the future of television in Europe (Vienna, 9-10 December 1986), as well as at the 2nd Ministerial Conference on the European Mass media policy in an international context (Stockholm, 23-24 November 1988);

Bearing in mind the political declaration adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, 28-29 May 2009);

Being desirous to develop the principles embodied in the existing Council of Europe recommendations regarding principles on television advertising, on equality between women and men in the media, on the use of satellite capacity for television and radio, on the promotion of audiovisual production in Europe, on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context, on the portrayal of violence in the electronic media, on “hate speech”, on the media and the promotion of a culture of tolerance, on measures to promote the democratic and social contribution of digital broadcasting, on the right of reply in the new media environment, on media pluralism and diversity of media content, on the remit of public service media in the information society and on the independence and functions of regulatory authorities for the broadcasting sector,

Have agreed as follows:

## **CHAPTER I: General provisions**

### *Article 1– Object, purpose and field of application*

1. This Convention is concerned with audiovisual media services. The purpose is to facilitate the provision of these services among the Parties in a transfrontier context.
2. The Convention applies to audiovisual media services which are provided by media service providers within the jurisdiction of a Party and which can be received, directly or indirectly, in one or more other Parties.
3. This Convention shall not apply to audiovisual media services intended exclusively for reception in States which are not Party to this Convention and which are not received with standard consumer equipment directly or indirectly by the public in one or more Parties.

### *Article 2 – Terms employed*

For the purposes of this Convention:

- a.* “audiovisual media service” means a service 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 means of an electronic communications network. Such audiovisual media services are either television broadcasts or on-demand services and/or audiovisual commercial communication. These services may take any form of economic activity, but exclude activities which are primarily non-economic and which are not in competition with television broadcasting;
- b.* “transmission” means the initial provision of audiovisual media services;
- c.* “retransmission” signifies the fact of receiving and simultaneously transmitting, irrespective of the technical means employed, complete and unchanged audiovisual media services, or important parts of such services;
- d.* “programme” means a set of moving images with or without sound constituting an individual item within a schedule or catalogue established by a media service provider and

whose form and content is comparable to the form and content of television broadcasting;

e. “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 broadcast, or in a catalogue, in the case of on-demand services;

f. “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;

g. “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;

h. “broadcaster” means a media service provider of television broadcasts;

i. “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 or her individual request on the basis of a catalogue of programmes selected by the media service provider;

j. “audiovisual commercial communication” means:

1. 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, or;
2. images designed to advance a cause or idea, or to bring about some other effect.

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, tele-shopping and product placement;

k. “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:

1. 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, or;
2. designed to advance a cause or idea, or to bring about some other effect;

l. “surreptitious audiovisual commercial communication” means the representation in words or pictures of goods, services, the name, the trademark 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 to be intentional if it is done in return for payment or for similar consideration;

*m.* “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 trademark, its image, its activities, or its products;

*n.* “tele-shopping” 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;

*o.* “product placement” means any form of audiovisual commercial communication consisting of the inclusion of or a reference to a product, a service or the trademark thereof so that it is featured within a programme, in return for payment or for similar consideration;

*p.* “European works” means creative works, the production or co-production of which is effectively controlled by European natural or legal persons and which comply with one of the following three conditions:

- they are made by one or more producers established in one or more European states;
- production of the works is supervised and actually controlled by one or more producers established in one or more European states;
- the contribution of co-producers of European 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.

### *Article 3 – Freedom of reception and retransmission*

The Parties shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of audiovisual media services from media service providers which comply with the terms of this Convention.

### *Article 4 – Duties and jurisdiction of the Parties*

1. Each Party shall ensure that all audiovisual media services transmitted by a media service provider within its jurisdiction comply with the terms of this Convention.

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

3. For the purposes of this Convention, a media service provider within the jurisdiction of a Party is:

- a media service provider who is deemed to be established on the territory of that Party, according to paragraph 4;

– a media service provider to whom paragraph 5 applies.

4. For the purposes of this Convention, a media service provider shall be deemed to be established on the territory of a Party, hereinafter referred to as the “Party having jurisdiction” in the following cases:

*a.* the media service provider has its head office on the territory of that Party and the editorial decisions about the audiovisual media service are taken on the territory of that Party;

*b.* if a media service provider has its head office on the territory of one Party, but the editorial decisions about the audiovisual media service are taken on the territory of another Party, it shall be deemed to be established in the State Party 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 States Parties, the media service provider shall be deemed to be established on the territory of the Party 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 States Parties, the media service provider shall be deemed to be established on the territory of the Party where it first began its activity in accordance with the system of law of that Party, provided that it maintains a stable and effective link with the economy of that Party;

*c.* if a media service provider has its head office on the territory of a Party, but editorial decisions about the audiovisual media service are taken in a State which is not Party to this Convention, or vice-versa, it shall be deemed to be established on the territory of the Party concerned, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates on the territory of that Party;

*d.* if, when applying the criteria of Article 2, paragraph 3, of the Audiovisual Media Services Directive (Council Directive 89/552/EEC as amended by Directive 2007/65/EC), a media service provider is deemed to be established in a member state of the European Community, that media service provider shall also be deemed to be established in that state for the purposes of this Convention.

5. Media service providers to whom the provisions of paragraph 4 are not applicable are deemed to be within the jurisdiction of a Party, in the following cases:

*a.* they use a satellite up-link situated on the territory of that Party;

*b.* although they do not use a satellite up-link situated on the territory of that Party, they use a satellite capacity appertaining to that Party.

6. If the Party having jurisdiction cannot be determined according to paragraph 5, the Standing Committee shall consider this issue according to Article 25, paragraph 1.*a*, of this Convention, in order to determine this Party.

#### *Article 5 – Transparency and information requirements*

1. Parties shall ensure that the responsibilities of media service providers shall be clearly and adequately specified in any authorisation issued by, or contract concluded with, the competent

authority of each Party, or by any other legal measure.

2. Parties shall ensure that audiovisual media service providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of the 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 its electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
- d.* where applicable, the competent regulatory or supervisory bodies

## **CHAPTER II: Programming matters**

### *Article 6 – Responsibilities of media service providers*

1. The presentation and content of audiovisual media services shall respect the dignity of the human being and the fundamental rights of others.

In particular they shall not:

- a.* contain any incitement to hatred based on race, sex, religion or nationality;
- b.* give undue prominence to violence.

2. Broadcasters shall ensure that news programmes fairly present facts and encourage the free formation of opinions.

3. Media service providers shall ensure the adequate protection of minors. In particular, they will ensure that:

– television broadcasts do not include programmes which might seriously impair the physical, mental or moral development of minors, in particular those that involve pornography or gratuitous violence. This provision shall be extended to other television programmes which are likely to impair the physical, mental or moral development of minors, except where it is ensured, by selecting the time of the broadcast or by any technical means, that minors in the area of transmission will not normally hear or see such broadcasts;

– on-demand services 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 services.

### *Article 7 – Access for disabled persons*

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

*Article 8 – Right of reply*

Each Party shall ensure that every natural or legal person, regardless of nationality or place of residence, shall have the opportunity to exercise a right of reply or to seek other comparable legal or administrative remedies relating to programmes transmitted by a broadcaster within its jurisdiction, within the meaning of Article 4. In particular, it shall ensure that timing and other arrangements for the exercise of the right of reply are such that this right can be effectively exercised. The effective exercise of this right or other comparable legal or administrative remedies shall be ensured both as regards the timing and the modalities.

*Article 9 – Access of the public to information*

1. Parties shall ensure that for the purpose of short news reports, any broadcaster established in a Party 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 on the territory of the same Party as the broadcaster seeking access has acquired exclusive rights to the event in question, access shall be sought from that broadcaster.
3. Parties 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, a Party may establish an equivalent system which achieves access on a fair, reasonable and non-discriminatory basis through other means.
5. Such short extracts shall be used solely for general news programmes and may be used in on-demand 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 of this article, Parties 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.

*Article 10 – Access of the public to events of major importance by means of television*

1. Each Party retains the right to take measures to ensure that a broadcaster within its jurisdiction does not broadcast on an exclusive basis events which are regarded by that Party as being of major importance for society in such a way as to deprive a substantial proportion of the public in that State Party of the possibility of following such events by live coverage or deferred coverage on free television. Each Party may consequently have recourse to the drafting of a list of designated events which it considers to be of major importance for society.
2. Parties shall ensure by appropriate means, respecting the legal guarantees granted by the Convention for the Protection of Human Rights and Fundamental Freedoms and, where



appropriate, the national constitution, that a broadcaster within their jurisdiction does not exercise the exclusive rights purchased by that broadcaster following the date of entry into force of the first protocol in such a way that a substantial proportion of the public in another State Party is deprived of the possibility of following events which are designated by that other State Party, in accordance with paragraph 1, on free television via 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 Party.

This requirement on States Parties however only applies if:

- a.* the Party taking the measures referred to in paragraph 1 has drawn up a list of national or non-national events which are considered by that Party as being of major importance for society;
- b.* that Party has done so in a clear and transparent manner in due and effective time;
- c.* that Party has made clear whether these events shall be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage;
- d.* the measures taken by the Party drawing up the list are proportionate and are as detailed as necessary to enable other Parties to take measures referred to in this paragraph;
- e.* the Party drawing up this list has notified the list and the corresponding measures to the Standing Committee;
- f.* the measures taken by the Party drawing up the list are within the limitations of the guidelines of the Standing Committee referred to in Article 25, paragraph 2.a, and the Standing Committee has given a positive opinion on the list and on the corresponding measures.

Measures based on this paragraph shall apply only to those events published by the Standing Committee under the terms of Article 25, paragraph 2.c, and to those exclusive rights purchased after the entry into force of the first protocol.

3. Where Parties have a list and corresponding measures in compliance with Article 3.j of Council Directive 89/552/EEC as amended by Directive 2007/65/EC, the Standing Committee will, upon request by the Party concerned, and without prejudice to the provisions of paragraph 4, publish this list and corresponding measures in the framework of the present Convention.

4. Following notification in accordance with Article 39 of a list and corresponding measures drawn up by a State Party and upon which the Standing Committee has given a positive opinion in accordance with Article 10, paragraph 2.f, or which the Standing Committee has published in compliance with paragraph 3 of the present article, a State Party may, within six months, declare by means of a notification addressed to the Secretary General of the Council of Europe that it will not be bound by the requirements of paragraph 2 in respect of that list. The Party concerned may at any moment recall its decision not to be bound by these requirements by means of a notification to the Secretary General.

5. Parties shall ensure that mutually recognised lists of events of major importance are made public at national level in the most appropriate way.

#### *Article 11 – Cultural objectives*

1. Each European Party shall ensure, where practicable and by appropriate means, that a television broadcaster within its jurisdiction reserves for European works a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and tele-shopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2. European Parties shall ensure, where practicable and by appropriate means, that television broadcasters reserve at least 10% of their transmission time, excluding the time appointed to news, sports events, games, advertising and teletext services, or alternatively, at the discretion of the Party, at least 10% of their programming budget, for European works created by producers who are independent of broadcasters. This proportion, having regard to broadcasters' informational, educational, cultural and entertainment responsibilities to their viewing public, should be achieved progressively, on the basis of suitable criteria; it must be achieved by earmarking an adequate proportion for recent works, that is to say works transmitted within five years of their production.

3. European Parties shall ensure that on-demand services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, 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.

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

#### *Article 12 – Media pluralism and diversity of content*

1. The Parties, in the spirit of co-operation and mutual assistance which underlies this Convention, shall endeavour to avoid that audiovisual media services provided by a media service provider within their jurisdiction endanger media pluralism.

2. To this end, Parties will promote full transparency of ownership of media service providers.

3. Parties shall encourage broadcasters with a public service mission to play an active role in promoting social cohesion and integrating all communities, social groups and generations, including minority groups, young people, the elderly, underprivileged and disadvantaged social categories, disabled persons, etc., while respecting their different identities and needs. In this context, attention should be paid to the content created by and for such groups, and to their access to, and presence and portrayal in programmes. Due attention should also be paid to gender equality issues.

### **CHAPTER III: Audiovisual commercial communication**

*Article 13 – General standards*

1. Audiovisual commercial communication shall be fair and honest.
2. Audiovisual commercial communication shall not be misleading and shall not prejudice the interests of consumers.
3. Without prejudice to Article 6, audiovisual commercial communication must not:
  - i. include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
  - ii. encourage behaviour that is prejudicial to health or to safety;
  - iii. encourage behaviour that is grossly prejudicial to the protection of the environment.
4. Audiovisual commercial communication shall not cause physical or moral detriment to minors. Therefore it 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 depict minors in dangerous situations.
5. Audiovisual commercial communications must not prejudice the editorial independence of the media service provider.

*Article 14 – Announcements in the public interest and charity appeals*

Articles 13, 16 and 17 of this chapter also apply to announcements in the public interest and charity appeals transmitted free of charge.

*Article 15 – Duration*

1. The proportion of television advertising spots and tele-shopping spots within a given clock hour shall not exceed 20%.
2. Paragraph 1 does not apply to:
  - i. announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
  - ii. sponsorship announcements;
  - iii. product placements and;
  - iv. announcements in the sense of Article 2.k.2 of the present Convention.
3. Tele-shopping windows shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of fifteen minutes.

*Article 16 – Form and presentation*

1. Audiovisual commercial communication must be readily recognisable as such. In addition television advertising and tele-shopping shall be distinguishable from editorial content and, without prejudice to the use of new advertising techniques, be kept quite distinct from other parts of the programme service by optical and/or acoustic and/or spatial means.
2. Surreptitious audiovisual commercial communication shall be prohibited.
3. Audiovisual commercial communication must not use subliminal techniques.
4. Audiovisual commercial communication shall not feature, visually or orally, persons regularly presenting news and current affairs programmes.

*Article 17 – Insertion of television advertising and tele-shopping*

1. Parties shall ensure, where advertising or tele-shopping 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 advertising and/or tele-shopping once for each scheduled period of at least thirty minutes. The transmission of children's programmes may be interrupted by advertising and/or tele-shopping once for each scheduled period of at least thirty minutes, provided that the scheduled duration of the programme is greater than thirty minutes.
3. No advertising or tele-shopping shall be inserted during religious services.
4. Isolated advertising and tele-shopping spots, other than in transmissions of sport events, shall remain the exception.

*Article 18 – Audiovisual commercial communication for particular products*

1. All forms of audiovisual commercial communication for cigarettes and other tobacco products shall be prohibited.
2. Audiovisual commercial communication for medicinal products and medical treatments available only by prescription in the Party within whose jurisdiction the media service provider falls shall be prohibited.
3. Television advertising for all other medicinal products and medical treatments shall:
  - encourage the rational use of the medicinal product by presenting it objectively and without exaggerating its properties, and;
  - in all parts comply with the particulars listed in the summary of product characteristics.
4. Tele-shopping for medicinal products and medical treatments shall be prohibited.

5. Audiovisual commercial communication for alcoholic beverages must not be aimed specifically at minors and may not encourage immoderate consumption of such beverages.

In addition, television advertising and tele-shopping for alcoholic beverages shall comply with the following criteria:

- a.* it may not depict minors consuming these beverages;
- b.* it shall not link the consumption of alcohol to enhanced physical performance or to driving;
- c.* it shall not create the impression that the consumption of alcohol contributes towards social or sexual success;
- d.* it shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal conflicts;
- e.* it shall not present abstinence or moderation in a negative light;
- f.* it shall not place emphasis on high alcoholic content as being a positive quality of the beverages.

6. Parties shall encourage the development of codes of conduct regarding inappropriate audiovisual commercial communication, accompanying or included in children's programming, 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 19 – Product placement*

- 1. Product placement shall be prohibited.
- 2. By way of derogation from paragraph 1 product placement shall be admissible, unless a Party decides otherwise, in:
  - cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, or;
  - cases where there is no payment but only the provision of certain goods or services free of charge, such as production props or prizes, with a view to their inclusion in a programme.

The derogation 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:

- i.* 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;
- ii.* they shall not directly encourage the purchase or rental of goods and services, in particular

by making promotional references to those goods or services;

iii. they shall not give undue prominence to the product in question;

iv. 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, Parties may choose to waive the requirements set out in point *iv* 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 by prescription on the territory of the Party within whose jurisdiction the media service provider falls.

4. The provisions of paragraphs 1, 2, and 3 shall apply only to programmes produced after the entering into force of the Second Protocol amending the European Convention on Transfrontier Television.

*Article 20 – Television advertising and tele-shopping directed specifically at a single Party*

1. In order to avoid distortions in competition and endangering the television system of a Party, advertising and tele-shopping which are specifically and with some frequency directed to audiences in a single Party other than the Party having jurisdiction shall not circumvent the television advertising and tele-shopping rules in that particular Party.

2. The provisions of the preceding paragraph shall not apply where:

(a) the rules concerned establish a discrimination between advertising and tele-shopping transmitted by a broadcaster within the jurisdiction of that Party and advertising and tele-shopping transmitted by a broadcaster or any other legal or natural person within the jurisdiction of another Party, or

(b) the Parties concerned have concluded bilateral or multilateral agreements in this area.

*Article 21 – Sponsorship*

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 an appropriate way for programmes at the beginning, during and/or at the end of the programmes.

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

3. The sponsorship of audiovisual media services or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatments may promote the name or the image of the undertaking but shall not promote specific medicinal products or medical treatments available only by prescription on the territory of the Party within whose jurisdiction the media service provider falls.

4. News and current affairs programmes shall not be sponsored. Parties may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

*Article 22 – Television broadcasting devoted exclusively to advertising, tele-shopping and/or self-promotion*

The provisions of this Convention shall apply *mutatis mutandis* to television broadcasting exclusively devoted to advertising and tele-shopping, as well as to television broadcasting exclusively devoted to self-promotion. Articles 11, 12 paragraph 3, 15 and 17 do not apply to these forms of broadcasting.

## **CHAPTER IV: Mutual Assistance**

*Article 23 – Co-operation between the Parties*

1. The Parties shall render each other mutual assistance and take appropriate measures to provide each other with the information necessary for the application of this Convention, notably through their competent independent regulatory bodies.

2. For that purpose:

*a.* each state shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe at the time of deposit of its instrument of ratification, acceptance, approval or accession;

*b.* each Contracting State which has designated more than one authority shall specify in its communication under sub-paragraph *a* the competence of each authority.

3. An authority designated by a Party shall:

*a.* furnish the information foreseen under Article 5, paragraph 2, of this Convention;

- b.* furnish information at the request of an authority designated by another Party on the domestic law and practices in the fields covered by this Convention;
- c.* co-operate with the authorities designated by the other Parties whenever useful, and notably where this would enhance the effectiveness of measures taken in implementation of this Convention;
- d.* where appropriate seek the views of the authorities designated by another Party prior to issuing an authorisation, registering or concluding a contract with a broadcaster whose programme service is to be wholly or principally directed at the territory of that other Party;
- e.* consider any difficulty arising from the application of this Convention which is brought to its attention by an authority designated by another Party.

## **CHAPTER V: Standing Committee**

### *Article 24 – Standing Committee*

1. For the purposes of this Convention, a Standing Committee shall be set up.
2. Each Party may be represented on the Standing Committee by one or more delegates. Parties are encouraged to ensure that their delegations include at least one person with expertise in the regulation of audiovisual media services. Each delegation shall have one vote. Within the areas of its competence, the European Community shall exercise its right to vote with a number of votes equal to the number of its member states which are Parties to this Convention; the European Community shall not exercise its right to vote in cases where the member States concerned exercise theirs, and conversely.
3. Any state referred to in Article 34, paragraph 1, which is not a Party to this Convention may be represented on the Standing Committee by an observer.
4. The Standing Committee may seek the advice of experts in order to discharge its functions. It may, on its own initiative or at the request of the body concerned, invite any international or national, governmental or non-governmental body technically qualified in the fields covered by this Convention to be represented by an observer at one or part of one of its meetings.
5. The Standing Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within six months of the date of entry into force of the Convention. It shall subsequently meet whenever one third of the Parties or the Committee of Ministers of the Council of Europe so requests, or on the initiative of the Secretary General of the Council of Europe in accordance with the provisions of Article 27, paragraph 2, or at the request of one or more Parties in accordance with the provisions of Articles 25, paragraph 1.c, and 30, paragraph 2.
6. A majority of the Parties shall constitute a quorum for holding a meeting of the Standing Committee.
7. Subject to the provisions of Article 27, paragraph 3, decisions of the Standing Committee shall be taken by a majority of three quarters of the members present.



8. The Standing Committee may decide that a decision on any specific issue can be taken by written procedure, including electronic voting. This decision may also be taken using this procedure. Decisions by written procedure shall be taken by three quarters of the members of the Standing Committee.

9. Subject to the provisions of this Convention, the Standing Committee shall draw up its own Rules of Procedure.

#### *Article 25 – Functions of the Standing Committee*

1. The Standing Committee shall be responsible for following the application of this Convention. It may:

- a.* make recommendations to the Parties concerning the application of the Convention;
- b.* suggest any necessary modifications of the Convention and examine those proposed in accordance with the provisions of Article 27;
- c.* examine, at the request of one or more Parties, questions concerning the interpretation of the Convention;
- d.* use its best endeavours to secure a friendly settlement of any difficulty referred to it in accordance with the provisions of Article 30;
- e.* make recommendations to the Committee of Ministers concerning States other than those referred to in Article 34, paragraph 1, to be invited to accede to this Convention.

2. In addition, the Standing Committee shall, in respect of Article 10, paragraph 2:

- a.* draw up guidelines referred to in Article 10, paragraph 2.f, taking into account the need to avoid differences between the implementation of the provisions of this Convention concerning access of the public to events of major importance for society and that of corresponding European Community provisions;
- b.* give an opinion, in the shortest time possible, on the measures taken by Parties that have drawn up a list of national or non-national events which are considered by those Parties as being of major importance for society in accordance with Article 10, paragraph 2;
- c.* publish and, when necessary, update a consolidated list of any enlisted events and corresponding legal measures notified by Parties in accordance with Article 10, paragraph 2, as well as lists and corresponding measures as referred to in Article 10, paragraph 3.

3. The Standing Committee shall give opinions on the measures referred to in Article 29 and in Article 33, paragraph 3, within three months following their notification.

#### *Article 26 – Reports of the Standing Committee*

After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

**CHAPTER VI: Amendments***Article 27 – Amendments*

1. Any Party may propose amendments to this Convention.
2. Any proposal for amendment shall be notified to the Secretary General of the Council of Europe who shall communicate it to the member states of the Council of Europe, to the other States Parties to the European Cultural Convention, to the European Community and to any non-member state which has acceded to, or has been invited to accede to this Convention in accordance with the provisions of Article 35. The Secretary General of the Council of Europe shall convene a meeting of the Standing Committee at the earliest two months following the communication of the proposal.
3. The Standing Committee shall examine any amendment proposed and shall submit the text adopted by a majority of three-quarters of the members of the Standing Committee to the Committee of Ministers for approval. After its approval, the text shall be forwarded to the Parties for acceptance.
4. Any amendment shall enter into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.
5. However, the Committee of Ministers may, after consulting the Standing Committee, decide that a particular amendment shall enter into force following the expiry of a period of 2 years after the date on which it has been opened to acceptance, unless a Party has notified the Secretary General of the Council of Europe of an objection to its entry into force. Should such an objection be notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe.
6. If an amendment has been approved by the Committee of Ministers, but has not yet entered into force in accordance with paragraphs 4 or 5, a State or the European Community may not express their consent to be bound by the Convention without accepting at the same time the amendment.

**CHAPTER VII: Restrictions to the principle of freedom of expression and retransmission***Article 28 – Television broadcasting*

1. When a Party finds a violation of this Convention concerning television broadcasting, it shall communicate to the Party having jurisdiction the alleged violation and the two Parties shall endeavour to overcome the difficulty on the basis of the provisions of Articles 23, 30 and 31.
2. If the alleged violation is of a manifest, serious and grave nature which raises important public issues and concerns Articles 6, paragraphs 1.a or 3, first indent, or 18, paragraphs 1, 2, 4 or 5, and if it persists after two weeks following the communication, the receiving Party

may suspend provisionally the retransmission of the incriminated television broadcast.

3. In all other cases of alleged violation, with the exception of those provided for in paragraph 4, the receiving Party may suspend provisionally the retransmission of the incriminated television broadcast eight months following the communication, if the alleged violation persists.

4. The provisional suspension of retransmission shall not be allowed in the case of alleged violations of Article 6, paragraph 2, or Articles 8, 9, 11 or 12.

*Article 29 – On-demand audiovisual media services*

1. In respect of on-demand services, Parties may take measures 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 service which prejudices the objectives referred to in point *i* or which presents a 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 Party has:

- asked the Party under whose jurisdiction the service provider falls to take measures, and the latter has failed to do so, or the measures were inadequate;

- notified the Standing Committee and the Party under whose jurisdiction the service provider falls of its intention to take such measures.

2. Parties may, in case of urgency, derogate from the conditions stipulated in paragraph 1*b*. Where this is the case, the measures shall be notified in the shortest possible time to the Standing Committee and to the Party under whose jurisdiction the service provider falls, indicating the reasons for which the Party considers that there is urgency.

3. Without prejudice to the Party's possibility of proceeding with the measures referred to in the preceding paragraph, the Standing Committee shall examine the compatibility of the notified measures with the Convention in the shortest possible time. Where the Standing Committee comes to the conclusion that the measures are incompatible with this Convention, the Party shall refrain from taking them or urgently put an end to them.

4. Any measures pursuant to paragraphs 1 and 2 shall comply with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and shall be applied in a non-discriminatory manner, be suitable for attaining the objectives which they pursue and may not go beyond what is objectively necessary to attain them.

## **CHAPTER VIII: Settlement of disputes**

### *Article 30 – Conciliation*

1. In case of difficulty arising from the application of this Convention, the parties concerned shall endeavour to achieve a friendly settlement.

2. Unless one of the parties concerned objects, the Standing Committee may examine the question, by placing itself at the disposal of the parties concerned in order to reach a satisfactory solution as rapidly as possible and, where appropriate, to formulate an advisory opinion on the subject.

3. Each party concerned undertakes to accord the Standing Committee without delay all information and facilities necessary for the discharge of its functions under the preceding paragraph.

### *Article 31 – Arbitration*

1. If the Parties concerned cannot settle the dispute in accordance with the provisions of Article 30, they may, by common agreement, submit it to arbitration, the procedure of which is provided for in the appendix to this Convention. In the absence of such an agreement within six months following the first request to open the procedure of conciliation, the dispute may be submitted to arbitration at the request of one of the Parties.

2. Any Party may, at any time, declare that it recognises as compulsory, *ipso facto* and without special agreement in respect of any other Party accepting the same obligation, the application of the arbitration procedure provided for in the appendix to this Convention.

## **CHAPTER IX: Other international agreements and the internal law of the Parties**

### *Article 32 – Other international agreements or arrangements*

1. This Convention shall not affect the rights and obligations arising from the provisions of other international instruments to which Parties to the present Convention are Parties or shall become Parties and which do not affect the enjoyment of other Parties of their rights or the performance of their obligations under this Convention. Where Parties establish their relations in respect of the matters dealt with in the present Convention other than as regulated therein, they shall do so in a manner that is not inconsistent with the Convention's objectives and principles.

2. In their mutual relations, Parties which are members of the European Union or of the European Economic Area shall apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case, without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties.

*Article 33 – Relations between the Convention and the internal law of the Parties*

1. Nothing in this Convention shall prevent the Parties from applying stricter or more detailed rules than those provided for in this Convention to audiovisual media services provided by a media service provider deemed to be within their jurisdiction, within the meaning of Article 4, paragraph 3.

2. In cases where a Party:

*a.* has exercised its freedom to adopt within its national law more detailed or stricter rules, than those stated in the Convention, of general public interest, and;

*b.* assesses that a broadcaster under the jurisdiction of another Party provides a television broadcast which is wholly or mostly directed towards its territory;

it may contact the Party having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Party, the Party having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Party having jurisdiction shall inform the first Party of the results obtained within two months following this request.

3. Where the first Party 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 Party having jurisdiction in order to circumvent the stricter or more detailed rules, in the fields covered by the Convention, which would be applicable to it if it were established within the first Party;

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. Before taking the measures referred to in paragraph 3, a Party shall notify the Standing Committee and the Party upon whose territory the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment.

Where the Standing Committee comes to the conclusion that the measures are incompatible with this Convention, the Party shall refrain from taking them.

**CHAPTER X: Final provisions**

*Article 34 – Signature and entry into force*

1. This Convention shall be open for signature by the member States of the Council of Europe and the other States party to the European Cultural Convention, and by the European Community. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven States, of which at least five member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.
3. A State may, at the time of signature or at any later date prior to the entry into force of this Convention in respect of that State, declare that it shall apply the Convention provisionally.
4. In respect of any State referred to in paragraph 1, or the European Community, which subsequently express their consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

*Article 35 – Accession by non-member States*

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States may invite any other State to accede to this Convention by a decision taken by the majority provided for in Article 20d. of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.
2. In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

*Article 36 – Territorial application*

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.
2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.
3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

*Article 37 – Reservations*

1. At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, any state may declare that it reserves the right to restrict the retransmission on its territory, solely to the extent that it does not comply with its domestic legislation, of television broadcasts containing television advertising for alcoholic beverages according to the rules provided for in Article 18, paragraph 5, of this Convention.

No other reservation may be made.

2. A reservation made in accordance with the preceding paragraph may not be the subject of an objection

3. Any Contracting State which has made a reservation under paragraph 1 may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

4. A Party which has made a reservation under paragraph 1 may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

*Article 38 – Denunciation*

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

*Article 39 – Notifications*

The Secretary General of the Council of Europe shall notify the member States of the Council, the other States party to the European Cultural Convention, the European Community and any State which has acceded to, or has been invited to accede to this Convention of:

*a.* any signature;

*b.* the deposit of any instrument of ratification, acceptance, approval or accession;

*c.* any date of entry into force of this Convention in accordance with the provisions of Articles 34, 35 and 36;

*d.* any report established in accordance with the provisions of Article 26;

*e.* any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 5th day of May 1989, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States party to the European Cultural Convention, to the European Community and to any State invited to accede to this Convention.

#### **Appendix: Arbitration**

1. A request for arbitration shall be notified to the Secretary General of the Council of Europe. It shall include the name of the other party to the dispute and the subject matter of the dispute. The Secretary General shall communicate the information so received to all the Parties to the Convention.

2. In the event of a dispute between two Parties one of which is a member State of the European Community, the latter itself being a Party, the request for arbitration shall be addressed both to the member State and to the Community, which jointly shall notify the Secretary General, within one month of receipt of the request, whether the member State or the Community, or the member State and the Community jointly, shall be party to the dispute. In the absence of such notification within the said time-limit, the member State and the Community shall be considered as being one and the same party to the dispute for the purposes of the application of the provisions governing the constitution and procedure of the arbitration tribunal. The same shall apply when the member State and the Community jointly present themselves as party to the dispute. In cases envisaged by this paragraph, the time-limit of one month foreseen in the first sentence of paragraph 4 hereafter shall be extended to two months.

3. The arbitration tribunal shall consist of three members: each of the parties to the dispute shall appoint one arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of either of the parties to the dispute, nor have his usual place of residence in the territory of either of those parties, nor be employed by either of them, nor have dealt with the case in another capacity.

4. If one of the parties has not appointed an arbitrator within one month following the communication of the request by the Secretary General of the Council of Europe, he shall be appointed at the request of the other party by the President of the European Court of Human Rights within a further one-month period. If the President of the Court is unable to act or is a national of one of the parties to the dispute, the appointment shall be made by the Vice-President of the Court or by the most senior judge to the Court who is available and is not a national of one of the parties to the dispute. The same procedure shall be observed if, within a period of one month following the appointment of the second arbitrator, the Chairman of the arbitration tribunal is not designated.

5. The provisions of paragraphs 3 and 4 shall apply, as the case may be, in order to fill any vacancy.



6. Two or more parties which determine by agreement that they are in the same interest shall appoint an arbitrator jointly.
7. The parties to the dispute and the Standing Committee shall provide the arbitration tribunal with all facilities necessary for the effective conduct of the proceedings.
8. The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote of its members. Its award shall be final and binding.
9. The award of the arbitration tribunal shall be notified to the Secretary General of the Council of Europe who shall communicate it to all the Parties to this Convention.
10. Each party to the dispute shall bear the expenses of the arbitrator appointed by it; these parties shall share equally the expenses of the other arbitrator, as well as other costs entailed by the arbitration.