

**ABBOZZ TA' LIĠI**  
**imsejjah**

*ATT biex ikompli jemenda l-Att dwar ix-Xandir, Kap. 350.*

IL-PRESIDENT, bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità tal-istess, hareġ b'liġi dan li ġej:

1. (1) It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2009 li jemenda l-Att dwar ix-Xandir (Emenda Nru. 2) u għandu jinqara u jiftiehem haġa waħda mal-Att dwar ix-Xandir, hawn iżjed il quddiem imsejjah "l-Att prinċipali".

Titolu fil-qosor u bidu fis-sehh.

(2) Dan l-Att għandu jibda jsehh f'dik id-data li l-Ministru responsabbli mill-kultura jista' jstabbilixxi b'avviż fil-Gazzetta, u dati differenti jistgħu jiġu hekk stabbiliti għal dispożizzjonijiet differenti.

2. L-artikolu 2 tal-Att prinċipali għandu jiġi emendat kif ġej:

Jemenda l-artikolu 2 tal-Att prinċipali.

(a) minflok it-tifsira "xandira" għandha tidhol din li ġejja:

““xandira” tfisser it-trasmissjoni inizjali ta' programmi bir-radju jew televiżjoni jew ta' materjal awdjoviżiv maħsub biex ikun riċevut mill-pubbliku minn kull *network* ta' komunikazzjoni elettronika u kull servizz ta' komunikazzjoni elettronika kif definiti fl-artikolu 2 tal-Att biex jirregola Komunikazzjoni

Kap. 399.

Elettronika, iżda ma tinkludix ritrasmissjonijiet u servizzi ta' komunikazzjoni li jipprovdu sensiliet ta' tagħrif jew messaġġi oħra li jsiru b'talba individwali, bħalma huma telekupjar, banek ta' informazzjoni elettronika u servizzi oħra simili;"; u

(b) it-tifsiriet “reklamar b’ħabi” u “*sponsorship*” għandhom jithassru.

Sostituzzjoni  
tat-titolu tat-  
Taqsim III  
tal-Att prinċipali.

**3.** Minflok it-titolu tat-Taqsim III tal-Att prinċipali, għandu jidhol dan li ġej:

“Licenzi tax-Xandir bir-Radju u t-Televiżjoni”.

Ihassar  
l-artikolu 12A  
tal-Att prinċipali.

**4.** L-artikolu 12A tal-Att prinċipali għandu jithassar.

Izid  
Taqsimiet III B  
u III Ċ ġodda  
mal-Att prinċipali.

**5.** Minnufih wara l-artikolu 16F tal-Att prinċipali, għandhom jiżdiedu dawn il-Partijiet ġodda li ġejjin:

### “TAQSIMA III B

#### **Dispożizzjonijiet Applikabbli għal Provdituri ta’ Servizzi tar-Radju u għall-Provdituri Kollha li jipprovdu Servizz ta’ Mezzi Awdjoviżivi**

Tifsir.

16G. F’din it-Taqsim, sakemm ir-rabta tal-kliem ma titlobx mod ieħor:

“Direttiva” tfisser Direttiva 2007/65/KE tal-Parlament Ewropew u tal-Kunsill tal-11 ta’ Diċembru 2007 li temenda d-Direttiva tal-Kunsill 89/552/KEE fuq il-koordinament ta’ ċerti dispożizzjonijiet imposti bil-liġi, regolamenti jew azzjoni amministrattiva fl-Istati Membri li għandhom x’jaqsmu mal-ġestjoni ta’ attivitajiet ta’ xandir bit-televiżjoni kif pubblikata fil-Ġurnal Uffiċjali tal-Unjoni Ewropea fit-18 ta’ Diċembru 2007 (L 332/27);

“komunikazzjoni kummerċjali awdjoviżiva” tfisser immaġini bil-ħoss jew mingħajru li huma mfaqqsin biex jippromwovu, direttament jew indirettament, il-prodotti, is-servizzi jew l-immaġini ta’ entità fiżika jew ġuridika li tkun qiegħda twettaq xi attività ekonomika. Dawk l-immaġini jakkumpanjaw jew huma inkluzi fi programm bi ħlas jew li jkollhom remunerazzjoni simili jew għal skopijiet awto-

promozzjonali. Għamliet ta' komunikazzjoni kummerċjali awdjoviżiva jinkludu, fost l-oħrajn, ir-reklamar televiżiv, *sponsorship*, telebejgħ u tqegħid ta' prodotti;

“komunikazzjoni kummerċjali awdjoviżiva bil-moħbi” tfisser ir-rappreżentazzjoni fi kliem jew immaġini ta' prodotti, servizzi, l-isem, il-marka tal-fabbrika jew l-attivitajiet ta' produttur ta' prodotti jew ta' provditur ta' servizzi fi programmi meta tali rappreżentazzjoni hija maħsuba mill-provditur ta' servizzi tal-mezzi biex taqdi r-reklamar u tista' tiżgwi lill-pubbliku dwar in-natura tagħha. Rappreżentazzjoni bħal dik għandha, b'mod partikolari, titqies bħala waħda intiza jekk din issir bi hlas jew għal xi remunerazzjoni simili;

“programm” tfisser sett ta' immaġini jiċċaqilqu bil-hoss jew mingħajru li jikkostitwixxi element individwali fi skeda jew katalogu stabbiliti minn provditur ta' servizzi tal-mezzi u li l-forma u l-kontenut tiegħu jistgħu jitqabblu mal-forma u l-kontenut tax-xandir televiżiv. Eżempji ta' programmi jinkludu *films* twal, avvenimenti sportivi, kummiedji bażati fuq sitwazzjonijiet partikolari, dokumentarji, programmi għat-tfal u drammi oriġinali;

“provditur ta' servizzi tal-mezzi” tfisser il-persuna fiżika jew ġuridika li għandha responsabbiltà editorjali għall-għażla tal-kontenut awdjoviżiv tas-servizz ta' mezzi awdjoviżivi u li tiddetermina l-mod kif dan hu organizzat;

“responsabbiltà editorjali” tfisser l-eżercizzju ta' kontroll effettiv kemm fuq is-selezzjoni tal-programmi kemm fuq l-organizzazzjoni tagħhom jew fi skeda kronoloġika, fil-każ ta' xandiriet bit-televiżjoni, jew f'katalogu, fil-każ ta' servizzi tal-mezzi awdjoviżivi li jsiru b'talba. Ir-responsabbiltà editorjali ma timplikax neċessarjament kull responsabbiltà legali taħt il-liġi nazzjonali għall-kontenut jew għas-servizzi pprovduti;

“servizz tal-mezzi awdjoviżivi” tfisser:

(a) servizz kif imfisser fl-artikoli 49 u 50 tat-Trattat li jaqa' taħt ir-responsabbiltà editorjali ta' provditur ta' servizzi tal-mezzi u li jkollu bħala fini prinċipali l-provdiment ta' programmi biex tingħata informazzjoni, divertiment jew edukazzjoni lill-pubbliku

Kap. 399.

ġenerali permezz ta' *networks* tal-komunikazzjoni elettronici fil-kuntest tat-tifsira tal-artikolu 2 tal-Att biex jirregola Komunikazzjoni Elettronika. Dak is-servizz ta' mezzi awdjoviżivi hu jew xandira televiżiva jew servizzi ta' mezzi awdjoviżivi li jsiru b'talba; jew

(b) komunikazzjoni kummerċjali awdjoviżiva; jew

(ċ) kemm (a) u kemm (b) hawn qabel;

“servizz li jsir b'talba tal-mezzi awdjoviżivi” tfisser servizz tal-mezzi awdjoviżivi mhux lineari provdut minn provditur ta' servizzi tal-mezzi għall-wiri ta' programmi magħżulin fil-mument magħżul mill-utent u skont it-talba individwali tiegħu abbażi ta' katalogu ta' programmi magħżul mill-provditur ta' servizzi tal-mezzi;

“*sponsorship*” tfisser kull kontribut magħmul minn impriża pubblika jew privata jew minn persuna fiżika li mhix involuta fil-provvista ta' servizzi tal-mezzi awdjoviżivi jew fil-produzzjoni ta' xogħlijiet awdjoviżivi, għall-finanzjament ta' servizzi tal-mezzi awdjoviżivi jew programmi bil-ħsieb li tippromwovi isimha, il-marka tal-fabbrika tagħha, l-immagini tagħha, l-attivitajiet tagħha jew il-prodotti tagħha;

“Stat Membru” tfisser Stat Membru tal-Unjoni Ewropea;

“tqegħid ta' prodott” tfisser kull forma ta' komunikazzjoni kummerċjali awdjoviżiva li tikkonsisti fl-inklużjoni ta' jew referenza għal prodott, servizz jew il-marka tal-fabbrika tagħhom biex dan jidher fi programm, bi ħlas jew għal remunerazzjoni simili;

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“it-Trattat” għandu jkollha l-istess tifsira mogħtija lilha bl-artikolu 2 tal-Att dwar l-Unjoni Ewropea;

“Unjoni Ewropea” għandu jkollha l-istess tifsira mogħtija lilha bl-artikolu 2 tal-Att dwar l-Unjoni Ewropea;

“xandar” tfisser provditur ta' servizz tal-mezzi ta' xandiriet bir-radju jew bit-televiżjoni, jew bit-tnejn;

“xandir”, safejn għandu x'jaqsam xandir televiżiv, jiġifieri servizz ta' mezzi awdjoviżivi lineari, tfisser servizzi

tal-mezzi awdjoviżivi provduti minn provditur ta' servizzi tal-mezzi għall-wiri simultanju ta' programmi abbażi ta' skeda ta' programmi.

16H. (1) L-Awtorità għandha tiżgura li s-servizzi tal-mezzi awdjoviżivi kollha trasmessi minn provdituri li jaqgħu taħt il-ġurisdizzjoni ta' Malta jkunu konformi mad-dispożizzjonijiet ta' dan l-Att u ma' kull leġislazzjoni sussidjarja li ssir tahtu li tapplika għal servizzi ta' mezzi awdjoviżivi maħsubin għall-pubbliku f'Malta.

Obbligi tal-Awtorità dwar servizz ta' mezzi awdjoviżivi.

(2) Għall-finijiet ta' dan l-Att, il-provdituri ta' servizzi tal-mezzi taħt il-ġurisdizzjoni ta' Malta għandhom ikunu dawk:

(a) li huma stabbiliti f'Malta skont is-subartikolu (3);  
jew

(b) li japplika għalihom is-subartikolu (4).

(3) Għall-finijiet ta' dan l-Att, provditur ta' servizzi ta' mezzi għandu jitqies li jkun stabbilit f'Malta:

(a) jekk il-provditur ta' servizzi ta' mezzi jkollu l-uffiċċju prinċipali tiegħu f'Malta u d-deċiżjonijiet editorjali dwar servizzi tal-mezzi awdjoviżivi jittieħdu f'Malta;

(b) jekk provditur ta' servizzi ta' mezzi jkollu l-uffiċċju prinċipali tiegħu f'Malta iżda d-deċiżjonijiet editorjali dwar is-servizz tal-mezzi awdjoviżivi jittieħdu fi Stat Membru ieħor u dan għandu jitqies li jkun stabbilit fl-Istat Membru fejn topera parti sinifikanti mill-forza tax-xogħol involuta fil-ġestjoni tal-attività tas-servizz tal-mezzi awdjoviżivi. Jekk parti sinifikanti mill-forza tax-xogħol involuta fil-ġestjoni tal-attività tas-servizz tal-mezzi awdjoviżivi tkun topera f'kull wieħed minn dawk l-Istati Membri, il-provditur ta' servizzi tal-mezzi għandu jitqies bħala stabbilit fl-Istat Membru fejn dan ikollu l-uffiċċju prinċipali. Jekk parti sinifikanti mill-forza tax-xogħol involuta fil-ġestjoni tal-attività tas-servizz tal-mezzi awdjoviżivi ma tkunx topera f'ebda wieħed minn dawk l-Istati Membri, il-provditur ta' servizzi ta' mezzi għandu jitqies li jkun stabbilit fl-Istat Membru fejn tkun bdiet l-ewwel darba l-attività tiegħu skont il-liġi ta' dak l-Istat Membru, sakemm huwa jżomm rabta stabbli u effettiva mal-ekonomija ta' dak l-Istat Membru;

(c) jekk provditur ta' servizzi ta' mezzi jkollu l-uffiċċju tiegħu fi Stat Membru iżda d-deċiżjonijiet dwar is-servizz tal-mezzi awdjovizivi jittieħdu f'pajjiż terz, jew bil-maqlub, huwa għandu jitqies li jkun stabbilit fl-Istat Membru involut, b'dan iżda li parti sinifikanti mill-forza tax-xogħol involuta fil-ġestjoni tal-attività tas-servizz tal-mezzi awdjovizivi tkun topera f'dak l-Istat Membru.

(4) Provdituri ta' servizzi ta' mezzi li d-dispożizzjonijiet tas-subartikolu (3) mhumiex applikabbli għalihom għandhom jitqiesu li jaqgħu taħt il-ġurisdizzjoni ta' Stat Membru fil-każijiet li ġejjin:

(a) jekk jużaw *up-link* satellitari sitwata f'dak l-Istat Membru;

(b) għalkemm ma jużawx *up-link* satellitari sitwata f'dak l-Istat Membru, jekk jużaw il-kapaċità satellitari li tappartjeni lil dak l-Istat Membru.

(5) Jekk il-kwistjoni dwar liema Stat Membru għandu ġurisdizzjoni ma tkunx tista' tigi determinata skont is-subartikoli (3) u (4), l-Istat Membru kompetenti għandu jkun dak fejn il-provditur ta' servizzi ta' mezzi jkun stabbilit fil-kuntest tat-tifsira tal-artikoli 43 sa 48 tat-Trattat.

(6) Din id-dispożizzjoni m'għandhiex tapplika għal servizzi ta' mezzi awdjovizivi maħsubin esklużivament għar-riċezzjoni f'pajjiżi terzi u li ma jinqabdux b'taġħmir *standard* tal-konsumatur direttament jew indirettament mill-pubbliku fi Stat Membru wieħed jew aktar.

Libertà ta' riċezzjoni u ritrasmissjoni.

16I. (1) Minbarra kif provdut f'dan l-Att u f'kull liġi oħra:

(a) il-libertà ta' riċezzjoni hija garantita; u

(b) il-libertà ta' ritrasmissjoni f'Malta ta' servizzi tal-mezzi awdjovizivi minn Stati Membri oħrajn għal raġunijiet li jaqgħu fl-ambitu tal-oqsma koordinati mid-Direttiva, hija garantita.

(2) Il-Ministru jista' jagħmel regolamenti biex jidderoga mid-dispożizzjonijiet tas-subartikolu (1) ta' dan l-artikolu li huma konsistenti mad-dispożizzjonijiet tad-Direttiva sakemm jitwettqu l-kondizzjonijiet imsemmijin fl-artikolu 2a tad-Direttiva.

16J. (1) Il-provditur ta' servizzi tal-mezzi awdjoviżivi għandhom mill-inqas jagħmlu aċċessibbli l-informazzjoni li għejja faċilment, direttament u permanentament lir-riċevituri ta' servizz:

L-informazzjoni għandha tingħata mill-provdituri ta' servizzi ta' mezzi awdjoviżivi.

(a) isem il-provdituri ta' servizzi tal-mezzi;

(b) l-indirizz ġeografiku li fih huwa stabbilit il-provditur ta' servizzi tal-mezzi;

(ċ) id-dettalji ta' provditur ta' servizzi tal-mezzi, inklużi l-indirizz tal-posta elettronika jew il-*website* tiegħu, li jippermettulu li jiġi kuntattjat malajr b'mod dirett u effettiv;

(d) meta jkun japplika, il-korpi regolatorji jew ta' sorveljanza kompetenti.

(2) Servizzi ta' mezzi awdjoviżivi provduti minn provdituri ta' servizzi tal-mezzi m'għandu jkun fihom ebda incitament għal mibegħda bażata fuq razza, sess, reliġjon jew nazzjonalità.

(3) Il-provdituri ta' servizzi tal-mezzi għandhom jiżguraw li s-servizzi tagħhom isiru gradwalment aċċessibbli għal persuni b'diżabilità viżiva jew fis-smiġħ.

(4) Il-provdituri ta' servizzi tal-mezzi m'għandhom jittrasmettu ebda xogħlijiet ċinematografiċi barra mill-perijodi miftehmin mad-detenturi tad-drittijiet.

16K. Komunikazzjonijiet kummerċjali awdjoviżivi provduti minn provdituri ta' servizzi tal-mezzi għandhom ikunu jikkonformaw mar-rekwiziti li għejjin:

Dispożizzjonijiet li japplikaw għal komunikazzjonijiet kummerċjali awdjoviżivi.

(a) il-komunikazzjonijiet kummerċjali awdjoviżivi għandhom jingħarfu mill-ewwel bħala tali. Komunikazzjoni kummerċjali awdjoviżiva bil-moħbi għandha tkun projbita;

(b) il-komunikazzjonijiet kummerċjali awdjoviżivi m'għandhom jużaw ebda teknika subliminali;

(ċ) il-komunikazzjonijiet kummerċjali awdjoviżivi m'għandhomx:

(i) jippreġudikaw ir-rispett għad-dinjità tal-bniedem;

(ii) jinkludu jew jippromwovu xi diskriminazzjoni abbażi ta' sess, razza jew oriġini etnika, nazzjonalità, reliġjon jew twemmin, diżabbiltà, età jew orjentament sesswali;

(iii) jinkoraġġixxu mgħiba li tkun ta' ħsara għas-saħħa jew għas-sigurtà;

(iv) jinkoraġġixxu mgħiba li tkun ta' preġudizzju serju għall-ħarsien tal-ambjent;

(d) il-forom kollha ta' komunikazzjonijiet kummerċjali awdjovizivi għal sigaretti u prodotti oħra tat-tabakk għandhom ikunu projbiti;

(e) il-komunikazzjonijiet kummerċjali awdjovizivi għal xarbiet alkoħoliċi m'għandhomx ikunu speċifikament diretti għal minorenni u m'għandhomx jinkoraġġixxu konsum mhux moderat ta' dawk ix-xarbiet;

(f) il-komunikazzjonijiet kummerċjali awdjovizivi għal prodotti mediċinali u għal kura medika disponibbli biss b'ricetta fl-Istat Membru li taħtu jaqa' l-provditur ta' servizzi tal-mezzi għandhom ikunu projbiti;

(g) il-komunikazzjonijiet kummerċjali awdjovizivi m'għandhomx jikkawunaw detriment fiżiku jew morali lil minorenni. Għalhekk m'għandhomx iħajru direttament lil minorenni biex jixtru jew jikru xi prodott jew servizz billi jisfruttaw in-nuqqas ta' esperjenza jew il-kredulità tagħhom, jinkoraġġuhom direttament biex jipperswadu lill-ġenituri tagħhom jew lil oħrajn biex jixtru l-prodotti jew servizzi reklamati, jisfruttaw il-fiduċja speċjali li minorenni jqiegħdu fil-ġenituri, għalliema jew persuni oħra, jew b'mod mhux raġonevoli juru minorenni f'sitwazzjonijiet perikolużi.

16L. (1) Is-servizzi jew programmi ta' mezzi awdjovizivi li jkunu sponsorjati għandhom jissodisfaw ir-rekwiżiti li ġejjin:

(a) il-kontenut tagħhom u, fil-każ ta' xandir televiżiv, l-iskedar tagħhom m'għandu f'ebda ċirkostanza jkun influwenzat b'mod li jaffettwa r-responsabbiltà u l-indipendenza editorjali tal-provdituri ta' servizzi tal-mezzi;

Dispożizzjonijiet applikabbli għal servizzi jew programmi ta' mezzi awdjovizivi.

(b) dawn m'għandhomx jinkoraġġixxu x-xiri jew il-kiri ta' prodotti jew servizzi, b'mod partikolari billi jagħmlu referenzi promozzjonali speċjali għal dawk il-prodotti jew servizzi;

(c) it-telespettaturi għandhom ikunu mgħarrfa b'mod ċar bl-eżistenza ta' ftehim ta' *sponsorship*. Programmi sponsorjati għandhom ikunu identifikati b'mod ċar bħala tali mill-isem, *logo* u; jew kull simbolu ieħor tal-isponsor bħal referenza għal xi prodotti jew servizzi tiegħu jew sinjal distintiv tiegħu b'mod xieraq għal programmi fil-bidu, matul u; jew fi tmiem il-programmi.

(2) Servizzi jew programmi ta' mezzi awdjovizivi m'għandhomx ikunu sponsorjati minn imprizi li l-attività prinċipali tagħhom tkun il-manifattura jew il-bejgħ ta' sigaretti u prodotti tat-tabakk oħra.

(3) *Sponsorship* ta' servizzi jew programmi ta' mezzi awdjovizivi minn imprizi li l-attivitajiet tagħhom jinkludu l-manifattura jew il-bejgħ ta' prodotti mediċinali u kura medika tista' tippromwovi l-isem jew l-immagini tal-intrapriża, iżda m'għandhiex tippromwovi prodotti mediċinali jew kuri mediċi speċifiċi disponibbli biss b'ricetta fl-Istat Membru li l-provdituri ta' servizzi tal-mezzi jaqa' taħtu.

(4) Programmi ta' aħbarijiet u affarijiet kurrenti m'għandhomx ikunu sponsorjati.

(5) Il-wiri ta' *logo* ta' *sponsorship* waqt programmi għat-tfal, dokumentarji u programmi reliġjużi għandu jkun projbit.

16M. (1) Bla ħsara għad-dispożizzjonijiet ta' dan l-artikolu, tqegħid ta' prodott għandu jkun projbit. Regolamentazzjoni ta' tqegħid ta' prodott.

(2) B'deroga mis-subartikolu (1), it-tqegħid ta' prodott għandu jkun permess biss fiċ-ċirkostanzi li ġejjin:

(a) f'xogħlijiet ċinematografiċi, f'films u f'sensiliet magħmulin għal servizzi tal-mezzi awdjovizivi, fi programmi sportivi u fi programmi ta' divertiment leġġer; jew

(b) fejn ma jkun hemm l-ebda ħlas iżda biss il-forniment ta' ċerti prodotti jew servizzi mingħajr ħlas, bħall-

armar ta' produzzjoni u l-premijiet, bil-ħsieb tal-inklużjoni tagħhom fi programm:

Iżda d-deroga li hemm provdut dwarha f'dan is-subartikolu ma għandiex tkun tapplika għal programmi għatfal.

(3) Programmi li jkun fihom tqegħid ta' prodott għandhom jissodisfaw tal-inqas ir-rekwiziti kollha li ġejjin:

(a) il-kontenut tagħhom u, fil-każ ta' xandir televiżiv, l-iskedar tagħhom m'għandu f'ebda ċirkostanza jiġi influwenzat b'tali mod li jaffettwa r-responsabbiltà u l-indipendenza editorjali tal-provditur ta' servizzi tal-mezzi;

(b) huma m'għandhomx jinkoraġġixxu direttament ix-xiri jew il-kiri ta' prodotti jew servizzi, b'mod partikolari billi jagħmlu referenzi promozzjonali speċjali għal dawk il-prodotti jew is-servizzi;

(ċ) m'għandhomx jagħtu prominenza mhux dovuta lill-prodott in kwistjoni;

(d) it-tele spettaturi għandhom ikunu mgħarrfa b'mod ċar bl-eżistenza ta' tqegħid ta' prodott. Programmi li fihom tqegħid ta' prodott, għandhom ikunu identifikati b'mod xieraq fil-bidu u fit-tmiem tal-programm, u meta programm jerga' jibda wara waqfa pubbliċitarja, sabiex tiġi evitata kull konfużjoni min-naħa tat-tele spettatur:

Iżda bħala eċċezzjoni l-Awtorità tista' tagħzel li turrinunzja għar-rekwiziti mnizzlin f'dan il-paragrafu sakemm il-programm in kwistjoni la jkun ġie prodott u lanqas kummissjonat mill-provditur tas-servizz tal-mezzi nnifsu jew minn kumpanija affiljata mal-provditur tas-servizz tal-mezzi.

(4) F'kull każ il-programmi m'għandux ikun fihom it-tqegħid ta' prodott li jkunu:

(a) prodotti tat-tabakk jew sigaretti jew tqegħid ta' prodott minn impriži li l-attività prinċipali tagħhom tkun il-manifattura jew il-bejgħ ta' sigaretti u ta' prodotti tat-tabakk oħra; jew,

(b) prodotti medicinali speċifiċi jew trattamenti mediċi

disponibbli biss b'riċetta tat-tabib fl-Istat Membru li fil-gurisdizzjoni tiegħu jkun jinsab il-provditur ta' servizzi tal-mezzi.

(5) Id-dispożizzjonijiet tas-subartikoli (1), (2) u (3) għandhom japplikaw biss għal programmi prodotti wara d-19 ta' Dicembru 2009.

### TAQSIMA IIIĊ

#### **Dispożizzjonijiet Applikabbli Biss għal Servizzi tal-Mezzi Awdjovizivi li jsiru b'Talba**

16N. (1) Servizzi tal-mezzi awdjovizivi li jsiru b'talba provduti minn provdutori ta' servizzi tal-mezzi li jistgħu jfixklu serjament l-iżvilupp fiżiku, mentali jew morali tal-minorenni għandhom ikunu disponibbli biss b'tali mod li jkun jiżgura li l-minorenni normalment ma jisimgħux jew jaraw tali servizzi tal-mezzi awdjovizivi li jsiru b'talba.

Dispożizzjonijiet applikabbli biss għal servizzi tal-mezzi awdjovizivi li jsiru b'talba.

(2) Servizzi tal-mezzi awdjovizivi li jsiru b'talba provduti minn provdutori ta' servizzi tal-mezzi għandhom jippromwovu, meta jkun prattiku permezz ta' mezzi xierqa, il-produzzjoni ta' xogħlijiet Ewropej u l-aċċess għalihom. Din il-promozzjoni tista' tirrelata, fost l-oħrajn, mal-kontribut finanzjarju magħmul minn dawn is-servizzi għall-produzzjoni u l-akkwist ta' drittijiet ta' xogħlijiet Ewropej jew għas-sehem u; jew il-prominenza ta' xogħlijiet Ewropej fil-katalogu ta' programmi offruti mis-servizz tal-mezzi awdjovizivi li jsiru b'talba.

16O. (1) Bla ħsara għas-subartikolu (4), kull provditur li jkun bi ħsiebu jipprovdi servizz ta' mezzi li jsiru b'talba għandu, qabel jagħmel dan, jinnotifika lill-Awtorità bl-intenzjoni li jkollu li jipprovdi dan is-servizz.

Notifika ta' servizzi tal-mezzi awdjovizivi li jsiru b'talba.

(2) Notifika taħt is-subartikolu (1) għandha ssir f'dik il-forma li l-Awtorità tista' minn żmien għal żmien tiddetermina u għandu jkun fiha l-informazzjoni meħtieġa biex l-Awtorità tkun tista' żżomm lista ta' provdutori ta' servizzi ta' mezzi awdjovizivi li jsiru b'talba.

(3) Meta l-Awtorità tirċievi notifika skont is-subartikolu (1), il-persuna involuta għandha titqies li tkun awtorizzata biex tippovdi servizz ta' mezzi awdjovizivi li jsiru

b'talba, bla ħsara għal dawk il-kondizzjonijiet li jistgħu jiġu imposti skont din it-Taqsima ta' dan l-Att.

(4) L-Awtorità tista' tiddetermina li kull persuna li tippovdi servizz tal-mezzi awdjovizivi li jsiru b'talba ta' klassi jew deskrizzjoni partikolari speċifikata f'din id-deċizzjoni m'għandhiex tkun soġġetta għar-reqwiziti tas-subartikolu (1).

(5) L-Awtorità tista', b'ordni fil-Gazzetta, temenda kondizzjonijiet imsemmija fis-subartikolu (3). Kull emenda bħal dik tista' ssir biss f'każijiet oġġettivament ġustifikati u b'manjera proporzjonata. L-Awtorità, qabel tagħmel xi emenda bħal dik għall-kondizzjonijiet imsemmija, għandha tagħti avviż tal-intenzjoni tagħha b'dak il-mod li hija tqis xieraq, billi tistieden partijiet interessati biex jipprezentaw l-ilmenti tagħhom fuq l-emendi proposti fi żmien mhux inqas minn tletin jum hekk kif jista' jiġi speċifikat fl-avviż. L-Awtorità tista', f'ċirkustanzi li hija tqis eċċezzjonali, tqassar dak il-perijodu.

Rekwiziti biex  
jinkisbu  
awtorizzazzjonijiet  
oħra, eċċ., meħtieġa  
mill-liġi.

16P. Il-konformità ma' xi awtorizzazzjoni mogħtija kif hemm fl-artikolu 16O li tawtorizza persuna tippovdi servizz ta' mezzi awdjovizivi li jsir b'talba m'għandhiex teħles lil dik il-persuna minn kull rekwizit tal-liġi biex tapplika għal xi awtorizzazzjoni, liċenzja jew permess ieħor, ikun kif ikun deskritt, jew minn xi obbligu li joħroġ minn din il-liġi jew minn xi liġi oħra.”.

Jemenda  
l-artikolu 19  
tal-Att prinċipali.

**6.** Is-subartikolu (7) tal-artikolu 19 tal-Att prinċipali għandu jithassar.

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## Għanijiet u Raġunijiet

L-għan ta' dan l-Abbozz hu biex jemenda l-Att dwar ix-Xandir, biex jittrasponi fil-liġi Maltija d-dispożizzjonijiet tad-Direttiva 2007/65/KE tal-Parlament Ewropew u tal-Kunsill tal-11 ta' Diċembru 2007 li temenda d-Direttiva tal-Kunsill 89/552/KEE fuq il-koordinament ta' ċerti dispożizzjonijiet imniżżlin b'liġi, regolamenti jew azzjoni amministrattiva fi Stati Membri dwar il-ġestjoni ta' attivitajiet ta' xandir televiżiv.

**A BILL  
entitled**

*AN ACT to further amend the Broadcasting Act, Cap. 350.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

**1.** (1) The short title of this Act is the Broadcasting (Amendment) (No. 2) Act, 2009 and it shall be read and construed as one with the Broadcasting Act, hereinafter referred to as “the principal Act”.

Short title and commencement.

(2) This Act shall come into force on such a date as the Minister responsible for culture may by notice in the Gazette establish, and different dates may be so established for different provisions.

Amends article 2 of the principal Act.

**2.** Article 2 of the principal Act shall be amended as follows:

(a) for the definition “broadcast” there shall be substituted the following:

““broadcast” means the initial transmission of radio or television programmes or of any audiovisual material intended for reception by the public on any electronic communications network and any electronic communications service as defined in article 2 of the Electronic Communications (Regulation) Act, but does

Cap. 399.

not include retransmissions and communication services providing items of information or other messages on individual demand such as telecopying, electronic data banks and other similar services;”; and

(b) the definitions “sponsorship” and “surreptitious advertising” shall be deleted.

Substitutes  
the title of  
Part III of the  
principal Act.

**3.** For the title to Part III of the Broadcasting Act, there shall be substituted the following:

“Radio and Television Broadcasting Licences”.

Deletes  
article 12A  
of the principal Act.

**4.** Article 12A of the principal Act shall be deleted.

Adds  
new Parts III B  
and III C to  
the principal Act.

**5.** Immediately after article 16F of the principal Act, there shall be added the following new Parts:

### **“PART III B**

#### **Provisions Applicable to Radio and to All Audiovisual Media Service Providers**

Interpretation.

16G. In this Part, unless the context otherwise requires:

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

“audiovisual media service” means:

(a) a service as defined by articles 49 and 50 of the Treaty which is under the editorial responsibility of a media service provider and the principal purpose of which is the provision of programmes in order to inform, entertain or educate to the general public by electronic communications networks within the meaning of article 2 of the Electronic Communications (Regulation) Act.

Such an audiovisual media service is either a television broadcast or an on-demand audiovisual media service;  
or

(b) an audiovisual commercial communication;  
or

(c) both (a) and (b) above;

“broadcaster” means a media service provider of either radio or television broadcasts, or of both;

“broadcasting”, in so far as television broadcasting is concerned, namely a linear audiovisual media service, means an audiovisual media service provided by a media service provider for simultaneous viewing of programmes on the basis of a programme schedule;

“Directive” means Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities published in the Official Journal of the European Union on 18 December 2007 (L 332/27);

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

“European Union” shall have the same meaning assigned to it by article 2 of the European Union Act;

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

“Member State” means a Member State of the European Union;

“on-demand audiovisual media service” means a nonlinear 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;

“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;

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

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

“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;

“the Treaty” shall have the same meaning assigned to it by article 2 of the European Union Act.

Act and of any subsidiary legislation made thereunder applicable to audiovisual media services intended for the public in Malta.

(2) For the purposes of this Act, the media service providers under the jurisdiction of Malta shall be those providers:

(a) who are established in Malta in accordance with sub-article (3); or

(b) to whom sub-article (4) applies.

(3) For the purposes of this Act, a media service provider shall be deemed to be established in Malta:

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

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

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

(4) Media service providers to whom the provisions of sub-article (3) are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

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

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

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

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

Freedom of reception and retransmission.

16I. (1) Except as provided in this Act and in any other law:

(a) freedom of reception is guaranteed; and

(b) freedom of retransmission in Malta of audiovisual media services from other Member States for reasons which fall within the fields coordinated by the Directive is guaranteed.

(2) The Minister may make regulations to derogate from the provisions of sub-article (1) of this article which are consistent with the provisions of the Directive provided that the conditions mentioned in article 2a of the Directive are fulfilled.

Information to be provided by media service providers.

16J. (1) Audiovisual media service providers shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

(a) the name of the media service provider;

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

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

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

(2) Audiovisual media services provided by media service providers shall not contain any incitement to hatred based on race, sex, religion or nationality.

(3) Media service providers shall ensure that their services are gradually made accessible to people with a visual or hearing disability.

(4) Media service providers shall not transmit cinematographic works outside periods agreed with the rights holders.

16K. Audiovisual commercial communications provided by media service providers shall comply with the following requirements:

Provisions applicable to audiovisual commercial communications.

(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;

(b) audiovisual commercial communications shall not use subliminal techniques;

(c) audiovisual commercial communications shall not:

(i) prejudice respect for human dignity;

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

(iii) encourage behaviour prejudicial to health or safety;

(iv) encourage behaviour grossly prejudicial to the protection of the environment;

(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;

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

(f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;

(g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

Provisions applicable to audiovisual media services or programmes.

16L. (1) Audiovisual media services or programmes that are sponsored shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes shall be clearly identified as such by the name, logo and, or any other symbol of the sponsor such as a reference to any of its products or services or a distinctive sign thereof in an appropriate way for programmes at the beginning, during and, or the end of the programmes.

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

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

(4) News and current affairs programmes shall not be sponsored.

(5) The showing of a sponsorship logo during children's programmes, documentaries and religious programmes shall be prohibited.

16M. (1) Subject to the provisions of this article, product placement shall be prohibited.

Regulation of  
product placement.

(2) By way of derogation from sub-article (1), product placement shall be admissible only in the following instances:

(a) in cinematographic works, films and series made for audiovisual media services, sports programmes and light entertainment programmes; and

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

Provided that the derogation provided for in this sub-article shall not apply to children's programmes.

(3) Programmes that contain product placement shall meet at least all of the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

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

(d) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer:

Provided that by way of exception, the Authority may choose to waive the requirements set out in this paragraph provided that the programme in question has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

(4) In any event programmes shall not contain product placement of:

(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products; or

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

(5) The provisions of sub-articles (1), (2) and (3) shall apply only to programmes produced after the 19th December 2009.

### **PART IIIC**

#### **Provisions Applicable Only to On-Demand Audiovisual Media Services**

Provisions applicable only to on-demand audiovisual media services.

16N. (1) On-demand audiovisual media services provided by media service providers which might seriously impair the physical, mental or moral development of minors shall only be made available in such a way that ensures that minors will not normally hear or see such on-demand audiovisual media services.

(2) On-demand audiovisual media services provided by media service providers shall promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, *inter alia*, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and, or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.

16O. (1) Subject to sub-article (4), any person who intends to provide an on-demand audiovisual media service shall, before doing so, notify the Authority of his intention to provide such a service.

Notification of on-demand audiovisual media services.

(2) A notification under sub-article (1) shall be in such form as the Authority may from time to time determine and shall contain the information that is required to enable the Authority to maintain a list of providers of on-demand audiovisual media services.

(3) Upon receipt by the Authority of a notification in accordance with sub-article (1), the person concerned shall be deemed to be authorised to provide an on-demand audiovisual media service, subject to such conditions as may be imposed in accordance with this Part of this Act.

(4) The Authority may determine that any person providing an on-demand audiovisual media service of a particular class or description specified in such a decision shall not be subject to the requirements of sub-article (1).

(5) The Authority may, by order in the Gazette, amend the conditions mentioned in sub-article (3). Any such amendments may only be made in objectively justified cases and in a proportionate manner. The Authority, before making any such amendment to the said conditions, shall give notice in such manner as it considers appropriate of its intention, inviting interested parties to make representations on the proposed amendments within such period of not less than thirty days as may be specified in the notice. The Authority may, in circumstances which it considers to be exceptional, shorten such period.

16P. Compliance with any authorisation granted in terms of article 16O enabling a person to provide an on-demand audiovisual media service shall not relieve such a person from any requirement

Requirement to obtain other authorisations, etc., required at law.

at law to apply for any other authorisation, licence or permit however so described, or from any obligation arising from this or any other law.”.

Amends  
article 19  
of the principal Act.

**6.** Sub-article (7) of article 19 of the principal Act shall be deleted.

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## OBJECTS AND REASONS

The object of this Bill is to amend the Broadcasting Act to transpose into Maltese law the provisions of Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.