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DRAFT REPORT

on the implementation of the revised Audiovisual Media Services Directive
(2022/2038(INI))

Committee on Culture and Education

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EXPLANATORY STATEMENT – SUMMARY OF FACTS AND FINDINGS

1. Introduction

This report examines the implementation of the Audiovisual Media Services Directive (hereinafter ‘the Directive’) since its 2018 revision. The deadline for transposing the revised Directive into national legislation expired on 19 September 2020. Pursuant to Article 33, second sentence of the Directive, the Commission must submit a report on the application of the Directive to the European Parliament by ‘19 December 2022 at the latest’.

The 2018 revision focused above all on the ongoing convergence of the media and changing habits in the consumption of audiovisual media services. While the distinction between linear and non-linear services was maintained, the scope of the Directive was extended to include video-sharing platform services.

In addition, a number of important changes were made in the following areas:

- Extension of the definition of programme to include short videos
- Inclusion of social media within the scope
- Clarification of the country of origin principle and recasting of procedures in case of circumvention of the principle or in case of conflict
- Strengthening co- and self-regulation
- Enhancing the accessibility of audiovisual services
- Findability and signal integrity rules
- Inclusion of European quotas for on-demand audiovisual media services
- More flexible rules regarding advertising time
- More specific requirements regarding the independence of, and the avoidance of state control over or influence on, national regulatory authorities or bodies
- Integration of the European Regulators Group for Audiovisual Media Services (ERGA);
- Promotion of media literacy skills

On 7 July 2020, the Commission published ‘Guidelines on the practical application of the essential functionality criterion of the definition a ‘video-sharing platform service’ under the Audiovisual Media Services Directive’ and ‘Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover’. In accordance with Article 33a(3), the Commission must, after consulting the Contact Committee, also issue guidelines regarding the scope of the reports on the implementation of measures to develop media literacy, which the Member States are to submit to the Commission for the first time by 19 December 2022 at the latest.

Moreover, on 3 December 2020, in a Memorandum of Understanding, the national regulatory

authorities agreed on common rules regarding the steps to be taken in the event of cross-border infringements in audiovisual media services and video-sharing platforms.

In order to prepare this implementation report, the rapporteur sent a questionnaire to various stakeholders on 23 June 2022, to which more than 60 stakeholders responded on the issues of relevance to them. Stakeholders were also invited to an exchange of views on 12 October 2022, with 15 stakeholders being given the opportunity to make substantive contributions. Finally, the CULT Committee held a public hearing on the implementation of the Directive on 25 October 2022.

2. Scope and state of implementation of the Directive

The regulatory objective of the Directive is to create as coherent a legal framework as possible for content requirements for linear and non-linear audiovisual media services and to hold platform operators accountable in this regard. The inclusion both of new types of content, such as short video clips or user-generated content, for which video-sharing platform providers do not have editorial responsibility, and of new providers, was explicitly desired.

In essence, the Directive's requirements should cover anyone in whose offer the presentation of audiovisual content is an important feature. In making this assessment, the co-legislators may have taken greater account of the end-user perspective than the Commission, whose guidelines approached the question of essentialness in a very quantitative manner. The question of whether an end-user can reasonably, objectively, assume that the provisions of the Directive apply, for example, to the social media service being used by the end-user is rather relegated to the background in the Guidelines, although admittedly aspects of monetisation and functionalities provided exclusively for audiovisual content are also likely to play a role in the assessment by end-users. The general intention was to effectively extend the scope of protection against illegal and harmful content and the regulated advertising environment to new online services without creating disadvantages for Union providers directly competing with global platform providers.

While in November 2020, 23 Member States had yet to make significant progress in transposing the Directive into national law, by mid-May 2022, this figure had fallen to five. The least progress was registered in the Member State chosen by most platform operators from third countries as their base in the EU, i.e. Ireland. Since legal action has been pending, it would appear that in this case also the process of transposition is now underway. Since the most popular third-country platforms, often large ones, do not yet fall within the scope of the Directive as a result of the failure to transpose it, it is difficult to draw comprehensive conclusions at the time of drafting the report as to whether the protection of minors from harmful content, the protection of the general public against illegal content, and the extension of certain advertising rules to video-sharing platform services are fully effective there.

3. Challenges in upholding the country of origin principle

Originally, Article 2(4) of the Directive was intended to provide legal certainty by means of an enforcement tool against third-country providers which, owing to their not being established in the Union, related to the satellite uplink provider or the satellite operator of the satellite on which a transponder was used. However, the provision now unintentionally works in favour of third country providers, since satellite capacities are now straightforwardly and quickly available and uplinks are easily accessible and interchangeable, so that the latter can be

redistributed relatively straightforwardly and quickly (immediately) without restriction, while the question of legal attribution to the jurisdiction of a Member State continues to be contentious.

The effectiveness of and trust in the procedures set out in Articles 3 and 4 of the Directive depends decisively on their swift and efficient implementation. However, the most recent instances in which such procedures have been applied would seem to indicate that they may be too lengthy in relation to the respective danger to be averted.

4. Accessibility and findability

With the 2018 revision, the issue of accessibility of audiovisual offers gained in importance and more targeted measures in this regard are being pursued. However, it will only be possible to ascertain the extent to which there has been an increase in accessible services on offer once Member States have submitted their reports to the Commission. That said, it is quite clear already that there are very different levels of implementation across Member States, both in terms of quality and quantity of accessible offers.

Although the role of platforms, intermediaries or terminal equipment in accessing audiovisual media services continues to grow, only a few Member States have so far made use of the potential opportunities offered by the rules on findability.

5. Quotas for on-demand audiovisual media services

By 1 January 2022, 17 Member States had set the target quota pursuant to Article 13(1) at 30 % in their national legislation. Only two Member States opted for significantly higher national or regional quotas. Since the last revision, global competition for talent has intensified, with cash-rich, globally refinancing providers of or platforms for on-demand video increasingly signing up talent as soon as possible. In addition, production costs in the Union have increased significantly, inter alia owing to higher investment demand.

In the Commission's guidelines for calculating the share of European works in on-demand catalogues, a series season counts as a single European work in quantitative terms. However, the total lengths of seasons counted in this manner differ considerably.

6. Co- and self-regulation and media oversight

The 2022 Strengthened Code of Practice on Disinformation in particular is tied to the possibilities for co- and self-regulation at Union level. The regulation of the use of artificial intelligence in the production and distribution of audiovisual content has been identified as a potential future area for co- and self-regulation, especially as some media regulators are considering the use of artificial intelligence to detect illegal content.

Media regulators and other stakeholders have repeatedly pointed out that it is crucial to better equip national regulators in terms of staffing and financial resources so that they can properly fulfil their role in the context of cross-border cooperation and ERGA, while enabling them to perform their increasingly complex tasks in a competent and timely manner. The following were identified as areas for enhanced cooperation between media regulators:

- determining whether a cross-border case exists where the application of the criteria of Article 2 of the Directive is contested by a party,

- the assessment and resolution of conflicts of territorial jurisdiction;
- the assessment of possible breaches of independence.

7. Way forward

Almost all media providers today also disseminate their content via online platforms to reach target groups that are important to them, especially younger audiences. Only in rare, exceptional cases are such platforms owned by a company from the European Union, and the platform services are often not subject to the obligation of pluralism of opinion. Platforms often feature the relatively strictly regulated and controlled online offers of Union media service providers directly alongside uncontrolled and unregulated offers that are not subject to the Directive. This inequality, to the detriment of Union providers, should be eliminated by further developing the Directive so as to render global platform operators accountable to a greater extent.

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the implementation of the revised Audiovisual Media Services Directive (2022/2038(INI))

The European Parliament,

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to Directive 2010/13/EU of the European Parliament and of the Council 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 (Audiovisual Media Services Directive)¹,
- having regard to Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 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 ('Audiovisual Media Services Directive') in view of changing market realities²,
- having regard to the Communication from the Commission of 7 July 2020 entitled 'Guidelines on the practical application of the essential functionality criterion of the definition of a 'video-sharing platform service' under the Audiovisual Media Services Directive' (2020/C 223/02)³,
- having regard to the Communication from the Commission of 7 July 2020 entitled 'Guidelines pursuant to Article 13(7) of the Audiovisual Media Services Directive on the calculation of the share of European works in on-demand catalogues and on the definition of low audience and low turnover' (2020/C 223/03)⁴,
- having regard to the Memorandum of Understanding between the National Regulatory Authority Members of the European Regulators Group for Audiovisual Media Services of 3 December 2020⁵,
- having regard to the 2022 Strengthened Code of Practice on Disinformation⁶,
- having regard to its study [to be published in November/December 2022] entitled 'Implementation of the revised Audiovisual Media Services Directive'⁷,
- having regard to Rule 54 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the

¹OJ L 95, 15.4.2010, p. 1.

²OJ L 303, 28.11.2018, p. 69; consolidated text: <http://data.europa.eu/eli/dir/2010/13/2018-12-18>.

³ OJ C 223, 7.7.2020, p. 3.

⁴ OJ C 223, 1.3.2022, p. 10.

⁵ https://erga-online.eu/wp-content/uploads/2020/12/ERGA_Memorandum_of_Understanding_adopted_03-12-2020_1.pdf

⁶ <https://ec.europa.eu/newsroom/dae/redirection/document/87585>

⁷ ...

- procedure for granting authorisation to draw up own-initiative reports,
- having regard to the opinion of the Committee on the Internal Market and Consumer Protection,
 - having regard to the report of the Committee on Culture and Education (A9-0000/2022),
- A. whereas the country of origin principle laid down in Article 2(1) of the Directive has successfully proved itself as an important pillar for the free and unhindered dissemination of information and for the cross-border distribution of audiovisual media services and constitutes an important basis for the protection of audiovisual media service providers and end-users and for the promotion of cultural diversity and pluralism of opinion in the Union;
- B. whereas new horizontal legal provisions at Union level make it necessary to clarify its interconnection with this specific legal framework for audiovisual media service providers in a consistent and coherent manner;
- C. whereas positive encouragement and promotion of professional audiovisual media services from the Union can make an important contribution to the global fight against disinformation and fake news;
- D. whereas, in light of the omnipresence of digital media services, the acquisition of media literacy by children and adolescents, as well as by adults, is an indispensable basic skill, which, in addition to functional understanding, must include the ability for critical (self-)reflection regarding media usage patterns;
1. Is critical both of the insufficient will on the part of some Member States to transpose the Directive in a timely manner and of the Commission's overall reluctance to initiate infringement procedures and the late publication of guidelines;
 2. Recalls the Commission's obligation, as laid down in Article 33, second sentence of the Directive, to submit a report on the application of the Directive no later than 19 December 2022, and reminds the Member States' of their obligation under Article 7(2) of the Directive to report to the Commission on progress regarding accessibility by the same date;
 3. Calls on the Commission to take the necessary measures to prevent any abuse of rights in the application of Article 2(4) of the Directive;
 4. Calls on the Commission to review the procedures laid down in Articles 3 and 4 to see whether they can be applied more quickly and effectively so as to strengthen the country of origin principle while respecting the rights of all parties concerned;
 5. Calls on the Member States to ensure, in transposing the Directive, that it is clear and easy to understand, in particular for end-users, whether the protection of minors from harmful content, the protection of the general public against certain illegal content, and the content-related advertising restrictions of the Directive apply in the medium currently being used, especially online;

6. Considers that horizontal legislation applicable to audiovisual media services, such as the Digital Services Act or horizontal co- and self-regulation standards, such as the 2022 Strengthened Code of Practice on Disinformation, should always be interpreted in a manner that is consistent with the objectives of the Directive;
7. Calls on the Commission, on the basis of the Member States' reports and in cooperation with ERGA, to work on common qualitative and quantitative targets to promote the further development of accessible services and to improve the accessibility of services overall;
8. Encourages Member States to better use and exploit the opportunities that can arise from the appropriate promotion of audiovisual media services of general interest; suggests, furthermore, that ERGA develop guidelines in this regard;
9. Points out, in this regard, that services or content of general interest are deliberately not limited to public service media but also include content provided by commercial media service providers aimed at meeting social, democratic and cultural needs;
10. Considers that the objectives of the Directive are served by Member States taking measures to ensure findability of content and services of general interest vis-à-vis relevant user interfaces and platform services that offer their services to users in the territory of that Member State but are not themselves established there;
11. Encourages the Member States to adopt comprehensive and effective rules in accordance with Article 7b to protect signal integrity also on all relevant online platforms and interfaces used to access audiovisual media services;
12. Considers it appropriate to maintain the European quota targets as minimum targets at their current level;
13. Encourages, furthermore, greater agreement on common EU-wide requirements in investment incentive schemes in the form of tax credits; considers that such schemes should provide automatic eligibility mechanisms so that they are less dependent on award decisions by panels, are not capped and provide additional incentives for social or cultural effects that are desirable in terms of media policy, such as talent development, social obligations, inclusion, diversity, gender equality or greening;
14. Considers that equating a season of a series with one title, as set out in the guidelines pursuant to Article 13(7) of the Directive on the calculation of the share of European works in on-demand catalogues, does not serve the intended objective; notes that quota levels are purely quantitative targets which can best be achieved equitably by means of a minute-by-minute count in relation to the total size, measured in minutes, of the currently available catalogue of a video-on-demand service;
15. Calls for the potential of co- and self-regulation to be exploited to the full and for their respective impact on audiovisual media service providers to be evaluated regularly;
16. Urges the Member States to fulfil their obligation under Article 30(4) of the Directive regarding the financial and human resources of national regulatory authorities or bodies in light of their increasingly complex tasks and to promote their cross-border

cooperation and insists on the need to safeguard the independence required by the Directive;

17. Urges the Commission to issue in good time the guidelines required under Article 33a(3) on the scope of the Member States' reports on the implementation of the measures for the development of media literacy skills, so that the timely submission of these reports is not further delayed;
18. Instructs its President to forward this resolution to the Council and to the Commission.

ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

Entity and/or person
Amazon
ANGA – Verband Deutscher Kabelnetzbetreiber e.V.
Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland
Association of Commercial Television and Video on Demand Services in Europe
Association of European Radios
Association of TV & Radio Sales Houses – egta
Association Relative à la Télévision Européenne – ARTE
Autorité publique française de régulation de la communication audiovisuelle et numérique – ARKOM
Banjay Group
Bitkom e.V.
Bundesverband Digitalpublisher und Zeitungsverleger, Medienverband der freien Presse
Consell de l’Audiovisual de Catalunya
DIGITALEUROPE
Direktorenkonferenz der Landesmedienanstalten
Electro and Digital Industry Association – ZVEI
EUROCINEMA – Association de producteurs de cinéma et de télévision
European Advertising Standards Alliance
European Audiovisual Production Association
European Broadcasting Union
European Coalitions for Cultural Diversity
European Composer & Songwriter Alliance
European Film Agency Directors Association
European Grouping of Societies of Authors and Composers – GESAC
European Magazine Media Association & European Newspapers Publishers’ Association
European Producers Club
European VOD Coalition
Federation of European Screen Directors
France Télévisions
Google
International Federation of Film Distributors’ and Publishers’ Associations
International Union of Cinemas
Kommunikationsbehörde Austria
MEDIAFOREUROPE N.V.

National Electronic Mass Media Council (Lettland)
Network of Independent European Film Distributors
News Media Europe
Paramount
Pilar Orero
Radio Télévision Luxembourg Deutschland
Sky
Société des Auteurs et Compositeurs Dramatiques
Society of Audiovisual Authors
Spanish Federation of Audiovisual Producers
Spitzenorganisation der Filmwirtschaft
Union Network International Europe
Verband Österreichischer Privatsender
Verband Privater Medien e.V. VAUNET
VIVENDI
Zentralverband der deutschen Werbewirtschaft
Zweites Deutsches Fernsehen