

8. Convenzione europea sulla televisione transfrontaliera.

La convenzione è stata sottoscritta a Straburgo –il 5 maggio 1989, è stata ratificata dall'Italia con legge 5 ottobre 1991, n. 327 (in GU 28 ottobre 1991, n. 253, s.o.) ed è entrata in vigore l'1 maggio 1993.

CHAPTER I – GENERAL PROVISIONS

1. *Object and purpose.* This Convention is concerned with programme services embodied in transmissions. The purpose is to facilitate, among the Parties, the transfrontier transmission and the retransmission of television programme services.

2. *Terms employed*⁵. For the purposes of this Convention:

a "Transmission" means the initial emission by terrestrial transmitter, by cable, or by satellite of whatever nature, in encoded or unencoded form, of television programme services for reception by the general public. It does not include communication services operating on individual demand;

b "Retransmission" signifies the fact of receiving and simultaneously transmitting, irrespective of the technical means employed, complete and unchanged television programme services, or important parts of such services, transmitted by broadcasters for reception by the general public;

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

d "Programme service" means all the items within a single service provided by a given broadcaster within the meaning of the preceding paragraph;

e "European audiovisual works" means creative works, the production or co-production of which is controlled by European natural or legal persons;

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

g "Tele-shopping" means direct offers broadcast to the public with a view to the supply of goods or services, including immovable property, rights and obligations in return for payment;

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

3. *Field of application.* This Convention shall apply to any programme service transmitted or retransmitted by entities or by technical means within the jurisdiction of a Party, whether by cable, terrestrial transmitter or satellite, and which can be received, directly or indirectly, in one or more other Parties.

4. *Freedom of reception and retransmission.* The Parties shall ensure freedom of expression and information in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and they shall guarantee freedom of reception and shall not restrict the retransmission on their territories of programme services which comply with the terms of this Convention.

5. *Duties of the transmitting Parties*⁶. 1 Each transmitting Party shall ensure that all programme services transmitted by broadcasters within its jurisdiction comply with the terms of this Convention.

2 For the purposes of this Convention, a broadcaster within the jurisdiction of a Party is:

- a broadcaster who is deemed to be established in that Party according to paragraph 3;
- a broadcaster to whom paragraph 4 applies.

3 For the purpose of this Convention, a broadcaster shall be deemed to be established in Party, hereinafter referred to as "transmitting Party" in the following cases:

- a the broadcaster has its head office in that Party and the decisions on programme schedules are taken in that Party;

⁵ Text amended according to the provisions of the Protocol (ETS No. 171).

⁶ Text amended according to the provisions of the Protocol (ETS No. 171).

b if a broadcaster has its head office in one Party but decisions on programme schedules are taken in another Party, it shall be deemed to be established in the Party where a significant part of the workforce involved in the pursuit of the television broadcasting activity operates; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in each of those Parties, the broadcaster shall be deemed to be established in the Party where it has its head office; if a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in neither of those Parties, the broadcaster shall be deemed to be established in the Party where it first began broadcasting in accordance with the system of law of that Party, provided that it maintains a stable and effective link with the economy of that Party;

c if a broadcaster has its head office in a Party but decisions on programme schedules are taken in a State which is not Party to this Convention, or vice-versa, it shall be deemed to be established in the Party concerned, provided that a significant part of the workforce involved in the pursuit of the television broadcasting activity operates in that Party;

d if, when applying the criteria of paragraph 3 of Article 2 of Directive 97/36/EC of the European Parliament and of the Council of 19 June 1997 amending Council Directive 89/552/EEC on the co-ordination of certain provisions laid down by law, regulation or administrative action in member States concerning the pursuit of television broadcasting activities, a broadcaster is deemed to be established in a member State of the European Community, that broadcaster shall also be deemed to be established in that State for the purposes of this Convention.

4 A broadcaster to whom the provisions of paragraph 3 are not applicable is deemed to be within the jurisdiction of a Party, so-called transmitting Party, in the following cases:

a it uses a frequency granted by that Party;

b although it does not use a frequency granted by a Party it does use a satellite capacity appertaining to that Party;

c although it uses neither a frequency granted by a Party nor a satellite capacity appertaining to a Party it does use a satellite up-link situated in that Party.

5 If the transmitting Party cannot be determined according to paragraph 4, the Standing Committee shall consider this issue according to Article 21, paragraph 1a, of this Convention, in order to determine this Party.

6 This Convention shall not apply to television broadcasts intended exclusively for reception in States which are not Party to this Convention, and which are not received directly or indirectly by the public in one or more Parties.

6. Provision of information. 1 The responsibilities of the broadcaster shall be clearly and adequately specified in the authorisation issued by, or contract concluded with, the competent authority of each Party, or by any other legal measure.

2 Information about the broadcaster shall be made available, upon request, by the competent authority of transmitting Party. Such information shall include, as a minimum, the name or denomination, seat and status of the broadcaster, the name of the legal representative, the composition of the capital, the nature, purpose and mode of financing of the programme service the broadcaster is providing or intends providing.

CHAPTER II – PROGRAMMING MATTERS

7. Responsibilities of the broadcaster. 1 All items of programme services, as concerns their presentation and content, shall respect the dignity of the human being and the fundamental rights of others.

In particular, they shall not:

a be indecent and in particular contain pornography;

b give undue prominence to violence or be likely to incite to racial hatred.

2 All items of programme services which are likely to impair the physical, mental or moral development of children and adolescents shall not be scheduled when, because of the time of transmission and reception, they are likely to watch them.

3 The broadcaster shall ensure that news fairly presents facts and events and encourages the free formation of opinions.

8. Right of reply⁷. 1 Each transmitting Party shall ensure that every natural or legal person, regardless of nationality or place of residence, shall have the opportunity to exercise a right of reply or to seek other comparable legal or administrative remedies relating to programmes transmitted by a broadcaster within its jurisdiction, within the

⁷ Text amended according to the provisions of the Protocol (ETS No. 171).

meaning of Article 5. In particular, it shall ensure that timing and other arrangements for the exercise of the right of reply are such that this right can be effectively exercised. The effective exercise of this right or other comparable legal or administrative remedies shall be ensured both as regards the timing and the modalities.

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

9. *Access of the public to information.*¹ Each Party shall examine and, where necessary, take legal measures such as introducing the right to short reporting on events of high interest for the public to avoid the right of the public to information being undermined due to the exercise by a broadcaster within its jurisdiction of exclusive rights for the transmission or retransmission, within the meaning of Article 3, of such an event.

9bis. *Access of the public to events of major importance*⁸. 1 Each Party retains the right to take measures to ensure that a broadcaster within its jurisdiction does not broadcast on an exclusive basis events which are regarded by that Party as being of major importance for society in such a way as to deprive a substantial proportion of the public in that Party of the possibility of following such events by live coverage or deferred coverage on free television. If it does so, the Party concerned may have recourse to the drafting of a list of designated events which it considers to be of major importance for society.

2 Parties shall ensure by appropriate means, respecting the legal guarantees granted by the Convention for the Protection of Human Rights and Fundamental Freedoms as well as, where appropriate, the national constitution, that a broadcaster within their jurisdiction does not exercise the exclusive rights purchased by that broadcaster following the date of entry into force of the Protocol amending the European Convention on Transfrontier Television in such a way that a substantial proportion of the public in another Party is deprived of the possibility of following events which are designated by that other Party, via whole or partial live coverage or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage on free television as determined by that other Party under paragraph 1, respecting the following requirements:

a the Party implementing the legal measures referred to in paragraph 1 shall draw up a list of national or non-national events which are considered by that Party as being of major importance for society;

b the Party shall do so in a clear and transparent manner in due and effective time;

c the Party shall determine whether these events shall be available via whole or partial live coverage, or where necessary or appropriate for objective reasons in the public interest, whole or partial deferred coverage;

d the measures taken by the Party drawing up the list shall be proportionate and as detailed as necessary to enable other Parties to take measures referred to in this paragraph;

e the Party drawing up the list shall notify the list and the corresponding legal measures to the Standing Committee, the time limit for which shall be fixed by the Standing Committee;

f the measures taken by the Party drawing up the list shall be within the limitations of the guidelines of the Standing Committee referred to in paragraph 3 and the Standing Committee must have given a positive opinion on the measures.

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

3 Once a year the Standing Committee shall:

a publish a consolidated list of the enlisted events and corresponding legal measures notified by Parties in accordance with paragraph 2e;

b draw up guidelines to be adopted by a majority of three quarters of the members in addition to the requirements listed up in paragraph 2a to e in order to avoid differences between the implementation of this article and that of corresponding European Community provisions.

10. *Cultural objectives*⁹.1 Each transmitting Party shall ensure, where practicable

⁸ Article added according to the provisions of the Protocol (ETS No. 171).

⁹ Text amended according to the provisions of the Protocol (ETS No. 171).

and by appropriate means, that a broadcaster within its jurisdiction reserves for European works a majority proportion of its transmission time, excluding the time appointed to news, sports events, games, advertising, teletext services and tele-shopping. This proportion, having regard to the broadcaster's informational, educational, cultural and entertainment responsibilities to its viewing public, should be achieved progressively, on the basis of suitable criteria.

2 In case of disagreement between a receiving Party and a transmitting Party on the application of the preceding paragraph, recourse may be had, at the request of one of the Parties, to the Standing Committee with a view to its formulating an advisory opinion on the subject. Such a disagreement shall not be submitted to the arbitration procedure provided for in Article 26.

3 The Parties undertake to look together for the most appropriate instruments and procedures to support, without discrimination between broadcasters, the activity and development of European production, particularly in countries with a low audiovisual production capacity or restricted language area.

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

10bis. *Media pluralism*¹⁰. The Parties, in the spirit of co-operation and mutual assistance which underlies this Convention, shall endeavour to avoid that programme services transmitted or retransmitted by a broadcaster or any other legal or natural persons within their jurisdiction, within the meaning of Article 3, endanger media pluralism.

CHAPTER III – ADVERTISING AND TELE-SHOPPING¹¹

11. *General standards*¹².1 Advertising and tele-shopping shall be fair and honest.

2 Advertising and tele-shopping shall not be misleading and shall not prejudice the interests of consumers.

3 Advertising and tele-shopping addressed to or using children shall avoid anything likely to harm their interests and shall have regard to their special susceptibilities.

4 Tele-shopping shall not exhort minors to contract for the sale or rental of goods and services.

5 The advertiser shall not exercise any editorial influence over the content of programmes.

12. *Duration*.¹ 1 The proportion of tele-shopping spots, advertising spots and other forms of advertising, with the exception of tele-shopping windows within the meaning of paragraph 3, shall not exceed 20% of the daily transmission time. The transmission time for advertising spots shall not exceed 15% of the daily transmission time.

2 The proportion of advertising spots and tele-shopping spots within a given clock hour shall not exceed 20%.

3 Windows devoted to tele-shopping programmes broadcast within programme services which are not exclusively devoted to tele-shopping shall be of a minimum uninterrupted duration of 15 minutes. The maximum number of windows per day shall be eight. Their overall duration shall not exceed three hours per day. They must be clearly identified by optical and acoustic means.

4 For the purposes of this article, advertising shall not include:
– announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes;
– announcements in the public interest and charity appeals broadcast free of charge.

13. *Form and presentation*¹³. 1 Advertising and tele-shopping shall be clearly distinguishable as such and recognisably separate from the other items of the programme service by optical and/or acoustic means. In principle, advertising and tele-shopping spots shall be transmitted in blocks.

2 Advertising and tele-shopping shall not use subliminal techniques.

3 Surreptitious advertising and tele-shopping shall not be allowed, in particular the presentation of products or services in programmes when it serves

¹⁰ Article added according to the provisions of the Protocol (ETS No. 171).

¹¹ Heading amended according to the provisions of the Protocol (ETS No. 171).

¹² Text amended according to the provisions of the Protocol (ETS No. 171).

¹³ Text amended according to the provisions of the Protocol (ETS No. 171).

advertising purposes.

4 Advertising and tele-shopping shall not feature, visually or orally, persons regularly presenting news and current affairs programmes.

14. *Insertion of advertising and tele-shopping*¹⁴. 1 Advertising and tele-shopping shall be inserted between programmes. Provided the conditions contained in paragraphs 2 to 5 of this article are fulfilled, advertising and tele-shopping spots may also be inserted during programmes in such a way that the integrity and value of the programme and the rights of the rights holders are not prejudiced.

2 In programmes consisting of autonomous parts, or in sports programmes and similarly structured events and performances comprising intervals, advertising and tele-shopping spots shall only be inserted between the parts or in the intervals.

3 The transmission of audiovisual works such as feature films and films made for television (excluding series, serials, light entertainment programmes and documentaries), provided their scheduled duration is more than forty-five minutes, may be interrupted once for each complete period of forty-five minutes. A further interruption is allowed if their scheduled duration is at least twenty minutes longer than two or more complete periods of forty-five minutes.

4 Where programmes, other than those covered by paragraph 2, are interrupted by advertising or tele-shopping spots, a period of at least twenty minutes should elapse between each successive advertising or tele-shopping break within the programme.

5 Advertising and tele-shopping shall not be inserted in any broadcast of a religious service. News and current affairs programmes, documentaries, religious programmes, and children's programmes, when their scheduled duration is less than thirty minutes, shall not be interrupted by advertising or tele-shopping. If their scheduled duration is thirty minutes or longer, the provisions of the previous paragraphs shall apply.

15. *Advertising and tele-shopping of particular products*¹⁴. 1 Advertising and tele-shopping for tobacco products shall not be allowed.

2 Advertising and tele-shopping for alcoholic beverages of all varieties shall comply with the following rules:

a they shall not be addressed particularly to minors and no one associated with the consumption of alcoholic beverage in advertising or tele-shopping should seem to be a minor;

b they shall not link the consumption of alcohol to physical performance or driving;

c they shall not claim that alcohol has therapeutic qualities or that it is a stimulant, a sedative or a means of resolving personal problems;

d they shall not encourage immoderate consumption of alcohol or present abstinence or moderation in a negative light;

e they shall not place undue emphasis on the alcoholic content of beverages.

3 Advertising for medicines and medical treatment which are only available on medical prescription in the transmitting Party shall not be allowed.

4 Advertising for all other medicines and medical treatment shall be clearly distinguishable as such, honest, truthful and subject to verification and shall comply with the requirement of protection of the individual from harm.

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

16. *Advertising and tele-shopping directed specifically at a single Party*¹⁵. 1 In order to avoid distortions in competition and endangering the television system of a Party, advertising and tele-shopping which are specifically and with some frequency directed to audiences in a single Party other than the transmitting Party shall not circumvent the television advertising and tele-shopping rules in that particular Party.

2 The provisions of the preceding paragraph shall not apply where:

a the rules concerned establish a discrimination between advertising and tele-shopping transmitted by a broadcaster within the jurisdiction of that Party and advertising and tele-shopping transmitted by a broadcaster or any other legal or natural person within the jurisdiction of another Party, or

b the Parties concerned have concluded bilateral or multilateral agreements in this area.

CHAPTER IV – SPONSORSHIP

¹⁴ Heading amended according to the provisions of the Protocol (ETS No. 171).

¹⁵ Text amended according to the provisions of the Protocol (ETS No. 171).

17. General standards. 1 When a programme or series of programmes is sponsored in whole or in part, it shall clearly be identified as such by appropriate credits at the beginning and/or end of the programme.

2 The content and scheduling of sponsored programmes may in no circumstances be influenced by the sponsor in such a way as to affect the responsibility and editorial independence of the broadcaster in respect of programmes.

3 Sponsored programmes shall not encourage the sale, purchase or rental of the products or services of the sponsor or a third party, in particular by making special promotional references to those products or services in such programmes.

18. Prohibited sponsorship¹⁶. 1 Programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of products, or the provision of services, the advertising and tele-shopping of which are prohibited by virtue of Article 15.

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

3 Sponsorship of news and current affairs programmes shall not be allowed.

CHAPTER IV *bis* – PROGRAMME SERVICES DEVOTED EXCLUSIVELY TO SELF-PROMOTION OR TELE-SHOPPING¹⁷

18bis. Programme services devoted exclusively to self-promotion. 1 The provisions of this Convention shall apply *mutatis mutandis* to programme services devoted exclusively to self-promotion.

2 Other forms of advertising shall be allowed on such services within the limits established by Article 12, paragraphs 1 and 2.

18ter. Programme services devoted exclusively to tele-shopping 1 The provisions of this Convention shall apply *mutatis mutandis* to programme services devoted exclusively to tele-shopping.

2 Advertising shall be allowed on such services within the limits established in Article 12, paragraph 1. Article 12, paragraph 2, shall not apply.

CHAPTER V – MUTUAL ASSISTANCE

19. Co-operation between the Parties. 1 The Parties undertake to render each other mutual assistance in order to implement this Convention.

2 For that purpose:

a each Contracting State shall designate one or more authorities, the name and address of each of which it shall communicate to the Secretary General of the Council of Europe at the time of deposit of its instrument of ratification, acceptance, approval or accession;

b each Contracting State which has designated more than one authority shall specify in its communication under sub-paragraph *a*. the competence of each authority.

3 An authority designated by a Party shall:

a furnish the information foreseen under Article 6, paragraph 2, of this Convention;

b furnish information at the request of an authority designated by another Party on the domestic law and practices in the fields covered by this Convention;

c co-operate with the authorities designated by the other Parties whenever useful, and notably where this would enhance the effectiveness of measures taken in implementation of this Convention;

d consider any difficulty arising from the application of this Convention which is brought to its attention by an authority designated by another Party.

CHAPTER VI – STANDING COMMITTEE

20. Standing Committee¹⁸. 1 For the purposes of this Convention, a Standing Committee shall be set up.

2 Each Party may be represented on the Standing Committee by one or more delegates. Each delegation shall have one vote. Within the areas of its competence, the European Community shall exercise its right to vote with a number of votes equal to the number of its member States which are Parties to this Convention; the European

¹⁶ Text amended according to the provisions of the Protocol (ETS No. 171).

¹⁷ Chapter added according to the provisions of the Protocol (ETS No. 171).

¹⁸ Text amended according to the provisions of the Protocol (ETS No. 171).

Community shall not exercise its right to vote in cases where the member States concerned exercise theirs, and conversely.

3 Any State referred to in Article 29, paragraph 1, which is not a Party to this Convention may be represented on the Standing Committee by an observer.

4 The Standing Committee may seek the advice of experts in order to discharge its functions. It may, on its own initiative or at the request of the body concerned, invite any international or national, governmental or non-governmental body technically qualified in the fields covered by this Convention to be represented by an observer at one or part of one of its meetings.

5 The Standing Committee shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within six months of the date of entry into force of the Convention. It shall subsequently meet whenever one-third of the Parties or the Committee of Ministers of the Council of Europe so requests, or on the initiative of the Secretary General of the Council of Europe in accordance with the provisions of Article 23, paragraph 2, or at the request of one or more Parties in accordance with the provisions of Articles 21, sub-paragraph c, and 25, paragraph 2.

6 A majority of the Parties shall constitute a quorum for holding a meeting of the Standing Committee.

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

8 Subject to the provisions of this Convention, the Standing Committee shall draw up its own Rules of Procedure.

21. Functions of the Standing Committee¹⁹. 1 The Standing Committee shall be responsible for following the application of this Convention. It may:

a make recommendations to the Parties concerning the application of the Convention;

b suggest any necessary modifications of the Convention and examine those proposed in accordance with the provisions of Article 23;

c examine, at the request of one or more Parties, questions concerning the interpretation of the Convention;

d use its best endeavours to secure a friendly settlement of any difficulty referred to it in accordance with the provisions of Article 25;

e make recommendations to the Committee of Ministers concerning States other than those referred to in Article 29, paragraph 1, to be invited to accede to this Convention.

f give opinions on abuse of rights under Article 24*bis*, paragraph 2c.

2 In addition, the Standing Committee shall:

a draw up the guidelines referred to in Article 9*bis*, paragraph 3b, in order to avoid differences between the implementation of the rules of this Convention concerning access of the public to events of major importance for society and that of corresponding European Community provisions;

b give an opinion on the measures taken by Parties which have drawn up a list of national or non-national events which are considered by those Parties as being of major importance for society in accordance with Article 9*bis*, paragraph 2;

c publish once a year a consolidated list of the enlisted events and corresponding measures notified by Parties in accordance with Article 9*bis*, paragraph 2c.

22. Reports of the Standing Committee. After each meeting, the Standing Committee shall forward to the Parties and the Committee of Ministers of the Council of Europe a report on its discussions and any decisions taken.

CHAPTER VII – AMENDMENTS

23. Amendments. 1 Any Party may propose amendments to this Convention.

2 Any proposal for amendment shall be notified to the Secretary General of the Council of Europe who shall communicate it to the member States of the Council of Europe, to the other States party to the European Cultural Convention, to the European Community and to any non-member State which has acceded to, or has been invited to accede to this Convention in accordance with the provisions of Article 30. The Secretary General of the Council of Europe shall convene a meeting of the Standing Committee at the earliest two months following the communication of the proposal.

¹⁹ Text amended according to the provisions of the Protocol (ETS No. 171).

3 The Standing Committee shall examine any amendment proposed and shall submit the text adopted by a majority of three-quarters of the members of the Standing Committee to the Committee of Ministers for approval. After its approval, the text shall be forwarded to the Parties for acceptance.

4 Any amendment shall enter into force on the thirtieth day after all the Parties have informed the Secretary General of their acceptance thereof.

5 However, the Committee of Ministers may, after consulting the Standing Committee, decide that a particular amendment shall enter into force following the expiry of a period of two years after the date on which it has been opened to acceptance, unless a Party has notified the Secretary General of the Council of Europe of an objection to its entry into force. Should such an objection be notified, the amendment shall enter into force on the first day of the month following the date on which the Party to the Convention which has notified the objection has deposited its instrument of acceptance with the Secretary General of the Council of Europe.

6 If an amendment has been approved by the Committee of Ministers, but has not yet entered into force in accordance with paragraphs 4 or 5, a State or the European Community may not express their consent to be bound by the Convention without accepting at the same time the amendment.

CHAPTER VIII – ALLEGED VIOLATIONS OF THIS CONVENTION

24. *Alleged violations of this Convention.* 1 When a Party finds a violation of this Convention, it shall communicate to the transmitting Party the alleged violation and the two Parties shall endeavour to overcome the difficulty on the basis of the provisions of Articles 19, 25 and 26.

2 If the alleged violation is of a manifest, serious and grave nature which raises important public issues and concerns Articles 7, paragraphs 1 or 2, 12, 13, paragraph 1, first sentence, 14 or 15, paragraphs 1 or 3, and if it persists within two weeks following the communication, the receiving Party may suspend provisionally the retransmission of the incriminated programme service.

3 In all other cases of alleged violation, with the exception of those provided for in paragraph 4, the receiving Party may suspend provisionally the retransmission of the incriminated programme service eight months following the communication, if the alleged violation persists.

4 The provisional suspension of retransmission shall not be allowed in the case of alleged violations of Articles 7, paragraph 3, 8, 9 or 10.

24bis. *Alleged abuses of rights conferred by this Convention*²⁰. 1 When the programme service of a broadcaster is wholly or principally directed at the territory of a Party other than that which has jurisdiction over the broadcaster (the "receiving Party"), and the broadcaster has established itself with a view to evading the laws in the areas covered by the Convention which would have applied to it had it fallen within the jurisdiction of that other Party, this shall constitute an abuse of rights.

2 Where such an abuse is alleged by a Party, the following procedure shall apply:

a the Parties concerned shall endeavour to achieve a friendly settlement;
b if they fail to do so within three months, the receiving Party shall refer the matter to the Standing Committee;
c having heard the views of the Parties concerned, the Standing Committee shall, within six months of the date on which the matter was referred to it, give an opinion on whether an abuse of rights has been committed and shall inform the Parties concerned accordingly.

3 If the Standing Committee has concluded that an abuse of rights has occurred, the Party whose jurisdiction the broadcaster is deemed to be within shall take appropriate measures to remedy the abuse of rights and shall inform the Standing Committee of those measures.

4 If the Party whose jurisdiction the broadcaster is deemed to be within has failed to take the measures specified in paragraph 3 within six months, the arbitration procedure set out in Article 26, paragraph 2, and the appendix of the Convention shall be pursued by the Parties concerned.

5 A receiving Party shall not take any measures against the programme service concerned until the arbitration procedure has been completed.

6 Any measures proposed or taken under this article shall comply with Article 10 of the Convention for the Protection of Human Rights and Fundamental

²⁰ Article added according to the provisions of the Protocol (ETS No. 171).

Freedoms.

CHAPTER IX – SETTLEMENT OF DISPUTES

25. Conciliation. 1 In case of difficulty arising from the application of this Convention, the parties concerned shall endeavour to achieve a friendly settlement.

2 Unless one of the parties concerned objects, the Standing Committee may examine the question, by placing itself at the disposal of the parties concerned in order to reach a satisfactory solution as rapidly as possible and, where appropriate, to formulate an advisory opinion on the subject.

3 Each party concerned undertakes to accord the Standing Committee without delay all information and facilities necessary for the discharge of its functions under the preceding paragraph.

26. Arbitration. 1 If the parties concerned cannot settle the dispute in accordance with the provisions of Article 25, they may, by common agreement, submit it to arbitration, the procedure of which is provided for in the appendix to this Convention. In the absence of such an agreement within six months following the first request to open the procedure of conciliation, the dispute may be submitted to arbitration at the request of one of the parties.

2 Any Party may, at any time, declare that it recognises as compulsory, *ipso facto* and without special agreement in respect of any other Party accepting the same obligation, the application of the arbitration procedure provided for in the appendix to this Convention.

CHAPTER X – OTHER INTERNATIONAL AGREEMENTS AND THE INTERNAL LAW OF THE PARTIES

27. Other international agreements or arrangements²¹. 1 In their mutual relations, Parties which are members of the European Community shall apply Community rules and shall not therefore apply the rules arising from this Convention except in so far as there is no Community rule governing the particular subject concerned.

2 Nothing in this Convention shall prevent the Parties from concluding international agreements completing or developing its provisions or extending their field of application.

3 In the case of bilateral agreements, this Convention shall not alter the rights and obligations of Parties which arise from such agreements and which do not affect the enjoyment of other Parties of their rights or the performance of their obligations under this Convention.

28. Relations between the Convention and the internal law of the Parties¹ Nothing in this Convention shall prevent the Parties from applying stricter or more detailed rules than those provided for in this Convention to programme services transmitted by a broadcaster deemed to be within their jurisdiction, within the meaning of Article 5.

CHAPTER XI – FINAL PROVISIONS

29. Signature and entry into force¹. 1 This Convention shall be open for signature by the member States of the Council of Europe and the other States party to the European Cultural Convention, and by the European Community. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2 This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which seven States, of which at least five member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

3 A State may, at the time of signature or at any later date prior to the entry into force of this Convention in respect of that State, declare that it shall apply the Convention provisionally.

4 In respect of any State referred to in paragraph 1, or the European Community, which subsequently express their consent to be bound by it, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of ratification, acceptance or approval.

30. Accession by non-member States. 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe, after consulting the Contracting States may invite any other State to accede to this Convention by a decision taken by the majority provided for in Article 20d. of the Statute of the Council of

²¹ Text amended according to the provisions of the Protocol (ETS No. 171).

Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2 In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

31. Territorial application. 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2 Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3 Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

32. Reservations²². 1 At the time of signature or when depositing its instrument of ratification, acceptance, approval or accession any State may declare that it reserves the right of restrict the retransmission on its territory, solely to the extent that it does not comply with its domestic legislation, of programme services containing advertising for alcoholic beverages according to the rules provided for in Article 15, paragraph 2, of this Convention.

No other reservation may be made.

2 A reservation made in accordance with the preceding paragraph may not be the subject of an objection

3 Any Contracting State which has made a reservation under paragraph 1 may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

4 A Party which has made a reservation under paragraph 1 may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

33. Denunciation. 1 Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

2 Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

34. Notifications²³. The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, the other States party to the European Cultural Convention, the European Community and any State which has acceded to, or has been invited to accede to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with the provisions of Articles 29, 30 and 31;
- d any report established in accordance with the provisions of Article 22;
- e any other act, declaration, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, the 5th day of May 1989, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the other States

²² Text amended according to the provisions of the Protocol (ETS No. 171).

²³ Text amended according to the provisions of the Protocol (ETS No. 171).

party to the European Cultural Convention, to the European Community and to any State invited to accede to this Convention.¹

APPENDIX

Arbitration

1 A request for arbitration shall be notified to the Secretary General of the Council of Europe. It shall include the name of the other party to the dispute and the subject matter of the dispute. The Secretary General shall communicate the information so received to all the Parties to the Convention.

2 In the event of a dispute between two Parties one of which is a member State of the European Community, the latter itself being a Party, the request for arbitration shall be addressed both to the member State and to the Community, which jointly shall notify the Secretary General, within one month of receipt of the request, whether the member State or the Community, or the member State and the Community jointly, shall be party to the dispute. In the absence of such notification within the said time-limit, the member State and the Community shall be considered as being one and the same party to the dispute for the purposes of the application of the provisions governing the constitution and procedure of the arbitration tribunal. The same shall apply when the member State and the Community jointly present themselves as party to the dispute. In cases envisaged by this paragraph, the time-limit of one month foreseen in the first sentence of paragraph 4 hereafter shall be extended to two months.

3 The arbitration tribunal shall consist of three members: each of the parties to the dispute shall appoint one arbitrator; the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the chairman of the tribunal. The latter shall not be a national of either of the parties to the dispute, nor have his usual place of residence in the territory of either of those parties, nor be employed by either of them, nor have dealt with the case in another capacity.

4 If one of the parties has not appointed an arbitrator within one month following the communication of the request by the Secretary General of the Council of Europe, he shall be appointed at the request of the other party by the President of the European Court of Human Rights within a further one-month period. If the President of the Court is unable to act or is a national of one of the parties to the dispute, the appointment shall be made by the Vice-President of the Court or by the most senior judge to the Court who is available and is not a national of one of the parties to the dispute. The same procedure shall be observed if, within a period of one month following the appointment of the second arbitrator, the Chairman of the arbitration tribunal is not designated.

5 The provisions of paragraphs 3 and 4 shall apply, as the case may be, in order to fill any vacancy.

6 Two or more parties which determine by agreement that they are in the same interest shall appoint an arbitrator jointly.

7 The parties to the dispute and the Standing Committee shall provide the arbitration tribunal with all facilities necessary for the effective conduct of the proceedings.

8 The arbitration tribunal shall draw up its own Rules of Procedure. Its decisions shall be taken by majority vote of its members. Its award shall be final and binding.

9 The award of the arbitration tribunal shall be notified to the Secretary General of the Council of Europe who shall communicate it to all the Parties to this Convention.

10 Each party to the dispute shall bear the expenses of the arbitrator appointed by it; these parties shall share equally the expenses of the other arbitrator, as well as other costs entailed by the arbitration.