European Commission: Proposal to amend the Audiovisual Media Services Directive

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Department for Legal Information
European Audiovisual Observatory

On 25 May 2016 the European Commission published a proposal to amend the Audiovisual Media Services Directive (AVMSD). As the Commission noted in its press release, the aim of the proposal is: “to achieve a better balance of the rules which today apply to traditional broadcasters, video-on-demand providers and video-sharing platforms, especially when it comes to protecting children. The revised AVMSD also strengthens the promotion of European cultural diversity, ensures the independence of audiovisual regulators and gives more flexibility to broadcasters over advertising”.

The main changes pertain to the following aspects:

Scope: the principle of “TV-likeness” is removed, and video-sharing platforms will now be included in the scope of the Directive. Such platforms will have to protect minors from harmful content and protect all citizens from incitement to hatred. The proposal defines video-sharing platforms as commercial services addressed to the public which:

- store a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;

- where the content is organised in a way determined by the provider of the service, in particular by hosting, displaying, tagging and sequencing;

- where the principal purpose of the service (or a dissociable section thereof) is devoted to providing programmes and user-generated videos to the general public, in order to inform, entertain or educate;

- is made available by electronic communications networks.

Incitement to hatred: there is a reinforcement of the grounds for prohibiting hate speech;

Country of origin: this principle is maintained, transparency obligations are reinforced, and the procedures for assessing jurisdiction are simplified;

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Protection of minors: the two-tier approach is replaced by common rules concerning content that "may impair the physical, mental or moral development of minors", and a provision that special measures must be put in place for the most harmful content;

European works: the obligations on broadcasters are maintained, while those on non-linear services are reinforced, also with regard to targeting countries. On-demand providers will have to make sure that their catalogues contain at least 20% share of European content. Member States will be able to ask on-demand services available in their country to contribute financially to Europeans works.

Commercial communications: there is a relaxation of the rules, but also a reinforcement of self- and co-regulatory codes. The limit of 20% of broadcasting time is maintained between 7h and 23h, but broadcasters can choose freely when to show ads throughout the day. Broadcasters and on-demand service providers will also have greater flexibility to introduce product placement and sponsorship.

Audiovisual regulators: the principle of independence is recognised and ERGA will play a bigger role, including in assessing jurisdiction and adopting Union codes.

Proposal for a Directive of the European Parliament and of the Council amending 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 (COM(2016)287 final)

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52016PC0287&qid=1465226241177

European Commission, Press release, "Commission updates EU audiovisual rules and presents targeted approach to online platforms", 25 May 2016

http://europa.eu/rapid/press-release_IP-16-1873_en.htm

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