



EUROPEAN COMMISSION

*Brussels, 14.10.2016
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Dear President,

The Commission would like to thank the Senato della Repubblica for its Opinion on the proposal to amend 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 from traditional television to the online world, while the regulatory burden is much higher on television. The proposal therefore would introduce flexibility when restrictions only applicable to television are no longer justified. At the same time, it would ensure that consumers are sufficiently protected in the on-demand and Internet world. This is done while making sure that innovation will not be stifled.

The Commission is pleased that the Senato della Repubblica expresses a favourable opinion on several substantive elements of the proposal, in particular the promotion of European works in on-demand services and the strengthening of regulators' independence.

The Commission takes note of the concerns of the Senato della Repubblica as regards video-sharing platforms. In order to avoid regulatory fragmentation and ensure predictability for these emerging business models, the Commission has proposed a full harmonisation provision, including a list of appropriate measures that video-sharing platforms are expected to adopt to protect minors from harmful content and all citizens from incitement to hatred. Independent regulators, fulfilling the proposal's independence requirements should be entrusted with the implementation of this provision to ensure its effectiveness. At the same time, the minimum harmonisation approach for remaining audiovisual media services, including on-demand services, remains unchanged in the AVMSD.

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As regards the promotion of European works on video-sharing platforms, their very nature makes the extension of the corresponding obligations technically challenging due to the evolving nature of their content and its primarily user-generated nature. It must be borne in mind that professional channels hosted on these platforms would be fully subject to the promotion requirements of the Directive. In addition, as regards financial contribution obligations, the proposal does not impose any such obligation on on-demand service providers but merely clarifies that Member States have the possibility, if they wish to do so, to impose such obligations.

Commercial communications on video-sharing platforms are subject to general advertising rules that may be in place in the concerned Member States and that may derive from other EU law instruments (e.g. Unfair Commercial Practices Directive¹). In addition, most self- and co-regulatory advertising codes cover all media and play an important role in helping to regulate online advertising.

As regards the Member State of jurisdiction for video-sharing platforms, the proposed criteria are set for the purpose of establishing jurisdiction under the AVMSD rules and would not enable greater tax evasion.

As for copyright protection, the AVMSD does not contain rules obliging providers of audiovisual services to offer particular content or prescribing how copyright should be protected. The e-Commerce Directive² remains the applicable framework for the liability of intermediaries for copyright and relating rights infringements.

Finally, as regards television advertising rules and the concerns voiced by the Senato della Repubblica, the Commission does not expect broadcasters to overwhelm viewers with advertising spots, as, in view of recent market developments, viewers are now more likely to switch to new offerings, mainly delivered via the Internet or without advertising. Although there could be more frequent interruptions in films made for television and cinematographic works, the Commission's proposal does not modify Article 20(1) AVMSD on the integrity of programmes and the rights of right holders. Similarly, Article 26 AVMSD, allowing Member States to lay down other conditions for television broadcast solely intended for the national territory, remains unchanged.

¹ Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (Text with EEA relevance) OJ L 149, 11.6.2005, p. 22–39.

² 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 ('Directive on electronic commerce') OJ L 178, 17.7.2000, p. 1–16.

The points made above are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the Italian government is represented.

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

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Günther Oettinger
Member of the Commission*