

## The EU Audiovisual Media Services Directive and its transposition into national law – a comparative study of the 27 Member States

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### Member State: Italy

#### Decree on the Implementation of Directive 2007/65

#### Important Notice

This text is an unofficial translation conducted at the University of Luxembourg in the framework of a research project on the transposition of the “**Audiovisual Media Services Directive**” in the Member States of the European Union.

The original legal acts which Member States notified to the European Commission as national execution measures were retrieved from official national databases. In order to focus on the core of the research project, several national legal acts have been shortened to include only those provisions of relevance for the study. Subsequently, the modified acts were translated by a translation agency external to the university.

The translations only serve the purpose of being an information source; there is no guarantee whatsoever that the translations correctly correspond to the original versions of the laws. Therefore, evidently, the texts have no legal value. The original, as well as the translated version of the legal acts, are available at: [www.medialaw.lu](http://www.medialaw.lu), where additional information on the comparative study may be found.

## **Member State: Italy**

### **Legislative Decree No.44 of 15 March 2010 on the Implementation of directive 2007/65/EC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.**

**Official Journal Gazzetta Ufficiale della Repubblica Italiana, number: 73**

#### **Chapter I**

#### **Transposition of Directive 2007/65/EC**

##### **Art. 2**

##### **Scope**

1. After article 1 of legislative decree No.177 of 31 July 2005, the following shall be inserted:  
«Article 1a (Scope). –

1. Without prejudice to the provisions referred to in article 1b, this consolidated act applies to all providers of radio and audiovisual media services in accordance with rules referred to in subparagraph 2 et seq.

2. Providers of radio and audiovisual media services fall within Italian jurisdiction if:

a) established in Italy in accordance with subparagraph 3; or

b) those to whom subparagraph 4 applies.

3. A provider of radio and audiovisual media services shall be deemed to be established in Italy in the following cases: a) the provider has its head office in Italy and the editorial decisions on the audiovisual media service are taken in Italian territory; b) if a media service provider has its head office in Italy but editorial decisions on the audiovisual media service are taken in another Member State of the European Union, or vice versa, said provider shall be deemed to be established in Italy, provided that a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in Italian Territory. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates both in Italy and in another Member State, the provider shall be deemed to be established in Italy if its head office is found in Italian Territory. If a significant part of the workforce involved in the pursuit of the audiovisual media service activity operates in neither Italy or in another Member State of the European Union, the provider shall be deemed to be established in Italy if this is the first Member State where it first began its activity in accordance with national laws, provided that it maintains a stable and effective link with the Italian economy;

c) if a provider of the audiovisual and radio media service has its head office in Italy but decisions on the audiovisual media service are taken in a third country, or vice versa, it shall

be deemed established in Italy provided a significant part of the workforce involved in the pursuit of the audiovisual media service operates in Italy.

4. Media services providers to whom the provisions of subparagraph 3 are not applicable shall be deemed to be under the jurisdiction of Italy in the following cases: a) they use a satellite up-link situated in Italy; b) although they do not use a satellite up-link situated in Italy, they use satellite capacity appertaining to Italy. 5. If the question as to which Member State has jurisdiction cannot be determined in accordance with subparagraphs 3 and 4, the media service provider established in Italy within the meaning of articles 49 to 54 of the Treaty of the Functioning of the European Union, shall be deemed as under Italian jurisdiction. 6. Audiovisual media service providers belonging to Member States of the European Union under Italian Jurisdiction within the meaning of this article shall be obliged to respect Italian laws applicable to audiovisual media service providers.

### **Art. 3**

#### **Transfrontier Broadcasting**

1. Article 36 of legislative decree No.177 of 31 July 2005, shall be repealed.

2. After article 1a of legislative decree No.177 of 31 July 2005, the following shall be inserted:  
«Article 1b (Transfrontier Broadcasting). –

1. Without prejudice to the cases envisaged by this article, freedom of reception shall be ensured and restrictions shall not be imposed on retransmissions of audiovisual media services from Member States for reasons which fall within the fields coordinated by directive 89/552/EEC by the European Parliament and of the Council, of 3 October 1989, and successive amendments.

2. The Authority may provisionally suspend reception or the retransmission of television broadcasts from European Union States in the following cases of infringement, already committed on at least two prior occasions in the previous 12 months:

a) manifestly, seriously and gravely infringes the ban on broadcasting programmes that might seriously impair the physical, mental or moral development of minors, in particular programmes that involve pornography or gratuitous violence;

b) manifestly, seriously and gravely infringes the ban on broadcasting programmes that might seriously 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 measure, that minors in the area of transmission will not normally hear or see the transmission;

c) manifestly, seriously and gravely infringes the ban on broadcasting programmes that contain any incitement to hatred on grounds of race, sex, religion or nationality.

3. The measures referred to subparagraph 2 shall be taken:

a) upon written notification by the Authorities to the media services provider and the European Commission. The notification must identify the highlighted infringement and of the measures that the Authority intends to take should any such infringement occur again;

b) if the consultations with the transmitting State and the Commission have not produced an amicable settlement within 15 days of the notification provided for in point a) and the alleged infringement persists.

4. The Authority may provide for the suspension of reception or the transmission of audiovisual media services upon a request from the European Union States if such measures are considered:

a) necessary for one of the following reasons:

1) 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;

2) the protection of public health;

3) public security, including the safeguarding of national security and defence;

4) the protection of consumers, including investors;

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

c) proportionate to those objectives;

5. Without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the Authority adopts the measures referred to in subparagraph 4 after having:

a) asked the Member State under whose jurisdiction the media service provider falls to take measures and such measures were not taken or were inadequate;

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

6. The Authority may, in urgent cases, derogate from the conditions laid down in subparagraph 5. Where this is the case, the measures shall be notified to the Commission and to the European Union Member State under whose jurisdiction the media service provider falls, indicating the reasons for which there is urgency.

7. The Authority is likewise competent for the application of article 3 of Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989, in accordance with the last amendment of Directive 2007/65/EC of the European Parliament and of the Council, of 11 December 2007, and to take suitable measures pursuant to that article.

8. In the case of an infringement of the basic principles of the audiovisual and radio media services system and, in particular, of infringements relating to the provisions referred to in points a) to c) in subparagraph 2, and point a) in subparagraph 4, as well as articles 32 and 32a, the Authority may order the suspension of reception or retransmission of media services under Italian jurisdiction within the meaning of article 1a, subparagraph 4, or not under the jurisdiction of any Member State of the European Union, but whose contents or catalogues, are received directly or indirectly by the Italian public. To this end, and following the adoption of a formal rebuke, the Authority may likewise order the provider of associated interactive services or conditional access services or the network or services operator on whose platform or infrastructure programmes are broadcast, to take all necessary measures for inhibiting the diffusion of those programmes or catalogues to the Italian public. In the case of failure to comply with the order, the Authority inflicts an administrative pecuniary sanction from 150 to 150,000 Euros to the provider of the associated interactive services or conditional access services or to the network or services operator.

9. The provisions in this article shall apply, with the necessary adjustments, to television broadcasts coming from participating States of the Strasbourg Convention on Transfrontier Television of 5 May 1989, ratified through law No. 327 of 5 October 1991, that are not Member States of the European Union.

## Article 4

### Definitions

1. Article 2 of legislative decree No.177 of 31 July 2005, shall be replaced by the following:  
«Art. 2 (Definitions). –

1. For the purposes of this consolidated act the following definitions shall apply: a)  
“**audiovisual media service**”:

1) a service, as defined by Articles 56 and 57 of the Treaty of the functioning of the European Union which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes, in order to inform, entertain or educate, to the general public by electronic communications networks. Such audiovisual media services shall be defined as television broadcasting, as defined in point i) of this article and, in particular, analogue and digital television, live streaming, webcasting, near-video-on-demand, or on-demand audiovisual media services, as defined in point m) of this article. Not included in the definition of “audiovisual media service” are: Services provided in the pursuit of activities which are primarily non-economic and which are not in competition with television broadcasting, such as private websites and services consisting of the provision or distribution of audiovisual content generated by private users for the purposes of sharing and exchange within communities of interest; any form of private correspondence, including e-mails; services the principal purpose of which is not the provision of programmes; services where any audiovisual content is merely incidental and not its principal purpose. Examples include:

a) websites that contain audiovisual elements only in an ancillary manner, such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service

b) on-line games;

c) search engines;

d) electronic versions of newspapers and magazines;

e) stand-alone text-based services;

f) games of chance involving a stake representing a sum of money, excluding broadcasts devoted to gambling or games of chance; or 2) audiovisual commercial communication;

b) “**media services provider**”, the natural or legal person with the editorial responsibility for the choice of the audiovisual content of the audiovisual media service and determines the manner in which it is organized; excluded from the definition of “media services provider” are natural or legal persons occupied exclusively with the broadcasting of programmes the editorial responsibility of which lies with third parties;

c) “**electronic communications networks**”, means transmission systems and, where applicable, switching or routing equipment and other resources which permit the conveyance

of signals by wire, radio, optical or other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, networks used for radio and television broadcasting, electricity cable systems, to the extent that they are used for the purpose of transmitting signals, and cable television networks, irrespective of the type of information conveyed;

d) “**network operator**” the holder of the right to install, manage and furnish an electronic communications network on terrestrial frequencies using digital technology, cable or satellite, and systems for the transmission, multiplexing, distribution and diffusion of the frequency resources that allow programmes to be broadcast to the users;

e) “**programme**” means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider and the form and content of which are comparable to the form and content of television broadcasting. Broadcasting consisting of merely repetitive or fixed images shall not be considered programmes.f) “data-broadcasting”, information services consisting of electronic editorial products, transmitted by television networks and, unlike television programmes, not provided on individual demand, including teletext information pages and data pages;

g) “**television schedule**” and “**radio schedule**”, is the series of programmes as a whole provided by a television or radio broadcaster, whether analogue or digital, under the same editorial brand and intended for public use, that does not include the deferred transmission of the same schedule, merely repetitive transmissions, or the lending, by payment, of single programmes, or programme packets, linear audiovisual services, with the user given the opportunity to purchase a single programme in the moments immediately before the start of its transmission or just before the first of a packet of programmes ;h) “editorial responsibility” means the exercise of effective control both over the selection of the programmes and over their organisation, including data-broadcasting, either in a chronological schedule, in the case of television broadcasts, or in a catalogue, in the case of on-demand audiovisual media services. For the purposes of this consolidation act the expression "television programming" means the same as “television schedules” according to letter g);

i) “**linear audiovisual media service**” or "television broadcasting" means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

l) “**broadcaster**” means a linear audiovisual media services provider, other than those highlighted in points aa) and bb);

m) “**non-linear audiovisual media service**”, or “on-demand audiovisual media service” means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider;

n) “**community broadcaster**”, is the broadcaster with the editorial responsibility of providing programmes intended for local television broadcasting, committed to: broadcast no more than 5 per cent of advertising for each hour of transmission; to broadcast original self-produced programmes for at least 50 per cent of the daily scheduling time from 7 to 21;

o) “**original self-produced programmes**”, programmes produced by the broadcaster, including analogue programmes, or by its parent or subsidiary company, or in co-production with another broadcaster, including analogue broadcasters;

p) “**independent producers**”, European communication operators occupied with audiovisual production who are not controlled by or associated to broadcasters, also analogue, or that for

a period of 3 years do not assign at least 90 per cent of its production to a single broadcaster, also analogue;

q) “**Provider of associated interactive services or conditional access services**” means the entity that provides the public or third-party operators with conditional access services, including pay per view services, through the distribution of access numbers for enabling programmes to be viewed, the invoicing of services and any supply of equipment, or that provides information society services within the meaning of article 2 of legislative decree of 9 April 2003, No.70, or that provides an electronic programme guide;

r) “**conditional access**”, is any technical measure and or system whereby access to a protected service in an intelligent form is made conditional upon prior individual authorisation of conditional access services provider;s) “**integrated communications system**”, the economic sector that includes the following activities: Daily and periodical press; annual and electronic publishing including that on the Internet; radio and audiovisual media services; cinema; outdoor advertising; product and service communication undertakings; sponsorship;

t) “**public service television**”, the public service carried out with a licence in the television sector through the complex programming, also non-informative, of the licensee company, according to the methods and within the limits indicated by this consolidated act and other reference standards;u) “**nationally**”, the pursuit of television or radio broadcasting activities not limited to a local area; v) “**local radio**”, the pursuit of radio broadcasting activities, with radiation of the signal providing a maximum coverage of up to 15 million inhabitants;

z) “**local television**”, the pursuit of television broadcasting activities in one or more catchment areas, however not more than ten, even if not bordering each other, with a coverage of less than 50 per cent of the national population; it becomes “**regional**” or “**provincial**” when the catchment area of the pursuit of television broadcasting activities is unique and falls within the territory of a single region or a single province, and the broadcaster, even analogue, does not broadcast in other catchment areas;

The expression “**local television**” without specifications also refers to regional or provincial broadcasting;

aa) “**analogue television broadcaster**” means the holder of a licence or authorisation for terrestrial frequencies using analogue technology that has the editorial responsibility for the scheduling of television programmes that are transmitted according to the following types:

1) “**analogue television broadcaster of informative programmes**”, the broadcaster of local television on terrestrial frequencies, that broadcasts informative programmes, using analogue technology, in the hours between 7 and 23 for no less than two hours per day, of which at least 50 percent are self-produced, on political, religious, economic, social, trade union or cultural events; these programmes, for at least half of the time, must regard themes and issues of local interest and must include news programmes broadcast for no less than 5 days a week or, alternatively, for 120 days in a six month period;

2) “**Commercial analogue television broadcaster**”, the broadcaster of local television on terrestrial frequencies using analogue technology, without specific obligations to inform;

3) “**community analogue television broadcaster**”, the broadcaster of local television consisting of a recognised or not recognised association, or non-profit foundation or cooperative, that broadcasts original, self-produced programmes of a cultural, ethical, political and religious nature, using analogue technology and is committed to: broadcast no more than 5 per cent of advertising per hour of broadcasting; to broadcast aforementioned programmes for at least 50 per cent of the daily scheduling time from 7 to 21;

4) “**Mono-thematic social analogue television broadcaster**” is the broadcaster for local television that broadcasts using analogue technology and that dedicates at least 70 per cent of its daily programming to themes of evident social use, such as health and social services issues, classifiable as a true service broadcaster;

5) “**national commercial analogue television broadcaster**”, refers to the broadcaster that uses unencoded broadcasting and analogue technology to broadcast predominantly general programmes with the obligation to inform;

6) “**analogue teleshopping broadcaster**” refers to the broadcaster that broadcasts, using analogue technology, predominantly direct offers to the public with a view to the supply of goods or services, including immovable property, rights and obligations, in return for payment;

bb) “**radio broadcaster**” means the holder of a licence or authorisation for terrestrial frequencies using analogue or digital technology, that has the editorial responsibility for the scheduling of radio programmes and, if an analogue radio broadcaster, transmits them according to the following types:

1) “**community radio broadcaster**”, national or local, is the broadcaster characterised by absence of profit that broadcasts original, self-produced programmes for at least 30 per cent of its daily broadcasting schedule between 7 and 21, that can avail itself of sponsorship and that does not broadcast more than 10 per cent of advertising for every hour of broadcasting; the transmission of music with intervals for advertising or with short commentary by the presenter of the same transmission shall not be considered an original self-produced programme;

2) “**local commercial radio broadcaster**” means the broadcaster without specific scheduling obligations, that nevertheless dedicates at least 20 per cent of its weekly programming to information, of which at least 50 per cent is local information, news and services, and to programmes; these limits are calculated on not less than 64 hours weekly;

3) “**national radio broadcaster**”, the broadcaster without particular obligations, other than the daily broadcasting of radio news;

cc) “**European works**”: 1) works that come under the following types: 1.1) works originating in Member States;

1.2) works originating in European third States party to the European Convention on Transfrontier Television of the Council of Europe, signed in Strasbourg on 5 May 1989 and ratified by law No.327 of 5 October 1991, and fulfilling the conditions of point 2);

1.3) works co-produced within the framework of agreements related to the audiovisual sector concluded between the European Union and third countries and fulfilling the conditions defined in each of those agreements.

1.4) the application of the provisions of numbers 1.2) and 1.3) shall be conditional on works originating in Member States not being the subject of discriminatory measures in the third country concerned.2) the works referred to in numbers 1.1) and 1.2) are works mainly made with authors and workers residing in one or more of the States referred to in numbers 1.1) and 1.2) provided they comply with one of the following three conditions:

2.1) they are made by one or more producers established in one or more of those States;

2.2) the production of the works is supervised and actually controlled by one or more producers established in one or more of those States;2.3) the contribution of co-producers of

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

3) works that are not European works within the meaning of number 1) but that are produced within the framework of bilateral co-production agreements concluded between Member States and third countries shall be deemed to be European works provided that the co-producers from the European Union supply a majority share of the total cost of production and that the production is not controlled by one or more producers established outside the territory of the Member States;

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

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

ff) “**advertising spot**”, a form of television advertising with predetermined content, transmitted by analogue and digital radio and television broadcasters; gg) “surreptitious audiovisual commercial communication” means the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the media service provider to serve as advertising and might mislead the public as to its nature. Such representation shall, in particular, be considered as intentional if it is done in return for payment or for similar consideration;

hh) “**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 their name, trade mark, image, activities or products;

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

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

mm) “**telepromotion**”, any form of advertising consisting of the showing of products, the verbal and visual presentation of goods or services of a producer of goods or a provider of services, made by the television or radio broadcaster, whether analogue or digital, within the context of a programme, with the aim of promoting the supply, in return for payment, of the goods or services presented or shown;

nn) “**Authority**” is the Italian Communications Authority;

oo) “**Ministry**” is the Italian Ministry of Economic Development.

2. Definitions as in paragraph 1 shall apply *mutatis mutandis* to radio services. Unless otherwise specified, sponsorship and teleshopping also include activities carried out through radio broadcasting. ».

## **Art. 5**

### **Guarantee for users**

1. The heading of Title IV of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Governing audiovisual and radio media services». The heading of Chapter I, of title IV, of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Provisions to be applied to all radio and audiovisual media services – Regulations for safeguarding use». 2. Article 32 of legislative decree No.177 of 31 July 2005 shall be replaced by the following:

«Art. 32 (General provisions). –

1. Providers of audiovisual media services under Italian jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

- a) the name of the media services provider;
- b) the geographical address at which the media services provider is established;
- c) the details of the media services provider, including the electronic mail address or website, which allow it to be contacted rapidly in a direct and effective manner;
- d) contact details for the Authority's offices and the Italian Antitrust Authority that supervises protection of the users.

2. Without prejudice to the right of each user to reorder the channels offered on digital television as well as the possibility for pay TV operators to introduce further and additional programme guide and channel order services, the Authority, for the purpose of ensuring fair, transparent and non-discriminatory conditions, shall adopt a suitable plan for the automatic numbering of digital terrestrial television channels, in unencoded form and paid for, and shall establish, with its own regulations, the method for assigning numbers to the audiovisual media services providers authorised to broadcast audiovisual contents using digital terrestrial technology, on the basis of the following principles and regulatory criteria in order of priority:

- a) guarantee the automatic channel ordering system is simple to use;
- b) respect the habits and preferences of users, with particular reference to general national channels and to local broadcasters;
- c) divide the numbering of the national broadcasting channels, based on the criteria of majority programming, in relation to the following types of thematic programming: Semi-generalist, children's, information, culture, sport, music, and teleshopping. In the first range of numbers suitable space must be provided for numbering assigned to quality programming by local broadcasters and those linked to the territory. Channels for adult viewing only must not be placed in that same range of numbers. For the purpose of guaranteeing the widest pluralism in equal conditions between subjects operating on the market, a series of numbers should be left available for new entries of each type;
- d) selection of specific numbering for paid-for audiovisual media services;

e) define the conditions for use of the numbering, providing the opportunity, based on agreements, to exchange number allocation within one of the same type group, following communication to the competent administrative authorities;

f) update the numbering plan according to the development of the market, and on hearing the interested parties. 3. The Ministry, within the scope of the licence issued for the pursuit of television broadcasting using terrestrial digital technology, shall assign the number to each channel based on the numbering plan and the regulation adopted by the Authority within the meaning of subparagraph 2 and shall establish the conditions for the use of the number assigned. The allocation of numbers to subjects already authorised for the pursuit of television broadcasting using terrestrial digital technology shall be carried out with separate integrative provisions by the authorisation.

4. If the rules adopted by the Authority are not respected within the meaning of subparagraph 2 or the conditions of use of the number assigned established within the meaning of subparagraph 3, the Minister shall order suspension of the authorisation to broadcast and of the use of the number assigned for a period of up to two years. Suspension shall occur if the interested subject, having received notification of the start of procedures and having been invited to regulate its position, does not do so within seven days. If the infringement is repeated, in the three years following the adoption of a provision for suspension, the Ministry shall revoke the authorisation to broadcast and use the assigned number. 5. Audiovisual media services provided by media services providers under Italian Jurisdiction shall respect human dignity and shall not contain any incitement to hatred on grounds of sex, religion or nationality. 6. Audiovisual media services providers shall ensure that citizens with a visual or hearing disability shall have access to their services. Audiovisual media services providers, with this in mind, shall see to taking suitable measures, upon the advice of category associations. 7. The provisions of this article shall also apply to radio broadcasters and the services provided by them. ».

## **Art. 6**

### **Protection of Copyright**

1. After article 32 of legislative decree No.177 of 31 July 2005, the following shall be inserted: «Art. 32a (Protection of copyright). –

1. The provisions of this consolidated act shall not prejudice the principles and rights laid down in legislative decree No.68 of 9 April 2003, on the implementation of Directive 2001/29/EC, on the harmonisation of certain aspects of copyright and related rights in the information society, and to legislative decree No.140 of 16 March 2006, on the implementation of Directive 2004/48/EC, regarding intellectual property rights. Audiovisual media services providers shall guarantee full observance of the principles and rights provided for by law No.633 of 22 April 1941, and successive amendments, regardless of the platform used for broadcasting audiovisual contents.

2. Audiovisual media services providers shall operate respecting copyright laws and related rights, and in particular:

a) broadcast cinematographic works respecting the time constraints and conditions agreed upon with the holders of the rights;

b) abstain from broadcasting or re-transmitting, or in any way making available to the users, on any platform and regardless of the type of service offered, programmes subject to intellectual property rights of third persons, or parts of said programmes, without the consent of the holders of the rights, and without prejudice to provisions on the subject of short news reports.

3. The Authority shall enact the regulatory provisions necessary for the effective observance of the limits and prohibitions referred to in this article.».

## **Art. 7**

### **Events of major importance**

After article 32a of legislative decree No.177 of 31 July 2005, the following shall be inserted:

«Art. 32b (Events of major importance). –

1. Upon the decision of the Authority a list shall be compiled of national or non-national events that are considered to be of major importance for society, the broadcasting of which in unencoded form, whether live or deferred, is ensured. The Authority likewise determines if the television broadcasting of such events should be of whole or partial live coverage, or whole or partial deferred coverage. The list shall be communicated to the European Commission as required by that provided in article 3j of Directive 89/552/EEC of 3 October 1989, of the Council, as last modified by Directive 2007/65/EC of the European Parliament and of the Council. ».

## **Art. 8**

### **Short news reports**

1. After article 32b of legislative decree No.177 of 31 July 2005, the following shall be inserted: «Art. 32c (Short news reports). –

1. The methods with which every television broadcaster, also analogical, may produce short news reports on events of high interest to the public transmitted exclusively by a television broadcaster, also analogical, subject to this consolidated act, shall be identified by the Authority 2. The regulation should, among other foresee that: a) the television broadcasters, also analogical, can freely choose short extracts from the transmitting television broadcaster's signal also analogical;

b) the source of the short extract shall be identified;

c) access shall be achieved on a fair, reasonable and non-discriminatory basis;

d) the extracts shall be used solely for general news programmes, with the exclusion of those on entertainment;

e) access for on-demand audiovisual media services providers may be provided only if the same programme is offered on a deferred basis by the same provider;

f) the maximum length of short extracts and time limits for their transmission.

g) Any compensation provided for shall not exceed the additional costs directly incurred in providing access.».

## **Art. 9**

### **Protection of Minors**

1. The heading of Chapter II, of Title IV, of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Protection of minors in audiovisual programming». 2. Article 34 of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Art. 34 (Provisions for the protection of minors). –

1. Programmes that, also in relation to the time of the broadcast, might seriously impair the physical, mental or moral development of minors or that involve scenes of gratuitous or insistent or brutal violence or of pornography shall be prohibited, without prejudice to the special regulations for conditional access transmissions, including those referred to in subparagraph 5, that in any case shall impose the use of a specific and selective control system that binds all contents to the introduction of the protection system as referred to in subparagraph 3.

The classification system for conditional access contents shall be adopted by each audiovisual media services provider or conditional access services provider, based on criteria provided by the Committee for the implementation of the Italian Code of Media and Minors, upon agreement with the Authority, and approved by ministerial decree. Within thirty days from the date of entry into force of this provision, the Committee for the implementation of the Code of Media and Minors shall submit the criteria to the competent ministerial authority that, having introduced any amendments and integrations, shall approve it within the following thirty days. Within a further thirty days, the audiovisual media services provider or the services providers shall adopt their own classification system, respecting the criteria approved by the ministerial decree.

2. Television and radio transmissions, also analogical, broadcast from any transmission platform, shall not contain programmes which might 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 measure, that minors in the area of transmission will not normally hear or see such broadcasts; When such programmes are broadcast, whether in unencoded form or upon payment, these must be preceded by an acoustic warning or are identified at the beginning of the programme, by a visual symbol.

3. Without prejudice to the regulations of the European Union on the protection of minors and that foreseen in subparagraphs 1 and 2 of this article, in article 3, as well as article 32, subparagraph 5, and by article 36a, the transmission, also upon payment, of films to which the *nulla osta* has been denied for their projection or representation in public or that have been prohibited to minors under the age of 18, as well as programmes classifiable as for adult vision only on the basis of the classification system as referred to in subparagraph 1, including those provided on demand, is in any case prohibited from 7.00 until 23.00 on all broadcast platforms.

4. Films banned to minors under the age of fourteen may not be broadcast, whether unencoded or upon payment, nor provided on-demand whether whole or partial, before 22.30 and after 07.00.

5. The Authority, with the aim of ensuring an adequate level of protection of human dignity and the physical, mental and moral development of minors, shall adopt, with co-regulation procedures, the detailed regulations containing indications on suitable technical devices that ensure that minors shall not normally see or hear the programmes according to subparagraph 3, including the use of personal identification numbers and filtering or identification systems, with respect to the following general criteria:

a) the classifiable content of non-free viewing on the basis of the classification system according to subparagraph 1 is provided with a parental control function that inhibits access to its contents, unless the user deactivates the aforementioned function through the digitisation of a specific secret code that makes its viewing possible;

b) the secret code must be communicated privately to the adult stipulating the contract for the supply of the contents or service, delivered with a warning regarding responsibility for its use and protection.

6. Television broadcasters, also analogical, transmitting on any broadcast platform are obliged to observe the provisions for protecting minors foreseen by the self-regulation Code of Media and Minors approved on the 29 November 2002, and successive amendments. Any amendments to the Code or the adoption of new self-regulatory acts shall be implemented by decree of the Italian Minister of Economic Development, adopted according to article 17, subparagraph 3, of Law No.400 of 23 August 1988, subject to the opinion of the Parliamentary Commission as referred to in Law No.451 of December 1997, and successive amendments.

7. Television broadcasters, including analogue broadcasters, and according to that established in the Code referred to in subparagraph 6, shall likewise be obliged to guarantee the application of specific measures for protecting minors in the hours of programming from 16.00 to 19.00 and within programmes directly geared to minors, with particular attention to advertising messages, promotions and any other form of audiovisual commercial communication.

8. The use of minors under the age of 14 in television programmes is covered by the regulations of the Italian Minister of Economic Development, with the agreement of the Italian Minister of Labour and Social Policy, the Italian Minister of Health and the Italian Minister of Equal Opportunities.

9. The Italian Minister of Economic Development, in agreement with the Italian Minister of Education, University and Research, shall provide for the realisation of school campaigns on the correct and knowledgeable use of the television, as well as broadcasts with the same aim geared to parents to be transmitted in peak viewing times, with particular reference to public service concessionaire transmissions.

10. The quota for the broadcasting of European works, provided for in article 44 must also include cinematographic works or those for television, including animation, specifically designed for minors, as well as productions and programmes aimed at minors or suitable for viewing by minors and adults. The minimum broadcasting time reserved for these works and programmes shall be determined by the Authority.

11. The Authority shall lay down detailed provisions as provided for in subparagraph 5 with its own regulation to be adopted by the 30 June 2010. The audiovisual media services provider or services provider shall conform to the mentioned detailed regulations within 30 days from the date of entry into force of the Authority regulation, in any case ensuring that

the contents it refers to are receivable and useable only in respect to the conditions established by the Authority pursuant to subparagraph 5. ».

## **Art. 10**

### **Commercial communications**

The heading of Chapter IV, of Title IV, of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Provisions on advertising, sponsorship and product placement».

2. After article 36 of legislative decree No.177 of 31 July 2005, the following shall be inserted: «Art. 36a (General principles on the subject of radio and audiovisual commercial communications). –

1. Audiovisual commercial communications provided by media services providers under Italian jurisdiction shall respect the following regulations:

a) audiovisual commercial communications shall be readily recognisable as such; surreptitious audiovisual commercial communication shall be prohibited;

b) audiovisual commercial communications shall not use subliminal techniques;

c) audiovisual commercial communications shall not:

1) prejudice respect for human dignity;

2) include or promote any discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;

3) encourage behaviour prejudicial to health or safety;

4) encourage behaviour grossly prejudicial to the protection of the environment;

d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited; Audiovisual commercial communications shall also be prohibited if carried out in an indirect form through the use of names, brands, symbols or other elements characteristic of tobacco products or of companies whose principal activity is the manufacture or sale of such products, when by the form, method and means used or according to any other univocal element such use may be considered suitable for the purposes of advertising the products themselves. For the purpose of determining the main activity of the company, reference must be made to the incidence of sales for each of its activities, the main activity being that which is prevalent among all others at a national level;

e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate consumption of such beverages;

f) audiovisual commercial communications for medicinal products and medicinal treatment available only on prescription shall be prohibited;

g) audiovisual commercial communications shall not cause physical or moral detriment to minors. They shall not exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations. 2. The Ministry, in agreement with the Authority and on hearing the Italian Ministry of Health, shall encourage media service providers to develop codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in children's

programmes, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, in particular those such as fat, trans-fatty acids, salt/sodium and sugars, excessive intakes of which in the overall diet are not recommended. 3. The provisions of this article shall also apply to radio broadcasters and the services provided by them. ».

#### **Art. 11 Advertising interruptions**

1. Article 37 of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Art. 37 (Advertising interruptions). –

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

2. Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception. Television advertising and teleshopping spots may be inserted during programmes provided they do not prejudice a programme's integrity, taking into account natural breaks and its duration and nature, or the rights of the right holders.

3. The insertion of advertising messages during the transmission of theatrical, lyrical and musical works is permitted with due regard to the principles as referred to in the paragraphs above and in any case during the intervals usually made in theatre halls.

4. The transmission of news programmes, cinematographic works, films made for television (excluding series, serials, and documentaries), may be interrupted by television advertising or teleshopping once only for each scheduled period of at least thirty minutes.

5. Television advertising or teleshopping shall not be inserted during religious services: The transmission of children's programmes may be interrupted by television advertising or teleshopping once for each scheduled period of at least 30 minutes, provided that the scheduled duration of the programme is greater than 30 minutes.

6. To local television broadcasters, also analogical, who broadcast exclusively at a national level, with the exception of interconnecting broadcasting, notwithstanding the provisions of directive 89/552/EEC, and successive amendments, on the subject of advertising messages during the transmission of theatrical, cinematographic, lyrical and musical works, two advertising interruptions for each act or time independently of the duration of the works themselves, shall be permitted, in addition to those inserted during the natural breaks of those works; likewise, for works of a scheduled duration of between 90 and 109 minutes, two advertising interruptions for each act or time shall be permitted; for works of a scheduled duration of 109 minutes or more three advertising interruptions plus a supplementary interruption shall be permitted for every 30 minutes of a scheduled duration of over 109 minutes.

7. For the purposes of this article, scheduled duration means the transmission time from the start of the programme's opening tune to the end of its closing tune, excluding inserted advertising, as foreseen in the scheduled programming.

8. Without prejudice to the ban of teleshopping advertising medical treatment, radio and television advertising of Medical institutes is regulated by specific provisions on the subject of health advertising according to law No.175 of 5 February 1992, as amended by law No.42 of

26 February 1999, by law No.362 of 14 October 1999, as well as article 7, subparagraph 8, of law No.112 of 3 May 2004, and successive amendments.

9. Television advertising and teleshopping for alcoholic beverages shall comply with the following criteria:

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

10. The transmission of data and information to the user as specified in article 26, subparagraph 3, may also include the broadcasting of advertising inserts.

11. The provisions of this article shall likewise apply to advertising and teleshopping transmitted by radio broadcasters. ».

## **Art. 12**

### **Overcrowding limits**

1. Article 38 of legislative decree of 31 July 2005, No.177, shall be replaced by the following: «Art. 38 (Overcrowding limits). –

1. The broadcasting of advertising messages by the general public service television concessionaire may not exceed 4 per cent of the weekly scheduled programming and 12 per cent of each hour; any excess, in any case no greater than 2 per cent during an hour, must be made up for in the hour previous to or following it.

2. The broadcasting of television advertising spots by an unencoded broadcaster, also analogical, nationally, unlike the general public service television concessionaire, may not exceed 15 per cent of the daily programme schedule and 18 per cent of a determined and distinct hour of the clock; any excess, in any case not greater than 2 per cent during an hour, must be made up for in the hour previous to or following it. An identical limit is fixed for subjects authorised, according to article 29, to broadcast contemporarily on at least 12 user catchment areas, with reference to contemporary programming times.

3. The maximum daily transmission time dedicated to advertising by national radio and television broadcasters, unlike general public service television concessionaire, shall be increased to 20 per cent if it includes forms of advertising other than advertising spots, such as telepromotions, without prejudice to the daily overcrowding and time limits for television broadcasters as referred to in subparagraph 2 for advertising spots. For the same subjects the broadcasting time dedicated to such forms of advertising other than advertising spots must not, however, exceed one hour and 12 minutes a day.

4. In any case the proportion of television advertising spots and teleshopping spots within a determined and distinct hour must not exceed 20 per cent.

5. The broadcasting of television advertising spots by the broadcaster for payment, even analogue, can not exceed 16 per cent for the year 2010, 14 per cent for the year 2011, and starting from the year 2012, 12 per cent of a determined and distinct time; any infringement, however not greater than 2 per cent during an hour, must be recuperated in the previous or following hour.

6. Provisions as referred to in subparagraphs 2 to 5 shall not apply to announcements by the broadcasters, also analogical, relating to their own programmes and/or collateral products deriving directly from these, sponsorship announcements and/or product placement.

7. The broadcasting of radio advertising messages by radio broadcasters other than by general public services television concessionaire can not exceed, for each hour of programming, 20 per cent for national radio, 25 per cent for local radio and 10 per cent for national or local radio by analogue community radio broadcasters. Any excess of advertising messages, in any case no greater than 2 per cent in an hour, must be made up for in the hour previous to or following it.

8. Without prejudice to the hourly overcrowding limits as referred to in subparagraph 7, for local radio broadcasters, the maximum daily transmission time dedicated to advertising, including forms of advertising other than advertisement spots, shall be 35 per cent.

9. The transmission of television advertising messages by broadcasters, also analogical operating locally, may not exceed 25 per cent of each hour and each day of scheduling. Any excess, in any case no greater than 2 per cent in an hour, must be made up for in the hour previous to or following it.

10. Local advertising is reserved for broadcasters, also analogical, and to radio broadcasters operating locally.

Subjects other than broadcasters, also analogical, and of radio broadcasters operating locally, including the general public service television concessionaire, shall be obliged to transmit advertising messages contemporarily, and with identical content, to all catchment areas served. Analogue and digital television and radio broadcasters, authorised according to article 29, may broadcast, in addition to national advertising, local advertising that is different for each area under authorisation, temporarily interrupting the interconnection.

11. There are no specific clauses in the advertising contracts that impose the television or radio, analogical or digital broadcasters to broadcast programmes that are different to or additional to advertising messages.

12. Advertising messages, as a part of initiatives promoted by institutions, organisations, category associations, publishers and book producers, aimed at sensitizing public opinion regarding books and reading, broadcast free or for favourable conditions by broadcasters, also analogical, by public and private radio broadcasters, and short advertising messages containing previews of upcoming European cinematographic work, shall not be considered for the purposes of calculating the maximum limits according to this article.

13. For the purpose of this article the clock hour is counted, starting, for each day of programming, from the hour and minute of the start of programmes of each broadcaster, also analogical; for “daily programming time” means the time in each 24 hour day, between the effective start and finish of the programmes of each broadcaster, also analogical. ».

## **Art. 13**

### **Sponsorship**

1. Article 39 of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Art. 39 (Provisions on radio and audiovisual media services and on sponsorship). -

1. Audiovisual media services or programmes that are sponsored shall meet the following requirements:

a) the content and, in the case of television broadcasting, the scheduling of a sponsored programme shall, in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the media service provider or the public concessionaire in terms of the broadcasting;

b) sponsored programmes shall be clearly identified as such and the name or logo of the sponsor indicated at the beginning and end of the programme;

c) they shall not encourage the purchase or rental of the goods or services of the sponsor or of a third party, in particular by making special promotional references to those products or services.

2. Audiovisual media services or programmes shall not be sponsored by natural persons or legal persons whose principal activity is the manufacture or sale of cigarettes or other tobacco products or the manufacture or sale of drinks of high alcohol content.

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

4. Sponsors using local broadcasters, also analogical, may express themselves through sound and visual signals, transmitted when programmes are interrupted and accompanied by the name and the brand of the sponsor and in all forms permitted by directive 89/552/EEC, and successive amendments.

5. Television and radio news programmes and political affairs programmes shall not be sponsored.

6. The showing of a sponsorship logo during children's programmes, documentaries and religious programmes is prohibited.

7. The provisions of this article shall also apply to radio broadcasters and the services of those providers.».

## **Art. 14**

### **Teleshopping**

1. To article 40, of legislative decree No.177 of 31 July 2005, after subparagraph 2, the following shall be inserted:

«2a. Teleshopping windows not falling within the limits as referred to in article 38, shall be clearly identified as such by optical and acoustic means and shall be of a minimum uninterrupted duration of 15 minutes. In the case of radio, the minimum duration is 3 minutes.

2b. To schedules dedicated exclusively to advertising, teleshopping, or self-promotion article 37, paragraphs 1 to 7, article 38, subparagraph 2 and article 44 shall not apply. »

Note on article 14: - The text of art.40, of legislative decree No.177 of 31 July 2005, as modified by this decree thus shall state:

«Art. 40 (Provisions on teleshopping). –

1. Teleshopping that offends human dignity, incites discrimination on grounds of race, sex or nationality, offends religious and political beliefs, or encourages behaviour prejudicial to health or safety or to the protection of the environment shall be prohibited. Teleshopping advertising cigarettes or other tobacco products shall be prohibited.

2. Teleshopping must not exhort minors to enter into contracts for the purchase or rental of products or services. Teleshopping must not cause moral or physical detriment to minors and must respect the following criteria for their protection:

a) shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity;

b) shall not directly exhort minors to persuade parents or others to purchase such products or services;

c) shall not exploit the special trust minors place in parents, teachers or others;

d) shall not unreasonably show minors in dangerous situations<sup>2a</sup>. Teleshopping windows that do not fall within the limits according to article 38, shall be clearly identified as such by optical and acoustic means and shall have a minimum uninterrupted duration of 15 minutes. In the case of radio, the minimum duration is 3 minutes.

2b. To schedules dedicated exclusively to advertising, teleshopping, or self-promotion article 37, subparagraphs 1 to 7, article 38, subparagraph 2 and article 44 shall not apply.»

## **Art. 15**

### **Product placement**

1. After article 40 of legislative decree No.177 of 31 July 2005, the following shall be inserted:  
«Art. 40-b (Product placement). –

1. Product placement is permitted in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes, excluding children's programmes. Placement may occur following payment or free of charge in exchange for certain goods and services, such as production props and prizes, with a view to their inclusion in a programme.

2. Programmes that contain product placement must 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) shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

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

3. If the programme in which the product has been placed has been produced or commissioned by the audiovisual media services provider or by its parent company, viewers shall be clearly informed of the existence of product placement with a warning at the start and end of the programme, and when a programme resumes after an advertising break.

4. Product placement shall be prohibited in the case of tobacco products or cigarettes, or of products of undertakings whose principal activity is the manufacture or sale of tobacco products. Likewise prohibited is the product placement of medicinal products or medical treatments available only on prescription.

5. The producers, broadcasters, also analogical, advertising agencies and other interested subjects, shall adopt the provisions of the principles highlighted in the previous paragraphs, using self-regulating procedures. Procedures for self-regulation shall be communicated to the Authority who shall verify their implementation. ». 2. The provisions of this article shall only be applied to programmes produced following the date of entry into force of this decree.

## **Art.16**

### **European audiovisual productions**

1. Article 44 of legislative decree No.177 of 31 July 2005, shall be replaced by the following: «Art. 44 (Promotion of the distribution and production of European works). –

1. The audiovisual media services providers, whether linear or non-linear, shall favour the development and broadcasting of European audiovisual productions.

2. Television broadcasters, also analogical, on any broadcasting platform, regardless of the broadcasting code, shall reserve for European works a majority proportion of their transmission time, excluding the time allotted to news, sports events, games, advertising and teletext services and teleshopping. Television broadcasters, also analogical, on any broadcasting platform, including pay per view TV, regardless of the broadcasting code, shall reserve at least 10 per cent of their transmission time for European works produced in the last five years, including cinematographic works originally produced in Italian regardless of where they are produced. The general public service television concessionaire, regardless of the broadcasting code, shall reserve at least 20 per cent of their transmission time for European works produced in the last five years, including cinematographic works originally produced in Italian regardless of where they are produced.

3. Television broadcasters, also analogical, on any broadcasting platform, including pay per view TV, regardless of the broadcasting code, shall reserve at least 10 per cent of its annual net profit revenues as indicated in the income statement of the last yearly financial statements available, to the production, financing, pre-purchase and purchase of European works made by independent producers. Said revenues are those that the obliged subject receives from advertising, teleshopping, sponsorship, contracts and conventions with public and private subjects, from public funds and by paid for televised offers for programmes (excluding sports programmes) for which the subject has editorial responsibility, including schedules broadcast or distributed through third-party broadcast or distribution platforms. The percentage of which, as referred to in the first sentence, must be reached by allocating a suitable quota to recent works, these being works broadcast within a period of 5 years from their production date including cinematographic works originally produced in Italian regardless of where they were produced. The general public service television concessionaire shall reserve for European works made by independent producers a share of

not less than 15 per cent of its total annual revenue deriving from television subscription fees as well as revenues from advertising connected to it, net of revenues deriving from public administration conventions and from sales of goods and services; within this quota, a reserve of not less than 20 per cent is established in the services contract to be allocated to the production, financing, pre-purchase or purchase of cinematographic works originally produced in Italian regardless of where they were produced, and a reserve of no less than 5 per cent to be allocated to animated works produced specifically for children's education. By decree of the Italian Minister for Economic Development and the Italian Minister of Cultural Heritage and Activities, of a non regulatory nature and to be adopted, having heard the competent parliamentary Committees, the criteria have been established for the qualification of cinematographic works originally produced in Italian regardless of where they were produced, as well as the percentage of quotas to be reserved to these within the limits of the percentages indicated in the second and third sentence of paragraph 2 and in the first sentence of this paragraph, taking into consideration the development of the market and the availability of said works.

4. On-demand audiovisual media services providers under Italian jurisdiction shall, gradually and taking into consideration market conditions, promote the production of European works and access to these, according to the methods defined by the Authority with its provisions to be adopted within three months.

5. According to its provisions the Authority shall establish the criteria for the time limits for using secondary rights purchased by the audiovisual media services providers, regardless of the broadcasting code, in proportion to and in any case related to the financial participation of the independent producers in the development phase and production of the work. Operators shall adopt self-regulatory procedures for governing the relationships between television broadcasters, also analogical, on any broadcast platform, and television producers, to be communicated to the Authority, who shall verify the agreement as established in this paragraph.

6. The provisions of this article shall not apply to television broadcasters, also analogical, operating locally.

7. The Authority shall, through co-regulatory procedures, replacing those in existence, see to the disposition of detailed regulations, in keeping with the principles provided for in this article, those of article 3i of directive 89/552/EEC of 3 October 1989 of the Council and successive amendments, according to which, with reference to on-demand audiovisual services, the promotion could, inter alia, relate to the financial contribution made by such services to the production and acquisition of rights of European works and to the share and/or prominence of European works in the catalogues of programmes offered by on-demand audiovisual media services, without prejudice to that covered in article 40a.

8. The obligations as referred to in this article shall be examined by the Authority on an annual basis. For the purposes of annually verifying the observance of the provisions as referred to in this article, carried out according to communications sent by the obliged subjects, the Authority shall establish, according to its regulations, the criteria for evaluating requests for concession of derogations for individual schedules or catalogues, regardless of the broadcasting code, by audiovisual media service providers that in each of the last two years have not made a profit or that have a market share, in terms of revenues from advertising, teleshopping, sponsorship, contracts and conventions with public or private subjects, from public funding and from paid-for television, of less than 1 per cent or that have thematic channels in this last hypothesis as well as in the case of general channels which exceed the aforementioned limit of 1 per cent, also taking into account the actual availability

of the works in question on the market. The regulations of the Authority shall likewise define the communication methods for fulfilling the obligations as referred to in this article regarding the principles of privacy provided for in the code referred to in legislative decree No.196 of 30 June 2003, and any sanctions in the case of infringement.» 2. The interministerial decree as referred to in subparagraph 3 of article 44 of legislative decree No.177 of 31 July 2005, as replaced by paragraph 1 of this article, shall be implemented within six months from the date of entry into force of this decree.