Commission refers five member states to the CJEU for failing to transpose AVMSD

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Christina Etteldorf
Institute of European Media Law

On 19 May 2022, the European Commission referred five EU member states – Ireland, Romania, Slovakia, Spain and Czechia – to the Court of Justice of the European Union (CJEU). The referral was based on Article 258 of the Treaty on the Functioning of the European Union (TFEU), under which, if a member state fails to fulfil an obligation under the Treaties and does not comply with a reasoned opinion delivered by the Commission within a set period, the Commission may bring the matter before the CJEU. This particular case concerns the member states' failure to fully transpose the Audiovisual Media Services Directive (AVMSD) in the version adopted under Directive (EU) 2018/1808 in December 2018, whose provisions were meant to be transposed into national law by 19 September 2020. The Commission also called on the CJEU to impose financial sanctions on the member states concerned (Article 260(3) TFEU).

In November 2020, shortly after the transposition deadline, the Commission had sent letters of formal notice to 23 member states which had failed to adopt the relevant national rules required under Directive (EU) 2018/1808. Around a year later, the matter had been escalated a step further when the Commission sent reasoned opinions to nine member states that had still not transposed or communicated suitable measures implementing the AVMSD to the Commission. Whereas Estonia, Croatia, Cyprus and Slovenia had responded by taking measures within the period laid down, the other five member states had not. In particular, they had failed to implement the provisions of Directive (EU) 2018/1808 designed to create a level playing field by partially harmonising the legal framework for different types of service (television, VOD services and video-sharing platforms), guarantee the independence of national media regulators, require on-demand catalogues to include a quota of European works, and improve the protection of children and consumers in general against certain harmful content and in the field of commercial communication. The latter provisions also cover video-sharing platforms in particular, which were brought under the scope of the AVMSD for the first time by the recent reforms. In this context, the proceedings against Ireland, in particular, will carry great significance beyond the member state itself and will be closely scrutinised, since the largest EU-wide video-sharing platform providers, including YouTube, have their European headquarters in Ireland and therefore come under Irish jurisdiction. In accordance with the country-of-origin principle enshrined in the AVMSD, the legal framework applicable to these platforms would therefore (initially) be laid down in Irish law,

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while the Irish regulator would become a central point of contact for supervisory and law enforcement matters. However, since Ireland has yet to transpose the relevant provisions, such rules are not currently in place.

Press release of the European Commission

https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2707

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