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ISSUE	What the TVWF Directive does	What the revised Directive (the AVMS Directive) would do
<p>Scope of Directive</p>	<p>Applies specific rules and conditions to:</p> <ul style="list-style-type: none"> • ‘television broadcasting’: initial transmission by wire or over the air of television programmes intended for reception by the public. • ‘television advertising’: any form of announcement broadcast in return for payment or consideration in order to promote the supply of goods or services • ‘sponsorship’: contribution made by a public or private undertaking [not a broadcaster itself] to the financing of TV programmes for promotional purposes. • ‘teleshopping’: direct offers broadcast to the public with a view to supplying goods or services in return for payment. <p>And prohibits:</p> <ul style="list-style-type: none"> • ‘surreptitious advertising’ which is the representation of the goods, services, name, trade mark or activities of a provider of goods or services in programmes, in return for payment, where this might mislead the public as to its nature. 	<p>Applies specific rules and conditions to:</p> <ul style="list-style-type: none"> • ‘audiovisual media services: Services delivered by means of an electronic communications network which have as their principal purpose the provision of moving images with or without sound, in order to inform, entertain or educate. Effect: <i>Scope of AVMS is therefore extended to cover many services outside the existing, broadcast-only definition.</i> • ‘television broadcasting’ or ‘television broadcast’ mean a linear audiovisual media service where a media service provider decides upon the moment in time when a specific programme is transmitted and establishes the programme schedule. Effect: <i>television broadcasting is now described as a ‘linear’ service.</i> • ‘audiovisual commercial communications’ – moving images, with our without sound, which accompany AVMS and are designed to promote the goods, services or image of an entity carrying out an economic activity. Effect: <i>Scope is extended beyond TV advertising to include non-linear advertising including internet-based advertising methods.</i> • ‘sponsorship’ and ‘teleshopping’ defined as before (apart from minor amendments to allow for sponsorship of non-linear services) . • ‘product placement’: any form of ACC which includes reference to a product, service, trade mark

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		<p>etc featured within an AVMS in return for payment or similar consideration</p> <ul style="list-style-type: none"> • 'surreptitious audiovisual communications': are prohibited. Effect: <i>These definitions permit product placement except where it might mislead the public as to its nature. NB 'surreptitious ACC', not defined but referred to in Article 3g(a), clearly extends restrictions to non-linear.</i>
<p>Key obligations and where they fall</p>	<p>Directive places general obligations on Member States to ensure that:</p> <ul style="list-style-type: none"> • 'television broadcasters' comply with conditions specified in or permitted under Articles 3, 3a, 4, 5, 7, 22 and 23 • 'television advertising', 'sponsorship' and 'teleshopping' comply with rules specified in Articles 10-19a. • 'surreptitious advertising' is prohibited in accordance with Article 10. 	<p>Directive places general obligations on Member States to ensure that:</p> <ul style="list-style-type: none"> • All 'media service providers' (providers of AVMS) comply with conditions specified in or permitted under Articles 3c, 3d, 3e, 3f and 3h. Effect: <i>Creates new 'non-linear' tier of basic rules, and country of origin principle for non-linear services</i> • 'television broadcasters' comply with additional conditions specified in Articles 3b (new), 4, 5, 22 and 23 • Providers of audiovisual commercial communications comply with conditions specified in Article 3g. Effect: <i>Creates new, non-linear tier of advertising/sponsorship rules</i> • Audiovisual media services that are sponsored or contain product placement comply with requirements in Article 3h • Providers of teleshopping and television advertising comply with additional conditions specified in Articles 10, 11 and 18. • 'surreptitious audiovisual communications' prohibited by Article 3g.
<p>Place of</p>	<p>Article 2 Sets out rules which determine which</p>	<p>Provisions updated to replace all references to 'broadcaster'</p>

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<p>Establishment</p>	<p>Member State has jurisdiction over any particular television broadcaster. EU-based broadcasters only have to comply with rules of the (one) Member State where they are deemed to be 'established'. The place of establishment is determined by where the head office is and editorial scheduling decisions are made, with various other tests if those are not co-located.</p> <p>Where a broadcaster has its head office in a Member State, but takes editorial decisions in a non-EU country, or vice versa, it is deemed to be established in that Member State provided a significant proportion of the workforce is involved in broadcasting there.</p> <p>Even if none of these conditions are met, a Member State can nonetheless exercise jurisdiction if a broadcaster uses frequencies granted by a MS, satellite capacity appertaining to that MS, or a satellite uplink in that MS.</p>	<p>with references to 'media service providers'. No substantive changes to formulae for determining which Member State has jurisdiction, except that</p> <ul style="list-style-type: none"> a) reference to granting of frequencies constituting grounds for having jurisdiction is dropped; and b) in determining jurisdiction over non-EU broadcasters, the MS which has the satellite uplink now takes precedence over the MS which has the satellite capacity. <p>Effect: <i>Existing place of establishment rules are extended to non-linear services.</i></p>
<p>Derogation from Country of Origin (CoO) principle</p>	<p>Article 2a establishes the principle that MSs shall not block transmission of services originating outside their territory, except that Member States may derogate from the Directive and apply national rules to broadcasts which 'manifestly, seriously and gravely' infringe rules in Article 22 (protection of minors and public order) and 22a (incitement to hatred), provided:</p> <ul style="list-style-type: none"> • the broadcaster has already infringed the rules on at least two occasions in the previous 12 months • The Member State has informed the Commission of the measures it intends to take • Consultations with the authorities in the 	<p>The principle of not blocking services originating outside the MS's territory is extended to AVMS. The process set out in Article 2a for derogations is maintained, and continues to apply only to cross-border broadcasts.</p> <p>A new mechanism is introduced – MSs may adopt appropriate measures to prevent abuse or fraudulent conduct by an audiovisual media service provider established in another Member State <i>which directs all or most of its activity to the territory of the first MS</i>, provided that:</p> <ul style="list-style-type: none"> • The originating MS has been asked to act by the recipient MS and has not done so;

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	<p>transmitting MS and the Commission have not produced a settlement within 15 days of the notification, and the problem persists.</p>	<ul style="list-style-type: none"> • The Commission has been notified and decides the action is consistent with EU law. <p>Effect: <i>Creates a power to derogate from COO principle on a slightly different legal basis to existing powers in relation to cross-border broadcasting</i></p>
<p>Linear and non-linear tiers</p>	<p>Single tier of rules applying to:</p> <ul style="list-style-type: none"> • 'television broadcasting' • 'television advertising' • 'sponsorship' and 'teleshopping' 	<p>Creates two tiers of rules (see 'key obligations and where they fall') – one for linear only, and the other for both linear and non-linear services (referred to as the 'non-linear' tier in the present document).</p> <ul style="list-style-type: none"> • Linear content tier: Applies to 'television broadcasting', which is redefined by reference to linear characteristics • Linear advertising tier: Applies to 'television advertising' as previously defined • Non-linear content tier: Applies to all AVMS services (NB: Article 1 definitions include a definition of 'non-linear services' but this does not appear in any of the other Articles) • Non-linear advertising tier: Applies rules on advertising, sponsorship and product placement to all audiovisual commercial communications. • 'teleshopping' is defined as a separate linear category. <p>Effect: <i>Intended to create graduated regulation of linear and non-linear tiers. But unclear whether the definitions have the intended effect..</i></p>
<p>General requirements on all AVMS providers</p>	<p>Article 22 obliged Member States to ensure the broadcasters under their jurisdiction did not include any programmes which:</p>	<p>Article 22 is retained, and continues to apply to broadcasters.</p> <p>New Article 3d introduces a requirement that Member</p>

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	<ul style="list-style-type: none"> • might seriously impair the physical, mental or moral development of minors • are likely to impair said development of minors unless minors are protected through scheduling, access control measures etc so that they would not normally see the programmes. <p>Article 22a required that MSs ensure broadcasts do not contain any incitement to hatred on grounds of race, sex, religion or nationality.</p> <p>Article 23 required that citizens have a right to reply where they have been damaged by an assertion of incorrect facts in a television broadcast.</p>	<p>States ensure that AVMS's under their jurisdiction are not made available in such a way that might seriously impair, the physical, mental or moral development of minors.</p> <p>Effect: <i>Extends requirements in relation to harmful content to all AVMS providers.</i></p> <p>Article 22a is deleted and replaced with Article 3e which requires that Member States ensure that AVMS's under their jurisdiction do not contain any incitement to hatred based on sex, racial or ethnic origin, religion or belief, disability age or sexual orientation.</p> <p>Effect: <i>Both extends scope to include all AVMS and adds to the list of prohibitions:</i></p> <p>New Article 3c which introduces basic identification requirements: name, address and contact details of the media service provider.</p> <p>The Right of Reply provision in Article 23 remains unchanged, but applies to 'linear' services rather than simply to 'television'.</p>
<p>General requirements on audiovisual commercial communications providers</p>	<p>Article 12 required that television advertising and teleshopping should not:</p> <ul style="list-style-type: none"> • Prejudice respect for human dignity; • Include discrimination on grounds of race, sex or nationality; • Be offensive to religious or political beliefs • Encourage behaviour prejudicial to health and safety • Encourage behaviour prejudicial to the protection of the environment. 	<p>New Article 3e (incitement to hatred provisions) apply to providers of ACC as well as AVMS</p> <p>New Article 3g requires that Member States ensure that ACC's:</p> <ul style="list-style-type: none"> • Are clearly identifiable • Do not use subliminal techniques • Do not include any discrimination on grounds of race, sex or nationality • Are not offensive to religious or political beliefs; • Do not encourage behaviour prejudicial to health

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	<p>Article 13 prohibited advertising and teleshopping for tobacco products.</p> <p>Article 14 prohibited advertising of prescription drugs.</p> <p>Article 15 restricted advertising of alcohol.</p> <p>Article 16 required that advertising did not cause moral or physical detriment to minors, or unduly exhort minors to purchase goods.</p> <p>Article 17 required that sponsored programmes be clearly identified, that the content and scheduled be not influenced by the sponsor, and that they did not encourage the purchase of products. It also prohibited the sponsoring of news and current affairs, or by tobacco companies or prescription drugs.</p>	<p>and safety</p> <ul style="list-style-type: none"> • Do not encourage behaviour prejudicial to the environment. <p>And:</p> <ul style="list-style-type: none"> • Prohibit all ACCs for tobacco products. • Restrict ACCs for alcohol. • Requires that ACCs do not cause moral or physical detriment to minors, or unduly exhort minors to purchase goods. <p>Articles 12, 13 and 16 are deleted. Article 14 (restriction on advertising of prescription drugs) is retained, and therefore continues to apply only to television advertising.</p> <p>New Article 3h requires that viewers are clearly informed when AVMS contain sponsorship (at the beginning, during and/or end), that the content is not influenced in a way that affects the editorial independence of the media service provider and that it does not directly encourage purchases. The prohibition of sponsorship of news and current affairs, or by tobacco companies or undertakings that sell prescription drugs continues to apply.</p> <p>Effect: <i>These provisions extend the existing regulation of broadcast advertising to all ACCs. The specific rules are broadly similar, with one or two minor changes.</i></p>
<p>Overall quantitative controls on TV advertising</p>	<p>Article 18 required that:</p> <ul style="list-style-type: none"> • No more than 20% of transmission time per day may be devoted to advertisements (in all 	<p>Revised Article 18 provides that:</p> <ul style="list-style-type: none"> • The daily advertising restriction is removed altogether

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	<p>their forms)</p> <ul style="list-style-type: none"> No more than 20% of transmission time per hour may be devoted to advertisements (in all their forms) 	<ul style="list-style-type: none"> The hourly limit of 20% is retained. The rule is expanded slightly to make it clear that it applies to <i>'short forms of advertising such as advertising spots and teleshopping spots'</i> (the new wording here is in <i>italics</i>). <p>These rules would apply to 'linear' services only.</p> <p>Effect: <i>Provides modest increase in flexibility for broadcasters.</i></p>
<p>Quantitative advertising rules for particular types of programme</p>	<p>Article 11 requires that there is a gap of at least 20 minutes between advertising and teleshopping breaks within any one programme.</p> <p>There is a prohibition on advertising and teleshopping breaks in any 'audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries unless these are more than 45 minutes long. If they are more than 45 minutes long, then there may be one advertising break within the programme for each period of 45 minutes, with a further interruption if the programme lasts at least 20 minutes longer than 2 or more 45-minute periods.</p> <p>There is a ban on advertising and teleshopping breaks in any news, current affairs, documentaries, religious programme or childrens' programme unless the programme is more than 30 minutes long. There is an absolute ban on advertising during broadcasts of religious services.</p>	<p>New Article 11 provides that:</p> <ul style="list-style-type: none"> There is no minimum interval between advertising breaks in any one programme. However, for advertising and teleshopping breaks in any films made for television (excluding series, serials, light entertainment programmes and documentaries), in cinematographic works, and in childrens' and news programmes, there can only be one break in each 35 minute period. There is a prohibition on advertising and teleshopping breaks during religious services. <p>These rules would apply to 'linear' services only.</p> <p>Effect: <i>Removal of the 20 minute rule has a liberalising effect, but this is offset by the inclusion of a stricter 35 minute rule for certain genres.</i></p>

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<p>Product placement</p>	<p>The TVWF Directive implicitly prohibits EU broadcasters from accepting product placement (this is the result of the requirements in the current Directive that advertising be identified and separate from programme contents).</p>	<p>The AVMS Directive would specifically permit Member States to allow their broadcasters to accept product placement, subject to the conditions set out in Article 3h. These include that viewers are clearly informed (at the beginning, during and/or at the end of the programme), that the content is not influenced in a way that affects the editorial independence of the media service provider, and that it does not directly encourage purchases. It prohibits product placement in news and current affairs, AVMs for childrens and documentaries.</p> <p>But Member States would not have to permit this – they could continue, if they wished, to prohibit their broadcasters from accepting product placement.</p>
<p>Listed Events and Short Reports</p>	<p>Article 3a of the Directive allows every Member State to draw up a list of major events (usually major sports events) which members of the public in that MS should be able to see – either live or recorded – on free-to-air television. When a Member State has drawn up such a list and it has been approved by the Commission, all other Member States must ensure that broadcasters under their jurisdiction do not exercise exclusive rights over those events in ways which would prevent the public in the Member State which has listed them from being able to watch them on free to air television.</p>	<p>Article 3a is retained for linear services. It does not apply to non-linear services.</p> <p>There is a new Article 3b, which also applies to linear, but not to non-linear, services. Each Member State would need to ensure that broadcasters elsewhere in the EU had access for the purposes of short news reports to events of high interest to the public which were transmitted by a broadcaster under its jurisdiction.</p> <p>That access would be ‘on a fair, reasonable and non-discriminatory basis’. The broadcaster which wanted a short report of an event would be able to choose the extract they wanted from the transmitting broadcaster’s signal. They would have to identify the source of the extract.</p>
<p>European Works</p>	<p>Article 4 of the TVWF Directive required that MSs, ‘where practicable and by appropriate means’ ensure</p>	<p>Articles 4 and 5 are retained for television broadcasting while some minor modifications have been introduced in</p>

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	<p>that broadcasters reserve a majority proportion of their transmission time for European works. Article 5 stipulates that a minimum proportion (at least 10%) of transmission time be reserved for European works created by independent producers. Alternatively, MS may require broadcasters to allocate at least 10% of their programme budget to independent productions.</p> <p>Article 6 defined the concept of 'European works'.</p>	<p>Article 6.</p> <p>New Article 3f introduces a new obligation on MS to ensure that media service providers 'promote, where practicable and by appropriate means' the production of and access to European works.</p> <p>It also requires that media service providers do not transmit cinematographic works outside the periods agreed with the rights holders.</p> <p>Effect: <i>Continuation of the "quotas" regime for linear and introduction of an obligation to promote European works in non-linear.</i></p>
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