



2016/0151(COD)

5.9.2016

*****I**

DRAFT REPORT

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))

Committee on Culture and Education

Rapporteurs: Sabine Verheyen, Petra Kammerevert

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT.....	72

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0287),
 - having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0193/2016),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ...¹,
 - having regard to the opinion of the Committee of Regions...²,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Culture and Education and the opinions of the Committee on Environment, Public Health and Food Safety, the Committee on Internal Market and Consumer Protection, the Committee on Legal Affairs, and the Committee on Civil Liberties, Justice and Home Affairs (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a directive Title 1

Text proposed by the Commission

Amendment

Proposal for a

Proposal for a

¹ xxxxxx.

² xxxxxx.

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

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
(Audiovisual Media Services Directive)

Or. en

Amendment 2

Proposal for a directive

Recital 1

Text proposed by the Commission

(1) The last substantive amendment to Directive 89/552/EEC of the Council²⁷, later codified by Directive 2010/13/EU of the European Parliament and of the Council²⁸, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council²⁹. Since then, the market of audiovisual media services has evolved significantly and rapidly. Technical developments allow for new types of services and user experiences. The viewing habits, particularly of younger generations, have changed significantly. While the main TV screen remains an important device to share audiovisual experiences, many viewers have moved to other, portable devices to watch audiovisual content. Traditional TV content accounts still for a major share of the average daily viewing time. However, new types of content, such as short videos or user-generated content, gain increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established.

Amendment

(1) The last substantive amendment to Directive 89/552/EEC of the Council²⁷, later codified by Directive 2010/13/EU of the European Parliament and of the Council²⁸, was made in 2007 with the adoption of Directive 2007/65/EC of the European Parliament and of the Council²⁹. Since then, the market of audiovisual media services has evolved significantly and rapidly. Technical developments allow for new types of services and user experiences. The viewing habits, particularly of younger generations, have changed significantly. While the main TV screen remains an important device to share audiovisual experiences, many viewers have moved to other, portable devices to watch audiovisual content. Traditional TV content accounts still for a major share of the average daily viewing time. However, new types of content, such as short videos or user-generated content, gain increasing importance and new players, including providers of video-on-demand services and video-sharing platforms, are now well-established. ***This continuously progressing convergence of media requires an up-to-date legal***

framework.

²⁷ Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 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) (OJ L 298, 17.10.1989, p. 23).

²⁸ 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) (OJ L 95, 15.4.2010, p. 1).

²⁹ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27).

²⁷ Directive 89/552/EEC of the European Parliament and of the Council of 3 October 1989 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) (OJ L 298, 17.10.1989, p. 23).

²⁸ 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) (OJ L 95, 15.4.2010, p. 1).

²⁹ Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ L 332, 18.12.2007, p. 27).

Or. en

Amendment 3

Proposal for a directive Recital 2

Text proposed by the Commission

(2) On 6 May 2015, the Commission adopted "A Digital Single Market Strategy for Europe"³⁰ in which it announced a review of Directive 2010/13/EU.

Amendment

(2) On 6 May 2015, the Commission adopted "A Digital Single Market Strategy for Europe"³⁰ in which it announced a review of Directive 2010/13/EU. ***On 19 January 2016, the European Parliament adopted the resolution "Towards a Digital***

Single Market Act'^{30a} setting out what it would expect from the review. The European Parliament has called for a review several times, on 4 July 2013 in its resolution "Connected TV"^{30b} and on 12 March 2014 in its resolution "Preparing for a Fully Converged Audiovisual World"^{30c} and has indicated the objectives of that review.

³⁰ COM(2015) 192 final

³⁰ COM(2015) 192 final

^{30a} P8_TA(2016)0009

^{30b} P7_TA(2013)0329

^{30c} P7_TA(2014)0232

Or. en

Amendment 4

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Directive 2010/13/EU should **remain** applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should be also considered to be met if the service has audiovisual content and form which is dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. Social media services are not included, except if they provide a service that falls under the definition of a video-sharing platform. A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity. As

Amendment

(3) Directive 2010/13/EU should **be** applicable only to those services the principal purpose of which is the provision of programmes in order to inform, entertain or educate. The principal purpose requirement should be also considered to be met if the service has audiovisual content and form which is dissociable from the main activity of the service provider, such as stand-alone parts of online newspapers featuring audiovisual programmes or user-generated videos where those parts can be considered dissociable from their main activity. Social media services are not included, except if they provide a service that falls under the definition of a video-sharing platform. A service should be considered to be merely an indissociable complement to the main activity as a result of the links between the audiovisual offer and the main activity. As

such, channels or any other audiovisual services under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered in the framework of a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will be up to the providers with editorial responsibility to abide by the provisions of this Directive.

such, channels or any other audiovisual services under the editorial responsibility of a provider may constitute audiovisual media services in themselves, even if they are offered in the framework of a video-sharing platform which is characterised by the absence of editorial responsibility. In such cases, it will be up to the providers with editorial responsibility to abide by the provisions of this Directive.

Or. en

Amendment 5

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) Establishing jurisdiction requires an assessment of factual situations against the criteria laid down in Directive 2010/13/EU. The assessment of such factual situations might lead to conflicting results. In the application of the cooperation procedures provided for in Articles 3 and 4 of Directive 2010/13/EU, it is important that the Commission can base its findings on reliable facts. The *European Regulators Group for Audiovisual Media Services (ERGA)* should therefore be empowered to *provide* opinions on jurisdiction upon the Commission's request.

Amendment

(5) Establishing jurisdiction requires an assessment of factual situations against the criteria laid down in Directive 2010/13/EU. The assessment of such factual situations might lead to conflicting results. In the application of the cooperation procedures provided for in Articles 3 and 4 of Directive 2010/13/EU, it is important that the Commission can base its findings on reliable facts. The *contact committee* should therefore be empowered to *decide on* opinions on jurisdiction *drafted by the European Regulators Group for Audiovisual Media Services (ERGA)* upon the Commission's request.

Or. en

Amendment 6

Proposal for a directive

Recital 7

(7) In its Communication to the European Parliament and to the Council on Better Regulation for Better Results – an EU Agenda³¹, the Commission stressed that when considering policy solutions, it will consider both regulatory and **well-designed** non-regulatory means, modelled on the Community of practice and the Principles for Better Self- and Co-regulation³². A number of codes set up in the areas coordinated by the Directive have proved to be well designed, in line with the Principles for Better Self- and Co-regulation. The existence of a legislative backstop has been considered an important success factor in promoting compliance with a self- or co-regulatory code. It is equally important that the codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed by the codes. Graduated sanctions which maintain an element of proportionality are usually considered to be an effective approach in enforcing a scheme. These principles should be followed by the self- and co-regulatory codes adopted in the areas coordinated by this Directive.

³¹ COM(2015) 215 final

³² <https://ec.europa.eu/digital-single-market/communities/better-self-and-co-regulation>

(7) In its Communication to the European Parliament and to the Council on Better Regulation for Better Results – an EU Agenda³¹, the Commission stressed that when considering policy solutions, it will consider both regulatory and non-regulatory means, modelled on the Community of practice and the Principles for Better Self- and Co-regulation³². A number of codes set up in the areas coordinated by the Directive have proved to be well designed, in line with the Principles for Better Self- and Co-regulation. The existence of a legislative backstop has been considered an important success factor in promoting compliance with a self- or co-regulatory code. It is equally important that the codes establish specific targets and objectives allowing for the regular, transparent and independent monitoring and evaluation of the objectives aimed by the codes. Graduated sanctions which maintain an element of proportionality are usually considered to be an effective approach in enforcing a scheme. These principles should be followed by the self- and co-regulatory codes adopted in the areas coordinated by this Directive.

³¹ COM(2015) 215 final

³² <https://ec.europa.eu/digital-single-market/communities/better-self-and-co-regulation>

Or. en

Amendment 7

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

Amendment

(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 ***and video-sharing platform providers*** provide sufficient information about content that may impair minors' physical, mental or moral development. This could be done, for instance, through a system of content descriptors indicating the nature of the content. Content descriptors could be delivered through written, graphical or acoustic means.

Or. en

Amendment 8

Proposal for a directive Recital 12

Text proposed by the Commission

(12) In order to remove barriers to the free circulation of cross-border services within the Union, it is necessary to ensure the effectiveness of self- and co-regulatory measures aiming, in particular, at protecting consumers or public health.
When well enforced and monitored, codes of conduct at Union level might be a good means of ensuring a more coherent and effective approach.

Amendment

(12) In order to remove barriers to the free circulation of cross-border services within the Union, it is necessary to ensure the effectiveness of self- and co-regulatory measures aiming, in particular, at protecting consumers or public health.

Or. en

Amendment 9

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The market for **TV broadcasting** has evolved and **that** there is a need for more flexibility **with regard to audiovisual commercial communications, in particular for quantitative rules for linear audiovisual media services, product placement and sponsorship**. The emergence of new services, including without advertising, has led to a greater choice for viewers, who can easily switch to alternative offers.

Amendment

(13) The market for **audiovisual services** has evolved and there is a need for more flexibility **to ensure a real level playing field for audiovisual commercial communications, sponsorship and product placement**. The emergence of new services, including without advertising, has led to a greater choice for viewers, who can easily switch to alternative offers.

Or. en

Amendment 10

**Proposal for a directive
Recital 13 a (new)**

Text proposed by the Commission

(13a) **In order to ensure the effectiveness of this Directive, in particular as regards the editorial responsibility of media service providers, the integrity of programmes and services should be safeguarded. Third parties, other than recipients of a service, should not modify programmes and services without the consent of the media service provider concerned.**

Amendment

(13a) **In order to ensure the effectiveness of this Directive, in particular as regards the editorial responsibility of media service providers, the integrity of programmes and services should be safeguarded. Third parties, other than recipients of a service, should not modify programmes and services without the consent of the media service provider concerned.**

Or. en

Amendment 11

**Proposal for a directive
Recital 14**

Text proposed by the Commission

(14) Sponsorship represents an

Amendment

(14) Sponsorship represents an

important means of financing audiovisual *media* services or programmes while promoting a legal or physical person's name, trade mark, image, activities or products. As such, for sponsorship to constitute a valuable form of advertising technique for advertisers and *audiovisual media* service providers, sponsorship announcements can contain promotional references to the goods or services of the sponsor, while not directly encouraging the purchase of the goods and services. Sponsorship announcements should continue to clearly inform the viewers of the existence of a sponsorship agreement. *The content of sponsored programmes* should not be influenced in such a way as to affect the *audiovisual media* service provider's editorial independence.

important means of financing audiovisual services or programmes while promoting a legal or physical person's name, trade mark, image, activities or products. As such, for sponsorship to constitute a valuable form of advertising technique for advertisers and service providers, sponsorship announcements can contain promotional references to the goods or services of the sponsor, while not directly encouraging the purchase of the goods and services. Sponsorship announcements should continue to clearly inform the viewers of the existence of a sponsorship agreement. Sponsored *content* should not be influenced in such a way as to affect the service provider's editorial independence.

Or. en

Amendment 12

Proposal for a directive Recital 16

Text proposed by the Commission

(16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and programmes *with a significant* children's audience. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in programmes *with a significant* children's audience. Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur the

Amendment

(16) Product placement should not be admissible in news and current affairs programmes, consumer affairs programmes, religious programmes and *children's* programmes *and content aimed at a* children's audience. In particular, evidence shows that product placement and embedded advertisements can affect children's behaviour as children are often not able to recognise the commercial content. There is thus a need to continue to prohibit product placement in programmes *and content aimed at a* children's audience. Consumer affairs programmes are programmes offering advice to viewers, or including reviews on the purchase of products and services. Allowing product placement in such programmes would blur

distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes.

the distinction between advertising and editorial content for viewers who may expect a genuine and honest review of products or services in such programmes.

Or. en

Amendment 13

Proposal for a directive

Recital 17

Text proposed by the Commission

(17) The rule that a product should not be given undue prominence has proved difficult to apply in practice. It also restricts the take-up of product placement which, by definition, involves some level of prominent exposure to be able to generate value. The requirements for programmes containing product placement should thus focus on clearly informing the viewers of the existence of product placement and on ensuring that the audiovisual media service provider's editorial independence is not affected.

Amendment

deleted

Or. en

Amendment 14

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) While this Directive does not increase the overall amount of admissible advertising time during the period from 7:00 to 23:00, it is important for broadcasters to have more flexibility and to be able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. The hourly limit should

Amendment

(19) While this Directive does not increase the overall amount of admissible advertising time during the period from 7:00 to 23:00, it is important for broadcasters to have more flexibility and to be able to decide when to place advertising in order to maximise advertisers' demand and viewers' flow. The hourly limit should

thus be abolished while a daily limit of 20% of advertising within the period from 7:00 to 23:00 should be introduced.

thus be abolished while a daily limit of 20% of advertising within the period from 7:00 to 23:00 should be introduced. ***It is also necessary, however, to maintain a sufficient level of consumer protection in that regard because such flexibility could expose viewers to an excessive amount of advertising during prime time. It may also decrease advertising revenues as well as reduce funding for the production of content. Stricter limits should therefore apply during the period from 20:00 to 23:00 with a limit of 20% of advertising within that particular period.***

Or. en

Amendment 15

Proposal for a directive Recital 20

Text proposed by the Commission

(20) Many broadcasters ***are part of larger media groups*** and make announcements not only in connection with ***their own programmes*** and ancillary products directly derived from those programmes but also in relation with programmes from other ***entities*** belonging to the same ***media group***. Transmission time allotted to announcements made by the broadcaster in connection with programmes from other ***entities*** belonging to the same ***media group*** should not be included in the maximum amount of daily transmission time that may be allotted to advertising and teleshopping.

Amendment

(20) Many broadcasters ***provide several channels and particular channels*** make announcements not only in connection with ***programmes broadcast on that particular channel*** and ancillary products ***and services*** directly derived from those programmes but also in relation with programmes from other ***channels*** belonging to the same ***broadcaster***. Transmission time allotted to announcements made by the broadcaster in connection with programmes from other ***channels*** belonging to the same ***broadcaster*** should ***also*** not be included in the maximum amount of daily transmission time that may be allotted to advertising and teleshopping ***as transmission time for public services announcements and charity appeals.***

Or. en

Amendment 16

Proposal for a directive Recital 21

Text proposed by the Commission

(21) Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that those are given enough prominence.

Amendment

(21) Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum share of European works and that those are given enough prominence. ***Member States should ensure that right holders under their jurisdiction label their audiovisual content that qualifies as European works as such in their metadata and make it available to service providers.***

Or. en

Amendment 17

Proposal for a directive Recital 27

Text proposed by the Commission

(27) As regards commercial communications on video-sharing platforms, they are already regulated by Directive 2005/29/EC of the European Parliament and of the Council, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services. As regards commercial communications concerning tobacco and related products in video-sharing platforms, the existing prohibitions provided for in Directive 2003/33/EC of the European Parliament and of the Council, as well as the prohibitions applicable to communications concerning e-cigarettes and refill containers pursuant to Directive 2014/40/EU of the European

Amendment

(27) As regards commercial communications on video-sharing platforms, they are already regulated by Directive 2005/29/EC of the European Parliament and of the Council, which prohibits unfair business-to-consumer commercial practices, including misleading and aggressive practices occurring in information society services. As regards commercial communications concerning tobacco and related products in video-sharing platforms, the existing prohibitions provided for in Directive 2003/33/EC of the European Parliament and of the Council, as well as the prohibitions applicable to communications concerning e-cigarettes and refill containers pursuant to Directive 2014/40/EU of the European

Parliament and of the Council, ensure that consumers are sufficiently protected. The measures set out in this Directive therefore complement those set out in Directives 2005/29/EC, 2003/33/EC and 2014/40/EU.

Parliament and of the Council, ensure that consumers are sufficiently protected. The measures set out in this Directive therefore complement those set out in Directives 2005/29/EC, 2003/33/EC and 2014/40/EU ***to establish a common level playing field for audiovisual media services, video-sharing platform services and user-generated videos.***

Or. en

Amendment 18

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) ***Some*** 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.

Or. en

Amendment 19

Proposal for a directive

Recital 29

(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 Market (OJ L 178, 17.07.2000, p. 1).

(29) In light of the nature of the providers' *relationship* 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 Market (OJ L 178, 17.07.2000, p. 1).

Or. en

Amendment 20

Proposal for a directive Recital 30

(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 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).

(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. It should remain possible for Member States to take stricter measures where 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 ***in accordance with Union law and communicative freedoms.***

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).

Or. en

Amendment 21

Proposal for a directive Recital 33

Text proposed by the Commission

(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 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.

Amendment

(33) Member States should 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, the internal market and the promotion of fair competition.

Or. en

Amendment 22

Proposal for a directive Recital 35

Text proposed by the Commission

(35) With a view to ensuring the consistent application of the Union audiovisual regulatory framework across all Member States, the Commission established ERGA by Commission Decision of 3 February 2014³⁶. ERGA's role is to advise and assist the Commission in its work to ensure a consistent implementation of Directive 2010/13/EU

Amendment

(35) With a view to ensuring the consistent application of the Union audiovisual regulatory framework across all Member States, the Commission established ERGA by Commission Decision of 3 February 2014³⁶. ERGA's ***and the contact committee's*** role is to advise and assist the Commission in its work to ensure a consistent implementation

in all Member States, and to facilitate cooperation among the national regulatory authorities, and between the national regulatory authorities and the Commission.

³⁶ Commission Decision C(2014) 462 final of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services.

of Directive 2010/13/EU in all Member States, and to facilitate cooperation among the national regulatory authorities, and between the national regulatory authorities and the Commission.

³⁶ Commission Decision C(2014) 462 final of 3 February 2014 on establishing the European Regulators Group for Audiovisual Media Services.

Or. en

Amendment 23

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 *and the contact committee have* made a positive contribution towards consistent regulatory practice and has provided high level advice to the Commission on implementation matters.

Or. en

Amendment 24

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

Amendment

(37) The Commission should be free to consult *the contact committee* on any matter relating to audiovisual media services and video-sharing platforms. ERGA *may also* assist the Commission by

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.

providing its expertise and advice and by facilitating exchange of best practices. The Commission should consult ***the contact committee*** in the application of Directive 2010/13/EU with a view to facilitating its convergent implementation across the Digital Single Market. ***The contact committee*** should ***decide on*** 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 ***drafted by ERGA***.

Or. en

Amendment 25

Proposal for a directive Recital 38

Text proposed by the Commission

(38) This Directive ***is without prejudice to the ability of*** Member States to impose obligations to ensure ***discoverability*** and accessibility of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law. ***In this respect, Member States should in particular examine the need for regulatory intervention against the results of the outcome of market forces. Where Member States decide to impose discoverability rules, they should only impose proportionate obligations on undertakings, in the interest of legitimate public policy considerations.***

Amendment

(38) This Directive ***encourages*** Member States to impose obligations to ensure ***the appropriate prominence*** and accessibility of content of general interest under defined general interest objectives such as media pluralism, freedom of speech and cultural diversity. Such obligations should only be imposed where they are necessary to meet general interest objectives clearly defined by Member States in conformity with Union law.

Or. en

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive 2010/13/EU

Article 1 – paragraph 1 – point a a – point i

Text proposed by the Commission

(i) the service consists of the storage of **a large amount of** programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;

Amendment

(i) the service consists of the storage of programmes or user-generated videos, for which the video-sharing platform provider does not have editorial responsibility;

Or. en

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point d

Directive 2010/13/EU

Article 1 – paragraph 1 – point b a (new)

Text proposed by the Commission

(ba) 'user-generated video' means a set of moving images with or without sound constituting an individual item that is created and/or uploaded to a video-sharing platform by one or more users;

Amendment

(ba) 'user-generated video' means **an audiovisual work which consists of** a set of moving images with or without sound constituting an individual item that is created and/or uploaded to a video-sharing platform by one or more users;

Or. en

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point e a (new)

Directive 2010/13/EU

Article 1 – paragraph 1 – point i

Present text

(i) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration **or broadcast for self-promotional purposes** by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

Amendment

(ea) In Article 1 (1), point (i) is amended as follows:

(i) 'television advertising' means any form of announcement broadcast whether in return for payment or for similar consideration by a public or private undertaking or natural person in connection with a trade, business, craft or profession in order to promote the supply of goods or services, including immovable property, rights and obligations, in return for payment;

Or. en

(This amendment seeks to amend a provision within the existing act - Article 1, paragraph 1, point i - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point e b (new)

Directive 2010/13/EU

Article 1 – paragraph 1 – point k

Present text

(k) 'sponsorship' means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or in the production of audiovisual works, to the financing of audiovisual media services or programmes with a view to promoting their name, trade mark, image, activities or products;

Amendment

(eb) In Article 1 (1), point (k) is amended as follows:

(k) 'sponsorship' means any contribution made by public or private undertakings or natural persons not engaged in providing audiovisual media services or **video-sharing platform services or user-generated videos or** in the production of audiovisual works, to the financing of audiovisual media services **or video-sharing platform services, or user-generated videos** or programmes with a view to promoting their name, trade mark,

image, activities or products;

Or. en

(This amendment seeks to amend a provision within the existing act - Article 1, paragraph 1, point k - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point e c (new)

Directive 2010/13/EU

Article 1 – paragraph 1 – point m

Present text

(m) 'product placement' means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme, in return for payment or for similar consideration;

Amendment

(ec) In Article 1(1), point (m) is amended as follows:

(m) 'product placement' means any form of audiovisual commercial communication consisting of the inclusion of or reference to a product, a service or the trade mark thereof so that it is featured within a programme ***or user-generated video***, in return for payment or for similar consideration;

Or. en

(This amendment seeks to amend a provision within the existing act - Article 1, paragraph 1, point m - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2010/13/EU

Chapter II – Title

Text proposed by the Commission

Amendment

**GENERAL PROVISIONS FOR
AUDIOVISUAL MEDIA SERVICES;**

deleted

Or. en

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 2 a (new)

Directive 2010/13/EU

Chapter II – Article –2 (new)

Text proposed by the Commission

Amendment

(2a) The following article is inserted:

‘Article -2

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

(a) protect all citizens from programmes and user-generated videos containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation, descent or national origin;

(b) protect minors from programmes or user-generated videos which may impair their physical, mental or moral development. Such content shall only be made available in such a way as to ensure that minors will not normally hear or see it. Such measures may include selecting the time of their availability, age verification tools or other technical measures.

2. What constitutes an appropriate measure for the purposes of paragraph 1

shall be determined in light of the nature of the content in question, shall be proportionate to the potential harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the providers and the users having created and/or uploaded the content as well as the public interest and respect communicative freedoms. Providers shall provide sufficient information to viewers about such content, preferably using a system of descriptors indicating the nature of the content.

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 -2f(3) and (4). Member States shall establish the necessary mechanisms to assess the appropriateness of the measures referred to in paragraph 2 of this Article. Member States shall entrust this task to the bodies designated in accordance with Article 29. When adopting such measures the Member States shall respect the conditions set by applicable Union law, in particular Articles 14 and 15 of Directive 2000/31/EC or Article 25 of Directive 2011/93/EU.

4. Member States shall ensure that complaint and redress mechanisms are available for the settlement of disputes between recipients of a service and media service providers or video-sharing platform providers relating to the application of the appropriate measures referred to in paragraphs 1 and 2.'

Or. en

Justification

In order to establish a genuine level playing field with the same degree of protection for all citizens as well as for minors, Articles 6, 6a, 12 and 28a relating to the protection of citizens, in particular of minors, are merged and are being made applicable to all services. See Am.

65, Am. 66, Am. 74 and Am. 81, which delete such articles accordingly.

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 2 b (new)

Directive 2010/13/EU

Chapter II – Article –2 a (new)

Text proposed by the Commission

Amendment

(2b) The following article is inserted:

‘Article -2a

1. Member States shall ensure that audiovisual commercial communications provided by media service providers and video-sharing platform providers under their jurisdiction comply with the following requirements:

(a) audiovisual commercial communications shall be readily recognisable as such. Surreptitious audiovisual commercial communication shall be prohibited;

(b) audiovisual commercial communications shall not use subliminal techniques;

(c) audiovisual commercial communications shall not:

(i) prejudice respect for human dignity;

(ii) encourage behaviour prejudicial to health or safety;

(iii) encourage behaviour grossly prejudicial to the protection of the environment;

(d) all forms of audiovisual commercial communications for cigarettes and other tobacco products shall be prohibited;

(e) audiovisual commercial communications for alcoholic beverages shall not be aimed specifically at minors and shall not encourage immoderate

consumption of such beverages;

(f) audiovisual commercial communication for medicinal products and medical treatment available only on prescription in the Member State within whose jurisdiction the media service provider falls shall be prohibited;

(g) audiovisual commercial communications shall not cause physical or moral detriment to minors. Therefore they shall not directly exhort minors to buy or hire a product or service by exploiting their inexperience or credulity, directly encourage them to persuade their parents or others to purchase the goods or services being advertised, exploit the special trust minors place in parents, teachers or other persons, or unreasonably show minors in dangerous situations.

2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications.'

Or. en

Justification

In order to establish a genuine level playing field with the same minimum set of basic rules on audiovisual commercial communications, Article 9 is being moved to Chapter II so to be applicable to all services. See Am. 69, which deletes Article 9 accordingly.

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 2 c (new)

Directive 2010/13/EU

Chapter II – Article – 2 b (new)

Text proposed by the Commission

Amendment

(2c) The following article is inserted:

'Article -2b

1. Audiovisual media services, video-sharing platform services, programmes or user-generated videos that are sponsored shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) viewers shall be clearly informed of the existence of a sponsorship agreement. Sponsored programmes or user-generated videos shall be clearly identified as such by the name, logo and/or any other symbol of the sponsor such as a reference to its product(s) or service(s) or a distinctive sign thereof in an appropriate way for programmes at the beginning and the end of the programmes or user-generated videos.

2. Audiovisual media services, user-generated videos or programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products.

3. The sponsorship of audiovisual media services, video-sharing platform services, user-generated videos or programmes by undertakings whose activities include the manufacture or sale of medicinal products and medical treatment may promote the name or the image of the undertaking, but shall not promote specific medicinal products or medical treatments available only on prescription in the Member State within whose jurisdiction the media service provider falls.'

Justification

In order to establish a genuine level playing field with the same minimum set of basic rules on sponsoring, Article 10 is being moved to Chapter II so to be applicable to all services. See related Am. 72.

Amendment 35**Proposal for a directive****Article 1 – paragraph 1 – point 2 d (new)**

Directive 2010/13/EU

Chapter II – Article –2 c (new)

*Text proposed by the Commission**Amendment*

(2d) The following article is inserted:

'Article -2c

1. This Article shall apply only to programmes produced after 19 December 2009.

2. Product placement shall be admissible in user-generated videos and all audiovisual media services, except in news and current affairs programmes, consumer affairs programmes, religious programmes and children's programmes or any other content aiming children's audience.

3. Programmes or user-generated videos that contain product placement shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services, in particular by making special promotional references to those goods or services;

(c) they shall not give undue

prominence to the product in question;

(d) viewers shall be clearly informed of the existence of product placement. Programmes or user-generated videos containing product placement shall be appropriately identified at the start and the end of the programme.

By way of exception, Member States may choose to waive the requirements set out in point (d) of the first subparagraph provided that the programme concerned has neither been produced nor commissioned by the service provider itself or a company affiliated to the service provider.

In any event programmes or user-generated videos shall not contain product placement of:

(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;

(b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.'

Or. en

Justification

In order to establish a genuine level playing field with the same minimum set of basic rules on product placement, Article 11 is being moved to Chapter II so to be applicable to all services. See Am. 73 which deletes Article 11 accordingly.

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 2 e (new)

Directive 2010/13/EU

Chapter II – Article –2 d (new)

Text proposed by the Commission

Amendment

(2e) The following article is inserted:

‘Article -2d

Member States shall ensure that media service providers and video-sharing platform providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.’

Or. en

Justification

In order to establish a genuine level playing field with the same minimum set of basic rules on protection of cinematographic works, Article 8 is being moved to Chapter II so to be applicable to all services. See Am. 68 which deletes Article 8 accordingly.

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 2 f (new)

Directive 2010/13/EU

Chapter II – Article –2 e (new)

Text proposed by the Commission

Amendment

(2f) The following article is inserted:

‘Article -2e

Member States shall ensure that audiovisual media service providers and video-sharing platform providers under their jurisdiction shall make easily, directly and permanently accessible to the recipients of a service at least the following information:

(a) the name of the media service provider or video-sharing platform provider;

(b) the geographical address at which the media service provider or video-sharing platform provider is established;

(c) the details of the media service

provider or video-sharing platform provider, including its electronic mail address or company-website, which allow it to be contacted rapidly in a direct and effective manner;

(d) the Member State having jurisdiction over the media service providers or video-sharing platform providers and the competent regulatory bodies or supervisory bodies.'

Or. en

Justification

In order to establish a genuine level playing field with the same minimum set of basic rules on information rights for recipients of a service, the current Article 5 of the existing Directive is being extended to video-sharing platform services and moved to Chapter II. See Am. 64 which deletes Article 5 accordingly.

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 2 h (new)

Directive 2010/13/EU

Chapter II – Article –2 f (new)

Text proposed by the Commission

Amendment

(2h) The following article is inserted:

'Article -2f

1. Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers and video-sharing platform providers under their jurisdiction effectively comply with the provisions of this Directive.

2. Member States shall remain free to require media service providers and video-sharing platform providers under their jurisdiction to comply with more detailed or stricter rules with regard to Articles -2 to -2e, Article 7, Article 13, Article 16, Article 17, Articles 19 to 26, Articles 30 and 30a provided that such rules are in

compliance with Union law and in respect of communicative freedoms.

3. Member States shall encourage co- 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 broadly accepted by 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.

4. The Commission and ERGA shall encourage media service providers and video-sharing platform providers to exchange best practices on co-regulatory systems across the Union.

5. In co-operation with the Member States, the Commission shall facilitate the development of Union codes of conduct in consultation with media service providers and video-sharing platform providers where appropriate. Draft Union codes of conduct and amendments or extensions to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes. The contact committee established pursuant Article 29 shall decide on the drafts, amendments or extensions of those codes. The Commission shall publish those codes.

6. If a national independent regulatory body concludes that any code of conduct or parts of it have proven to be not effective enough the Member State of this regulatory body remains free to require media service providers and video-sharing platform providers under their jurisdiction to comply with more detailed or stricter rules in compliance with Union law and in respect of communicative

freedoms. Such legislation has to be reported to the Commission without delay.

7. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.'

Or. en

Justification

To ensure that same procedural rules apply on co- and self-regulation as well as to streamline the establishment of codes of conduct, a new Article -2f is thereby introduced. It aims to merge all provisions related to co- and self-regulation and codes of conduct which can be found in Articles 4 and 9 of the current Directive and in Articles 6a and 28a of the amending act. See relating Am. 61 and Am. 69.

Amendment 39

Proposal for a directive

Article 1 – paragraph 1 – point 2 i (new)

Directive 2010/13/EU

Chapter II a (new) – Title

Text proposed by the Commission

Amendment

(2i) The following chapter is inserted:

CHAPTER IIa

**PROVISIONS FOR AUDIOVISUAL
MEDIA SERVICES**

Or. en

Amendment 40

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a

Directive 2010/13/EU

Article 2 – paragraph 3 – point b

(a) *in paragraph 3, point (b) is replaced by the following:* **deleted**

(b) if a media service provider has its head office in one Member State but editorial decisions on the audiovisual media service are taken in another Member State, it shall be deemed to be established in the Member State where the majority of the workforce involved in the pursuit of the audiovisual media service activity operates;

Or. en

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a a (new)

Directive 2010/13/EU

Article 2 – paragraph 4

Present text

Amendment

4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

- (a) they use a satellite up-link situated in that Member State;
- (b) ***although they do not use a satellite up-link situated in that Member State,*** they use satellite capacity appertaining to that Member State.

(aa) In Article 2, paragraph 4 is amended as follows:

4. Media service providers to whom the provisions of paragraph 3 are not applicable shall be deemed to be under the jurisdiction of a Member State in the following cases:

- (a) they use a satellite up-link situated in that Member State; ***or***
- (b) they use satellite capacity appertaining to that Member State.

Or. en

(This amendment seeks to amend a provision within the existing act - Article 1, paragraph 1, point m - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but

merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Justification

The up-link location can change in a very short period of time. Clarifying this provision enables national regulatory bodies to determine quickly which jurisdiction is applicable at a very specific moment in time.

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point b

Directive 2010/13/EU

Article 2 – paragraph 5 b (new)

Text proposed by the Commission

5b. Where, in applying Articles 3 and 4 of this Directive, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide *an* opinion on the matter within 15 working days from submission of the Commission's request. If the Commission requests an opinion *from ERGA*, the time-limits set out in Articles 3(5) and 4(5) shall be suspended until *ERGA* has adopted an opinion.;

Amendment

5b. Where, in applying Articles 3 and 4 of this Directive, the Member States concerned do not agree on which Member State has jurisdiction, they shall bring the matter to the Commission's attention without undue delay. The Commission may request the European Regulators Group for Audiovisual Media Services (ERGA) to provide *a preliminary draft* opinion on the matter within 15 working days from submission of the Commission's request. *The contact committee decides on the draft opinion without delay.* If the Commission requests an opinion, the time-limits set out in Articles 3(5) and 4(5) shall be suspended until *the contact committee* has adopted an opinion.

Or. en

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) manifestly, seriously and gravely infringes **Articles 6 or 12, or both**;

(a) manifestly, seriously and gravely infringes **Article -2(1)**;

Or. en

Justification

Article 6 and Article 12 have been merged in a new Article -2. See Am. 32.

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) prejudices or presents a serious and grave risk of prejudice to public security, including the safeguarding of national security and defence; or

deleted

Or. en

Amendment 45

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) prejudices or presents a serious and grave risk of prejudice to public health.

deleted

Or. en

Amendment 46

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 3 – point a

Text proposed by the Commission

Amendment

(a) *during the 12 months preceding the notification referred to in point (b) of this paragraph, the media service provider has, in the opinion of the Member State concerned, contravened point (a), (b) or (c) of paragraph 2 on at least two occasions;* **deleted**

Or. en

Justification

This provision should be deleted. A Member State should not have to wait 12 months as well as for a second contravention to happen before being able to act.

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

article 3 – paragraph 3 – point b

Text proposed by the Commission

Amendment

(b) the Member State concerned has notified the media service provider , the Member State which has jurisdiction over the provider and the Commission in writing of the alleged **contraventions** and of the measures it intends to take should any such alleged **contraventions** occur again;

(b) the Member State concerned has notified the media service provider , the Member State which has jurisdiction over the provider and the Commission in writing of the alleged **contravention** and of the measures it intends to take should any such alleged **contravention** occur again;

Or. en

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 3 – point d

Text proposed by the Commission

Amendment

(d) *the media services provider has contravened point (a), (b) or (c) of paragraph 2 at least once after the notification provided for in point (b) of this paragraph;* *deleted*

Or. en

Amendment 49

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 3 – point e

Text proposed by the Commission

Amendment

(e) the notifying Member State has respected the rights of defence of the media services provider concerned and, in particular, has given the media services provider the opportunity to express its views on the alleged *contraventions* and the measures that that Member State intends to take. It shall duly take into account those views as well as the views of the Member State of jurisdiction.

(e) the notifying Member State has respected the rights of defence of the media services provider concerned and, in particular, has given the media services provider the opportunity to express its views on the alleged *contravention* and the measures that that Member State intends to take. It shall duly take into account those views as well as the views of the Member State of jurisdiction.

Or. en

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Points (a) and (d) of paragraph 3 shall apply only in respect of linear services.

deleted

Or. en

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

The Commission shall, within ***three*** months following the notification of the measures taken by the Member State in application of paragraphs 2 and 3 and after having consulted ***ERGA***, take a decision on whether those measures are compatible with Union law. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within ***three months*** from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

The Commission shall, within ***two*** months following the notification of the measures taken by the Member State in application of paragraphs 2 and 3 and after having consulted ***the contact committee***, take a decision on whether those measures are compatible with Union law. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within ***one month*** from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

Or. en

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

Where the Commission considers the notification as incomplete, it shall request

Where the Commission considers the notification as incomplete, it shall request

all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

without delay all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Or. en

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 5

Text proposed by the Commission

5. Paragraphs 3 and 4 shall be without prejudice to the application of any procedure, remedy or sanction to the *contraventions* in question in the Member State which has jurisdiction over the media service provider concerned.

Amendment

5. Paragraphs 3 and 4 shall be without prejudice to the application of any procedure, remedy or sanction to the *contravention* in question in the Member State which has jurisdiction over the media service provider concerned.

Or. en

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 4

Directive 2010/13/EU

Article 3 – paragraph 8

Text proposed by the Commission

8. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in paragraphs 2 to 7 in the framework of the contact committee *established pursuant to Article 29* and ERGA.;

Amendment

8. Member States and the Commission shall regularly exchange experiences and best practices regarding the procedure set out in paragraphs 2 to 7 in the framework of the contact committee and ERGA.;

Or. en

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point a

Directive 2010/13/EU

Article 4 – paragraph 1

Text proposed by the Commission

1. *Member States shall remain free to require media service providers under their jurisdiction to comply with more detailed or stricter rules with regard to Articles 5, 6, 6a, 9, 10, 11, 12, 13, 16, 17, 19 to 26, 30 and 30a, provided that such rules are in compliance with Union law.;*

Amendment

1. *In cases where a Member State:*

(a) has exercised its freedom under Article -2f, paragraph 2 to adopt more detailed or stricter rules of general public interest; and

(b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory;

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within two months. Either Member State may invite the contact committee to examine the case.

Or. en

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point a a (new)

PE587.655v02-00

44/75

PR\1104385EN.docx

Present text

Amendment

(aa) In Article 4, paragraph 2 is deleted;

2. In cases where a Member State:

(a) has exercised its freedom under paragraph 1 to adopt more detailed or stricter rules of general public interest; and

(b) assesses that a broadcaster under the jurisdiction of another Member State provides a television broadcast which is wholly or mostly directed towards its territory;

it may contact the Member State having jurisdiction with a view to achieving a mutually satisfactory solution to any problems posed. On receipt of a substantiated request by the first Member State, the Member State having jurisdiction shall request the broadcaster to comply with the rules of general public interest in question. The Member State having jurisdiction shall inform the first Member State of the results obtained following this request within 2 months. Either Member State may invite the contact committee established pursuant to Article 29 to examine the case.

Or. en

(This amendment seeks to amend a provision within the existing act - Article 4, paragraph 2 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 57

**Proposal for a directive
Article 1 – paragraph 1 – point 5 – point c**

Directive 2010/13/EU
Article 4 – paragraph 4 – point c

Text proposed by the Commission

(c) the Commission has decided, after having consulted *ERGA*, that the measures are compatible with Union law, in particular that assessments made by the Member State taking those measures under paragraphs 2 and 3 are correctly founded.

Amendment

(c) the Commission has decided, after having consulted *the contact committee*, that the measures are compatible with Union law, in particular that assessments made by the Member State taking those measures under paragraphs 1 and 3 are correctly founded.

Or. en

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point c

Directive 2010/13/EU

Article 4 – paragraph 5 – subparagraph 1

Text proposed by the Commission

The Commission shall decide within **3** months following the notification provided for in point (a) of paragraph 4. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within **3 months** from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

Amendment

The Commission shall decide within *two* months following the notification provided for in point (a) of paragraph 3. That period shall begin on the day following the receipt of a complete notification. The notification shall be considered as complete if, within *one month* from its receipt, or from the receipt of any additional information requested, the Commission does not request any further information.

Or. en

Amendment 59

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point c

Directive 2010/13/EU

Article 4 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Where the Commission considers the notification as incomplete, it shall request all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Amendment

Where the Commission considers the notification as incomplete, it shall request ***without delay*** all necessary additional information. The Commission shall inform the Member State of the receipt of the response to that request.

Or. en

Amendment 60

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point c a (new)

Directive 2010/13/EU

Article 4 – paragraph 6

Present text

6. Member States shall, by appropriate means, ensure, within the framework of their legislation, that media service providers under their jurisdiction effectively comply with the provisions of this Directive.

Amendment

(ca) paragraph 6 is deleted;

Or. en

(This amendment seeks to amend a provision within the existing act - Article 4, paragraph 6 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Justification

This provision has been moved to Article -2f, paragraph 1. See Am. 38.

Amendment 61

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point d

Text proposed by the Commission

(d) paragraph 7 is **replaced by the following:**

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.

Draft Union codes of conduct referred to in Articles 6a (3), 9(2) and 9(4) and amendments or extensions to existing Union codes of conduct shall be submitted to the Commission by the signatories of these codes.

The Commission may ask ERGA to give an opinion on the drafts, amendments or extensions of those codes. The Commission may publish those codes as appropriate.;

Amendment

(d) paragraph 7 is **deleted;**

Or. en

Justification

See Article -2f, paragraph 3, Am.38.

Amendment 62

Proposal for a directive

Article 1 – paragraph 1 – point 5 – point d a (new)

Present text

Amendment

(da) paragraph 8 is deleted;

8. Directive 2000/31/EC shall apply unless otherwise provided for in this Directive. In the event of a conflict between a provision of Directive 2000/31/EC and a provision of this Directive, the provisions of this Directive shall prevail, unless otherwise provided for in this Directive.

Or. en

(This amendment seeks to amend a provision within the existing act - Article 4, paragraph 8 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Justification

See article -2f, paragraph 7, Am. 38.

Amendment 63

Proposal for a directive
Article 1 – paragraph 1 – point 6
Directive 2010/13/EU
Chapter III – Title

Text proposed by the Commission

Amendment

(6) Title of Chapter III is replaced by the following:

(6) Chapter III and its title are deleted;

**PROVISIONS APPLICABLE TO
AUDIOVISUAL MEDIA SERVICES;**

Or. en

Amendment 64

Proposal for a directive

Article 1 – paragraph 1 – point 7

Directive 2010/13/EU

Article 5 – point d

Text proposed by the Commission

Amendment

(7) *in Article 5, point (d) is replaced by the following:*

(7) Article 5 *is deleted;*

(d) the Member State having jurisdiction over the media service providers and the competent regulatory authorities or supervisory bodies.;

Or. en

Justification

See Article -2e, Am. 37.

Amendment 65

Proposal for a directive

Article 1 – paragraph 1 – point 8

Directive 2010/13/EU

Article 6

Text proposed by the Commission

Amendment

(8) Article 6 *is replaced by the following:*

(8) Article 6 *is deleted;*

Member States shall ensure by appropriate means that audiovisual media services provided by media service providers under their jurisdiction do not contain any incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.;

Or. en

Justification

See Article -2, Am. 32.

Amendment 66

Proposal for a directive

Article 1 – paragraph 1 – point 9

Directive 2010/13/EU

Article 6a

Text proposed by the Commission

Amendment

(9) the following Article 6a is inserted: deleted

‘Article 6a

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.

2. For the implementation of this Article, Member States shall encourage co-regulation.

3. The Commission and ERGA shall encourage media service providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.’

Or. en

Justification

See Article -2 and Am. 32.

Amendment 67

Proposal for a directive

Article 1 – paragraph 1 – point 10

Text proposed by the Commission

(10) Article 7 is *deleted*;

Amendment

(10) Article 7 is *replaced by the following*:

‘Article 7

1. Member States shall ensure that media service providers under their jurisdiction make their services continuously and progressively more accessible to people with a visual or hearing disability aiming for an almost complete accessibility by the end of 2027.

2. With regard to the implementation of this Article, Member States shall encourage the development of self- and co-regulatory codes of conduct. The Commission and ERGA shall encourage media service providers to exchange best practices on self-regulatory systems across the Union.

3. By ... [three years after the entry into force of this Directive] 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 provision.’

Or. en

Justification

It is important to ensure that accessibility is properly addressed in this Directive in respect of the UN Convention for people with disabilities.

Amendment 68

Proposal for a directive

Article 1 – paragraph 1 – point 10 a (new)

Directive 2010/13/EU

Article 8

Present text

Amendment

(10a) Article 8 is deleted;

‘Article 8

Member States shall ensure that media service providers under their jurisdiction do not transmit cinematographic works outside periods agreed with the rights holders.’

Or. en

(This amendment seeks to amend a provision within the existing act -Article 8, paragraph 8- that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Justification

See Article -2d, Am. 36.

Amendment 69

Proposal for a directive

Article 1 – paragraph 1 – point 11

Directive 2010/13/EU

Article 9

Text proposed by the Commission

Amendment

(11) Article 9 is **amended as follows**:

(11) Article 9 is **deleted**;

(a) paragraph 2 is replaced by the following:

‘2. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications, accompanying or included in programmes with a significant children’s audience, of foods and beverages containing nutrients and substances with a nutritional or physiological effect, excessive intakes of which in the overall diet are not recommended, in particular fat, trans-

fatty acids, salt or sodium and sugars.

Those codes should be used to effectively reduce the exposure of minors to audiovisual commercial communications of foods and beverages that are high in salt, sugars or fat or that otherwise do not fit national or international nutritional guidelines. Those codes should provide that the audiovisual commercial communications are not to emphasise the positive quality of the nutritional aspects of such foods and beverages.

The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.'

(b) the following paragraphs 3 and 4 are inserted:

'3. Member States and the Commission shall encourage the development of self- and co-regulatory codes of conduct regarding inappropriate audiovisual commercial communications for alcoholic beverages. Those codes should be used to effectively limit the exposure of minors to audiovisual commercial communications for alcoholic beverages.

4. The Commission and ERGA shall encourage the exchange of best practices on self- and co-regulatory systems across the Union. If considered appropriate, the Commission shall facilitate the development of Union codes of conduct.'

Or. en

Justification

See Article -2, Am. 32.

Amendment 70

Proposal for a directive

Article 1 – paragraph 1 – point 11 a (new)

Directive 2010/13/EU

Article 9 a (new)

Text proposed by the Commission

Amendment

(11a) The following article is inserted:

‘Article 9a

Member States remain free to take appropriate measures ensuring the appropriate prominence of audiovisual media services of general interest.

Such measures shall be proportionate and meet general objectives such as media pluralism, freedom of speech and cultural diversity clearly defined by Member States in accordance with Union law. Member States may require providers of audiovisual media services which target audiences in their territories but are established in another Member State to adopt to those measures.’

Or. en

Amendment 71

Proposal for a directive

Article 1 – paragraph 1 – point 11 b (new)

Directive 2010/13/EU

Article 9 b (new)

Text proposed by the Commission

Amendment

(11b) The following article is inserted:

‘Article 9b

Member States shall ensure that third parties other than the recipient of a service do not modify the programmes and services of media service providers concerned without their explicit consent.’

Amendment 72

Proposal for a directive

Article 1 – paragraph 1 – point 12

Directive 2010/13/EU

Article 10 – point b

Text proposed by the Commission

(12) *in* Article 10, *point (b)* is replaced by the following:

"(b) they shall not directly encourage the purchase or rental of goods or services;"

Amendment

(12) Article 10 is replaced by the following:

News and current affairs programmes shall not be sponsored. Member States may choose to prohibit the showing of a sponsorship logo during children's programmes, documentaries and religious programmes.

Or. en

Justification

See Article -2b, Am. 34. The remaining part is applicable only to audiovisual media services.

Amendment 73

Proposal for a directive

Article 1 – paragraph 1 – point 13

Directive 2010/13/EU

Article 11

Text proposed by the Commission

(13) Article 11 is ***replaced by the following:***

Article 11

1. Paragraphs 2, 3 and 4 shall apply only to programmes produced after 19 December 2009.

2. Product placement shall be admissible in all audiovisual media services, except in news and current affairs programmes, consumer affairs

Amendment

(13) Article 11 is ***deleted;***

programmes, religious programmes and programmes with a significant children's audience.

3. Programmes that contain product placement shall meet the following requirements:

(a) their content and, in the case of television broadcasting, their scheduling shall in no circumstances be influenced in such a way as to affect the responsibility and editorial independence of the media service provider;

(b) they shall not directly encourage the purchase or rental of goods or services;

(c) viewers shall be clearly informed of the existence of product placement. Programmes containing product placement shall be appropriately identified at the start and the end of the programme, and when a programme resumes after an advertising break, in order to avoid any confusion on the part of the viewer;

By way of exception, Member States may choose to waive the requirements set out in point (c) provided that the programme concerned has neither been produced nor commissioned by the media service provider itself or a company affiliated to the media service provider.

4. In any event programmes shall not contain product placement of:

(a) tobacco products or cigarettes or product placement from undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products;

(b) specific medicinal products or medical treatments available only on prescription in the Member State under whose jurisdiction the media service provider falls.;

Or. en

Justification

See Article -2c, Am. 35.

Amendment 74

Proposal for a directive

Article 1 – paragraph 1 – point 14

Directive 2010/13/EU

Article 12

Text proposed by the Commission

Amendment

(14) Article 12 is *replaced by the following and moved to Chapter III:*

(14) Article 12 is *deleted*;

Article 12

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.

The most harmful content, such as gratuitous violence and pornography, shall be subject to the strictest measures, such as encryption and effective parental controls.;

Or. en

Justification

See Article -2, Am. 32.

Amendment 75

Proposal for a directive

Article 1 – paragraph 1 – point 15

Directive 2010/13/EU
Article 13 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that providers of on-demand audiovisual media services under their jurisdiction secure at least a **20%** share of European works in their catalogue and ensure prominence of these works.

Amendment

1. Member States shall ensure that providers of on-demand audiovisual media services under their jurisdiction secure at least a **30%** share of European works in their catalogue and ensure prominence of these works.

Or. en

Amendment 76

Proposal for a directive

Article 1 – paragraph 1 – point 15 a (new)

Directive 2010/13/EU

Article 19 – paragraph 2

Present text

2. *Isolated advertising and teleshopping spots, other than in transmissions of sports events, shall remain the exception.*

Amendment

(15a) In Article 19, paragraph 2 is deleted;

Or. en

(This amendment seeks to amend a provision within the existing act - Article 19, paragraph 2 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 77

Proposal for a directive

Article 1 – paragraph 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 1

Text proposed by the Commission

1. The daily proportion of television advertising spots and teleshopping spots within the period between 7:00 and 23:00 shall not exceed 20 %.

Amendment

1. The daily proportion of television advertising spots and teleshopping spots within the period between 7:00 and 23:00 shall not exceed 20 %. ***The proportion of television advertising spots and teleshopping spots within the period between 20:00 and 23:00 shall not exceed 20%.***

Or. en

Justification

It is necessary to ensure adequate consumer protection as viewers may be exposed to more advertising especially in prime time with such a daily limit of 20%. Limiting advertising during prime time would not only protect viewers but also ensure that advertising revenues do not decrease dramatically, so to avoid the lack of sufficient financing for the production of content.

Amendment 78

Proposal for a directive

Article 1 – paragraph 1 – point 17

Directive 2010/13/EU

Article 23 – paragraph 2 – point a

Text proposed by the Commission

(a) announcements made by the broadcaster in connection with its own programmes and ancillary products directly derived from those programmes or with programmes ***from other*** entities belonging to the same ***media group***;

Amendment

(a) announcements made by the broadcaster in connection with its own programmes and ancillary products ***and services*** directly derived from those programmes or with programmes, ***product and services from*** entities belonging to the same ***broadcaster***;

Or. en

Amendment 79

Proposal for a directive

Article 1 – paragraph 1 – point 17

Directive 2010/13/EU
Article 23 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

**(ca) public services announcements
and charity appeals.;**

Or. en

Amendment 80

Proposal for a directive

Article 1 – paragraph 1 – point 17 a (new)

Directive 2010/13/EU

Article 26

Present text

Amendment

‘Article 26

Without prejudice to Article 4, Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.’

(17a) Article 26 is amended as follows:

‘Article 26

Without prejudice to Article -2f(1), (2) and (5), Member States may, with due regard for Union law, lay down conditions other than those laid down in Article 20(2) and Article 23 in respect of television broadcasts intended solely for the national territory which cannot be received directly or indirectly by the public in one or more other Member States.’

Or. en

(This amendment seeks to amend a provision within the existing act - Article 26 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 81

Proposal for a directive

Article 1 – paragraph 1 – point 19

Directive 2010/13/EU

Article 28 a

Article 28a

deleted

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:

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

(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.

2. What constitutes an appropriate measure for the purposes of paragraph 1 shall be determined in light of the nature of the content in question, the harm it may cause, the characteristics of the category of persons to be protected as well as the rights and legitimate interests at stake, including those of the video-sharing platform providers and the users having created and/or uploaded the content as well as the public interest.

Those measures shall consist of, as appropriate:

(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;

(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;

(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;

(d) establishing and operating systems allowing users of video-sharing platforms to rate the content referred to in paragraph 1;

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

(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).

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).

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.

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.

6. *Member States shall ensure that complaint and redress mechanisms are available for the settlement of disputes between users and video-sharing platform providers relating to the application of the appropriate measures referred to in paragraphs 1 and 2.*

7. *The Commission and ERGA shall encourage video-sharing platform providers to exchange best practices on co-regulatory systems across the Union. Where appropriate, the Commission shall facilitate the development of Union codes of conduct.*

8. *Video-sharing platform providers or, where applicable, the organisations representing those providers in this respect shall submit to the Commission draft Union codes of conduct and amendments to existing Union codes of conduct. The Commission may request ERGA to give an opinion on the drafts, amendments or extensions of those codes of conduct. The Commission may give appropriate publicity to those codes of conduct.*

Or. en

Justification

See Article -2, Am. 32.

Amendment 82

Proposal for a directive

Article 1 – paragraph 1 – point 19 a (new)

Directive 2010/13/EU

Article 29

Present text

Amendment

(19a) Article 29 is amended as follows:

‘Article 29

‘Article 29

1. A contact committee is established

1. A contact committee is established

under the aegis of the Commission. It shall be composed of representatives of the competent authorities of the Member States. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. The tasks of the contact committee shall be:

- (a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;
- (b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of this Directive;
- (c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 16(3) and on their methodology;
- (d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community;
- (e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the Union's audiovisual policy, as well as relevant developments in the technical field;
- (f) to examine any development arising in the sector on which an exchange

under the aegis of the Commission. It shall be composed of representatives of the competent *bodies or* authorities of the Member States *and four Members of the European Parliament nominated for three years*. It shall be chaired by a representative of the Commission and meet either on his initiative or at the request of the delegation of a Member State.

2. *Beside its competences laid down in Article -2f(5), Article 2(5)(b), Article 3(4), Article 4(1) and Article 4(3)* the tasks of the contact committee shall be:

- (a) to facilitate effective implementation of this Directive through regular consultation on any practical problems arising from its application, and particularly from the application of Article 2, as well as on any other matters on which exchanges of views are deemed useful;
- (b) to deliver own-initiative opinions or opinions requested by the Commission on the application by the Member States of this Directive;
- (c) to be the forum for an exchange of views on what matters should be dealt with in the reports which Member States must submit pursuant to Article 16(3) and on their methodology;
- (d) to discuss the outcome of regular consultations which the Commission holds with representatives of broadcasting organisations, producers, consumers, manufacturers, service providers and trade unions and the creative community;
- (e) to facilitate the exchange of information between the Member States and the Commission on the situation and the development of regulatory activities regarding audiovisual media services, taking account of the Union's audiovisual policy, as well as relevant developments in the technical field;
- (f) to examine *and give opinions to the Commission on* any development arising in the sector on which an exchange

of views appears useful.’

of views appears useful.’

Or. en

(This amendment seeks to amend a provision within the existing act - Article 29 - that was not referred to in the Commission proposal. Please note however that this amendment does not open any new substantial point in the revision of the Directive, but merely introduces a change necessary to ensure the legal consistency with the Rapporteurs' position.)

Amendment 83

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive 2010/13/EU

Chapter XI – Title

Text proposed by the Commission

Amendment

(20) title of Chapter XI is replaced by the following:

deleted

REGULATORY AUTHORITIES OF THE MEMBER STATES;

Or. en

Justification

The original wording of the title of Chapter XI from the current Directive "COOPERATION BETWEEN REGULATORY BODIES OF THE MEMBER STATES" should be kept. Throughout the text, "regulatory authority" shall be replaced by "regulatory body".

Amendment 84

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 1

Text proposed by the Commission

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 of any other public or private body. This shall be without prejudice to the possibility for

1. Each Member State shall designate one or more independent national regulatory **bodies as far as necessary for the application of this Directive**. Member States shall ensure that they are functionally independent of any other public or private body. This shall be

Member States to set up regulators having oversight over different sectors.

without prejudice to the possibility for Member States to set up regulators having oversight over different sectors.

Or. en

Amendment 85

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

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.

Amendment

Member States shall ensure that national regulatory *bodies* 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 bodies exercise no ex ante influence over editorial decisions, editorial choices or layouts. Their duties shall be limited to monitoring the provisions of this Directive, of national law and the fulfilment of statutory obligations. Member States may provide them with the competence to monitor the fulfilment of codes of conduct in so far as no other body has been entrusted yet. National regulatory bodies can be entrusted as an additional point of complaints for recipients of a service.***

Or. en

Amendment 86

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 5

Text proposed by the Commission

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. A dismissal decision shall be made public and a statement of reasons shall be made available.

deleted

Or. en

Amendment 87

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 6

Text proposed by the Commission

Amendment

6. Member States shall ensure that independent national regulatory authorities have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them **and to actively participate in and contribute to ERGA.**

6. Member States shall ensure that independent national regulatory authorities have separate annual budgets. The budgets shall be made public. Member States shall also ensure that national regulatory authorities have adequate financial and human resources to enable them to carry out the task assigned to them.

Or. en

Amendment 88

Proposal for a directive

Article 1 – paragraph 1 – point 21

Directive 2010/13/EU

Article 30 – paragraph 7 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that effective mechanisms exist at national level under which any *user* or media services provider or video-sharing platform provider who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body. The appeal body shall be independent of the parties involved in the appeal.

Amendment

Member States shall ensure that effective mechanisms exist at national level under which any *recipient of a service* or media services provider or video-sharing platform provider who is affected by a decision of a national regulatory authority has the right of appeal against the decision to an appeal body. The appeal body shall be independent of the parties involved in the appeal.

Or. en

Amendment 89

Proposal for a directive

Article 1 – paragraph 1 – point 22

Directive 2010/13/EU

Article 30 a – paragraph 3 – introductory wording

Text proposed by the Commission

3. *ERGA*'s shall have the following tasks:

Amendment

3. *ERGA* shall have the following tasks:

Or. en

Amendment 90

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

deleted

Amendment 91

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

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 and end-users in order to collect the necessary information;

deleted

Or. en

Amendment 92

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

Amendment

(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;

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

Or. en

Amendment 93

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 **draft** opinions, when requested by the Commission, on the issues envisaged in **Article -2f(5) and Article 2(5b)**;

Or. en

Amendment 94

Proposal for a directive
Article 1 – paragraph 1 – point 23
Directive 2010/13/EU
Article 33 – paragraph 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 **and, if necessary, make further proposals to adapt it to developments in the field of audiovisual media services, in particular in the light of recent technological developments, the competitiveness of the sector and levels of media literacy in all Member States. The report shall also assess the issue of advertising accompanying or included in children's programmes or content aiming a children's audience.**

Or. en

EXPLANATORY STATEMENT

On 25 May 2016 the Commission published its proposal for amending the so-called AVMS Directive.

During the last term, the European Parliament, and in particular the CULT Committee which has exclusive competence in the matter, called on numerous occasions for such revision in the light of rapid technological and market developments, the emergence of new service providers as well as changes in consumer behaviour, which have blurred the lines between traditional and on-demand services.

In its resolutions of 19 January 2016 on 'Towards a Digital Single Market Act', of 12 March 2014 on 'Preparing for a Fully Converged Audiovisual World', of 4 July 2013 on 'Connected TV' and of 22 May 2013 on the implementation of the AVMS Directive, the European Parliament, whilst giving clear preliminary indications for such review, urged the Commission to update the Directive.

The Rapporteurs therefore welcome the Commission's initiative in proposing this a review at this critical juncture for audiovisual services.

The main points the Rapporteurs would like to address are:

I. Media convergence: alignment of the provisions for linear and non-linear services, Article -2 to Article -2f

The revision of the Directive aims to adapt the current rules to the increasing convergence of media markets and technologies in Europe. The scope of the Directive is being extended to cover not only traditional broadcasting and on-demand services, but also video-sharing platform services as well as user-generated videos.

In order to align the provisions for these services and to create a genuine level playing field, Chapter I has been restructured, in order to establish common rules for audiovisual media services, video-sharing platform services and user-generated videos. The provisions of this Chapter I apply to all services within the scope of the Directive alike. Seven new articles (Am. 32 to Am. 38) have been introduced, these merge several articles from the current Directive and the proposal relating to:

- incitement to violence or hatred, discrimination (Article -2),
- protection of minors from harmful content (Article -2a),
- audiovisual commercial communications, sponsoring (Article -2b) and product placement (Article -2c),
- protection of cinematographic works (Article -2d),
- information rights to recipients of a service (Article -2e),
- co- and self-regulations and codes of conduct (Article -2f).

Such changes in the structure of the Directive are crucial in order to achieve a higher degree of alignment between linear and non-linear services. By doing so, the Directive takes into account the realities of today's media convergence whilst setting out fair rules for competition

on media markets. With drastic changes in consumer behaviour and content consumption, and in order to ensure on the one hand a high level of consumer protection and on the other hand a genuine level playing field, the same minimum requirements should be established for all audiovisual services ie. audiovisual media services as well as sponsored user-generated videos or user-generated videos.

II. Protection of minors

The Rapporteurs wish to maintain a high level of protection for minors by retaining a graduated level of protection according to the severity of possible impairment, as referred to in Article -2, paragraph 1, point b, and paragraph 2 (Am.32).

The Rapporteurs would like to stress that there are technical ways to identify videos with harmful content and to eliminate those. However, such instruments must not restrict communicative freedoms. The principle of notice-and-take-down as referred to in Article 14 and Article 15 of Directive 2000/31/EC ('e-commerce' Directive) shall therefore apply.

III. Co-and self-regulatory codes of conduct

The Rapporteurs do not support the Commission's proposal for full harmonisation in the form of co-and self-regulation for video-sharing platform services. Since the purpose of the Directive is to simply coordinate national policies, a minimum harmonisation level is created, allowing Member States to set stricter rules.

To ensure consistency, the establishment of co-and self-regulatory codes of conduct has been streamlined in Article -2f (Am.38). In case a Member State has proven that any code of conduct does not work effectively, it remains free to enact laws on the matter concerned.

IV. Quantitative advertising rules, commercial communications and product placement

A higher degree of flexibility on quantitative advertising rules is necessary.

As for the provision on time limits for spots, whilst more flexibility is needed, it is necessary to maintain a sufficient level of consumer protection. The proposed daily limit of 20% could expose viewers to an excessive amount of advertising during prime time. The Rapporteurs therefore suggest in Article 23, paragraph 1 (Am. 77) that stricter limits should apply between 20.00 and 23.00 with a limit of 20% during that period.

Moreover, the provision of undue prominence regarding to product placement should be kept in the new Article -2c of the Directive (Am. 35)

Commercial communications regarding alcoholic beverages, tobacco and medical products should still be limited.

Limitations for commercial communications concerning nutrition should be agreed in codes of conduct in order to achieve a higher level of protection.

V. Promotion of European audiovisual works

The Rapporteurs welcome the Commission's proposal to strengthen the promotion of European audiovisual works. Providers of on-demand audiovisual media services should promote the production and distribution of European works by ensuring that their catalogues contain a minimum 30% share of European works and that those are given adequate prominence (Am. 75).

The Rapporteurs also suggest in Recital 21 (Am.16) that Member States should ensure that rightholders under their jurisdiction label their audiovisual content that qualifies as European works in their metadata and make it available to service providers, so that they can easily determine whether works are European.

VI. European Regulators Group for Audiovisual Media Services (ERGA)

The Rapporteurs appreciate the contribution of ERGA as an informative and consultative body. They consider however that to safeguard the prerogatives of Member States, it should not have any decision-making powers. More competences should be instead given to the contact committee, established in Article 29 of the current Directive (Am.82).

The contact committee should be solely competent to make decisions, including on opinions drafted by ERGA. In that regard, Article -2f, Article 2, paragraph 5b, Article 3, paragraph 4, Article 4, paragraph 1 and Article 4, paragraph 3 (Am. 38, Am. 42, Am. 51, Am. 54, Am. 55, Am. 56 and Am. 57) are modified accordingly.

VII. Accessibility

The Rapporteurs suggest that provisions relating to accessibility should remain in the text of the Directive. Article 7 of the existing Directive is being modified: Media service providers are required to make more efforts on the accessibility of services to people with a visual or hearing disabilities. Such accessibility should be achieved by the end of 2027. The wording proposed (Am. 67) takes into account the UN Convention on the rights of persons with disabilities, whilst leaving sufficient room for manoeuvre on how to reach that objective.

VIII. Other points

- Programmes with a significant children`s audience

The Rapporteurs consider that this notion as suggested by the Commission in its proposal is neither clear nor legally sound, because programmes not initially targeting children, such as sport events or TV singing contests, may fall within this category.

The Rapporteurs suggest to keep the current terminology of 'children's audience' and 'children programmes' in Recital 16 (Am. 12) as well as Article -2c, Article 10 and Article 33, paragraph 2 (Am. 35, Am. 72 and Am. 94)

- Appropriate prominence of audiovisual media services of general interest (Article 9a)

In order to safeguard media pluralism and diversity, Member States shall have the right to take measures to ensure the appropriate prominence of audiovisual media services of general

interests (Am. 70).

- Protection of signal integrity of media service providers (Recital 13a)

It is of utmost importance to guarantee the signal integrity of media service providers. Third parties, other than recipients of a service should not be able to modify programmes and services without the consent of the media service provider concerned (Am. 10).