



ASSEMBLY OF THE REPUBLIC
EUROPEAN AFFAIRS COMMITTEE

Written Opinion
COM(2016)287



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EUROPEAN AFFAIRS COMMITTEE

PART I – INTRODUCTION

In accordance with Article 7 of Law No 43/2006 of 25 August 2006 on monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012, the European Affairs Committee has received 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]

Given its subject matter, the above-mentioned initiative was referred to the Committee on Culture, Communication, Youth and Sport, which analysed it and approved the report annexed to and forming an integral part of this Opinion.

The above-mentioned initiative was also sent to the Legislative Assembly of the Autonomous Region of Madeira, which scrutinised it and delivered a unanimous favourable opinion, which is also attached.

PART II – RECITALS

1 - This initiative is a 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.

2 - The Proposal for a Directive in question therefore forms part of the Digital Single Market Strategy, currently one of the European Commission's major priorities.

3 - In this context it is important to note that the AVMSD (Audiovisual Media Services Directive) provided a cross-border audiovisual media framework to strengthen the internal market for the production and distribution of programmes and to ensure fair competition.

The audiovisual media landscape has therefore changed at a rapid pace due to ever-increasing convergence between television and services distributed via the internet.

4 - This initiative therefore states that consumers, particularly the younger members of society, increasingly access on-demand content via smart/connected TVs and portable devices.



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5 - Traditional broadcasting in the EU also remains strong in terms of viewership, advertising revenues, and investment in content (around 30 % of revenues). New business models are emerging. Broadcasters are extending their activities online and new operators 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.

6 - As a result, on 6 May 2015, the Commission adopted 'A Digital Single Market Strategy for Europe'¹ in which it announced a review of Directive 2010/13/EU.

7 - The Digital Single Market (DSM) strategy for Europe therefore calls for a modernisation of the Audiovisual Media Services Directive (AVMSD) 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 players (in particular those for the promotion of European works), the protection of minors and advertising rules.

8 - In this context, 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 1 989 of them targeted foreign markets (either EU or non-EU). This share had increased from 28% in 2009 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.

9 - The initiative also states that 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.

10 - Lastly, it should be noted that the Report submitted by the Committee on Culture, Communication, Youth and Sport, which was approved, fully reflects the content of the

¹ COM(2015) 192 final.



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Proposal. Accordingly, it must be reproduced in full in order to avoid repetition of analysis and consequent redundancy.

In the light of the provisions made in the Proposal, the following must be considered:

a) *Legal basis*

The legal basis of this proposal is Article 53(1) and Article 62 of the TFEU.

The AVMSD (Audiovisual Media Services Directive) is based on the EU's powers to coordinate Member States laws to bring about the freedom to provide services in the internal market.

b) *Principle of subsidiarity*

This initiative 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.

It will therefore be difficult to sufficiently achieve the objectives behind this initiative by individual Member States acting alone and will be achieved more effectively by action taken at European Union level.

PART III - OPINION

In the light of the information set out above and the report of the relevant committee, the European Affairs Committee's opinion is as follows:

1. This initiative is not in breach of the principle of subsidiarity, in so far as the objective pursued will be achieved more effectively by means of action at Union level.
2. This concludes the scrutiny of this initiative.



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Palácio de São Bento, 19 July 2016

Rapporteur

(Duarte Marques)

Chair of the Committee

(Regina Bastos)

PART IV – ANNEX

- Report from the Committee on Culture, Communication, Youth and Sport
- Report and Opinion of the Legislative Assembly of the Autonomous Region of Madeira.

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Committee on Culture, Communication, Youth and Sport

Report from the Committee on Culture, Communication, Youth and Sport

COM (2016) 287

Rapporteur: Vânia Dias da Silva (CDS-PP)

Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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

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Committee on Culture, Communication, Youth and Sport

PART I – INTRODUCTION

In accordance with Article 7(1), (2) and (3) of Law No 43/2006 of 25 August 2006 on monitoring, assessment and pronouncement by the Assembly of the Republic within the scope of the process of constructing the European Union, as amended by Law No 21/2012 of 17 May 2012, the Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL 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] was sent to this Committee on 2 June 2016, in view of its subject-matter, for examination and drafting of this report.

PART II - RECITALS

1. Purpose of the initiative

This Proposal for a Directive of the European Parliament and of the Council forms part of the Digital Single Market Strategy, currently one of the European Commission's major priorities.

Therefore, the AVMSD (Audiovisual Media Services Directive) has provided a cross-border media framework to strengthen the internal market for the production and distribution of programmes and to ensure fair competition.

The audiovisual media landscape has therefore changed at a rapid pace due to ever-increasing convergence between television and services distributed via the internet.

Consumers, particularly the younger members of society, increasingly access on-demand content via smart/connected TVs and portable devices.

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,

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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 Europe calls for a modernisation of the Audiovisual Media Services Directive (AVMSD) 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 players (in particular those for the promotion of European works), the protection of minors and advertising rules.

In order to meet this commitment, 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.

2. Relevant issues

As mentioned above, 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.

Therefore, although television 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 operators, including providers of video-on-demand services and video-sharing platforms, are now well-established.

On 6 May 2015, the Commission adopted 'A Digital Single Market Strategy for Europe' in which it announced a review of Directive 2010/13/EU (the Audiovisual Media Services Directive).

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In order to ensure the effective implementation of this initiative, Member States must 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.

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.

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.

3. 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, bearing in mind the key role of audiovisual regulators in shaping and preserving the internal market.
- It 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.
- Regarding the protection of minors, the proposal 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

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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 initiative also 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.
- It aims to achieve a balance between competitiveness and consumer protection by, on the one hand, introducing more flexibility for all audiovisual media services with regard to product placement and sponsorship and increased flexibility for TV broadcasting.
- Its scope is extended, 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 introduces 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.

4. Implications for Portugal

This initiative 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

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communications. Such regimes are deemed to be broadly accepted by the main stakeholders and provide for effective enforcement.

5. Principles of subsidiarity and proportionality

The legal basis behind this Proposal lies in 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).

The proposal complies with both the principles of subsidiarity and proportionality by preserving, in general, a minimum harmonisation approach and improving the derogation and circumvention mechanisms, allowing Member States to take their national circumstances into account.

Member States have therefore, 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.

However, given that the Audiovisual Media Services Directive (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.

PART III – CONCLUSIONS

In view of the above, the parliamentary Committee on Culture, Communication, Youth and Sport concludes as follows:

1. This initiative upholds the principles of subsidiarity and proportionality, insofar as the objective will be achieved more effectively by means of action at European Union level.

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2. Given the subject-matter of this proposal, of greatest importance to the Digital Single Market, we would propose this proposal for a Directive and future developments be monitored closely and on an ongoing basis.
3. The Committee on Culture, Communication, Youth and Sport considers its examination of this initiative to be complete. Pursuant to Law No 43/2006 of 25 August 2006, as amended by Law No 21/2012 of 17 May 2012, this Report must be forwarded to the parliamentary European Affairs Committee.

Palácio de São Bento, 29 June 2016

Rapporteur

[signed]

(Vânia Dias da Silva)

Chair of the Committee

[signed]

(Edite Estrela)

AUTONOMOUS REGION OF MADEIRA

LEGISLATIVE ASSEMBLY

1st Specialised Standing Committee on General Policy and Youth

Report and Opinion

European Commission Working Programme for 2016, concerning 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

CHAPTER I

Introduction

At the request of the President of the Legislative Assembly, the Specialised Standing Committee on General Policy and Youth met on 20 June 2016 to assess and give an opinion on the Work Programme of the European Commission for 2016.

The request for an opinion was received in the Legislative Assembly of the Autonomous Region of Madeira on Thursday 2 June 2016 and was referred to the Specialised Standing Committee on General Policy and Youth, which was asked to provide its opinion by 28 June 2016.

CHAPTER II:

Legal framework and background

The Work Programme is assessed pursuant to Article 229(2) of the Constitution of the Portuguese Republic, Article 36(1)(i) and Articles 89 and 90 of the Political and Administrative Statute of the Autonomous Region of Madeira, approved by Law No 130/99 of 21 August 1999, and also in line with Article 44(j) of the Rules of Procedure of the Legislative Assembly of the Autonomous Region of Madeira.

In view of the subject matter, pursuant to Article 43 of the Rules of Procedure, it falls to the Specialised Standing Committee on General Policy and Youth to give an opinion on behalf of the Legislative Assembly.

CHAPTER III

Assessment of the initiative

An opinion was requested 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.

In accordance with that document, *'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'*.

The intention behind the proposal for a Directive is to ensure *'a higher degree of harmonisation [...] 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.*

In addition, *'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.'*

Thus, in view of the above, the Committee decided that it did not have any objections to this Work Programme of the European Commission for 2016.

CHAPTER IV

Conclusions and opinion

On the basis of its assessment, the Specialised Standing Committee on General Policy and Youth decided unanimously to give a favourable opinion on the European Commission's Working Programme for 2016 referred to it.

Funchal, 20 June 2016

Rapporteur

[signed]

(Carolina Silva)

Chairman

[signed]

(Adolfo Brazão)