

SENATE OF THE REPUBLIC
17th LEGISLATURE

DOC. XVIII
No 144

RESOLUTION OF THE 8th STANDING COMMITTEE

(Public works, communications)

(Rapporteur: Senator RANUCCI)

approved at the session of 27 July 2016

ON THE

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 (COM (2016) 287 FINAL)

pursuant to Article 144(1) and (6) of the Rules of Procedure

Sent to the President's Office on 3 August 2016

C O N T E N T S

Text of the resolution	p.	3
Opinion of the 7th Committee .	p.	8
Opinion of the 14th Committee	p.	10

The Committee,

Having examined, pursuant to Article 144 of the Rules of Procedure, EU document COM (2016) 287 final on the 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, which was submitted for our reasoned opinion as regards subsidiarity,

whereas:

the Digital Single Market Strategy for Europe of May 2015 calls for a modernisation of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on audiovisual media services (AVMS Directive) to take account of far-reaching market, consumption and technological changes, marked by ever-increasing convergence between television and services distributed via the internet, whereas these transmission platforms are subject to different rules and varying levels of consumer protection;

on 25 July 2014 (during the Italian Presidency), the Council invited the Commission to ‘urgently complete the exercise of the review of the Audiovisual Media Services Directive 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’;

whereas the proposal under examination addresses the following issues:

the country of origin principle, with respect to determining which country has jurisdiction over media service providers;

derogation and cooperation procedures restricting freedom of reception and retransmission in specific cases;

the independence of audiovisual regulators;

protection of minors and consumers;

promotion of European works;

advertising rules;

providers of video-sharing platforms such as YouTube and Dailymotion (an area not currently covered by the AVMS Directive);

a level playing field between traditional broadcasting and video-on-demand services (such as Netflix);

whereas the proposal also complements other existing EU legislation, in particular Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on electronic commerce, Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2008 on advertising and sponsorship of tobacco products, Directive 2005/29/EC of the Parliament and of the Council of 11 May 2005 on unfair commercial practices and 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;

noting that the regulatory solutions put forward in the proposal are aimed at: strengthening the protection of minors, including by imposing an obligation to protect minors from harmful content and hate speech on video-sharing platforms; ensuring media services help promote cultural diversity adapted to different business models; tackling the deficit of fair treatment between television broadcasting and on-demand services including with respect to the

protection of minors, the promotion of European works and commercial communications; maintaining a degree of flexibility in the way in which the Member States will implement the AVMS Directive by allowing subsidiarity considerations and national circumstances to be taken into account; improving the overall implementation of the Directive;

noting, in particular, that:

the new Article 13 of the AVMS Directive, as replaced by proposal, introduces an obligation for providers of on-demand audiovisual media services to provide for a minimum 20 % share of European works in their catalogues and ensure such works are given adequate prominence. Member States may also require providers under their jurisdiction to contribute financially to the production of European works, including through direct investment in content and contributions to national funds. Lastly, providers with low turnover and small audiences or that are small and micro enterprises are exempted from these requirements;

Article 23 of the AVMS Directive, as amended by the proposal, grants broadcasters greater flexibility on when to air advertisements: the overall limit of 20 % of the broadcasting time between 7.00 and 23.00 is maintained, but instead of the current limit of 12 minutes per hour, broadcasters will have greater freedom to choose when to broadcast advertisements over the course of the day. Broadcasters and on-demand providers will also have greater flexibility to use product placement and sponsorship, while keeping viewers informed;

the new Article 28a inserted into the AVMS Directive by the proposal under examination lays down specific provisions for services provided by video-sharing platforms, requiring providers to take measures to protect children from harmful content and to protect the general public from hate speech, i.e. content inciting violence or hatred. Those measures should preferably be based on users reporting content and co-regulation. Moreover, video-sharing platforms will come under the rules of the e-Commerce Directive that apply to providers of hosting services, under which providers are exempt from liability for any illegal content stored on their platforms that they merely host (Article 14) and Member States may not require providers to engage in active monitoring (Article 15);

having regard to the comments set out in the Government's report, submitted pursuant to Article 6(4) and (5) of Law No 234 of 24 December 2012;

taking into account the information provided by associations representing businesses in the broadcasting sector;

having regard also to the comments of the 7th and 14th committees;

whereas the legal basis of the proposal appears to have been correctly identified as Article 53(1) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 62 of the TFEU, as the AVMS Directive is based on the European Union's powers to coordinate the laws of the Member States to bring about freedom to provide services in the internal market. The proposal under examination is based on those provisions,

hereby expresses, pursuant to Protocol (No 2) to the TFEU on the application of the principles of subsidiarity and proportionality:

a favourable opinion as to compliance with the principle of subsidiarity, in that action at EU level is both necessary and provides added value in view of the ever-increasing European dimension of the audiovisual market, including as

regards the growth of online services and the fact that TV channels are becoming more international;

a favourable opinion as to compliance with the principle of proportionality, since the proposal does not go beyond what is necessary to achieve the above objective by means of minimum harmonisation and the use of co-regulation, self-regulation and cooperation mechanisms allowing Member States to take account of national circumstances;

also expresses a favourable opinion on the substantive elements that are relevant in the context of political dialogue with the EU institutions, with the following comments:

While we welcome the objective of the proposal for a directive to update the AVMS Directive to reflect market, competitive and technological changes in the audiovisual sector, uniform rules for all providers of audiovisual media services need to be ensured to allow fair competition between operators (level playing field principle) and thereby also safeguard pluralism in the audiovisual services offered.

Compliance with these principles could, however, prove difficult due to asymmetries in the rules that apply to traditional audiovisual media services (linear and non-linear) on the one hand and to video-sharing platforms on the other. For the former a highly prescriptive system is maintained, based on minimum harmonisation allowing Member States to lay down more detailed or stricter rules. For video-sharing platforms, however, the maximum harmonisation provided for is a self- and co-regulatory code of conduct, restricted, moreover, to protecting minors from harmful content and the public from hate speech, in regard to which Member States do not have any discretionary power to act and which could therefore prove weak and ineffective.

Since video-sharing platforms increasingly compete with audiovisual media services (e.g. in the advertising market), it seems essential to provide for more uniform rules, in particular as regards the quality of the content of audiovisual commercial communications as referred to in Article 9 of the AVMS Directive, since, as stated above, the proposal being examined imposes obligations in this regard only on audiovisual media services.

In particular, there is a case for adopting measures that more effectively ensure the protection of minors from harmful content and the public from any form of hate speech. In order to prevent and deal with unlawful activities and foster more responsible behaviour by providers and users, Member States should therefore be allowed to impose more stringent requirements on video-sharing platform providers, albeit within reasonable limits (e.g. by requiring them to adopt suitable access systems to filter out the most harmful content and to give advance warning of any such harmful content).

We fully support the measures introduced by the proposal in terms of promoting European works by requiring on-demand audiovisual service providers to reserve at least 20 % of their catalogues for such works and the option of requiring financial contributions.

In that regard, broader reflection is needed on the impact, in terms of a level playing field, of exempting video-sharing platforms from copyright protection and from the possibility of requiring a financial contribution in support of European works.

As regards the proposed amendments to Article 20 of the AVMS Directive on advertising, we take the view that more frequent interruption of films made for television and cinematographic works should not be allowed to

compromise the integrity and continuity of the works, with particular regard to the credits at the end of the film. It is recalled that Article 37(2) of the consolidated text on audiovisual and radio media services (Legislative Decree No 177 of 31 July 2005) expressly provides that 'television advertising and teleshopping spots may also be inserted during a programme provided its integrity is not affected, taking into account natural breaks, its duration and nature and intellectual property rights'.

As regards the proposal to replace the hourly limit on advertising with a daily limit, again in Article 20, while we recognise that the total advertising time on 24-hour basis will remain unchanged as there is no increase in the overall time allowed, we do see a need to assess the risk of any inconvenience to users, who could be faced with much more advertising during peak periods since the spots may be concentrated around a few hours to maximise demand from advertisers and the flow of viewers.

More efficient and balanced rules on television advertising should in any case be considered in view of the overall potential of the advertising market, so as to boost the resources available to the audiovisual sector (also in support of other aims such as promoting European works) on the one hand and increase competition in the sector on the other, especially between media service providers and digital platforms which, as noted above, are not subject to any obligation although they operate in the same market for advertising resources.

As regards the Italian market, due attention should be paid to the rules limiting advertising time on local TV stations, for which the current limit of 25 % per hour and day of broadcasting should be maintained (Article 38(9) of the consolidated text on audiovisual and radio media services) in order not to further deteriorate the local advertising sector, which is severely affected by the economic crisis.

With regard to the new Article 28b in the proposal for a directive, which allows video-sharing platform providers to freely choose the Member State of jurisdiction in cases where the parent company is not established in the European Union and operates in more than one Member State through subsidiaries set up there, we take the view that this provision may enable tax evasion by non-European companies and call for stricter, more consistent and legally unambiguous criteria to be set for determining the State of jurisdiction.

Lastly, we fully concur with the rules aimed at strengthening regulators' independence from government and industry.

This document is also to be understood as guidance to the Government within the meaning of Article 7 of Law No 234 of 24 December 2012.

RESOLUTION OF THE 7th STANDING COMMITTEE

(EDUCATION, HERITAGE, SCIENTIFIC RESEARCH,
ENTERTAINMENT AND SPORT)

(Rapporteur: SENATOR FASIOLO)

28 June 2016

The Committee,

having examined document COM(2016) 287 final,

having regard to the increased European dimension of the audiovisual market, also due to the growth of online services and the fact that TV channels are becoming more international;

noting, however, that television broadcasting, video on demand and user-generated content are currently subject to different rules and different levels of consumer protection;

having examined the overall aims of the proposal, including: a review of the scope of the rules, including as regards extending them to services provided by video-sharing platforms; harmonisation, including by ensuring the regulators' independence; strengthening the protection of children against hate speech and safeguarding their physical and psychological health; better informing adults about the risks from video and advertising, so that they can be more aware when acting as parents or in other educational roles; new conditions for product placement, promoting European works and advertising; the possibility for Member States to impose financial contributions on providers of on-demand audiovisual media services; formal recognition of the European Regulators Group for Audiovisual Media Services (ERGA);

taking a favourable view of stricter provisions for the protection of minors;

welcoming the requirement for on-demand services to reserve at least 20 % of their catalogues for European works, giving them adequate prominence;

agreeing with the option for Member States to require providers under their jurisdiction to contribute financially to the production of European works, including through direct investment in content and contributions to national funds;

taking the view that this could also apply to providers established in other States but that address audiences in other jurisdictions, although the contributions should be based only on revenue earned in the Member States concerned so as to avoid double taxation;

whereas in order not to stifle market development and to allow the entry of new operators, companies with no significant presence on the market, especially those with a low turnover and a small audience, should not be subject to such contributions;

expressing concern over the proposal to allow films made for television (excluding series, serials and documentaries), cinematographic works and news programmes to be interrupted with advertisements or teleshopping once for each scheduled period of about 20 minutes, rather than the 30 minutes currently provided for, with the exception of children's programmes;

having examined the regulatory changes regarding the daily advertising limit, set at a maximum of 20 % in the time range between 7.00 and 23.00, whereas the 20 % ceiling is currently calculated per hour;

taking a favourable view of the provisions concerning regulators, which must be fully independent from any other public or private body, act impartially and transparently and in accordance with the principles of media pluralism, cultural diversity, consumer protection, the internal market and competition and will make up the group of European regulators;

comments favourably on the proposal, while making the following points:

1) With respect to Article 20 on advertising, we take the view that more frequent interruption of films made for television and cinematographic works could compromise the integrity and continuity of the works, with particular regard to the credits at the end of the film, and recall in this respect that Article 37 of the consolidated text on audiovisual and radio media services (Legislative Decree No 177 of 31 July 2005) expressly provides that ‘television advertising and teleshopping spots may also be inserted during a programme provided its integrity is not affected, taking into account natural breaks, its duration and nature and intellectual property rights’.

2) As regards the proposal to replace the hourly limit on advertising with a daily limit, again in Article 20, while we recognise that total advertising time on a 24-hour basis will remain unchanged as there is no increase in the overall time allowed, we fear the possible inconvenience to users, who could be faced with much more advertising during peak periods since the spots may be concentrated around a few hours to maximise demand from advertisers and the flow of viewers.

RESOLUTION OF THE 14th STANDING COMMITTEE

(EUROPEAN UNION POLICY)

(rapporteur: SENATOR CARDINALI)

6 July 2016

The Committee, having examined document COM(2016) 287 final,

whereas:

the Digital Single Market Strategy for Europe of May 2015 called for a modernisation of Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on audiovisual media services (AVMS Directive) to take account of market, consumption and technological changes;

on 25 July 2014 (during the Italian Presidency), the Council invited the Commission to ‘urgently complete the exercise of the review of the Audiovisual Media Services Directive 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’;

whereas, in accordance with the impact assessment, the proposal under examination aims to address the following issues: insufficient protection of children and consumers on video-sharing platforms (such as YouTube and Dailymotion); the lack of a level playing field between traditional broadcasting services and on-demand video services (such as Netflix) and internal market weaknesses stemming from the fact that some rules of the AVMS Directive are not sufficiently precise; the rules on commercial communications; the need to streamline the procedures for applying the country of origin principle, by simplifying the rules determining which country has jurisdiction over providers and improving the cooperation and derogation procedures that restrict the freedom of reception and retransmission in specific cases;

noting that the regulatory solutions put forward in the proposal are aimed at: strengthening the protection of minors, including by imposing an obligation to protect minors from harmful content and hate speech on video-sharing platforms; ensuring media services help promote cultural diversity adapted to different business models; tackling the deficit of fair treatment between television broadcasting and on-demand services including with respect to the protection of minors, the promotion of European works and commercial communications; maintaining a degree of flexibility in the way in which the Member States will implement the AVMS Directive by allowing subsidiarity considerations and national circumstances to be taken into account; improving the overall implementation of the Directive;

noting in particular that Article 23 of the proposal allows broadcasters greater flexibility on when to air advertisements: the overall limit of 20 % of the broadcasting time between 7.00 and 23.00 is maintained, but instead of the current limit of 12 minutes per hour broadcasters now have more freedom to choose when to broadcast advertisements over the course of the day. Broadcasters and on-demand providers will also have greater flexibility to use product placement and sponsorship, while keeping viewers informed;

comments favourably, for matters within its remit, highlighting the following points:

The AVMS Directive is based on the European Union's powers to coordinate the laws of the Member States ensuring the freedom to provide services in the internal market, namely Article 53(1) of the Treaty on the Functioning of the European Union (TFEU) in conjunction with Article 62 TFEU. The proposal under examination is based on those provisions.

Action at EU level is both necessary and provides added value in view of the ever-increasing European dimension of the audiovisual market, including as regards the growth of online services and the fact that TV channels are becoming more international. We therefore take the view that the subsidiarity principle is complied with.

The minimum harmonisation approach based on co-regulation and self-regulation and the cooperation mechanisms allowing Member States to take account of national circumstances ensure that the principle of proportionality is complied with.

In this respect we consider it essential to:

- ensure uniform rules for all operators providing audiovisual media services in order to promote fair competition;
- defend the pluralism of audiovisual operators; ensure the independence of regulators from government and industry;
- require online platforms to behave responsibly; prevent and deal with all forms of hate speech broadcast through audio-visual services;
- in particular, protect minors from harmful content.