



Brussels,
Ares(2016)

Opinion

Title

DG CNECT – 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 audio-visual media services

(resubmitted version of 25 March 2016)*

(A) Context

The key objective of the Audio-Visual Media Service Directive (AVMSD) is to create and ensure the proper functioning of a single European market for audio-visual media services, while contributing to the promotion of cultural diversity, providing an adequate level of consumer protection, and safeguarding media pluralism. The Digital Single Market (DSM) strategy for Europe calls for a modernisation of the AVMSD to reflect market, consumption, and technological changes. This impact assessment reviews options for such a modernisation, focussing on the scope of the AVMSD and on the nature of the rules applicable to all market players, in particular those for the promotion of European works, protection of minors, and advertising rules.

(B) Overall opinion: POSITIVE

The Board gives a positive opinion, on the understanding that the report will be further improved with respect to the key aspects mentioned below.

1) The scope of the initiative. While part of the scope was clarified (pin-pointing video-sharing platforms and extension of the promotion of European content to Video-on-Demand) another part was blurred. The elimination of the 'TV-like' criterion and the envisaged codification of the 21 Oct 2015 ECJ judgement should not be part of the baseline, but re-introduced instead in the options. The reasons why the envisaged extension of the scope of the Directive to video-sharing platforms as regards commercial communications is not envisaged anymore should be clarified. Similarly the reasons why references to the exposure of minors to advertising of HFSS foods and alcohol were withdrawn in both the problem description and the definition of the options, should be clearly explained.

2) Coherence of problems and options. The RSB has recommended a refocus of the options on the most important issues but the revised report contains options that have changed in substance (without consultation of the ISSG). As a result, the previous link with the outcome of the evaluation and feedback from stakeholders should be re-

* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted.

introduced (in particular for the Country of Origin and the independence of the regulators).

3) **Assessment of impacts.** Even though the quantitative elements of the analysis have been brought out better, the report still does not contain a consolidated assessment of the costs/cost savings of the set of preferred options. This falls short of the REFIT requirements in a context where the preferred option, while delivering substantial societal benefits, comes with significant costs. The report could also better qualify the impacts of some measures on SMEs.

(C) Main recommendations for improvements:

- **Further clarify the context and the scope of the initiative.** The scope of the initiative has been clarified on the one hand by limiting the on-line extension of the Directive to video-sharing platforms only and excluding upfront problems dealt with by other legislative initiatives. On the other hand, the scope is less clear as regards the removal of the debateable 'TV-like' criterion and the previously planned extension of rules on commercial communications to video-sharing platforms. The removal of the "TV-like" requirement and the associated codification of the 21 Oct 2015 ECJ judgement should not be part of the baseline, but re-introduced in the options. The reasons for not considering anymore the extension to commercial communications should be clearly spelled out. The report also misses an analysis of the international aspect of the revision as regards the consequences of shifting coverage for some services from the e-Commerce Directive to the AVMSD in the context of e.g. TTIP negotiations (obligation to protect internet service providers from liability with respect to transmission or storage of information).
- **Strengthen the links with the evaluation results.** The streamlined problem description left behind some of the issues identified in the evaluation: this applies to the contentious 'TV-like' requirement for assessing the applicability of the AVMSD and consumer protection issues linked to the advertising of HFSS foods and alcohol.
- **Better specify the options and enhance the analysis of their impacts.** The proposed options have been rationalised in line with the revised problem definition. However, they have also been changed in substance, omitting several important issues identified in the evaluation study (see above). As regards the soft-law option aiming at protection of minors in the on-line environment, the report should reassess its effectiveness given the reported uncertain results of the existing schemes and further analyse the latent fragmentation risks resulting from potentially 28 different national regimes. Some quantified options (such as the requirement to secure a 20% share of European works in Video-on-Demand Providers' catalogues could be explained)
- **Stress the REFIT aspects of the initiative.** Improvements have been made to the presentation of costs/cost savings of the options, nevertheless the comparisons should be done against the baseline options and – as this is a REFIT initiative – the overall costs/cost savings should be summarised and simplification/burden reduction aspects should be brought out. The scale used to assess the overall impact should be explained: the costs of the preferred options to promote European content and for the protection of minors for VoD and platforms are qualified as "medium" while anecdotal evidence and stakeholders views point to significant costs (promotion of European content, extension of protection of minors provisions to VoD).

(D) Procedure and presentation

The report has been shortened and streamlined. However, in the process some useful elements have been discarded (e.g. the summary of options and the annex with the detailed description of options) and should be put back. The options have been altered substantially without the consultation of the interservice steering group. Annex 1 should be supplemented with information on the results of the RSB's scrutiny of the report and how its recommendations have been taken into account in the revised report.

(E) RSB scrutiny process

Reference number	2015/CNECT/006
External expertise used	No
Date of RSB meeting	11 April 2016, oral procedure (an earlier version of this report was discussed by the Board on 16 March 2016, for which an opinion was issued on 18 March 2016).