Council of the European Union / European Parliament: Audiovisual Media Services Directive Adopted

IRIS 2008-1:1/3

Mara Rossini
Institute for Information Law (IViR), University of Amsterdam

On 29 November 2007, the European Parliament approved without amendments the Council's Common Position on the proposed new Audiovisual Media Services without Frontiers Directive. The Common Position adopted on 15 October 2007 formalised a text which had throughout the legislative process been the object of inter-institutional negotiations: the informal contacts between the Parliament, the Commission and the Council culminated in a final text approved with no amendments by Parliament.

The Commission had originally proposed a regulatory construction consisting of a core of rules applicable to all audiovisual media services and an additional layer of obligations applicable only to television broadcasting. This approach was deemed to be the best option because, as stated in Recital 42 of the Directive: "on-demand audiovisual media services are different from television broadcasting with regard to the choice and control the user can exercise, and with regard to the impact they have on society. This justifies imposing lighter regulation on on-demand audiovisual media services, which should comply only with the basic rules provided for in this Directive". This approach has thus been retained, although some structural changes to the initial text have been introduced (creation of new chapters and reordering of certain articles). Concerning more substantive changes brought about in the Council's text, the Commission has stated that the text meets the aims of the Commission's initial and modified proposals. The following points can be highlighted:

- The Directive clarifies the extension to the scope of the Directive proposed by the Commission: as explained by the Council, the underlying philosophy is that the "on-demand services" now included should compete for the same audience as television broadcasts. Parliament had at first reading already clarified the definition of "audiovisual media service" and underlined that this includes neither services where the provision of audiovisual content is merely incidental to the service and not their principal purpose, nor the press in printed and electronic form. The Directive for its part opens with a list of definitions in Article 1. An "audiovisual media service" means 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

© European Audiovisual Observatory (Council of Europe) 2026

networks within the meaning of Article 2(a) of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this Article or an on-demand audiovisual media service as defined in point (g) of this Article". Point (e) and (g) respectively state: "'television broadcasting' or 'television broadcast' (i.e. 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" and "'on-demand audiovisual media service' (i.e. a non-linear audiovisual media service) means an audiovisual service provided by a media service provider for the viewing of programmes at the moment chosen by the viewer and at his individual request on the basis of a catalogue of programmes selected by the media service provider". Alongside the definition contained in its Article 1(a), Recitals 16 to 23 explain the characteristics of an audiovisual media service. The latter explain, for example, that the notion of "programme" as defined in Article 1(b) should be interpreted in a dynamic way taking into account developments in television broadcasting. Recital 18 excludes from the definition of "audiovisual media service" all services "whose principal purpose is not the provision of programmes, i.e. where any audiovisual content is merely incidental to the service and not its principal purpose" as a consequence of which, websites that contain audiovisual elements in an ancillary manner such as animated graphical elements, short advertising spots or information related to a product or non-audiovisual service are excluded from the Directive's scope as are games of chance, including lotteries, betting and other forms of gambling services, on-line games and search engines.

- Jurisdiction will continue to be determined on the basis of the establishment of the service provider (country of origin principle). However a new mechanism will deal with cases where a television broadcast is directed wholly or mostly towards a Member State other than the one where the broadcaster is established (e.g. in cases of circumvention of stricter rules). The Commission was satisfied that the rules defining the place of establishment of a media service provider were not modified which, in its opinion, implied a reaffirmation of the right of a broadcaster to offer its services in the Internal Market from the country of establishment of its choosing. As far as stricter national rules are concerned, the Directive develops the mechanism proposed by the Commission, creating a first non-binding "cooperation" phase, where mutually acceptable solutions are sought between the Member States involved, followed by a second formal phase where the European Commission will examine the compatibility of the Member State's proposed measures with Community law. If the proposed measures are deemed by the Commission to be incompatible with Community law, the Member State concerned must refrain from taking them (Article 2a).

- With regard to commercial communication, first and foremost such communication must be "readily recognizable as such and be distinguishable from editorial content" (Article 3e(a)). The ban on discrimination in audiovisual

© European Audiovisual Observatory (Council of Europe) 2026

commercial communications includes all the categories of discrimination mentioned in Article 13 of the Treaty. This was a specific request from the Parliament and is duly reflected in the Directive (Article 3e(c)). The text contains a core of "qualitative" rules, which apply to all audiovisual media services while "quantitative" rules apply only to television broadcasting. Member States and the Commission are required to encourage the development of codes of conduct regarding advertising of "junk food" aimed at children, and the quantitative rules on interruption of programmes are stricter for children's programmes.

- A general prohibition rests on product placement, however, exemptions to this principle are provided for certain types of programme (films, series, sports and light entertainment) subject to certain conditions (Article 3g). These exemptions apply automatically unless a Member State opts out. The requirement to identify product placement at the moment that a programme resumes after an advertising break has been added, and the specific case of "thematic placement" has been addressed albeit in Recital 63.

- The Commission proposed a provision seeking to ensure the non-discriminatory application of national systems aimed at guaranteeing, for the purpose of short news reports, the access of broadcasters to events of high interest to the public. The Directive in turn creates an obligation on Member States to establish such a system, thus creating a Community-wide right. The key aspects of this right are harmonised by the text, whilst the modalities and conditions of its application are left to the Member States to decide (Article 3k).

- The role of Regulatory authorities is mentioned in a new article, which deals with cooperation and the exchange of information (Article 23b). A reference to the independence of such authorities from national governments as well as from operators is included in a Recital.

- The Directive contains an obligation on Member States to encourage service providers to ensure that their services are gradually made accessible to people with a visual or hearing disability (Article 3c).

The European Parliament's position was forwarded to the Council and the Commission and the final text of the Directive was signed by the Council of the EU and by the European Parliament on 11 December 2007. Member States now have 24 months to implement it into national law.

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, Official Journal of the European Union L 332/27, 18 December 2007

© European Audiovisual Observatory (Council of Europe) 2026

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_332/l_33220071218en00270045.pdf

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026