EUROPEAN UNION

Committee of the Regions

SEDEC-VI/003

4th SEDEC Commission meeting, 25 June 2015

DRAFT OPINION

Commission for Social Policy, Education, Employment, Research and Culture

Review of the Audiovisual Media Services Directive

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This document will be discussed at the meeting of the **Commission for Social Policy, Education, Employment, Research and Culture (SEDEC)** to be held **from 11 a.m. to 5 p.m. on 25 June 2015**. To allow time for translation, any amendments must be submitted through the online tool for tabling amendments (available on the Members' Portal: http://cor.europa.eu/members) **no later than 3 p.m. (Brussels time) on 12 June 2015**. A user guide is available on http://toad.cor.europa.eu/CORHelp.aspx.

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Reference document

Draft opinion of the Commission for Social Policy, Education, Employment, Research and Culture - Review of the Audiovisual Media Services Directive

I. GENERAL COMMENTS

THE COMMITTEE OF THE REGIONS,

1. deems it appropriate to review the Audiovisual Media Services Directive (AVMSD) in the light of technological developments and their implications for the production, distribution and consumption of audiovisual media;

2. reiterates the importance of maintaining an explicit reference to cultural diversity as a founding pillar of the AVMSD, particularly in view of the European Union's accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;

3. highlights the need to pursue policies which encourage the pluralism of news media and the protection of individual freedoms, which are guarantors of democracy;

4. asserts the appropriateness of taking the regional dimension in the AVMSD into account, in order to enhance European cultural identities, cross-border co-productions within the European Union and local creative innovation;

5. notes the economic power of the cultural industry, its great ability to create value and its potential in terms of quality jobs in the economic sectors of the future;

6. shares the desire expressed by the European Commission in its Green Paper on Preparing for a Fully Converged Audiovisual World: Growth, Creation and Values, to ensure "*the widest possible access to European diversified content and the widest choice of high quality offers*";

7. is pleased to note the wish expressed by the European Commission, in relation to the Digital Single Market Strategy, to modernise copyright legislation and to ensure a fair balance between the interests of producers and users, in order to promote access to culture and cultural diversity;

8. stresses the value of the dual system that typifies the European audiovisual landscape, ensuring the stimulating co-existence of public and private stakeholders, and highlights the importance of encouraging Member States to provide sufficient long-term public funding for public audiovisual operators, in order to enable them to carry out public service obligations in both linear and non-linear services;

9. reaffirms the importance of effective regulation of audiovisual media services, requiring genuine cooperation between regulators and the independence of these regulators from both public authorities and audiovisual stakeholders;

10. stresses the importance of the role of social cohesion played by European audiovisual media, an essential part of European citizenship;

II. POLICY RECOMMENDATIONS

Scope of the directive

11. considers that the scope of the AVMSD must cover all types of audiovisual content providers;

12. recommends establishing new categories of service providers, which should be considered as service distributors within the meaning of the directive, regardless of the distribution platform;

13. stresses the benefit of subjecting these new categories of service providers to certain provisions of the directive, according to the nature of their activity;

14. notes that, after having passed the programme selection stage, consumers are placed in a similar viewing situation, regardless of whether the service is linear or non-linear, and that the AVMSD's differing treatment of linear and non-linear services with respect to the protection of minors and commercial communication should, therefore, be adapted;

15. calls on the European Commission to clarify the concept of 'editorial responsibility' characterising the activity of an audiovisual media service provider, as set out in the current directive, to order to include both responsibility relating to service provision and the accompanying legal liability;

16. calls for the operative part of the directive to include a clear distinction in the rules applicable to audiovisual media service providers exercising full editorial control over the programmes and services they offer and service providers who do not exercise such control, such as service distributors and over-the-top (OTT) services including search engines, social networks, content aggregators, e-commerce services, portals or online file-sharing services;

Assessment of the country of origin principle

17. reiterates the call made in its opinion on European film in the digital era[1], for an assessment of the country of origin principle as enshrined in the AVMSD, considering in particular questions of legal certainty, which is crucial for the development of European audiovisual stakeholders;

18. considers, in line with the European Parliament's resolution of 12 March 2014 on Preparing for a Fully Converged Audiovisual World, that European law must be adapted to the realities of the Internet and the digital environment, in particular with respect to companies offering audiovisual content on-line which try to evade taxation in certain Member States by basing themselves in countries with a very low tax rate;

19. encourages the strengthening and broadening (in particular to cover non-linear services) of the current arrangements as laid down in Article 4 of the AVMSD which aim to prevent European and national measures being circumvented;

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1 http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52014IR3660&from=EN.

20. proposes that targeted measures be introduced to counter the adverse effects of the country of origin principle, which are growing as a result of convergence, while at the same time preserving the internal market and the free movement of services;

21. suggests, in this respect, taking into consideration, when assessing the country of origin principle, the practical situations - which have arisen during recent years - where an operator targets an audience located in another Member State;

22. considers it appropriate to incorporate measures into the provisions of the AVMSD to combat such audience-targeting where the main objective is to circumvent national law, for instance tax systems or regulatory frameworks;

23. pursuing the same objective of combating audience-targeting, considers that the prime factor in connecting an audiovisual media service provider to a Member State must be the place of business criterion, i.e. the place where the largest section of the workforce is employed in audiovisual media activities;

Accessibility

24. noting the growing importance of OTT services — defined as a method of distributing content via the Internet and without intermediary action on the part of Internet service providers over and above routing — and their growing interfacing role between members of the public and audiovisual content, underlines the usefulness of effective regulation applied to such services in order to ensure access to a broad range of information sources and a diversity of audiovisual content;

25. deems it essential to ensure that local and regional audiovisual content producers have equal access to the viewing public, including in cases where content is distributed by aggregators;

26. considers that this principle of equal access to the public by local and regional audiovisual content producers should guide the European institutions' considerations;

27. calls for provisions to be adopted ensuring that OTT services and Internet service providers are in no way able to favour their own content or any content of their choice when acting as audiovisual media service distributors, in order to promote cultural diversity;

28. with a view to enforcing the principles of cultural diversity and media pluralism, asserts that searching for and selecting audiovisual content cannot in any circumstances depend on economic interests;

29. calls for it to be ensured that the necessary measures relating to content integrity are adopted when reviewing the directive, out of consideration for both content producers and consumers;

Geo-blocking

30. considers that fair remuneration of audiovisual content producers is a prerequisite which cannot be called into question;

31. considers it appropriate in a converging digital world to ensure a stimulating value chain for European audiovisual production;

32. urges the European Commission, when considering the geo-blocking of audiovisual content, to take the specific cultural features of such content into account;

33. similarly, calls on the European Commission to protect European audiovisual content producers and European and national distributors from other world regions;

34. considers that the principle of copyright territoriality must be preserved, this mechanism having proved its effectiveness in guaranteeing payment to producers and promoting quality European audiovisual production;

35. supports the introduction of portability of rights by audiovisual media service users and, in particular, portability of rights relating to audiovisual subscriptions, allowing users to access the services they have in their country when travelling abroad;

36. also makes the case for special attention to linguistic and cultural minorities in the European Union which are affected by geo-blocking policies preventing those concerned from having access to audiovisual media services in their own language;

European and independent works

37. encourages all European audiovisual stakeholders to favour the development of high-quality content in order to make the European selection of linear and non-linear services more attractive;

38. stresses the importance of ensuring the effectiveness of the AVMSD, which recommends *"adopting suitable measures to encourage the activity and development of European audiovisual production and distribution, particularly in countries with a low production capacity or a restricted language area*";

39. advocates encouraging Member States to implement financial contribution systems for linear and non-linear services with the aim of supporting the overall audiovisual chain, including production of works, as currently set up, on an optional basis, for non-linear services in Article 13 of the directive, and including the promotion of the works;

40. advocates, for linear and non-linear services, allowing Member States to introduce a contribution system for financing works based on the overall proceeds from linear and non-linear services generated on their domestic markets, including those deriving from the commercialisation of services by foreign operators;

Consumer protection

41. recommends that the key principles of consumer protection in relation to commercial communications be maintained and that the new provisions to be adopted for convergence be concentrated in the area dedicated to the programme's design;

42. draws the European Commission's attention to the new advertising practices and strategies developed on non-linear services, aimed at increasing the effectiveness of messages, and to the potential dangers they entail with regard to protecting consumers, their private lives and their personal details;

43. accordingly, calls for the introduction of a coherent body of measures aimed at ensuring that consumers of linear and non-linear audiovisual media services are protected;

44. notes that particular attention should be paid to the link between the questions relating to apparent absence of costs, to accessibility, to quality of content and to the risks that have a bearing on people's individual freedoms, including the use of their personal data;

Protection of minors

45. suggests a similar form of regulation for programmes likely to be harmful to minors, irrespective of the means of accessing such programmes or the broadcasting medium used, for both linear and non-linear services;

46. calls for the introduction of incentives to promote content specifically designed and adapted for children as well as the promotion of partnerships between audiovisual operators and the educational community in the digital environment;

Media literacy

47. calls for further promotion of content relating to media literacy, also covering new media;

Online media

48. deems it appropriate to look closely at whether it would be useful for the directive's scope to cover certain online media strands (video) and downloading services (such as download-to-rent and download-to-own) in particular by revising the definition of the term “audiovisual media service”;

Free Trade Agreements

49. draws the European Commission's attention to the fact that, as stated by the European Parliament in its resolution of 12 March 2014 referred to above, allowing the audiovisual culture and media sector to be included in international free-trade agreements represents a

contradiction of the EU's commitment to promote cultural diversity and identity and its commitment to respect Member States' sovereignty over their own cultural matters;

Regulation

50. supports the inclusion in the AVMSD of the principles set out by ERGA — the European Regulators Group for Audiovisual Media Devices - in its founding declaration, referring to "*the identification, at European level, of common characteristics that any independent regulator in our sector should be equipped with"* in terms of independence, transparent decision-making and appointment processes, competence and expertise, the effectiveness of enforcement powers, dispute settlement mechanisms and review of regulators' decisions by a judicial authority.

Brussels, …

PROCEDURE

Title	Review of the Audiovisual Media Services Directive
Reference	Own-initiative opinion
Legal basis	Articles 167 and 173 TFEU
Procedural basis	Rule 41 b) ii))
Date of Council/EP referral/Date of Commission letter	N/A
Date of Bureau/President's decision	18 March 2015
Commission responsible	Commission for Social Policy, Education, Employment, Research and Culture (SEDEC)
Rapporteur	Jean-François Istasse (BE/PES), Member, Verviers Municipal Council
Analysis	24 March 2015
Discussion in commission	29 April 2015
Date adopted by commission	25 June 2015
Result of the commission vote (majority, unanimity)	
Date of adoption in plenary session	Scheduled for 13-14 October 2015
Previous Committee opinions	– European film in the digital era[2] – European film in the digital era[3] – Digital agenda for Europe[4] – Decision on the establishment of an audiovisual cooperation programme, MEDIA MUNDUS[5]
Date of subsidiarity monitoring network consultation	N/A

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2 CdR 3660/2014.

3 CdR 293/2010 fin.

4 CdR 104/2010 fin.

5 CdR 27/2009 fin.