



Protocol amending the European Convention on Transfrontier Television ^{*}

Strasbourg, 1.X.1998

The member States of the Council of Europe and the other Parties to the European Convention on Transfrontier Television, opened for signature in Strasbourg on 5 May 1989 (hereinafter referred to as "the Convention"),

Welcoming the fact that the enlargement of the membership of the Council of Europe since 1989 has led to the development and implementation at the pan-European level of the legal framework provided for under the Convention;

Considering the major technological and economic developments in the field of television broadcasting as well as the appearance of new communications services in Europe since the adoption of the Convention in 1989;

Noting that these developments call for a revision of the provisions of the Convention;

Bearing in mind, in this regard, the adoption by the European Community of Directive 97/36/EC of the European Parliament and of the Council of 19 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in member states concerning the pursuit of television broadcasting activities;

Considering the urgent need to amend certain provisions of the Convention in order to develop a coherent approach to transfrontier television between this instrument and the directive, as underlined in the Declaration on Media in a Democratic Society adopted by the ministers of the States participating in the 4th European Ministerial Conference on Mass Media Policy (Prague, 7-8 December 1994) and in the political Declaration of the 5th European Ministerial Conference (Thessaloniki, 11-12 December 1997);

Wishing to further develop the principles embodied in the Council of Europe recommendations on the drawing up of strategies to combat smoking, alcohol and drug dependence in co-operation with opinion-makers and the media, on the right to short reporting on major events where exclusive rights for their television broadcast have been acquired in a transfrontier context and on the portrayal of violence in the electronic media, which have been adopted within the framework of the Council of Europe since the Convention was adopted,

Have agreed as follows:

(*) Since its entry into force on 1 March 2002, this Protocol forms an integral part of the Convention (ETS No. 132).

The Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community entered into force on 1 December 2009. As a consequence, as from that date, any reference to the European Communities shall be read as the European Union.

Article 1

The word "*jurisdiction*" in Article 8, paragraph 1, and in Article 16, paragraph 2a, in the French text, shall be replaced by the word "*compétence*".

Article 2

The word "advertisements" in Article 15, paragraphs 3 and 4, in the English text, shall be replaced by the word "advertising".

Article 3

The definition of "Broadcaster" in Article 2, paragraph c, shall be worded as follows:

"c "Broadcaster" means the natural or legal person who has editorial responsibility for the composition of television programme services for reception by the general public and transmits them or has them transmitted, complete and unchanged, by a third party;"

Article 4

The definition of "Advertisement" in Article 2, paragraph f, shall be worded as follows:

"f "Advertising" means any public announcement in return for payment or similar consideration or for self-promotional purposes, which is intended to promote the sale, purchase or rental of a product or service, to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster itself;"

Article 5

A new paragraph g reading as follows shall be inserted in Article 2:

"g "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;"

Article 6

Article 2, paragraph g, shall be renumbered to Article 2, paragraph h, and shall have the following wording:

"Sponsorship" means the participation of a natural or legal person, who is not engaged in broadcasting activities or in the production of audiovisual works, in the direct or indirect financing of a programme with a view to promoting the name, trademark, images or activities of that person."

Article 7

The following text shall replace Article 5:

"Article 5 – Duties of the transmitting Parties

- 1 Each transmitting Party shall ensure that all programme services transmitted by a broadcaster within its jurisdiction comply with the terms of this Convention.
- 2 For the purposes of this Convention, a broadcaster within the jurisdiction of a Party is:

- a broadcaster who is deemed to be established in that Party according to paragraph 3;
 - a broadcaster to whom paragraph 4 applies.
- 3 For the purposes of this Convention, a broadcaster shall be deemed to be established in a Party, hereinafter referred to as the "transmitting Party", in the following cases:
- a the broadcaster has its head office in that Party and the decisions on programme schedules are taken in that Party;
 - b if a broadcaster has its head office in one Party but decisions on programme schedules are taken in another Party, it shall be deemed to be established in the Party where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Parties, the broadcaster shall be deemed to be established in the Party where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Parties, the broadcaster shall be deemed to be established in the Party where it first began broadcasting in accordance with the system of law of that Party, provided that it maintain a stable and effective link with the economy of that Party;
 - c if a broadcaster has its head office in a Party but decisions on programme schedules are taken in a State which is not Party to this Convention, or vice-versa, it shall be deemed to be established in the Party concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Party;
 - d if, when applying the criteria of paragraph 3 of Article 2 of Directive 97/36/EC of the European Parliament and of the Council of 19 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, a broadcaster is deemed to be established in a member State of the European Community, that broadcaster shall also be deemed to be established in that State for the purposes of this Convention.
- 4 A broadcaster to whom the provisions of paragraph 3 is not applicable is deemed to be within the jurisdiction of a Party, so-called transmitting Party, in the following cases:
- a it uses a frequency granted by that Party;
 - b although it does not use a frequency granted by a Party it does use a satellite capacity appertaining to that Party;
 - c although it uses neither a frequency granted by a Party nor a satellite capacity appertaining to a Party it does use a satellite up-link situated in that Party.
- 5 If the transmitting Party cannot be determined according to paragraph 4, the Standing Committee shall consider this issue according to Article 21, paragraph 1, indent a, of this Convention, in order to determine this Party.
- 6 This Convention shall not apply to television broadcasts intended exclusively for reception in States which are not Party to this Convention, and which are not received directly or indirectly by the public in one or more Parties."

Article 8

Article 8 shall have the following wording:

"Article 8 – Right of reply

- 1 Each transmitting 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 5. 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.
- 2 For this purpose, the name of the programme service or of the broadcaster responsible for this programme service shall be identified in the programme service itself, at regular intervals by appropriate means."

Article 9

The following text shall replace Article 9:

"Article 9 – Access of the public to information

Each Party shall examine and, where necessary, take legal measures such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster within its jurisdiction of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of such an event."

Article 10

A new Article 9bis, worded as follows, shall be inserted:

"Article 9bis – Access of the public to events of major importance

- 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 Party of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Party concerned may 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 as well as, 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 Protocol amending the European Convention on Transfrontier Television in such a way that a substantial proportion of the public in another Party is deprived of the possibility of following events which are designated by that other Party, 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 under paragraph 1, respecting the following requirements:

- a the Party implementing the measures referred to in paragraph 1 shall draw up a list of national or non-national events which are considered by that Party as being of major importance for society;
- b the Party shall do so in a clear and transparent manner in due and effective time;
- c the Party shall determine 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 shall be proportionate and as detailed as necessary to enable other Parties to take measures referred to in this paragraph;
- e the Party drawing up the list shall notify the list and the corresponding measures to the Standing Committee, the time limit for which shall be fixed by the Standing Committee;
- f the measures taken by the Party drawing up the list shall be within the limitations of the guidelines of the Standing Committee referred to in paragraph 3 and the Standing Committee must have given a positive opinion on the measures.

Measures based on this paragraph shall apply only to those events published by the Standing Committee in the annual list referred to in paragraph 3 and to those exclusive rights purchased after the entry into force of this amending Protocol.

- 3 Once a year the Standing Committee shall:
 - a publish a consolidated list of the enlisted events and corresponding measures notified by Parties in accordance with paragraph 2e;
 - b draw up guidelines to be adopted by a majority of three quarters of the members in addition to the requirements listed up in paragraph 2 a to e in order to avoid differences between the implementation of this Article and that of corresponding European Community provisions."

Article 11

Paragraph 1 of Article 10 shall have the following wording:

- "1 Each transmitting Party shall ensure, where practicable and by appropriate means, that a 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."

Article 12

Paragraph 4 of Article 10 shall have the following wording:

- "4 The Parties shall ensure that a broadcaster within their jurisdiction does not broadcast cinematographic works outside periods agreed with the rights holders."

Article 13

A new Article 10bis reading as follows shall be inserted:

"Article 10bis – Media pluralism

The Parties, in the spirit of co-operation and mutual assistance which underlies this Convention, shall endeavour to avoid that programme services transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction, within the meaning of Article 3, endanger media pluralism."

Article 14

The heading of Chapter III shall read as follows:

"Advertising and tele-shopping"

Article 15

Article 11 shall have the following wording:

- "1 Advertising and tele-shopping shall be fair and honest.
- 2 Advertising and tele-shopping shall not be misleading and shall not prejudice the interests of consumers.
- 3 Advertising and tele-shopping addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.
- 4 Tele-shopping shall not exhort minors to contract for the sale or rental of goods and services.
- 5 The advertiser shall not exercise any editorial influence over the content of programmes."

Article 16

Article 12 shall have the following wording:

"Article 12 – Duration

- 1 The proportion of tele-shopping spots, advertising spots and other forms of advertising, with the exception of tele-shopping windows within the meaning of paragraph 3, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.
- 2 The proportion of advertising spots and tele-shopping spots within a given clock hour shall not exceed 20%.
- 3 Windows devoted to tele-shopping programmes broadcast within programme services which are not exclusively devoted to tele-shopping shall be of a minimum uninterrupted duration of 15 minutes. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified by optical and acoustic means.
- 4 For the purposes of this article, advertising shall not include:

- announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
- announcements in the public interest and charity appeals broadcast free of charge."

Article 17

Article 13 shall have the following wording:

"Article 13 – Form and presentation

- 1 Advertising and tele-shopping shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means. In principle, advertising and tele-shopping spots shall be transmitted in blocks.
- 2 Advertising and tele-shopping shall not use subliminal techniques.
- 3 Surreptitious advertising and tele-shopping shall not be allowed, in particular the presentation of products or services in programmes when it serves advertising purposes.
- 4 Advertising and tele-shopping shall not feature, visually or orally, persons regularly presenting news and current affairs programmes."

Article 18

The following text shall replace Article 14:

"Article 14 – Insertion of advertising and tele-shopping

- 1 Advertising and tele-shopping shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this article are fulfilled, advertising and tele-shopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.
- 2 In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances containing intervals, advertising and tele-shopping spots shall only be inserted between the parts or in the intervals.
- 3 The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than forty-five minutes, may be interrupted once for each complete period of forty-five minutes. A further interruption is allowed if their scheduled duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.
- 4 Where programmes, other than those covered by paragraph 2, are interrupted by advertising or tele-shopping spots, a period of at least twenty minutes should elapse between each successive advertising or tele-shopping break within the programme.
- 5 Advertising and tele-shopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their scheduled duration is less than thirty minutes, shall not be interrupted by advertising or tele-shopping. If their scheduled duration is thirty minutes or longer, the provisions of the previous paragraphs shall apply."

Article 19

The heading of Article 15 and paragraphs 1 to 2a, of this article shall have the following wording:

"Article 15 – Advertising and tele-shopping of particular products

- 1 Advertising and tele-shopping for tobacco products shall not be allowed.
- 2 Advertising and tele-shopping for alcoholic beverages of all varieties shall comply with the following rules:
 - a they shall not be addressed particularly to minors and no one associated with the consumption of alcoholic beverages in advertising or tele-shopping should seem to be a minor;"

Article 20

In the French text, Article 15, paragraph 2, sub-paragraphs b to e, shall be worded as follows:

- "b ils ne doivent pas associer la consommation de l'alcool à des performances physiques ou à la conduite automobile;
- c ils ne doivent pas suggérer que les boissons alcoolisées sont dotées de propriétés thérapeutiques ou qu'elles ont un effet stimulant, sédatif, ou qu'elles peuvent résoudre des problèmes personnels;
- d ils ne doivent pas encourager la consommation immodérée de boissons alcoolisées ou donner une image négative de l'abstinence ou de la sobriété;
- e ils ne doivent pas souligner indûment la teneur en alcool des boissons."

Article 21

A new paragraph 5 reading as follows shall be inserted in Article 15:

- "5 Tele-shopping for medicines and medical treatment shall not be allowed."

Article 22

Article 16 will have the following wording:

"Article 16 – 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 transmitting Party 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 23

Paragraph 1 of Article 18 shall read as follows:

- "1 Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising and tele-shopping of which are prohibited by virtue of Article 15."

Article 24

A new paragraph 2 reading as follows shall be inserted in Article 18:

- "2 Companies whose activity includes, *inter alia*, the manufacture or sale of medicines and medical treatments may sponsor programmes by promoting the name, trademark, image or activities of the company, to the exclusion of any reference to medicines or specific medical treatment available only on medical prescription in the transmitting Party."

Article 25

Paragraph 2 of Article 18 shall be renumbered to paragraph 3.

Article 26

A new Chapter IVbis reading as follows shall be inserted:

"Chapter IVbis – Programme services devoted exclusively to self-promotion or tele-shopping

Article 18bis – Programme services devoted exclusively to self-promotion

- 1 The provisions of this Convention shall apply *mutatis mutandis* to programme services devoted exclusively to self-promotion.
- 2 Other forms of advertising shall be allowed on such services within the limits established by Article 12, paragraphs 1 and 2.

Article 18ter – Programme services devoted exclusively to tele-shopping

- 1 The provisions of this Convention shall apply *mutatis mutandis* to programme services devoted exclusively to tele-shopping.
- 2 Advertising shall be allowed on such services within the limits established in Article 12, paragraph ., Article 12, paragraph 2, shall not apply."

Article 27

The last sentence of paragraph 4 of Article 20 shall be deleted and paragraph 7 of Article 20 shall have the following wording:

- "7 Subject to the provisions of Article 9bis, paragraph 3b, and Article 23, paragraph 3, the decisions of the Standing Committee shall be taken by a majority of three-quarters of the members present."

Article 28

Article 21 shall be supplemented as follows:

- "f give opinions on abuse of rights under Article 24bis, paragraph 2c.
- 2 In addition, the Standing Committee shall:
 - a draw up the guidelines referred to in Article 9bis, paragraph 3b, in order 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 on the measures taken by Parties which 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 9bis, paragraph 2;
 - c publish once a year a consolidated list of the enlisted events and corresponding measures notified by Parties in accordance with Article 9bis, paragraph 2e."

Article 29

Two new paragraphs 5 and 6, reading as follows, shall be inserted in Article 23:

- "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 two 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."

Article 30

A new Article 24bis, reading as follows, shall be inserted:

"Article 24bis – Alleged abuses of rights conferred by this Convention

- 1 When the programme service of a broadcaster is wholly or principally directed at the territory of a Party other than that which has jurisdiction over the broadcaster (the "receiving Party"), and the broadcaster has established itself with a view to evading the laws in the areas covered by the Convention which would have applied to it had it fallen within the jurisdiction of that other Party, this shall constitute an abuse of rights.
- 2 Where such an abuse is alleged by a Party, the following procedure shall apply:
 - a the Parties concerned shall endeavour to achieve a friendly settlement;
 - b if they fail to do so within three months, the receiving Party shall refer the matter to the Standing Committee;

- c having heard the views of the Parties concerned, the Standing Committee shall, within six months of the date on which the matter was referred to it, give an opinion on whether an abuse of rights has been committed and shall inform the Parties concerned accordingly.
- 3 If the Standing Committee has concluded that an abuse of rights has occurred, the Party whose jurisdiction the broadcaster is deemed to be within shall take appropriate measures to remedy the abuse of rights and shall inform the Standing Committee of those measures.
- 4 If the Party whose jurisdiction the broadcaster is deemed to be within has failed to take the measures specified in paragraph 3 within six months, the arbitration procedure set out in Article 26, paragraph 2, and the appendix of the Convention shall be pursued by the Parties concerned.
- 5 A receiving Party shall not take any measures against the programme service concerned until the arbitration procedure has been completed.
- 6 Any measures proposed or taken under this article shall comply with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms."

Article 31

Article 28 shall have the following wording:

"Article 28 – Relations between the Convention and the internal law of the Parties

Nothing in this Convention shall prevent the Parties from applying stricter or more detailed rules than those provided for in this Convention to programme services transmitted by a broadcaster deemed to be within their jurisdiction, within the meaning of Article 5."

Article 32

Paragraph 1 of Article 32 shall have the following wording:

- "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 programme services containing advertising for alcoholic beverages according to the rules provided for in Article 15, paragraph 2, of this Convention.

No other reservation may be made."

Article 33

In Article 20, paragraph 2, Article 23, paragraph 2, Article 27, paragraph 1, Article 29, paragraphs 1 and 4, Article 34 and in the closing formula, the words "European Economic Community" are replaced by "European Community".

Article 34

This Protocol shall be open for acceptance by the Parties to the Convention. No reservation may be made.

Article 35

- 1 This Protocol shall enter into force on the first day of the month following the date on which the last of the Parties to the Convention has deposited its instrument of acceptance with the Secretary General of the Council of Europe.
- 2 However, this Protocol shall enter into force following the expiry of a period of two years after the date on which it has been opened to acceptance, unless a Party to the Convention has notified the Secretary General of the Council of Europe of an objection to its entry into force. The right to make an objection shall be reserved to those States or the European Community which expressed their consent to be bound by the Convention prior to the expiry of a period of three months after the opening for acceptance of this Protocol.
- 3 Should such an objection be notified, the Protocol 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.
- 4 A Party to the Convention may, at any time, declare that it will apply the Protocol on a provisional basis.

Article 36

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the other Parties to the Convention and the European Community of:

- a the deposit of any instrument of acceptance;
- b any declaration of provisional application of this Protocol in accordance with Article 35, paragraph 4;
- c any date of entry into force of this Protocol in accordance with Article 35, paragraphs 1 to 3;
- d any other act, notification or communication relating to this Protocol.

Done at Strasbourg, the 9th day of September 1998, in English and French, and opened for acceptance the 1st day of October 1998. Both texts are equally authentic and shall be deposited in a single copy 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 Parties to the Convention and to the European Community.