



Council of the
European Union

Brussels, 27 May 2016
(OR. en)

9479/16

Interinstitutional File:
2016/0151 (COD)

AUDIO 68
DIGIT 55
MI 382
CONSOM 121
IA 28
CODEC 744
TELECOM 98

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	26 May 2016
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2016) 287 final
Subject:	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

Delegations will find attached document COM(2016) 287 final.

Encl.: COM(2016) 287 final



Brussels, 25.5.2016
COM(2016) 287 final

2016/0151 (COD)

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

(Text with EEA relevance)

{SWD(2016) 168 final}

{SWD(2016) 169 final}

{SWD(2016) 170 final}

{SWD(2016) 171 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The audiovisual media landscape is changing at a rapid pace due to ever-increasing convergence between television and services distributed via the internet. Consumers increasingly access on-demand content via smart/connected TVs and portable devices. Young consumers, particularly, watch videos, including user-generated content, on the internet. Traditional broadcasting in the EU remains strong in terms of viewership, advertising revenues, and investment in content (around 30% of revenues). However, new business models are emerging. Broadcasters are extending their activities online and new players offering audiovisual content via the internet (e.g. video-on-demand providers and video-sharing platforms) are getting stronger and competing for the same audiences. However, TV broadcasting, video-on-demand and user-generated content are subject to different rules and varying levels of consumer protection.

The Digital Single Market (DSM) strategy for Europe¹ calls for a modernisation of the Audiovisual Media Services Directive (AVMSD)² to reflect these market, consumption and technological changes. It requires the Commission to focus on the scope of application of the AVMSD and on the nature of the rules applicable to all market players³ (in particular those for the promotion of European works⁴), the protection of minors and advertising rules.

Pursuant to this commitment and in line with ‘Better Regulation’ requirements⁵, the Commission carried out an *ex post* evaluation (also called ‘REFIT’). It assessed the effectiveness, efficiency, relevance, coherence and EU added-value of the AVMSD, and pinpointed areas where there is potential for simplification, without undermining the objectives of the AVMSD.

• Consistency with existing policy provisions in the policy area

Council Directive 89/552/EEC as amended by Directives 97/36/EC and 2007/65/EC and codified in Directive 2010/13/EU (AVMSD), covers both rules for ‘television broadcasting’ and for on-demand audiovisual media services. This proposal takes into account changes in the audiovisual landscape since the last revision to ensure that the AVMSD will provide a modernised, flexible and forward looking legal framework.

¹ Communication from the Commission "A digital single market strategy for Europe", 6 May 2015, COM(2015) 192 final, http://ec.europa.eu/priorities/digital-single-market/docs/dsm-communication_en.pdf

² Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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)

³ More specifically, the DSM strategy mentions that "The Commission will examine whether the current system of rules applying to broadcast and to on-demand services should be adapted. It will also consider whether the current scope or the rules should be broadened to encompass new services and players that are currently not considered as audiovisual media services under the Directive and/or providers that fall outside its current geographical scope".

⁴ The DSM strategy also mentions that "The Commission will also work on measures to promote catalogues of European works on Video on Demand platforms".

⁵ The AVMSD REFIT evaluation is announced in the Commission Staff Working Document "REFIT: Initial results of the mapping of the acquis" (SWD(2013) 401 final) and is part of the Commission's 2015 Work Programme (Annex 3 (COM2014) 910 final of 16.12.2014).

- **Consistency with other Union policies**

This proposal complements existing EU law, in particular the e-Commerce Directive 2000/31/EC, Directive 2003/33/EC on advertising and sponsorship of tobacco products, Directive 2005/29/EC on unfair commercial practices and Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography.

In December 2015, the Commission adopted a proposal for a European Accessibility Act⁶, which sets accessibility requirements for a wide range of products and services including audiovisual media services. Therefore, the revision of the AVMSD does not address the issue of accessibility.

e-Commerce Directive 2000/31/EC (ECD)

The current AVMSD does not apply to user-generated content offered on video-sharing platforms since the providers of video-sharing platforms services often do not have editorial responsibility for the content stored on those platforms. In many cases these services are subject to the e-Commerce Directive (ECD), as they constitute information society services.

The ECD does not require intermediaries to monitor content hosted by them; in fact, it prohibits Member States from imposing a general obligation to monitor or to engage in active fact-finding indicating illegal activity (Article 15). Under the ECD, intermediaries – and more specifically providers of so-called 'hosting' services – are exempt from liability for any illegal information that they host (Article 14). Providers can only qualify as hosting service providers within the meaning of the ECD where they have neither knowledge of nor control over the information in question. This exemption from liability is only available if providers ensure that, if illegal content is identified, they take expeditious action to disable access to or remove it.

This proposal would complement the ECD on some points, as explained in section 5 below, while leaving the abovementioned provisions of the ECD, as well as its Article 3 on the internal market, unaffected.

Directive on advertising and sponsorship of tobacco products 2003/33/EC

Directive 2003/33/EC prohibits advertising for cigarettes and other tobacco products in the press and other printed publications, in radio and in information society services. It also bans sponsorship, by tobacco companies, of radio programmes and of cross-border events. Moreover recital 14 of Directive 2003/33/EC makes it clear that all forms of audiovisual commercial communications for cigarettes and other tobacco products in broadcast services are prohibited by the AVMSD. Such restrictions have, through successive amendments, been extended to cover all audiovisual commercial communications, including sponsorship and product placement in audiovisual media services (Articles 9(1)(d), 10(2) and 11(4)(a) AVMSD). In addition, pursuant to Article 20(5)(e) of Directive 2014/40/EU on the manufacture, presentation and sale of tobacco and related products⁷, the prohibitions applicable to communications concerning tobacco products under the AVMSD also apply to electronic cigarettes and refill containers. The prohibition on commercial communications in respect of tobacco and related products are recalled in a recital of the Directive now proposed.

⁶ COM(2015) 615 (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2015%3A615%3AFIN>)

⁷ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

Unfair Commercial Practices Directive 2005/29/EC (UCPD)

The UCPD is the main body of legislation on business-to-consumer commercial practices, such as misleading advertising, in the EU. It applies to all business to consumer commercial practices, before, during and after a transaction has taken place, and online as well as offline.

The UCPD provides three levels of consumer protection:

- (1) The black-list of 31 specific commercial practices which are prohibited in all circumstances;
- (2) Misleading and aggressive practices – to be assessed on a case-by-case basis;
- (3) General prohibition of unfair practices contrary to professional diligence – to be assessed on a case-by-case basis.

Directive on combating the sexual abuse and sexual exploitation of children and child pornography 2011/93/EU

The Directive on combating the sexual abuse and sexual exploitation of children and child pornography harmonises throughout the Union criminal offences relating to sexual abuse committed against children, the sexual exploitation of children and child pornography. It also lays down minimum sanctions.

- **Consistency with international law obligations**

21 EU Member States are contracting parties to the 1989 European Convention on Transfrontier Television (CETS No. 132) which was amended by a 1998 Protocol. The Union is not a party to the Convention.

The Convention allows contracting parties to apply stricter or more detailed rules to programme services transmitted by broadcasters under their jurisdiction.

To the extent that some of the existing AVMSD rules are less strict than the Convention rules, implementation of the AVMSD rules by EU Member States which are contracting parties to the Convention could already result in some differences between EU Member States depending on whether they are contracting parties to the Convention in respect of their international obligations. This will also be the case for some amendments contained in this proposal, which would introduce in the AVMSD further rules that are less strict than the Convention rules.

For the matters covered by the AVMSD the Union has acquired exclusive competence to enter into international agreements. Any changes of the obligations stemming from the Convention would thus require action on the part of the Union.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The AVMSD is based on the EU's powers to coordinate Member States laws to bring about the freedom to provide services in the internal market (Article 53(1) TFEU in conjunction with Article 62 TFEU).

- **Subsidiarity (for non-exclusive competence)**

The EU-wide dimension of the audiovisual market is constantly increasing, in particular due to online growth and the fact that TV channels are becoming more international. At the end of 2013, 5 141 TV channels (not counting local channels and windows) were established in the

EU. Of these, Almost 1989 of them targeted foreign markets (either EU or extra-EU). This share had increased from 28 % in 2009 —year of implementation— to 38 % in 2013. As far as video-on-demand services are concerned, 31 % of the video-on-demand services available in Member State on average are established in another EU country (2015). This underpins the continued added value of the EU intervention.

The proposal complies with both the subsidiarity and proportionality principles by preserving, in general, a minimum harmonisation approach and improving the derogation and circumvention mechanisms. This will allow Member States to take their national circumstances into account. Member States have, in practice, adopted stricter rules, in particular as regards the definition of on-demand audiovisual media service, the setting-up of national regulatory authorities, the promotion of European works, the protection of minors and commercial communications.

Given that the AVMSD provides minimal harmonisation, the existing rules can only be simplified at EU level.

As regards extending the scope of the AVMSD to video-sharing platforms, EU action ensures consistency with the services already covered by that Directive. Maximum harmonisation in this field prevents any potential future fragmentation resulting from national intervention.

- **Proportionality**

As stated above, by preserving the minimum harmonisation approach and cooperation mechanisms, the proposal will comply with the proportionality principle.

- **Choice of the instrument**

The proposed Directive recommends the use of co-regulation and self-regulation in particular with regard to the protection of minors, the fight against hate speech and commercial communications. Such regimes are deemed to be broadly accepted by the main stakeholders and provide for effective enforcement.

3. RESULTS OF *EX POST* EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- ***Ex post* evaluations/fitness checks of existing legislation**

The overall conclusion is that the AVMSD objectives are still relevant. The evaluation found that the country of origin principle has enabled the development and free circulation of audiovisual media services across the EU, with legal certainty and resulted in lower compliance costs for providers and more choice for consumers.

The REFIT evaluation concluded that there is scope for simplification, specifically of the procedures that support the application of the ‘country of origin’ (COO) principle (i.e. the criteria determining jurisdiction over providers and the derogation and cooperation procedures limiting freedom of reception and retransmission in specific cases) and of some commercial communications rules. Some other rules are no longer suited to achieving the policy objectives, primarily due to market developments and changes in viewing patterns. The Directive is also being simplified by aligning the rules on protection of minors for TV broadcasting and on-demand services.

- **Stakeholder consultations**

In 2013, the Commission published the Green Paper⁸ *"Preparing for a Fully Converged Audiovisual World: Growth, creation and values"* and invited stakeholders to share their views on the changing media landscape and borderless internet in particular on market conditions, interoperability and infrastructure, and implications for EU rules. The outcomes of the Green Paper are reflected in the feedback document and executive summary of the replies published by the Commission in September 2014⁹.

With a view to the current revision of the AVMSD, the Commission carried out a public consultation¹⁰ called 'The AVMSD — a media framework for the 21st century' which took place from 6 July 2015 to 30 September 2015.

The main results when it comes to policy options for the future were:

- convergence of views across stakeholders regarding the need for possible changes of the rules on the scope of application of the Directive, although there was no common pattern or clarity among stakeholders as regards the way forward;
- convergence of views on the need to ensure the independence of national regulators;
- support across stakeholders for maintaining the status quo as regards the country of origin principle; must-carry/findability; accessibility for persons with disabilities; rules on major events for society, short news reports and right of reply;
- no clear consensus among stakeholders on commercial communications, protection of minors or the promotion of European works.

The following trends emerged among different groups of contributors:

- There was a call from a fair share of representatives of the broadcasting sector to ensure a level playing field either by regulating new services and/or ensuring more flexibility of existing rules.
- Consumers' organisations called for strengthening of the AVMSD rules aimed at protecting viewers, particularly vulnerable viewers.
- The internet, telecom and information and communication technology (ICT) industries called for refraining from new regulation, in order to preserve innovation.
- The content industry called for strengthening of the rules aimed at promoting European works, across all audiovisual media services.

- **Collection and use of expertise**

The Commission relied on the following external expert advice:

- Policy recommendations from **other EU institutions**, in particular the European Parliament¹¹, the Council¹², the European Economic and Social Committee¹³ and the Committee of the Regions¹⁴.

⁸ <http://ec.europa.eu/digital-agenda/en/news/consultation-green-paper-preparing-fully-converged-audiovisual-world-growth-creation-and-values>

⁹ <https://ec.europa.eu/digital-agenda/en/news/publication-summaries-green-paper-replies>

¹⁰ <http://ec.europa.eu/digital-agenda/en/news/public-consultation-directive-201013eu-audiovisual-media-services-avmsd-media-framework-21st>

¹¹ Three Own-initiative reports adopted by the European Parliament. A) The January 2015 (still to be adopted) "Towards a Digital Single Market Act" (2015/2147(INI)); B) the July 2013 "Connected TV" report (Rapporteur MEP Petra Kammerevert (S&D, DE)) calling on the Commission to evaluate the extent to which it is necessary to revise the AVMSD,

- **Data gathering on the AVMSD cost and benefits¹⁵.** The questionnaire was drafted by a task force of Member States audiovisual regulators convened by the European Commission. It was submitted to Member States regulators in the European Regulators Group for Audiovisual Media Services (ERGA¹⁶), to the relevant sectors of the industry and to consumer organisations. The questionnaire was sent in May/June 2015. It asked about the benefits and downsides of certain AVMSD rules and sought quantitative evidence in terms of annual revenue or direct and indirect costs of compliance. It covered rules on:
 1. Commercial communications
 2. European works
 3. The protection of minors
 4. The country of origin principle

The reference period for the quantitative questions was 2010 to 2014, inclusive.

The survey attracted 107 replies: 40 from commercial broadcasters (38 %), 20 from public broadcasters (19 %), 18 from video-on-demand providers (17 %), 12 from national associations focusing on the protection of minors (12 %), 10 from national associations representing independent producers (10 %), and 4 from consumer association (4 %). One association representing broadcasters and one representing sales houses also participated. The respondents are established in 19 Member States.

- **Studies by and opinions of the European Regulators Group for Audiovisual Media Services (ERGA).** In its 2015 work programme, ERGA committed itself to delivering analyses and reports on four main topics: the independence of audiovisual regulatory authorities; material jurisdiction in a convergent audiovisual world; protecting minors in a converged environment; and tackling the issue of territorial jurisdiction in the EU context. Each topic was dealt with by sub-groups comprising ERGA members. The first three reports were adopted via written procedure (in line with Article 11 of the ERGA Rules of Procedure) in December 2015. The report on territorial jurisdiction will be adopted in the course of 2016.

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2013-0329&language=EN&ring=A7-2013-0212> C) The March 2014 report, "Preparing for a Fully Converged Audiovisual World" (Rapporteur MEP Sabine Verheyen (EPP, DE)) which calls for a review of the AVMSD, <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0232&language=EN&ring=A7-2014-0057>.

¹² Most recently, the Council conclusions adopted under the Italian Presidency of the EU in 2014 inviting the Commission to "Urgently complete the exercise of the review of the AVMSD in the light of the rapid technological and market changes resulting from the digital shift, and on the basis of the outcome of this review submit an appropriate proposal for the revision of this Directive as soon as possible, in respect of the principle of subsidiarity." http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/145950.pdf

¹³ Opinion adopted by the European Economic and Social Committee in September 2013 on the Green Paper "Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, <http://www.eesc.europa.eu/?i=portal.en.ten-opinions.28469>

¹⁴ At its Plenary Session of 12-14 October 2015, the Committee of the Regions adopted an own-initiative opinion on the "Review of the Audiovisual Media Services Directive" – link to be published

¹⁵ As most of the provided information is confidential, it has been used in the Impact Assessment and the REFIT in an aggregated and anonymised way. For this reason the replies are not published.

¹⁶ <http://ec.europa.eu/digital-agenda/en/news/commission-decision-establishing-european-regulators-group-audiovisual-media-services>

- **External studies¹⁷** on alcohol advertising exposure, impact of online marketing on children, independence of audiovisual regulators, self- and co-regulation and standardisation:
 - **A study on Alcohol advertising exposure**, to assess whether rules on audiovisual commercial communication for alcoholic beverages have given minors the level of protection required¹⁸.
 - **A study on the impact of marketing through social media, online games and mobile applications on children's behaviour**. The final report will be published in May 2016¹⁹.
 - **A study on the independence of audiovisual regulators**, updating a previous study on independence of regulatory authorities. It reports on recent changes and developments in Member States and candidate countries as regards the independence and efficient functioning of the audiovisual media services regulatory bodies. The final report was published²⁰ on 8 December 2015.
 - **A study on Self-regulation** that reviews existing self-regulation approaches in a range of Member States and aims at providing information about relevant evidence of existing schemes and their effectiveness. The final report is due in the second quarter of 2016.
- **Four Studies on survey and data gathering to support the impact assessment** of a possible new legislative proposal on the AVMSD commissioned under the Framework Contract EAC-22-201²¹. These cover: commercial communication, protection of minors, cultural diversity and media freedom/public interest and access for persons with disabilities. The draft final reports of the study will be sent to the Commission in the second quarter of 2016.
- **Two reports of the European Audiovisual Observatory (EAO)** ('Study on data and information on the costs and benefits of the Audiovisual Media Service Directive (AVMSD)²² and 'On-demand markets in the European Union —2014 and 2015 developments'²³) carried out in the context of Framework Contract PN/2011-27/A6. These two reports focus on:
 - (1) the measurement of audiences;
 - (2) online advertising in the EU;
 - (3) the EU subscription video-on-demand market in 2014;
 - (4) the visibility of films in on-demand services;
 - (5) the proportion of European fiction works on a sample of TV channels;

¹⁷ <http://ted.europa.eu/udl?uri=TED:NOTICE:212396-2015:TEXT:EN:HTML&ticket=ST-1292379-SKem8OGQ1reJn1lxAZqVGszP2zjXhYuZOoStsF8rBu0ZCOZKgO05NbMy9k6hOrTzlimWUTdcKGfvm49lhwu7y5m-Jj71zxYb8yr5J3R6eCTiGK-TqeqixAzhASPiqbmnf8X5hXPzlpWbUx9btUwoJzMau>

¹⁸ <https://ec.europa.eu/digital-single-market/en/news/study-exposure-minors-alcohol-advertising-tv-and-online-services>

¹⁹ http://ec.europa.eu/consumers/consumer_evidence/behavioural_research/impact_media_marketing_study/index_en.htm

²⁰ <http://ec.europa.eu/digital-agenda/en/news/study-audiovisual-media-services>

²¹ <http://ted.europa.eu/udl?uri=TED:NOTICE:279501-2014:TEXT:EN:HTML>

²² <https://ec.europa.eu/digital-single-market/en/news/study-data-and-information-costs-and-benefits-audiovisual-media-service-directive-avmsd>

²³ <https://ec.europa.eu/digital-single-market/en/news/demand-audiovisual-markets-european-union-smart-20120028>

- (6) on-demand audiovisual services, including revenues and investment in original programming;
- (7) linear audiovisual services, including revenues and investment in original programming

- **Impact assessment**

The executive summary of the Impact assessment and the positive opinion of the Regulatory Scrutiny Board can be found on the website of the Commission: XXX

The following options have been examined (for each section, the preferred option is highlighted):

- (8) Options addressing the problem of insufficient protection of minors and consumers in video-sharing platforms

Option A encourages self-regulation for protection of minors and consumers on video-sharing platforms

Option B imposes an obligation of means on video-sharing platforms for protection of minors and hate speech, implemented through co-regulation.

- (9) Options addressing the problem of the lack of a level playing field and internal market weaknesses

(a) Promotion of European works

Option A gives more flexibility to both TV broadcasting and on-demand services in the way they implement the obligations to promote European works.

Option B maintains the status quo for TV broadcasting and reinforces the rules for on-demand service providers.

(b) Protection of minors in on-demand services

Option A increases the level of protection of minors for on-demand audiovisual media services, simplifies the notion of harmful content and encourages EU co-regulation on content descriptors.

(c) Country of origin principle

Option A simplifies and improves jurisdiction rules and cooperation procedures

(d) Independence of regulators

Option A requires Member States to have an independent regulatory authority and sets a number of requirements to support their independence and effectiveness. ERGA coordination and advisory role is reinforced and embedded in the AVMSD.

- (10) Option addressing the problem of the rules on commercial communications no longer fit for purpose

Option A makes some of the rules for audiovisual commercial communications more flexible.

The combination of preferred options is deemed to strike the best balance between the need to introduce flexibility with respect to the current level of regulation and ensuring adequate consumer protection.

On the one hand, the industry will benefit from more flexible quantitative rules on commercial communications. The increased efficiency of the country of origin principle and the requirements for the independence of regulators would improve the business environment in which audiovisual players operate.

On the other hand, consumers will be guaranteed a high level of protection through the limited extension of the AVMSD to video-sharing platforms and the reinforcement of the requirements applicable to on-demand services in terms of the protection of minors. Consumers will also benefit from a greater access to European works in on-demand services.

All options take into account, where appropriate, the need for flexibility for the industry by considering possible implementation via self and/or co-regulation (scope of application, information on harmful content).

Most of the options complement each other. For example, the independence of regulators will be of the utmost importance if Member States decide to entrust them with the application of the new rules regarding video-sharing platforms. Also the potential increase in audiovisual media service providers' revenues deriving from the greater flexibility of quantitative rules on advertising will release a potential for an increased contribution to the production of European works.

The combination of options achieves a more level playing field between the different players in the audiovisual media market. This is for instance realised by levelling up certain requirements for on-demand services and video-sharing platforms in relation to the protection of consumer or promotion of European works while providing more flexibility to TV broadcasting services on certain rules on commercial communications.

- **Regulatory fitness and simplification**

The *ex post* evaluation identified commercial communications as one area where more flexibility could be provided in particular as regards TV broadcasters.

The market for TV broadcasting has evolved and there is a need for more flexibility with regard to audiovisual commercial communications, in particular for quantitative rules for linear audiovisual media services, product placement and sponsorship. The emergence of new services, including without advertising, has led to a greater choice for viewers, who can easily switch to alternative offers. Product placement has the potential to generate substantial additional resources for media service providers. The regulatory framework has to be aligned to this new context, namely via more flexibility with respect to the rules for broadcasting services. Against this backdrop, the proposal allows (in certain circumstances) product placement and introduces more flexibility as regards the quantitative rules. At the same time, the proposal takes into account evidence²⁴ collected on the effect that product placement can have on children by continuing to limit their exposure to such content.

As regards possible savings for service providers, it would be limited. Advertising scheduling is a core component of broadcast programming and the quantitative rules imposed by the AVMSD are only a small part of a large number of parameters taken into account in TV scheduling strategies aiming at optimising audience and revenue. The costs associated with broadcast programming, including IT costs, are 'business as usual', i.e. costs endured even in the absence of the AVMSD.

²⁴ Study on the impact of marketing through social media, online games and mobile applications on children's behaviour, European Commission: http://ec.europa.eu/consumers/consumer_evidence/behavioural_research/impact_media_marketing_study/index_en.htm

As regards national regulatory authorities, there would not be any incremental administrative cost for them. Currently, regulators' monitoring and enforcement activities with respect to the 20% limitation of advertising per hour on television amount to up to EUR 1 million²⁵. As regards product placement and sponsorship rules, these costs amount respectively up to EUR 2.2 million and EUR 2.1 million per year at EU level²⁶. As an important share of these costs derive from the application of subjective criteria, such as the undue prominence of product placement, regulators will certainly lower their current costs. It is however not possible to quantify precisely these cost savings.

As regards small and medium-sized enterprises (SMEs) and micro enterprises, the proposal provides for possible exemptions for the provisions related to the promotion of European works. Indeed, Member States would be allowed to introduce exceptions for thematic or low audience audiovisual media services.

For the provisions addressing protection of consumer including minors, the proposal does not foresee any exemptions for SMEs and micro enterprises as it touches extremely important values.

- **Fundamental rights**

The proposal takes also full account of the fundamental rights and principles recognised by the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life and the protection of personal data (Articles 7 and 8), the freedom of expression and information (Article 11), the freedom to conduct a business (Article 16) and the prohibition of discrimination (Article 21), the rights of the child (Article 24) and the right to an effective remedy and a fair trial (Article 47).

4. BUDGETARY IMPLICATIONS

The proposal has no implications for the EU budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Monitoring of the implementation will continue to be assured by the Commission on the basis of:

- Application reports by the Commission, on the Directive as a whole, two years after the adoption of the Directive and every three years thereafter;
- Reports on the application of the provisions related to the promotion of European works every two years (for TV broadcasting and on-demand services);
- Monitoring of the implementation of the provisions on video-sharing platforms on the basis of an independent study carried out after the transposition;
- Monitoring of the implementation of the provision on content descriptors for protection of minors.

²⁵ Study on defining a framework for the monitoring of advertising rules under the AVMSD: based on the current average value for the monitoring of 1 linear provider established in the EU (PPP adjusted) which is derived from a sample of the regulatory costs in 7 Member States which can be considered as a representative sample of different approaches to fulfilling regulatory responsibilities with regard to the monitoring and enforcement of the quantitative rules. It is further assumed that regulators focus their regulatory activities on linear services which have more than 0,5 % of the audience share.

²⁶ Study on defining a framework for the monitoring of advertising rules under the AVMSD

- **Explanatory documents (for directives)**

N/A

- **Detailed explanation of the specific provisions of the proposal**

The country of origin principle for media service providers is maintained and reinforced by simplifying the rules determining which country has jurisdiction and improving the derogation mechanisms in cases of exceptions.

The amended Directive will continue to be based on minimum harmonisation. However, a higher degree of harmonisation is sought by reinforcing the independence of audiovisual regulators. This is an important novelty, given the key role of audiovisual regulators in shaping and preserving the internal market. Moreover, it is highly relevant for guaranteeing the pluralism of the media. The proposal reinforces the role of the European Regulators Group for Audiovisual Media Services (ERGA) by giving it more tasks when advising and assisting the Commission in consistent implementation of the directive in all Member States. As a consequence, the Commission Decision of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services will be repealed when the Directive enters into force.

Article 7 of the current Directive is deleted given that the proposed European Accessibility Act already sets stricter common accessibility requirements for media service providers.

Regarding the protection of minors, the revised Directive provides for alignment of the standards of protection for TV broadcasting and on-demand services. Article 12 requires that programmes that may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. This is regardless of whether such programmes are broadcast by TV broadcasters or provided by on-demand media service providers. With a view to this alignment, Article 27 of the current Directive (applicable to TV broadcasting only) is removed.

The revised Directive creates a more level playing field in the promotion of European works by obliging on-demand services to reserve at least 20% share for European works in their catalogues and to ensure adequate prominence of such works (Article 13). Article 13 will also allow Member States to impose financial contributions (direct investments or levies allocated to national film funds) to on-demand services in their jurisdictions as well as, under certain conditions, to those established in a different Member State but targeting their national audiences. In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements. This is in particular the case for companies with a low turn-over.

This proposal achieves a balance between competitiveness and consumer protection by, on the one hand, introducing more flexibility for all audiovisual media services on product placement and sponsorship and increased flexibility for TV broadcasting. The hourly limit is replaced by a daily limit of 20% of advertising during the period between 07:00 and 23:00 (Article 23). Films made for television, cinematographic works and news could be interrupted more often (Article 20) and isolated spots would be admissible (Article 19). On the other hand, the future Directive will also strengthen provisions to protect minors from inappropriate audiovisual commercial communications of foods high in fat, salt/sodium and sugars and alcohol beverages by, where necessary, encouraging codes of conduct at EU level (Article 9(2) and (4)).

A further new feature is the extension of its scope to cover, in certain respects, video-sharing platform services which do not have editorial responsibility for the content that they store but which organise that content, through various means.

The amended Directive would introduce an obligation on Member States to ensure that, within their field of responsibility, video-sharing platform providers put in place, preferably through co-regulation, appropriate measures to: i) protect minors from harmful content; and ii) protect all citizens from incitement to violence or hatred. The proposal sets out what those measures can entail, as appropriate in an individual case. The system would be compatible with the liability exemption for hosting service providers set out in Article 14 ECD, in as far as that provision applies in a particular case, because these obligations relate to the responsibilities of the provider in the organisational sphere and do not entail liability for any illegal information stored on the platforms as such.

Member States continue to be bound by the rules of the ECD. They would consequently not be allowed to impose on providers any general obligation to monitor content or to actively engage in fact-finding, without precluding the imposition of monitoring requirements in specific cases (Article 15 ECD).

Member States would not be allowed to require video-sharing platform providers under their jurisdiction to apply stricter measures than the ones provided for in the Directive, as amended. This is without prejudice to any measures which Member States may apply in line with Directive 2000/31/EC with respect to illegal content stored on the platforms.

Furthermore, this is also without prejudice to Article 25 of Directive 2011/93/EU, which requires Member States to take measures against websites containing or disseminating child pornography. In particular, it provides that Member States may take measures to block access to web pages containing or disseminating child pornography towards the Internet users within their territory, subject to safeguards to ensure the transparency, necessity and proportionality of such measures as well as the possibility for legal redress.

With respect to the provision of information society services provided from another Member State, the ECD sets out the principle of country of origin, subject to a number of possible exceptions (Article 3). This system will continue to apply to video-sharing platforms providers. The proposal seeks to ensure that the same rules also apply to such providers which do not have an establishment in a Member State, but which have a parent company, a subsidiary or another entity of the same group with such an establishment.

The Commission would facilitate, with ERGA's support, the coordination of codes of conduct at EU level. Moreover, a complaint and redress mechanism should be foreseen at national level.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The last substantive amendment to Directive 89/552/EEC of the Council²⁷, later codified by Directive 2010/13/EU of the European Parliament and of the Council²⁸, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council²⁹. Since then, the market of audiovisual media services has evolved significantly and rapidly. Technical developments allow for new types of services and user experiences. The viewing habits, particularly of younger generations, have changed significantly. While the main TV screen remains an important device to share audiovisual experiences, many viewers have moved to other, portable devices to watch audiovisual content. Traditional TV content accounts still for a major share of the average daily viewing time. However, new types of content, such as short videos or user-generated content, gain increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established.

²⁷ Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 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) (OJ L 298, 17.10.1989, p. 23).

²⁸ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 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) (OJ L 95, 15.4.2010, p. 1).

²⁹ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27).

- (2) On 6 May 2015, the Commission adopted "A Digital Single Market Strategy for Europe"³⁰ in which it announced a review of Directive 2010/13/EU.
- (3) Directive 2010/13/EU should remain applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should be also considered to be met if the service has audiovisual content and form which is dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. Social media services are not included, except if they provide a service that falls under the definition of a video-sharing platform. A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity. As such, channels or any other audiovisual services under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered in the framework of a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will be up to the providers with editorial responsibility to abide by the provisions of this Directive.
- (4) In order to ensure the effective implementation of this Directive, it is crucial for Member States to keep up-to-date records of the audiovisual media service providers and video-sharing platform providers under their jurisdiction and regularly share those records with their competent independent regulatory authorities and the Commission. Those records should include information about the criteria on which jurisdiction is based.
- (5) Establishing jurisdiction requires an assessment of factual situations against the criteria laid down in Directive 2010/13/EU. The assessment of such factual situations might lead to conflicting results. In the application of the cooperation procedures provided for in Articles 3 and 4 of Directive 2010/13/EU, it is important that the Commission can base its findings on reliable facts. The European Regulators Group for Audiovisual Media Services (ERGA) should therefore be empowered to provide opinions on jurisdiction upon the Commission's request.
- (6) The procedures and conditions for restricting freedom to provide and receive services should be the same for linear and non-linear services.
- (7) In its Communication to the European Parliament and to the Council on Better Regulation for Better Results – an EU Agenda³¹, the Commission stressed that when considering policy solutions, it will consider both regulatory and well-designed non-regulatory means, modelled on the Community of practice and the Principles for Better Self- and Co-regulation³². A number of codes set up in the areas coordinated by the Directive have proved to be well designed, in line with the Principles for Better Self- and Co-regulation. The existence of a legislative backstop has been considered an important success factor in promoting compliance with a self- or co-regulatory code. It is equally important that the codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed by the codes. Graduated sanctions which maintain an element of proportionality are usually considered to be an effective approach in enforcing a

³⁰ COM(2015) 192 final

³¹ COM(2015) 215 final

³² <https://ec.europa.eu/digital-single-market/communities/better-self-and-co-regulation>

scheme. These principles should be followed by the self- and co-regulatory codes adopted in the areas coordinated by this Directive.

- (8) In order to ensure coherence and give certainty to businesses and Member States' authorities, the notion of "incitement to hatred" should, to the appropriate extent, be aligned to the definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based.
- (9) In order to empower viewers, including parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical, mental or moral development. This could be done, for instance, through a system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means.
- (10) Certain widely recognised nutritional guidelines exist at national and international level, such as the WHO Regional Office for Europe's nutrient profile model, in order to differentiate foods on the basis of their nutritional composition in the context of foods television advertising to children. Member States should be encouraged to ensure that self-and co-regulatory codes of conduct are used to effectively reduce the exposure of children and minors to audiovisual commercial communications regarding foods and beverages that are high in salt, sugars or fat or that otherwise do not fit these national or international nutritional guidelines.
- (11) Similarly, Member States should be encouraged to ensure that self-and co-regulatory codes of conduct are used to effectively limit the exposure of children and minors to audiovisual commercial communications for alcoholic beverages. Certain co-regulatory or self-regulatory systems exist at Union and national level in order to market responsibly alcoholic beverages, including in audiovisual commercial communications. Those systems should be further encouraged, in particular those aiming at ensuring that responsible drinking messages accompany audiovisual commercial communications for alcoholic beverages.
- (12) In order to remove barriers to the free circulation of cross-border services within the Union, it is necessary to ensure the effectiveness of self- and co-regulatory measures aiming, in particular, at protecting consumers or public health. When well enforced and monitored, codes of conduct at Union level might be a good means of ensuring a more coherent and effective approach.
- (13) The market for TV broadcasting has evolved and that there is a need for more flexibility with regard to audiovisual commercial communications, in particular for quantitative rules for linear audiovisual media services, product placement and sponsorship. The emergence of new services, including without advertising, has led to a greater choice for viewers, who can easily switch to alternative offers.
- (14) Sponsorship represents an important means of financing audiovisual media services or programmes while promoting a legal or physical person's name, trade mark, image, activities or products. As such, for sponsorship to constitute a valuable form of advertising technique for advertisers and audiovisual media service providers, sponsorship announcements can contain promotional references to the goods or services of the sponsor, while not directly encouraging the purchase of the goods and

services. Sponsorship announcements should continue to clearly inform the viewers of the existence of a sponsorship agreement. The content of sponsored programmes should not be influenced in such a way as to affect the audiovisual media service provider's editorial independence.

- (15) The liberalisation of product placement has not brought about the expected take-up of this form of audiovisual commercial communication. In particular, the general prohibition of product placement with some exceptions has not created legal certainty for audiovisual media service providers. Product placement should thus be allowed in all audiovisual media services, subject to exceptions.
- (16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes with a significant children's audience. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in programmes with a significant children's audience. Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes.
- (17) The rule that a product should not be given undue prominence has proved difficult to apply in practice. It also restricts the take-up of product placement which, by definition, involves some level of prominent exposure to be able to generate value. The requirements for programmes containing product placement should thus focus on clearly informing the viewers of the existence of product placement and on ensuring that the audiovisual media service provider's editorial independence is not affected.
- (18) As the increase in the number of new services has led to a greater choice for viewers, broadcasters are given greater flexibility with regard to the insertion of advertising and teleshopping spots where this does not unduly impair the integrity of programme. Yet, in order to safeguard the specific character of the European television landscape, interruptions for cinematographic works and films made for television as well as for some categories of programmes that still need specific protection should remain limited.
- (19) While this Directive does not increase the overall amount of admissible advertising time during the period from 7:00 to 23:00, it is important for broadcasters to have more flexibility and to be able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. The hourly limit should thus be abolished while a daily limit of 20% of advertising within the period from 7:00 to 23:00 should be introduced.
- (20) Many broadcasters are part of larger media groups and make announcements not only in connection with their own programmes and ancillary products directly derived from those programmes but also in relation with programmes from other entities belonging to the same media group. Transmission time allotted to announcements made by the broadcaster in connection with programmes from other entities belonging to the same media group should not be included in the maximum amount of daily transmission time that may be allotted to advertising and teleshopping.

- (21) Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that those are given enough prominence.
- (22) In order to ensure adequate levels of investment on European works, Member States should be able to impose financial obligations to on-demand service providers established on their territory. Those obligations can take the form of direct contributions to the production of and acquisition of rights in European works. The Member States could also impose levies payable to a fund, on the basis of the revenues made with on-demand services that are provided in and targeted towards their territory. This Directive clarifies that, given the direct link between financial obligations and Member States' different cultural policies, Member States are also allowed to impose such financial obligations on providers of on-demand services established in another Member State which are targeted towards its territory. In this case financial obligations should only be charged on the revenues generated through the audience in that Member State.
- (23) When assessing on a case-by-case basis whether an on-demand audiovisual media service established in another Member State is targeting audiences in its territory, a Member State shall refer to indicators such as advertisement or other promotions specifically aiming at customers in its territory, the main language of the service or the existence of content or commercial communications aiming specifically at the audience in the Member State of reception.
- (24) When Member States impose financial contributions to providers of on-demand services such contributions shall seek an adequate promotion of European works, while avoiding risks of double imposition for service providers. With this view, if the Member State where the provider is established imposes a financial contribution, it shall take into account any financial contributions imposed by targeted Member States.
- (25) In order to ensure that obligations on promotion of European works do not undermine market development and to allow for the entry of new players in the market, companies with no significant presence on the market should not be subject to such requirements. This is in particular the case for companies with a low turnover and low audiences and small and micro enterprises as defined in Commission Recommendation 2003/361/EC³³. It could also be inappropriate to impose such requirements in cases where – given the nature or theme of the on-demand audiovisual media services– they would be impracticable or unjustified.
- (26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In this context, harmful content and hate speech stored on video-sharing platforms have increasingly given rise to concern. It is necessary, in order to protect minors from harmful content and all citizens from content containing incitement to violence or hatred, to set out proportionate rules on those matters.
- (27) As regards commercial communications on video-sharing platforms, they are already regulated by Directive 2005/29/EC of the European Parliament and of the Council, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services. As regards commercial communications concerning tobacco and related products in

³³ Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (OJ L 124, 20.5.2003, p. 36).

video-sharing platforms, the existing prohibitions provided for in Directive 2003/33/EC of the European Parliament and of the Council, as well as the prohibitions applicable to communications concerning e-cigarettes and refill containers pursuant to Directive 2014/40/EU of the European Parliament and of the Council, ensure that consumers are sufficiently protected. The measures set out in this Directive therefore complement those set out in Directives 2005/29/EC, 2003/33/EC and 2014/40/EU.

- (28) An important share of the content stored on video-sharing platforms is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes or user-generated videos, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical, mental or moral development and protect all citizens from incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin.
- (29) In light of the nature of the providers' involvement with the content stored on video-sharing platforms, those appropriate measures should relate to the organisation of the content and not to the content as such. The requirements in this regard as set out in this Directive should therefore apply without prejudice to Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴, which provides for an exemption from liability for illegal information stored by certain providers of information society services. When providing services covered by Article 14 of Directive 2000/31/EC, those requirements should also apply without prejudice to Article 15 of that Directive, which precludes general obligations to monitor such information and to actively seek facts or circumstances indicating illegal activity from being imposed on those providers, without however concerning monitoring obligations in specific cases and, in particular, without affecting orders by national authorities in accordance with national legislation.
- (30) It is appropriate to involve the video-sharing platform providers as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. Co-regulation should therefore be encouraged.

With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures to protect minors from harmful content and all citizens from content containing incitement to violence or hatred than the ones provided for in this Directive. However, it should remain possible for Member States to take such stricter measures where that content is illegal, provided that they comply with Articles 14 and 15 of Directive 2000/31/EC, and to take measures with respect to content on websites containing or disseminating child pornography, as required by and allowed under Article 25 of Directive 2011/93/EU of the European Parliament and the Council³⁵. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.

³⁴ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (OJ L 178, 17.07.2000, p. 1).

³⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

- (31) When taking the appropriate measures to protect minors from harmful content and to protect all citizens from content containing incitement to violence or hatred in accordance with this Directive, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of expression and information, the freedom to conduct a business, the prohibition of discrimination and the right of the child.
- (32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.
- (33) Regulatory authorities of the Member States can achieve the requisite degree of structural independence only if established as separate legal entities. Member States should therefore guarantee the independence of the national regulatory authorities from both the government, public bodies and the industry with a view to ensuring the impartiality of their decisions. This requirement of independence should be without prejudice to the possibility for Member States to establish regulators having oversight over different sectors, such as audiovisual and telecom. National regulatory authorities should be in possession of the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities established under this Directive should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the internal market and the promotion of fair competition.
- (34) Any party subject of a decision of a national regulatory authority should have the right to appeal to a body that is independent from the parties involved. Such body may be a court. The appeal procedure should be without prejudice to the division of competences within national judicial systems.
- (35) With a view to ensuring the consistent application of the Union audiovisual regulatory framework across all Member States, the Commission established ERGA by Commission Decision of 3 February 2014³⁶. ERGA's role is to advise and assist the Commission in its work to ensure a consistent implementation of Directive 2010/13/EU in all Member States, and to facilitate cooperation among the national regulatory authorities, and between the national regulatory authorities and the Commission.

³⁶ Commission Decision C(2014) 462 final of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services.

- (36) ERGA has made a positive contribution towards consistent regulatory practice and has provided high level advice to the Commission on implementation matters. This calls for the formal recognition and reinforcement of its role in this Directive. The group should therefore be re-established by virtue of this Directive.
- (37) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing its expertise and advice and by facilitating exchange of best practices. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation across the Digital Single Market. Upon the Commission's request, ERGA should provide opinions, including on jurisdiction and Union codes of conduct in the area of protection of minors and hate speech as well as audiovisual commercial communications for foods high in fat, salt/sodium and sugars.
- (38) This Directive is without prejudice to the ability of Member States to impose obligations to ensure discoverability and accessibility of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law. In this respect, Member States should in particular examine the need for regulatory intervention against the results of the outcome of market forces. Where Member States decide to impose discoverability rules, they should only impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.
- (39) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for the right to freedom of expression, the freedom to conduct a business, the right to judicial review and to promote the application of the rights of the child enshrined in the Charter of Fundamental Rights of the European Union.
- (40) The right to access political news programmes is crucial to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union are fully and properly protected. Given the ever growing importance of audiovisual media services for societies and democracy, broadcasts of political news should, to the best extent possible, and without prejudice to copyright rules, be made available cross-border in the EU.
- (41) This Directive does not concern rules of private international law, in particular rules governing the jurisdiction of the courts and the law applicable to contractual and non-contractual obligations.
- (42) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents³⁷, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures by one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (43) Directive 2010/13/EU should therefore be amended accordingly,

³⁷ OJ C 369, 17.12.2011, p. 14.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive 2010/13/EU is amended as follows:

(1) in Article 1, paragraph 1 is amended as follows:

(a) in point (a), point (i) is replaced by the following:

"(i) a service as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, where the principal purpose of the service or a dissociable section thereof is devoted to providing programmes, under the editorial responsibility of a media service provider, in order to inform, entertain or educate, to the general public by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC. Such an audiovisual media service is either a television broadcast as defined in point (e) of this paragraph or an on-demand audiovisual media service as defined in point (g) of this paragraph;"

(b) the following point (aa) is inserted:

"(aa) 'video-sharing platform service' means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets the following requirements:

(i) the service consists of the storage of a large amount of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;

(ii) the organisation of the stored content is determined by the provider of the service including by automatic means or algorithms, in particular by hosting, displaying, tagging and sequencing;

(iii) 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;

(iv) the service is made available by electronic communications networks within the meaning of point (a) of Article 2 of Directive 2002/21/EC.";

(c) point (b) is replaced by the following:

"(b) 'programme' means a set of moving images with or without sound constituting an individual item within a schedule or a catalogue established by a media service provider, including feature-length films, videos of short duration, sports events, situation comedies, documentaries, children's programmes and original drama;"

(d) the following point (ba) is inserted:

"(ba) 'user-generated video' means a set of moving images with or without sound constituting an individual item that is created and/or uploaded to a video-sharing platform by one or more users;"

(e) the following point (da) is inserted:

"(da) 'video-sharing platform provider' means the natural or legal person who provides a video-sharing platform service;"

(2) the title of Chapter II is replaced by the following:

"GENERAL PROVISIONS FOR AUDIOVISUAL MEDIA SERVICES";

(3) Article 2 is amended as follows:

(a) in paragraph 3, point (b) is replaced by the following:

"(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where the majority of the workforce involved in the pursuit of the audiovisual media service activity operates;"

(b) the following paragraphs 5a and 5b are inserted:

"5a. Member States shall communicate to the Commission a list of the audiovisual media service providers under their jurisdiction and the criteria set out in paragraphs 2 to 5 on which their jurisdiction is based. They shall subsequently inform the Commission without undue delay of any changes to that list. The Commission shall ensure that the competent independent regulatory authorities have access to this information.

5b. Where, in applying Articles 3 and 4 of this Directive, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide an opinion on the matter within 15 working days from submission of the Commission's request. If the Commission requests an opinion from ERGA, the time-limits set out in Articles 3(5) and 4(5) shall be suspended until ERGA has adopted an opinion.";

(4) Article 3 is replaced by the following:

"Article 3

1. Member States shall ensure freedom of reception and shall not restrict retransmissions on their territory of audiovisual media services from other Member States for reasons which fall within the fields coordinated by this Directive.

2. Member States may provisionally derogate from paragraph 1 if an audiovisual media service provided by a media service provider under the jurisdiction of another Member State:

(a) manifestly, seriously and gravely infringes Articles 6 or 12, or both;

(b) prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence; or

(c) prejudices or presents a serious and grave risk of prejudice to public health.

3. Member States may only apply paragraph 2 where the following conditions are met:

(a) during the 12 months preceding the notification referred to in point (b) of this paragraph, the media service provider has, in the opinion of the Member State concerned, contravened point (a), (b) or (c) of paragraph 2 on at least two occasions;

(b) the Member State concerned has notified the media service provider, the Member State which has jurisdiction over the provider and the Commission in writing of the alleged contraventions and of the measures it intends to take should any such alleged contraventions occur again;

(c) consultations with the Member State which has jurisdiction over the provider and the Commission have not produced an amicable settlement within one month of the notification provided for in point (b);

(d) the media services provider has contravened point (a), (b) or (c) of paragraph 2 at least once after the notification provided for in point (b) of this paragraph;

(e) the notifying Member State has respected the rights of defence of the media services provider concerned and, in particular, has given the media services provider the opportunity to express its views on the alleged contraventions and the measures that that Member State intends to take. It shall duly take into account those views as well as the views of the Member State of jurisdiction.

Points (a) and (d) of paragraph 3 shall apply only in respect of linear services.

4. The Commission shall, within three months following the notification of the measures taken by the Member State in application of paragraphs 2 and 3 and after having consulted ERGA, take a decision on whether those measures are compatible with Union law. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within three months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

Where the Commission considers the notification as incomplete, it shall request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or where it provides incomplete information, the Commission shall take a decision that the measures taken by the Member State in accordance with paragraph 2 are incompatible with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State shall put an end to the measures in question as a matter of urgency.

5. Paragraphs 3 and 4 shall be without prejudice to the application of any procedure, remedy or sanction to the contraventions in question in the Member State which has jurisdiction over the media service provider concerned.

6. Member States may, in urgent cases, derogate from the conditions laid down in points (b) and (c) of paragraph 3. Where this is the case, the measures shall be notified in the shortest possible time to the Commission and to the Member State which has jurisdiction over the media service provider, setting out the reasons for which the Member State considers that there is such urgency that derogating from those conditions is necessary.

7. Without prejudice to the Member State's possibility of proceeding with the measures referred to in paragraph 6, the Commission shall examine the compatibility of the notified measures with Union law in the shortest possible time. Where it comes to the conclusion that the measures are incompatible with Union law, the Commission shall require the Member State concerned to refrain from taking any intended measures or urgently to put an end to those measures.

8. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in paragraphs 2 to 7 in the framework of the contact committee established pursuant to Article 29 and ERGA.";

(5) Article 4 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules with regard to Articles 5, 6, 6a, 9, 10, 11, 12, 13, 16, 17, 19 to 26, 30 and 30a, provided that such rules are in compliance with Union law.";

(b) in paragraph 3, the following second subparagraph is inserted after point (b) of the first subparagraph:

" The Member State which took steps in accordance with points (a) and (b) of paragraph 2 should substantiate the grounds on which it bases its assessment of the alleged circumvention.";

(c) paragraphs 4 and 5 are replaced by the following:

"4. A Member State may take measures pursuant to paragraph 3 only where the following conditions are met:

(a) it has notified the Commission and the Member State in which the broadcaster is established of its intention to take such measures while substantiating the grounds on which it bases its assessment;

(b) it has respected the rights of defence of the broadcaster concerned and, in particular, has given the broadcaster the opportunity to express its views on the alleged circumvention and the measures the notifying Member States intends to take;

(c) the Commission has decided, after having consulted ERGA, that the measures are compatible with Union law, in particular that assessments made by the Member State taking those measures under paragraphs 2 and 3 are correctly founded.

5. The Commission shall decide within 3 months following the notification provided for in point (a) of paragraph 4. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within 3 months from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

Where the Commission considers the notification as incomplete, it shall request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Where the Member State concerned does not provide the information requested within the period fixed by the Commission or provides incomplete information, the Commission shall take a decision that the measures taken by the Member State in accordance with paragraph 3 are incompatible with Union law. If the Commission decides that the measures are incompatible with Union law, the Member State in question shall refrain from taking the intended measures.";

(d) paragraph 7 is replaced by the following:

"7. Member States shall encourage co-regulation and self-regulation through codes of conduct adopted at national level in the fields coordinated by this Directive to the extent permitted by their legal systems. Those codes shall be such that they are broadly accepted by the main stakeholders in the Member States concerned. The codes of conduct shall clearly and unambiguously set out their objectives. They shall provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at. They shall provide for effective enforcement, including when appropriate effective and proportionate sanctions.

Draft Union codes of conduct referred to in Articles 6a (3), 9(2) and 9(4) and amendments or extensions to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes.

The Commission may ask ERGA to give an opinion on the drafts, amendments or extensions of those codes. The Commission may publish those codes as appropriate.";

- (6) Title of Chapter III is replaced by the following:

"PROVISIONS APPLICABLE TO AUDIOVISUAL MEDIA SERVICES";

- (7) in Article 5, point (d) is replaced by the following:

"(d) the Member State having jurisdiction over the media service providers and the competent regulatory authorities or supervisory bodies.";

- (8) Article 6 is replaced by the following:

"Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.";

- (9) the following Article 6a is inserted:

"Article 6a

1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical, mental or moral development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.

2. For the implementation of this Article, Member States shall encourage co-regulation.

3. The Commission and ERGA shall encourage media service providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.";

- (10) Article 7 is deleted;

- (11) Article 9 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in programmes with a significant children's audience, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-fatty acids, salt or sodium and sugars.

Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the nutritional aspects of such foods and beverages.

The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.";

(b) the following paragraphs 3 and 4 are inserted:

"3. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes should be used to effectively limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.

4. The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. If considered appropriate, the Commission shall facilitate the development of Union codes of conduct.";

(12) in Article 10, point (b) is replaced by the following:

"(b) they shall not directly encourage the purchase or rental of goods or services;"

(13) Article 11 is replaced by the following:

"Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.

2. Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes with a significant children's audience.

3. Programmes that contain product placement shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services;

(c) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer;

By way of exception, Member States may choose to waive the requirements set out in point (c) provided that the programme concerned has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

4. In any event programmes shall not contain product placement of:

(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;

(b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.";

(14) Article 12 is replaced by the following and moved to Chapter III:

"Article 12

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical, mental or moral development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.";

- (15) Article 13 is replaced by the following:

"Article 13

1. Member States shall ensure that providers of on-demand audiovisual media services under their jurisdiction secure at least a 20% share of European works in their catalogue and ensure prominence of these works.

2. Member States may require providers of on-demand audiovisual media services under their jurisdiction to contribute financially to the production of European works, including via direct investment in content and contributions to national funds. Member States may require providers of on-demand audiovisual media services, targeting audiences in their territories, but established in other Member States to make such financial contributions. In this case, the financial contribution shall be based only on the revenues earned in the targeted Member States. If the Member State where the provider is established imposes a financial contribution, it shall take into account any financial contributions imposed by targeted Member States. Any financial contribution shall comply with Union law, in particular with State aid rules.

3. Member States shall report to the Commission by *[date – no later than three years after adoption]* at the latest and every two years thereafter on the implementation of paragraphs 1 and 2.

4. The Commission shall, on the basis of the information provided by Member States and of an independent study, report to the European Parliament and to the Council on the application of paragraphs 1 and 2, taking into account the market and technological developments and the objective of cultural diversity.

5. Member States shall waive the requirements laid down in paragraphs 1 and 2 for providers with a low turnover or low audience or if they are small and micro enterprises. Member States may also waive such requirements in cases where they would be impracticable or unjustified by reason of the nature or theme of the on-demand audiovisual media services.";

- (16) In Article 20, paragraph 2, the first sentence is replaced by the following:

"The transmission of films made for television (excluding series, serials and documentaries), cinematographic works and news programmes may be interrupted by television advertising and/or teleshopping once for each scheduled period of at least 20 minutes.";

- (17) Article 23 is replaced by the following:

"Article 23

1. The daily proportion of television advertising spots and teleshopping spots within the period between 7:00 and 23:00 shall not exceed 20 %.
2. Paragraph 1 shall not apply to:
 - (a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes from other entities belonging to the same media group;
 - (b) sponsorship announcements;
 - (c) product placements.";
- (18) Chapter VIII is deleted;
- (19) the following Chapter IXa is inserted:

"CHAPTER IXa

PROVISION APPLICABLE TO VIDEO-SHARING PLATFORM SERVICES

Article 28a

1. Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers take appropriate measures to:
 - (a) protect minors from content which may impair their physical, mental or moral development;
 - (b) protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin.
2. What constitutes an appropriate measure for the purposes of paragraph 1 shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created and/or uploaded the content as well as the public interest.

Those measures shall consist of, as appropriate:

 - (a) defining and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical, mental or moral development of minors, in accordance with Articles 6 and 12 respectively;
 - (b) establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;
 - (c) establishing and operating age verification systems for users of video-sharing platforms with respect to content which may impair the physical, mental or moral development of minors;
 - (d) establishing and operating systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;
 - (e) providing for parental control systems with respect to content which may impair the physical, mental or moral development of minors;

(f) establishing and operating systems through which providers of video-sharing platforms explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (b).

3. For the purposes of the implementation of the measures referred to in paragraphs 1 and 2, Member States shall encourage co-regulation as provided for in Article 4(7).

4. Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30.

5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2. Member States shall not be precluded from imposing stricter measures with respect to illegal content. When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

6. Member States shall ensure that complaint and redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of the appropriate measures referred to in paragraphs 1 and 2.

7. The Commission and ERGA shall encourage video-sharing platform providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.

8. Video-sharing platform providers or, where applicable, the organisations representing those providers in this respect shall submit to the Commission draft Union codes of conduct and amendments to existing Union codes of conduct. The Commission may request ERGA to give an opinion on the drafts, amendments or extensions of those codes of conduct. The Commission may give appropriate publicity to those codes of conduct.

Article 28b

1. Member States shall ensure that video-sharing platform providers which are not established on their territory, but which have either a parent company or a subsidiary that is established on their territory or which are part of a group and another entity of that group is established on their territory, are deemed to have been established on their territory for the purposes of Article 3(1) of Directive 2000/31/EEC.

For the purposes of applying the first subparagraph, where the parent company, the subsidiary or the other entity of the group are each established in different Member States, the provider shall be deemed to have been established in the Member State where its parent company is established or, in the absence of such an establishment in a Member State, where its subsidiary is established or, in the absence of such an establishment in a Member State, where the other entity of the group is established.

For the purposes of applying the second subparagraph, where there are several subsidiaries each of which are established in different Member States, or where there are several other entities of the group each of which are established in different Member States, the Member States concerned shall ensure that the provider designates in which of these Member States it shall be deemed to have been established.

2. Member States shall communicate to the Commission a list of the video-sharing platform providers established on their territory and the criteria, set out in Article 3(1) of Directive 2000/31/EC and in paragraph 1, on which their jurisdiction is based. They shall update the list regularly. The Commission shall ensure that the competent independent regulatory authorities have access to this information.";
- (20) title of Chapter XI is replaced by the following:
- "REGULATORY AUTHORITIES OF THE MEMBER STATES";
- (21) Article 30 is replaced by the following:

"Article 30"

1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are legally distinct and functionally independent of any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

2. Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural diversity, consumer protection, internal market and the promotion of fair competition.

National regulatory authorities shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law.

3. The competences and powers of the independent regulatory authorities, as well as the ways of making them accountable shall be clearly defined in law.

4. Member States shall ensure that national regulatory authorities have adequate enforcement powers to carry out their functions effectively.

5. The Head of a national regulatory authority or the members of the collegiate body fulfilling that function within a national regulatory authority, may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. A dismissal decision shall be made public and a statement of reasons shall be made available.

6. Member States shall ensure that independent national regulatory authorities have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them and to actively participate in and contribute to ERGA.

7. Member States shall ensure that effective mechanisms exist at national level under which any user or media services provider or video-sharing platform provider who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body. The appeal body shall be independent of the parties involved in the appeal.

That appeal body, which should be a court, shall have the appropriate expertise to enable it to carry out its functions effectively. Member States shall ensure that the

merits of the case are duly taken into account and that there is an effective appeal mechanism.

Pending the outcome of the appeal, the decision of the national regulatory authority shall stand, unless interim measures are granted in accordance with national law.";

(22) the following Article 30a is inserted:

"Article 30a

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.

2. It shall be composed of national independent regulatory authorities in the field of audiovisual media services. They shall be represented by the heads or by nominated high level representatives of the national regulatory authority with primary responsibility for overseeing audiovisual media services, or in cases where there is no national regulatory authority, by other representatives as chosen through their procedures. A Commission representative shall participate in the group meetings.

3. ERGA's shall have the following tasks:

(a) to advise and assist the Commission in its work to ensure a consistent implementation in all Member States of the regulatory framework for audiovisual media services;

(b) to advise and assist the Commission as to any matter related to audiovisual media services within the Commission's competence. If justified in order to advise the Commission on certain issues, the group may consult market participants, consumers and end-users in order to collect the necessary information;

(c) to provide for an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;

(d) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3 and 4 thereof;

(e) to give opinions, when requested by the Commission, on the issues envisaged in Articles 2(5b), 6a(3), 9(2), 9(4) and on any matter relating to audiovisual media services, in particular on the protection of minors and incitement to hatred.";

4. The Commission shall be empowered to adopt, by means of an implementing act, the rules of procedure for ERGA.";

(23) Article 33 is replaced by the following:

"Article 33

The Commission shall monitor Member States' application of the Directive, including its application of co-regulation and self-regulation through codes adopted at national level.

By *[date – no later than four years after adoption]* at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive.

By *[date - no later than 10 years after adoption]* at the latest, the Commission shall submit to the European Parliament and the Council an ex post evaluation, accompanied where appropriate by proposals for its review, in order to measure the impact of the Directive and its added value."

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[date – no later than 1 year after entry into force]* at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President