

Audiovisual media services: changing market realities

2016/0151(COD) - 25/05/2016 - Legislative proposal

PURPOSE: to amend Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services in view of changing market realities.

PROPOSED ACT: Directive of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: the last substantive amendment to Directive 89/552/EEC of the Council, later codified by [Directive 2010/13/EU](#) of the European Parliament and of the Council on audiovisual media services (Audiovisual Media Services Directive), was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council.

Since then, **the audiovisual media landscape is changing at a rapid pace** due to ever-increasing convergence between television and services distributed via the internet. Consumers increasingly access on-demand content via smart/connected TVs and portable devices. Young consumers, particularly, watch videos, including user-generated content, on the internet.

Traditional broadcasting in the EU remains strong in terms of viewership, advertising revenues, and investment in content (around 30% of revenues). However, new business models are emerging.

Underpinning the continued added value of the EU intervention, the Commission stressed that **the EU-wide dimension of the audiovisual market is constantly increasing**, in particular due to online growth and the fact that TV channels are becoming more international:

- at the end of 2013, 5 141 TV channels (not counting local channels and windows) were established in the EU. This share had increased from 28 % in 2009 —year of implementation— to 38 % in 2013;
- as far as video-on-demand services are concerned, 31 % of the video-on-demand services available in Member State on average are established in another EU country (2015).

The [Digital Single Market \(DSM\) strategy for Europe](#) calls for a modernisation of the Audiovisual Media Services Directive (AVMSD) to reflect these market, consumption and technological changes. Pursuant to this commitment and in line with ‘Better Regulation’ requirements, the **Commission carried out an ex post evaluation** (also called ‘REFIT’). It assessed the effectiveness, efficiency, relevance, coherence and EU added-value of the AVMSD, and pinpointed areas where there is potential for simplification, without undermining the objectives of the AVMSD.

IMPACT ASSESSMENT: the combination of preferred options is deemed to strike the best balance between the need to introduce flexibility with respect to the current level of regulation and ensuring adequate consumer protection:

- the **industry** will benefit from more flexible quantitative rules on commercial communications. The increased efficiency of the country of origin principle and the requirements for the independence of regulators would improve the business environment in which audiovisual players operate;
- **consumers** will : (i) be guaranteed a high level of protection through the limited extension of the AVMSD to video-sharing platforms and the reinforcement of the requirements applicable to on-demand services in terms of the protection of minors; (ii) consumers will also benefit from a greater access to European works in on-demand services.

All options take into account, where appropriate, the **need for flexibility for the industry** by considering possible implementation via self and/or co-regulation.

CONTENT: this proposal seeks to amend Directive 2010/13/EU in order to take into account changes in the audiovisual landscape since the last revision to **ensure that the AVMSD will provide a modernised, flexible and forward looking legal framework.**

The main elements of the amended Directive are as follows:

Country of origin principle for media service providers: this principle is maintained and reinforced by simplifying the rules determining which country has jurisdiction and improving the derogation mechanisms in cases of exceptions.

Minimum harmonisation: the amended Directive will continue to be based on minimum harmonisation. However, a higher degree of harmonisation is sought by reinforcing the independence of audiovisual regulators.

The proposal reinforces the role of the European Regulators Group for Audiovisual Media Services (ERGA) by giving it more tasks when advising and assisting the Commission in consistent implementation of the directive in all Member States.

Protection of minors: the proposal provides for alignment of the standards of protection for TV broadcasting and **on-demand services**. It requires that programmes that may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. This is regardless of whether such programmes are broadcast by TV broadcasters or provided by on-demand media service providers.

Promotion of European works: the proposal creates a more level playing field in the promotion of European works by obliging **on-demand services to reserve at least 20% share for European works** in their catalogues and to ensure adequate prominence of such works.

Member States may also impose **financial contributions** to on-demand services in their jurisdictions as well as, under certain conditions, to those established in a different Member State but targeting their national audiences. In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements.

Balance between competitiveness and consumer protection: the proposal achieves a balance between competitiveness and consumer protection by, on the one hand, introducing more flexibility for all audiovisual media services on product placement and sponsorship and increased flexibility for TV broadcasting.

The hourly limit is replaced by a daily limit of 20% of advertising during the period between **07:00 and 23:00**. Films made for television, cinematographic works and news could be interrupted more often and isolated spots would be admissible.

On the other hand, the future Directive will also strengthen provisions to protect minors from inappropriate audiovisual commercial communications of foods high in fat, salt/sodium and sugars and alcohol beverages by, where necessary, encouraging codes of conduct at EU level.

Scope: a further new feature is the extension of its scope to cover, in certain respects, video-sharing platform services which do not have editorial responsibility for the content that they store but which organise that content, through various means.

Video-sharing platform providers: the amended Directive would introduce an obligation on Member States to ensure that, within their field of responsibility, video-sharing platform providers put in place, preferably through **co-regulation**, appropriate measures to: (i) protect minors from harmful content; and (ii) protect all citizens from incitement to violence or hatred.

Member States continue to be bound by the rules of the [e-Commerce Directive](#) (ECD). They would consequently not be allowed to impose on providers any general obligation to monitor content or to actively engage in fact-finding, without precluding the imposition of monitoring requirements in specific cases.

Furthermore, this is also without prejudice to [Directive 2011/93/EU](#), which requires Member States to take measures against websites containing or disseminating child pornography.

Provision of information society services provided from another Member State: the ECD sets out the principle of country of origin, subject to a number of possible exceptions. This system will continue to apply to video-sharing platforms providers.

The proposal seeks to ensure that the same rules also apply to such providers which do not have an establishment in a Member State, but which have a parent company, a subsidiary or another entity of the same group with such an establishment.

Lastly, the Commission would facilitate, with ERGA's support, the **coordination of codes of conduct** at EU level. Moreover, a complaint and redress mechanism should be foreseen at national level.