



2016/0151(COD)

11.11.2016

DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Culture and Education

on the proposal for a directive of the European Parliament and of the Council 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 in view of changing market realities

(COM(2016)0287 – C8-0193/2016 – 2016/0151(COD))

Rapporteur: Angelika Mlinar

SHORT JUSTIFICATION

A new legislative proposal amending the Audiovisual media services directive (AVMSD) was adopted by the European Commission on 25 May 2016. The new proposal responds to the need to update the legislation to technical evolution and also to consumers' needs and enlarges the material scope to video sharing platforms for the purpose of combatting hate speech and dissemination of harmful content to minors.

The Rapporteur welcomes those provisions but believes that whilst a 'level playing field' should be created, differences between broadcasters and video sharing platforms should be taken into account and that the implementation of the future legal framework should ensure that freedom of expression and information is optimally protected in a fast-evolving media landscape.

The LIBE Committee was not involved in the adoption of the previous directive since the decision making process started prior to the entry into force of the Lisbon Treaty, consequently the Charter of Fundamental Rights didn't have the same legal status as the Treaties. Furthermore, the LIBE committee has exclusive competence on any measure related to judicial cooperation in criminal matters and in particular, on the criminal law response to racism, xenophobia and hate speech.

The Rapporteur focused her work on five areas with the objectives of strengthening the fundamental rights related provisions, maintaining the highest degree of impartiality and independence of the media and avoiding arbitrariness.

Approach towards hate speech and incitement to violence or hatred

In order to protect citizens from harmful content and content containing incitement to violence or hatred hosted on video-sharing platforms, but also to protect and guarantee users' fundamental rights, it is essential to set out common and proportionate rules on those matters as well as European guidelines. Such rules should further define the characteristics of "harmful content" and "incitement to violence and hatred", taking into account the intention and effect of such content at the European level.

The Commission proposal refers to the grounds on which incitement to violence or hatred is based from the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law. However, this Framework Decision doesn't cover all grounds that are subsequently included in the Commission proposal. An alignment with the grounds included in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime would guarantee a better level of protection against incitement to hatred which further aims at specifying the characteristics of "publicly inciting to violence or hatred". However, those grounds alone are not meant to be used to restrict the making available of audio-visual content.

Protecting minors from harmful content

The Rapporteur is of the opinion that to effectively implement measures to protect minors from harmful content such as pornographic content, it is essential to adopt effective prevention measures.

The Rapporteur also believes that it is of utmost importance to ensure through this Directive review that measures implemented by Member States to protect minors from content that may impair their physical or mental development are necessary and proportionate and fully respect the obligations of the Charter of Fundamental Rights.

Recent developments at Member State level have shown that the protection of minors can be used excessively as a ground to restrict the diffusion of audio-visual content aiming at combating discrimination based on gender or sexual orientation. It is therefore essential, taking into account Article 52 of the Charter, to ensure that equality and non-discrimination are upheld and not undermined by excessive measures of protection of minors from harmful content.

Due process in tackling illegal content

The Rapporteur believes that while Member States shall not be precluded from imposing stricter measures with respect to illegal content, for the purpose of this Directive, restricting the online distribution of illegal content to the public should always be in line with the Charter of Fundamental Rights, and should be limited to what is necessary and proportionate and executed on the basis of a prior judicial authorisation.

Due process is key to ensuring that freedom of expression and information can be guaranteed effectively and avoid arbitrariness in decisions on content availability. The Rapporteur therefore recommends clarifying this element as part of the provision applying to video-sharing platform services, which should be subject to the same principle than “traditional” media when it comes to illegal content.

E-commerce Directive safeguards

The Rapporteur recommends to ensure that the provisions of the e-commerce Directive are not affected by measures applying to video-sharing platform services and the audiovisual media content they are hosting. Under article 15(1) of Directive 2000/31/EC Member States should not impose a general obligation on providers of transmission, storage and hosting services to monitor the information which they transmit or store, nor a general obligation to seek facts or circumstances indicating illegal activity. In this regard, it is also important to include in the revision a reference to the CJEU, which in its Judgments C-360/10 and C-70/10, rejected measures for the 'active monitoring' of almost all users of the services concerned. Preserving such safeguards is also essential for a consistent application of the legal framework throughout the Union when it comes to video-sharing platform service providers' obligations and liability.

Independence of regulators at both European and national level

The directive, in line with the Charter of Fundamental Rights and in particular article 11, should aim at enshrining the independence of audiovisual media regulators into EU law by ensuring that they are legally distinct and functionally independent from the industry and governments and operate in a transparent and accountable manner and have sufficient powers.

The principle of independence of regulators, already well developed and implemented in other sectors of the European Acquis Communautaire, is pursued in the audiovisual sector by article 30 of the 2010/13/EU Directive on Audiovisual Media Services.

The European Regulatory Group for the Audiovisual (ERGA) was established in March, 2014, through the Commission Decision C(2014) 462 of 3.2.2014 as advisory body to the Commission. The Commission proposal formalises the role of ERGA as an independent, expert advisor to the Commission and as a forum for the exchange of experiences and best practices between the national regulators.

The Rapporteur welcomes the Commission approach and she believes that the regulatory body can achieve the relevant degree of structural independence from the government only if established as a separate legal entity.

AMENDMENTS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Culture and Education, as the committee responsible, to take into account the following amendments:

Amendment 1

Proposal for a directive
Citation 2 a (new)

Text proposed by the Commission

Amendment

(2 a) - having regard to the Charter of Fundamental Rights of the European Union, and in particular Article 7, 10, 11, 21, 24, 26 and 52 thereof;

Or. en

Amendment 2

Proposal for a directive
Recital 8

Text proposed by the Commission

Amendment

(8) In order to ensure coherence and give certainty to businesses and Member States' authorities, ***the notion of*** "incitement to hatred" should, ***to the appropriate extent***, be aligned ***to the***

(8) In order to ensure coherence and give ***legal*** certainty to businesses and Member States' authorities, "incitement to hatred" should be aligned ***with*** the definition in the Council Framework

definition in the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based.

Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law which defines hate speech as "publicly inciting to violence or hatred". This should include aligning the grounds on which incitement to violence or hatred is based ***as well as those grounds not covered by Framework Decision 2008/913/JHA such as social origin, genetic features, language, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health. These grounds are intended to further specify the characteristics of "publicly inciting to violence or hatred" but should not alone be considered as a basis for restricting the making available of audio-visual content.***

Or. en

Justification

Fifth the grounds also included in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime would guarantee a better level of protection against incitement to hatred. Such alignment aims at further specifying the characteristics of "publicly inciting to violence or hatred" but those grounds alone are not meant to be used to restrict the making available of audio-visual content.

Amendment 3

Proposal for a directive Recital 9

Text proposed by the Commission

(9) In order to empower viewers, ***including*** parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical, ***mental or moral*** development. This could be done, for

Amendment

(9) In order to empower viewers, ***in particular*** parents and minors, in making informed decisions about the content to be watched, it is necessary that audiovisual media service providers provide sufficient information about content that may impair minors' physical ***or mental*** development. This could be done, for instance, through a

instance, through a system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means.

system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means.

Or. en

Justification

The use of the word 'moral' is ambiguous. Different Member States understand morality differently.

Amendment 4

Proposal for a directive Recital 26

Text proposed by the Commission

(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In ***this context, harmful content and hate speech stored on video-sharing platforms have increasingly given rise to concern.*** It is necessary, in order to protect minors from harmful content and all citizens from content containing incitement to violence or hatred, to set out proportionate rules on those matters.

Amendment

(26) There are new challenges, in particular in connection with video-sharing platforms, on which users - particularly minors - increasingly consume audiovisual content. In ***addition, the decision to remove such content, being often dependent on a subjective interpretation, can undermine the freedom of expression and information. In this context,*** it is necessary, in order to protect minors from harmful content and all citizens from content containing incitement to violence or hatred ***hosted on video-sharing platforms, but also to protect and guarantee the fundamental rights of users,*** to set out ***common and*** proportionate rules on those matters. ***Such rules should, in particular, further define at Union level the characteristics of "harmful content" and "incitement to violence and hatred", taking into account the intention and effect of such content. Self-regulatory and co-regulatory measures implemented or approved by Member States or by the Commission should fully respect the obligations of the Charter of Fundamental Rights of the***

Amendment 5

Proposal for a directive Recital 28

Text proposed by the Commission

(28) An important share of the content **stored** on video-sharing platforms is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes or user-generated videos, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical, **mental or moral** development and protect all **citizens** from incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to **sex, race, colour**, religion, **descent or national or ethnic origin**.

Amendment

(28) An important share of the content **hosted** on video-sharing platforms is not under the editorial responsibility of the video-sharing platform provider. However, those providers typically determine the organisation of the content, namely programmes or user-generated videos, including by automatic means or algorithms. Therefore, those providers should be required to take appropriate measures to protect minors from content that may impair their physical **or mental** development and protect all **users** from incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to **race, colour, ethnic or social origin, genetic features, language**, religion **or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health**. **These grounds are intended to further specify the characteristics of "publicly inciting to violence or hatred" but should not alone be considered as a basis for restricting the making available of audio-visual content.**

Justification

Framework Decision doesn't cover all grounds that are subsequently included in the

Commission proposal. An alignment with the grounds also included in Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime would guarantee a better level of protection against incitement to hatred. Such alignment aims at further specifying the characteristics of "publicly inciting to violence or hatred" but those grounds alone are not meant to be used to restrict the making available of audio-visual content.

Amendment 6

Proposal for a directive Recital 29

Text proposed by the Commission

(29) In light of the nature of the providers' involvement with the content **stored** on video-sharing platforms, those appropriate measures should relate to the organisation of the content and not to the content as such. The requirements in this regard as set out in this Directive should therefore apply without prejudice to Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴, which provides for an exemption from liability for illegal information stored by certain providers of information society services. When providing services covered by Article 14 of Directive 2000/31/EC, those requirements should also apply without prejudice to Article 15 of that Directive, which precludes general obligations to monitor such information and to actively seek facts or circumstances indicating illegal activity from being imposed on those providers, without however concerning monitoring obligations in specific cases and, in particular, without affecting orders by national authorities in accordance with national legislation.

³⁴ 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

Amendment

(29) In light of the nature of the providers' involvement with the content **hosted** on video-sharing platforms, those appropriate measures should relate to the organisation of the content and not to the content as such. The requirements in this regard as set out in this Directive should therefore apply without prejudice to Article 14 of Directive 2000/31/EC of the European Parliament and of the Council³⁴, which provides for an exemption from liability for illegal information stored by certain providers of information society services. When providing services covered by Article 14 of Directive 2000/31/EC, those requirements should also apply without prejudice to Article 15 of that Directive, which precludes general obligations to monitor such information and to actively seek facts or circumstances indicating illegal activity from being imposed on those providers, without however concerning monitoring obligations in specific cases and, in particular, without affecting **judicial** orders by national authorities in accordance with national legislation.

³⁴ 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

Amendment 7

Proposal for a directive Recital 30

Text proposed by the Commission

(30) It is appropriate to involve the video-sharing platform providers as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. Co-regulation should therefore be encouraged.

With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures to protect minors from harmful content and all citizens from content containing incitement to violence or hatred than the ones provided for in this Directive. However, it should remain possible for Member States to take such stricter measures where that content is illegal, provided that they comply with Articles 14 and 15 of Directive 2000/31/EC, and to take measures with respect to content on websites containing or disseminating child pornography, as required by and allowed under Article 25 of Directive 2011/93/EU of the European Parliament and the Council³⁵. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.

³⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual

Amendment

(30) It is appropriate to involve the video-sharing platform providers, ***civil society organisations and other relevant stakeholders*** as much as possible when implementing the appropriate measures to be taken pursuant to this Directive. Co-regulation ***within a transparent and accountable multistakeholder process*** should therefore be encouraged.

With a view to ensuring a clear and consistent approach in this regard across the Union, Member States should not be entitled to require video-sharing platform providers to take stricter measures to protect minors from harmful content and all citizens from content containing incitement to violence or hatred than the ones provided for in this Directive. However, it should remain possible for Member States to take such stricter measures where that content is illegal, provided that they comply with Articles 14 and 15 of Directive 2000/31/EC, and to take measures with respect to content on websites containing or disseminating child pornography, as required by and allowed under Article 25 of Directive 2011/93/EU of the European Parliament and the Council³⁵. It should also remain possible for video-sharing platform providers to take stricter measures on a voluntary basis.

³⁵ Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual

abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA (OJ L 335, 17.12.2011, p. 1).

Or. en

Amendment 8

Proposal for a directive Recital 30 a (new)

Text proposed by the Commission

Amendment

(30 a) Member States should ensure that any measure taken, for the purposes of this Directive, to restrict the online distribution, or otherwise making available, of illegal content to the public is in line with the Charter of Fundamental Rights, is limited to what is necessary and proportionate and is taken on the basis of a prior judicial authorisation.

Or. en

Amendment 9

Proposal for a directive Recital 31

Text proposed by the Commission

Amendment

(31) When taking the ***appropriate*** measures to protect minors from harmful content and to protect all citizens from content containing incitement to violence or hatred in accordance with this Directive, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of

(31) When taking the ***restrictive*** measures to protect minors from harmful content and to protect all citizens from content containing incitement to violence or hatred in accordance with this Directive, the applicable fundamental rights, as laid down in the Charter on Fundamental Rights of the European Union, should be carefully balanced. That concerns in particular, as the case may be, the right to respect for private and family life and the protection of personal data, the freedom of

expression and information, the freedom to conduct a business, the prohibition of discrimination and the right of the child.

expression and information, the freedom to conduct a business, the prohibition of discrimination and the right of the child.

Member States have a positive obligation to ensure that the balance of incentives for media service providers and video-sharing platform providers covered by this Directive is such that legal content, including content that can offend, shock or disturb, can be communicated. Similarly, age verification should only be required by law if necessary and proportionate and should be implemented in a way which offers the maximum protection of privacy.

Or. en

Amendment 10

Proposal for a directive Recital 32

Text proposed by the Commission

(32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC. Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are part of a group and another entity of that group is established in a Member State. To that effect,

Amendment

(32) The video-sharing platform providers covered by this Directive provide information society services within the meaning of point (a) of Article 2 of Directive 2000/31/EC ***and generally provide hosting services in line with Article 14 of that Directive.*** Those providers are consequently subject to the rules on the internal market set out in Article 3 of that Directive, if they are established in a Member State. It is appropriate to ensure that the same rules apply to video-sharing platform providers which are not established in a Member State with a view to safeguarding the effectiveness of the measures to protect minors and citizens set out in this Directive and ensuring a level playing field in as much as possible, in as far as those providers have either a parent company or a subsidiary which is established in a Member State or where those providers are

arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.

part of a group and another entity of that group is established in a Member State. To that effect, arrangements should be made to determine in which Member State those providers should be deemed to have been established. The Commission should be informed of the providers under each Member State's jurisdiction in application of the rules on establishment set out in this Directive and in Directive 2000/31/EC.

Or. en

Amendment 11

Proposal for a directive Recital 32 a (new)

Text proposed by the Commission

Amendment

(32 a) Under Article 15(1) of Directive 2000/31/EC, Member States are not to impose a general obligation on providers of transmission, storage and hosting services to monitor the information which they transmit or store, nor a general obligation to actively seek facts or circumstances indicating illegal activity. In this regard, the Court of Justice of the European Union ('the Court'), in its Cases C-360/10^{1a} and C-70/10^{1b}, rejected measures for the 'active monitoring' of almost all users of the services concerned (internet access providers in one case and a social network in the other) and held that any injunction requiring a hosting service provider to undertake general monitoring is to be precluded.

^{1a} Judgment of the Court of Justice of 16 February 2012, Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v Netlog NV, C-360/10, ECLI:EU:C:2012:85.

^{1b} Judgment of the Court of Justice of 24 November 2011, Scarlet Extended SA v

Justification

In line with Directive 2000/31 EC and the European Court of Justice judgements in cases C-360/10 and C-70/10.

Amendment 12

**Proposal for a directive
Recital 32 b (new)**

Text proposed by the Commission

Amendment

(32 b) This Directive, in line with the Charter of Fundamental Rights of the European Union, in particular Article 11, aims to enshrine the independence of audiovisual media regulators into Union law by ensuring that they are legally distinct and functionally independent from the industry and government in that they neither seek nor take instructions from any body, they operate in a transparent and accountable manner as set out in a law and they have sufficient powers.

Amendment 13

**Proposal for a directive
Recital 33**

Text proposed by the Commission

Amendment

(33) Regulatory authorities of the Member States can achieve the requisite degree of structural independence only if established as separate legal entities. Member States should therefore guarantee

(33) Regulatory authorities of the Member States can achieve the requisite degree of structural ***and functional*** independence only if established as separate legal entities. Member States

the independence of the national regulatory authorities from both the government, public bodies and the industry with a view to ensuring the impartiality of their decisions. This requirement of independence should be without prejudice to the possibility for Member States to establish regulators having oversight over different sectors, such as audiovisual and telecom. National regulatory authorities should be in possession of the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities established under this Directive should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, the internal market and the promotion of fair competition.

should therefore guarantee the independence of the national regulatory authorities from both the government, public bodies and the industry with a view to ensuring the impartiality of their decisions. This requirement of independence should be without prejudice to the possibility for Member States to establish regulators having oversight over different sectors, such as audiovisual and telecom. National regulatory authorities should be in possession of the enforcement powers and resources necessary for the fulfilment of their tasks, in terms of staffing, expertise and financial means. The activities of national regulatory authorities established under this Directive should ensure respect for the objectives of media pluralism, cultural diversity, consumer protection, ***non-discrimination, transparency***, the internal market and the promotion of fair competition.

Or. en

Amendment 14

Proposal for a directive Recital 35 a (new)

Text proposed by the Commission

Amendment

(35 a) This Directive formalises the role of the ERGA as an independent, expert advisor to the Commission and as a forum for the exchange of experiences and best practices between the national regulatory authorities. The ERGA is entrusted with a specific advisory role with regard to issues of jurisdiction and the issuing of opinions on Union codes of conduct based on co-regulation.

Or. en

Amendment 15

Proposal for a directive Recital 36

Text proposed by the Commission

(36) ERGA has made a positive contribution towards consistent regulatory practice and has provided high level advice to the Commission on implementation matters. This calls for the formal recognition and reinforcement of its role in this Directive. The group should therefore be re-established by virtue of this Directive.

Amendment

(36) ERGA has made a positive contribution towards consistent regulatory practice and has provided high level **and independent** advice to the Commission on implementation matters. This calls for the formal recognition and reinforcement of its role in this Directive. The group should therefore be re-established by virtue of this Directive.

Or. en

Amendment 16

Proposal for a directive Recital 37

Text proposed by the Commission

(37) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing its expertise and advice and by facilitating exchange of best practices. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation across the Digital Single Market. Upon the Commission's request, ERGA should provide opinions, including on jurisdiction and Union codes of conduct in the area of protection of minors and hate speech as well as audiovisual commercial communications for foods high in fat, salt/sodium and sugars.

Amendment

(37) The Commission should be free to consult ERGA on any matter relating to audiovisual media services and video-sharing platforms. ERGA should assist the Commission by providing its expertise and advice and by facilitating exchange of best practices. In particular, the Commission should consult ERGA in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation across the Digital Single Market. Upon the Commission's request, ERGA should provide opinions, including on jurisdiction and Union **rules and** codes of conduct in the area of protection of minors and hate speech as well as audiovisual commercial communications for foods high in fat, salt/sodium and sugars.

Or. en

Amendment 17

Proposal for a directive

Recital 39

Text proposed by the Commission

(39) 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.

Amendment

(39) *Member States, when implementing* this Directive, *are under the obligation to respect* fundamental rights and *observe* the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, *Member States should ensure that no measure adopted for the transposition of* this Directive *directly or indirectly undermines* 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.

Or. en

Amendment 18

Proposal for a directive

Recital 39 a (new)

Text proposed by the Commission

Amendment

(39 a) *Where it is apparent that national legislation is such as to obstruct the exercise of one or more fundamental freedoms guaranteed by the Treaty, it may benefit from the exceptions provided for by EU law only in so far as that complies with the fundamental rights enforced by the Court. That obligation to comply with fundamental rights manifestly comes within the scope of EU law and, consequently, within that of the Charter. The use by a Member State of exceptions*

provided for by EU law in order to justify an obstruction of a fundamental freedom guaranteed by the Treaty should, therefore, be regarded as 'implementing Union law' within the meaning of Article 51(1) of the Charter.

Or. en

Justification

In line with the European Court of Justice judgement of 30 April 2014 in Case C-390/12 - Pflieger and Others

Amendment 19

Proposal for a directive
Recital 40

Text proposed by the Commission

(40) The right to access political news programmes is crucial to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union are fully and properly protected. Given the ever growing importance of audiovisual media services for societies and democracy, broadcasts of political news should, *to the best extent possible, and* without prejudice to copyright rules, be made available cross-border in the EU.

Amendment

(40) The right to access political news programmes is crucial to safeguard the fundamental freedom to receive information and to ensure that the interests of viewers in the Union are fully and properly protected. Given the ever growing importance of audiovisual media services for societies and democracy, broadcasts of political news should, without prejudice to copyright rules, be made available cross-border in the EU.

Or. en

Amendment 20

Proposal for a directive
Article 1 – paragraph 1 – point 1 – point b
Directive 2010/13/EU
Article 1 – paragraph 1 – point aa

Text proposed by the Commission

(aa) 'video-sharing platform service'

Amendment

(aa) 'video-sharing platform service'

means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets the following requirements:

means a service, as defined by Articles 56 and 57 of the Treaty on the Functioning of the European Union, which meets *all* the following requirements:

Or. en

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point d

Directive 2010/13/EU

Article 4 – paragraph 7

Text proposed by the Commission

7. *Member States* shall encourage co-regulation and self-regulation through codes of conduct ***adopted at national level*** in the fields coordinated by this Directive to the extent permitted by *their* legal systems. Those codes shall be such that they are broadly accepted by the main stakeholders ***in the Member States*** concerned. The codes of conduct shall clearly and unambiguously set out their objectives. They shall provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at. They shall provide for effective enforcement, including when appropriate effective and proportionate sanctions.

Amendment

7. *The Commission* shall encourage ***and facilitate*** co-regulation and self-regulation through codes of conduct in the fields coordinated by this Directive to the extent permitted by ***national*** legal systems. Those codes shall be such that they are broadly accepted by the main stakeholders concerned. The codes of conduct shall clearly and unambiguously set out their objectives. They shall provide for regular, transparent and independent monitoring and evaluation of the achievement of the objectives aimed at. They shall provide for effective ***and transparent*** enforcement, including when appropriate effective and proportionate sanctions ***are applied***.

Or. en

Amendment 22

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2010/13/EU

Article 6 a – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical, *mental or moral* development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.

Amendment

1. Member States shall ensure that audiovisual media service providers provide sufficient information to viewers about content which may impair the physical *or mental* development of minors. For this purpose, Member States may use a system of descriptors indicating the nature of the content of an audiovisual media service.

Or. en

Justification

The use of the word 'moral' is ambiguous. Different Member States understand morality differently.

Amendment 23

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2010/13/EU

Article 12 – paragraph 1

Text proposed by the Commission

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical, *mental or moral* development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

Amendment

Member States shall take appropriate measures to ensure that programmes provided by audiovisual media service providers under their jurisdiction, which may impair the physical *or mental* development of minors are only made available in such a way as to ensure that minors will not normally hear or see them. Such measures may include selecting the time of the broadcast, age verification tools or other technical measures. They shall be proportionate to the potential harm of the programme.

Or. en

Amendment 24

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2010/10/EU

Article 12 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

Member States shall ensure that the measures taken to protect minors from programmes and content provided by audiovisual media services providers under their jurisdiction, which may impair their physical or mental development, are necessary and proportionate and fully respect the obligations set out in the Charter, in particular those set out in Title III and Article 52 thereof.

Or. en

Amendment 25

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

1. Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, Member States shall ensure that video-sharing platform providers take appropriate measures to:

1. Without prejudice to Articles 14 and 15 of Directive 2000/31/EC, ***the Commission and*** Member States shall ensure that video-sharing platform providers take appropriate measures to:

Or. en

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU
Article 28 a – paragraph 1 – point a

Text proposed by the Commission

(a) protect minors from content which may impair their physical, ***mental or moral*** development;

Amendment

(a) protect minors from content which may impair their physical ***or mental*** development;

Or. en

Amendment 27

Proposal for a directive
Article 1 – paragraph 1 – point 19
Directive 2010/13/EU
Article 28 a – paragraph 1 – point b

Text proposed by the Commission

(b) protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to ***sex***, race, colour, religion, ***descent or national or ethnic origin***.

Amendment

(b) protect all citizens from content containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, ***ethnic or social origin, genetic features, language***, religion ***or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health***. ***These grounds are intended to further clarify the characteristics of "publicly inciting to violence or hatred" but shall not alone be considered as a basis for restricting the making available of audiovisual content.***

Or. en

Amendment 28

Proposal for a directive
Article 1 – paragraph 1 – point 19

Directive 2010/13/EU
Article 28a – paragraph 2 – subparagraph 2 – point a

Text proposed by the Commission

(a) **defining** and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical, **mental or moral** development of minors, in accordance with Articles 6 and 12 respectively;

Amendment

(a) **specifying the characteristics of** and applying in the terms and conditions of the video-sharing platform providers the concepts of incitement to violence or hatred as referred to in point (b) of paragraph 1 and of content which may impair the physical **or mental** development of minors, in accordance with Articles 6 and 12 respectively;

Or. en

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 2 – subparagraph 2 – point b

Text proposed by the Commission

(b) establishing and operating mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;

Amendment

(b) establishing and operating **transparent** mechanisms for users of video-sharing platforms to report or flag to the video-sharing platform provider concerned the content referred to in paragraph 1 stored on its platform;

Or. en

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28a – paragraph 2 – subparagraph 2 – point c

Text proposed by the Commission

(c) establishing and operating age

Amendment

(c) establishing and operating age

verification systems for users of video-sharing platforms with respect to content which may impair the physical, *mental or moral* development of minors;

verification systems for users of video-sharing platforms with respect to content which may impair the physical *or mental* development of minors;

Or. en

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28a – paragraph 2 – subparagraph 2 – point e

Text proposed by the Commission

(e) providing for parental control systems with respect to content which may impair the physical, *mental or moral* development of minors;

Amendment

(e) providing for parental control systems with respect to content which may impair the physical *or mental* development of minors;

Or. en

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 2 – subparagraph 2 – point f

Text proposed by the Commission

(f) establishing and operating systems through which providers of video-sharing platforms explain to users of video-sharing platforms what effect has been given to the reporting and flagging referred to in point (b).

Amendment

(f) establishing and operating systems through which providers of video-sharing platforms explain to users of video-sharing platforms *the validity of, and* what effect has been given to, the reporting and flagging referred to in point (b).

Or. en

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 3

Text proposed by the Commission

3. For the purposes of the implementation of the measures referred to in paragraphs 1 and 2, **Member States** shall encourage co-regulation as provided for in Article 4(7).

Amendment

3. For the purposes of the implementation of the measures referred to in paragraphs 1 and 2, **the Commission** shall encourage co-regulation as provided for in Article 4(7), ***through the adoption of guidelines ensuring that codes of conduct are compliant with the provisions of this Directive and fully respect the obligations set out in the Charter of Fundamental Rights, in particular Article 52 thereof.***

Or. en

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

28a – paragraph 4

Text proposed by the Commission

4. Member States shall establish the necessary mechanisms to assess the ***appropriateness*** of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30.

Amendment

4. Member States shall establish the necessary mechanisms to assess the ***legality, transparency, necessity, effectiveness and proportionality*** of the measures referred to in paragraphs 2 and 3 taken by video-sharing platform providers. Member States shall entrust this task to the authorities designated in accordance with Article 30.

Or. en

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a – paragraph 5

Text proposed by the Commission

5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2. Member States shall not be precluded from imposing stricter measures with respect to illegal content. When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

Amendment

5. Member States shall not impose on video-sharing platform providers measures that are stricter than the measures referred to in paragraph 1 and 2. Member States shall not be precluded from imposing stricter measures with respect to illegal content, ***provided that any measure taken, for the purposes of this Directive, to restrict the online distribution, or otherwise making available, of illegal content to the public is in line with the Charter of Fundamental Rights, is limited to what is necessary and proportionate and is taken on the basis of a prior judicial authorisation.*** When adopting such measures, they shall respect the conditions set by applicable Union law, such as, where appropriate, those set in Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

Or. en

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 1

Text proposed by the Commission

1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are legally distinct and functionally independent ***of*** any other

Amendment

1. Each Member State shall designate one or more independent national regulatory authorities. Member States shall ensure that they are legally distinct and functionally independent ***from any***

public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

government or any other public or private body. This shall be without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

Or. en

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. Member States shall ensure that the nomination process of the head of a national regulatory authority or the members of the collegiate body fulfilling that function within a national regulatory authority is transparent and guarantees the requisite degree of independence for the fulfilment of its functions

Or. en

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, cultural diversity, consumer protection, internal market and the promotion of fair competition.

Member States shall ensure that national regulatory authorities exercise their powers impartially and transparently and in accordance with the objectives of this Directive, in particular media pluralism, ***non-discrimination***, cultural diversity, consumer protection, internal market and the promotion of fair competition.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 5

Text proposed by the Commission

5. The Head of a national regulatory authority or the members of the collegiate body fulfilling that function within a national regulatory authority, may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law. A dismissal decision shall be made public and a statement of reasons shall be made available.

Amendment

5. The Head of a national regulatory authority or the members of the collegiate body fulfilling that function within a national regulatory authority, may be dismissed only if they no longer fulfil the conditions required for the performance of their duties which are laid down in advance in national law ***and on the basis of a justified prior notification***. A dismissal decision shall be made public and a statement of reasons shall be made available.

Or. en

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 1

Text proposed by the Commission

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established.

Amendment

1. The European Regulators Group for Audiovisual Media Services (ERGA) is hereby established ***as an independent expert advisory group to the Commission and as a forum for the exchange of experiences and best practices between the national regulatory authorities***.

Or. en

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3– point a

Text proposed by the Commission

(a) to advise and assist the Commission in its work to ensure a consistent implementation in all Member States of the regulatory framework for audiovisual media services;

Amendment

(a) to advise and assist the Commission in its work to ensure a **coherent**, consistent **and transparent** implementation in all Member States of the regulatory framework for audiovisual media services;

Or. en

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point b

Text proposed by the Commission

(b) to advise and assist the Commission as to any matter related to audiovisual media services within the Commission's competence. If justified in order to advise the Commission on certain issues, the group may consult market participants, consumers and end-users in order to collect the necessary information;

Amendment

(b) to advise and assist the Commission as to any matter related to audiovisual media services within the Commission's competence. If justified in order to advise the Commission on certain issues, the group may consult market participants, consumers, **relevant civil society organisations** and end-users in order to collect the necessary information;

Or. en

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30a – paragraph 3 – point c

Text proposed by the Commission

(c) to provide for an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;

Amendment

(c) to provide for **guidelines and** an exchange of experience and good practice as to the application of the regulatory framework for audiovisual media services;

Or. en

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point d

Text proposed by the Commission

(d) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3 **and 4** thereof;

Amendment

(d) to cooperate and provide its members with the information necessary for the application of this Directive, in particular as regards Articles 3, **4 and 28a** thereof;

Or. en

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – point e

Text proposed by the Commission

(e) to give opinions, when requested by the Commission, on the issues envisaged in Articles 2(5b), 6a(3), 9(2), 9(4) and on any matter relating to audiovisual media services, in particular on the protection of minors and incitement to hatred.";

Amendment

(e) to give opinions, when requested by the Commission, on the issues envisaged in Articles 2(5b), 6a(3), 9(2), 9(4), **28a** and on any matter relating to audiovisual media services, in particular on the protection of minors and incitement to hatred.";

Or. en

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 23

Directive 2010/13/EU

Article 33 – subparagraph 2

Text proposed by the Commission

By [date – no later than four years after adoption] at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive.

Amendment

By [date – no later than four years after adoption] at the latest, and every three years thereafter, the Commission shall submit to the European Parliament, to the Council and to the European Economic and Social Committee a report on the application of this Directive, ***in particular on the impact of the implemented measures on fundamental rights as enshrined in the Charter.***

Or. en