

Council of the EU: Publication of the Revised AVMSD in the Official Journal

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*Elena Sotirova
European Platform of Regulatory Authorities*

On 28 November 2018, the consolidated text of the revised “Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 (the Audiovisual Media Services Directive) in view of changing market realities” was published in the Official Journal of the European Union.

The last substantive amendment to the Council Directive 89/552/EEC, subsequently codified by Directive 2010/13/EU of the European Parliament and of the Council, 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 services market has evolved significantly and rapidly due to the ongoing convergence of television and Internet services. This convergence of media required an updated legal framework in order to reflect developments in the market and to achieve a balance between access to online content services, consumer protection and competitiveness.

On 6 May 2015, the European Commission adopted a communication entitled ‘A Digital Single Market Strategy for Europe’ (see IRIS 2015-6/3) in which it announced its intention to review the Directive 2010/13/EU by widening in particular its scope and modifying the rules related to the promotion of European works, the protection of minors and the commercial communications applicable to all market players. As part of this “Digital Single Market Strategy for Europe”, on 25 May 2016 (see IRIS 2016-6/3), the Commission submitted a draft for the revision of the Directive and, since then, the latter has been the subject of intense negotiations between the co-legislators. On 18 May 2017, the European Parliament gave a mandate to the Committee on Culture and Education (CULT) to begin talks with the European Council on the new directive (see IRIS 2017-7/6).

With the Commission's support, the negotiations were concluded with the informal agreement on the proposed rules, which was reached on 6 June 2018 (see IRIS 2018-8/7). The European Parliament adopted its report on the provision of audiovisual media services on 2 October 2018, and on 6 November 2018, the European Council adopted the revised AVMS Directive, marking the final step of

the legislative process.

Among the new provisions introduced by the Directive is a strengthened Country of Origin Principle (which states that providers only need to abide by the rules of a member state rather than in multiple countries) with more clarity on which member state's rules apply, aligned derogation procedures for both TV broadcasters and on-demand service providers as well as possibilities for derogations in the event of public security concerns and serious risks to public health. In addition, certain audiovisual rules extend to video sharing platforms: services such as YouTube, as well as audiovisual content shared on social media services such as Facebook, are covered by the revised Directive. The Directive also provides for a better protection of minors against harmful content in the online world: the new rules strengthen the protection on video-on-demand services and extend the obligation to protect minors also on video sharing platforms, which now need to put in place appropriate measures. Furthermore, it provides for a reinforced protection on TV and video on demand against incitement to violence or hatred and public provocation to commit terrorist offences. Video sharing platforms are also required to take appropriate measures to protect people from incitement to violence or hatred and content constituting criminal offences. In relation to the promotion of European works, the Directive introduces increased obligations for on-demand services, who need to have at least a 30% share of European content in their catalogue and to ensure the prominence of this content. Concerning television advertising, the Directive introduces more flexibility: instead of the current 12 minutes per hour, broadcasters can choose more freely when to show advertisements throughout the day, with an overall limit of 20% of broadcasting time being maintained between 6 a.m. and 6 p.m. and the same share allowed during prime time (from 6 p.m. to midnight). On the other hand, it strengthens the provisions to protect children from inappropriate audiovisual commercial communications for foods high in fat, salt and sodium, and sugars, including by encouraging codes of conduct at EU level, where necessary. Video sharing platforms also have to respect certain obligations for the commercial communications they are responsible for and to be transparent about commercial communications that are declared by the users when uploading content that contains such commercial communications. Finally, the independence of audiovisual regulators is reinforced in EU law by ensuring that they are legally distinct from their government and functionally independent from the government and any other public or private body.

Further to Article 3, the text will officially enter into force on the twentieth day following that of its publication, namely on 19 December 2018. Member states will then have 21 months in order to bring into force the laws, regulations and administrative provisions necessary to comply with this Directive, that is, no later than 19 September 2020. They shall immediately communicate the text of those provisions to the European Commission.

Publication of the revised Audiovisual Media Services Directive (EU) 2018/1808 in the Official Journal of the European Union

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.303.01.0069.01.ENG&toc=OJ:L:2018:303:TOC

