

Deres ref./dato:  
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22. august 2016**Vedr. EU-kommisjonens forslag til endringer i direktivet om audiovisuelle medietjenester (AMT-direktivet)**

Vi viser til Kulturdepartementets høringsbrev og -notat av 29. juni 2016 vedrørende EU-kommisjonens forslag til endringer i direktivet om audiovisuelle medietjenester (AMT-direktivet) med høringsfrist den 18. august 2016.

NRK er oppført på høringslisten, men som følge av feil e-postadresse ved avsendelse fra departementet, mottok vi ikke høringsbrevet med notat. Først ved kontakt med en annen høringsinstans 9. august d.å. ble vi tilfeldig kjent med hørings-saken. For ordens skyld ber departementet sikre at fremtidige hørings-saker sendes til [postmottak@nrk.no](mailto:postmottak@nrk.no).

Da NRK forutsetter at departementets svar til Europakommisjonen må utformes på engelsk, har NRK tatt seg friheten til å også utforme sitt svar på engelsk for å underlette departementets videre arbeid.

NRK har følgende kommentarer og innspill til høringen:

Prominence

## Fortale 38

| Europakommisjonens tekstforslag   | NRKs forslag til endringer  |
|---|---|
| (38) This Directive is without prejudice to the ability of Member States to impose obligations to ensure <b>discoverability</b> and <b>accessibility</b> of content of general interest under defined general interest objectives | (38) This Directive is without prejudice to the ability of Member States to impose obligations to ensure <b>appropriate prominence</b> of content of general interest and <b>easy access to such content for consumers,</b> |

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| <p>such as media pluralism, freedom of speech and cultural diversity. Such obligations should <b>only be imposed where they are necessary</b> to meet general interest objectives clearly defined by Member States in conformity with Union law. In this respect, Member States should in particular examine the need for regulatory intervention against the results of the outcome of market forces. <b>Where Member States decide to impose discoverability rules, they should only impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.</b></p> | <p><b>including persons with a visual or hearing disability</b>, under defined general interest objectives. Such obligations should <b>be proportionate</b> and meet general interest objectives <b>such as media pluralism, freedom of speech and cultural diversity</b> clearly defined by Member States in conformity with Union law.</p> |
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Begrunnelse:

The terms discoverability and accessibility are imprecise and should be replaced by appropriate prominence and easy access (including access for persons with disabilities). In particular, the notion of prominence is not limited to the unique activity of discovering general interest content (once discovered, content may “disappear” or be difficult to find at recurrent use).

The limits to Member States' freedom are clarified by express reference to proportionality and compatibility with Union law.

Artikkel 4 – ny sub-paragraf XX

| Europakommisjonens tekstforslag | NRKs forslag til ny tekst   |
|---------------------------------|---|
|                                 | <p><b>(XX) This Directive is without prejudice to the ability of Member States to impose obligations to ensure appropriate prominence of content of general interest and easy access to such content for consumers, including persons with a visual or hearing disability, under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity.</b></p> |

Begrunnelse:

In light of converging media markets and increasing vertical integration and consolidation, it is important for Member States to be able to ensure that general

interest content, due to its democratic, social or cultural relevance, remains prominent and is easy for users to find.

A provision regarding prominence in the operative part of the Directive enhances legal certainty as to the scope of the Directive. Legal certainty and stability are indispensable for all participants operating in a rapidly changing market.

The provision would be based on recital 38 of the Commission's proposal. However, the terms discoverability and accessibility are imprecise and should be replaced by appropriate prominence and easy access (including access for persons with disabilities). In particular, the notion of prominence is not limited to the unique activity of discovering general interest content (once discovered, content may "disappear" or be difficult to find at recurrent use).

### Innhold/signalintegritet

#### Artikkel 11 a (ny)

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|---------------------------------|---|
| Europakommisjonens tekstforslag | NRKs forslag til ny tekst   |
|                                 | <b>Member States shall ensure that third parties do not modify the programmes and services of media service providers without their consent, for instance through commercial overlays or similar practices.</b> |

#### Begrunnelse:

It is necessary to include a new provision on the protection of signal and content integrity so as to ensure that viewers receive the audiovisual media programmes and services as conceived by the media service providers which have the editorial responsibility. This strengthens viewers' trust in audiovisual media and the capability of media service providers to invest, while ensuring the effectiveness of the Directive's rules and preventing their circumvention by third parties, in particular as regards rules on commercial communications.

This provision would protect the editorial responsibility of media service providers. It is not admissible that the programmes and services offered by media service providers are manipulated on their way to the consumer. Any action against the integrity of programmes and services should be prohibited, such as commercial overlays or similar practices which exploit the content of media service providers and draw commercial gains from their alteration. This would also help to maintain consumers' trust in audiovisual media.

In addition, ensuring content/signal integrity would contribute to sustaining the audiovisual value chain and protecting the sources of financing of audiovisual productions.

A provision on content/signal integrity would also prevent circumvention of the Directive's rules by third parties. Third parties should not be allowed to undermine the protection of consumers, and in particular of minors, by overlaying commercial communications or editorial content on audiovisual media services.

Ny fortale

| Europakommisjonens tekstforslag | NRKs forslag til ny tekst   |
|---------------------------------|---|
|                                 | <b>(YY) In order to ensure the effectiveness of the Directive's provisions and to protect the editorial responsibility of media service providers and sustain the audiovisual value chain, it is crucial that the integrity of programmes and services of media service providers is safeguarded. Programmes and services should be distributed unabridged, unaltered and uninterrupted. Third parties, other than consumers, may not modify programmes and services without the consent of the media service provider concerned.</b> |

Begrunnelse:

The AVMSD should recognize the protection of content/signal integrity in order to protect the effectiveness of the Directive's rules, in particular the requirements for commercial communications.

Content/signal integrity should be protected as a quid pro quo for the editorial responsibility of media service providers. This protection is important for the entire audiovisual eco-system. Such protection should entail the unabridged, unaltered and uninterrupted distribution of media service providers. Third parties, other than viewer, should not be able to interfere with or modify the content offered by media service providers. Functionalities built into devices, which the viewer can control, should not be affected.

## Children's programmes

### Artikkel 11 (2)

| Europakommisjonens tekstforslag   | NRKs forslag til endringer  |
|---|---|
| (2) Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and <b>programmes with a significant children's audience.</b> | (2) Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and <b>children's programmes.</b> |

### Begrunnelse:

The notion of programmes with a significant children's audience is imprecise and should be replaced by children's programmes, a notion which has been used in the Directive from the outset.

### Fortale 16

| Europakommisjonens tekstforslag  | NRKs forslag til endringer  |
|--|---|
| (16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes <b>with a significant children's audience.</b> In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in programmes <b>with a significant children's audience.</b> | (16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and <b>children's programmes.</b> In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in <b>children's programmes.</b> <b>In this context, children's programmes should be understood as programmes produced as mainly aimed at children.</b> |
| Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction   | Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction  |

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| between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes. | between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes. |
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#### Begrunnelse:

The notion of programmes with a significant children's audience is imprecise and should be replaced by "children's programmes", a notion which has been used in the Directive from the outset. It should be made clear that – in the context of the Directive's rules on product placement – the children's programme qualification has to be done at the production stage, i.e. that the notion refers to programmes which were produced to be mainly directed at children.

#### Artikkel 9

| Europakommisjonens tekstforslag   | NRKs forslag til endringer  |
|---|---|
| <p>2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in programmes <b>with a significant children's audience</b>, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.</p> <p>Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the</p> | <p>2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in <b>children's programmes</b>, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.</p> <p>Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the</p> |

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| nutritional aspects of such foods and beverages. | nutritional aspects of such foods and beverages. |
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Begrunnelse:  
Se ovenfor.

Dersom departementet har noen spørsmål til NRKs høringssvar vennligst ta kontakt med undertegnede eller med advokat Thomas Myhr, tlf. 97 07 15 10 / [thomas.myhr@nrk.no](mailto:thomas.myhr@nrk.no).

Med vennlig hilsen

*Thomas Myhr*

Olav Nyhus (sign)  
direktør