



Brussels, 20.4.2017  
C(2017) 1760 final

Dear Chair,

*The Commission would like to thank the Sénat for its Opinion on the proposal for a Directive of the European Parliament and of the Council amending Directive 2010/13/EU 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 in view of changing market realities {COM(2016) 287 final}.*

*This proposal is one of the key initiatives of the Digital Single Market strategy which calls for a modernisation of the Audiovisual Media Services Directive (AVMSD) to reflect market, consumption and technological changes. Viewers, and particularly minors, are moving away from traditional TV to the online world, while the regulatory burden is much higher on TV. The proposal would therefore introduce flexibility when restrictions only applicable to TV are no longer justified. At the same time, it would ensure that consumers will be sufficiently protected in the on-demand and Internet world. This is done while making sure that innovation will not be stifled.*

*The Commission welcomes the Sénat's support of the general approach of the proposal.*

*The Commission is pleased that the Sénat expresses a favourable opinion on several substantive elements of the proposal, in particular on the extension of the scope of the AVMSD to video-sharing platforms, the promotion of European works, the protection of minors in on-demand services, and the strengthening of regulators' independence.*

*The Commission notes the Sénat's position as regards a larger set of common rules for audiovisual media services and video-sharing platforms but underlines the different characteristics of such services in many instances. That is why, as regards video-sharing platforms, the AVMSD proposal focuses only on those rules that are necessary to protect viewers from the most harmful content (i.e. content harmful to minors and incitement to hatred).*

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*The Commission takes note of the Sénat's concerns as regards the exact scope of the notion of video-sharing platforms and the storage of content. However, in most cases, storing content is a pre-requisite to giving access to content and this would not limit significantly the scope of application of the proposal.*

*The AVSMD proposal reinforces the fight against hate speech and seeks to align the AVMSD with the Council Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law<sup>1</sup>. Accordingly, the proposal bans not only incitement to hatred but also incitement to violence. The notion of incitement to hatred in the AVMSD has been interpreted broadly in the Commission's practice and could therefore also cover instances of incitement to terrorism. In addition, the proposed Directive on combating terrorism could also address the Sénat's concerns as regards the online dissemination of content inciting to terrorism.*

*As the Sénat will certainly recall, the order of the subsidiary jurisdiction criteria (Article 2(4) AVMSD) was reversed during the 2007 revision of the Directive, at the request in particular of the French authorities. At this stage, the Commission considers that the current order of criteria remains valid and allows national authorities, in case of problems, to act more closely to the broadcaster and the point of retransmission, i.e. at the level of the satellite uplink.*

*As regards the promotion of European works in on-demand services, by setting a 20% share of European works, the AVMSD will secure a minimum level of diversity across Europe and a safety net below which the share of EU works in catalogues should not fall. At the same time, it will ensure that providers established in Member States with smaller or developing audiovisual markets will still be able to grow. In any case, it is important to note that Member States will preserve the opportunity to set higher standards if they wish. As regards the possibility to impose financial contributions to on-demand service providers established in a different Member State, the proposal merely clarifies the existing situation in which financial contributions do not fall within the scope of the AVMSD. This is considered as a justified and balanced way to limit forum shopping practices without undermining the country of origin principle.*

*The proposal's approach to product placement, although it reverses the current logics of rule and exception, maintains the essential safeguards for the protection of viewers and, in particular, prohibits product placement in the most sensitive programmes.*

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<sup>1</sup> OJ L 328, 6.12.2008, pp. 55-58.

*As regards television advertising rules and the concerns voiced by the Sénat, the AVMSD proposal does not do away with the limitation of advertising interruptions. It simply gives the possibility to interrupt TV films, cinematographic works and news every 20 minutes instead of every 30 minutes. This is necessary to give more flexibility to broadcasters while at the same time maintaining limits to protect consumers. In addition, the existing rules to protect the most vulnerable, namely that in children's programmes interruptions are possible only once for each scheduled period of at least 30 minutes, remain.*

*As regards accessibility, in view of the adoption by the Commission of the proposal for a European Accessibility Act that sets compulsory common functional accessibility requirements on audiovisual media service providers, the current Article 7 was deemed no longer necessary. In addition, the European Accessibility Act proposal would harmonises accessibility in component of services, like for example websites, which willould benefit from an horizontal approach. Having common accessibility requirements across various sectors willould benefit the market cohenerence. A provision on accessibility could however be reintroduced in the AVMSD proposal if such is the will of the co-legislators.*

*The introduction of independence requirements applicable across all EU countries will contribute to guaranteeing legal certainty and a level playing field for all market players. The criteria are drafted in a way that, while ensuring coherence, leaves some margin to Member States to adapt to national specificities, for example, as regards the number of regulators or the nature of their function.*

*Finally, the role of the European Regulators Group for Audiovisual Media Services (ERGA) which is further specified in the proposal, will remain focused on implementation matters while the Contact Committee's competences will remain in the sphere of policy advice.*

*The Commission hopes that these clarifications address the issues raised by the Sénat and looks forward to continuing the political dialogue in the future.*

*Yours faithfully,*

*Frans Timmermans  
First Vice-President*

*Andrus Ansip  
Vice-President*