

Commission sends reasoned opinion to nine EU member states over lack of implementation of the revised AVMS Directive 2018

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On 23 September 2021, the European Commission announced that it had sent a “reasoned opinion” to nine EU member states (Czechia, Estonia, Ireland, Spain, Croatia, Italy, Cyprus, Slovenia and Slovakia) for failing to provide information about the implementation of the revised Audiovisual Media Services Directive 2018 (AVMS Directive) (see IRIS 2019-1/3) into their national law. Notably, the revised AVMS Directive had been enacted in November 2018, and under Article 2, EU member states were required to incorporate the Directive into national law by 21 September 2020, and to notify the Commission of the text of the main provisions of national law which were adopted.

Under the EU treaties, the Commission may take legal action – an infringement procedure – against an EU member state that fails to implement EU law. This legal action involves a number of stages, including: first, sending a letter of formal notice requesting further information to the member state concerned, who must send a detailed reply; second, sending a reasoned opinion: a formal request to comply with EU law; and third, the Commission deciding to refer the matter to the EU Court of Justice.

In November 2020, the European Commission announced that it had launched infringement procedures against 23 EU member states for failing to transpose the AVMS Directive (see IRIS 2021-1/25). However, numerous EU member states have enacted national legislation implementing the AVMS Directive. The revised AVMS Directive contains a range of new rules, including more flexibility in television advertising; a strengthened country-of-origin principle; increased obligations to promote European works for on-demand services (such as Netflix), including at least a 30% share of European content in their catalogues and the requirement to ensure the prominence of this content; certain audiovisual rules being extended to what are termed video-sharing platforms (such as YouTube); extending the obligation to protect minors to video-sharing platforms, which must put in place appropriate protective measures; reinforced protection on television and video-on-demand against incitement to violence or hatred and public provocation to commit terrorist offences; and video-sharing platforms also being required to take appropriate measures to protect people from incitement to violence or hatred and content constituting criminal offences.

Finally, the Commission noted that the nine EU member states that had received the reasoned opinion had two months to reply to the Commission, “or the Commission may decide to refer their cases to the Court of Justice of the European Union”.

European Commission, “Commission calls on Member States to fully transpose EU rules on audiovisual content”, 23 September 2021

<https://digital-strategy.ec.europa.eu/en/news/audiovisual-media-commission-calls-member-states-fully-transpose-eu-rules-audiovisual-content>

