Council of the EU: Provisional Inter-institutional Agreement on new AVMS Directive

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On 13 June 2018, following inter-institutional negotiations, the European Parliament, European Council, and European Commission published a Provisional Agreement on a proposal amending the Audiovisual Media Services Directive (2010/13/EU) (AVMSD), which was first put forward by the Commission in May 2016 (see IRIS 2016-6/3). The proposed version of the new Directive, running to 38 pages, makes substantial amendments to over 17 of the articles of the AVMSD and includes some new articles. A number of notable amendments should be mentioned.

Firstly, the amended Article 13(1) now provides that member states must ensure that media service providers of on-demand audiovisual media services under their jurisdiction ensure that European works make up at least 30% of their catalogues and ensure prominence of those works. Moreover, under Article 13(2), where member states require media service providers under their jurisdiction to contribute financially to the production of European works (including via direct investment in content and contributing to national funds), they may also require media service providers which target audiences in their territories but which are established in other member states to make such financial contributions; furthermore, those contributions must be proportionate and non-discriminatory.

Secondly, in relation to television advertising, the amended Article 23 provides that the proportion of television advertising spots and teleshopping spots between (i) 6 a.m. and 6 p.m. and (ii) 6 p.m. and midnight must not exceed 20% of airtime. Moreover, under the current wording of Article 23, the proportion of television advertising spots and teleshopping spots within a given hour of the clock shall not exceed 20% of airtime.

Thirdly, a new Chapter IXa is included which contains new provisions applicable to video-sharing platform services. A substantial definition of a video-sharing platform service is included; the new chapter defines a video-sharing service as one "…where the principal purpose of the service or of a dissociable section thereof or an essential functionality of the service is devoted to providing programmes, user-generated videos, or both, to the general public, for which the video-sharing platform provider does not have editorial responsibility, in order to inform, entertain or educate, by means of an electronic communications network

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… and the organisation of which is determined by the video-sharing platform provider, including by automatic means or algorithms in particular by displaying, tagging and sequencing."

Notably, under a new Article 28a(1), member states must ensure that video-sharing platforms take "appropriate measures" to protect (a) minors from programmes, user-generated videos and audiovisual commercial communications which may impair their physical, mental or moral development; (b) the general public from programmes, user-generated videos and audiovisual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group; and (c) the general public from programmes, user-generated videos and audiovisual commercial communications containing content the dissemination of which constitutes an activity which is a criminal offence under EU law, namely public provocation to commit a terrorist offence, offences concerning child pornography, and offences concerning racism and xenophobia. Notably, a new Article 28a(3) elaborates upon the "appropriate measures" to be applied to video-sharing platforms, but states that they "shall not lead to any ex-ante control measures or upload-filtering of content" which do not comply with Article 15 of the e-Commerce Directive (2000/31/EC).

The proposal will now be sent for formal adoption by the Council and the European Parliament later in 2018.

Provisional Agreement Resulting from Interinstitutional Negotiations, 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 (Audiovisual Media Services Directive) in view of changing market realities (COM(2016)0287 - C8-0193/2016 - 2017/0151(COD)), 13 June 2018

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