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*Committee on Culture and Education*

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# **DRAFT REPORT**

on connected TV  
(2012/2300(INI))

Committee on Culture and Education

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on connected TV (2012/2300(INI))

*The European Parliament,*

- having regard to Article 167 of the Treaty on the Functioning of the European Union,
- having regard to Article 10(1) of the European Convention on Human Rights,
- having regard to Articles 11 and 8 of the Charter of Fundamental Rights of the European Union<sup>1</sup>,
- having regard to the Protocol on the system of public broadcasting in the Member States annexed to the Amsterdam Treaty amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts<sup>2</sup>,
- having regard to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions adopted by the United Nations Educational, Scientific and Cultural Organisation (UNESCO) on 20 October 2005,
- 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)<sup>3</sup>,
- having regard to Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive)<sup>4</sup> amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009<sup>5</sup>,
- having regard to Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive)<sup>6</sup> amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009<sup>7</sup>,
- having regard to Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities (Access Directive)<sup>8</sup> amended by Directive 2009/140/EC of the

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<sup>1</sup> OJ C 364, 18.12.2000, pp. 11 and 10.

<sup>2</sup> OJ C 340, 10.11.1997, p. 109.

<sup>3</sup> OJ L 95 of 15.4.2010, p. 1, corr. OJ L 263 of 6.10.2010, p. 15.

<sup>4</sup> OJ L 108, 24.4.2002, p. 33.

<sup>5</sup> OJ L 337, 18.12.2009, p. 37.

<sup>6</sup> OJ L 108, 24.04.2002, p. 51.

<sup>7</sup> OJ L 337, 18.12.2009, p. 11.

<sup>8</sup> OJ L 108, 24.04.2002, p. 7.

European Parliament and of the Council of 25 November 2009<sup>1</sup>,

- having regard to Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive)<sup>2</sup> amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009<sup>3</sup>,
  - having regard to Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations<sup>4</sup>,
  - having regard to 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)<sup>5</sup>,
  - having regard to Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector<sup>6</sup>, as last amended by Directive 2009/136/EC of the European Parliament and of the Council of 25 November 2009<sup>7</sup>,
  - having regard to the Communication from the Commission on the application of State aid rules to public service broadcasting<sup>8</sup>,
  - having regard to Council Recommendation 98/560/EC of 24 September 1998 on the development of the competitiveness of the European audiovisual and information services industry by promoting national frameworks aimed at achieving a comparable and effective level of protection of minors and human dignity<sup>9</sup>,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Culture and Education (A7-0000/2013),
- A. whereas TV sets were originally developed to receive linear broadcast signals, which, in the digital environment, have hitherto met with incomparably greater interest on the part of the public than other electronic media services, so that their outstanding importance for individual and public opinion-forming will persist for the foreseeable future;
- B. whereas it is becoming possible for linear and non-linear audiovisual services and numerous other communications services to be used on one and the same screen, combined seamlessly and consumed simultaneously, in parallel, as a result of which the

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<sup>1</sup> OJ L 337, 18.12.2009, p. 37.

<sup>2</sup> OJ L 108, 24.04.2002, p. 21.

<sup>3</sup> OJ L 337, 18.12.2009, p. 37.

<sup>4</sup> OJ L 204, 21.7.1998, p. 37.

<sup>5</sup> OJ L 178, 17.7.2000, p. 1.

<sup>6</sup> OJ L 201, 31.7.2002, p. 37.

<sup>7</sup> OJ L 337, 18.12.2009, p. 11.

<sup>8</sup> OJ C 257, 27.10.2009, p. 1.

<sup>9</sup> OJ L 270, 7.10.1998, p. 48.

dividing lines between these services are becoming blurred and it is now barely apparent to the user which type of communication service is being used;

- C. whereas consumers' interest in hybrid receiving systems is constantly growing, so that the opportunities for dissemination of (interactive) on-line services, which take their starting point as traditional TV services as regards their content or conception or are related to them in terms of scope, are constantly and significantly increasing;
  - D. whereas the attention of each user is finite and, as the number of services on offer rises, it becomes more difficult to reach users, which means that access to and findability of services will be decisive for their success;
  - E. whereas the current provisions of 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) do not yet take into account these new technical developments and whereas in particular graduated regulation, which differentiates between television programmes (including webcasting and live streaming) and audiovisual media services on demand, will become less important in its existing form, although differently regulated information and communications services are available on one and the same device, including services which do not fall within the scope of the Audiovisual Media Services Directive, which may result in unequal competitive conditions and unacceptable discrepancies in the protection of users;
  - F. whereas the regulatory objectives of the Audiovisual Media Services Directive – particularly ensuring and promoting diversity of opinion and of the media, protecting human dignity and protecting children, as well as regulation of advertising – retain their importance to society and their regulatory justification as a matter of principle, but at the same time the limits of the effectiveness and enforceability of these protective provisions are becoming increasingly apparent because of the methods of use which have been made possible by hybrid receiving systems;
  - G. whereas the mere chance fact of the existence of numerous services does not automatically result in the aforementioned regulatory objectives being attained, but their attainment needs to be safeguarded in advance, as undesirable developments can only be reversed to a limited extent and with considerable difficulties and there will therefore remain a need for a specific regulatory framework for the use of services on demand in hybrid receiving systems;
1. Calls on the Commission, in the Audiovisual Media Services Directive and, insofar as necessary, in a supplementary manner in additional EU legal acts, to lay down provisions regulating services which will control the availability of, and access to, audiovisual media services and other communications services or their representation on hybrid receiving devices, so as to prevent producers of such receiving devices or suppliers of the services in question from exploiting their gatekeeper position in a way which discriminates against content providers;
  2. Calls on the Commission to further develop the concept of media services defined in Article 1 of the Audiovisual Media Services Directive in such a way that the necessity of

regulation by the Member States is determined more on the basis of the potential impact of services and specific features of that impact, particularly their relevance to opinion-forming and diversity;

3. Calls on the Commission, by means of the prompt further development of the Audiovisual Media Services Directive and other EU legislation, to create a level playing field for all content providers, taking account of the following minimum requirements, so as to ensure fair competition among content providers and guarantee users the chance to choose among a wide range of high-quality services on a footing of equal opportunity and without discrimination;
4. Calls on the Commission to review the provisions of the Audiovisual Media Services Directive, inter alia with reference to competitiveness in the industry, and particularly to fully exploit the opportunities afforded by liberalisation or greater flexibility of quantitative rules on advertising;
5. Calls on the Commission to ensure in the Audiovisual Media Services Directive that Member States are given the opportunity to grant those content providers an appropriately privileged status with regard to findability on hybrid platforms (including portals, home pages and EPGs) to which the Member States assign a public broadcasting remit or which help to promote objectives in the public interest, particularly to ensure media pluralism and cultural diversity, or which lastingly and demonstrably undertake to carry out duties in the public interest which maintain the quality and independence of reporting and promote diversity of opinion, in which connection service providers with the highest aspirations to comply with such obligations should also be assigned the most prominent position on platforms;
6. Calls on the Commission and Member States, in addition to such ‘must be found’ rules, to consider to what extent a reform of media regulation so as to move towards incentive schemes and strengthen self-regulatory approaches can enable the aforesaid regulatory objectives of the Audiovisual Media Services Directive to be attained in a lasting fashion;
7. Calls on the Commission to ensure that these platforms are operated on the basis of an open, non-proprietary standard, in a way which accords with market conditions entailing fair competition and accords with consumer demand;
8. Calls on the Commission to ensure that platform services and portal services are interoperable, so that, if possible, content need only be prepared once, irrespective of the particular device manufacturer or service provider, giving third parties equal opportunities, without discrimination, to produce and market their own applications, irrespective of the medium of transmission;
9. Calls on the Commission to ensure in a legally binding manner that all content is as a matter of principle made available to the same quality standard on networks and platforms unless a measure entailing positive or negative discrimination demonstrably serves the public interest in the case of the dissemination of particular services;
10. Calls on the Commission to safeguard by law the integrity of linear and non-linear services on hybrid platforms and in particular to prohibit the overlay or scaling of these

services with third-party content, unless the latter have been authorised by the content provider and explicitly initiated by the user; points out that unauthorised use or dissemination by third parties of the content or broadcast signals of a provider must likewise be prevented;

11. Calls on the Commission to ensure that the anonymous use of TV and on-line services by means of hybrid receiving devices is guaranteed and that monitoring and exploitation of the user's behaviour by manufacturers of devices or by third parties is not normally allowed, being permitted only with the witting and unambiguous consent of the user;
12. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

At first sight, it seems as if connected television raises only technical issues. What is basically at issue, however, is the availability, accessibility and findability of media content and whether, and if so by what regulatory means, media services can be treated differently in a convergent world. The media are of a dual character: they are goods, but they are also, and above all, cultural assets, and as such they are of particular social importance. The diversity of the media and freedom of opinion, the press and information contribute substantially to the functioning of our democratic societies. The media have educational, informative, entertainment and watchdog functions. This is the basic reason why in the EU and the Member States media policy is governed not only by competition law and/or commercial law but by separate regulations which take into account their special character as outlined here and their particular importance to society. The convergence of technologies, which has reached a new peak with connected TV, will not change this in any way.

Connected TV is an important technological step towards media convergence, a step which is of a nature to call into question vital decisions concerning regulation of the media. In the Audiovisual Media Services Directive it was decided to impose a finely meshed regulatory system on linear services, but to treat non-linear services less restrictively. This was justified *inter alia* by reference to differences in the impact of the services on society. In all Member States, linear services provided by public and private TV broadcasters are seen – apart from their mass-media impact – as possessing very substantial social-policy implications, which in many places are governed by statutory provisions. Despite the technological convergence, neither the mass attractiveness of TV nor its significance for social policy has changed at all so far. Because a wider radius of action continues to be imputed to the linear media, they must be subject to strict regulation. This differentiation, which has made sense hitherto and which is reflected in the graduated regulatory approach found in the Audiovisual Media Services Directive, is becoming increasingly inadequate due in particular to the development of connected TV, or at least is giving rise to a series of questions and problems which need to be resolved in the regulation of the media.

A hybrid receiving device affords users access both to traditional TV programmes and to the Internet. Irrespective of their mode of technical distribution, in the long term almost total convergence of the media is likely to occur. Services are used on one and the same screen which are subject to different rules, with widely differing degrees of regulation, namely:

- linear audiovisual media services;
- non-linear audiovisual media services;
- audiovisual services which do not fall within the scope of the Audiovisual Media Services Directive but are subject to other European legislation;
- media services which are not subject to any European legislation;
- services whose classification remains controversial.

The term ‘connected TV’ is regularly used to refer to a television set which can itself receive and display on screen both traditional linear programmes and Internet content. In addition, it is still a hybrid receiving device if, although the TV itself is not capable of connecting to the Internet, it is connected to another device which does have an Internet connection (e.g. a Blu-Ray player, games console, digital receiver / set-top box).



As Internet content often requires special processing for display on a TV screen, such hybrid devices have so far offered universal Internet access only in a few cases. Switching from a conventional TV programme to Internet content on the screen is performed by means of a portal or using widgets, whose appearance and functionality are comparable to Smartphone apps, which can be accessed on a platform and which overlay the TV picture or are displayed in split-screen mode alongside a TV picture which is reduced in size. Navigation is by means of a remote control unit, but may also be performed using a Smartphone or Tablet. Increasingly, therefore, material supplied by traditional broadcasters – both linear and non-linear –, on-demand services, WebTV and Internet content processed for connected TV are no longer findable to users via assigned channels, which users could hitherto change relatively easily but via a kind of home page. The wealth of content on offer makes findability and non-discriminatory access to content one of the central issues of connected TV. Creators of platforms and/or portal operators make a preselection of the content which will be available and above all determine whether and how it is prioritised, and they alone decide on the technology to be used in providing it. As a result, the platform operator, portal operator or device manufacturer (all three functions may be combined by one and the same business) controls access to content which has an impact on opinions. To an unprecedented extent, this gives platform operators and device manufacturers a gatekeeper position which is not currently covered by any media regulation. It therefore seems urgently necessary to amend the Audiovisual Media Services Directive, in particular, to take this new situation into account, because otherwise diversity of opinion and of the services on offer may be jeopardised, as may freedom of information. The strong position of device manufacturers and platform operators may also hamper further rapid market development of hybrid services, as device manufacturers determine the market conditions and technological conditions under which content appears on platforms which they operate. However, free and fair competition among services and content is possible only on the basis of uniform competitive conditions, i.e. in this case an interoperable system which uses uniform technology and is open and responsive to market needs, in relation both to the provider market (cable networks, Pay TV, IPTV) and to the market for receiving devices.

Ensuring the findability and accessibility of content will become the main issue in maintaining diversity. Accordingly, the system on which the Audiovisual Media Services Directive has been based hitherto should be developed further, as it is still assumed here that only a few parties possess the requisite resources to make an impact in the mass media. These scarce resources have – at least in the case of traditional broadcasting – been regulated by means of a licensing system. However, digitisation of content has put an end to this scarcity, as data of excellent quality are now available over the Internet at any time, irrespective of their nature as text, moving pictures or sound (or a combination thereof). To users it is increasingly a matter of indifference by what technical means content reaches them. They can use content at any place and time, even if they may (to some extent without being aware of the fact) have different expectations of the quality of content and of presentation, depending on the provider.

Modern media regulation must in future recognise that scarcity is a feature no longer of the modes of transmission but of the places where content can be found.

Existing ‘Must-carry’ rules need to be supplemented with ‘Must-be-found’ rules. Those content providers should be given an appropriately privileged status with regard to findability

on hybrid platforms (including portals, home pages and EPGs) to which the Member States assign a public broadcasting remit or which help to promote objectives in the public interest, such as ensuring media pluralism and cultural diversity, or which undertake to carry out duties which maintain the quality and independence of reporting and promote diversity of opinion. Those who are subject to the stricter rules for linear and non-linear media services laid down in the Audiovisual Media Services Directive or who voluntarily agree to comply with those rules should therefore have the opportunity to acquire a more prominent position on platforms. Consideration should also be given to new forms of incentive schemes.

It is important to try to establish an appropriate balance of power between market parties, especially device manufacturers and content providers, and particularly in the case of integrated services. Individual content providers must also be prevented from gaining an unfair advantage in relation to the dissemination of their content.

The Audiovisual Media Services Directive needs to be further developed in such a way that it also comprehensively regulates operators of hybrid portals and platforms. Anyone who has significant control over the diversity of content and opinions reaching an end-user should also be subject to regulation to safeguard that diversity of content and opinions.

It should be ensured that devices, platforms and portals are designed on the basis of an open, non-proprietary and interoperable standard. Only in this way can non-discriminatory and technologically neutral access to all content be guaranteed.

Moreover, the new technical capacities of connected TV make it necessary to protect the integrity of content. The overlaying of content with third-party content should be prohibited except where the content provider authorises it and the user expressly initiates it.

Connected TV also has implications for data protection. This must be taken into account both in the development of hybrid devices ('privacy by design') and in the standard settings in a device ('privacy by default'), and particularly concerns the principle of data minimisation, proportionality and purpose limitation. Complete data transparency with reference to gathering, processing, use and transfer of data must be ensured. Without the express consent of the user, personal data may be gathered and used only to the extent necessary in order to facilitate the use of services and to charge the user.

Anonymous use of media must remain possible in future without causing any problems, and should be regarded as *the rule*. Analyses of user behaviour and the establishment of user profiles using complete IP addresses (including geo-location) should be allowed only with the witting and unambiguous consent (opt-in) of the user. This must be ensured by legislation.